



## DOMESTIC IMPLEMENTATION OF INTERNATIONAL LAWS IN INDIA

By *Ananaya Aggarwal*  
From *Amity Law School Noida*

### ABSTRACT

The Indian Society has always accepted the major changes in the legal system with open arms and has adapted themselves to the same. One fact is that the society can be seen progressing only if it is growing as per the international standards which have been laid down in the international instruments. Very often we have seen the nations breaking the pacts and treaties, but then they are usually sanctioned and discouraged by the UN. The International law can be made applicable only if it does not contravene the already existing laws of the country. The Constitution of India has also given enough liberty to the Indian Judiciary and Parliament to adapt themselves to the major changes in the legal system and to maintain their domestic laws with the international laws and treaties in order to progress in society and to maintain peace. In this research paper I'll be talking about the concept of international laws with its nature, types & sources and status of international laws in India with relevant case laws.

### CHAPTER 1: INTRODUCTION

Though there is no single universally accepted definition of the international law, but there has been an attempt made by many jurists to define the term international law.

As per **Oppenheim**: "*Law of Nations or International Law is the name for the **body of customary and treaty rules** which are considered as binding by the state in their intercourse with each other.*"

The definition has failed to fit in the modern era as it has faced the following criticisms:

1. The definition has taken into account only the states relations with each other, whereas in the modern law, the international organizations and institutions are widely recognised as the subjects of law.
2. Oppenheim has used the term considered as binding he does not say that the rules are legally binding which makes the definition a qualified one.
3. As per the definition, only the customary laws and the treaties are considered as the sources of law, which in itself is incorrect.
4. Some rights and duties have also been imposed by the International laws, and it is not only limited to the customs or treaties, and the wider perspective is missing in this definition.
  - i.
  - ii. As per **Fenwick**: "*It is the body of rules accepted by the general community of nations, as defining their rights and the means of procedure by, which those rights may be protected or violations of them redressed.*"
  - iii. As per **Brierly**: "*It is the body of rules and principles of action, which are binding upon civilized states in their relations with one another.*"
  - iv. As per **J.G. Starke**: "*It is that body of law, which states feel themselves bound to observe and therefore do commonly observe in their relations with each other and, which includes also the rules of law relating to the functioning of international institutions or organizations, their relations with each other and their relations with states and individuals. Certain rules of law relating to individual and non-state entities so far as the rights and duties of such individuals and non-state entities are the concern of international*"



*community. Simply International law means a body of generally accepted principles and rules controlling the conduct of national states, non-state entities, international organizations, individuals and corporations.”*

The definition of Starke has taken into account the changing character of international law and has truly reflected the present position of the international law. However, this definition will become a subject of criticism once the scope of international law will widen and more entities will become a part of international law.

1. As per **Schwazzenberger**: *“International Law is the body of legal rules which apply between sovereign states and such other entities as have been granted international personality.”*
2. Keeping in mind all the definitions given by the great jurists, we can come to a conclusion and define the international law as: *“International law is a constantly evolving body of norms that are commonly observed by the members of the international community in their relation with one another. These norms confer rights and impose obligations upon the States and, to a lesser extent, upon international organizations and individuals.”*

### **Nature of International Law**

If we discuss the nature of the international law, then there are always two conflicting views on the same. One view is that it is not a proper law because it is not backed up by any sovereign legislative authority by enactment of proper rules or laws, and can be used as only moral law, and it is not binding on the parties to it. This view has been given

by Austin where he has suggested that due to lack of any enforcement agency and has no sanctions involved in case of violation of the same. Hobbes, Holland, Bentham and some other jurists have given a nod to the view presented by Austin. But the view given by the abovementioned jurists has been criticised by Oppenheim according to whom International law is law in proper sense and he has given two major reasons for the same: firstly, the reason that international law has been recognized as the law by the government of various states and they feel that they should legally and morally follow the same, and secondly; the states have never denied the existence of the rules of international law, in fact the states have constantly tried to interpret the international laws and justify its conduct. Starke has also supported the view given by Oppenheim because the United Nations is based on the true legality of the international laws and now the agencies do not regard international law as merely moral law, as they have been working on making them applicable to the state laws as well. If we talk about some states like USA and UK, they have adopted this law as their own law, as laid down in the Paquete Habana Case in 1900.

### **Types of International Law**

There are two main classifications of the international law which are Private International law and the Public International Law. On one other hand, the Private law deals with the relationship or disputes of the parties of two states with respect to any subject in the foreign laws or where the role of foreign courts is involved. On the other hand, the Public law deals with the disputes of two different states with regard to application of any convention, treaties, customs or general principles of law.



**Public international law** (or the law of nations) is “a body of customary or conventional rules which are considered as legal binding by civilized states in their intercourse with each other and is concerned solely with the rights and obligations of sovereign states”. For instance, if there is a dispute between two nations with regards to the asylum, then the same would be governed by this kind of law.

**Private international law** (or the conflict of laws) may be defined as “the rules chosen by a given state for the decision of cases which have a foreign element or complexion.” For instance, if there is a contract between two people coming from USA and UK, and there is a breach of contract by one party, then the same would be governed by this.<sup>1</sup>

### Sources of International Law

As per **Oppenheim**, there is only one source of the International law, which is common consent of the nations. Consent here can be expressed in two forms only, one through the treaties in which the express consent is mentioned, and customs, which are implied.

**Article 38 of the “Statute of International Court of Justice”** talks about the sources of international law which reads as follows:

1. “The Court, whose function is to decide in accordance with international law such disputes as are submitted to it shall apply”:
  - a. “international conventions, whether general or particular, establishing rules expressly recognized by the contesting states”;
  - b. “international custom, as evidence of a general practice accepted as law”;

- c. “the general principles of law recognized by civilized nations”;
  - d. “subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.”
2. “This provision shall not prejudice the power of the Court to decide a case *ex aequo et bono*, if the parties agree thereto.”

In this Article, the fifth source has not been mentioned i.e. decisions or determinations of the organ of International Institution, but now it has been widely accepted by the States. It is to be noted that Article 38 is not exhaustive in nature, but merely declaratory, wherein some basic sources of law has been mentioned. The various sources of international law which have been mentioned in Article 38 are as follows:

1. **International Customs:** It is of course the most original and the oldest sources of law. The Customary rules have been developed in a long process of historical development. While the courts apply the customary principles to any case, it is to be seen whether it fulfils the basic criteria of a custom, which is opinion juris (wide acceptance of the custom by all and they believe that it is mandatory to follow the practice), antiquity, generality of practice by numerous states.
2. **International treaties:** The most important source of international law is the treaties signed by the states, or where the states have

<sup>1</sup> Tapan, Difference between Public International Law and Private International Law, <https://www.preservearticles.com/difference/differen>

ce-between-public-international-law-and-private-international-law/3904



consented to sign the same. Treaties are broadly classified into:

- a. Law-making treaties: These treaties have a large number of parties and create general or universal norms. For Example. “*United Nation Charter*”, “*Geneva Convention*”, “*Vienna Convention on the law of treaties, 1969*”.
- b. Treaty Contracts: It is a treaty between two or only a few states dealing with a special matter concerning these states exclusively. The treaties are based on “*pacta sunt servanda*”, which means that the states are bound to fulfil in good faith the obligations assumed by them under treaties. The principle has been mentioned in “*Article 26 of the Vienna Convention*”. The states become a member of the treaty by various modes, namely accrediting, negotiation, adoption, signing, ratification, accession, adhesion and registration. The treaties can be invalidated if there is mistake or error by the party, or if fraud is committed by other party, if there is lack of proper authority of the representative, or if a state has been coerced into entering the treaty. The treaties can be terminated by the parties by the consent of the parties, concluding to another treaty which deals with the same subject matter, if material breach is committed by party, if the war outbreaks, or if there is a fundamental change in the circumstances i.e. “*Rebus Sic Stantibus*”.
3. General Principles of Law: It is to be noted that the general principles of the international law would not ipso facto become the laws of the states, unless and until those principles have been adopted by the States in their domestic laws. There are some basic rules which have got wide recognition in almost all the civilised legal systems; For Example; principles of Res Judicata, estoppel, equity, prescription and subrogation.
4. Judicial Decisions and Juristic Works: The judicial decisions given by the International Court of Justice and the teachings of the highly qualified publicists are also a source of international law. However, it is to be noted that the decisions of the ICJ do not create a binding effect, only except between the parties and only in that particular case.
5. Writings of the jurists: This source can be taken into consideration if the application of all the other sources has failed to resolve the disputes between the parties.
6. Resolutions of the General Assembly: Though the resolutions of the General Assembly do not possess any legal character, and are non-binding in nature, but they have been widely accepted by the States as the sources of law.

#### **CHAPTER 2: STATUS OF INTERNATIONAL LAW IN INDIA**

Under International law, there are mainly two theories that are followed in the international law, Monism and Dualism. Monism theory says that the international law is in unity with the domestic laws, and the treaties, conventions, and international customs are accepted as and treated as their own laws, and the same are directly applied by the Judiciary without going into much details. In fact, the states following the monistic approach are of the view that the national law which is in contravention of the international is null and void. The dualism theory says that there are two parallel legal systems, one is national and the other is international law. The national law holds importance in this system, and the international law can be used by the judiciary only if the same does not contravene with the domestic laws of the State. The treaties or conventions signed by the State cannot directly apply the international laws. In India, we follow the dualistic theory of



international law. The Constitution is the grundnorm, from which all other laws derive its validity. If we talk about the human rights in India, many of them have already found a place in our Fundamental Rights, such as *“Right to equality, freedom of expression, movement, association, religion, equal pay for equal work, education, livelihood etc.”* Some rights which do not find a place in the fundamental rights directly but which have been recognised by the higher judiciary are right to travel abroad, legal aid, speedy trial, privacy, know, shelter, compensation for violation of human rights etc. India has already signed and ratified major international instruments such as UDHR, ICCPR, ICESCR, CEDAW etc., and has continuously adopted the same whenever required. In India, there are some specific provisions which deal with the domestic application of the international laws, and they are enumerated as follows:

**“Promotion of International Peace and Security”<sup>2</sup>** – *“The state shall endeavour to”:*

- a. *“Promote international peace and security”*
- b. *“Maintain just and honourable relations between nations”*
- c. *“Foster respect for International Law and Treaty obligations in the dealings of organized people with one another”;* and
- d. *“Encourage settlement of International dispute by arbitration.”*

The interesting fact here is that this Article finds its place in the *“Directive Principles of States Policy”* i.e. the *“Part IV of the Constitution”*, which is not justiciable and non-enforceable in nature. However, the action can be taken by the State to promote

the DPSP’s and implement them fully or partly. The most relevant part here is the clause (c) of the Article, which focuses on respecting the international law and the treaties, covenants, and the same has been relied by the Indian judiciary many times to make it applicable to the Domestic Laws. However, a balance has been maintained between the two, so that the domestic and international laws are not in conflict with each other.

**“Extent of executive power of the Union”<sup>3</sup>** – *“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 or agreement.”*

This Article has given the powers to the Union the powers to make laws with respect to any treaty or any agreement through the Parliament. The Union can exercise the power to make sure that the treaties are given effect in our country, which is only possible if there is a domestic law on the similar lines; otherwise the same cannot be made applicable to our country as the international law cannot directly be enforced in the courts of law.

**“Executive Power of the Union”<sup>4</sup>**–

*“(1) The Executive Power of the Union shall be vested in the President and shall be exercised by him either directly or through*

<sup>2</sup> INDIA CONST, Art. 51.

<sup>3</sup> INDIA CONST. Art. 73

<sup>4</sup> INDIA CONST. Art. 53



*officers subordinate to him accordance with this Constitution.”*

**“Legislation of giving effect to International Agreements”<sup>5</sup>-**

*“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.”*

The treaties or the agreements or the conventions can be given legal effect only by the Parliament of India. The same can be done by bringing into specific legislations which deal with the subject matters given under the treaties or conventions or the declarations to which India has promised to adhere to by signing and ratification.

In **“Magnabhai Ishwarbhai Patel v. Union of India”<sup>6</sup>**, the Constitution Bench of Supreme Court of India observed that”;

*“The effect of Art 253 is that if a treaty, agreement or convention with a foreign state deals with a subject within the competence of state legislature, 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.”*

In **“State of West Bengal v. Kesoram Industries Ltd”**, it was observed by the Constitutional Bench that:

*“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 in to any treaty be it bilateral or multilateral with any other country or countries”.*

**“Jurisdiction of the Union in relation to territories outside India”<sup>7</sup>-**

*“The Government of India may by agreement with the Government of any territory not being part of the territory of India undertake any executive, legislative or judicial functions vested in the government of such territory, but every such agreement shall be subject to, and governed by, any law relating to the exercise of foreign jurisdiction for the time being in force.”*

**“Bar to interference by courts in disputes arising out of certain treaties, agreements, etc.”<sup>8</sup>-**

*“Notwithstanding anything in this constitution but subject to the provisions of Article 143, neither the Supreme Court nor any other court shall have jurisdiction in any dispute arising out of any provision of treaty, agreement, covenant, engagement, sanad or other similar instrument which was entered into or executed before the commencement of this constitution by any ruler of an Indian State and to which the Government of the Dominion of India or any of its predecessor Governments was a party and which has or has been continued in operation after such commencement, or in any dispute in respect of any right accruing under or any liability or obligation arising out of any of the provisions of this constitution relating to any such*

<sup>5</sup> INDIA CONST. Art. 253

<sup>6</sup> Maganbhai Ishwarbhai Patel v. Union of India, AIR 1969 SC 783 (India).

<sup>7</sup> INDIA CONST. Art. 260.

<sup>8</sup> INDIA CONST. Art. 363.



treaty, agreement covenant, engagement, sanad or other similar instrument.” This Article has barred the jurisdiction of the court to interfere or legislate on a matter which has been included in a treaty or agreement, which was entered into by the rulers of India before or after the formation of the Constitution, and also barred to exercise jurisdiction on the covenants entered into by the Princely States. In **“Maharaja Pravir Chandra Bhanj Deo v. The State of Madhya Pradesh”**, it was held *“any dispute arising out of the Merger Agreement, or the Instrument of Accession was beyond the competence of the courts to enquire into.”*

**“Extent of laws made by Parliament and by the Legislatures of States”<sup>9</sup>-**

*“(1) Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the legislature of a state may make laws for the whole or any part of the state.”*

*“(2) No law made by the Parliament shall be deemed to be invalid on the ground that it would have extra territorial operation.”*

**“Subject matter of laws made by Parliament and the legislatures of the state”<sup>10</sup>-**

*“(1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List – I in the Seventh Schedule (in this Constitution referred to as the Union List)”*

Article 245 and 246 has given extensive powers to the Union to legislate on the matters specified in the Union List and in the List I. The following matters have been enumerated relating to the International Law:

- a. *“Foreign affairs; all matters which bring Union into relation with any foreign country (entry 10)”*
- b. *“Diplomatic, Consular and trade representation (entry 11)”*
- c. *“Union Nations Organisation (entry 12)”*
- d. *“Participation in International Conference, Associations and other bodies and implementing of decisions made there at (entry 13)”*
- e. *“Entering into treaties, agreements and conventions with Foreign Countries (entry 14)”*
- f. *“War and Peace (entry 15)”*
- g. *“Foreign jurisdiction (entry 16)”*
- h. *“Citizenship, naturalization and aliens (entry 17)”*
- i. *“Extradition”*
- j. *“Admission into, and emigration and expulsion from India, passports and visas*
- k. *Pilgrimages to places outside India (entry 20)” and*
- l. *“Piracies and crimes committed on the high seas or in the air (entry 21)”*

**“Continuance in force of existing laws and their adaptation”<sup>11</sup>-**

*“(1) Notwithstanding the repeal by this constitution of the enactments referred to in Article 395 but subject to the other provisions of this Constitution, all the laws in force in the territory of India immediately before the commencement of this Constitution shall continue in force therein in until altered or repealed or amended by a competent legislature or other competent authority. This Article has treated the Pre-Constitutional laws as enforceable and they will remain in force until and unless the same are not inconsistent with the provisions of the*

<sup>9</sup> INDIA CONST. Art. 245.

<sup>10</sup> INDIA CONST. Art. 246.

<sup>11</sup> INDIA CONST. Art. 372



*Constitution. It has given force to all the British laws, enacted before the Constitution came into force. The international customs and laws have been given weightage by this provision and the same can be treated as the law in the country until and unless it is inconsistent with the municipal or domestic law of the country.”*

### **CHAPTER 3: CASE LAWS**

There have been numerous cases where the International Law and its instruments have been used by the judiciary to provide justice to the parties. Though the direct application of the international law is not possible in India as we have differentiated between the municipal and the international law, and the same can only be applied where the Parliament has incorporated the same in our statute books. There are some landmark judgments in which the importance of the international conventions has been appraised, and due importance has been given to them to provide justice to the litigants.

#### **1.) Vishaka v. State of Rajasthan<sup>12</sup>**

##### **Facts:**

Bhanwari Devi, a social activist in Rajasthan was brutally raped by men in front of her husband who took revenge from her as she tried to stop a child marriage of Gujjar community and the matter was reported to the police. The gang rape was not taken seriously by the authorities, no proper medical examination was done, and the rapists were discharged. However, the High Court held it to be a case of gang rape and the offenders were punished.

After such incidents went on a rise, a PIL was filed by the NGOs and women workers raising concern over the incidents of sexual

harassment at workplace. It was held by the Supreme Court that the women have a Fundamental Right guaranteed under Article 14, 19 and 21 to work with dignity, and the right not to get sexually harassed by the perpetrators. The court has also focused on gender equality, right to profession, and has cast a duty upon the employers to make sure that the women do not get sexually exploited at workplace.

At that point of time, India did not have any proper guidelines or laws relating to sexual harassment, however the court adopted a wider approach to the International law getting inclusive in the domestic law and released a series of guidelines based on the CEDAW model. The CEDAW has prohibited the discrimination in the workplace in the following manner:

**Article 11(1)(a,f):** The right to work and the right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction

**Article 24:** “States parties undertake to adopt all necessary measures at the national level aimed at achieving the full realization of the rights recognized in the present Convention.”

**General Recommendation No. 19:** On the elimination of violence against women.

The other international covenants which were relied in this case by the Supreme Court were:

- 1. ICCPR - Article 15:** “No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be

<sup>12</sup> Vishaka v. State of Rajasthan, AIR 1997 SC 3011 (India).



*imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.”<sup>13</sup>*

- 2. Beijing Declaration - Article 24:** *“Take all necessary measures to eliminate all forms of discrimination against women and the girl child and remove all obstacles to gender equality and the advancement and empowerment of women”<sup>14</sup>*

As a result, the *“Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2006”* was enacted based on the guidelines laid down by the Supreme Court.

## **2.) Jeeja Ghosh v. Union of India<sup>15</sup>**

### **Facts:**

In this case, Jeeja Ghosh is a woman with disability, suffering from cerebral palsy, who is a social worker herself and works for the rights of the disabled persons in an NGO named ADAPT-All Disabled Person Together. In 2012, she boarded a flight (Spice Jet) to Goa for a conference, but she was forcefully made to de-board the flight by the flight attendants on the Captain’s order. She could not attend the conference where she had the opportunity to express her views on the lives of the disabled person, and many

people looked onto her for her motivational speeches. She felt extremely humiliated on being treated like this for no particular reason, and she could not sleep for days after this shocking incident took place. The refund amount was less than Rs. 1500, which added fuel to the fire.

The petitioner submitted her case to the Court where she pleaded that this Act was against the *“Civil Aviation Rules, 2008”* and was also against the *“People with Disabilities Act, 2005”*. Moreover, she pleaded that her fundamental right under Article 21 has been infringed along with her right under Article 19(1)(g).

In this case, various international instruments were taken in consideration by the Court while deciding the case;

**UNCRPD** was discussed which reads as follows:

**Article 5:** *“State Parties shall prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds. In order to promote equality and eliminate discrimination, State Parties shall take all appropriate steps to ensure that reasonable accommodation is provided.”*

**Article 9:** *“To enable persons with disabilities to live independently and participate fully in all aspects of life, State Parties shall take appropriate measures to ensure persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to*

<sup>13</sup> UN General Assembly, International Covenant on Civil and Political Rights, <http://www.un-documents.net/iccpr.htm>

<sup>14</sup> UN, Fourth World Conference on Women Beijing Declaration,

<https://www.un.org/womenwatch/daw/beijing/platform/declar.htm>

<sup>15</sup> Jeeja Ghosh v. Union of India, (2016) 7 SCC 761



information and communications, including information and communications technologies and system, and to other facilities and services open or provided to the public.”

### **Vienna Convention on the Law of treaties, 1963:**

**Article 27:** “State party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.”

The Biwako Millenium Framework for Action Towards an Inclusive, Barrier-Free and Rights-Based Society for Persons With Disabilities in Asia and the Pacific, published in 2002 and signed by India as well, states that existing land, water and air public transport systems (vehicles, stops and terminals) should be made accessible and usable as soon as practicable.

The Hon’ble Court agreed to the contentions of the petitioner and awarded her a compensation amounting to Rs. 10,00,000.

### **3.) Nilabati Behara v. State of Orissa<sup>16</sup>**

This case was dealing with granting of compensation in case of custodial death and the Court took the backing of Article 9(5) of the ICCPR.

### **4.) Chairman Railway Board v. Chandrima Das<sup>17</sup>**

This case dealt with the rape of the foreigners in our country, and here also, the court took the backing of the UDHR and other

international conventions in order to provide justice to the parties.

**5.)** In “**Vellore Citizens Welfare Forum v. Union of India, 1996**”<sup>18</sup>, the court said that “there is no difficulty in accepting CIL, not contrary to domestic law, as part of the Indian legal system. Although both treaties and CIL impose equally binding obligations on a country, unlike treaties it is often not easy to ascertain whether a norm has indeed attained the status of CIL. A norm becomes part of CIL only if states customarily follow that norm from a sense of legal obligation.”<sup>19</sup>

## **CHAPTER 4: IMPACT OF INTERNATIONAL LAWS ON DOMESTIC LAWS**

**Environmental Law:** To preserve and protect the environment, India has enacted various legislations by applying the principles of International Law after the Stockholm Conference. Such legislations are “*Water (Prevention and Control of Pollution) Act 1974, the Air (Prevention and Control of Pollution) Act 1981, and the Environment (Protection) Act 1986. These legislations along with other laws, like the Forest Act, 1927, the Prevention of Cruelty to Animals Act, 1960, the Wildlife (Protection) Act, 1972, Forest (Conservation) Act, 1980, the Public Liability Insurance Act, 1991, the National Environment Tribunal Act, 1995, the National Environment Appellate Tribunal Act, 1997 and the Biological Diversity Act, 2002*”. Impact of international law on India’s environmental law was highly beneficial as

<sup>16</sup> Nilabati Behara v. State of Orissa & Ors. AIR 1993 SC 1960 (India).

<sup>17</sup> Chairman Railway Board v. Chnadrima Das, (2000) 2 SCC 465 (India).

<sup>18</sup> Vellore Citizens Welfare Forum v. Union of India, AIR 1996 SC 2715 (India).

<sup>19</sup> P. Ranjan, Anmolam, F. Ahmad, Is The Supreme Court Confused About The Application of International Law (Sep. 28, 2016), <https://thewire.in/law/supreme-court-international-law>



now clean environment is a fundamental right of every citizen under the Indian Constitution.<sup>20</sup>

### **Intellectual Property Rights:**

Developments in international law led to the enactment of IPR system in India. Now India is a member of the “*World Intellectual Property Organisation (WIPO)*”, and party to the “*World Trade Organisation (WTO)*” managed Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS Agreement). Thus, Indian domestic laws are based on the model of international IPR Regime. In this regard there are various legislations like “*The Patent Act, 1970, The Copyright Act, 1957, The Trade Marks Act, 1999, The Design Act, 2000 & The Geographical Indications of Goods (Registration and Protection) Act, 1999.*”

**ADR:** Based on the Model Law on “*International Commercial Arbitration, 1985 and the Conciliation Rules, 1980*” adopted by the United Nations Commission on International Trade Law, to settle the commercial disputes in the country. India enacted the Arbitration and Conciliation Act, 1996.

**Cyber Law:** Information Technology Act, 2000 governs the Cyber Laws in India which was based on the “*UNCITRAL Model Law on Electronic Commerce (E-Commerce).*” To help the Indian Domestic Laws, various International Treaties are being used. India has signed and ratified such treaties for the following needs and use:

- To fill the lacunas or gaps in the current existing law of the State
- To interpret the already existing laws

- If a stance is taken by the court, which does not find its place in the Indian laws, then the international laws are used to justify the same
- Implementation of the International treaties or conventions or covenants in case they do not stand in conflict with the national laws
- To make sure that the provisions of the international instruments are respected duly, it is necessary to pay attention to the same to maintain diplomatic relations.
- The international law is constantly changing if we compare it to the already existing national laws, and the same can be interpreted by the judiciary to bring in some substantive changes.

**Space Law:** India has been an active participant in all the conferences related to space laws as India is one of the founder members of the UNCOPOUS. India has played an important role in the development of international space law, but India does not have domestic laws dealing with the subject. This is an appalling condition to see that India is the leading country in space technology sector but still the deficiency in the legal system exists.

### **CHAPTER 5: CONCLUSION**

The Constitution has given enough liberty to the Judiciary and the Parliament to make use of the excellent and the progressive provisions in the treaties. It is very important for India to maintain its domestic laws at par with the international laws in order to progress in the society. The Indian Society has always accepted the major changes in the legal system with open arms and has adapted themselves to the same. One fact is that the society can be seen progressing only if it is growing as per the international standards

<sup>20</sup> INDIA CONST. Art. 21



\*\*\*\*\*

which have been laid down in the international instruments. We see nations breaking the rules and regulations made by any treaty but then they are highly discouraged by the United Nations (UN). As seen above, India has enacted various legislations and acts which are based on the Model Law of various International Laws and regimes. India is taking various international treaties into consideration to help their own domestic laws. The International law can be made applicable only if it does not contravene the already existing laws of the country. In "*Jolly George Vergese v. Bank of Cochin*"<sup>21</sup>, Justice Krishna Iyer has cleared it out that until the municipal Law is changed to accommodate the treaty, what binds the courts is the former not the latter. A similar kind of approach has been adopted by the Courts and the Parliament in our country. India follows a dualistic approach and the international laws cannot be directly invoked in any particular case unless the same has been incorporated in our provisions. The treaties which have been signed by India are required to be followed in good faith, but also the same cannot be invoked directly, in case it contravenes the domestic law of the land. But the good part is that India has adopted a liberal approach here, and has always tried to incorporate the legal principles of the international law in our domestic laws, and has given utmost importance to them. Various international instruments are in par with the current laws be it the domain of human rights, environmental laws, trade laws, cyber laws, customary practices, alternate dispute resolution, intellectual property rights, or other issues.

<sup>21</sup> *Jolly George Vergese & Anr v. The Bank of Cochin*, AIR 1980 SC 470 (India).