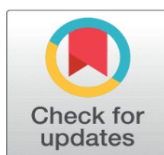
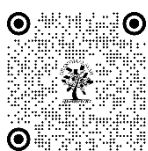


SOVEREIGNTY IN INDIA: ANALYZING THE INFLUENCE OF INTERNATIONAL TREATIES ON DOMESTIC LEGISLATION

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ABSTRACT

This study investigates the relationship between India's sovereignty and the impact of international treaties on its domestic legal system. Sovereignty, a key concept of the Indian Constitution, preserves the country's autonomy in making and enforcing laws. Globalization and the growing integration of international norms provide challenges to the traditional concept of sovereignty. This paper investigates the legal framework for incorporating international treaties into Indian domestic law, focusing on constitutional provisions, judicial interpretations, and legislative prerogatives. The article examines significant decisions and statutory enactments to illustrate the dynamics of the executive branch's treaty-making capabilities, as well as the need for parliamentary approval for treaties that affect individuals' rights. It also analyzes the balance between meeting international obligations and maintaining constitutional primacy. The study sheds light on the evolving relationship between sovereignty and international legal commitments by examining India's position within the broader global legal landscape, as well as providing insights into the potential need for reforms to improve transparency, accountability, and constitutional principles.

Keywords: Sovereignty, International Treaties, Domestic Law, Indian Constitution, Globalization, Legal Framework

1. INTRODUCTION

Sovereignty is an important cornerstone of India's political and legal identity, and it is established in the Constitution as a key component of the country's independence and administration. In an increasingly interconnected world, international accords, treaties, and conventions constantly change the concept of sovereignty. As India strengthens its ties with global organizations and foreign nations, it must balance its sovereign powers and its international obligations. This study looks at the complex relationship between India's sovereignty and the impact of international treaties on its domestic legal framework. It looks into the constitutional provisions governing treaty-making, the role of the president and legislature, and how India's legal system interprets and enforces such accords. The study aims to better understand the legal mechanisms at work when international commitments cross with domestic law, as well as how India balances sovereignty and global responsibilities. Through this analysis, I hope to investigate the changing landscape of India's legal system in light of international law and diplomacy.¹

¹ Brownlie, Ian. *Principles of Public International Law*. Oxford University Press, 8th Edition, 2012.

"However good a constitution may be, if those who are implementing it are not good, it will prove to be bad." —
Dr B.R. Ambedkar

CONSTITUTIONAL FRAMEWORK FOR SOVEREIGNTY IN INDIA:

The Constitution of India is the foundation of the country's legal system, firmly securing sovereignty while providing a framework that respects both internal autonomy and international commitments. In India, sovereignty is protected by some constitutional provisions aimed at ensuring the country's independence from both internal and external forces. This framework is based on the idea that India's sovereignty is paramount within its borders, but it also recognizes the emerging global order through carefully calibrated constitutional provisions. Article 51 of the Directive Principles of State Policy encourages the state to follow international law and meet its treaty responsibilities. This demonstrates India's commitment to engaging with the world community in a manner that is both responsible and consistent with its constitutional ideals. The dualist philosophy underpins India's strategy to incorporate international accords into its domestic legal system. Simply put, when an international treaty is ratified, it does not automatically become part of Indian law. They must be formally adopted by the Parliament through domestic legislation, ensuring that international responsibilities are consistent with national laws.²

This dualist perspective is clearly expressed in Article 253 of the Indian Constitution, which gives Parliament the authority to legislate for the implementation of international treaties, accords, and conventions. This provision emphasizes the legislature's vital role in treaty approval, so upholding the principle of parliamentary sovereignty. It ensures that no international convention or accord can supersede Indian law until Parliament has granted its approval, preserving India's sovereignty through democratic processes. A significant case that reflects this dualist approach is *The Government of India v. Vedanta Limited (2019)*, The Supreme Court ruled that, while international treaties and agreements influence India's domestic policy, they are not inherently enforceable unless adopted through law. The case underscored the importance of parliamentary approval for international treaties to be legally binding in India.³

In *The Jolly George Varghese v. The Bank of Cochin (1980)* case also established that an international agreement does not have legal power in India unless it is converted into domestic law through an act of Parliament. This decision emphasizes the need of legislative action in striking a balance between national sovereignty and international commitments. Articles 51 and 253, as well as judicial declarations, reflect India's multifaceted attitude to sovereignty. The country attempts to strike a compromise between its adherence to international law and the necessity to uphold the supremacy of its Constitution. The dualist method ensures that foreign treaties are not naively integrated, but are subject to careful analysis and parliamentary approval to ensure they correspond with India's national interests and constitutional ideals.⁴

JUDICIAL INTERPRETATIONS AND THE ROLE OF COURTS:

In India, the legal system plays an important role in interpreting the difficult balance between international treaties and domestic law. Indian courts have always upheld the Constitution's supremacy while acknowledging the effect of international law, emphasizing that treaties and agreements must not weaken the country's sovereign legal structure. Judicial interpretations have evolved to reflect both India's global involvement and the constitutional obligation to preserve the nation's interests.⁵ A landmark case that solidified the constitutional supremacy over international treaties is *Kesavananda Bharati v. State of Kerala (1973)*. In this judgment, the Supreme Court confirmed the essential concept of the basic structure doctrine, which states that no amendment to the Constitution can change its basic structure. The Court ruled that international treaties and agreements cannot supersede the Constitution's fundamental framework, upholding the notion that domestic sovereignty and constitutional integrity remain paramount. This decision ensured that no foreign influence, including international treaties, could overrule the constitutional framework of India.⁶

Indian courts have also recognized the importance of international treaties and conventions when they align with the nation's constitutional values and fundamental rights. One significant example of this is *Vishaka v. State of Rajasthan*

² Basu, Durga Das. *Introduction to the Constitution of India*. Lexis Nexis, 23rd Edition, 2018.

³ *The Government of India v. Vedanta Limited* [AIR 2019 SC 1913].

⁴ *Jolly George Varghese v. Bank of Cochin* [AIR 1980 SC 470].

⁵ Jain, M. P. *Indian Constitutional Law*. Lexis Nexis, 8th Edition, 2021.

⁶ *Sadananda Bharati v. State of Kerala* [AIR 1973 SC 1461].

(1997), the Supreme Court relied on the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) to fill loopholes in Indian sexual harassment legislation. In the lack of comprehensive domestic law on the subject, the Court used international accords to establish a framework for workplace sexual harassment. This decision demonstrated the judiciary's willingness to use international law to fill gaps in domestic law while still adhering to India's constitutional norms.⁷ While the Vishaka case illustrated the Court's openness to international accords, it was also concerned to ensure that such reliance did not violate India's Constitution. The Court stressed that the rights and protections under international agreements should be understood in a way that is consistent with the fundamental rights granted by the Indian Constitution, thus maintaining the priority of national law.⁸

Another significant case that reflects the judiciary's nuanced approach is *State of West Bengal v. Committee for Protection of Democratic Rights (2010)*, the Supreme Court considered the role of international human rights legislation in interpreting constitutional rights. The Court emphasized that, while not automatically binding, international human rights agreements could be useful in interpreting constitutional guarantees of life and liberty. The court emphasized that while international treaties might inform judicial interpretations of fundamental rights, they lack legal effect unless they are incorporated into Indian law through legislative action.⁹ In *Indira Gandhi v. Raj Narain (1975)*, the Court took a similar approach, recognizing international values, notably those concerning democratic governance and human rights. The case acknowledged the importance of national sovereignty while also acknowledging that international norms could provide useful insights into interpreting constitutional provisions. The Court, however, remained cautious in ensuring that international accords did not violate India's democratic norms or constitutional order.¹⁰

The *Olga Tellis v. Bombay Municipal Corporation (1985)* the case further demonstrated the Court's approach to reconciling international commitments with domestic constitutional objectives. In this instance, the Court relied on the Universal Declaration of Human Rights (UDHR) to affirm the right to life and livelihood. While the UDHR is not a treaty, its principles were used to interpret the meaning of Article 21 (Right to Life) of the Indian Constitution, indicating the judiciary's pragmatic approach to reconciling international human rights standards with domestic constitutional safeguards. These judgments demonstrate a basic component of Indian judicial philosophy: while international treaties and conventions are influential, they are not inherently enforceable unless they are codified into Indian law by legislative action. The judiciary has consistently ruled that foreign duties must be balanced with constitutional ideals and fundamental rights. The Court has emphasized the need to preserve India's sovereignty by ensuring that any reliance on international law does not conflict with the Constitution's basic structure or its core principles.¹¹

Indian courts play an important role in managing the complex convergence between international law and domestic sovereignty. They have repeatedly highlighted in their decisions that, while international treaties can be persuasive, they do not override the Constitution unless adopted by the government. The judiciary's job is to guarantee that international commitments are consistent with India's constitutional framework, maintaining national sovereignty while simultaneously participating in the global legal scene.¹²

2. CHALLENGES TO SOVEREIGNTY IN THE CONTEXT OF INTERNATIONAL TREATIES

International treaties provide several benefits, but they also pose substantial obstacles to India's sovereignty. The country's interaction with the global community requires a complex balancing act between meeting international responsibilities and maintaining autonomy in areas such as economic, environmental, human rights, and security policies. The following are some of the major issues that India faces in this regard.

ECONOMIC SOVEREIGNTY:

Economic sovereignty is one of the most difficult issues where international treaties may clash with domestic goals. India's participation in global trade accords, particularly through the World Trade Organization (WTO), frequently entails policy changes that may conflict with national interests. For example, trade regulations governing intellectual

⁷ Shaw, Malcolm N. *International Law*. Cambridge University Press, 7th Edition, 2014.

⁸ Vishaka v. State of Rajasthan [AIR 1997 SC 3011].

⁹ State of West Bengal v. Committee for Protection of Democratic Rights [AIR 2010 SC 1476].

¹⁰ Indira Gandhi v. Raj Narain [AIR 1975 SC 2299].

¹¹ Olga Tellis v. Bombay Municipal Corporation [AIR 1986 SC 180].

¹² Chandrachud, Abhinav. *An Independent, Colonial Judiciary: A History of the Bombay High Court During the British Raj, 1862–1947*. Oxford University Press, 2015.

property rights (IPR) and agricultural subsidies have been a source of worry for India. The TRIPS Agreement (Trade-Related Aspects of Intellectual Property Rights) under the WTO has sparked heated controversy about its influence on India's pharmaceutical industry, which has long manufactured low-cost generic medications for underdeveloped countries. In the *India v. United States* case (2002), India opposed to the unilateral imposition of trade restrictions and intellectual property laws that it considered were incompatible with its developmental aspirations. The Supreme Court concluded that, while India must comply with international trade agreements, the constitutional responsibility to preserve public health and welfare may take precedence where national interests are at issue. Similarly, debates over agricultural subsidies, such as those concerning the Agreement on Agriculture (AoA), have posed challenges in reconciling domestic food security measures with global trade commitments.¹³

ENVIRONMENTAL COMMITMENTS:

Environmental treaties, such as the Paris Climate Accord, are another area where Indian sovereignty may conflict with international duties. According to such accords, India must take actions to reduce carbon emissions, which may include legislative changes that affect domestic sectors, particularly those that rely on coal and fossil fuels. India's energy policies, which promote affordable electricity access for its rising population, frequently contradict the environmental sustainability goals set in international agreements. In the *Environmental Protection Foundation v. Union of India* (2000), the Court highlighted India's responsibility to uphold global environmental commitments while also emphasizing the importance of taking into account the socioeconomic circumstances. The Court concluded that, while India must comply with international treaties, it may pursue flexible pathways that meet its developmental aspirations. The problem is to strike a balance between the need for economic growth and sustainable environmental practices, especially as international treaties set strict emission objectives.¹⁴

HUMAN RIGHTS NORMS:

International human rights accord frequently promote universal ideas, which can occasionally conflict with India's cultural, sociopolitical, and religious circumstances. Because of India's diversified society, international human rights principles must be applied with due regard for domestic customs and traditions. Issues such as LGBTQ+ rights, gender equality, and free speech regularly invoke international human rights accords, posing a challenge to adhere to global standards while maintaining home norms. In *Navtej Singh Johar v. Union of India* (2018), The Supreme Court overturned Section 377 of the Indian Penal Code, which criminalized gay activities, citing principles of equality and human decency. This was a historic decision that brought domestic law in conformity with international human rights norms, particularly those outlined in the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR). In some circumstances, such as the argument over Personal Laws and their compatibility with international human rights standards, there is persistent opposition because these laws reflect India's distinct cultural and religious fabric. Balancing international human rights with India's diverse sociocultural structure remains a difficulty.¹⁵

SECURITY AND DEFENSE:

International treaties governing arms control, cybersecurity, and defense cooperation can sometimes limit India's strategic autonomy, requiring it to make concessions that could compromise its defense capabilities. For instance, treaties related to nuclear non-proliferation, such as the Nuclear Non-Proliferation Treaty (NPT),¹⁶ have often been at odds with India's position on maintaining a credible nuclear deterrent. India's refusal to sign the NPT, citing its sovereignty and security concerns, reflects the tension between global security frameworks and national defense imperatives. In the *Pokhran-II nuclear tests* (1998)¹⁷ India demonstrated its commitment to strategic autonomy in the face of global pressure and sanctions. Treaties governing cybersecurity, such as those under the United Nations (UN) framework, may oblige India to align its domestic laws and practices with international norms on data protection, cybersecurity measures, and surveillance, which may conflict with the country's security requirements. The *Puttaswamy v. Union of India* (2017) case, which recognized the right to privacy as a fundamental right, demonstrated the Court's role

¹³ *India v. United States* (2002), WTO dispute settlement case, DS50.

¹⁴ *Environmental Protection Foundation v. Union of India* [AIR 2000 SC 128].

¹⁵ *Navtej Singh Johar v. Union of India* [AIR 2018 SC 4321].

¹⁶ Nuclear Non-Proliferation Treaty (NPT): For details on the NPT and its implications on India's strategic autonomy, see Treaty on the Non-Proliferation of Nuclear Weapons (NPT), available at: the [UN Office for Disarmament Affairs](#).

¹⁷ *Pokhran-II Nuclear Tests* (1998): For an overview of India's nuclear tests and the subsequent geopolitical implications, refer to "India's Nuclear Tests: Challenges and Responses" by Rajesh Basrur in *Asian Survey*, Vol. 39, No. 4 (1999), pp. 663–6

in reconciling international human rights principles with national security considerations. The Court concluded that while privacy is vital, national security issues should also be taken into consideration.¹⁸

CULTURAL AND SOVEREIGNTY ISSUES:

India's sovereignty is also threatened when foreign treaties, conventions, and standards clash with its cultural and religious identity. The adoption of UNESCO cultural heritage standards may conflict with traditional customs or religious beliefs in some parts of India. Similarly, international legal standards on freedom of expression and media rights frequently conflict with India's aim to maintain its sovereignty from foreign influence while preserving its cultural values. The *Shah Bano case (1985)* is one such example in which the enforcement of international human rights norms governing women's right to maintenance clashed with Indian personal rules, notably those based on Islamic culture. The Indian Parliament responded by passing the Muslim Women (Protection of Rights on Divorce) Act, thereby overruling the Supreme Court's decision and reaffirming India's devotion to its cultural and legal traditions.¹⁹

3. BALANCING SOVEREIGNTY AND INTERNATIONAL OBLIGATIONS:²⁰

India's approach to negotiating the intersection of sovereignty and international commitments is pragmatic and strategic. While engaging with the international world, India is deeply dedicated to preserving its constitutional sovereignty and national interests. The balancing act entails a variety of tactics for preserving sovereignty while adhering to international obligations. The following is an exploration of these tactics, accompanied by examples and historical legal cases.

LEGISLATIVE OVERSIGHT:

India has a dualist system in which foreign treaties do not automatically become part of domestic law unless explicitly incorporated into legislation. This ensures democratic oversight because treaties require legislative approval before they may influence domestic policy. Article 253 of the Constitution authorizes Parliament to pass legislation implementing international treaties, ensuring that such accords are reviewed via a legislative lens. The Protection of Human Rights Act of 1993 was passed to ensure compliance with India's duties under international human rights accords. Similarly, the Patents (Amendment) Act of 2005 established the legislative framework for implementing the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), assuring consistency with India's constitutional principles while satisfying international trade commitments.²¹ The *Berubari Union case (1960)* is another noteworthy case, the Supreme Court decided that any accord involving the cession of Indian land required parliamentary consent. This decision reiterated the need of legislative control in international treaty affairs, as well as the need to maintain Indian territorial sovereignty.²²

JUDICIAL SAFEGUARDS:

Indian courts have played a pivotal role in safeguarding constitutional sovereignty against the potential overreach of international treaties. The judiciary ensures that international obligations do not undermine the Constitution's basic structure or fundamental rights. In *Kesavananda Bharati v. State of Kerala (1973)*²³, The Supreme Court made it clear that neither foreign agreement nor internal modification could affect the fundamental framework of the Constitution. This notion serves as a safeguard against any treaty or international agreement that may jeopardize India's constitutional ideals.

Also, in *Vishaka v. State of Rajasthan (1997)*²⁴, To address workplace sexual harassment, the Supreme Court used the principles of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). While drawing from international norms, the Court noted that such reliance must align with constitutional safeguards, thus safeguarding the preservation of sovereignty and basic rights. In *Maganbhai Ishwarbhai Patel v. Union of India (1969)*,

¹⁸ Puttaswamy v. Union of India [AIR 2017 SC 4161].

¹⁹ Shah Bano Begum v. Union of India [AIR 1985 SC 945].

²¹ Paras Diwan. *Private International Law: Indian and English*. Universal Law Publishing, 5th Edition, 2010.

²² *Berubari Union and Exchange of Enclaves*, AIR 1960 SC 845, [1960] 3 SCR 250.

²³ AIR 1973 SC 1461

²⁴ AIR 1997 SC 3011.

The Court clarified that the executive's authority to enter into foreign treaties is subject to judicial review if the treaty violates constitutional provisions. This decision underscored the judiciary's responsibility to preserve the constitutional balance while adhering to international duties.²⁵

SELECTIVE ENGAGEMENT:

India chooses which international treaties to ratify based on its strategic, economic, and social objectives. This approach enables India to strike a balance between its global commitments and its national interests. India has signed but not ratified several key treaties, including the Rome Statute of the International Criminal Court (ICC), due to concerns about its implications for sovereignty and national security. Similarly, India has refused to ratify the Comprehensive Nuclear Test Ban Treaty (CTBT) to preserve strategic autonomy in its defence plans. This selective engagement ensures that India remains committed to global collaboration while protecting its national interests, especially in areas where international agreements may limit its autonomy or development ambitions.²⁶

4. STRENGTHENING DOMESTIC CAPACITIES

India balances its international responsibilities with strong domestic policy, ensuring that treaties strengthen rather than weaken sovereignty. By aggressively tackling global concerns through domestic measures, India displays its ability to meet international obligations while maintaining policy autonomy. The National Action Plan on Climate Change (NAPCC) was implemented to meet India's commitments under the Paris Climate Accord. The NAPCC combines climate goals with national development goals, ensuring that environmental sustainability is accomplished while without jeopardizing India's energy and industrial strategies. The Unlawful Activities (Prevention) Act of 1967 (UAPA) was revised to conform with international terrorism conventions while retaining domestic laws as the primary means of addressing national security concerns.²⁷

5. CULTURAL AND SOCIAL SENSITIVITIES

India's complex cultural and social landscape frequently needs a cautious approach to applying international human rights standards. Treaties addressing gender equality, LGBTQ+ rights, and religious liberties are aligned with domestic circumstances to avoid disrupting communal cohesion. In *Shah Bano Begum v. Union of India (1985)*²⁸, the Supreme Court ruled in support of maintenance rights for divorced Muslim women, citing principles of equality and justice. However, this ruling caused heated debate, resulting in the passage of the Muslim Women (Protection of Rights on Divorce) Act of 1986, which balanced individual rights with cultural sensibilities. In *Navtej Singh Johar v. Union of India (2018)*²⁹, the Court overturned Section 377 of the Indian Penal Code, harmonizing domestic law with international human rights norms while upholding India's constitutional ideals of equality and dignity.

6. CONCLUSION

India's approach to balancing sovereignty and international duties reveals a deliberate and realistic strategy. While international treaties allow India to actively participate in global governance, their implementation is carefully balanced with constitutional principles and national interests. Legislative monitoring guarantees democratic accountability, judicial safeguards defend constitutional sovereignty, and selective participation enables India to prioritize accords that align with its strategic aims. India efficiently navigates the complicated interaction between global commitments and domestic autonomy by taking a dualist approach and relying on strong policy frameworks. Landmark court interpretations and proactive domestic actions illustrate India's ability to fulfil international obligations while maintaining its sovereignty. This dynamic balance underscores India's commitment to global cooperation while

²⁵ Maganbhai Ishwarbhai Patel v. Union of India [AIR 1969 SC 783]

²⁶ Nawaz, M. K. "Treaty-Making Power under the Indian Constitution: A Study in the Conflict Between Law and Practice." *Journal of the Indian Law Institute* 7, no. 1 (1965): 1–21.

²⁷ Kumar, R. "National Action Plan on Climate Change: Indian Context." *International Journal of Environmental Studies*, 68, no. 5 (2011): 703–718.

²⁸ AIR 1985 SC 945

²⁹ AIR 2018 SC 4321

preserving its constitutional integrity and cultural sensitivities, ensuring that it remains a sovereign state contributing meaningfully to the evolving international order.