pISSN: 2454-7107, eISSN: 2455-4189

Indian Journal of Law and Human Behavior
Volume 6 Number 2 / July – December 2020
DOI: http://dx.doi.org/10.21088/ijlhb.2454.7107.6220.8

Review Article

Relation and Implementation of Provisions of International Law in Municipal Law of India: Role of Indian Parliament and Judiciary

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How to cite this article:

Rajeev Kumar Singh / Relation and Implementation of Provisions of International Law in Municipal Law of India: Role of Indian Parliament and Judiciar. Indian J Law Hum Behav 2020;6(2):79–86.

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Abstract

Different countries follow different Schools for Application of International Law, while some follow the Monistic approach by which judiciary can apply the International Treaties itself, which make them self-executing treaties. India follows the Dualistic School under which the International Treaties doesn't automatically become part of the legal system even after being ratified by the executive head of the country. Rather they need to be incorporated in the legal system by enactment of an act in the legislation by the Parliament wherever it is necessary only then it can be applied by the Indian courts.

Although Indian Judiciary is not empowered by the constitution to make legislations still it has huge hands to interpret Indian obligations under the International Law into Municipal Law of the Land by pronouncing it in its decisions whenever issues concerning the International Law arise in any case. A pro-active role is played by India Judiciary in implementation of International Law in India and especially when the matters are related to environment or about the Human Rights of the people. This paper with the help of constitutional provisions followed in India examines its practices in relation of International Law and Customary law with the role of judiciary.

Keywords: Monistic approach; Dualistic School; Ratified; Pro-active role; Municipal Law; Customary Law.

Introduction

Entering into international treaties and agreements is one of the attributes of State sovereignty.[1] Treaties are contracts between nations. As the provisions of international law, they put obligations which international law requires that the parties to comply at municipal level as well as international level.[2]

While International law is applied in the relations of the States and to other subjects of International law or Municipal law is applied within a State to the individuals and corporate entities. Prima facie there is hardly any relationship between the two systems as each is designed to operate in its own sphere and they are applied differently to their subjects by different courts. When there is a conflict between the two systems, a court is faced with the difficulty of arriving at a decision. Therefore the process of enforcement of International law at Municipal level is diverse in different countries. Moreover a very large part of modern International law is directly concerned with the activities of individuals who come under the jurisdiction of Municipal law.

India follows the dualist theory for the implementation of international law at domestic level.[3] International treaties do not automatically become part of national law in India.[4] It, therefore, requires the legislation to be made by the Parliament for the implementation of international law in India. It's been a matter of debate for the implementation of international laws in our country after it has gain influence in our day to day life. While some

of the judicial decisions given by Indian supreme court in cases like Jolly Jeorge v. Bank of Cochin;[5] Gramophone Company of India Ltd. v. Birendra Bahadur Pandey;[6] Visakha v. State of Rajasthan,[7] Ali Akbar v. United Arab Republic,[8] and many others explains and also includes different parts of the international law while making decisions on the matter of municipal law or of Indian legislation.

From this we arrive to a question that, whether domestic courts should apply international law directly and if so than to what extent by looking into the paradigm shift in the outlook of courts towards international conventional law. For the answer of this question we have to understand the Pillars of Indian democracy that includes Legislature, Judiciary and Executive. In this respect, Indian judiciary, though not empowered to make legislations, has interpreted India's obligations under international law into the constitutional provisions relating to implementation of international law in pronouncing its decision in a case concerning issues of international law. Through "judicial activism" the Indian judiciary has played a proactive role in implementing India's international obligations under International treaties, especially in the field of human rights and environmental law.[9]

Primary Approaches for Building Relationship in International law with Municipal law:

International law has a very complex and uneasy relationship with the domestic laws of a country. The two systems are usually understood as distinct legal system of rules and principles.[10] It is pertinent to note that international treaties are the result of the negotiations between the States and are governed by international law.[11] They must be said to be the most important sources of international law.

A. Contrastive Incorporation Practices of States

While International Law is applied in the relations of the States and to other subjects of international law, national or State law which is called Municipal Law.[12] It requires a State to carry out its international obligations; domestic legal systems of different countries vary in respect of implementation of international law at national level. As a result, the process used by a State to carry out its international obligations varies from legislative, executive and judicial measures. States also follow different practices in incorporating treaties within its internal legal structure, so that the provisions can be implemented by State authorities.

International law automatically becomes a part of national law or municipal law in some countries i.e. as soon as a State ratifies or accedes to an international agreement, than international law becomes national law.[13] It also be noted that International Law gives an Individual certain rights or obligations which can be enforced directly in national courts as was alleged in Pinochet case.[14]

It is actual practice, illustrated by customs and by treaty that formulates the role of international law, and not formalistic structures, theoretical deductions or moral stipulations.[15]

Accordingly, when positivists such as Triepel[16] and Strupp[17] consider the relationship of international law to municipal law, they do so upon the basis of the supremacy of the state, and the existence of wide differences between the two functioning orders.[18] This theory in prescribed word is kwon as dualism theory, which we can say it means that the municipal law and international law exists separately and cannot surpass each other neither can overrule. And if one examines the constitutional texts, especially those of the developing countries, which are usually keen on emphasizing their sovereignty, the finding is that most of the States do not gives primacy to international law over their municipal law.[19]

B. Theories of the Relationship: Monistic and Dualistic

To explain the relationship between the International and Municipal, these theories are the most appropriate so as to understand their relation with each other. These two theories are coined to be named as Monism and Dualism.

According to monistic theory, municipal law as well as international law is a part of one universal legal system serving the need of the human community in one way or the other. Law is unified branch of knowledge, no matter whether it applies to persons or other entities. As per the chief exponents of this theory like Kelson, Wright and Westlake, the Monism is a very sound theory. It exercised a great influence upon international law, because it has close association with natural law. It is very difficult to disprove the view that man lies at the root of all laws but in actual practice States do not follow this theory.

According to dualistic theory, international law and municipal laws of the several States are two distinct, separate and self-contained legal systems. The chief exponents of this theory are Tripel and Anzilloti. Starks is also of the view that international laws have an intrinsically different character from

that of State law. The reasons may be as follows:

- Subjects
- Origin
- Substance

Dualistic theory is subjected to many criticisms. Firstly, it is incorrect to say that international law regulates the relations of States only. In the modern period, individuals and other non-state entities are also the subjects of the international law. Secondly, it is incorrect to say that origin or source of international law is common will of the State. There are certain principles of international law which are binding upon the States, even against their free will. Thirdly, no doubt, pacta sunt servanda is an important principle of international law but it cannot be said that it is the only principle on which international law rests.

Preference of Municipal or International law

Monist attaches primacy to international law and treats it as superior legal system. Dualist attaches primacy to municipal law and considers it as superior. The basis of their view is that State is independent and sovereign. Further, municipal law strengthens international law and makes it operative by incorporating it into national law by legislation. The practice of States indicates that sometimes there is the primacy of international law; sometimes there is the primacy of municipal law and sometimes mixture of different legal system.

Harmonization theory

According to this theory, neither municipal nor international law has supremacy to each other; international law as well as municipal law have been made for human beings, and so, pri0marily there should not be any contradiction in them, and if contradiction in them then they should be harmonized.

In India, it is pertinent to say that we follow the dualistic approach, when there is any conflict between municipal law and international law then the municipal law will prevail and secondly if there will be a lacuna in the national or municipal law then the provisions of the international law will be taken in view and may be used if relevant and accordingly the provisions can be added in the legislation by making amendment in the legislation. This is also because of India being a common law heritage.

Implementation of International Treaties in India

There are different constitutional provisions which are embodied in different articles of the Indian constitution which give power to the union government to enter into the international agreements or treaties, also give legislative powers to implement International Agreements as well as for the implementation of international obligations.

A. Executive Powers to enter into International Agreements

The union government has executive power to enter into and implement international treaties under Articles 246 and 253 read with Entry 14 of List I of the Seventh Schedule of the Constitution.[20] The executive powers of union government are derived from the legislative power of the Union of India. In this regard, it is to be noted that the executive powers of the Union and State governments are co-extensive with their respective legislative powers.[21]

Under Article 53 of the Indian Constitution, executive powers are vested in the President of the Union of India. Apart from vesting the executive power, this provision also provide for the exercise of such executive power either by him directly or through the officers subordinate to him in accordance with the Constitution. It is pertinent to note that Article 73[22] of the Indian Constitution confers upon the government of India executive powers over all subjects in which parliament has legislative competence.[23]

As read above article 73(1) (b) of the Indian Constitution provides the scope of the executive powers, which according to this article means, the executive power of the Government of India extends to matters with regard to which Parliament can make laws. The Indian Constitution follows the "dualistic" doctrine with respect to international law.[24] Therefore, an international treaty does not automatically form part of national law. They must, where appropriate, be incorporated into the legal system by a legislation made by the Parliament.[25]

B. Legislative Powers by Constitution for implementing Treaties

Signing and ratifying international treaty is in the domain of the executive, implementation of such treaty comes under the domain of parliament as explicitly provided under Article 253.[26] In Magnabhai Ishwarbhai Patel v. Union of India[27] the observation[28] of the constitutional bench is very important to understand this relationship.

Yet again in another case in State of West Bengal v. Kesoram Industries Ltd,[29] the observation[30] of the Supreme Court of India is very significant. Therefore the conferred power on the Parliament is evidently in line with the power conferred upon it by Entries 13 and 14 of List I under the Seventh Schedule.

C. Implementation of International Obligations

For understanding the implementation of international obligations carried upon our country, thre is needed to understand the Article 51(c) of the Indian Constitution.[31] Source of Article 51 of the Constitution of India is from the Havana Declaration of 30th November 1939. The first draft (draft Article 40)[32] is the basis of Article 51 of the Indian Constitution. Article 40 was adopted by the Constituent Assembly with the amendments moved by Dr. Ambedkar, H.V. Kamath, Ananthasayanam Ayyangar and P. Subbarayan in its existing form as Article 51 of Constitution of India. During the debate, all the speakers emphasized commitment of India to promoting International Peace and Security and adherence to principles of International Law and Treaty obligations.[33] It is important to note that Article 51 in clause (c) specifically mentions "International Law" and "Treaty Obligations". The important point to observe is that Art. 51 (c) treats both International Customary Law and Treaty Obligations on the same footings.

Now if we try to see the Judicial Interpretation of Article 51(c) done by the court is that Article 51 has been relied upon by Courts to hold that various International Covenants, Treaties etc., particularly those to which India is a party or signatory, become part of Domestic Law in so far as there is no conflict between the two.[34] In Keshavanand Bharati v. State of Kerala,[35] Chief Justice Sikri's observation[36] is very pertinent on this point.

It is significant to note here that Article 51 finds place in Chapter IV of the Constitution which provides for Directive Principles of State Policy (DPSP) and are non justifiable by virtue of Article 37. But it is equally important to understand that even being non enforceability, these DPSP are fundamental in the formulation of the law and policies and the State cannot ignore it.

Indian Judiciary and International Law

In India, though the polity is dual, the judiciary is integrated. Therefore, India has an integrated judicial system.[37]

As the custodian of the Constitution of India the Supreme Court and High Courts have immense responsibility on them. Articles 129 and 215 recognize the existence of such power in the Supreme Court and the High Courts as they exercise inter alia the sovereign judicial power. The Supreme Court and the High Courts also have writ jurisdictions under Article 32 and 226 of the Indian Constitution, respectively.[38] Thus, they are empowered to provide remedy in the form of writs in case of violation of fundamental rights guaranteed under chapter III of the Constitution of India.[39]

A. Construction of law by International Law

Wherever necessary, Indian courts can look into International Conventions as an external aid for construction of a national legislation.[40] The Supreme Court in Visakha v. State of Rajasthan[41] took recourse to International Convention for the purpose of construction of domestic law.[42]

Likewise in the Case of Justice K. S. Puttaswamy (Retd.) and Anr. v. Union of India and Ors.; The Constitution Bench of the Supreme Court gave its decision on the question raise by the bunch of petitions filed "That whether Right to Privacy is a fundamental right or not, and if it is than what's the source of such right.?" For this the nine judge bench unanimously gave the decision that the right to Privacy is the core of the fundamental rights guaranteed by the Indian Constitution and is also embodied in the Article 21 key words i.e. "Life" and "Personal Liberty." For which the judges took the external aid from Article 12 of the Universal Declaration of Human Rights. Even due to the decision in this case many of the previous judgments of the Supreme Court were overruled.

B. General Principles

- Interpreting Existing laws to implement treaty Obligations
- Fostering Respect for International Law

Judicial Activism

Judiciary has further broadened the ambit of its role. Higher Judiciary has fashioned a broad strategies that have transformed it from a positivist dispute-resolution body into a catalyst for socio-economic change and protector of human rights and environment. This strategy is related to the evolution of Public Interest Litigation (PIL).[43]

Relying upon the Article 51, Sikri, C.J. in Kesavananda Bharathi v. State of Kerala,[44] observed as under:

"It seems to me that, in view of Article 51 of the directive principles, this Court must interpret language of the Constitution, if not intractable, which is after all an intractable law, in the light of the United Nations Charter and the solemn declaration subscribed to by India."

The Supreme Court in Visakha v. State of Rajasthan took recourse to International Convention for the purpose of construction of domestic law.[45] In this case the observation of the Supreme Court is worth for understanding.

In Additional District Magistrate, Jabalpur v. Shivakant Shukla,[46] (popularly known as Habeas Corpus Case) the majority (speaking through J. Beg) held that international customary rules were merely ethical principles and were not applicable ipso facto. This judgment has been criticized as Article 372 of the Constitution enacts that all laws in force in the territory of India immediately before the commencement of the Constitution shall continue to be in force until altered, repealed or amended by a competent legislature. The word "law in force" includes British Common law; hence Common law doctrine is applicable to India. In this case Justice H. R. Khanna giving his dissenting opinion held that if there was a conflict between the provisions of a treaty and Municipal law, it is the Municipal law that will prevail. But if two constructions of Municipal law were possible, the court should give the construction as might bring about harmony between Municipal and International Law or treaty. The Constitutional provision should be construed in such a way as to avoid conflict with the Universal Declaration of Human Rights.

In Jolly George Varghese and Another v. The Bank of Cochin,[47] Justice Iyer reaffirmed the above view of Justice H.R. Khanna. J. Iyer construed Sec. 51 of Civil Procedure Code of India in such a way as to avoid conflict with Art. 11 of ICCPR, 1966. It was held that Sec. 51 of the C.P.C. shall prevail if the treaty in question has neither been specifically adopted in the Municipal field nor has gone under transformation. Likewise in Gramophone Co. of India v. B.B. Pandey,[48] the Indian Copyright Act was construed harmoniously with International treaties and conventions.

The Court in Vellore Citizens Welfare Forum v. Union of India and Others[49] referred the "precautionary principle" and the "polluter pays principle" as part of the environmental law of the country.[50] In Civil Rights Vigilance Committee SLSRC College of Law v. Union of India and others, the Karnataka High Court's observation[51] is very important. In People's Union for Civil Liberties v. Union of India,[52] the Supreme Court observed that; those rules of International law which are in consonance with the Municipal law can be incorporated in domestic law. In A.P. Pollution Control Board v. Prof. M.V. Nayadu,[53] the Supreme Court recognized and applied the International Customary Rule of "precautionary principle". The Indian Supreme Court's view about customary nature of "precautionary principle" was appreciated in a Canadian case.[54] In Justice K. S. Puttaswamy (Retd.) and Anr. v. Union Of India and Ors., the Supreme Court recognized the "Right to Privacy" embodied in the Indian Constitution and as well as because of it being a guaranteed right under Article 12 of the "Universal Declaration of Human Right". Similarly in a Petition filed by Rohingya Muslim Refugees in the Supreme Court recently, which the Apex Court took up for hearing even after non-existence of any Domestic Law regarding this also deals with the matters of International Law which protect the habitation of refugees in any country with the UN Convention, 1951 under which Article 33 of the Convention provide the Principle of Non-Refoulement as India not being a party of this convention, so have no obligation to follow it but India is under the International Obligation as being a part of the International Community by "Customary International Law", which is a set of legal principles binding on all countries regardless of whether they have signed any treaties or conventions relating to the International Refugee Law. But the case is still pending in the Apex Court and the decision is awaited by around thousands of Rohingya muslims residing in India at present without any legal registration to reside in the country.

Now days it can be clearly said that an active role is played by the Higher Judiciary of country in implementing the International Law and making it the Law of the Land wherever required to serve the justice to all the peoples.

Conclusion

For the implementation of International Treaties and Agreements Obligations the Constitution of India embodies the basic framework existing in it under different articles to make it a part of the Domestic Legal System. By which the Government of India vest the power to implement International treaties and agreements in the local law of the country. Accordingly the executive power is vested with the President of India for entering into as well as for ratifying International Treaties.

It does not lead to that International Laws 'ipso facto' become the part of the Indian Legislations by Ratification only. This is because in India dualistic theory of incorporation of International Law into Municipal law is followed by Indian Constitution. This means that in India the International Laws does not automatically become part of the Legal System of the country by only being a party to any International Treaty or Agreement. For being the national law, International Laws must need to be incorporated in an act and should be assented by the parliament, which holds the legislative power by the constitution.

Notwithstanding anything if the India's obligation under International Treaties are not made part of the legislation by the parliament then they doesn't hold any relevance in Indian Courts. Whereas even after so, a pro-active role is played by the Higher Courts of India in implementation of International Law in India and specially when the matters are related to environment or about the Human Rights of the people. Through 'Judicial Activism' the Indian Judiciary marks itself to play a key role in filling the gaps between the International Law and Municipal Laws in India. Thus Indian Judicial System is an important aspect in implementation of the International Laws in our country.

References

1. The Constitution of India, 1950
2. Charles worth, Hilary and others, eds., The Fluid State: International Law and National Legal Systems (Sydney, Australia: The Federation Press, 2005)
3. National Commission to Review the Working of the Constitution, A Consultation Paper on Treaty-Making Power under Our Constitution (2001) Rao, B. Shiva, The Framing of India's Constitution, Select Documents (1967
4. Rao, P. Chandrasekhara, The Indian Constitution and International Law (New Delhi: Taxmann, 1993)
5. The Vienna Convention on the Law of Treaties United Nations, 1969, UN Treaty Series, vol. 1155, p. 331
6. Malanczuk, Peter, Akehurst's Modern Introduction to International Law, 7th Revised Edition, (New York: Rout ledge, 1997).
7. Anand, R. P. Confrontation or Cooperation: International Law and the Developing Countries (1987)
8. Agarwal, Dr. H.O., International Law & Human Rights, 20th Edn. (Allahabad: Central Law Publication, 2014).
9. Shaw, N.Malcolm, International Law, 7th Edn. (CAMBRIDGE) Ch 4 International law and Municipal law.
10. S. K. Agarwal, "IMPLEMENTATION OF INTERNATIONAL LAW IN INDIA: ROLE OF JUDICIARY", oppenheimer.mcgill.ca/IMG/pdf/SK_Agarwal.pdf
11. Halashetti, Jagadish S., "The Status of International Law under the Constitution of India", https://www.legalindia.com/the-status-of-international-law-under-the-constitution-of-india/
12. The principle of sovereign equality as embodied in the UN Charter is the cornerstone of the international relations between the States. See Articles 2(1) and 2(2) of the UN Charter; see also R. P. Anand, "Sovereignty of States in International Law" in: R.P. Anand, Confrontation or Cooperation: International Law and the Developing Countries (1987)
13. Narendra Kodoliya, "A Paradigm Shift in the Role of Domestic Courts in Implementing International Treaty Provisions: An Indian Perspective"
14. Jolly Jeorge Vs. Bank of Cochin, AIR 1980 SC 470
15. S. K. Agarwal, "Implementation of International Law in India: Role of Judiciary"
16. AIR 1980 SC 470
17. AIR 1984 SC 667
18. AIR 1997 SC 3011
19. AIR 1966 SC 230 3
20. See S. K. Agarwal, "Implementation of International Law in India: Role of Judiciary"
21. See Hilary Charlesworth and others, eds., The Fluid State: International Law and National Legal Systems (Sydney, Australia: The Federation Press, 2005)
22. The Vienna Convention on the Law of Treaties defines the term "treaty" for the purposes of the Convention to mean a written international agreement between States governed by international law, see Article 2(1). The Vienna Convention on the Law of Treaties United Nations, 1969, UN Treaty Series, vol. 1155, p. 331
23. Westlake has rightly stated that the word Municipal law for the national or State law should be avoided, because municipalities within a state have their own subordinate laws to which the name municipal law is appropriate.(Westlake, International law, Part 1(1910) p. 6.) It seems that the name municipal law has been employed for the State law for want of a better term.
24. S. K. Agarwal, "Implementation of International Law in India: Role of Judiciary"
25. R. v. Bow Street Metropolitan Stipendiary Magistrate ex parte Pinochet, (No. 3) 1997, 2 All

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26. Malcolm N. Shaw, International Law (Seventh Edition), Ch 4 International law and Municipal law, p 93.
27. H. Triepel, Volkerrecht und Landesrecht, Berlin, 1899.
28. K. Strupp, "Les Regles Generales du Droit International de la Paix", 47 HR, 1934, p 38, See also D. Anzillotti, Corse di Diritto internazionale, 3rd Edn. Rome, 1928, Vol. I, pp, 43 ff
29. Malcolm N. Shaw, International Law (Seventh Edition), Ch 4 International law and Municipal law, p 93.
30. Antonio Cassese, Modern Constitutions and International Law, 192, Rec. des COURS 331 (1985-ffl), p. 331
31. The Supreme Court of India has interpreted the constitutional provisions on the executive power in Samsher Singh v. State of Punjab, AIR 1974 SC 2192, by adopting the "residuary test" in defining the executive power. According to this, the executive power of the state is what remains after the legislative and judicial powers are separated and removed. The court went on to add that the real executive power is vested in the Prime Minister and his Council of Ministers and that the President has to act only on the advice tendered by the Council of Ministers.
32. Article 73 and 162 of the Indian Constitution
33. Extent of executive power of the Union:
    (1) Subject to the provisions of this Constitution, the executive power of the Union shall extend
        (a) to the matters with respect to which Parliament has power to make laws; and
        (b) to the exercise of such rights, authority and jurisdiction as are exercisable by the government of India by virtue of any treaty on agreement: Provided that the executive power referred to in sub clause (a) shall not, save as expressly provided in this constitution or in any law made by Parliament, extend in any State to matters with respect in which the Legislature of the State has also power to make laws
    (2) Until otherwise provided by Parliament, a State and any officer or authority of a State may, notwithstanding anything in this article, continue to exercise in matters with respect to which Parliament has power to make laws for that State such executive power or functions as the State or officer or authority thereof could exercise immediately before the commencement of this Constitution.
34. Subject-matter of the legislative competence of the Parliament has been enumerated in Article 256 read with List I and List III of the Seventh Schedule. See D.D. Basu, Introduction to the Constitution of India, 20th Edn. (Nagpur: Wadhwa Sales Corporation 2008)
35. Jolly Jeorge Vs. Bank of Cochin AIR 1980 SC 470
36. Jolly Jeorge Vs. Bank of Cochin AIR 1980 SC 470; Gramophone Company of India Ltd. v. Birendra Bahadur Pandey AIR 1984 SC 667
37. Article 253 states that "Notwithstanding anything in the foregoing provisions of this chapter, Parliament has power to make any law for the whole or any part of the Territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any International Conference, Association or Other body."
38. AIR 1969 SC 783 at para 25
39. "The effect of Art 253 is that if a treaty, agreement or convention with a foreign state deals with a subject with in the competence of state legislation, the parliament alone has notwithstanding Article 246 (3) the power to make laws to implement the treaty, agreement or convention or any decision made at any international conference, association or other body."
40. AIR 2005 SC 1644 at para 4
41. "A treaty entered in to by India cannot become law of the land and it cannot be implemented unless parliament passes a law as required under Article 253. The executive in India can enter into any treaty be it bilateral or multilateral with any other country or countries".
42. The state shall Endeavour to- (c) foster respect for international law and treaty obligations in the dealings of organized peoples with one another;
43. "The state shall promote international peace and security by the prescription of open, just and honorable relations between nations, by the firm establishment of the understandings of International Law as the actual rule of conduct among governments and by the maintenance of justice and scrupulous respect for treaty obligations in the dealings of organized people with one another".
44. Subhash C. Kashyap, The constitution of India and International Law', Bimal N. Patel (ed.), 'India and International Law', Martinus Nijhoft Publishers, Leiden 2005, p.19.
45. See Re Berubari Union and Exchange of Enclaves, AIR 1960 SC 845; Ali Akbar v. U.A.R. AIR 1966 SC 230; Magnabhai v. Union of India, AIR 1969 SC 783; Gramaphone Co. Birendra, AIR 1984 SC 667; Jolly George Verghese V. Bank of Cochin, AIR 1980 SC 470; UPSE Board v. Hari Shankar, AIR 1979 SC 65; Prem Shankar Shukla v. Delhi Adm., AIR 1980 SC 1535; Vishaka v. State of Rajasthan, AIR 1997 SC 3011.
46. AIR 1973 SC 1461
47. "In view of Article 51 of the constitution this court

must interpret language of the Constitution, if not intractable, which is after all a municipal law, in the light of United Nations Charter and the solemn declaration subscribed to by India"

48. Provisions in regard to the judiciary in India are contained in Part V ("The Union") under Chapter IV titled "The Union Judiciary" and Part VI ("The States") under Chapter VI titled "Subordinate Courts" respectively. See D.D. Basu, Introduction to the Constitution of India, 20th Edn (Nagpur: Wadhwa Sales Corporation 2008).
49. Ibid
50. See D.D. Basu, Introduction to the Constitution of India, 20th Edn (Nagpur: Wadhwa Sales Corporation 2008), n 14
51. P.N. Krishanlal v Govt. of Kerala, (1995) Sup. (2) SCC 187; Law Commission of India, "A continuum on the General Clauses Act, 1897 with special reference to the admissibility and codification of external aids to interpretation of statutes," 183rd Report, November, 2002, p. 20
52. AIR 1997 SC 3011
53. "In the absence of domestic law occupying the field to formulate effective measures to check the evil of sexual harassment of working women at all work places, the contents of International Conventions and norms are significant for the purpose of interpretation of the guarantee of gender equality, right to work with human dignity in Articles 14, 15, 19 (1) (g) and 21 of the Constitution and the safeguards against sexual harassment implicit therein. Any international convention not inconsistent with the fundamental rights and in harmony with its spirit must be read into those provisions to enlarge the meaning and content thereof, to promote the object of the Constitutional guarantee."
54. See S.P. Sathe, "Judicial Activism: The Indian experience," Washington University Journal of Law and Policy, vol. 29, no. 6, 2001.
55. (1973) Supp. SCR 1
56. AIR 1997 SC 3011
57. AIR 1976 SC 1207
58. AIR 1980 SC 470
59. AIR 1984, SC 667
60. AIR 1983 Kar 85
61. "Even otherwise, once these principles are accepted as part of the Customary International Law there would be no difficulty in accepting them as part of the domestic law. It is almost accepted proposition of law that the rules of Customary International Law which are not contrary to the municipal law shall be deemed to have been incorporated in the domestic law and shall be followed by the Courts of Law."
62. 'The position before English courts is something of a compromise between the two methods. There can be no doubt that they regard customary international law as part of the law of the land for they take "judicial notice" of it; that is to say they assume that the court knows the law and does require it to be proved by calling expert evidence, as in cases involving foreign and external systems of law. The court regards any relevant rule of customary international law as being incorporated in to the domestic law'.
63. AIR 1997 SC 568
64. 1999 SCC 712
65. Canada Ltee (Spraytech, Socie'te' d'arrosage) v. Hudson (2001) 2 SCR 241 at para 32, per L'Heureaux-Dube J