

CHAPTER 11

Endorsement of the United Nations Charter in the National Constitutions of the World

The Charter of the United Nations, signed in San Francisco on 26 June 1945, is the first international treaty whose aims are expressly based on universal respect for human rights. Each of the six principal organs of the United Nations - the General Assembly, the Economic and Social Council, the Security Council, the Trusteeship Council, the International Court of Justice and the Secretariat - plays an active role in the unceasing efforts of the United Nations to promote and protect the realisation of human rights and fundamental freedoms throughout the world.

The deep concern of the international community for the promotion and protection of human rights is clearly expressed in the Charter of the United Nations, in which the peoples of the United Nations record their determination "to reaffirm faith in 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",¹ and for this purpose "to practice tolerance and live together in peace with another as good neighbours"² and "to employ international machinery for the promotion of the economic and social advancement of all peoples".³

The Charter of the United Nations is not confined to mere reaffirmation, in its preamble, the faith in fundamental human rights. Article 1(3) *inter alia* specifies that one of the purposes of the United Nations Charter is to promote and respect human rights and fundamental freedoms. Further, the Charter is not limited to the simple proclamation of goals. Article 55(c), obliges the United Nations to act in such a way as to promote "universal respect for, and observance of, human rights". To enable it to fulfil that mission, the Charter gives the United Nations certain powers and prescribe certain methods. These powers and

¹ See, Preamble of the Charter of the United Nations.

² *Id.*

³ *Id.*

methods essentially come under three concepts: 'study', 'examination' and 'recommendation'. Reference should be made, in this context, to article 13, concerning the general assembly; article 60, concerning the implementation of international cooperation in the economic, social and human rights fields; article 62 which defines the functions of the Economic and Social Council; and articles 76 and 87, which concern the trusteeship system.

These powers and methods enable the United Nations, in particular, to recommend to states the ratification of human rights treaties drafted within the organisation. Thus, any reference of the United Nations Charter in the national Constitution has an important bearing on that country's commitment towards human rights.

The Charter of the United Nations has been referred in the Constitutions of eleven countries of the world. These are: Afghanistan, Angola, Bangladesh, Benin, Cambodia, Chad, Comoros, Ghana, Guinea, Moldova and Togo. Of these, Afghanistan, Benin, Chad, Comoros, Guinea and Togo have recalled the Charter in the Preambles of their Constitutions and others have recalled in their constitutional articles with the exception of Afghanistan which not only endorses in the Preamble but also in the text. The following paragraphs highlight the references of the UN Charter as incorporated in the respective national Constitutions.

Constitution of Republic of Afghanistan 1990

Preamble : "... respecting the valuable heritages of the constitutionalist movement and in conformity with the charter of the United Nations ...":

Article - 133 : "The Republic of Afghanistan respects and observes the UN Charter ...".⁵

Constitutional Law of the People's Republic of Angola 1975

Article - 31 : "The People's Republic of Angola shall respect and apply the principles of the Charter of the United Nations".⁶

⁴ See, Blaustein, A. P., and Flanz, G. H., (eds.), *Constitutions of the Countries of the World*, Oceana Publications, Inc. New York, 1998, Vol. I, p. 1.

⁵ *Ibid*, at p. 38.

⁶ *Ibid*, at p. 14.

Chapter 11

The Constitution of the People's Republic of Bangladesh 1972

Article - 24 : "The state shall base its international relations on the principles of respect for national sovereignty and equality, non-interference in the internal affairs of other countries, peaceful settlement of international disputes, and respect for international law and the principles enunciated in the United Nations Charter, . . .".⁷

The Constitution of the Republic of Benin 1990

Preamble : "We the Beneniese People- Reaffirm our attachment to the principles of democracy and human rights as they have been defined my the Charter of the United Nations of 1945 . . .".⁸

The Constitution of Cambodia 1993

Article - 31 : "The Kingdom of Cambodia shall recognize and respect human rights as stipulated in the United Nations Charter, . . .".⁹

The Constitution of the Republic of Chad 1996

Preamble : "We the Chadian People: - Reaffirm our commitment to the principles of the Rights of Man as defined by the Charter of the United Nations of 1945, . . .".¹⁰

Constitution of the Federal Republic of Comoros 1992

Preamble : "The People reaffirm their commitment to principles defined by the Charter of the United Nations, . . .".¹¹

Constitution of the Republic of Ghana 1992

Article - 40 : "In its dealings with other nations, the Government shall - . . . adhere to the principles enshrined in or as the case may be, the aims and ideals of . . . the Charter of the U. N."; ¹²

⁷ See, Blaustein, A. P., and Flanz, G. H., above note 4, Vol. II, at p. 37.

⁸ Ibid, at p. 1.

⁹ See, Blaustein, A. P., and Flanz, G. H., above note 4, Vol. III, at p. 4.

¹⁰ See, Blaustein, A. P., and Flanz, G. H., above note 4, Vol. IV, at p. 1.

¹¹ Ibid, at p. 42.

¹² See, Blaustein, A. P., and Flanz, G. H., above note 4, Vol. VII, at p. 67.

Fundamental Law of the Republic of Guinea 1990

Preamble : "The People of Guinea, Proclaim: . . . Its adherence to the ideals and principles, rights and duties established in the United Nations Charter . . ." ¹³

Constitution of the Republic of Moldova 1994 :

Article - 8(1) : "The Republic of Moldova pledges to respect the Charter of the United Nations . . ." ¹⁴

Constitution of the Fourth Republic of Togo 1992

Preamble : "We the Togolese people, putting ourselves under the protection of God and: - Convinced that we shall not be able to build such a state except on political pluralism, principle of democracy and of protection of human rights as defined by the Charter of the United Nations of 1945, . . ." ¹⁵

As discussed earlier,¹⁶ prior to the establishment of the United Nations, the promotion and protection of human rights had been largely a concern of municipal law. It is the United Nations which has 'internationalised' human rights. The Charter of the United Nations has emphasised on the general obligation of all members of the United Nations to provide for and encourage respect for human rights. Thus, by expressly referring to the Charter of the United Nations, in their respective Constitutions, the above mentioned countries have recognised that the 'human rights' referred to in the Charter are a subject of international concern and, to that extent, no longer within their exclusive domestic jurisdiction.

¹³ See, Blaustein, A. P., and Flanz, G. H., above note 4, Vol. VIII, at p. 1.

¹⁴ See, Blaustein, A. P., and Flanz, G. H., above note 4, Vol. XI, at p. 50.

¹⁵ See, Blaustein, A. P., and Flanz, G. H., above note 4, Vol. XIX, at p. 182.

¹⁶ See above, Chapter 3.

CHAPTER 12

Endorsement of the Status of International Law in the National Constitutions of the World

The adoption by the United Nations, of the various Conventions relating to human rights, is not an academic exercise. Its object is to bring about effective and harmonised progress in the national law and practice. One of the factors influencing the effectiveness of these international standards is the degree to which they are formally accepted by member states.¹ Thus, adoption of Conventions, strictly speaking, is only a first stage in the whole legislative procedure of the United Nations. The intention is that these standards should be embodied in the law of the member countries is the second stage.

International human rights law leaves it to states to adopt such legislative and other measures, consistent with their constitutional process, to give effect to the obligations, which they may undertake to implement. Thus, status of international law as referred to in the Constitutions of the member states of the United Nations, envisages the relationship of domestic vis-a-vis international law of the respective countries. The various pattern of endorsement by different countries, of international law in the national Constitutions are as follows:

Constitution of Republic of Afghanistan 1990

Article - 133 : "The Republic of Afghanistan respects and observes the UN-Charter and Universal Declaration of Human Rights and other accepted principles of international law".²

¹ Whatever effect the unratified Conventions can have in the absence of binding obligations, it is in connection with formal act of ratification that their impact is likely to be tangible and lasting. This is due to the fact that ratification involves the formal commitment of states to give effect to the Conventions within their territory and it sets in motion the regular supervisory machinery of the United Nations.

² See, Blaustein, A.P., and Flanz G.H., (eds), *Constitutions of the World*, Oceana Publications, Inc., New York, 1998, Vol. I, p. 38.

Constitution of the Argentine Nation 1853

Article - 31 : "The Constitution, the laws of the Nation enacted by the Congress in pursuance thereof, and treaties with foreign powers are the supreme law of the Nation; and the authorities in every Province are bound thereby, notwithstanding any provision to the contrary which the provincial laws or constitutions may contain, excepting, for the Province of Buenos Aires, the treaties ratified following the Pact of November 11, 1859".³

Constitution of Australia 1900

Article - 75 : "In all matters arising under any treaty, . . . the High Court shall have original jurisdiction".⁴

The Federal Constitutional Law of Austria 1974

Article - 9 : "The generally recognized rules of International Law are valid parts of Federal law".⁵

Constitution of the State of Bahrain 1973

Article - 37 : " . . . a treaty shall have the force of a law after it has been signed, ratified and published in the Official Gazette".⁶

The Constitution of the People's Republic of Bangladesh 1972

Article - 24 : "The state shall base its international relations on the principles of respect for national sovereignty and equality, non-interference in the internal affairs of other countries, peaceful settlement of international disputes, and respect for international law and the principles enunciated in the United Nations Charter . . .".⁷

The Constitution of the Republic of Belarus 1996

Article - 8 : "The Republic of Belarus recognises the Supremacy of the universally recognised principles of international law and ensures that its laws comply with such principles.

³ Ibid, at p. 47.

⁴ Ibid, at p. 3

⁵ Ibid, at p. 3.

⁶ See, Blaustein, A. P., and Flanz G. H., above note 2, Vol. II, at, p. 26.

⁷ Ibid, at p. 37.

Chapter 12

The Republic of Belarus in conformity with principles of international law may on a voluntary basis enter into interstate formations and withdraw from them.

The constitution of international treaties that are contrary to the constitution shall not be permitted"⁸.

Constitution of the Republic of Bulgaria 1991

Article - 5(4) : "International treaties, ratified constitutionally, promulgated, and made effective by the Republic of Bulgaria, are part of the country's internal laws. They take precedence over conflicting domestic legislation".⁹

Constitution of Burkina Faso 1991

Article - 151 : "Treaties or agreements regularly ratified or approved shall be, from their publication, an authority superior to those of the laws, with reserve, for each agreement or treaty, of its application for the other party".¹⁰

Constitution of the Republic of Burundi 1992

Article - 171 : "Peace treaties and commercial treaties, treaties relative to international organization, treaties that engage the finances of the State, those that modify legislative dispositions as well as those that are relative to the status of persons may be ratified only by virtue of a law".

Article - 176 : "When the Constitutional Court, upon request by the President of the Republic, the Prime Minister, the President of the National Assembly or a quarter of the representatives, declares that an international obligation contravenes the Constitution, such accord may only be ratified after amendment of the Constitution".¹¹

Constitution of the Republic of Costa Rica 1949

Article - 7 : "Public treaties, international agreements and concordats duly approved by the Legislative Assembly shall have a higher authority than the laws from their promulgation or from the day they designate".¹²

⁸ Ibid, at p. 2.

⁹ See, Blaustein, A. P. and G.H., Flanz, above note 2, Vol. III, at p. 88.

¹⁰ Ibid, at p. 73.

¹¹ Ibid, at p. 35.

¹² See, Blaustein, A. P., and Flanz, G.H., above note 2, Vol. V, at p. 77.

Constitution of the Republic of Ivory Coast 1960

Article - 54 : "Peace treaties and treaties and amendments regarding international organization, and those that modify internal laws of the State, may be ratified only after passage of a law".¹³

Article - 55 : "If the Supreme Court, acting at the request of the President of the Republic or the President of the National Assembly, declares that an international obligation includes a clause contrary to the Constitution, authorization to ratify it can take place only after revision of the Constitution".¹⁴

Article - 56 : "Treaties or agreements regularly ratified shall, upon their publication, prevail over laws, provided, for each agreement or treaty, that it is applied by the other party".¹⁵

Constitution of the Czech Republic 1992

Article - 10 : "Ratified and promulgated international accords on human rights and fundamental freedoms, to which the Czech Republic has committed itself, are immediately binding and are superior to law"¹⁶.

Constitution of the Republic of Djibouti 1992

Article - 37 : "Treaties or agreements duly ratified shall, upon their publication, have an authority superior to that of laws subject, for each agreement or treaty, to its application by the other party and to its conformity with the relevant provisions of the law of treaties.

Without prejudice to the previous paragraph, the ratification or approval of an international commitment containing a clause contrary to the relevant provisions of the Constitution may take place only after the amendment of the Constitution".¹⁷

Article - 63 : "Peace treaties, commercial treaties, treaties or agreements relative to international organizations, treaties which imply a commitment for the finances of the State, those relative to the status of

¹³ Ibid, at p. 9.

¹⁴ Id.

¹⁵ Ibid, at p. 10.

¹⁶ Ibid, at p. 119.

¹⁷ See, Blaustein, A. P., and Flanz, G. H., above note 2, Vol. VI, at p. 16.

Chapter 12

persons, and those that call for the cession, exchange or acquisition of territory may be ratified or approved only by virtue of a law".¹⁸

Constitution of the Dominican Republic 1966

Article - 3 : "The Dominican Republic recognises and applies the rules of general and American international law to the extent that its public powers have adopted them ...".¹⁹

The Constitution of the Arab Republic of Egypt 1980

Article - 151 : "[Treaties] shall have the force of law after their conclusion, ratification and publication according to the established procedure".²⁰

The Constitution of the Republic of El Salvador 1983

Article - 144 : "The international treaties formalized by EL Salvador with other states or international organisations, constitute the law of the republic once they enter into effect, in conformity with the dispositions of the same treaty and of this Constitution.

The law shall not modify or repeal that agreed in a treaty in effect for El Salvador. In case of conflict between the treaty and the law, the treaty shall prevail.²¹

Article - 145 : "Treaties in which constitutional provisions are in any manner restricted or affected may not be ratified, unless the ratification is done with the corresponding reservations. The dispositions of the treaty on which reservations are made are not law of the Republic".²²

Fundamental Law of Equatorial Guinea 1991

Article - 8 : "The Equatoguinean State respects the principles of International Law and reaffirms its adherence to the rights and obligations proceeding from the charters of the international organizations and agencies to which it belongs".²³

¹⁸ Ibid, at p. 27.

¹⁹ Ibid, at p. 1.

²⁰ Ibid, at p. 32.

²¹ Ibid, at p. 32.

²² Ibid, at p. 32.

²³ Ibid, at p. 27.

Republic of Estonia Constitution 1992

Article - 3 : "State power shall be exercised solely on the basis of this Constitution and such laws which are in accordance with the Constitution. Universally recognized principles and norms of international law shall be an inseparable part of the Estonian legal system".²⁴

Article - 123 : "The Republic of Estonia shall not conclude foreign treaties which contradict the Constitution.

If Estonian laws or other acts contradict foreign treaties ratified by the Riigikogu (legislature), the provisions of the foreign treaty shall be applied".²⁵

The French Constitution 1958

Article - 53 : "Peace treaties, commercial treaties, treaties or agreements relative to international organization, those that imply a commitment for the finances of the State, those that modify provisions of a legislative nature, those relative to the status of persons, those that call for the cession, exchange or addition of territory may be ratified or approved only by a law".²⁶

Article - 54 : "If the Constitutional Council, the matter having been referred to it by the President of the Republic, by the Premier, or by the President of one or the other assembly, shall declare that an international commitment contains a clause contrary to the Constitution, the authorization to ratify or approve this commitment may be given only after amendment of the Constitution".²⁷

Article - 55 : "Treaties or agreements duly ratified or approved shall, upon their publication, have an authority superior to that of laws, subject, for each agreement or treaty, to its application by the other party".²⁸

²⁴ Ibid, at p. 3.

²⁵ Ibid, at p. 37.

²⁶ See, Blaustein, A.B., and Flanz, G.H., above note 2, Vol. VII, at p. 38.

²⁷ Ibid, at p. 39.

²⁸ Ibid, at p. 39.

Constitution of the Gabonese Republic 1991

Article - 87 : "International engagements . . . hereafter shall be deferred, before their ratification, to the Constitutional Court,The Constitutional Court shall verify, within a period of one month, if its provisions contain a clause contrary to the Constitution In the affirmative, these provisions shall not be ratified".²⁹

Article - 114 : "Peace treaties, commercial treaties, treaties relative to international organization, treaties which engage the finances of the State, those which are relative to the state of persons shall only be approved and ratified by virtue of a law". . . . Treaties shall take effect only after having been regularly ratified and published".³⁰

Basic Law of the Federal Republic of Germany 1949

Article - 25 : "The general rules of international law shall be an integral part of federal law. They shall override the laws and directly establish rights and obligations for the inhabitants of the federal territory".³¹

Article - 59(2) : "Treaties which regulate the political relations of the Federation or relate to matters of federal legislation shall require the approval or participation of the appropriate legislative body as the form of a federal law. In the care of administrative agreements, the provisions concerning the federal administration shall apply *mutatis mutandis*".³²

Constitution of the Republic of Ghana 1992

Article - 40 : "In its dealings with other nations, the Government shall - . . . (c) promote respect for international law, treaty obligations and the settlement of international disputes by peaceful means; (d) adhere to the principles enshrined in or as the case may be, the aims and ideals of (i) the Charter of the U. N.; (ii) the Charter of the O.A.U.; (iii) the Commonwealth; (iv) the Treaty of the Economic Community of West African States; and (v) any other international organization of which Ghana is a member".³³

²⁹ *Ibid*, at p. 32.

³⁰ *Ibid*, at p. 38.

³¹ *Ibid*, at p. 117.

³² *Ibid*, at p. 129.

³³ *Ibid*, at p. 67.

The Constitution of Greece 1975

Article - 28 : "The generally acknowledged rules of international law, as well as international conventions as of the time they are sanctioned by law and become operative according to the conditions therein shall be an integral part of domestic Greek law and shall prevail over any contrary provision of the law".³⁴

Political Constitution of the Republic of Guatemala 1985

Article - 46 : "Premanence of International law - The general principle is established that in the field of human rights treaties and agreements approved and ratified by Guatemala have precedence over municipal law".³⁵

Fundamental Law of the Republic of Guinea 1990

Article - 77 : "Peace treaties, commercial treaties, treaties or accords relative to international organization, those which engage the finances of the State, those which modify provisions of a legislative nature, those which are relative to the state of persons, those which encompass cession, exchange or adjunction of territory, shall only be ratified or approved by a law".³⁶

Article - 78 : "If the Supreme Court, convened by the President of the Republic or a Deputy has declared that an international engagement contains a law contrary to the Fundamental Law, authorize*on to ratify or approve it shall not intervene until after the revision of the Fundamental Law.

A law authorizing the ratification or approval of an international engagement shall not become effective when it has been declared non-conforming to the Fundamental Law".³⁷

Article - 79 : "Treaties or accords regularly approved or ratified shall have from their date of publication a superior authority to that of laws under the reservation of reciprocity".³⁸

³⁴ Ibid, at p. 26.

³⁵ See, Blaustein, A. P., and Flanz, G. H. , above note 2, Vol. VIII, at p. 14

³⁶ Ibid, at p. 16.

³⁷ Id.

³⁸ Id.

Chapter 12

Constitution of the Republic of Honduras 1982

Article - 15 : "Honduras supports the principles and practices of international law, that promote the solidarity and self-determination of people's nonintervention and the strengthening of universal peace and democracy".³⁹

Article - 16 : "International treaties entered into by Honduras with other states form part of the domestic law as soon as they enter into force".⁴⁰

Article - 17 : "When an international treaty affects a constitutional provision, it must be approved through the same procedure that governs reform of the constitution before being ratified by the Executive Power".⁴¹

Article - 18 : "In case of conflict between the treaty or convention, and the law, the former shall prevail".⁴²

Constitution of the Republic of Hungary 1990

Article - 7(1) : "The Legal system of the Republic of Hungary accepts the universally recognized rules and regulations of international law, and harmonise the internal laws and statutes of the country with the obligations assumed under international law".⁴³

Constitution of Ireland - 1937

Article - 29(3) : "Ireland accepts the generally recognized principles of international law as its rule of conduct in its relations with other states".⁴⁴

Article - 29(3) : "No international agreement shall be part of the domestic law of the state save as may be determined by the Oireachats".⁴⁵

The Constitution of the Republic of Italy 1947

Article - 10 : "Italy's legal system conforms with the generally recognized principles of international law".⁴⁶

Article - 80 : "The Chambers authorise, by law, ratification of international treaties of a political nature, or which provide for arbitration or judicial

³⁹ *Ibid*, p. 7.

⁴⁰ *Id*.

⁴¹ *Id*.

⁴² *Id*.

⁴³ *Ibid*, at p. 1.

⁴⁴ See, Blaustein, A. P., and Flanz, G. H., above note 2, Vol. XI, p. 52

⁴⁵ *Ibid*, at p. 53.

⁴⁶ *Ibid*, at p. 49.

regulation, or imply modifications to the nation's territory or financial burdens, or to laws".⁴⁷

The Constitution of Japan 1947

Article 98 : "The treaties concluded by Japan and established laws of nations shall be faithfully observed".⁴⁸

The Constitution of the Hashemite Kingdom of Jordan 1952

Article - 33(ii) : "Treaties and agreements which involve financial commitments to the treasury or affect the general or personal rights of Jordanians shall not be enforceable unless they are sanctioned by the National Assembly".⁴⁹

The Constitution of the Republic of Kazakhstan 1995

Article - 4(3) : "International treaties ratified by the Republic of Kazakhstan have priority over its laws and are directly implemented except in cases when the application of international treaty shall require the promulgation of a law".⁵⁰

Article - 4(4) : ". . . (I)nternational treaties of which the Republic of Kazakhstan is a party are published . . .".⁵¹

The Constitution of Kyrghyz Republic 1993

Article - 12(3) : "International treaties and other norms of international law which have been ratified by the Kyrghyz Republic shall be a component and directly applicable part of legislation of the Kyrghyz Republic".⁵²

Article - 16(1) : "In the Kyrghyz Republic basic human rights and freedoms shall be recognized and guaranteed in accordance with universally accepted norms and principles of international law, international treaties and agreements on the issues of human rights which have been ratified by the Kyrghyz Republic".⁵³

⁴⁷ Ibid, at p. 66.

⁴⁸ Ibid, at p. 22.

⁴⁹ Ibid, at p. 36.

⁵⁰ See, Blaustein, A. P., and Flanz, G. H., above note 2, Vol. X, at p. 12.

⁵¹ Id.

⁵² Ibid, at p. 11.

⁵³ Ibid, at p. 13.

Chapter 12

The Constitution of Kuwait 1962

Article - 70 : "The Amir shall conclude treaties by decree and shall transmit them immediately to the National Assembly with the appropriate statement. A treaty shall have the force of law after it is signed, ratified and published in the Official Gazette.

However, treaties of peace and alliance; treaties concerning the territories of the State, its natural resources or sovereign rights or public or private rights of citizens; treaties of commerce, navigation and residence; and treaties which entail additional expenditure not provided for in the budget, or which involve a amendment of the laws of Kuwait; shall come into force only when made by a law".⁵⁴

Constitution of the Republic of Korea 1987

Article - 6(1) : "Treaties duly concluded and promulgated in accordance with the Constitution and the generally recognized rules of international law shall have the same effect as the Republic of Korea".⁵⁵

Article - 6(2) : "The status of aliens shall be guaranteed as prescribed by international law and treaties".⁵⁶

Constitution of the Republic of Lithuania 1992

Article - 105(3) : "The Constitutional Court shall present conclusions concerning: . . . the conformity of international agreements of the Republic of Lithuania with the Constitution . . .".⁵⁷

Article - 135 : "In conducting foreign policy, the Republic of Lithuania shall pursue the Universally recognized principles and norms of international law, shall strive to safeguard national security and independence as well as the basic rights, freedoms and welfare of its citizens, and shall take part in the creation of sound international order based on law and justice".⁵⁸

Article - 138 : "International agreements which are ratified by the Seimas (legislature) of the Republic of Lithuania shall be [a] constituent part of the legal system of the Republic of Lithuania".⁵⁹

⁵⁴ *Ibid*, at p. 22.

⁵⁵ *Ibid*, at p. 23.

⁵⁶ *Id*.

⁵⁷ See, Blaustein, A. P., and Flanz, G. H. , above note 2, Vol. XI, at p. 20.

⁵⁸ *Ibid*, at p. 26.

⁵⁹ *Id*.

The Constitution of the Grand Duchy of Luxembourg 1968

Article - 37 : "The Grand Duke shall make treaties. These shall not come into effect until they have been sanctioned by law and published in the manner laid down for the publication of laws".⁶⁰

Constitution of the Republic of Macedonia 1991

Article - 8 : "The fundamental values of the constitutional order of the Republic of Macedonia are:

-- the basic freedoms and rights of the individual and citizen, recognised in international law and set down in the Constitution

-- respect for the generally accepted norms of international law".⁶¹

Article - 98 : "Courts are autonomous and independent. Courts judge on the basis of the Constitution and laws and international agreements ratified in accordance with the Constitution".⁶²

Constitution of the Republic of Malawi 1994

Article - 11(2) : "In interpreting the provisions of this Constitution a court of law shall : . . . (c) where applicable, have regard to current forms of public international law and comparable foreign case law".⁶³

Constitution of Mali 1992

Article - 116 : "Treaties or agreements regularly approved or ratified shall have, from their publication, an authority superior to that of laws, under the reservation for each treaty or agreement of application by the other party".⁶⁴

Constitution of the Republic of Moldova 1994

Article - 4(2) : "Wherever disagreements appear between conventions and treaties signed by the Republic of Moldova and her own national laws, priority shall be given to international regulations".⁶⁵

Article - 7 : "The Constitution of the Republic of Moldova is the supreme law of the country. No laws or other legal acts and regulations in

⁶⁰ Ibid, at p. 22.

⁶¹ Ibid, at p. 7.

⁶² Ibid, at p. 36.

⁶³ Ibid, at p. 9.

⁶⁴ Ibid, at p. 23.

⁶⁵ See, Blaustein, A.P., and Flanz, G.H., above note 2, Vol. XII, at p. 51.

contradictions with the provisions of the Constitution may have any legal power".⁶⁶

Article - 8 (2) : "The coming into force of an international treaty containing provisions contrary to the Constitution shall be preceded by a revision of the latter".⁶⁷

The Constitution of Mongolia 1992

Article - 10(1) : "Mongolia shall adhere to the universally recognized norms and principles of international law and pursue a peaceful foreign policy".⁶⁸

Article - 10(2) : "Mongolia shall fulfill in good faith its obligations under international treaties to which it is a party".⁶⁹

Article - 10(3) : "The international treaties to which Mongolia is a Party, shall become effective as domestic legislation upon the entry into force of the laws on their ratification or accession".⁷⁰

Article - 10(4) : "Mongolia shall not abide by any international treaty or other instruments incompatible with its Constitution".⁷¹

The Constitution of Morocco 1996

Preamble : "Aware of the necessity of setting its action within the context of the international organizations of which it is an active and energetic member, the Kingdom of Morocco subscribes to the principles, rights and obligations resulting from the charters of the aforesaid organizations and reaffirms its attachment to the Human Rights as they are universally recognised".⁷²

The Constitution of the Kingdom of Netherlands 1983

Article - 90 : "The Government shall promote the development of the international rule of law".⁷³

Article - 91(3) : "Any provisions of a treaty that conflict with the Constitution or which lead to conflicts with it may be approved by the

⁶⁶ Id.

⁶⁷ Id.

⁶⁸ Ibid, at p. 98.

⁶⁹ Id.

⁷⁰ Id.

⁷¹ Id.

⁷² Ibid, at p. 3.

⁷³ See, Blaustein, A. P., and Flanz, G. H., above note 2, Vol. XIII, at p. 19.

Chambers of the States General only if at least two thirds of the votes cast are in favor".⁷⁴

Article - 93 : "provisions of treaties and of resolutions of international institutions, which may be binding upon all persons by virtue of their contents shall become binding after they have been published".⁷⁵

Article - 94 : "Statutory regulations in force within the Kingdom shall not be applicable if such application is in conflict with provisions of treaties that are binding on all persons or of resolutions by international institutions".⁷⁶

Political Constitution of the Republic of Nicaragua 1987

Article - 182 : "The Political Constitution is the fundamental charter of the Republic; all other laws are subordinate to it. Any laws, treaties, decrees, rules, orders or provisions that oppose it or alter its dispositions shall have no value".⁷⁷

The Constitution of the Republic of Niger 1996

Article - 119 : "Treaties of defence and of peace, treaties and agreements relating to international organisations which modify internal laws of state and which bring financial engagements to the state can not be ratified except according to a law".⁷⁸

Article - 121 : "The treaties and agreements which are properly ratified have, upon their publication, an authority superior to that of laws, subject to their application by the other party".⁷⁹

Political Constitution of Peru 1993

Article - 55 : "Treaties signed by the State and in force are part of national law".⁸⁰

Article - 56 : "Treaties must be approved by the Congress before their ratification by the President of the Republic if they involve the following

⁷⁴ Id.

⁷⁵ Id.

⁷⁶ Ibid, at. p. 20.

⁷⁷ Ibid, at p. 33.

⁷⁸ Ibid, at. p. 27.

⁷⁹ Ibid, at p. 27.

⁸⁰ See, Blaustein, A. P., and Flanz, G. H., above note 2, Vol. XV, at, p. 126.

matters: (1) Human Rights; (2) Sovereignty, dominion or integrity of the State (3) National defence. (4) Financial obligations of the State . . ." ⁸¹

Article - 57 : "The President of the Republic may accept or ratify treaties without need for the prior approval of the Congress in matters not covered in the previous article. In all these cases, he must render an accounting to the Congress.

When the treaty affects constitutional provisions, it must be approved by the same procedure that applies to amending the Constitution before being ratified by the President of the Republic".⁸²

The Constitution of the Portuguese Republic 1976

Article - 8(1) : "The norms and principles of general or ordinary international law are an integral part of Portuguese law"⁸³.

Article - 8(2) : "The rules provided for in international conventions that have been duly ratified or approved shall apply in the internal order so long as they remain internationally binding with respect to the Portuguese State".⁸⁴

Article - 8(3) : "Rules made by the competent organs of international organisations to which Portugal belongs, apply directly in the internal order to the extent that the constitutive treaties provide".⁸⁵

Constitution of Romania 1991

Article - 11(1) : "The Romanian state pledges to fulfil, to the letter and in good faith, its commitments under the treaties to which it is a party".⁸⁶

Article - 11(2) : "The treaties ratified by Parliament, according to the law, are part of domestic law".⁸⁷

Article - 20(2) : "If there is disagreement between the pacts and treaties on fundamental human rights to which Romania is a party and domestic laws, then international law regulations will have priority".⁸⁸

⁸¹ Ibid, at p. 126.

⁸² Id.

⁸³ Ibid, at p. 6.

⁸⁴ Id.

⁸⁵ Ibid, at p. 7.

⁸⁶ See, Blaustein, A. P., and Flanz, G. H., above note 2, Vol. XVI, at p. 6.

⁸⁷ Ibid, at p. 6.

⁸⁸ Ibid, at p. 8.

Constitution of the Russian Federation 1993

Article - 15(4) : "The commonly recognized principles and norms of international law and the international treaties of the Russian Federation shall be a component part of its legal system. If an international treaty of the Russian Federation stipulates other rules than those stipulated by the law, the rules of the international treaty shall apply".⁸⁹

Article - 125(6) : " . . . [I]nternational agreements of the Russian Federation may not be enforced and applied if they violate the Constitution of the Russian Federation".⁹⁰

Constitution of the Republic of Rwanda 1991

Article - 44(6) : " . . . [P]eace treaties, alliance treaties, treaties that may bring modifications to the national territorial borders or affect sovereignty rights, treaties concerning the Republic's relations with one or several other states, as well as treaties, conventions and agreements involving financial implications not anticipated in the budget, shall be enforceable only following approval by law".⁹¹

Constitution of the Republic of Senegal 1963

Article - 77 : "Peace treaties, commercial treaties, treaties or agreements relating to international organizations, those which obligate state finances, those which modify provisions of a legislative nature, those which concern the status of persons, and those which entail a cession, exchange or acquisition of territory shall be ratified or approved only by virtue of a law".⁹²

Article - 78 : "If the Supreme Court declares that an international commitment contains a clause contrary to the Constitution, the authorization to ratify or approve it may be made only after an amendment of the Constitution".⁹³

Article - 79 : "Treaties or agreements duly ratified shall, upon their publication, have an authority superior to that of the laws subject for each treaty and agreement, to its application by the other party".⁹⁴

⁸⁹ Ibid, at p. 5.

⁹⁰ Ibid, at p. 37.

⁹¹ Ibid, at p. 9.

⁹² Ibid, at p. 37.

⁹³ Ibid, at p. 38.

⁹⁴ Id.

Constitution of the Republic of Seychelles 1993

Article - 48 : "This Chapter (chapter V) shall be interpreted in such a way so as not to be inconsistent with any international obligations of Seychelles relating to human rights and freedoms . . ." ⁹⁵

Constitution of the Republic of Slovenia 1991

Article - 8 : "Laws and other regulations must be in accordance with generally valid principles of international law and with international agreements to which Slovenia is bound. Ratified and published international agreements are used directly" ⁹⁶

Constitution for Somali Democratic Republic 1979

Article - 19 : "The Somali Democratic Republic shall recognize the Universal Declaration of Human Rights and generally accepted rules of international law" ⁹⁷

The Constitution of the Republic of South Africa 1996

Article 231(1) : "The negotiating and signing of all international agreements is the responsibility of the national executive.

Article 231(2) : An international agreement binds the Republic only after it has been approved by resolution in both the National Assembly and the National Council of Provinces, unless it is an agreement referred to in subsection (3).

Article 231(3) : An international agreement of a technical, administrative or executive nature, or an agreement which does not require either ratification or accession, entered into by the national executive, binds the Republic without approval by the National Assembly and the National Council of Provinces, but must be tabled in the Assembly and the Council within a reasonable time.

Article 231(4) : Any international agreement becomes law in the Republic when it is enacted into law by national legislation; but a self-executing provision of an agreement that has been approved by Parliament is law in the Republic unless it is inconsistent with the Constitution or an Act of Parliament.

⁹⁵ Ibid, at p. 48.

⁹⁶ See, Blaustein, A.P., and Flanz, G.H., above, note 2, Vol. XVII, at p. 2.

⁹⁷ Ibid, at p. 5.

Article 231(5) : The Republic is bound by international agreements which were binding on the Republic when this Constitution took effect.⁹⁸

Article 232 : Customary international law is law in the Republic unless it is inconsistent with the Constitution or an Act of Parliament.⁹⁹

Article 233 : When interpreting any legislation, every court must prefer any reasonable interpretation of the legislation that is consistent with international law over any alternative interpretation that is inconsistent with international law.¹⁰⁰

The Spanish Constitution 1978

Article - 10(2) : "The norms relative to basic rights and liberties which are recognised by the Constitution, shall be interpreted in conformity with the Universal Declaration of Human Rights and the international treaties and agreements on those matters ratified by Spain".¹⁰¹

Constitution of the Fourth Republic of Togo 1992

Article - 138 : "Peace treaties, commercial treaties, and treaties relative to international organisations, as well as those involving the state's finances, those which modify legislative provisions, and those which involve the suspension, exchange or adjudication of territory can not be ratified except by a law.

Such treaties shall take effect until they have been ratified or published".¹⁰²

The Constitution of Tonga 1974

Article - 39 : "It shall be lawful for the King to make treaties with Foreign States provided that such treaties shall be in accordance with the laws of the Kingdom".¹⁰³

Constitution of the Tunisian Republic 1959

Article - 32 : "Treaties only have the force of law after their ratification. Treaties duly ratified have an authority superior to that of laws".¹⁰⁴

⁹⁸ Ibid, at p. 117.

⁹⁹ Id.

¹⁰⁰ Id.

¹⁰¹ See, Blaustein, A. P., and Flanz, G. H., above note 2, Vol. XVIII, at, p. 45.

¹⁰² Ibid, at p. 216.

¹⁰³ Ibid, at p. 13.

¹⁰⁴ Ibid, at p. 10.

Chapter 12

Article - 33 : "Treaties are approved by law".¹⁰⁵

Constitution of Turkmenistan 1992

Article - 5 : "The Constitution of Turkmenistan shall be the supreme law of the State; its rules and provisions shall be applied directly. Laws and other legal acts which contradict the Constitution shall have no legal force".¹⁰⁶

Article - 6 : "Turkmenistan shall acknowledge the priority of generally recognized norms of international law. Turkmenistan shall be an authorized member of the world community, observing in its foreign policy the principles of peaceful co-existence, non-use of force, and non-interference in the internal affairs of other states".¹⁰⁷

The Constitution of the United States of America 1787

Article - 3(2) : "The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority".¹⁰⁸

Article - 6 : "This Constitution and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any thing in the Constitution or Laws of any State to the Contrary notwithstanding".¹⁰⁹

Constitution of the Republic of Uzbekistan 1992

Preamble : "The people of Uzbekistan, solemnly declaring their adherence to human rights and principles of state sovereignty . . . recognizing priority of the generally accepted norms of the international law, . . .".¹¹⁰

Constitution of the Republic of Venezuela 1961

Article - 128 : "International Treaties or conventions conducted by the National Executive must be approved by a special law in order to be

¹⁰⁵ Id.

¹⁰⁶ See, Blaustein, A. P., and Flanz, G. H., above note 2, Vol. XX, at, p. 2.

¹⁰⁷ Id.

¹⁰⁸ Ibid, at p. 10.

¹⁰⁹ Ibid, at p. 12.

¹¹⁰ See, Blaustein, A. P., and Flanz, G. H., above note 2, Supplement Volume, at p. 8.

valid, unless they concern the execution or completion of pre-existing obligations of the Republic, the application of ordinary acts in international relations, or the exercise of powers which the law expressly bestows on the National Executive".¹¹¹

Constitution of the Federal Republic of Yugoslavia 1992

Article - 10 : "The Federal Republic of Yugoslavia shall recognize and guarantee the rights and freedoms of man and citizen recognized under international law".¹¹²

Article - 124(2) : "The Federal Constitutional Court shall rule on . . . conformity of statutes, other laws and general enactments with the Constitution . . . and with ratified and promulgated international treaties".¹¹³

From the above, it is evident that in the Constitutions of the 66 countries the status of international law has been spelled out. These countries are: Afghanistan, Argentina, Australia, Bahrain, Bangladesh, Belarus, Bulgaria, Burkina Faso, Burundi, Costa Rica, Ivory Cost, Czech Republic, Djibouti, Dominican Republic, Egypt, El Salvador, Equatorial Guinea, Estonia, France, Gabon, Germany, Ghana, Greece, Guatemala, Republic of Guinea, Honduras, Hungary, Ireland, Italy, Japan, Jordan, Kazakhstan, Kyrgyz Republic, Kuwait, Korea, Lithuania,, Luxembourg, Macedonia, Malawi, Mali, Moldova, Mongolia, Morocco, The Netherlands, Nicaragua, Niger, Peru, Portugal, Romania, Russia, Rwanda, Senegal, Seychilles, Slovenia, Somalia, South Africa, Spain, Togo, Tonga, Tunisia, Turkmenistan, USA, Uzbekistan, Venezuela and Yugoslavia. Amongst these countries, Morocco and Uzbekistan have endorsed international law in the preambles of their constitutions, while others have endorsed it in the Articles of the Constitutions.

From the above constitutional provisions three main methods of incorporation of international human rights norms into national legal systems have emerged: (a) direct incorporation of the rights recognised in the treaties into what may be called a 'bill of rights' in the national legal

¹¹¹ Ibid, at p. 9.

¹¹² Ibid, at p. 5.

¹¹³ Ibid, at p. 36.

Chapter 12

order; (b) enactment of different legislative measures in the civil, criminal and administrative laws to give effect to the different rights recognised in various conventions; and (c) self-executing operation of the Conventions in the national legal order.

Further, in establishing the relationship between international law and municipal law, the constitutional provisions have demonstrated various dimensions. Some Constitutions have accorded international law to have the same status as that of the municipal law, while others have made international treaties as part of municipal law only after ratification by national legislature. Most of the Constitutions have entrusted the national supreme judiciary with the responsibility to resolve any conflict between international law and municipal law. Some Constitutions have simply expressed their respect for and adherence to the norms of international law and treaties. Conversely some Constitutions have prescribed for constitutional amendment if any international legal obligation contravenes the Constitution.

CHAPTER 13

Comparison of the Constitution of India with the Universal Declaration of Human Rights

The Constitution of India was adopted on 26 November 1949 and came into force on 26 January 1950. It is one of the newest Constitutions drafted and adopted immediately after the adoption by the international community of the Universal Declaration of Human Rights. When the Indian Constituent Assembly met to draft and adopt the Constitution it was taken for granted that the fundamental rights were going to be an integral part of the Constitution. Throughout the freedom struggle, the demand for fundamental rights was always in the forefront. Thus Constitution of India contains in it, a detailed bill of rights. The following table compares the rights enshrined in the Constitution of India and the Universal Declaration of Human Rights.

The Universal Declaration of Human Rights 1948	The Constitution of India 1950
<i>Equality in dignity and rights</i> Article 1 : All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.	Preamble : We, the people of India, ... secure to all its citizens ... equality of status and opportunity; ... assuring the dignity of the individual ...
<i>Non-discriminatory application of Right</i> Article 2 : Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.	Article 15(1) : The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

<p>Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.</p>	
<p><i>Right to life, liberty and security</i> Article 3 : Everyone has the right to life, liberty and security of person.</p>	<p>Article 21 : No person shall be deprived of his life or personal liberty except according to procedure established by law.</p>
<p><i>Prohibition of slavery</i> Article 4 : No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.</p>	<p>Article 23(1) : Traffic in human beings and beggar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.</p>
<p><i>Prohibition of torture and degrading treatment</i> Article 5 : No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.</p>	
<p><i>Recognition as a person before the law</i> Article 6 : Everyone has the right to recognition everywhere as a person before the law.</p>	
<p><i>Equality before the law</i> Article 7 : All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.</p>	<p>Article 14 : The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.</p>

Fifty Years of the Universal Declaration of Human Rights

<p><i>Remedies against violations of rights</i> Article 8 : Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.</p>	
<p><i>Prohibition of arbitrary arrest</i> Article 9 : No one shall be subjected to arbitrary arrest, detention or exile.</p>	<p>Article 22(1) : No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.</p>
<p><i>Right to a fair trial</i> Article 10 : Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.</p>	
<p><i>Presumption of innocence and protection of against retroactivity of criminal law</i> Article 11(1) : Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.</p> <p>Article 11(2) : No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.</p>	<p>Article 20(1) : No person shall be convicted of any offence except for violation of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.</p>

Chapter 13

<p><i>Prohibition of interference with privacy</i> Article 12 : No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.</p>	
<p><i>Freedom of movement</i> Article 13(1) : Everyone has the right to freedom of movement and residence within the borders of each State. Article 13(2) : Everyone has the right to leave any country, including his own, and to return to his country.</p>	<p>Article 19(1) : All citizens shall have the right- ... (d) to move freely throughout the territory of India; (e) to reside and settle in any part of the territory of India;</p>
<p><i>Right of asylum</i> Article 14(1) : Everyone has the right to seek and to enjoy in other countries asylum from persecution. Article 14(2) : This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.</p>	
<p><i>Right to a nationality</i> Article 15(1) : Everyone has the right to a nationality. Article 15(2) : No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.</p>	
<p><i>Right to marry and to found a family</i> Article 16(1) : Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.</p>	

Fifty Years of the Universal Declaration of Human Rights

<p>Article 16(2) : Marriage shall be entered into only with the free and full consent of the intending spouses. Article 16(3) : The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.</p>	
<p><i>Right to own property</i> Article 17(1) : Everyone has the right to own property alone as well as in association with others. Article 17(2) : No one shall be arbitrarily deprived of his property.</p>	<p>Article 300(A) : No person shall be deprived of his property save by authority of law.</p>
<p><i>Freedom of thought, conscience and religion</i> Article 18 : Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.</p>	<p>Article 25(1) : Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.</p>
<p><i>Freedom of opinion and expression</i> Article 19 : Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.</p>	<p>Article 19(1) : All citizens shall have the right- (a) to freedom of speech and expression.</p>
<p><i>Freedom of assembly and association</i> Article 20(1) : Everyone has the right to freedom of peaceful assembly and association. Article 20(2) : No one may be compelled to belong to an association.</p>	<p>Article 19(1) : All citizens shall have the right- (b) to assemble peacefully and without arms; (c) to form associations or unions;</p>

<p><i>Right to participate in Government</i> Article 21(1) : Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.</p> <p>Article 21(2) : Everyone has the right of equal access to public service in his country.</p> <p>Article 21(3) : The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.</p>	<p>Article 16(1) : There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.</p> <p>Article 16(2) : No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.</p> <p>Article 326 : The elections to the House of the People and to the Legislative Assembly of every State shall be on the basis of adult suffrage;</p>
<p><i>Right to social security</i> Article 22 : Everyone, as a member of society, has the right to social security and is entitled to realisation, through national effort and international co-operation and in accordance with the organisation and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.</p>	

Fifty Years of the Universal Declaration of Human Rights

<p><i>Right to work, equal pay for equal work</i></p> <p>Article 23(1) : Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.</p> <p>Article 23(2) : Everyone, without any discrimination, has the right to equal pay for equal work.</p> <p>Article 23(3) : Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.</p> <p>Article 23(4) : Everyone has the right to form and to join trade unions for the protection of his interests.</p>	<p>Article 19(1) : All citizens shall have the right – (g) to practise any profession, or to carry on any occupation, trade or business.</p> <p>Article 42 : The State shall make provision for securing just and humane conditions of work and for maternity relief.</p> <p>Article 39(d) : The State shall in particular, direct its policy towards securing- that there is equal pay for equal work for both men and women.</p> <p>Article 43 : The State shall endeavour to secure, . . . to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life</p> <p>Article 19(1) : All the citizens shall have the right - (c) to form associations and unions;</p>
<p><i>Right to rest and leisure</i></p> <p>Article 24 : Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays and pay.</p>	<p>Article 43 : The State shall endeavour to secure, . . . full enjoyment of leisure and social and cultural opportunities</p>
<p><i>Right to an adequate standard of living</i></p> <p>Article 25(1) : Everyone has the right to a standard of living adequate for the health and well being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.</p>	

<p>Article 25(2) : Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.</p>	<p>Article 41 : The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.</p> <p>Article 39 : The state shall in particular, direct its policy towards securing-</p> <p>(f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.</p>
<p><i>Right to education</i></p> <p>Article 26(1) : Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.</p> <p>Article 26(2) : Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and</p>	<p>Article 45 : The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years.</p>

<p>shall further the activities of the United Nations for the maintenance of peace.</p> <p>Article 26(3) : Parents have a prior right to choose the kind of education that shall be given to their children.</p>	
<p><i>Right to participate in cultural life</i></p> <p>Article 27(1) : Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.</p> <p>Article 27(2) : Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.</p>	<p>Article 29 (1) : Any section of the citizens residing in the territory of India or any part thereof having a distinct language , script or culture of its own shall have the right to conserve the same.</p> <p>Article 29(2) : No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.</p>
<p><i>Right to a proper social order</i></p> <p>Article 28 : Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realised.</p>	<p>Article 38(1) : The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.</p>
<p><i>Duties to society</i></p> <p>Article 29(1) : Everyone has duties to the community in which alone the free and full development of his personality is possible.</p> <p>Article 29(2) : In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.</p>	

Chapter 13

<p>Article 29(3) : These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.</p>	
<p><i>Prohibition of destruction of rights of others</i> Article 30 : Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.</p>	

From the above table the impact of the Universal Declaration is clearly evident and it may be emphasised that the Indians were much ahead of the United Nations in guaranteeing the rights as the Covenants were only adopted in 1966. The following rights of the Universal Declaration have been embodied in the Constitution of India: Equality in dignity and rights,¹ Non-discriminatory application of right,² Right to life, liberty and security,³ Prohibition of slavery,⁴ Equality before the law,⁵ Prohibition of arbitrary arrest,⁶ Protection against retroactivity of criminal law,⁷ Freedom of movement,⁸ Right to own property,⁹ Freedom of thought, conscience and religion,¹⁰ Freedom of opinion and expression,¹¹ Freedom of Assembly and Association,¹² Right to participate in government,¹³

¹ The Constitution of India 1950, Preamble.

² Ibid. Article 15(1).

³ Ibid. Article 21.

⁴ Ibid. Article 23.

⁵ Ibid. Articles 14 and 39A.

⁶ Ibid. Article 22(1).

⁷ Ibid. Article 20.

⁸ Ibid. Article 19(1).

⁹ Ibid. Article 300A.

¹⁰ Ibid. Article 25(1).

¹¹ Ibid. Article 19(1).

¹² Id.

¹³ Ibid. Articles 16 and 326.

Right to work, equal pay for equal work,¹⁴ Right to rest and leisure,¹⁵ Right to an adequate standard of living,¹⁶ Right to education,¹⁷ Right to participate in cultural life,¹⁸ and Right to a proper social order.¹⁹

The following rights of the Universal Declaration have not been included in the Constitution of India: Prohibition of torture and degrading treatment,²⁰ Recognition as a person before the law,²¹ Remedies against violation of rights,²² Right to a fair trial,²³ Prohibition of interference with privacy,²⁴ Right of asylum,²⁵ Right to a nationality,²⁶ Right to marry and to found a family,²⁷ Right to social security,²⁸ Duties to society,²⁹ and Prohibition of destruction of rights of others.³⁰

¹⁴ Ibid, Articles 19(1), 39(d), 42 and 43.

¹⁵ Ibid, Article 43.

¹⁶ Ibid, Articles 39(f) and 41.

¹⁷ Ibid, Article 45.

¹⁸ Ibid, Article 29.

¹⁹ Ibid, Article 38.

²⁰ The Universal Declaration of Human Rights 1948, Article 5.

²¹ Ibid, Article 6.

²² Ibid, Article 8.

²³ Ibid, Article 10.

²⁴ Ibid, Article 12.

²⁵ Ibid, Article 14.

²⁶ Ibid, Article 15.

²⁷ Ibid, Article 16.

²⁸ Ibid, Article 22.

²⁹ Ibid, Article 29.

³⁰ Ibid, Article 30.

CHAPTER 14

Comparison of the Constitution of Pakistan with the Universal Declaration of Human Rights

Pakistan is one of the original signatories to the Universal Declaration of Human Rights and voted in favour of the 10 December 1948 Resolution which adopted the Declaration. The present Constitution of Pakistan was adopted on 12 April 1973. Following its earlier Constitutions of 1956 and 1962, the present Constitution also contains a detailed bill of rights. In the following table the provisions of the Constitution of Pakistan and the Universal Declaration of Human Rights are compared.

The Universal Declaration of Human Rights 1948	The Constitution of Pakistan 1973
<p><i>Equality in dignity and rights</i> Article 1 : All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.</p>	
<p><i>Non-discriminatory application of Right</i> Article 2 : Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.</p>	

Fifty Years of the Universal Declaration of Human Rights

<p><i>Right to life, liberty and security</i> Article 3 : Everyone has the right to life, liberty and security of person.</p>	<p>Article 9 : No person shall be deprived of life or liberty save in accordance with law.</p>
<p><i>Prohibition of slavery</i> Article 4 : No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.</p>	<p>Article 11 (1) : Slavery is non-existent and forbidden and no law shall permit or facilitate its introduction into Pakistan in any form.</p>
<p><i>Prohibition of torture and degrading treatment</i> Article 5 : No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.</p>	
<p><i>Recognition as a person before the law</i> Article 6 : Everyone has the right to recognition everywhere as a person before the law.</p>	
<p><i>Equality before the law</i> Article 7 : All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.</p>	<p>Article 25 (1) : All citizens are equal before law and are entitled to equal protection of law. Article 25 (2) : There shall be no discrimination on the basis of sex alone. Article 25(3) : Nothing in this Article shall prevent the State from making any special provision for the protection of women and children.</p>
<p><i>Remedies against violations of rights</i> Article 8 : Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.</p>	
<p><i>Prohibition of arbitrary arrest</i> Article 9 : No one shall be subjected to arbitrary arrest, detention or exile.</p>	<p>Article 10 (1) : No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest, nor shall he be denied the right to consult and be defended by a legal practitioner of his choice.</p>

<p><i>Right to a fair trial</i> Article 10 : Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.</p>	
<p><i>Presumption of innocence and protection against retroactivity of criminal law</i> Article 11(1) : Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence. Article 11(2) : No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.</p>	<p>Article 12 (1) : No law shall authorise the punishment of a person – (a) for an act or omission that was not punishable by law at the time of the act or omission; or (b) for an offence by a penalty greater than, or of a kind different from, the penalty prescribed by law for that offence at the time the offence was committed.</p>
<p><i>Prohibition of interference with privacy</i> Article 12 : No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.</p>	<p>Article 14 (1) : The dignity of man and, subject to law, the privacy of home, shall be inviolable. Article 14(2) : No person shall be subjected to torture for the purpose of extracting evidence.</p>

Fifty Years of the Universal Declaration of Human Rights

<p><i>Freedom of movement</i> Article 13(1) : Everyone has the right to freedom of movement and residence within the borders of each State. Article 13(2) : Everyone has the right to leave any country, including his own, and to return to his country.</p>	<p>Article 15 : Every citizen shall have the right to remain in, and, subject to any reasonable restriction imposed by law in the public interest, enter and move freely throughout Pakistan and to reside and settle in any part thereof.</p>
<p><i>Right of asylum</i> Article 14(1) : Everyone has the right to seek and to enjoy in other countries asylum from persecution. Article 14(2) : This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.</p>	
<p><i>Right to a nationality</i> Article 15(1) : Everyone has the right to a nationality. Article 15(2) : No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.</p>	
<p><i>Right to marry and to found a family</i> Article 16(1) : Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution. Article 16(2) : Marriage shall be entered into only with the free and full consent of the intending spouses. Article 16(3) : The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.</p>	<p>Article 35 : The State shall protect the marriage, the family, the mother and the child.</p>

Chapter 14

<p><i>Right to own property</i> Article 17(1) : Everyone has the right to own property alone, as well as in association with others.</p> <p>Article 17(2) : No one shall be arbitrarily deprived of his property.</p>	<p>Article 23 : Every citizen shall have the right to acquire, hold and dispose of property in any part of Pakistan, subject to the Constitution and any reasonable restrictions imposed by law in the public interest.</p> <p>Article 24 (1) : No person shall be compulsorily deprived of his property save in accordance with law.</p>
<p><i>Freedom of thought, conscience and religion</i> Article 18 : Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.</p>	<p>Article 20 : Subject to law, public order and morality - (a) Every citizen shall have the right to profess, practice and propagate his religion. (b) Every religious denomination and every sect thereof shall have the right to establish, maintain and manage its religious institutions.</p>
<p><i>Freedom of opinion and expression</i> Article 19 : Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.</p>	<p>Article 19 : Every citizen shall have the right to freedom of speech and expression, and there shall be freedom of the Press, subject to any reasonable restrictions imposed by law in the interest of the glory of Islam or the integrity, security or defence of Pakistan or any part thereof, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of Court, [commission of] or incitement to an offence.</p>
<p><i>Freedom of assembly and association</i> Article 20(1) : Everyone has the right to freedom of peaceful assembly and association. Article 20(2) : No one may be compelled to belong to an association.</p>	<p>Article 16 : Every citizen shall have the right to assemble peacefully and without arms, subject to any reasonable restrictions imposed by law in the interest of public order.</p>

Fifty Years of the Universal Declaration of Human Rights

<p><i>Right to participate in Government</i> Article 21(1) : Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.</p> <p>Article 21(2) : Everyone has the right of equal access to public service in his country.</p> <p>Article 21(3) : The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.</p>	<p>Article 27 (1) : No citizen otherwise qualified for appointment in the service of Pakistan shall be discriminated against in respect of any such appointment on the ground only of race, religion, caste, sex, residence or place of birth.</p> <p>Article 51(1) : The National Assembly shall consist of (two hundred and seven Muslim) members to be elected by direct and vote in accordance with law.</p>
<p><i>Right to social security</i> Article 22 : Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.</p>	
<p><i>Right to work, equal pay for equal work</i> Article 23(1) : Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.</p>	<p>Article 18 : Subject to such qualifications, if any, as may be prescribed by law, every citizen shall have the right to enter upon any lawful profession or occupation, and to conduct any lawful trade or business:</p>

<p>Article 23(2) : Everyone, without any discrimination, has the right to equal pay for equal work.</p> <p>Article 23(3) : Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.</p> <p>Article 23(4) : Everyone has the right to form and to join trade unions for the protection of his interests.</p>	
<p><i>Right to rest and leisure</i></p> <p>Article 24 : Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays and pay.</p>	<p>Article 38 (b) : The State shall provide for all citizens, within the available resources of the country, facilities for work and adequate livelihood with reasonable rest and leisure.</p>
<p><i>Right to an Adequate standard of living</i></p> <p>Article 25(1) : Everyone has the right to a standard of living adequate for the health and well being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.</p> <p>Article 25(2) : Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.</p>	<p>Article 38 (a) : The State shall - Secure the well-being of the people, irrespective of sex, caste, creed or race, by raising their standard of living, by preventing the concentration of wealth and means of production and distribution in the hands of a few to the detriment of general interest and by ensuring equitable adjustment of rights between employers and employees, and landlords and tenants.</p>

Fifty Years of the Universal Declaration of Human Rights

<p><i>Right to education</i> Article 26(1) : Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit. Article 26(2) : Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace. Article 26(3) : Parents have a prior right to choose the kind of education that shall be given to their children.</p>	<p>Article 37 (b) : The State shall remove illiteracy and provide free and compulsory secondary education within minimum possible period. Article 37 (c) : The State shall make technical and professional education generally available and higher education equally accessible to all on the basis of merit.</p>
<p><i>Right to participate in cultural life</i> Article 27(1) : Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits. Article 27(2) : Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.</p>	<p>Article 28 : Subject to Article 251 any section of citizens having a distinct language, script or culture shall have the right to preserve and promote the same and subject to law, establish institutions for that purpose.</p>
<p><i>Right to a proper social order</i> Article 28 : Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.</p>	

<p><i>Duties to society</i></p> <p>Article 29(1) : Everyone has duties to the community in which alone the free and full development of his personality is possible.</p> <p>Article 29(2) : In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.</p> <p>Article 29(3) : These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.</p>	
<p><i>Prohibition of destruction of rights of others</i></p> <p>Article 30 : Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.</p>	

It appears from the above comparison that the Constitution of Pakistan has adopted the following rights of the Universal Declaration: Right to life, liberty and security,¹ Prohibition of slavery,² Equality before the law,³ Prohibition of arbitrary arrest,⁴ Protection against retroactivity of criminal law,⁵ Prohibition of interference with privacy,⁶ Freedom of

¹ The Constitution of Pakistan 1973, Article 9.

² Ibid, Article 11.

³ Ibid, Article 25.

⁴ Ibid, Article 10(1).

⁵ Ibid, Article 12(1).

⁶ Ibid, Article 14.

Fifty Years of the Universal Declaration of Human Rights

movement,⁷ Right to marry and to found family,⁸ Right to own property,⁹ Freedom of thought, conscience and religion,¹⁰ Freedom of opinion and expression,¹¹ Freedom of assembly and association,¹² Right to participate in government,¹³ Right to work, equal pay for equal work,¹⁴ Right to rest and leisure,¹⁵ Right to an adequate standard of living,¹⁶ Right to education,¹⁷ and Right to participate in cultural life.¹⁸

The Constitution of Pakistan has not included in it, the following rights which are mentioned in the Universal Declaration of Human Rights: Equality in dignity,¹⁹ Non-discriminatory application of right,²⁰ Prohibition of torture and degrading treatment,²¹ Recognition as a person before the law,²² Remedies against violation of rights,²³ Right to a fair trial,²⁴ Right of asylum,²⁵ Right to a nationality,²⁶ Right to social security,²⁷ Right to a proper social order,²⁸ Duties to society,²⁹ and Prohibition of destruction of rights of others³⁰.

⁷ Ibid, Article 15.

⁸ Ibid, Article 35.

⁹ Ibid, Articles 23 and 24(1).

¹⁰ Ibid, Article 20.

¹¹ Ibid, Article 19.

¹² Ibid, Articles 16 and 17.

¹³ Ibid, Articles 27(1) and 51(1).

¹⁴ Ibid, Article 18.

¹⁵ Ibid, Article 38(b).

¹⁶ Ibid, Article 38(a).

¹⁷ Ibid, Articles 37(b) and 37(c).

¹⁸ Ibid, Article 28.

¹⁹ The Universal Declaration of Human Rights 1948, Article 1.

²⁰ Ibid, Article 2.

²¹ Ibid, Article 5.

²² Ibid, Article 6.

²³ Ibid, Article 8.

²⁴ Ibid, Article 10.

²⁵ Ibid, Article 14.

²⁶ Ibid, Article 15.

²⁷ Ibid, Article 22.

²⁸ Ibid, Article 28.

²⁹ Ibid, Article 29.

³⁰ Ibid, Article 30.



CHAPTER 15

Comparison of the Constitution of Bangladesh with the Universal Declaration of Human Rights

The Constitution of Bangladesh was adopted on 4 November 1972 and came into force on 16 December, 1972. Human rights agenda had been in the fore-front of the country's liberation struggle. The country's respect for human rights and fundamental freedom dates back from the Proclamation of Independence of 10 April 1971. The Proclamation *inter alia* reads: "... we undertake to observe ... and to abide by the Charter of the United Nations". The Constitution in its Preamble provides "... it shall be a fundamental aim of the state to realise ... a society in which the rule of law, fundamental human rights and freedom, ... will be secured for all citizens". Article 11 provides that the Republic shall be a democracy in which fundamental human rights and freedoms and respect for the dignity and worth of the human person shall be guaranteed. The provisions of the Constitution of Bangladesh and the Universal Declaration of Human Rights are compared below.

The Universal Declaration of Human Rights 1948	The Constitution of Bangladesh 1972
<p><u>Equality in dignity and rights</u> Article 1 : All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.</p>	<p>৭২০৩৬৯</p>
<p><u>Non-discriminatory application of Rights</u> (০৬৫৫) ১০৬ Article 2 : Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.</p>	<p>Article 28(1) : The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex or place of birth.</p> <p>Article 28(2) : Women shall have equal rights with men in all spheres of the State and of public life.</p> <p>Article 28(3) : No citizen shall, on grounds only of religion, race, caste,</p>

Fifty Years of the Universal Declaration of Human Rights

<p>Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.</p> <p>সর্বস্বত্ব</p>	<p>sex or place of birth be subjected to any disability, liability, restriction or condition with regard to access to any place of public entertainment or resort, or admission to any educational institution.</p> <p><u>Article 28(4)</u> : Nothing in this article shall prevent the State from making special provision in favour of women or children or for the advancement of any backward section of citizens.</p>
<p><u>Right to life, liberty and security</u></p> <p><u>Article 3</u> : Everyone has the right to life, liberty and security of person.</p> <p>জীবন স্বাধীনতা</p>	<p><u>Article 32</u> : No person shall be deprived of life or personal liberty save in accordance with Law.</p>
<p><u>Prohibition of slavery</u></p> <p><u>Article 4</u> : No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.</p>	<p><u>Article 34(1)</u> : All forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.</p>
<p><u>Prohibition of torture and degrading treatment</u></p> <p><u>Article 5</u> : No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.</p> <p>সর্বস্বত্ব</p>	<p><u>Article 35(5)</u> : No person shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment.</p>
<p><u>Recognition as a person before the law</u></p> <p><u>Article 6</u> : Everyone has the right to recognition everywhere as a person before the law.</p>	<p><u>Article 31</u> : To enjoy the protection of the law, and to be treated in accordance with law, and only in accordance with law, is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Bangladesh, and in particular no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law.</p>

<p><u>Equality before the law</u> Article 7 : All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.</p>	<p>Article 27 : All citizens are equal before law and are entitled to equal protection of law.</p> <p>Handwritten notes in Hindi: "सबके लिए समान अधिकार" (Equal rights for all), "सबके लिए समान कानून" (Equal law for all), "सबके लिए समान सुरक्षा" (Equal protection for all).</p>
<p><i>Remedies against violations of rights</i> Article 8 : Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.</p>	
<p><u>Prohibition of arbitrary arrest</u> Article 9 : No one shall be subjected to arbitrary arrest, detention or exile.</p>	<p>Article 33(1) : No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest, nor shall he be denied the right to consult and be defended by a legal practitioner of his choice.</p> <p>Article 33(2) : Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest, excluding the time necessary for the journey from the place of arrest to the court of the magistrate, and to such person shall be detained in custody beyond the said period without the authority of a magistrate.</p> <p>Article 33(3) : Nothing in clauses (1) and (2) shall apply to any person - (a) who for the time being is an enemy alien; or (b) who is arrested or detained under any law providing for preventive detention.</p>

Fifty Years of the Universal Declaration of Human Rights

<p><u>Right to a fair trial</u> Article 10 : Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.</p>	<p><u>Article 35(3) : Every person accused of a criminal offence shall have the right to speedy and public trial by an independent and impartial court or tribunal established by law.</u></p>
<p><u>Presumption of innocence and protection from retroactivity of criminal law</u> Article 11(1) : Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.</p> <p>Article 11(2) : No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.</p>	<p>Article 35(1) : No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than, or different from, that which might have been inflicted under the law in force at the time of the commission of the offence.</p> <p>Article 35(2) : No person shall be prosecuted and punished for the same offence more than once.</p> <p>Article 35(4) : No person accused of any offence shall be compelled to be witness against himself.</p>
<p><u>Prohibition of interference with privacy</u> Article 12 : No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.</p>	<p><u>Article 43 : Every citizen shall have the right, subject to any reasonable restrictions imposed by law in the interests of the security of the State, public order, public morality or public health-</u> (a) to be secured in his home against entry, search and seizure; and</p>

	(b) to the privacy of his correspondence and other means of communication.
<p><u>Freedom of movement</u></p> <p>Article 13(1) : Everyone has the right to freedom of movement and residence within the borders of each State.</p> <p>Article 13(2) : Everyone has the right to leave any country, including his own, and to return to his country.</p>	<p>Article 36 : Subject to any reasonable restrictions imposed by law in the public interest, every citizen shall have the right to move freely throughout Bangladesh, to reside and settle in any place therein and to leave and re-enter Bangladesh.</p>
<p><u>Right to asylum</u></p> <p>Article 14(1) : Everyone has the right to seek and to enjoy in other countries asylum from persecution.</p> <p>Article 14(2) : This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.</p>	
<p><u>Right to a nationality</u></p> <p>Article 15(1) : Everyone has the right to a nationality.</p> <p>Article 15(2) : No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.</p>	
<p><u>Right to marry and to found a family</u></p> <p>Article 16(1) : Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.</p> <p>Article 16(2) : Marriage shall be entered into only with the free and full consent of the intending spouses.</p> <p>Article 16(3) : The family is the natural</p>	

<p>and fundamental group unit of society and is entitled to protection by society and the State.</p>	
<p><u>Right to own property</u> Article 17(1) : Everyone has the right to own property alone as well as in association with others. Article 17(2) : No one shall be arbitrarily deprived of his property.</p>	<p>Article 42(1) : Subject to any restrictions imposed by law, every citizen shall have the right to acquire, hold, transfer or otherwise dispose of property, and no property shall be compulsorily acquired, nationalised or requisitioned save by authority of law.</p>
<p><u>Freedom of thought, conscience and religion</u> Article 18 : Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.</p>	<p>Article 39(1) : Freedom of thought and conscience is guaranteed. Article 41(1)(a) : Subject to law, public order and morality - every citizen has the right to profess, practise or propagate any religion; Article 41(1)(b) : Every religious community or denomination has the right to establish, maintain and manage its religious institutions.</p>
<p><u>Freedom of opinion and expression</u> Article 19 : Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.</p>	<p>Article 39(2) : Subject to any reasonable restrictions imposed by law . . . (a) the right of every citizen to freedom of speech and expression; and (b) freedom of the press, are guaranteed.</p>
<p><u>Freedom of assembly and association</u> Article 20(1) : Everyone has the right to freedom of peaceful assembly and association. Article 20(2) : No one may be compelled to belong to an association.</p>	<p>Article 37 : Every citizen shall have the right to assemble and to participate in public meetings and processions peacefully and without arms, subject to any reasonable restrictions imposed by law in the interests of public order or public health.</p>

	<p>Article 38 : Every citizen shall have the right to form associations or unions, subject to any reasonable restrictions imposed by law in the interests of morality or public order.</p>
<p><u>Right to participate in Government</u> Article 21(1) : Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.</p> <p>Article 21(2) : Everyone has the right of equal access to public service in his country.</p> <p>Article 21(3) : The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.</p>	<p>Article 29(1) : There shall be equality of opportunity for all citizens in respect of employment or office in the service of the Republic.</p> <p>Article 29(2) : No citizen shall, on grounds only of religion, race, caste, sex or place or birth, be ineligible for, or discriminated against in respect of, any employment or office in the service of the Republic.</p> <p>Article 122(1) : The Elections to the Parliament shall be on the basis of adult franchise.</p>
<p><u>Right to social security</u> Article 22 : Everyone, as a member of society, has the right, to social security and is entitled to realisation, through national effort and international co-operation and in accordance with the organisation and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.</p>	<p>Article 15 : It shall be a fundamental responsibility of the State to attain, through planned economic growth, a constant increase of productive forces and a steady improvement in the material and cultural standard of living of the people, with a view to securing to its citizens - ... (d) the right to social security</p>

<p><u>Right to work, equal pay for equal work</u></p> <p>Article 23(1) : Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.</p> <p>Article 23(2) : Everyone, without any discrimination, has the right to equal pay for equal work.</p> <p>Article 23(3) : Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.</p> <p>Article 23(4) : Everyone has the right to form and to join trade unions for the protection of his interests.</p>	<p>Article 15 : It shall be a fundamental responsibility of the State to attain, through planned economic growth, a constant increase of productive forces and a steady improvement in the material and cultural standard of living of the people, with a view to securing to its citizens -</p> <p>...</p> <p>(b) the right to work, that is the right to guaranteed employment at a reasonable wage having regard to the quantity and quality of work; ...</p> <p>Article 20(1) : Work is right, a duty and a matter of honour for every citizen who is capable of working, and everyone shall be paid for his work on the basis of the principle "from each according to his abilities to each according to his work".</p> <p>Article 38 : Every citizens shall have the right to form associations or unions, subject to any reasonable restrictions imposed by law in the interest of morality or public order.</p>
<p><u>Right to rest and leisure</u></p> <p>Article 24 : Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays and pay.</p>	<p>Article 15 : It shall be a fundamental responsibility of the State to attain, through planned economic growth, a constant increase of productive forces and a steady improvement in the material and cultural standard of living of the people, with a view to securing to its citizens ...</p> <p>(c) the right to reasonable rest, recreation and leisure.</p>

<p><i>Right to an adequate standard of living</i></p> <p>Article 25(1) : Everyone has the right to a standard of living adequate for the health and well being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.</p> <p>Article 25(2) : Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.</p>	<p>Article 15 : It shall be a fundamental responsibility of the State to attain, through planned economic growth, a constant increase of productive forces and a steady improvement in the material and cultural standard of living of the people, with a view to securing to its citizens -</p> <p>(a) : the provision of basic necessities of life including food, clothing, shelter, education and medical care; . . .</p> <p>(d) . . . to public assistance in cases of undeserved want arising from unemployment, illness or disablement, or suffered by widows or orphans or in old age, or in other such cases.</p>
<p><i>Right to education</i></p> <p>Article 26(1) : Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and <u>higher education shall be equally accessible to all on the basis of merit.</u></p> <p>Article 26(2) : Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the</p>	<p><u>Article 17</u> : The State shall adopt effective measures for the purpose of-</p> <p>(a) establishing a uniform, mass-oriented and universal system of education and extending free and <u>compulsory education to all children to such stage as may be determined by law;</u></p> <p>(b) relating education to the needs of society and producing properly trained and motivated citizens to serve those needs;</p> <p>(c) removing illiteracy within such time as may be determined by law.</p>

Fifty Years of the Universal Declaration of Human Rights

<p>United Nations for the maintenance of peace.</p> <p>Article 26(3) : Parents have a prior right to choose the kind of education that shall be given to their children.</p>	
<p><i>Right to participate in cultural life</i></p> <p>Article 27(1) : Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.</p> <p>Article 27(2) : Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.</p>	<p>Article 23 : The State shall adopt measures to conserve the cultural traditions and heritage of the people, and so to foster and improve the national language, literature and the arts that all sections of the people are afforded the opportunity to contribute towards and to participate in the enrichment of the national culture.</p>
<p><i>Right to a proper social order</i></p> <p>Article 28 : Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realised.</p>	
<p><i>Duties to society</i></p> <p>Article 29(1) : Everyone has duties to the community in which alone the free and full development of his personality is possible.</p> <p>Article 29(2) : In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.</p> <p>Article 29(3) : These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.</p>	

Prohibition of destruction of rights of others

Article 30 : Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

From the above table it is apparent that the Constitution of Bangladesh has incorporated the following rights which are specified in the Universal Declaration: Non-discriminatory application of rights,¹ Right to life, liberty and security,² Prohibition of slavery,³ Prohibition of torture and degrading treatment,⁴ Recognition as a person before the law,⁵ Equality before the law,⁶ Prohibition of arbitrary arrest,⁷ Right to a fair trial,⁸ Protection from retroactively of criminal law,⁹ Prohibition of interference with privacy,¹⁰ Freedom of movement,¹¹ Right to own property,¹² Freedom of thought, conscience and religion,¹³ Freedom of opinion and expression,¹⁴ Freedom of assembly and association,¹⁵ Right to participate in government,¹⁶ Right to work, equal pay for equal work,¹⁷

¹ See *The Constitution of Bangladesh 1972*, Article 28.

² *Ibid*, Article 31.

³ *Ibid*, Article 34.

⁴ *Ibid*, Article 35(5).

⁵ *Ibid*, Article 31.

⁶ *Ibid*, Article 27.

⁷ *Ibid*, Article 33.

⁸ *Ibid*, Article 35(3).

⁹ *Ibid*, 35(1), 35(2), 35(4).

¹⁰ *Ibid*, Article 43.

¹¹ *Ibid*, Article 36.

¹² *Ibid*, Article 42.

¹³ *Ibid*, Articles 39(1), 41(1), 41(2).

¹⁴ *Ibid*, Article 39(2).

¹⁵ *Ibid*, Articles 37 and 38.

¹⁶ *Ibid*, Articles 29 and 122(1).

¹⁷ *Ibid*, Articles 15(b) and 20(1).

Fifty Years of the Universal Declaration of Human Rights

Right to rest and leisure,¹⁸ Right to an adequate standard of living,¹⁹ Right to education,²⁰ and Right to participate in cultural life.²¹

However, the following rights of the Universal Declaration have not been included in the Constitution of Bangladesh: Equality in dignity,²² Remedies against violation of rights,²³ Right of asylum,²⁴ Right to a nationality,²⁵ Right to marry and to found a family,²⁶ Right to a proper social order,²⁷ Duties to society,²⁸ and Prohibition of destruction of rights of others.²⁹

¹⁸ Ibid, Article 15(c).

¹⁹ Ibid, Article 15(a) ,(15(d).

²⁰ Ibid, Article 17.

²¹ Ibid, Article 23.

²² See, *The Universal Declaration of Human Rights 1948*, Article 1.

²³ Ibid, Article 8.

²⁴ Ibid, Article 14.

²⁵ Ibid, Article 15.

²⁶ Ibid, Article 16.

²⁷ Ibid, Article 28.

²⁸ Ibid, Article 29.

²⁹ Ibid, Article 30.

CHAPTER 16

Conclusion

The formulation by the United Nations in 1948 of the Universal Declaration of Human Rights made possible the subsequent flourishing of the idea of human rights. The Declaration was an attempt to provide an authoritative international list of human rights that would give some fixed meaning to the idea, and this attempt has been successful to a substantial degree. Its progeny, such as the European Convention on Human Rights and the International Covenants of 1966, has refined the formulations of these rights and gave them the status of international law.

Indeed, no one reading the materials set out in the preceding chapters can fail to be struck by the dramatic development of international human rights law over the last fifty years. As we have seen, the Universal Declaration of 1948 was the first international text to list human rights as such, although the United Nations Charter three years earlier, had already indicated that these were likely to be prominent issue in the post-war world. From such early beginnings developed the elaborate network of treaties, which now form the basis of the modern human rights law.

One of the most interesting confirmations of the progress achieved over the past fifty years in the matter of human rights is that shown by the current acceptance by all states of principles, criteria and ideas affirmed in the Universal Declaration of 1948. What, at the moment the Declaration was adopted, was the result of the will of 48 States with no opposing votes and 8 abstentions resulting from reticence and forbearance in the drafting of the Declaration, is now a days accepted by all Members of the international community without theoretical restrictions or restraint. In addition to numerous other resolutions of the United Nations under which this obligation was affirmed, the Proclamation of Teheran, unanimously declared in its paragraph 2 that the Universal Declaration of Human Rights "constitutes an obligation for the members of the international community". Further, the Vienna

Declaration and Programme of Action recalled in 1993, the rights enunciated in the Universal Declaration of Human Rights.

The provisions of the Universal Declaration of Human Rights are admitted today as obligatory, both in the sense that they are considered as general principles of international law, and as an interpretation of the Charter expressly and repeatedly accepted by the international community by means of resolutions of the General Assembly of the United Nations as a spokesman for mankind proclaiming these rights and freedoms. The Universal Declaration has been transformed from a moral standard to a document under which definitive rights and duties are imposed on States.

The Universal Declaration was based in the need to affirm "a common understanding of these rights and freedoms", and to achieve a common standard for all peoples and nations". To arrive at a concept consecrating a common standard of mankind for human rights beyond theoretical and practical differences on the nature of rights and freedoms of human being, was perhaps the most important achievement of the Universal Declaration. This achievement led afterwards to the wording of two International Covenants which opened enormous horizons regarding the promotion, defence and protection of human rights, notwithstanding a world divided by ideologies and by numerous political, social and economic systems, which have of necessity different criteria as to the nature and essence of human rights.

Though not legally binding as an instrument, its provisions are recognized as a "common standard of achievement for all peoples and all nations", as stated in the Preamble. Guided thereby the governments "shall strive by progressive measures, national and international, to secure their universal and effective recognition and observance". In so far as the subsequently adopted treaties go less far in the formulation of the rights embodied therein, or go further in permitting limitations of these rights than does the Universal Declaration, and in relation to those states which have not ratified these treaties, the Universal Declaration retains its full significance as "common standard of achievement". The Universal Declaration has been proclaimed as a goal-setting resolution by the

General Assembly, which should be followed by international treaties defining concrete obligations of states and the necessary or possible implementation measures. And, indeed, since that time, such instruments have come into force.

The Universal Declaration has had its impact as a political instrument and continues to work this way. It has influenced the formulation of human rights in many Constitutions and international Conventions. It may suffice to refer to the European Convention on Human Rights, the Human Rights Covenants, the American Convention on Human Rights, the African Charter on Human and Peoples' Rights, the Conventions against Racism and the Discrimination of Women and the Convention on the Suppression and Punishment of the Crime of Apartheid.

Certainly, the Universal Declaration of Human Rights was the root of a whole series of declarations concerning human rights, such as the Declaration on the Granting of Independence to Colonial Countries and Peoples, the Declaration of the Elimination of All Forms of Racial Discrimination, the Declaration on the Elimination of Discrimination against Women, the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, the Declaration against Torture and other Inhuman Treatment, the Declaration of the Rights of the Child, the Declaration on the Right to Development, the Declaration on the Preparation of Societies for Life in Peace, the Declaration on Social Progress and Development etc.

Thus, one of the achievements of the Universal Declaration, therefore, is that it has not remained an isolated document. To the contrary, it has brought awareness of the human rights issue to different forums. It has created a momentum that has produced extremely important results in public opinion and state practice and contributed to changing and developing the entire concept of international relations.

The Universal Declaration has been repeatedly approved by innumerable resolutions supported virtually by all States. Although the Declaration was followed by numerous International Covenants and Conventions, it remains the principal catalogue of human rights and the principal articulation of the international human rights idea.

There can be little doubt that, when drafted and promulgated, the Universal Declaration was not generally seen as a binding agreement. It is called a 'declaration', not a Convention, Covenant, or other designation commonly used for binding international agreements. It does not purport to be an agreement or to bind all or any states.

In effect, the international community adopted a standard and asked each member State to take that standard to heart, and to proceed to take any necessary measures to assure that the standard would be honoured within its jurisdiction. Implementation of the Declaration was to be the responsibility of each state through its domestic institutions and laws.

Today few governments as well as scholars would insist that a violation of any provision of the Declaration was a violation of international law; most states and scholars would argue that failure to respect some of the provisions of the Declaration would constitute a violation of international law.

If the jurisprudential character of the Declaration remains controversial, no one would doubt its significance as the principal articulation of the international human rights idea and the authoritative enumeration of universally recognized human rights. As such, its contribution to the enforcement of human rights is unquestionable. The Universal Declaration has been the principal conduit for bringing the idea of human rights into the life of many nations: it is expressly referred to in State Constitutions; its provisions are adopted or adapted in others. It is the source of numerous international Covenants and Conventions. It is commonly and universally invoked as a standard of justice and freedom. It ranks with the U. N. Charter as one of the most celebrated and most respected international instruments of our time.

The Universal Declaration of Human Rights has maintained its fundamental importance as a common standard of achievement for all peoples and all nations aimed at the promotion and protection of human rights, notwithstanding far-reaching changes in the international system and environment which have occurred since 1948. The universal character of the Declaration has been preserved and reinforced during its fifty years of existence. It has been accepted by all countries. It is looked

upon by peoples the world over as a valid instrument of protection and support in the struggle for human rights on the basis of equality of all persons and peoples.

Thus, Mrs. Franklin D. Roosevelt, in her statement on the eve of the adoption of the Declaration rightly described that the Declaration may well become the international Magna Carta of all men everywhere.¹ In the year 1949 similar view was expressed by Professor Baron F. M. Van Asbeck wherein he said: "Future generations will perhaps in their optimistic moments mark the adoption of the Universal Declaration by the General Assembly of the United Nations (on Dec. 10th, 1948) as the beginning of a new era in the history of mankind and in international law - as - literally true here - the law of nations".²

The Universal Declaration has its place in history and contemporary international relations because it draws lessons from the past without being restricted to problems of the past. It sets standards for present-day international law. But not being a treaty, it retains sufficient flexibility to be adapted to current problems with which humanity is faced. Thus, after fifty years it still remains a goal to be achieved. Let this 50th anniversary of the Universal Declaration of Human Rights provide us with the zeal to translate the human rights dream, so eloquently captured in the various international and national instruments, in to reality by focusing more resolutely on the implementation mechanisms and promotional activities.

¹ *Department of State Bulletin*, December 19, 1948.

² Asbeck, B.F.M.V., *The Universal Declaration of Human Rights and its Predecessors*, Leiden, 1949, p. 1