

# DEFINING INDIA'S INTERNATIONAL OBLIGATIONS IN THE CONTEXT OF DOMESTIC LEGAL FRAMEWORK

Dr. Anshu Jain <sup>1</sup>, Upasana Kalgotra <sup>2</sup>

<sup>1</sup> Assistant Professor, Department of Laws, Guru Nanak Dev University, Amritsar, India

<sup>2</sup> Research Scholar, Department of Laws, Guru Nanak Dev University, Amritsar, India



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## ABSTRACT

India has consistently championed the cause of global peace and cooperation, committing itself to uphold international responsibilities for the betterment of humanity. The Indian Constitution includes provisions aimed at fulfilling these international obligations. This research paper will explore the influence of international treaties and conventions on the development and implementation of significant legislation within the Indian legal framework. The Constitution empowers Parliament to enact laws that give effect to international agreements and treaties, thereby promoting and respecting international law. The integration of international law through treaties is addressed in Articles 53, 73, 246, 253, and Entry 14 of List I in the Seventh Schedule of the Constitution. India has honored its commitments as a signatory to numerous treaties and conventions. Nevertheless, certain treaties necessitate specific legislation to address pressing issues such as the prevention of genocide and the protection of refugees.

**Keywords:** The Constitution of India, International Law, International Treaties and Agreements

## 1. INTRODUCTION

According to the general principle, the legal framework of each state is regulated by an authority that encompasses specific rules and regulations, serving as a foundation for the state's other laws. This authority is referred to as the 'Constitution.' Every nation worldwide has established Constitution to ensure effective governance and to uphold law and order. A law cannot be enacted by the legislative body unless it is sanctioned by the country's Constitution. Given that international law lacks binding force, its implementation relies on state legislation. Consequently, treaties and conventions must be incorporated into state laws, which can only occur if the Constitution of the respective state permits the creation of laws based on international law.

The Constitution of India is regarded as the highest legal authority, outlining the structure of the state, the framework for effective governance, the powers and responsibilities of various governmental institutions, and the fundamental rights of citizens. As such, it cannot be altered through standard legislative processes. It defines the political, legal, and social characteristics of the government within the nation. All domestic legislation must align with the Constitution's provisions. There is no singular global standard for the composition of the Constitution; each state possesses its own Constitution, tailored to its specific needs and regulations. It is important to note that, in contrast to international law, the rules established by a state's Constitution are obligatory for all individuals within that country. International law can only be applied within a state through the authority granted by its Constitution, and it must align with its stipulations. Likewise, in India, international norms and principles can be enforced through the authority of the Indian Constitution. This chapter will explore the role of the Constitution of India in integrating treaties and conventions into the nation's legal framework.

## **2. INTERNATIONAL LAW AND THE CONSTITUTION OF INDIA**

The Constitution of India serves as the fundamental framework that governs the nation's laws. All other legal provisions in the country derive their authority to legislate and enforce from the Constitution. It delineates the powers and responsibilities of the three branches of government. According to the Preamble, the authority of the Constitution originates from the people of India. Additionally, it defines the character of the Indian state as sovereign, socialist, secular, democratic, and republican, while outlining its objectives to ensure "social, economic, and political justice, liberty of thought, expression, belief, faith, and worship, equality of status and opportunity, and the assurance of individual dignity by fostering fraternity, unity, and integrity among the citizens of India."<sup>1</sup>

In the case of the Indian Constitution, there is no explicit mention of the integration of international law into the Indian legal system. However, significant emphasis has been placed on the respect and advancement of international law through the establishment of treaties and agreements. Parts III and IV of the Indian Constitution, which address Fundamental Rights and Directive Principles of State Policy, have been crafted with consideration for international standards and norms established by global governing bodies. Article 51 of the Indian Constitution mandates the state to foster international peace and security by maintaining diplomatic relations. It is also essential for states to promote adherence to international treaties and agreements among nations and to facilitate the resolution of disputes at the international level.

## **3. ENACTMENT OF INTERNATIONAL TREATIES AND CONVENTIONS UNDER THE CONSTITUTION OF INDIA**

The incorporation of international law via treaties within the framework of the Constitution of India is addressed in Articles 53, 73, 246, 253, and Entry 14 of List I in the Seventh Schedule.

Article 53 grants the President of India the authority to wield executive power, either directly or through subordinate officials. All executive actions carried out under Article 53 are open to judicial review, thereby necessitating that such powers

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<sup>1</sup> The Constitution of India, Preamble

be exercised in accordance with the provisions of the Constitution of India.<sup>2</sup> In situations where executive authority is exercised in relation to the implementation of international treaties, the President is granted comparable powers. He represents India in various international forums. Another relevant constitutional provision regarding executive power is Article 73, which outlines the scope of executive authority. This Article specifies that "Subject to the provisions of this Constitution, the executive power of the Union shall extend to matters for which Parliament has the authority to legislate."<sup>3</sup> The Constitution has vested the executive to exercise its power to implement international law into domestic law without any restriction under this Article and the courts have also opined the similar view in the case of *Vishakha v. State of Rajasthan*<sup>4</sup> and *NALSA v. Union of India*<sup>5</sup>. Both the courts have stated that except in the case of inconsistency with domestic laws, international law can become the part of domestic law in all the cases in India.

In addition to its executive authority, Parliament is granted the exclusive power to legislate under Article 246 of the Constitution of India. Clause (1) of this Article specifies that "Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws concerning any of the matters listed in List I of the Seventh Schedule of this Constitution, known as the 'Union List.'" The Union List initially includes 97 subjects, granting Parliament the sole authority to legislate on these matters. Additionally, issues related to international treaties and organizations fall under the Union List, specifically under Entries 13 and 14 of List I.<sup>6</sup>

Additionally, the Parliament's ability to legislate on matters of international significance is addressed in Article 253 of the Constitution. This Article specifies: "Notwithstanding anything in the preceding provisions of this Chapter, Parliament has the power to enact any law for the entirety or any portion of the territory of India to implement any treaty, agreement, or convention with other nations or any decisions made at any International Conference, Association, or other entity."<sup>7</sup>

#### **4. ROLE OF JUDICIARY IN THE IMPLEMENTATION OF INTERNATIONAL LAW IN INDIA.**

The general principles established by the Constitution of India regarding the implementation of international law across various aspects of the Indian legal system necessitate legal interpretation. Consequently, the judiciary has been entrusted with the responsibility of interpreting these laws to ensure the effective application of international law in India. In the case of *Vishakha v. State of Rajasthan*<sup>8</sup>, the court highlighted the importance of utilizing international treaties and agreements when there is no domestic legislation in place to safeguard women from sexual harassment in the workplace. This was achieved through the interpretation of Articles 14, 15, 19, and 21 of the Constitution of India.

Similarly, Honourable Chief Justice Sikri has realised the importance of international law in the case of *Keshavananda Bharti v. State of Kerala*<sup>9</sup>. He noted that in instances where the language of municipal law is ambiguous or

<sup>2</sup> The Constitution of India, art. 53.

<sup>3</sup> The Constitution of India, art. 73.

<sup>4</sup> (1997) 6 SCC 241

<sup>5</sup> AIR 2014 SC 1863

<sup>6</sup> The Constitution of India, Seventh Schedule, Entry 13 and 14

<sup>7</sup> The Constitution of India, art. 253

<sup>8</sup> *supra* 4

<sup>9</sup> (1973) 4 SCC 225.

contradictory, the court should rely on the relevant international authority associated with that municipal law. This is due to Article 253 of our Constitution, which grants exclusive authority to Parliament to enact laws that implement any treaty, convention, or agreement with other nations, as well as decisions made at international conferences.<sup>10</sup>

Contrary to above mentioned views, the judgment under *ADM, Jabalpur v. Shivakant Shukla*<sup>11</sup> has recognised international norms and regulations as solely ethical principles implies that they cannot be integrated into domestic legislation. A dissenting judge in this case expressed the view that municipal law should take precedence in situations where there is a conflict between a treaty and domestic law. Furthermore, when there are potential interpretations that could align international law with municipal law, the court should strive to create a harmonious relationship between the two legal frameworks. Therefore, while reaffirming the above-mentioned view, the court in the case of *Jolly George Varghese and Another v. The Bank of Cochin*<sup>12</sup>, has interpreted Sec. 51 of Civil Procedure Code in consonance with Art. 11 of ICCPR. But in case the treaty in question has not been ratified by the domestic law of the country, then Sec. 51 of Civil Procedure Code must be preferred over the treaty.

And one of the recent and historic judgments of *Justice K. S. Puttaswamy (Retd.) and Anr. V. Union of India and Ors*<sup>13</sup> the Right to Privacy has been explicitly recognized as a fundamental right. This right is established under Article 12 of the Universal Declaration of Human Rights, to which India is a signatory. Therefore, acknowledging the Right to Privacy as a fundamental right is a primary responsibility of Indian Constitution.

This does not imply that every treaty negotiated by the executive in India must be legislated under the Indian legal framework for it to be applicable within the country. Parliament has the discretion to either enact or decline the treaty. If it chooses not to implement the treaty, it will consequently have no legal effect in India.

#### 4.1. DOMESTIC IMPLEMENTATION OF INTERNATIONAL LAW

A key characteristic of international law is that states are unable to incorporate international rules and norms into their legal frameworks until such laws are adopted within their domestic legal systems. Consequently, India has integrated these laws by incorporating them into the provisions of its Constitution. A brief overview of some of these laws is provided below:

#### 4.2. UNIVERSAL DECLARATION OF HUMAN RIGHTS AND THE CONSTITUTION OF INDIA.

The significance of Human Rights is underscored by the need for comprehensive protection of individuals, as well as the provision of specific benefits and privileges, applicable globally. According to Article 55 (c) of the United Nations Charter, the organization is tasked with fostering friendly and peaceful relations among nations by promoting universal respect for human rights and fundamental

<sup>10</sup> Vivek Sehrawat, "Implementation of International Law in Indian Legal System", 31 *Florida Journal of Law*, 13-14, available at <<https://scholarship.law.ufl.edu/cgi/viewcontent.cgi?article=1050&context=fjil>> (last visited on 29<sup>th</sup> October, 2023).

<sup>11</sup> AIR 1976 SC 1207.

<sup>12</sup> AIR 1980 SC 470

<sup>13</sup> AIR 2017 SC 4161

freedoms, without discrimination based on race, sex, language, or religion. This commitment culminated in the adoption of the Universal Declaration of Human Rights by the United Nations General Assembly on December 10, 1948.

As a signatory to the Universal Declaration of Human Rights, India is committed to adhering to the principles set forth by the United Nations. Consequently, it has incorporated human rights into the Constitution of India through various amendments. The Constitution provides a range of rights and freedoms, recognized as fundamental rights and directive principles of state policy, for the citizens of India. These rights encompass equality, freedom of speech and expression, the right to move freely within the country, the right to reside anywhere, protection against arbitrary arrest, the right to life and liberty, freedom of religion, the right to pursue any profession, the right to a sufficient means of livelihood, protection against economic exploitation, and equal pay for equal work, among others. The primary international frameworks that have influenced the inclusion of these rights in the Indian Constitution, which India has ratified, are:

- International Covenant on Economic, Social and Cultural Rights, 1976
- International Covenant on Civil and Political Rights, 1976
- Convention on the Prevention and Punishment of the Crime of Genocide, 1948
- International Convention on the Elimination of All Forms of Racial Discrimination, 1965
- Convention on the Elimination of All Forms of Discrimination against Women, 1979
- Convention on the Rights of the Child, 1989
- Convention on the Rights of Persons with Disabilities, 2006

### 4.3. ENVIRONMENT LAW IN INDIA

A supportive environment is essential for the survival of humanity. Therefore, it is the fundamental responsibility of individuals to safeguard and maintain the environment at all costs. The issue of environmental protection has consistently captured public attention. Notable global agreements that have contributed to atmospheric protection, biodiversity conservation, and ocean management include the Montreal Protocol, the United Nations Framework Convention on Climate Change, the Kyoto Protocol, the Paris Agreement, the Convention on Biological Diversity, the Convention on International Trade in Endangered Species, the Convention on Migratory Species, the Ramsar Wetlands Convention, the UNESCO World Heritage Convention, among others. India has played a proactive role in international agreements, leading to the enactment of numerous domestic laws aimed at establishing new environmental policies and safeguarding the environment within the country. The Indian Constitution includes explicit provisions for environmental protection. The right to a healthy environment has also been recognized as a fundamental right under Article 21 of the Constitution of India. In the case of *Subhash Kumar v. State of Bihar*<sup>14</sup>, the court observed:

The right to life is a fundamental entitlement enshrined in Article 21 of the Constitution, encompassing the right to access clean water and air, essential for a fulfilling life. Should any factor threaten or diminish this quality of life in violation of legal provisions, a citizen is entitled to invoke Article 32 of the Constitution to

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<sup>14</sup> AIR 1991 SC 420.



seek redress against pollution in water or air that could adversely affect their quality of life.

However, *Maneka Gandhi case*<sup>15</sup> has expanded the scope of right to life and liberty by stressing to including clean air, water and healthy environment under the arena of Art. 21 which are essential for the survival of human beings.

The Directive Principles of State Policy mandate the State to implement measures for environmental protection. Article 48A of the Constitution of India obligates the State to safeguard and enhance the environment, as well as to protect the country's forests and wildlife. Additionally, Article 51A assigns a responsibility to Indian citizens to preserve and improve the environment, which encompasses forests, lakes, rivers, and wildlife, while also promoting compassion towards all living beings. Beyond these constitutional provisions, India has established various laws focused on environmental conservation, including the Water (Prevention and Control of Pollution) Act of 1974, the Environmental Protection Act of 1986, the Air (Prevention and Control of Pollution) Act of 1981, the National Green Tribunal Act of 2010, the Wildlife Protection Act of 1972, the Energy Conservation Act of 2001, the Biological Diversity Act of 2002, among others.

#### 4.4. INTELLECTUAL PROPERTY RIGHTS

Intellectual Property Rights (IPR) refer to the exclusive entitlements granted to individuals for their original creations in the fields of art, science, literature, and technology. These rights encompass various forms, including copyright, trademarks, patents, geographical indications, plant varieties, industrial designs, and layouts for semiconductor integrated circuits. The World Intellectual Property Organization (WIPO) and the World Trade Organization (WTO) are specialized agencies of the United Nations that focus on intellectual property policies, services, information dissemination, and international cooperation. As a member state, India has established its own Intellectual Property Rights legislation following the implementation of the TRIPS agreement. Notable amendments to Indian Intellectual Property Laws include the 1994 amendment to the Copyright Act of 1957, the 1999 amendment to the Patents Act of 1970 through the Patents (Amendment) Act of 2002, and the replacement of the Merchandise Marks Act of 1958 with the Trade Marks Act of 1999. Additionally, new legislation has been introduced, such as the Geographical Indications of Goods (Registration and Protection) Act of 1999, the Integrated Circuits Layout-Design Act of 2000, and the Plant Varieties and Farmers' Rights Act of 2001.<sup>16</sup>

#### 4.5. CYBER LAW

In today's digital age, nearly every facet of an individual's life is interconnected through the internet. Our methods of communication, work, shopping, trading, learning, and information acquisition have all become integrated with technology. The United Nations has introduced two significant initiatives aimed at the global development of cyber laws. These initiatives are the United Nations Commission on International Trade Law (UNCITRAL) Model Law and the United Nations Conference on Trade and Development (UNCTAD). Consequently, India has adopted the Information Technology Act of 2000, which is based on the UNCITRAL Model Law on Electronic Commerce. The primary goal of this legislation is to safeguard

<sup>15</sup> AIR 1978 SC 597

<sup>16</sup> S. K. Verma, "Enforcement of Intellectual Property Rights: TRIPS Procedure and India", 46 *Journal of the Indian Law Institute*, 198 (2004), available at [https://www.jstor.org/stable/43951903?read-now=1&seq=15#page\\_scan\\_tab\\_contents](https://www.jstor.org/stable/43951903?read-now=1&seq=15#page_scan_tab_contents), (last visited on 23<sup>rd</sup> May 2024)

personal data and information, while also addressing electronic authentication, digital signatures, cybercrime, and the liability of network service providers. Additionally, the Indian Parliament has recently passed the Digital Personal Data Protection Act, 2023 (DPDPA), which regulates the collection, processing, and storage of data, ensuring data protection and establishing safeguards for individual privacy.

## 5. CONCLUSION

International law is implemented through the practices of States. Member States incorporate international values and norms during negotiations and agreements. However, this body of law cannot be directly integrated into domestic legislation. Instead, it serves as a framework of principles that each State party must adhere to when formulating their domestic laws. In the case of India, a dualistic approach is adopted, meaning that international law can only take effect once it has been enacted by Parliament. The Indian Constitution includes several provisions aimed at promoting international law and facilitating its integration into the Indian legal system. Additionally, the Indian judiciary has made efforts to incorporate significant international elements by urging Parliament to legislate on issues not currently addressed by Indian law, such as workplace sexual harassment.

India, as a signatory to various international treaties and agreements, has enacted numerous laws that have become essential for governance within the country. However, this research paper highlights a significant issue: despite India's commitment to a wide array of international treaties and conventions, there are still several areas where legislative action is inadequate. Specifically, India lacks comprehensive laws to effectively address the challenges faced by refugees and issues related to genocide. Consequently, the primary aim of Article 51 of the Constitution of India, which emphasizes the importance of adhering to international obligations, necessitates that these laws be properly integrated into the Indian legal framework to uphold and advance international law within the nation.

## CONFLICT OF INTERESTS

None.

## ACKNOWLEDGMENTS

None.

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