

The Role of International Law in Shaping Domestic Constitution

Mandeep Mishra*, Smriti Khanna

Student, BBA.LLB.8 semester, JIMS Greater Noida Affiliated with GGSIPU.

ARTICLE INFO

*Correspondence:

mandeepmishra311@gmail.com

Student, BBA.LLB.8 semester, JIMS Greater Noida Affiliated with GGSIPU.

Dates:

Received: 24-04-2025

Accepted: 15-05-2025

Published: 30-06-2025

Keywords:

International Law, Constitutional procedures, Legal framework, Human rights.

How to Cite:

Mishra, M., Khanna, S. (2025) The Role of International Law in Shaping Domestic Constitution. DME Journal of Law, 6(1), 1-6.
doi: 10.53361/dmejl.v6i01.01

Abstract

This paper talks about how foreign and international law interacts closely with domestic constitutional law to balance the growth of the rule of law in a given region. When it is appropriate, local courts in South Africa and the United States take international and foreign law into account when resolving cases. Each jurisdiction has different guidelines on whether to apply foreign or international law, as well as different standards for doing so. Above all, though, this practice ought to be supported because it advances global norms and the consistent application of international law aspects that are particularly crucial when it comes to human rights.

This article makes the case that India has made a substantial contribution to the study of international law explicitly aim to give local courts a role in judicial enforcement. In addition to addressing the standards set forth by international law, this article looks at how international law is implemented inside the Indian domestic system. It addresses the issue of who has the authority to make treaties by critically analysing the basic contradiction in domestic constitutional procedures that give treaties legal force. The role of the judiciary in India's application of international law is examined in this article. Lastly, recommendations for the new legal framework are given in this article to improve the application of international law. Rarely does an international treaty specify how the States are to carry out its provisions instead, each State determines how to carry out its commitment on a domestic level. One significant exemption is the human rights treaty-guaranteed right of access to effective remedies. There's no universal norm of international law dictating that every treaty has to become domestic law. Additionally, Article 2 of the International Covenant on Civil and Political Rights guarantees the opportunity to select certain implementation strategies: "Where not already provided for by existing legal or other measures, each State Party to the present Covenant undertakes"

INTRODUCTION

International law can also fill the gaps in standard-setting and interpretation of the bill of rights. It can also be used as a weapon to enforce the rule of law and induce legal reform in a state. Articles 51 and 253 of the Indian Constitution are the key to the country's compliance with international law. For ensuring friendly and peaceful relations with other states, international organisations, associations, and bodies, the State has to enact these laws and enact new ones. The corpus of law known as international law primarily governs relations

between states and between governments and international organisations. International law is primarily legally binding and requires those to whom it is addressed to act. Some international rules and principles are “soft” law because they are not legally binding. These are important not only as widely accepted ideals but also as guidelines which could be enforced quietly by other states’ disapproval or requests for receiving development assistance, for instance. The process of converting foreign law into home law is often not governed by international law. There is no international agency of enforcement. States convert international law into their domestic legal system in a wide variety of ways depending on home law, including tradition and constitutional provisions. States also differ in their constitutional provisions for the application of international law. International law may be disregarded by domestic courts or they may be required to do so until it is enacted into domestic law. A state’s domestic legal system’s principles and policy goals thus decide the application of international law there.

The national legislature is entrusted with the responsibility of passing legislation.

Indian courts are positive that international law will be applied in national courts, and they are always changing their strategy. India has said that it is dedicated to the creation and application of international law. Nonetheless, India was not involved in the development of key fundamental tenets of international law.

This article examines the substance of international law, local legal orders, and the legal implications of international law inside the Indian domestic legal system. It also looks at how international law is implemented within the domestic legal system in India.

Additionally, it makes the case that India has made a substantial contribution to the study of international law, particularly in the areas of trade, environmental law, arbitration, and human rights law.

International Law

States typically recognise international law as a body of rules, norms, and standards. It outlines the legal obligations that states have to one another and to the people that reside within their borders. Many topics are covered under international law, such as:

Diplomacy and warfare financial ties, Human rights, Demilitarisation, Global criminality Those in refuge, Nationality, Migration, The way inmates are treated, Using force.

International law defines the legal obligations of States in their relationship with each other and how they treat individuals in their territories. Its scope includes a wide variety of global issues of concern, but not limited to: human rights; disarmament; international crime; refugees; migration; nationality conflicts; treatment of detainees; use of force; and conduct of war. It also regulates the global commons, such as the environment, sustainable development, international waterways, space, international communications, and international trade.

There are two broad divisions for international law: The first division of law is called private international law, and it is “the study of disputes involving private parties, such as individuals or businesses, that are closely related to several nations.” Examples such as those resulting from Union Carbide-owned industrial plants that release toxic gas The US corporation in India is governed by private international law. Private international law settles legal disputes between countries and decides which country’s laws apply to a case. The second division of law is international law it comprises general laws, rules, and guidelines that encompass the proper conduct of nation states and international organisations, and the proper relationship of governments and organisations and persons, whether legal or natural. It is usual to refer to public international law as the “law of nations” or simply “international law.” Public international law includes human rights, environmental law, economic law, diplomatic law, maritime law, and humanitarian law.

Domestic Law

Domestic law, often known as national law, regulates the interactions between individuals, organisations, and other entities within a country. Relationships between governments and other international actors are governed by international law. The law of nations or public international law are common names for it.¹ “International law refers to the body of rules that regulates interactions between sovereign

¹ International Law. (n.d.). <https://www.britannica.com/topic/international-law>

states and other entities that are formally recognised as international players”. The phrase’s originator is recognised as English philosopher Jeremy Bentham (1748–1832). A parliament does not pass laws that form international law; instead, a country’s legislature develops domestic law. International customs and treaties are also taken into account by international law; multilateral treaties are only binding on governments who have ratified and signed them. Because of a government’s sovereignty—the ability to rule without external intervention—international law is frequently applied differently than domestic law. For instance, the International Criminal Court (ICC) will only try cases involving genocide, war crimes, and crimes against humanity in the absence of a willing or able domestic government.

In the same manner, the ordinary law and the state constitution are put on an equal level in international law. As per Vienna Convention on the law of Treaties Article 27, a state will uphold its obligation under a treaty even when it contravenes municipal law. Article 46 of Vienna Convention is the sole exception, and it only happens when a state’s express consent to being bound by a treaty evidently offends a “rule of its internal law of fundamental importance.”

Domestic law is law in a state that governs the behavior of persons, groups, and other parties that are subject to the jurisdiction of a state. Contrary to this, international law aims at the obligations, rights, and duties of states and other parties to international affairs.

International laws can be divided into two: Jus gentium, which is from organisation treaties that apply to all nations, and Jus gentes, which is a two-nation treaty between two states. Domestic or municipal laws are laws of a sovereign state binding to residents of a particular area, town, or city. Contrary to this, international law can be enforced by domestic courts at home, and governments can therefore fulfill their international obligations.

International Covenant on Civil and Political Rights

A person’s right to legal remedy following a violation of their rights is guaranteed by ²Article 2 of the 2 (*International Covenant on Civil and Political Rights*,1977) or the book *International Covenant on Civil and Political Rights*(1977)

International Covenant on Civil and Political Rights (ICCPR). It also declares that everyone has the freedom to express themselves, which includes the freedom to look for, accept, and exchange ideas and information in any format with anybody, wherever in the world.

1. Every State Party to the present Covenant agrees to uphold and protect the rights guaranteed by the present Covenant to every person residing on its territory and falling under its purview, without regard to any distinction of any kind, including race, colour, sex, language, religion, political opinion, national or social origin, property, birthplace, or other status.
2. Each State Party to the present Covenant agrees, if not already covered by existing legislative or other measures, to take the necessary actions to adopt any laws or other measures that may be required to give effect to the rights recognised in the present Covenant, in accordance with both its own constitutional procedures and the provisions of the present Covenant.
3. All States Parties to the current Covenant agree to the following: (a) Guarantee that anyone whose rights or freedoms as recognised herein are violated will have an effective remedy, even if the violation was caused by someone acting in an official capacity; (c) To ensure that the competent authorities will uphold the rights of those seeking such remedies when they are granted; (b) To guarantee that the right of any person requesting such a remedy be ascertained by competent judicial, administrative, or legislative authorities, or by any other competent authority permitted by the State’s legal system; and to increase the options for judicial remedy.

Role of international law in the creation of constitutions

Typically, a state’s constitution is the highest legal authority for domestic law. All other state actions and laws are subject to conformity with the provisions made by the constitution. The approach used in the process of constitution-making distinguishes constitutions from common law and justifies the view that the people are the ultimate source of their legitimacy. Furthermore, constitutions deal



with various important matters relating to the organization of a state, such as the relationship between state institutions, the rights of the people as against the government, and the powers and duties of different levels of administration. Constitutions are, however, increasingly now starting to deal with these matters, a reflection of the increasing importance of international law and international relations for all states. Most constitutions prescribe the way in which international law is to be incorporated into the structure of domestic law. The related question of how a state comes to have international legal obligations is also dealt with by most constitutions. It is standard practice to inquire whether any foreign legal commitment of the state is to be especially elaborate within the constitution at the time of its creation. It may also be wise to take international legal norms into account in planning and carrying out the process of constitution-making. Even during the colonial era, when India was an independent state in the League of Nations before it became independent, there were linkages between the Indian constitution and international law. The principles articulated in the Universal Declaration of Human Rights, an international document adopted by the United Nations General Assembly with the primary aim of protecting and preserving the basic rights to which every human being is inherently entitled, had a strong impact on the Indian Constitution, which was formally enacted on November 26, 1950. Drafting a constitution can be influenced by international legal commitments, and a nation's constitution should be helpful in the fulfillment of such commitments. For example, the adoption of the Universal Declaration of Human Rights (UDHR) by the United Nations General Assembly influenced the adoption of the Indian Constitution in 1950. The protection and preservation of the basic rights of every individual is the primary aim of the UDHR. When a state becomes a party to an international treaty by accession or ratification, international human rights law can be easily incorporated into the domestic legal order of some nations. Domestic legislation is required in some nations for international law to be effective due to its non-self-executing nature.

Differences between national constitutions and international law

Scope

National Constitution

A legal document that sets out the principles and rules of a specific country, such as the form of government, the rights of the people, and the limitations of power. It is effective within the territorial boundaries of that country.

International Law

It is a collection of rules, customs, and agreements that govern international relations. Though some treaties are confined to a specific territory or state, it has universal application.

Origin

National Constitution

Prepared through a national process that typically involves a constitutional convention or representatives elected by the people.

International Law

It is derived from general legal concepts, customary international law- practices recognized as law by most nations- and treaties – agreements adopted by nations.

Implementation

State Constitution

Approved by national organizations and courts.

International law

Is mostly upheld by diplomacy, persuasion, and the threat of sanctions or reprisals. International courts are useful for settling disputes, but their Implementation frequently depends on nations adherence to judgments.

Arrangement

State Constitution

A nation's state Constitution is its ultimate law. Government policies and laws must be in line with the Constitution.

International law

Each nation has a different relationship between international and national law. While some nations require national legislation to give effect to international treaties, others directly incorporate international law into their domestic legal systems.

Main point

State Constitution

Lays down the foundation for internal governance, safeguards individual liberties, and delineated the authority and bounds of governmental bodies.

International law

Regulates relations between Nations and deals with matters such as commerce, environmental preservation, Human rights, and resolving disputes.

State Constitutions, in other words, serve as the cornerstone of national governance, but international law establishes the guidelines for international relations between Nations.

Role of Judiciary

By applying and interpreting international law in a domestic context, the court adds to the corpus of international law. The court also helps settle conflicts between international and national law. The main court of the United Nations, the International Court of Justice (ICJ), settles cases initiated by governments in accordance with international law. Additionally, the ICJ provides advisory opinions on legal issues to specialised agencies and UN bodies with mandate. The UN General Assembly and Security Council select the fifteen judges constituting the ICJ for nine-year terms.

India's judiciary makes its obligations under international law effective by delivering judgments in domestic cases encompassing legal questions. The judiciary also facilitates the implementation of international law by advancing respect for it, raising it before courts, and emphasizing its status in the legal framework. The Indian court has been specifically busy in enforcing India's international commitments in respect of human rights and the law on the environment.

The court in the landmark ³Vishaka v. State of Rajasthan (1997) case cited a number of international 3 Vishaka & Ors vs State Of Rajasthan & Ors on 13 August. (n.d.).1997 <https://indiankanoon.org/doc/1031794/>

conventions and norms that were relevant to guaranteeing gender equality, the right to work with dignity, and adherence to Articles 14, 15, 19(1)(g), and 21 of the constitution when creating guidelines on sexual harassment of women at work. it also said that held that international conventions not inconsistent with fundamental rights must be read "to enlarge the meaning and content thereof."

International Law and Constitution Provisions, in India

The provisions of the Universal Declaration of Human Rights (UDHR) were largely adopted by the Indian Constitution, which took effect on November 26, 1950. The UN General Assembly approved the UDHR with the explicit purpose of safeguarding and protecting the fundamental rights to which every individual is entitled. The Constitution, however, contains a number of provisions pertaining to the signing power of treaties. The Indian Constitution stipulates that the Indian Government has to implement its treaty obligations despite the fact that signed treaties are not enforceable in the domestic courts.

Promote respect for international law and treaty obligations in the relationships among the people on an organized basis, states Article 51(c) of the Indian Constitution. The Constituent Assembly concurred with the amendments proposed by Dr. Ambedkar, and draft Article 40 was enacted as Article 51 in the following words. All the speakers during the debate stressed India's adherence to the promotion of international peace and security and respect for the principles of international law and treaty obligations.

A Directive Principle of State Policy, Article 51 of the Indian Constitution deals with the promotion of international peace and security. It declares that the government must:

- Encourage world peace and security
- Promote fair and respectful global relations
- Encourage adherence to treaty obligations and international law.
- Encourage arbitration to be used in solving international issues

The classical international law doctrines of self-defense, which entail necessity and proportionality to the attack, have been construed to include Article 51.



Article 51 also outlines the duties of citizens to avoid conflicts in a bid to promote international peace and security. It also talks about the moral duty of citizens to maintain the unity of India and promote patriotism.

CONCLUSION

State practice and international law evolve constantly. State practice, on its part, bargains with the highly-touted norms and principles of international law on the basis of interests that are nationally perceived. Indian practice embodies the complex and uncertain interaction between international law and local law. India is not consistent in accepting international law; sometimes it accepts it and sometimes it does not

In the majority of its decisions and orders,

India has attempted to incorporate and enforce international law, provided such enforcement is non-violative of national laws. Treaties of international law and principles of international customary law have led to the application of a number of Articles, strengthening India's legal status and structure within the international community. Constancies of international law to which a state is (or may be) subject generally have an influence on provisions of a constitution. Some of them are enforceable by the constitution. In either event, a state ought to be able to enforce its constitution in place of or in supplement to it in meeting its international law obligations. International legal norms and standards, whether they appear to be legally binding or not, can prove to be beneficial while framing a constitution-building process