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India and International Law

• Shilpa Seth

Abstract- *The article throws light on the relationship between India's legal system and International Law. The article focuses on the aspects International Law and the manner in which it gets incorporated in the Municipal Law of India. The article briefly covers the various provisions of the Indian Constitution that help incorporating and coordinating the international legal provisions. Furthermore, the article also highlights India as a Dualist country and emphasizes on its characteristic features.*

Keywords- *Municipal Law, International Law, Dualism, Indian Constitution, Incorporation, Domestic Statutes, Treaty.*

Introduction- With a study of the relationship between the Indian and the International Legal system, India can be conventionally attributed as a Dualist country. The International laws and norms are to be incorporated in the Municipal laws so that they can be invoked in India. Thus the approval of International law can be done by the Executive, whereas their domestic implementation requires Parliamentary Sanction.

Constitutional Provisions- There was many discussions about the India's interaction with the International Legal Order during the Assembly Debates, and thus we can notice reflections of the same in various provisions as under:

- Article 51 (though unenforceable) guides the State to maintain International peace and security.
- Article 51A gives effect to the declaration of the Universal Declaration of Human Rights¹, thereby indicating the duties owed by the individuals to the community.
- Article 253 allows the Parliament enact laws to implement international obligations, notwithstanding the constitutional distribution of powers.
- Article 73 indicates that the power of the Executive is coextensive to the powers of the Parliament and thus the Executive Powers are extended to the matters of International Law and relations, which by the virtue of Article 53, are vested in the President of India (as the Executive powers of the union are vested in the President).²

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The Formal Dualism

As mentioned above, India is traditionally a Dualist, meaning thereby, the Municipal Law and the International law are two distinct, separate and self-contained legal systems³. Thus there is a difference between formation of a Treaty and its adoption into the Domestic Legal System. In India, only the Legislature has the power to make laws, therefore, Legislature's ratification of an international treaty is a precondition before it becomes binding on the State⁴. The interaction between the Indian Municipal laws and the International Legal system has been large scale during all these years. However, some of the instances and examples are discussed as follows:

1. The Constitutional Aspect: As discussed earlier, the Constitution of India reflects the internationally held values in many ways. The Fundamental Rights and the Fundamental duties evidently reiterate the International Human Rights perspective and values.

2. International Influence on Domestic Statutes: There have been various instances when the International laws have influenced the Domestic Statutes under the Municipal Legal order in many ways. Some of them are as under-

- **Environmental Laws-** The rise in the global awareness of environmental concerns such as global warming, pollution, etc. have led to various international conferences and conventions. One such was the Stockholm Conference 1972 (First Earth Summit)⁵ with India as an active participant. India has codified such ideas in the form of legislations such as the Water (Prevention and Control of Pollution) Act⁶, the Air (Prevention and Control of Pollution) Act 1981⁷, and the Environment (Protection) Act⁸ and the latest National Green Tribunal Act⁹.
- **Trade Laws-** International trade has been supported by Liberal ideologies all over the globe and in order to institutionalize the international trade regulations there have been various organizations among which the World Trade Organization (1995) is the most prominent. India is a member of the WTO among the other 153 member States. Thus a variety of legislations have been enacted to give effect to the obligations of WTO in India, like the Special Economic Zones Act¹⁰ and the Competition Act¹¹.
- Moreover the system of Intellectual Property Rights in India is very much based on the International IPR regime due to India's membership with the World Intellectual Property Organisation and the TRIPS Agreement¹².
- **Laws related to Alternative Dispute Resolution-** Model Law on International Commercial Arbitration (1985) and the Conciliation Rules (1980) adopted by the United Nations Commission on

International Trade Law were the basis for the Arbitration and Conciliation Act¹³ which was enacted to bring uniform rules regarding settling commercial disputes in India.

- **Cyber Laws-** The Information Technology Act¹⁴ governs the cyber laws in India and this legislation too was enacted based on the UNCITRAL Model Law on E- Commerce (1996).

1. International Influence on Domestic Cases- The judgement of various domestic cases in India has been influenced by international laws as well. A few examples are as under:

- *Gramophone Co. of India v. Birendra Bahadur Pandey*¹⁵: In this case the court had discussed the doctrine of *Incorporation* regarding international law as a part of the municipal law with reference to customary international law.
- *Vishaka v. State of Rajasthan*¹⁶: The Judiciary in the instant case had laid down the Vishaka Guidelines to check and provide for remedial measures against sexual harassment at workplace. These guidelines were in consonance with International conventions, especially with the Convention on Elimination of All Forms of Discrimination against Women (1979)¹⁷.
- *MC Mehta v. Union of India*¹⁸: This is another landmark judgement in which the environmental issues were solved using principles based on international conventions and conferences such as the Stockholm Conference¹⁹.

Conclusive Remarks

Thus if we try to describe India vis-à-vis International Law, it is a country with formal Dualism, where the municipal and the international legal order are distinct and separate. However, while India is formally dualistic, it exhibits some monistic tendencies as well.

Monism indicates that the municipal and the international law are interconnected and form a part of a unitary legal system²⁰. With the features and aspects mentioned above, it is quite difficult to identify the attributes of monism in India. However, over the years the Supreme Court has shifted to monistic principles as well, especially the doctrine of Incorporation.

As mentioned in the case of *Gramophone Company of India Ltd. v Birendra Bahadur Pandey*²¹, the doctrine of incorporation allows the courts to directly enforce international law without any legislative transformation, unless there is a conflict with the domestic law.

Thus it is not wrong to conclude that in India, there is Formal Dualism along with shades of Functional Monism²² in its Legal System.

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