CHAPTER I
INTRODUCTION

Human rights are evolved along with human being. These rights are basic rights relating to life, liberty equality and dignity of the individual. Human beings are born equal in dignity and rights. These are moral claims which are inalienable and inherent in all human personality by virtue of their ‘humanity alone’. These claims are articulated and formed as ‘human rights’. It has been translated into legal rights according to establishment of law creating process of states in national and international. The history of human rights is full of instances which establish the fact that all struggles for human rights revolve around to create a condition for respect each individual can live with dignity. The human rights are human dignity and the struggle for the human rights recognition and respect is for human dignity. Therefore human rights are basic inalienable rights which cannot be subjected to take away.

The traditional norm governing the concept of human rights is the respect for human personality regardless of colour, race, sex or religion. These rights are essential for development of human personality and pursuit of happiness of every human being. According to H. Lauchaterpat, human rights may be said to be those basic fundamental rights guaranteed to every man or women inhabiting any part of the world should be deemed entitled merely by virtue of born as a human being. Further Jack Donnelly observed, the Human rights are ‘universally’ applied because they are all human beings in universe. The human rights are considered as highest moral value rights and it regulates the fundamental structures and practices in society.

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ordinary circumstances, it takes priority over other moral, legal, and political claims. Therefore eminent professor Jock Donnelly called it as “the moral universality of human rights”\(^5\). These senses, the concept of human rights was introduced and developed by thinkers from various cultural and religious traditions. After the First World War, serious steps were taken to establishment of international human rights standards in nineteenth century. However, it was succeeded in the second half of the nineteenth century. The efforts of the United Nations, its specialized agencies and regional intergovernmental organizations were taken collective steps for recognition and promotion of international standard of human rights in universally\(^6\). The United National Organization was established on 24\(^{th}\) October 1945 with primary object to protect humanity from future war.

The Charter of the United Nations expressed the determination of member States “to reaffirm faith in the fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small”\(^7\). The Second World War has witnessed that massive violation of human rights which leaded to the breach of international peace. The horrors and untold sorrows of the world wars have strengthened the belief that “the recognition of the inherent dignity and of the equal and inalienable rights of all member of the human family is the foundation of freedom, justice and peace in the world.”\(^8\) It is necessitated by the world nations to enunciate the universal declarations model in recognition of the central role of Universal Declaration of Human Rights, 1948\(^9\). The Universal Declaration of Human Rights 1948 has been regarded as the cornerstone of

\(^{5}\) Id.
\(^{6}\) Supra note1 at vii.
\(^{7}\) Para-II of Preamble of the U.N. Charter, 1945.
\(^{8}\) Para-IV of the Universal Declaration of Human Rights, 1948.
\(^{9}\) It established the contours of the contemporary consensus on internationally recognized human rights. Adopted by the United Nations General Assembly on December 10, 1948, by a vote of 48-0 with eight abstentions.
international human rights law in contemporary world order\textsuperscript{10}. The UDHR includes substantial list of rights and it has been further elaborated by variety of treaties, most importantly the two international covenants on Human Rights, 1966\textsuperscript{11}, listed out the rights of Civil, Political, Economic, Social and Cultural Rights. The international human rights law comprises more than eighty universal and regional conventions\textsuperscript{12} which have binding force for state parties and therefore called as “hard law”. The end of the Word War-II most of the Nations constitutions in the world have incorporated human rights in their domestic sphere\textsuperscript{13} explicitly or implicitly. The various provisions of the Constitutions in the world have the covenants enumerated rights in one way or another.\textsuperscript{14} The Indian Constitution 1950 and the Universal Declaration of human rights 1948 has been drafted parallel in time. Therefore the founding fathers have faithfully reflected both guaranteed list of basic civil, political, economic, social and cultural in Indian Constitution under Part-III and Part-IV respectively; since India had faced serious basic human rights violation during the British regime. Hence the Indian constitution consciously has incorporated basic human rights norm into Constitutional mainstream. Therefore the realization of human rights in India is not a claim of individual against the State as of the responsibility of the State is to protect human rights whether the individual claims or not, the state is responsible to protect and secure the human rights.\textsuperscript{15}

\textsuperscript{10}Supra note 1 at viii.
\textsuperscript{12} These instruments and state parties thereto are presented in the UNESCO Publication Human Rights: Major International Instruments published annually.
\textsuperscript{14}Prof. Mool Chand Sharma and Raja Ramachandran (eds), Constitutionalism, Human Rights & the Rule of Law – Essays in honour of Soli J Sorabjee xiv (Universal law publishing, Delhi, 2008).
\textsuperscript{15}Supra note 13 at 40.
1.1 Social and Economic Rights in Imperialist Rule and at Independence

India faced massive human rights violations during the British regime for more than 200 years. Indian masses were deprived of basic rights which are essential to lead life with dignity i.e. right to food, clothes, education, work, health, property right to land and shelter. During that period social and economic rights were deprived. Lahore and Karachi sessions of Indian National Congress urged the British to guarantee independence and certain fundamental rights for Indian people. At the time of India’s independence, there was everywhere starvation deaths, droughts, illiteracy and no standard of living, and no social security to common man to worker, education and property rights. These situations has been explained by Dr. Ambedkar in his concluding address to Assembly and argued as “We must begin by acknowledgement the fact that there is complete absence of two things in Indian Society. One of these is equality. On the social plane we have in India a society based on the principle of graded inequality which means elevation of some and degradation for others. On the economic plane we have a society in which there are some who have immense wealth as against many who live in abject poverty. How long shall we continue to deny it we will do so only by putting our political democracy in peril. We must remove this contradiction at the earliest possible moment or else those who suffer from inequality will blow up the structure of political democracy which this Assembly has so laboriously built up.”

Jawaharlal Nehru’s economic plan was mainly focused on socialistic model. He was the one who was responsible to incorporate human rights into India through framing polices which aimed to eradicate poverty and remove illness from the society i.e. hunger, poverty and illiteracy. He categorically asserted that “if we cannot solve this problem soon, all our paper

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constitutions will become useless and purposeless... If India goes down, all will go
down; if India thrives, all will thrive; and if India lives, all will live". This speech
indicates that the necessary incorporative mechanism must be provided under our
constitution. During this time, the United Nations Organization was established by
dominating powers in the World. The Preamble to the U.N. Charter proclaims “to
reaffirm faith in fundamental human rights, in the dignity, and worth of human
person, in the equal rights of men and women and of national large and small, and ....,
to promote social progress and better standards of life in larger freedom”. Apart
from preamble to the U.N. Charter, Art.1 (2) categorically urges the World Countries
to develop friendly relations with other nations and respect for equal rights of all and
guarantee to self-determination of people. Further Article 1(3) provides to promote
and protect for fundamental human rights and fundamental freedom to all without any
distinctions as to race, religion, sex or language. The responsibility fixed by U.N.
Charter, the human rights Committee was established by the ECOSOC. The
Committee studied various provisions of the Charter imposed obligations for
protection and strengthening of fundamental human rights. Hence, the Committee
appointed Elinor Roosvelt as Chairman of the Draft declaration of the Universal
Declaration of Human Rights (UDHR). At the same time, Indian Constituent
Assembly appointed a drafting committee to frame Indian Constitution. The Indian
Constitutional Drafting Committee appointed sub-committees to study about various
constitutions and to incorporate relevant provisions into Indian Constitution. The
Drafting of Declaration task handled by well developed Western nations, they got
well experience working of their constitution, and certain rights mentioned were
included into Universal Declaration of Human Rights. These rights were influenced

17 Id.
in Drafting of the Indian Constitution. The UDHR mentioned Civil and Political Rights and Social-Economic Rights were incorporated into Indian Constitution. India is an original member of the U.N. and signatories of the Universal Declaration of the Human Rights. Treaties are not to be treated self executing in India. India specifically follows the Anglo-Saxon model of British practice to application of treaties or convention. This principle incorporates customary international law into India, if they are not inconsistent with statutes. But, the Constitution imposed restriction under article 367. It directs that the International Charters should be interpreted on the same footing as an Act of Parliament. However, The Supreme Court of India has not hesitated to incorporate international human rights law into India, the Court interpreted the Written Constitution with liberally infusing salutary safe guards for human rights contained under the International Human Rights law. Because, the Constitution of India contemporary to the Universal Declaration of Human Rights. In 1948, the Constituent Assembly debates were going on. Therefore we may assume that the makers of the Constitution were influenced by UDHR for framing Part-III and Part-IV of the Constitution. With regard to both covenants i.e. ICCPR, and ICESCR, 1966 to which India is party and ratified by it. Hence, the covenants imposed international obligation to implement it through appropriate legislation. If the Parliament failed to legislate, the Court would be justified interpreting the constitutional provision with regard to the International Covenants. These are the justifying mechanism for article 367 to incorporate international human rights into India. Therefore, Article 51(c) specifically provides that it is one of the directive principles to direct the State to foster respect for international law and treaty

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obligations in the dealings of organized people with one another.\textsuperscript{20} Art.253 provides that Parliament has power to make law for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body.\textsuperscript{21} These provisions apparently provide incorporation mechanism. Therefore the Union Parliament, Executive and Judiciary have power to interpret international treaty or Convention or instruments relating to human rights while doing their course of business. Hence, Rajeev Dhavan, Senior Advocate of Supreme Court aptly observed that “\textit{human rights treaties stand on a different footing from other treaties precisely because similar rights enshrined in the Indian Constitution}”.\textsuperscript{22}

The Constitution itself provides that the executive of the Union has power to enter into treaties; and execution and implementation of treaty provisions. The Executive power of the Union is extending (i) to the matters with respect to which Parliament has power to make laws; and (ii) to the exercise of such rights, authority and jurisdiction as are exercisable by the Government of India by virtue of any treaty or agreement.\textsuperscript{23} Therefore executive has performed on part of their obligation to frame Welfare programmes and fund allotments in various FYPs. The Supreme Court of India has adopted Anglo-Saxon and progressive approach by interpreting Constitutional and other statutory provisions. With regard to Parliament enactment, the Government of India has replied to the U.N. rapporteur in which categorically stated that “the treaty or convention has to be given effect through national

\textsuperscript{20} Article 51(3) of the Indian Constitution, 1950.
\textsuperscript{21} \textit{Id}, article 253.
\textsuperscript{22} Rajeev Dharan, “\textit{Treaties and People: Indian Reflections\textquotedblright}, 39 JILI 31 (1997).
\textsuperscript{23} Article 73 of the Indian Constitution, 1950.
Therefore, organs of the Government have incorporated socio-economic related rights into India.

Therefore then the Prime Minister of India, Pandit Jawaharlal Nerhu emphatically asserted that to remove inequalities and provide socio-economic rights to all people in India. His speech was “the service of India means the service of the millions who suffer. It means the ending poverty and ignorance and disease and inequality of opportunity. The ambition of the greatest man of our generation has been to wipe every tear from every eye. That may be beyond us, but as long as there are tears and sufferings, so long our work will not be over”. The then President of India, Rathakrishnan asserted that “India must have a ‘socio-economic revolution’ designed not only to bring about ‘the real satisfaction of the fundamental needs of the common man’, but to go much deeper and bring about ‘a fundamental change in the structure of Indian Society’”. Hence socio-economic rights must be guaranteed to people. The Constituent Assembly emphatically discussed about socio-economic rights. Hence, the framers of the Constitution incorporated the specific provision under Directive principles in Art.51 and legislative relations between Union and States in Art.253 to implement laws and ratify treaties which was made under international conferences or with other nations. These provisions are responsible for incorporation of international human rights to be incorporated into India. Therefore these factors that during 200 years imperialistic rule of Britisher in India, they deprived Indians basic civil and political rights; and social and economic rights such as right to education, food, shelter etc. In this context, the research made critic and analyse to India’s active role of incorporation of social and economic rights of

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24 Supra note 18 at 93.
26Id. at 26–27.
international human rights in India through legislature of the Union, union judiciary
and exclusive program of action on social, economic and cultural rights. Hence, the
research work formulated certain questions, which are to be answered in this research.

1.2 Research Problems

In this background the following research questions are to be formulated.

Does the India take effective step to incorporate the international human rights law?
If so:-

1. What is meant by international human rights?
2. What constitutes Economic, Social and Cultural rights in international human
   rights law?
3. What are the international obligations imposed under the International Human
   Rights law in India?
4. What is the incorporation mechanisms provided under the Indian law?
5. What is meant by legislative incorporation of international human rights in India?
6. Does the legislature of the union take any endeavour to incorporate international
   human rights into domestic sphere?
7. What is meant by executive incorporation of international human rights in India?
8. Does the executive of India take any endeavour to incorporate international
   human rights into domestic sphere?
9. What is meant by judicial incorporation of international human rights?
10. Does the judiciary of India take any endeavour to incorporate international human
    rights into domestic sphere?
11. What are the methods adopted by India for incorporation of International Human
    Rights?
1.3 Objectives of the Study

The objectives stated below are deduced from the research questions in order to have comprehensive and explicit answers.

1. To define operative definition of “international human rights”, “social and economic rights”, “incorporation”, “legislative incorporation”, “executive incorporation”, “judiciary incorporation” and “seminal rights” for the purpose of the research work.

2. To analyse various international conventions, treaties and covenants that are related to the international human rights.


4. To analyse India’s obligation with international law.

5. To analyse and identify international conventions and treaties in which India is a signatory.

6. To analyse the legislative social and economic rights of incorporation of international human rights in India.

7. To analyse the executive incorporation of social and economic rights of international human rights in India.

8. To analyse the judicial incorporation of social and economic rights of international human rights in India.

9. To critically analyse the seminal rights related to right to educations, right to work, and right to found family.

10. To critically analyse the right to social security related rights of workers and old aged person; and their welfare schemes programme in India.
11. To analyse the right to adequate standard of living related to right to health, right to food, pure drinking water, right to housing in India.

12. To analyse right to property in India.

1.4 Conceptual Definition
The research work concepts like ‘international human rights, ‘social and economic rights’ ‘incorporation’, ‘legislative incorporation’, ‘executive incorporation’, ‘judicial incorporation’ and ‘seminal rights’ among others has used for purpose of the research. Hence, clear understanding of the concepts is required to proceed in this research work.

**International Human Rights Law**
The eminent scholars Louis Henkin, Jack Donnelly, Ronald Dworkin and Hersch Lauterpacht have defined international human rights in their own perspectives. For the purpose of the research, it refers and limited to the rights set out in the international conventions and covenants which are adopted by General Assembly of the United Nations and its organizations.

**Social and Economic Rights**
Social and Economic Rights means and includes cultural rights; seminal rights such as right to education, work and found family; right to adequate standard of living such as right to food, water, right to shelter and health; right to social security; and right to property.

**Incorporation**
The concept of incorporation means and includes the influence or reference of the international human rights law directly or indirectly into Indian legal system. The process of incorporation has limited to legislative, executive and judicial.
Legislative Incorporation

Legislative incorporation means the law enacted by the Parliament of India directly or indirectly to social and economic rights of international human rights related to seminal rights such as right to education, work and found family; right to adequate standard of living such rights are food, drinking water, shelter and health; right to social security of workers in organized and unorganized and old aged persons; and right to property.

Executive Incorporation

Executive incorporation means the executive programmes formulated by union executive of India directly or indirectly to social and economic rights of international human rights related to seminal rights such as right to education, work and found family; right to adequate standard of living such rights are food, drinking water, shelter and health; right to social security of workers in organized and unorganized and old aged persons; and right to property.

Judicial Incorporation

Judicial incorporation means the Supreme Court of India while deciding cases recognizing directly or indirectly to social and economic rights of international human rights related to seminal rights such as right to education, work and found family; right to adequate standard of living such rights are food, drinking water, shelter and health; right to social security of workers in organized and unorganized and old aged persons; and right to property.

Seminal Rights

The origin of the word ‘seminal’ is derived from Latin word ‘seminalis, from semen, semen seed and it firstly used in 14 century. The word considered as
adjective. It means having strong influence on ideas, works, and events etc., which come later: very important and influential. The concept of seminal rights requires definition and an in depth explanation. The core international human rights instruments has provided minimum basic rights that required for individual to lead a progressive life without which individual cannot live as a human being. Therefore seminal right means and includes right to education, work and found family. These rights are required to fulfill the development of human being in social and economic aspect.

1.5 Review of Literature

In this section books, articles, dissertations, notes and comments; and reviews made by jurists, authors, scholars are analyzed to find out the gap in existing literature on the topics of International Human Rights Law and, on Economic, Social and Cultural Rights, Human Rights in India and the Roles of Parliament, Executive and Supreme Court on protection and promotion of International human rights in India.

Manisuli Ssenyonjo, in “Economic, Social and Cultural Rights in International Law”, analyzed in deeper in the light of the practice of the International Covenant on Economic, Social and Cultural Rights while taking into account of other relevant sources of Economic, Social and Cultural Rights (ESCR) at national, regional and international levels. Harold Hongju Koh, in “How is International Human Rights Law Enforced?” analyzed to enforcement of international human rights into domestic level through a transnational legal process of institutional interaction, interpretation of legal norms and attempt to internalize those norms.

27 Supra note 19.
Ellie Palmer, in “Judicial Review, Socio-Economic Rights and the Human Rights Act”, analyzed legal mechanism for protecting socio-economic rights in International law and it was recognized into constitutional propriety and efficacy of various methods of protecting socio-economic rights at international, European regional and domestic legal system. Rhona K.M. Smith, in “Texts & Materials on International Human Rights”, trace the international human rights with special reference to key vulnerable groups. Anthony D’ Amato, in “The concept of Human Rights in International Law”, attempted that the concept of human rights can play vital role in international law to implement and comply the world in realistic manner. Dianne Otto, in “Rethinking the ‘University’ of Human Rights Law”, analyzed international human rights assists toward a world without domination and established universally egalitarian states. He explored transformation of international human rights universally applicable in whole world. Michael Hass, in “International Human Rights : A Comprehensive Introduction”, discussed the main focus on human rights activism in which individual and organizations sought to advance human rights through drafting important legal documents.

Durga Das Basu, in “Human Rights in Constitutional Law”, elaborately analyzed various nationals’ constitution with international human rights law in comparatively and further he analyzed that the international human rights law guaranteed rights in national constitutions. Mahendra P. Singh and Helmut Goerlich

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37Vijay Chitnis and C.M. Madam (et.al), Human Rights and the Law, (Snow-white, Mumbai, 1997).
Yash Ghai & Jill Cottrell, in “The Millennium Declaration, Rights and Constitutions”,\(^{41}\) explored how economic, social and cultural rights which recognized under the Millennium Development Goals (MDGs) enforced. They emphatically says that only possible when the world constitutions incorporate these rights into it. Granville Austin, in “The Indian Constitution: Corner-stone of a Nation”,\(^{42}\) explored that Indian Constitution in Part-III and Part-IV is the conscience of the Constitution and it guarantees civil and political rights and, economic social and cultural rights. Therefore he categorically came to conclusion that Indian Constitution is the first and foremost a social document.

Manoj Kumar Sinha, in “Implementation of Basic Human Rights”,\(^{43}\) analyzed development of human rights in jurisprudential aspects in national and international level and implementation of non-derogable rights at national and international level, and Jurisprudence of Indian judiciary and national human rights institutions. P.R. Ghandhi, in “Balackstone’s International Human Rights Documents”\(^{44}\) consolidated various international instruments in chronologically dealing to human rights and United Nations procedure for handling human rights complaints.

Sally Engle Merry, in “Human Rights and Gender Violence : Translating International Law into Local Justice”\(^{45}\) analyzed human rights into anthropological model. She explored deep roots in cultural and religious belief. She also discussed how human rights are incorporated into local cultural system. She emphatically answered that human rights norms incorporated into local through localizing


\(^{42}\)Granville Austin, *The Indian Constitution : Cornerstone of a Nation*, (Oxford University Press, New Delhi, 2009).


\(^{45}\)Sally Engle Merry, *Human Rights and Gender Violence*, (Oxford University Press, New Delhi, 2006).
transnational knowledge of rights, S.P. Sathee, in “Judicial Activism in India”,
traces the evolution of the Supreme Court of India from restrictive narrow or passive,
positivist court into an activist court. He is proudly at jurist critically analyzed
Supreme Courts judgments in various periods. He observed that the Supreme Court
has activist role in cases decided under the Public Interest Litigation.

Jack Donnelly, in “Universal Human Rights in Theory and Practice”,
explores the efficacy of bilateral and multilateral international action to issues related
on humanitarian intervention, democracy and human rights. He further elaborates a
theory of human rights in view of cultural relativism. Adamantia Pollis and Peter
analyzed issues with the concept of the Universality of the human rights and discussed the
theoretical aspect of human rights with in the context of economic, social and cultural
traces the contribution of political theory relating protection and promotion of human rights in international law
i.e. global and regional level and, foreign policy of states and non-governmental
organizations.

Atula Gaur, in “Protection and Implementation of International Human Right
in Domestic Law” traces the implementation of human rights standards in India and
explains constitutional provisions and Judicial decisions which harmonizing the
International with municipal law. Shale Horowitz and Albrecht Schnabel (eds.), in

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46S.P. Sathe, Judicial Activism in India, (Oxford University Press, New Delhi, 2010).
50Atula Gaur, Protection and Implementation of International Human Rights in Domestic Law, (Serials Publications, New Delhi, 2010).
“Human Rights and Societies in Transition: Causes, Consequences, Responses”, explored appropriate and effective policies to promote human rights in transition societies. International, regional and local actors must be aware of violations of human rights so that they can frame policies to take steps to protect human rights and it also offers recommendations for implementation of human rights practices in transition societies.


\begin{thebibliography}{9}
\bibitem{56}S. Gopalan (ed.), \textit{India and Human Rights} (Lok Shaba Secretariat, New Delhi, 1998).
\bibitem{58}Upendra Baxi, \textit{The Future of Human Rights}, (Oxford University Press, New Delhi, 2005).
\bibitem{60}YSR Murthy, \textit{Human Rights : Hand Book}, (LexisNexis, New Delhi, 2007).
\end{thebibliography}
and Developing Countries”62 explored Human Rights in new horizons of International Law, Human Rights in developing nations, developed nations, regional conventions on Human Rights and jurisprudence of the European Court of Human Rights.

Bimal N. Patel edited a collection of articles under the title, “India and International Law” 63. In this work, Manoj Kumar Sinha wrote an article, “Laws of Human Rights and the Indian Constitution” deals the enforcement mechanism under the Constitutional Law and for this purpose, the role played by the Supreme Court, executive and legislature in implementation of human rights. Another article contributed by Subhash C. Kashyap, in “Human Rights provisions in the UN Documents and in the Constitution and Law of India” comparatively analyzed various internationally recognized human rights instruments with constitutional provisions and Central Acts.


Courts activist role into A.K. Gopalan to Menaka Gandhi and Menaka Gandhi to 1993 in which Supreme Courts activists’ role was explained.

Anisur Rahman (ed.), “Human Rights and Social Security”\textsuperscript{65} in which an article contributed by Nalini Kant Jha, in “The Role of Higher Indian Judiciary in Balancing Human Rights and Social Welfare : An Assessment” analyzed the Supreme Court activist role played through public interest litigation (PIL) or social action litigation (SAL) in number of cases. He traced number of cases in protection of basic human rights balancing social wellbeing. Another article contributed by Pawan Kumar, in “Role of Public Interest Litigation in Protection of Human Rights under Indian Constitutional Law” analyzed Human Rights under Indian Constitution and traced public interest litigation’s nature, scopes and courts role to protect and implement human rights through PIL.

Dr. Paramjit S. Jaswal and Dr. Nishtha Jaswal, in “Human Rights and the Law”\textsuperscript{66} traces historical foundation of human rights and analytically discussed the International Bill of Human Rights (IBHR) and also Judiciary’s evolution of new human rights jurisprudence. Azizur Rahman Chowdhury and Md. Jahid Hossain Bhuiyan edited a collection articles titled, “Issues in Human Rights”.\textsuperscript{67} In this work, M. Abdul Hannan, in “The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights : Their Implementation and Progress” analyzed the implementation procedures of the covenants and the petition system and general comments of the HRC; and supervisory procedure.

\textsuperscript{66}Dr. Paramjit S. Jaswal and Dr. Nishtha Jaswal, “\textit{Human Rights and the Law},” (APH Publishing Corporation, New Delhi, 2012).
Ian Brownlie (ed.), in “Basic Documents in International Law”\(^{68}\) attempts to combine essential instruments related to international law. B.N. Kirpal and Ashok H. Desai (et.al) edited a collection of articles titled, “Supreme But not Infallible: Essays in Honour of the Supreme Court of India”.\(^{69}\) In this work, Atul M. Setalvad, in “The Supreme Court on Human Rights and Social Justice: Changing Perspectives” analyzed constitutional provisions and Supreme Court decisions specifically recognized human rights through innovative techniques.


K.P. Saksena edited collected articles titled, “Human Rights and the Constitution”.\(^{72}\) In this work, V.S. Mani, in “The Promise, the Content and the Performance: The Human Rights Provisions in the Indian Constitution” critically analyzed objective resolution, Part-III and Part-IV of the Constitution, social and economic justice and expansive view of right to life and personal liberty in article 21 by the Supreme Court. Another article contributed by Abdulrahim P. Vijapur, in “Domestic Application of the International Covenant on Civil and Political Rights – with Special Reference to Rights of Minority in India” analyzed minorities rights

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\(^{68}\) Ian Brownlie, *Basic Documents in International Law*, (Oxford University Press, New York, 2009).

\(^{69}\) B.N. Kirpal and Ashok H. Desai (et.al), *Supreme But Not Infallible: Essays in Honour of the supreme Court of India*, (Oxford University Press, New Delhi, 2010).


under the ICCPR and domestic implementation of International Covenants on Human Rights through reporting and complaint procedures.


Rajeev Dhavan, in “Treaties and the People : Indian Reflections”,76 explored the background of treaty making power, restraints arising from incorporation doctrine and ratification of treaties in Indian perspectives. He observed that treaties are expanding regime of Global governance to accountability in democratic society. Gopal Subramanium, in “Contribution of Indian Judiciary to Social Justice Principles underlies the Universal Declaration of Human Rights”,77 critically examined Supreme Courts role while deciding cases, expanding, horizons of right to life on basis of human rights through judicial interpretation in various cases since UDHR, 1948.

Ranbir Singh, in “Human Rights and the People of India”, critically explored the interface between human rights and the people of India. He examined after independence, the Indian people were really enjoyed human rights. N.S. Kamboj, in “Human Rights and Judicial Activism”, examined the role of NHRC and the Judiciary to effective implementation of human rights. V. Hemalatha Devi, Sayed Maswood and B. Yuvakumar Reddy, in “Right to Work as Fundamental Right: Illusion or Reality”, analyzed constitutional provisions related to right to work with international bill of rights and judicial pronouncements.


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analysed right to development in context of declaration on the Right to Development. He explored that right can be guaranteed to everyone in the present day.

Dr. S.R.S. Bedi, in “The Role of the Judges in the Age of Human Rights – An Analysis of Human Dignity,” critically analysed the jurisprudential foundation and explanation on the part played by the U.N. and landmark judgments of the ICJ. Gurjeet Singh, in “Role of National Human Rights Commission in the context of Review of Laws, Implementation of International Instruments of Human Rights,” examined the role and responsibilities performed by the NHRC in accordance with the statutory requirements and review of laws and implementation of International Human Rights Law in India. Arvind P. Datar, in “Our constitution and its self-inflicted wounds” critically analysed to Constitutional Amendments which is responsible for a socialist and a republican form of state. Rajeev Dharan, in “Promise, Promise…..: Human Rights in India” critically analysed compartmentalization of Human Rights into ESR and CPR and its constitutional background of India.


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Rights Vis – A – Vis Human Rights Movements in India. It Strengths and Weakness”\textsuperscript{90} analysed development of International Human Rights and Human Rights movement in India and effects of violation of Human Rights to developing Countries. J.L. Kaul and Anju Vali Tikoo, in “Revisiting Award of compensation for violation of Fundamental Human Rights: An analysis of Indian Supreme Court Divisions”\textsuperscript{91} analyzed the doctrine of compensation in case of violation basic Fundamental Human Rights as envisaged by the Supreme Court.

P.S. Seema, in “Incorporation of International Human Rights Documents into Indian Law- Response of the Supreme Court”\textsuperscript{92} explored to the jurisprudence developed by the Supreme Court of India while decided cases in incorporated International Human Rights Law into India and constitutional Scheme of incorporation. Noor Mohd. Bilal, in “International Human Rights Law and International Humanitarian Law – convergence and concerns”\textsuperscript{93} analysed the International Human Rights Law with regard to observant and promotion of Human Rights; and relationship between Human Rights Law and Humanitarian Law in modern International Law, Dr. Rajkumar Upadhay, in “Western and Indian concept of Human Rights: AN overview”\textsuperscript{94} analysed the Human Rights concept in Western countries and Indian approach of Human Rights.

\textsuperscript{94}Dr. Rajkumar Upadhay, “Western and Indian Concept of Human Rights: An overview”, \textit{All India Reporter}, Jour 123 – 128 (2010)
Robert Mc. Corquodale and Penelope Simous, in “Responsibility beyond Borders: State Responsibilities for Extraterritorial Violations by Corporation of International Human Rights Law”\textsuperscript{95} analyse the extraterritorial obligation of states under International Human Rights Law and states responsibility and International Human Rights Law. Justice P. Sathasivam, in “Role of Court in protection of Human Rights”\textsuperscript{96} analysed the Supreme Court activist role while deciding cases through which International Human Rights incorporated V.G. Ranganath, in “Human Rights - A Judicial Analysis”\textsuperscript{97} analysed the Supreme Court recognised basic Human Rights.

The above review of literature shows that in fact the authors have widely concentrated evolution of International Human Rights and Human Rights in India and in various issues related Civil and Political Rights; and Economic, Social and Cultural Rights. Some authors’ occasionally analysed Supreme Court role to applying International Human Rights Law while deciding cases before it. It is evident that scholars have analysed various issues related to Human Rights in jurisprudential aspects including International conventions and treaties. But no authors systematically have been explored and formulated incorporation of International Human Rights particularly social and economic rights in relation to executive, legislative and judiciary. It clearly shows that there is no systematic research on this topic. Therefore, in this research work is attempt to explore and formulate role played by legislative, executive and judiciary to incorporate Socio – economic rights of International Human Rights Law in India.

\textsuperscript{96}Justice P. Sathasivam, “Role of Courts in Protection of Human Rights; \textit{All India Reporter}, Jour 65 – 71 (2012)
\textsuperscript{97}V.G.Ranganath, “Human Rights – A Judicial Analysis”, All India Reporter, Jour 204 – 208 (2013).
1.6 Research Methodology

It is a doctrinaire research. The processes of incorporation of social and economic rights of international human rights law into India are analysed and in which social and economic rights are separated from international human rights law. The research identified the methods of incorporation of social and economic rights of international human rights laws into India which has been explored, analysed and formulated through methods of legislative, executive and judicial incorporation. The doctrine of international human rights has been analysed with reference to application in India.

There are various stages involved in the research process.

1) All the international human rights are listed out.

2) All the social and economic rights of international human rights are systematically listed out from international human rights.

3) Identified various incorporation mechanisms of social and economic rights international human rights set out in the Indian Constitution.

4) Legislature incorporation of social and economic rights of international human rights is identified.

5) Judiciary’s roles of application of social and economic rights of international human rights through interpretation of various laws are identified.

6) Executive incorporation of social and economic rights of international human rights of central government programs is culled out.

7) Roles of legislature, executive and judicial incorporation of social and economic rights have been critically analysed.
All the core social and economic rights are classified into seminal rights; adequate standard of living; social security; and right to property. Further these rights are divided into right to education, work, found family, the minimum rights required for adequate standard of living – food, water, housing and health. The Social security includes rights related to organized and unorganized workers and in case of unemployment, old age, sickness and disablement; and finally the right to property. The right to property is guaranteed as one of the economic, social and cultural rights. The era of science and technology guaranteed individual’s intellectual as a property.

For the purpose of this research each chapters are classified into three methods of incorporation i.e. legislative, executive and judicial. The Indian stages of incorporation has analyzed into four periods. The first period of incorporation related from 1950 after the adaptation of Universal Declaration of Human Rights (UDHR) by United Nations General Assembly (UNGA) up to the enactment of international covenants 1966. The second period is from 1966 to 1979. The third period is from 1979 to 1993. The fourth period is from 1993 to 2013.

The research work is applied explorative, formulate, analytical and critical methods. The international human rights laws have been explored. The core international economic, social and cultural rights have separated from the international human rights law. The constitutional mechanism for incorporation of international human rights has critically studied. Through this incorporation mechanism, of the legislative, executive and judiciary role has been analyzed. The incorporative methods have been classified into legislative, executive and judicial. The legislative, executive and judicial methods of incorporation was adopted by India

98 India has ratified both covenants on 10th April 1979
99 India has enacted the Protection of Human Rights Act, 1993 that incorporated most of the basic standard recommended by Amnesty International.
100 Id.
that legislature has responsible for enacting laws, executive formulated policies for welfare of the people and judiciary interpret the law made by legislature and its role to do complete justice under article 142\textsuperscript{101}. The process has been studied into four periods in which roles of methods of incorporation i.e. mechanism has been critically studied. For the purpose, the Acts of Parliament, executive programs and judiciary role for incorporation of social and economic rights of international human rights has been listed out. Thereafter sources are classified chronologically for the purpose of the study.

1.7 Sources of Data

International treaties and conventions related to social and economic rights, Constitution of India, Acts of Parliament, executive programmes of social and economic rights and decision of the Supreme Courts on social and economic rights are considered as the primary sources. Articles, books, dissertations, writs-ups of the eminent scholars on the human rights and review of cases are considered as secondary sources of data. The judgments of the Supreme Court downloaded from the AIR InfoTech, SCC online and executive programs of the Government of India are downloaded from internet resources.

1.8 Delimitation

This study is confined to core international instruments relating to social and economic rights that are adopted by United Nations General Assembly. The legislative incorporation of social and economic rights of international human rights law is considered as Act of Parliament when it merely touches the economic and social rights. Similarly executive, judicial incorporation are referred to Union executives and Supreme Court respectively. The Supreme Court cases are taken

\textsuperscript{101}The Supreme Court has power to grant equitable relief to eradicate injustice while exercising its jurisdiction.
irrespective of *ratio decidendi* or *obiter dicta*. The analysis of incorporation mechanism in India reveals the usages of words transformation that is interchanged for the concept of incorporation. Hence, both concepts are addressed for this research purpose.

1.9 Limitations

The research explores, formulates and critically examined the incorporation of social and economic rights of international human rights into India. For the purpose, processes of incorporation have been done through the Act of Parliament; application of international human rights by the Supreme Court while deciding or taking interpretation of statutes; and union executive welfare programmes. These are studied under four periods (1950 to 2013). It is necessary to compile and edit them in an organized way to set a complete picture about the given issues. Therefore many Acts of Parliament, Constitutional Amendments, Union Governments’ welfare programmes and Supreme Courts judgments were quoted in verbatim.

1.10 Plan of study

The research work has divided into seven chapters. The first chapter is *Introduction*, the second is the *Background*, the third is *Seminal Rights*, fourth is *Right to Adequate Standard of Living*, fifth is *Social Security*, sixth is *Right to Property* and the last chapter is *Conclusion*. The introductory chapter list out the research questions to be answered, application of methodology, review of literature, sources of data used for to get answers for the research questions.

The second chapter, *Background* is divided into three parts. First part deals with development of international human rights law, second part deals about economic and social rights; and third part deals that economic and social right in India. The first part the development of international human rights law have been
traced and analysed. The enumerations of human rights in international bill of human rights\textsuperscript{102} have been discussed. The second part deals with core international instruments that depicted social and economic rights have been listed out. The third part discussed social and economic rights in India as found is constitution\textsuperscript{103} and Human rights Act and institutional mechanism, the role of judiciary in incorporation or application of international human rights while interpreting and deciding cases. This chapter also identified that the list of international human rights and application or transformation of these rights are into India in various process of incorporation.

The third chapter titled as \textbf{Seminal Rights}. It includes basic essential rights to development of individuals such rights are education, work and found family. The chapter divided into three heads. The first heads deals right to education second head deals right to work and thirdly right to found family discussed. The role of legislature, executive and judiciary incorporation of related periods discussed. The fourth chapter deals about \textbf{Right to Adequate Standard of Living}. These are basic rights without the right human being cannot live as human being. Hence, this chapter divided into right to food, water, Housing and health and that are elaborately discussed in international instruments and incorporated in to India through legislature, executive and judiciary. The sixth chapter deals with \textbf{Right to Property}. The right to property has considered as controversial because that protects ‘haves’ against ‘have-nots’. It clearly has characteristic of social rights with significant implications for the distribution of social goods and wealth. The right to property has major implications for several important social and economic rights such as right to work, the right to enjoy the benefits as right to work, the right to enjoy the benefits of

\footnotesize{\textsuperscript{102}The International Bill of human rights consist of the Universal Declaration of human rights called as soft law, International covenants on Civil and Political Rights, 1966 and International Covenants on Economic, Social and Cultural Rights, 1966, both are called “hard law”.}

\footnotesize{\textsuperscript{103}Part-III (Fundamental rights) and Part-IV (Directive principles of state policies) of the Indian Constitution, 1950.}
scientific progress, the right to education and the right to adequate housing. John Locke rightly called right to property as natural rights such as right to life and liberty which human beings could not be deprived of. Now-a-days property is considered as key concepts to the legal order. The state’s economy depends on the property. During 1950s & 1960s western world has converted private property into public property through nationalization process. Hence, the right to property is not mentioned in binding covenants.\(^\text{104}\) Now the Supreme Court of India has recognized right to property as a human rights.\(^\text{105}\) The right of claim of adverse position is considered as human right. The protection of traditional knowledge and intellectual property are also comes under right to property and same was elaborately analyzed.

The final chapter is conclusion and it sum ups the findings, trends of incorporation and recommendations.

\(^{104}\) Id. art.31-B.

\(^{105}\) Justices Dalveer Bhandari and H S Bedi noted, "The right of property is now considered to be not only a constitutional or statutory right but also a human right." Quoting from a decision passed by an English court, the Bench said, "Human rights have been historically considered in the realm of individual rights such as right to health, right to livelihood, right to shelter and employment, etc. But now human rights are gaining a multifaceted dimension. Right to property is also considered very much a part of the new dimension."