VI. TRANSNATIONAL CONSTITUTIONAL RIGHTS: RIGHTS-LIMITATION, POSITIVE OBLIGATIONS, AND REMEDIES IN INDIA, AZERBAIJAN, AND THE EUROPEAN COURT OF HUMAN RIGHTS

- *ELMAR MAHMUDOV*[*]

Abstract

The article has been written about the definition, limitation, and defense of constitutional rights in three jurisdictions of influence (India, Azerbaijan, and the European Court of Human Rights (ECHR). It emphasizes the particularism of specific nations as well as the increased transnational mobility of constitutional concepts.

The dialogue takes place in three dimensions that repeat: First are rights limitation models: India is pursuing its model of reasonable plus proportionality (particularly in socio-economic and equality cases) and the ECHR model of Necessity in a democratic society, which, besides being followed, has also in Azerbaijan been changeable to a stronger emphasis on proportionality/legality in its domestic courts, and finds its reflection in its new 1995 Constitution.

These systems are doctrinally different, but they are growing closer in that they demand justification on the basis of evidence and limitations. Second, positive duties:

[*] Master's Student in International and European Law, Vilnius University

Indian courts are becoming increasingly responsive to the ECHR approach that governments bear a positive and proactive responsibility to protect individuals against harm, especially in areas relating to the need to protect the environment, gender equality, and the health of the population.

The Constitutional Court of Azerbaijan has also reinforced the relevance of the state obligations in protecting universal rights for the individual, with significant mention of equality, right to fair trial, and protection of social rights, demonstrating the potential of constitutional review to empower individual and collective rights.

Third, remedial approaches: India commonly seeks to pursue broad-based structural remedies, such as continued writ of mandamus and monitoring compliance; the ECHR balances individual redress with pilot cases to resolve systemic flaws; and Azerbaijan, in particular, has built a practice of remedies within the context of constitutional review, legislative guidance, and declaratory judgments that helps move local law closer to international and human rights norms.

The article ends with the conclusion that in spite of the differing constitutional histories, courts in these traditions do tend to converge when granted a method of adjudication of rights based on the provision of reasons, proportionality justification, and context-sensitive remedies. It ends with five steps of practical adjudication:

(1) define the right and its reach; (2) demand public justifications and evidence of curtailment; (3) apply the minimally intrusive level; (4) align the remedy with the misconduct; and (5) revise those outcomes periodically to make sure that the need to protect is still there.

Keywords: *Azerbaijan, Constitution, ECHR, India, Courts.*

I. INTRODUCTION

Constitutional rights are construed in narrow sense in the modern democratic systems. In addition to limiting the power of the people, they gradually make the state obligated to defend dignity, equality, and participation. Even though, as we have seen, each constitutional tradition has its own more or less doctrinaire foundations, depending on local texts, history, and institutional culture, the rights judgment of modern practice is more of a transnational discourse. Courts embrace analytical tools, cite one another, and apply international human rights standards as part of their own substantive legal systems.[1]

In this paper, the discussion is placed within the framework of the definition of rights, restriction and redress in three settings in India, Azerbaijan and the European Court of Human Rights (ECHR). In state systems a variety of legal traditions such as these jurisdictions play a role in modern constitutional practice. As in the case of *Olga Tellis v Bombay Municipal Corporation*, the culture of the normative protection of socio-economic rights and equality by the litigation of the rights enshrined in a broad charter of rights in Part III of its

[1] Anne-Marie Slaughter, *A New World Order* (Princeton UP 2004), ch 2.

Constitution, India has come to develop a strong culture of litigation, a culture of rights protection in common law courts. [2] Azerbaijan, under its 1995 Constitution, has continued to entrench principles of proportionality, legality, and equality, and simultaneously has equated its jurisprudence with European human-rights principles.[3] The ECHR, in its turn, adopts a supranational view: its assessment based on the European Convention on Human Rights utilizes the criterion of whether an interference is necessary in a democratic society, the first criterion to be formulated in the case of Handyside v United Kingdom.[4]

The analysis centers on three recurrent dimensions. It first considers the models underpinning the restriction of rights and compares the combined reasonableness and proportionality principle used by India with the necessity test of the European Convention on Human Rights and the developing use of proportionality analysis in the Azerbaijani constitutional system. Second, it deals with positive obligations, in which an abundant jurisprudence has been elaborated by ECHR, and in which obligations have been extended similarly by India with its activist Supreme Court, and Azerbaijan with its sense of the importance of the state in issues of equality, social protection and due process of law. Third, it discusses remedies, observing that India often enforces structural solutions in order to achieve a result, the ECHR relies on individual relief and pilot judgments, and Azerbaijan moves

[2] *Olga Tellis v Bombay Municipal Corporation* AIR 1986 SC 180.
[3] Constitution of the Republic of Azerbaijan 1995, arts 24–71.
[4] *Handyside v United Kingdom* (1976) 1 EHRR 737.

constitutional review and legislation in line with the international standards.

The article attempts to provide a practical and limited account of how the systems address constraints, obligations, and determinations. The systems are influenced by different historical paths and institutional functions, but they come together concerning common devotion: evidence-based justification, the least-restrictive means, and the articulate rationale. The article then concludes by suggesting a brief checklist of rights adjudication that summarizes these comparative lessons in a coherent model to be used by comparative constitutional researchers and theorists of rights adjudication.

XIV. RIGHTS-LIMITATION FRAMEWORKS

A. India: from reasonableness to proportionality

Part III of the Constitution of India gives a broad list of fundamental rights. Simultaneously, most of these rights are limited to a reasonable restriction. Article 19, as an example, provides the freedom of speech, association, and movement, but the state is allowed to restrict it in the name of public order, morality, or the sovereignty and integrity of

India.[5] In other words, the Constitution itself provides that they may be restricted on a solid enough basis by the government, but that they must be reasonable.

The Supreme Court also explained in the case of State of Madras v V.G. Row that the reasonableness test requires consideration of the need to balance the worth of the fundamental rights against the demands of social control and population welfare.[6] This means that the Court stated that restrictions do not stand on the mere fact that they are desired by the legislature; they have to be fair, balanced, and reasonable in connection with the constitutional values.

This test of reasonableness, over many decades, was open to the discretion of judges in some cases. Nonetheless, in Modern Dental College v State of Madhya Pradesh the Court officially approved of a structured proportionality test.[7] In other words, it is anticipated that the judges will consider the following steps: whether the law aims to accomplish a legitimate conclusion, whether this conclusion is proper, whether there exist less restrictive means, and whether the balance is sensible.

This was strengthened in Justice K.S. Puttaswamy v Union of India [8], which established the right to privacy as an essential one. In other

[5] Constitution of India 1950, art 19.
[6] *State of Madras v V.G. Row* AIR 1952 SC 196.
[7] *Modern Dental College v State of Madhya Pradesh* (2016) 7 SCC 353.
[8] *Justice K.S. Puttaswamy v Union of India* (2017) 10 SCC 1.

words, the Court concluded that the principle of proportionality must always rule the procedure regarding the intrusion into the right to privacy or the right to equality: the government should explain that any particular restriction is not just legitimate but also needed and not excessive.

B. Azerbaijan: constitutional proportionality and legality

In the Constitution of the Republic of Azerbaijan enacted in 1995, there is a wide-ranging list of rights and freedoms (Articles 24-71).[9] The meaning of article 71 is that no more rights should be limited than is required to protect the rights of other human beings, societal order, or national security. In other words, even the Constitution itself demands that any restrictions should be legal, and should seek a legitimate end-- not any end of the policy of government.

In its original application, the Constitutional Court insisted on legality: the restrictions must be based obviously on the law; in other words, the government may not restrain rights by adjudication or executive power; it must make a law.[10]

In 2002, proportionality would be applied more directly by the Court. By 2002, the Court was going to use proportionality more directly. It considered restrictions on the freedom to assemble such that peaceful gatherings needed prior authorisation in Decision No. 7 (2005), The

[9] Constitution of the Republic of Azerbaijan 1995, arts 24–71.
[10] Constitutional Court of Azerbaijan, Decision No 3 (1998).

Court ruled such restrictions were disproportionate, as the legislature had not demonstrated that less restrictive alternatives, such as a simple notification procedure would be insufficient.[11] Put simply, the Court required the government to explain why it selected such a heavy restriction rather than a light one.

The Court later used proportionality in relation to equality and social rights, as in Case No. 12 (2014), where state actions had to observe human dignity without undermining legitimate goals such as economic reform.[12] Basically, although in this act, the government is acting for the common good, the bottom or basic dignity and equality of the people must never be compromised.

These examples show that Azerbaijan incorporated the idea of proportionality in its constitution. The Constitutional Court will often refer to European human rights law, balancing local experience with Strasbourg standards.[13] In other words, Azerbaijan demonstrates that a much younger constitutional order can imitate and implement foreign values, but at the same time be tied to one's own constitutional document.

C. The necessity in a democratic society of the European Court of Human Rights.

[11] Constitutional Court of Azerbaijan, Decision No 7 (2005).
[12] Constitutional Court of Azerbaijan, Decision No 12 (2014).
[13] ibid, referring to ECHR standards.

European Convention on Human Rights permits the states to limit some rights e.g., expression, assembly, or private life as long as the limitation is prescribed by the law, has a legitimate purpose, and is necessary in a democratic society.[14] Similarly, it means that governments may restrict rights in the Convention, but the restriction must be justified by law, and it must have a purpose and must actually need to belong to the vocation of a democratic society.

In a case of Handyside v United Kingdom [15], the Court upheld the idea that the freedom of expression protects both the opinions that are safe and even popular, but also the opinions that may be offensive, shocking or even disturbing. In other words, the state cannot ban speech merely because it offends feeling: it must establish that there is a sufficient reason why the speech should be suppressed in the name of democracy.

In Sunday Time v United Kingdom [16] it was noted by the Court that because laws which restrict the rights are limited, they must be precise and available. In other words, citizens must be able to foresee what is allowed and that which must be forbidden, and unclear or arbitrary prohibitions are unacceptable.

Lingens v Austria[17] held that any limitation on speech in political content must be interpreted in a limited fashion. That is, the

[14] European Convention on Human Rights 1950, arts 8–11.
[15] *Handyside v United Kingdom* (1976) 1 EHRR 737.
[16] *Sunday Times v United Kingdom (No 1)* (1979) 2 EHRR 245.
[17] *Lingens v Austria* (1986) 8 EHRR 407.

government has a very narrow margin of appreciation when it comes to the press and political debate, since it is the centrality of open criticism in democracy.

This jurisprudence explains how Strasbourg has formulated a test of proportionality, within the frame of the necessity language, but tailored the strength of the review to the right and the circumstances.

D. Comparative insights

India, Azerbaijan, the ECHR are mentioned right next to each other: there is diversity and variety.: There exists diversity and convergence. India has been transformed into a wider system of reasonableness to a more detailed proportionality regime; Azerbaijan has incorporated proportionality and legality by its Constitutional Court, and the ECHR has applied proportionality by use of the term necessity in democratic society. These paths are varied in history and institutional location, but share a common constitutional language.

Some general themes emerge:

1. Public justification. The three systems all demand that the state should justify why a restriction is required. That is to say that authority does not justify a rights-limiting measure by itself, but must be justified by reasons available to citizens and courts. Analytically this transforms the constitutional adjudication into a culture of justification: governments are not at liberty to do but must engage in persuasion.

2. Evidence and necessity. In every jurisdiction, courts currently require evidence that the restrictions respond to a problem that actually exists. India needs to prove connections between restriction and end, Azerbaijan seeks to know whether other less restrictive alternatives existed, and the ECHR seeks a pressing social need. Put another way, constitutional review is becoming more evidence-based, less abstract judicial balancing and more fact-specific review. This is why rights adjudication is more like a scientific reasoning: hypotheses need to be checked upon real world data.

3. Least restrictive means. The essential concept that rights are limited to the extent necessary is reiterated systems-wide. That is, governments cannot afford the most convenient or coercive solution; they need to be in the course that weighs least on rights and yet attain their objective. Analytically, this principle drives the states to innovativeness and carefulness in designing policies, and in law-making it imposes efficiency, in addition to legitimacy.

What are these convergences telling us? First, proportionality is not simply a doctrine inherent to law, but a form of government, a mode of how states justify action. Second, convergence posits that proportionality is functioning as an intermediary between the legal cultures: the activist judiciary in India, Azerbaijan constitutionalism in the making, and even the supranational influence of the ECtHR is all

converging around the same justificatory ideals. Finally, the non-mechanicalistic view of proportionality is shown in how more care is taken over matters of political speech than over wider matters of discretion over morality. Instead, it is an adaptable grammar that gives courts the opportunity to modify common principles to local customs.

That is, even though there are disparate texts and histories, these jurisdictions are converging on a global constitutional lesson where rights may be restricted, but only when governments give explicit, reasonable, and evidence-based reasons demonstrating that the restriction is indeed necessary and closely focused.

XV. POSITIVE OBLIGATIONS

Constitutional rights are no longer thought of solely as negative liberties -- protections against state action. Increasingly, courts also consider them as sources of positive obligations, or the view, that the state should actively protect persons against risks from private actors or structural risk. India, Azerbaijan and the European Court of Human Rights (ECtHR) all reflect this trend in different ways.

A. India: public interest litigation and affirmative duties

India has been one of the first countries to extend constitutional rights to the socio-economic arena through public interest litigation (PIL). The Supreme Court has read its interpretation of Article 21 of the

Constitution ("no person shall be deprived of his life or personal liberty except according to procedure established by law") as a portal for recognition of broad state obligations.

The case of Olga Tellis v Bombay Municipal Corporation[18] was when the court ruled that right to life would not be limited to just survival of the body, but also included the right to livelihood and this would be the duty of the state to help and not to evict pavement dwellers without a means of living because right to life would be meaningless without livelihood. The absence of a law on workplace sexual harassment gave rise to Vishaka v State of Rajasthan[19], where the Court imposed on employers and state authorities the obligation to actively pro-create a safe work environment for women, recognising that equality and dignity require actions rather than non-interference.

Environmental cases have also proved to be of immense importance. In M.C. Mehta v Union of India ('Oleum Gas Leak case', 1987)[20], the Court laid down an "absolute liability" rule on industries dealing with dangerous substances, mandating positive steps to avoid harm, the Court held that the state and industry have a positive obligation to protect citizens against environmental and health hazards, not wait for harm to occur.

[18] *Olga Tellis v Bombay Municipal Corporation* AIR 1986 SC 180.
[19] *Vishaka v State of Rajasthan* AIR 1997 SC 3011.
[20] *M.C. Mehta v Union of India* AIR 1987 SC 965 (Oleum Gas Leak).

Through these cases, India shows how the courts have been able to turn fundamental rights into instruments for affirmative action by the State in areas such as livelihood, gender equality and environmental protection.

B. Azerbaijan: constitutional recognition of duties to protect

Azerbaijan's Constitution of 1995 is a comprehensive list of rights, yet it also ties the rights to the obligations of the state. Article 24 confirms that human rights and freedoms are "supreme values" and that the state has the responsibility to "guarantee and protect them"[21], in other words that the Constitution explicitly imposes upon the state the obligation to act as guarantor, and not simply as non-interferer.

The Constitutional Court has built this up in its jurisprudence. For instance, in Decision No. 12[22] it stated that the state must protect equality and the right to social security; that is, it held that the achievement of equality cannot only involve the prohibition of discrimination, but that it involves the adoption of policies that ensure the effective recognition of the rights of vulnerable groups.

Similarly, where fair trial rights are at issue, the Court has called for adequate legal aid and for judicial independence in state institutions: in other words, justice is not accomplished by proclaiming rights - the

[21] Constitution of the Republic of Azerbaijan 1995, art 24.
[22] Constitutional Court of Azerbaijan, Decision No 12 (2014) (on equality and social rights).

state must construct systems and institutions that make those rights material.

By defining these obligations within its constitutional interpretation, Azerbaijan has come closer to the European standards and has simultaneously reinforced its own constitutional identity.

C. The European Court of Human Rights: developed positive-obligation doctrine

The ECHR has been a leader, in terms of expressing positive obligations. Case law demonstrates that states have not only to refrain from violating rights, but also to take reasonable measures to protect individuals against danger from others.

In Osman v United Kingdom[23] the Court stated that the police owed a duty to take operational steps to save life where there was a "real and immediate" risk known to the authorities, in other words, if there was a state of knowledge of a person's life being at risk then the state cannot sit by, but must act to prevent the harm.

In Opuz v Turkey[24], the Court concluded that Turkey was in breach of Articles 2 and 3 by failing to protect a woman from domestic violence that ultimately culminated in her murder: In other words, protecting women from gender-based violence is not optional - it is a legal obligation of the state parties under the Convention.

[23] *Osman v United Kingdom* (1998) 29 EHRR 245.
[24] *Opuz v Turkey* App no 33401/02 (ECtHR, 9 June 2009).

In Lopez Ostra v Spain[25], the Court held that the failure to take steps to prevent massive environmental pollution was a violation of Article 8 (private and family life) of the European Convention on the grounds that a healthy environment free from hazardous pollution was basic to personal dignity and should be regulated and acted upon by the state.

These cases demonstrate how the ECtHR has developed a jurisprudence on state obligation to protect against harm - in areas ranging from policing to domestic violence to environmental regulation.

D. Comparative insights

We may observe, over the three jurisdictions, one and the same movement from negative to affirmative constitutionalism. Although context differs, the trend remains the same, that rights are no longer being considered as mere protective shields but as such that are accompanied by duties by the state to guarantee meaningful enjoyment.

India is a case in point of how PIL is capable of using judicial creativity to turn traditional civil liberties into a platform for the manifestation of urgent socio-economic rights. By extending Article 21 to include livelihood, health and clean environment, the Supreme Court has shown how a text originally couched in classical liberal terms can become the constitutional vehicle for social change.

[25] *López Ostra v Spain* (1994) 20 EHRR 277.

Azerbaijan provides a lesson for how a relatively young constitutional system can enshrine positive obligations at the very core of constitutional adjudication. Through rights integrated with well-defined obligations to uphold them in its Constitution and by reference to European case studies, the Constitutional Court comes to place on itself a role of mediator between its own constitutional identity and both internal and external standards of human rights.

The ECHR is an example of how a supranational tribunal can condense general principles (duties to protect life, prevent gender-based violence and ensure a healthy environment) and then export them into national legal systems. The Strasbourg jurisprudence is a source of both advice and pressure, pushing states to operationalise the positive obligations in the form of legislation and policy reform.

Despite these divergences, there are clearly important convergences:

1. Action over and against inactivity: The concept of rights is beginning to be conceived as action and not lack of action, non-interference.
2. State obligation: it is the hope of the courts that governments should establish legal systems and regimes and enforcement that will avoid injury and safeguard dignity.
3. Give attention to vulnerability: Vulnerability can be the heart of positive-obligation jurisprudence, and especially

concern the poor, women and minority, and those who are vulnerable to violence or other environmental hazards.

4. Two-level dialogue: Strasbourg is the standard employed in dialogue between the national courts of India and Azerbaijan; Strasbourg has attempted to justify its decisions with reference to the constitutional traditions of the member states.

In other words, today constitutional rights mean a lot more than 'leave me alone'. They demand of governments the social, legal, and institutional conditions in which dignity, equality, and freedom can be realized in practice. This turn to affirmative constitutionalism represents one of the most important trends in comparative rights adjudication.

XVI. REMEDIES

The issue of remedy is central even in cases where the courts recognize the infringement of rights. Remedies not only decide whether a judgment is a relief to the individual but also whether rights are actually being protected in practice. Indeed, the remedial policies of the Indian, Azerbaijan, and European Court of Human Rights (ECHR) vary, representing their institutional framework and political contexts.

A. India: structural remedies and judicial supervision

The Supreme Court of India is associated with an approach to designing new solutions, particularly in the area of litigation in the

interests of society. More and more traditional solutions like vetoing a bill are perceived as not good enough when structural problems entail.

The Court established, in Vineet Narain v Union of India [26] the terms of a continuing mandamus, allowing the case to remain open, with dictated directions over time to ensure it was observing its directions on anti-corruption investigations. That is, rather than issue a one-time judgment the Court behaved as a continuous supervisor, ensuring that reforms were carried out.

It has also been used in environmental cases. The Court gave long-lasting directions in the area of pollution and vehicle pollution as well as industrial safety in the series of M.C. Mehta v Union of India cases. [27] That is, the Court only did not proclaim rights but vigorously to control the adherence and press within a step-by-step approach government organization to attain environmental conservation.

These solutions reflect the practical nature of the Court: executive inaction or laxity in protection of rights has led to judicial intervention, in the form of supervisory, supplementary, and structural orders.

These solutions reflect the practical nature of the Court: executive inaction or laxity in protection of rights has led to judicial intervention, in the form of supervisory, supplementary and structural orders.

[26] *Vineet Narain v Union of India* (1998) 1 SCC 226.
[27] *M.C. Mehta v Union of India* (1988) 1 SCC 471 (and subsequent orders).

B. Azerbaijan: declaratory judgments and legislative guidance

The Constitutional Court of Azerbaijan, under the 1995 Constitution, is critical in ensuring that the law is applied within the Constitution and the international standards of human rights. Its remedies are not in the same style as India, but they aim at the same goal, of being effective.

The Court mostly passes declaratory judgments which declare a provision or a law unconstitutional. For example, in Decision No. 6[28] it invalidated the provisions limiting property rights on the basis that the legislature had failed to show why alternative less restrictive methods would be insufficient. Stated differently, the Court stated: until Parliament rewrites the law in a more proportionate and balanced manner, it is invalid.

Far beyond the invalidation, the court gives interpretive guidance of appeals from courts. In Decision No. 4[29], it clarified the way fair trial rights in the Constitution were to be interpreted in the light of Article 6 of the European Convention on Human Rights. To put it another way, the Court does not merely strike down laws but educates legislature and lower courts about the rights and how they should be applied in a consistent manner with European norms.

This makes the Constitutional Court a protector of the text and a translator into international norms.

[28] Constitutional Court of Azerbaijan, Decision No 6 (2002).
[29] Constitutional Court of Azerbaijan, Decision No 4 (2011).

C. The European Court of Human Rights: individual and structural remedies

The ECHR is an international court whose decisions are binding to states. Article 41 of the Convention establishes its remedial powers through the award of just satisfaction to the victims of the violation of rights. This can be in practice in monetary terms.

The Court has, however, also created structural remedies in the pilot-judgment procedure. In the case of Broniowski v Poland[30], the Court had to deal with thousands of complaints of the same kind as concerned the restitution of the property. It rendered a pilot judgment that Poland was obliged to take general steps to remedy the structural problem, as well as provide individual compensation to the applicant. That is, the Court said: it is not the problem of a single person, Poland needs to correct the situation and not compel thousands of other people to appeal to the court.

In the case of Ananyev v Russia[31], the Court applied the pilot-judgment procedure to deal with inhuman terms of detainments. That is, the Court demanded that Russia not only had to pay the individual applicants' compensation, but also reformed its overall system of detention.

[30] *Broniowski v Poland* App no 31443/96 (ECtHR, 22 June 2004).
[31] *Ananyev v Russia* App nos 42525/07 and 60800/08 (ECtHR, 10 January 2012).

Judgment execution in the ECHR is managed by the Committee of Ministers of the Council of Europe. This produces a kind of two-tier remedial regime: judicial statements and political oversight of adherence. That is to say, Strasbourg remedies are a mixture of personal and systemic pressure on a regime to ensure that rights protection is both personal and structural.

D. Comparative insights

The three jurisdictions placed side by side show not only varying remedial preferences but also varying judicial self-images.

In India, judiciary is viewed as a proactive manager in the implementation of rights. Indian Supreme Court sees itself as not merely as an umpire, but there are occasions when it sees itself as acting as a custodian of a continuing reform, particularly in the areas of environment, corruption and social rights.

Azerbaijan adheres to a dialogic style, making declaratory verdicts and interpretative recommendations, but no orders. This is in addition to its constitution design and its proximity to the European legal space. Put another way, the Azerbaijani Constitutional Court presents itself as a teacher and interpreter: it dictates to the legislature and lower courts on how to bring practice into line with constitutional and Convention standards, but leaves them to undertake the practical corrections.

ECHR is both individual and systemic. The striking feature of its pilot-judgment process in particular is that the Court renders justice to the

applicant and at the same time communicates to the state that it has to remedy the structural issue at a larger scope. Stated differently, Strasbourg resolutions are two-tiered: the court not only eliminates a case but also tries to avoid the occurrence of hundreds of like cases in the future.

However, despite these differences, one similarity is that the remedies must be effective. The different courts do this differently because they stipulate that rights are not abstract and imaginary but are real and viable. This is the traditional Strasbourg formula that rights should be not theoretical and illusionary, but practical and effective[32]. And, to express it another way, there can be nothing thing which can be called rights, that is not recreated; constitutional justice is precisely put to the test whether the judiciary may give a remedy that will secure the safeguarding of the citizens, and which will leave the allocation of the powers among the systems established to themselves.

Therefore, remedies do not exist as the last chapter of litigation because they represent a constitutional dialogue by action. They identify the extent to which courts are ready to influence the creation of governance, the way they see themselves in relation to the political institutions and the interpretation of international standards into domestic practice.

[32] *Airey v Ireland* (1979) 2 EHRR 305, para 24.

XVII. CONCLUSION

The adjudication of comparative constitutional rights is diverse, but convergent. This dynamic is especially well illustrated by India, the European Court of Human Rights (ECHR) and Azerbaijan. Each has a different constitutional context: India as a massive federal democracy with the tradition of public interest litigation, Azerbaijan as a young constitutional system, reconciling its practice with European models, and the ECHR as a supranational court, to which it seeks to create a common language of rights, throughout Europe. These differences notwithstanding, the three systems have a common rising interest in structured justification, positive obligations, and available remedies.

There are three important insights in the comparative analysis. First, the rights limitation frameworks are converging on proportionality. The development of India into reasonableness towards proportionality, the introduction of proportionality and tests of legality in Azerbaijan and the necessary in a democratic society standard at the ECHR all require evidence-based justification and tight focus. Second, positive obligations are today components of systemic constitutional identity. In India, in PIL cases on livelihood, equality and environment, in Azerbaijan in constitutional jurisprudence of equality and fair trial, or in Strasbourg, in a strong case law on life, dignity and private life, the message is the same: rights need enforcement as well as moderation. Third, remedial methods vary in the form, but they all have the goal of being effective. The structural orders in India, the declaratory

judgments with interpretative direction of Azerbaijan, and pilot judgments in Strasbourg all demonstrate context-sensitive attempts to render the rights protection practical and enforceable.

Combined, these experiences indicate that constitutional systems are not converging toward uniformity but rather towards a common way of justification: governments need to justify and demonstrate why limits are necessary; courts must make rights practical; and remedies need to be institutionalised.

In order to pack this in, the paper suggests a brief five-step checklist that can be used by comparative constitutional scholars in assessing the rights adjudication process:

- Determine the right and scope.
- Any limitation must have public reasons and evidence required.
- Take the least restraining course possible.
- Match the solution and the offense committed-individual or systemic.
- Periodically review the results of the review to maintain protection.

Such a checklist never wipes out constitutional diversity but condenses general lessons. It gives the researcher a systematic guide to comprehend the ways in which courts of various systems justify

constraints, introduce commitments, and fashion remedies, thus contributing to the discipline of comparative constitutional law.