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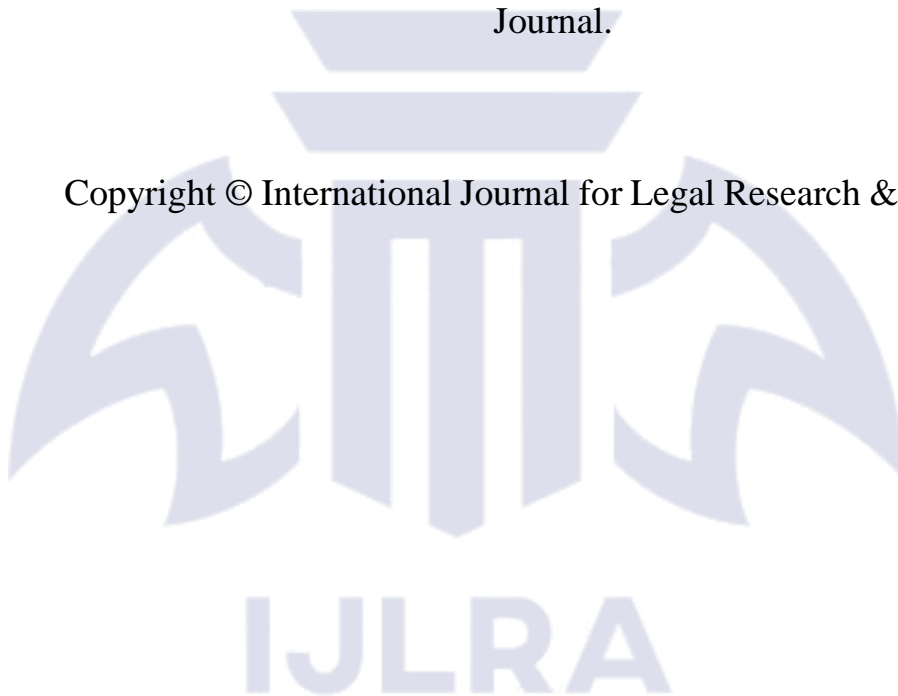
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Megha Middha, Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar

Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to

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Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board



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Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi.(2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on

Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8Articles in various reputed Law Journals. Conducted 1Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



participated in several workshops on research methodology and teaching and learning.

Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-I, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diplomain IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He

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THE IMPACT OF INTERNATIONAL LAW'S ON DOMESTIC LEGAL SYSTEM

AUTHORED BY - GOPAL PALEKAR

SL21ULBBO31

SCHOOL OF LAW

MAHINDRA UNIVERSITY

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ABSTRACT

This article delves into the topic of international law in the context of the Indian domestic legal system. It highlights India's significant contributions to the field of international law, yet notes that the country is hesitant to draft covenants that restrict their freedoms. The article examines how international law is implemented in India and the conditions assessed by international law. It also criticizes the fundamental contradiction in approaches towards convention-making power at the domestic level. Furthermore, the role of the legal bar in the implementation of international law in India is explored. Ultimately, the article provides suggestions for a new legal framework to enhance the performance of international law in India. It endeavors to emphasize the importance of studying state practice as a way to validate actuality and develop international morals and ethics while also highlighting how India's adherence to international law manifests in its legal system. Finally, the article notes that there are no specific conditions assessed by international law to fulfill scores to incorporate covenants or customs into domestic legal systems. It concludes by reiterating that implementing international law requires navigating complex legal systems and ensuring effective coordination between domestic legal systems and international laws.

I. INTRODUCTION

This article explores the role of transnational law and its interaction with domestic legal orders in India. It delves into the process of how transnational law is incorporated into the Indian legal system and argues that India has made significant contributions to the development of transnational law¹. transnational law in fields such as human rights, environmental law, arbitration, and trade law. However, India still shows reluctance in drafting covenants that limit its sovereignty and explicitly grant domestic courts judicial enforcement power. Through an analysis of the contradictions in convention-making power and approaches at the domestic level, this paper examines the role of the bar in perpetuating transnational law in India. It addresses the conditions assessed by transnational law and examines the relationship between transnational law and domestic law, proposing a new legal framework for better implementation of transnational law. Throughout this article, the terms "transnational law" and "domestic law" are frequently used. Therefore, it is important to provide a clear definition of these terms. This definition will assist readers in understanding the legal issues surrounding the implementation of transnational law within Indian domestic law. According to the United Nations, transnational law refers to the legal responsibilities that states carry in their interactions with each other and their treatment of individuals within their respective boundaries. The scope of transnational law encompasses various issues of global concern, such as human rights, demilitarization, transnational crime, refugees, migration, issues of nationality, treatment of prisoners, use of force, conduct of war, and more. It also covers the regulation of global resources such as land and sustainable development, international waters, outer space, global shipping, and world trade. Transnational law is divided into two different categories: private and public. Private transnational law deals with issues between private entities, such as individuals or corporations, that have a significant relationship with more than one country. For example, a lawsuit arising from a gas leak from a factory owned by Union Carbide in India would fall under private transnational law. Private transnational law addresses conflicts between public laws and determines which country's laws are applicable to specific situations. On the other hand, public transnational law includes the laws, rules, and principles that govern the conduct of nation-states and international organizations among themselves, as well as the relationships between countries and international organizations with individuals, both natural and juridical. Public transnational law is sometimes referred to as the "law of nations" or simply "international law." It covers various areas of law, such as maritime law,

¹ Virendra Kumar Ahuja. (2016). *Public International Law*.

commercial law, political law, environmental law, human rights law, and humanitarian law. This article primarily focuses on public transnational law. It is also important to note that public transnational law should not be confused with private transnational law. Additionally, there are five sources of transnational law: covenants, custom, general principles of law, judicial opinions, and legal education. In conclusion, understanding the definitions and differences between transnational and domestic law and their various categories is crucial in comprehending the legal complexities of transnational issues within domestic law. This article highlights the significance of studying state practice as a means of supporting transnational morals and norms, while also identifying the peculiarities of its application in the Indian context due to its adherence to transnational law. The paper examines the incorporation of transnational law in the Indian domestic system, which may be accomplished through ratifying transnational covenants or following customs. However, there are no specific conditions mandated by transnational law for incorporating covenants or customs into domestic legal systems, and the process of incorporation is generally not governed by transnational law. Each state follows its own process of incorporation, with indigenous values and customs also playing a role. Domestic courts may choose to ignore transnational law until incorporated into domestic law, and the incorporation of transnational law ultimately depends on the policy objectives and values of a state's domestic legal system. Nonetheless, a state cannot disregard its transnational obligations before international courts. State sovereignty is a crucial issue in the implementation of transnational law, with scholars stating that the restatement of transnational commands into domestic legal norms is part of a state's sovereignty, and they may be unwilling to surrender this to transnational control. States have a wide range of freedom in the choice of means and styles to fulfill their transnational law obligations, but sometimes the involvement of state bodies entrusted with promoting legislation is necessary.

II. DEFINITIONS

The term "transnational law" and "domestic law" is constantly and materially employed throughout this Composition. As similar, there's a need to stipulate to a working description because of the term's significance then. This primary description should help compendiums address the legal issues underpinning the perpetration of transnational law in Indian domestic law.

III. THEORIES ON THE RELATIONSHIP BETWEEN INTERNATIONAL LAW AND DOMESTIC LAW

The theory of monism suggests that transnational law and external law share a common basis and are therefore part of the same system of law. This view considers both as part of a universal set of legal rules that applies to all individuals, regardless of their nationality. In a monist system, transnational law is automatically incorporated into domestic law without the need for separate measures to be taken. This means that international law, once ratified, becomes part of the domestic legal system. The proposition maintains that domestic law is subordinate to transnational law, which allows the ICC Statute to be applied and arbitrated in public courts. However, there are some exceptions to the monist approach. In some cases, the direct incorporation of transnational law into domestic law takes place at the time of ratification. Alternatively, in other countries, direct incorporation only occurs for certain types of executing covenants. Despite these exceptions, the general principle of monism remains a fundamental aspect of international law.

Monism Theory suggests that transnational and external law are just one in nature, and are part of a single universal body of legal rules that governs us all, either inclusively or separately. So, according to Monism Theory, it's like everyone's playing the same game in different leagues--no need to incorporate transnational law into domestic law! On the other hand, Dualism Theory looks at these two legal systems as two different entities entirely. Before transnational law can become domestic law, Dualists believe it needs to be translated into language state legislation can understand. It's like we're all playing different games with our own special rules! So, if you want the ICC Statute to apply in the public court, you'd better learn how to speak politico-legalese first under Dualism Theory.

Covenants are an essential source of transnational law and India is a party to more than one hundred and sixty such agreements that cover various aspects of law such as air, space, and maritime law.⁹³ The Vienna Convention on the Law of Treaties defines a "convention" as an international agreement concluded between States in written form and governed by international law, regardless of its designation.⁹⁴ However, according to the Indian Supreme Court's interpretation in *State of W.B.v. Kesoram Industries Ltd.*, 2004, an agreement entered into by India cannot become a part of the domestic law unless the Parliament passes a relevant Act under Article 253.⁹⁵ The principle of *pacta sunt servanda* enshrined in Article 26 of the Vienna Convention on the Law of Treaties states that

every convention in force is binding on the parties to it and must be performed by them in good faith.⁹⁶ In practice there are no exceptions to this fundamental rule which states that countries are free to determine their international obligations under international law.⁹⁷

The doctrine contained in Articles 26 and 27 of the Vienna Convention, 1980 embeds the principle that every convention must be respected in good faith by all parties involved.⁹⁸ Consequently, a party cannot employ its domestic laws as an excuse for failing to abide by their treaty commitments.⁹⁹ Numerous judicial decisions have confirmed that provisions derived from international covenants may be applied domestically to extend their protections.¹⁰⁰ Indian courts often cite conventions and other elements of international law when interpreting domestic legislation.¹⁰¹ As noted by *Vishakav v State of Rajasthan* (1997), with respect to gender issues arising concerning foreign nationals, domestic courts should turn to international conventions and principles when interpreting national laws if there is no inconsistency between them and there is a gap in national legislation.¹⁰² In this case, international law was used as a guide for defining national legislation; additionally it was determined that international conventions compatible with basic rights should be interpreted “to broaden their scope”¹⁰³

In 2014 National Legal Services Authority v Union of India recognized transgender as a third gender category -¹⁰⁴ yet declared that when Indian legislature clashes with international regulations then Indian courts will give precedence to national over international laws; however where there is no inconsistency, external courts should recognize rules from international sources¹⁰⁵ Similarly, *Neelabati Beherav State of Orissa* (1993) relied upon Article 9(5) of Covenant on Civil and Political Rights (1966) for compensating victims suffering from custodial death¹⁰⁶ While *Chairman Railway Board v Chandrima Das* (2000) invoked UDHR principles while expanding scope Article 21 Constitution -¹⁰⁷ thus confirming principle that national court can accept rules derived from external sources¹⁰⁸

Finally, 2017 report United Nations country team lauded whole-of-Government approach implementation Sustainable Development Goals¹⁰⁹ including environmental impact assessments Forest Conservation Act¹¹⁰ One issue highlighted Third Universal Periodic Review 2017 suggests Indian government could ratify several treaties¹¹¹ especially concerning use lethal force security personnel¹¹² As per Section 46 Code Criminal Procedure Law enforcement participants authorized

all means necessary execute arrest¹¹³ Therefore United Nations Special Rapporteur advocated review legislative framework incorporate principles moral rights conforming external regulations¹¹⁴ Subsequently Supreme Court India specified even when two types regulations conflict court bound refer domestic act¹¹⁵ Nonetheless India unable draft covenants constraining leeway expressly authorizing judicial enforcement¹¹⁶ Therefore it essential India reconcile diverging legislations¹¹⁷ whenever feasible embrace transnational principles¹¹⁸

IV. CONSTITUTIONAL PROVISIONS FOR INTERNATIONAL LAW

Before exploring the issue of operation of transnational law in the Indian environment, a brief overview of the indigenous provision would be useful. The effectiveness of transnational law depends upon the will of the countries and the nature of the indigenous distribution of power between the different situations of governmental methodology of perpetration of transnational covenants by state parties in their external and internal autonomous spheres. ⁶² Under the Constitution of India, there's no specific and definite reference to the status of transnational law in the Indian domestic legal system; it also doesn't explicitly bear or authorize the bar to draw on transnational law.⁶³ The Indian Constitution ensures that in the entire Indian administration, high regard shall be given to transnational law and also to transnational morality.⁶⁴ The Indian Constitution, espoused on 26th November 1950, was greatly told by the values imbibed in The Universal Declaration of Human Rights(UDHR). espoused by the United Nations General Assembly, the UDHR's primary motive is to cover and save the introductory abecedarian rights which all mortal beings are entitled to. still, there are several vittles in the Constitution on convention- making powers. According to the Indian Constitution, ratified covenants don't automatically have the force of law in domestic courts, but the Constitution also provides that the Indian Government adheres to its convention scores. ⁶ Composition 51(c) of the Indian Constitution says, foster respect for transnational law and convention scores in the dealings of organized peoples with one another. The acceptance of emendations moved by Dr. Ambedkar, H.V. Kamath, Ananthasayanam Ayyangar and P. Subbarayan, draft Composition 40 was espoused by the Constituent Assembly in its present form as Composition 51. ⁶⁶ All the speakers emphasized the commitment of India to promoting International Peace and Security and adherence to principles of International Law and Treaty scores during the debate.⁶⁷ Significantly, the clause ' c ' of Composition 51 mentions explicitly ' transnational law ' and'

convention scores' independently. According to Prof. C.H. Alexandrowicz the expression 'transnational law' then represents customary transnational law and 'convention scores' and stands for scores arising out of transnational covenants.⁶⁸ This interpretation seems logical in the environment of the textbook of the draft of Article 40, especially when one considers the stations of courts in India on questions of transnational law.⁶⁹ Also, the Composition 51(c) treats both transnational customary law and convention scores on the same footings.⁷⁰ The Indian Constitution is silent on the status of transnational law in its domestic legal system. It doesn't obligate or authorize the bar to draw on transnational law in its decision timber.

V. TREATIES

Covenants are primary sources and an important part of transnational law. India is a party to further than one hundred sixty covenants and conventions dealing with different fields of law similar as air law, space law and maritime law.⁹³ The Vienna Convention on the Law of Treaties defines a convention" as an transnational agreement concluded between States in written form and governed by transnational law, whether embodied in a single instrument or in two or further affiliated instruments and whatever its particular designation." ⁹⁴ still, under the Indian Supreme Court's interpretation in *State of W.B. v. Kesoram Industries Ltd., 2004*, a convention entered into by India can not come a law of the land and it can not be enforced unless Parliament passes a law under Composition 253.⁹⁵ As banded over, the principle of *pacta sunt servanda* enshrined in Composition 26 of the Vienna Convention on the Law of covenants states that "Every convention in force is binding upon the parties to it and must be performed by them in good faith." ⁹⁶ still, covenants should be performed in good faith². Still, there are no exceptions to the principle of the introductory rule that states are free to determine their transnational scores under transnational law. ⁹⁷ It's said that the Vienna convention is the convention of conventions. The doctrine of *pacta sunt servanda* contained in composition 26 and composition 27 of the- Vienna convention, 1980 lays down that every convention in force is binding upon the parties to it and must be performed in good faith.⁹⁸ A party may not bring the vittles of its internal law as a defense for its failure to perform a convention.⁹⁹ colorful judicial pronouncements have made it clear that the provision of transnational covenants might be read into being Indian law to expand their protections.¹⁰⁰ The Indian courts

² *uphold International Law* (no date) *United Nations*. Available at: <https://www.un.org/en/our-work/uphold-international-law> (Accessed: 03 May 2023).

regularly cite covenants and other vittles of transnational law for indigenous interpretation. 101 For illustration, in 1997 Vishakav. State of Rajasthan, case on sexual importunity of women at the plant countries," regard must be had to transnational conventions and morals for unriddling domestic law when there's no inconsistency between them and there's a void in the domestic law." 102 The court used transnational law to find the meaning of domestic law, and also held that transnational conventions not inconsistent with abecedarian rights must be read" to enlarge the meaning and content thereof" 103 In 2014, NationalLegal Services Authorityv. Union of India case honored ambisexual as a third order of gender. 104 The court said" If congress has made any legislation which is in conflict with transnational law, also Indian courts are bound to give effect to the Indian law, rather than transnational law. still, in the absence of contrary legislation, external courts in India would admire the rules of transnational law." 105 In 1993, Neelabati Beherav. State of Orissa, the court reckoned upon Composition 9(5) of the Covenant on Civil and Political Rights(1966) while granting compensation to the victim for the matter of custodial death. 106 Also, in 2000 in the case of ChairmanRailway Boardv. ChandrimaDas, the court employed the principles of the UDHR while widening Composition 21 of the Constitution's compass by furnishing security to rape victims of foreign citizens. 107 The Indian courts have incorporated transnational law to fulfill its obligation by interpreting transnational law into domestic legislation.108 Hence, the Indian bar has played a visionary part in enforcing India's transnational scores under transnational covenants, especially mortal rights, development, and environmental law. 109 For illustration, in 2017 periodic report of India's UN country platoon ate the" whole- of- Government" approach for the perpetration of Sustainable Development Goals.110 The platoon appreciated India's commitment to addressing climate change; the country platoon appertained to enterprises at the relaxation of morals for environmental impact assessments and operation procedures under the Forest Conservation Act.111 still, in the third universal periodic review 2017, the United Nations country platoon indicated that India didn't apply recommendations contained in the former reviews regarding the ratification of several transnational instruments.1 1 2 For illustration³, the Special Rapporteur took note of reports regarding deaths performing from the inordinate use of force by security officers with little adherence to the principles of proportionality and necessity as defined under transnational mortal rights law norms.1 1 3 Section 46 of the Criminal Procedure Code authorized law enforcement officers to use" all means necessary" to perform an arrest forcefully defied.1 1 4 farther, it was recommended that

³ *What is international law?* (2016) Findlaw. Available at: <https://www.findlaw.com/hirealawyer/choosing-the-right-lawyer/international-law.html>

India review the law and legislation in all countries regarding the use of force, including the exceptional use of murderous force, by all security officers to insure compliance with transnational mortal rights law principles. 115 In the below- banded cases, the Supreme Court of India explained that if transnational law conflicts with the domestic law also the courts will be bound to give effect to domestic law. still, India remains reticent to draft covenants that circumscribe this free rein and that seek expressly to accord domestic courts a judicial enforcement part⁴. The covenants which are harmonious with domestic law are per se part of domestic law and don't need legislative Act for their perpetration. 116 India shouldn't shirk transnational law because it conflicts with domestic law. India should look for ways to apply transnational laws when it conflicts with domestic laws.

VI. CONCLUSION

In conclusion, the ever-evolving relationship between state practice and transnational law is complex and vague. With the introduction of the Indian Constitution, there is an established frame for transnational conventions to be implemented into the domestic legal system. The government of India holds exclusive power in entering and confirming any international covenants, while Indian courts may refer to transnational law when no contradiction exists between them and domestic law is lacking. Although this composition has offered four suggestions for a better implementation of transnational law in India's domestic system, further improvements can still be made.

⁴ *Library guides: New researchers' library guide: home* (no date) Home - New Researchers' Library Guide - Library Guides at University of Melbourne. Available at: <https://unimelb.libguides.com/research>