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The Impact of Globalization on Indian Constitutional Law, Including Role of International Human Rights Norms

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ABSTRACT

This paper explores how international human rights rules have played a contribution in the globalisation of India's constitutional legislation. Transnational law, which operates outside the borders of individual states, is the result of the convergence of formerly separate legal systems brought about by globalisation. There are a number of international agreements and treaties that govern the management of businesses internationally. The development of international entities like the International Court of Justice and International Criminal Court has also improved the enforcement of international law. Also, a new type of lawyers who focus on international law have emerged as a result of globalisation.

The Indian Constitution lays down not only the structure of administration but also the fundamental rights and obligations of people and the workings of the legal system, making it one of the most extensive and complex constitutions now in use. The colonial period saw the beginning of Indian constitutional law, and in 1885 the Indian National Congress was established to push for a new constitution that would grant Indians greater political power and freedoms. The request was granted and a federal form of government was established in India by the Government of India Act of 1935; the Constitution of India was ratified in 1949.

The author of this paper claims that the harmonisation of laws in different jurisdictions is a direct result of the effect international law has had on the evolution of India's constitutional law. One effect of globalisation may be the strengthening of laws protecting intellectual property. The paper argues that the role of law will evolve in light of growing international connections, and that legal systems will have to adapt to these new circumstances if they are to remain effective and relevant.

Keywords: *International human rights standards, transnational law, international law, international law, intellectual property rights.*

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I. INTRODUCTION

The process through which the economies, communities, and cultures of the globe become more interconnected with one another as well as more dependent on one another is referred to as globalization. It has had a significant effect on many other facets of society, including the legal system. This article will analyze the effects that globalization has had on the Indian legal system, especially the Indian Constitution, and how it has altered both the way we understand the law and how we put it into practice.

One effect that globalization has had is to bring previously disparate legal systems into harmony. Because of the increasing globalization of business, it is essential to have a standardized body of legislation that regulates how firms are run. This has led to the development of international treaties and conventions, the purpose of which is to bring the legal systems of various nations into conformity with one another. The “United Nations Convention on Contracts for the International Sale of Goods (CISG)”, for instance, is an example of a standard legislation that covers contracts for the sale of products between parties located in different nations.²

Globalization has resulted in the formation of a new body of law known as transnational law. This body of law is comprised of a collection of laws and concepts that extend beyond the confines of individual nations. Transnational law is not restricted to the laws of any one country; rather, it comprises a broad variety of legal standards that are recognized and implemented by various nations. This is because transnational law is not limited to the laws of any one country. For instance, the “Universal Declaration of Human Rights” is an example of a transnational legislation that many nations all over the globe have accepted and made part of their legal systems.³

Because of globalization, today's legal system is more difficult to navigate. Because of the increasing globalization of companies, they are forced to navigate different legal systems, which may be challenging and time-consuming. This has resulted in the rise of a new breed of attorneys that specialize in international law and are familiar with a variety of legal systems from across the world.

Globalization has led to an increase in the enforcement of international law, which is one of the many benefits of globalization. In order to ensure compliance with international law and hold

² Singh, A. P. (2008). Globalization And Its Impact on National Politics With Reference To India : An Overview Of Different Dimensions. *The Indian Journal of Political Science*, 69(4), 801–814. <http://www.jstor.org/stable/41856470>.

³ Id.

people as well as nations responsible for their conduct, several international bodies such as the “International Court of Justice (ICJ)” and the “International Criminal Court (ICC)” have been formed. The enhanced enforcement of international law has assisted in furthering global efforts to advance peace, justice, and respect for human rights.⁴

An rise in intellectual property protection is one consequence that may be attributed to globalization. Intellectual property is becoming more important to companies as a means of protecting their discoveries, designs, and brand names as the corporate world becomes increasingly worldwide. As a consequence of this, international treaties and conventions have emerged with the purpose of safeguarding intellectual property in a variety of nations.

The development of law has been significantly influenced by globalization. It has resulted in the harmonization of laws across various jurisdictions, the establishment of transnational law, increasing complexity, the enforcement of international law, and the protection of intellectual property. Furthermore, it has contributed to the development of transnational law. It is certain that the function of law will continue to develop in the face of increasing global connectivity; thus, it will be essential for legal systems to adjust to these shifting dynamics if they are to continue being useful and efficient.

II. DEVELOPMENT OF INDIAN CONSTITUTIONAL LAW

The Constitution of India is often recognized as one of the most comprehensive and detailed constitutions in use. The Constitution is the supreme law of the land, outlining not only the form of government but also the fundamental rights and duties of citizens and the workings of the judicial system. The development of Indian constitutional law over many decades has been fascinating and time-consuming. It's been a challenging and fascinating ride thus far.

Indian constitutional law is generally agreed upon to have originated during the colonial era. With the help of their colonial overlords, the British, the Indians were able to pass the Government of India Act in 1858.⁵ The Indian Reorganization Act established a legislative council and a system of representation for Native Americans. With the intention of expanding the powers of the legislative council and establishing indirect election, the act was amended twice, first in 1861 and again in 1892. The reserved and transferred topics split the administrative domain that was set up by the Government of India Act of 1919. In addition, this

⁴ Rizvi, G. (2007). Emergent India: Globalization, Democracy, and Social Justice. *International Journal*, 62(4), 753–768. <http://www.jstor.org/stable/40204335>.

⁵ Singh, M. P. (2005). Federalism, Democracy and Human Rights: Some Reflections. *Journal of the Indian Law Institute*, 47(4), 429–446. <http://www.jstor.org/stable/43951994>.

law granted the Indian parliament certain limited authority.

In 1885, the Indian National Congress was formed to advocate for a new constitution that would give Indians more political representation and liberties. More participation in India's government was another demand. The concept of a constituent assembly to draft a new constitution gained popularity in the 1920s, and it was included in the Nehru Report that came out in 1928. The desire was met by the “Government of India Act of 1935”, which granted the request and established a federal system of administration in India. Voters in India chose their Constituent Assembly representatives in 1946; they would go on to draft India's constitution. Dr. B.R. Ambedkar presided over the assembly, which was comprised of representatives chosen from various communities and areas all throughout India. Striking a balance between the interests of the numerous various organizations, religions, and geographical locations was a challenging task for those working on the constitution.⁶

The Constitution of India was finally passed on November 26, 1949, and it went into effect on January 26, 1950. All citizens were assured protection of their constitutionally protected liberties, and a strong federal government was established. The Constitution established an independent judiciary and established a system of checks and balances to prevent any one arm of government from usurping the powers of the other two. Since the Indian Constitution was ratified in 1950, there have been a number of landmark court judgments and legislative measures that have significantly advanced the field of Indian constitutional law.⁷

The Supreme Court of India has had a vital role in interpreting the Constitution and protecting citizens' rights. Several seminal decisions have shaped the evolution of Indian constitutional law, including the Kesavananda Bharati case⁸ (which established the “basic structure doctrine” of the Constitution), the Minerva Mills case⁹ (which upheld the supremacy of the Constitution over parliamentary sovereignty), and the ADM Jabalpur case (which led to the inclusion of the “right to life and personal liberty” as fundamental rights).¹⁰ As India's social and political climate evolved through time, so too did the country's founding document, the Constitution. The 73rd and 74th Amendments created the notion of local self-government and handed increased rights to the rural and urban local authorities, respectively; the 42nd Amendment, which restored some of the powers of the court and curtailed the powers of the central

⁶ Supra note 1, at 812.

⁷ Narayana, M. R. (2010). Impact of Economic Globalization on Urbanization: A Comparative Analysis of Indian and Select Global Experiences. *India Quarterly*, 66(1), 91–116. <http://www.jstor.org/stable/45072988>.

⁸ (1973) 4 SCC 225

⁹ AIR 1980 SC 1789

¹⁰ AIR 1976 SC 1207

government; and so on. Some of the most important changes are those listed above.

Therefore, it is important to note that the development of Indian constitutional law has been a complex and time-consuming process. As India's social and political landscape has evolved, so too has the country's founding document, the Constitution of India. It's a living document that's continually being revised to account for new information. The Indian judiciary and political leadership have played crucial roles in interpreting and updating the country's constitution to keep it in line with modern realities and the wishes of the people it governs.

III. INTERNATIONAL NORMS THAT INFLUENCE OUR NATIONAL LEGAL SYSTEM

One of the most important documents in the annals of human rights is known as the “Universal Declaration of Human Rights (UDHR)”. This text was prepared by delegates from a variety of nations all around the globe, each of whom came from their own unique legal experience. It is the first text that set out with the intention of ensuring that basic human rights be respected on a global scale. Since its adoption in 1948, the UDHR has been rendered into a total of 500 different languages, making it the document with the highest rate of translation in the whole globe. “Chairman, Railway Board v. Chandrima”¹¹ is a historic case that demonstrates how the Universal Declaration of Human Rights is used in our national legal system. It was held by the Supreme Court that our Constitution guarantees all of the basic and fundamental human rights set out in the UDHR, 1948, to its citizens and other persons.¹²

This was done while putting an emphasis on the applicability of the Universal Declaration of Human Rights and the principles thereof in the domestic jurisprudence. This was done while putting an emphasis on the applicability of the Universal Declaration of Human Rights and principles thereof in the domestic jurisprudence. The section of the Constitution devoted to the discussion of “Fundamental Rights” may be found in Part III of the document. This section's goal is to protect fundamental civil liberties from the shifting sands of political debate and to put them out of reach of political parties that, by virtue of their electoral majorities, could one day constitute the government at the national or state level. The court has made the observation that the Human Rights Jurisprudence is based on the UDHR, which was published in 1948 and has gained international recognition as the “Moral Code of Conduct” having the United Nations. This observation serves to further emphasize the significance of the UDHR, accepted by the “General Assembly”.¹³

¹¹ AIR 1973 SC 2720

¹² Supra note 4, at 430.

¹³ Bharati, R. (2009). “Cosmopolitanism, Globalization And Local Administration In India.” *The Indian Journal of Political Science*, 70(1), 65–75. <http://www.jstor.org/stable/41856496>.

It was not until 1989 that the “Convention on the Rights of the Child” was finally signed. 192 nations, except Somalia and the United States, have signed and ratified the treaty thus far. The tardy action taken on child rights is a disheartening indication of the callous attitude, and almost utter disdain, that has been shown toward the rights of this vulnerable group within society. The child is a victim in today's society of a wide range of atrocities, including sexual assault, torture, war, brutality, poverty, bonded labor, deprivation, and denial. Concerns have been raised about the state of children's health, in particular the prevalence of malnutrition among children who come from economically deprived parts of society. The use of children as laborers in India has a long and troubled history, and the exploitation of minors for the purpose of obtaining labor is a disturbing reality. There are still close to 150 million youngsters in this nation who are held against their will as slaves. The feeble and the underprivileged around the globe are often relegated to the status of mere footnotes in history. A youngster is perhaps the most vulnerable member of the global community, which is mostly comprised of adults. An all-encompassing piece of legislation that addresses the full scope of the problem of child labor from every angle—namely, prevention, prohibition, regulation, and rehabilitation—in order to realize the overarching goal of eradicating the practice of child labor is both an urgent necessity and a formidable obstacle. Under the provisions of Article 24 of the Constitution, it is unlawful to employ children less than 14 years old in any industry or mine or in any other occupation deemed to be dangerous. Moreover, measures for the protection of minors against exploitation and against the moral and material desertion are included in Art.39 clauses (e) and (f), as well as Art. 45.¹⁴

The primary organization tasked with advancing and safeguarding human rights is the “National Human Rights Commission”, which came into being as a result of the passage of the “Protection of Human Rights Act” in 1993. Moreover, the Act makes provisions for the formation of “Human Rights Courts” (hereinafter “HRC”) and “State Human Rights Commissions” (hereinafter “SHRC”) at the district level in each state. The Human Rights Act provides the NHRC with a wide mandate. Yet, the Commission is only able to make recommendations and does not have any effective enforcement mechanisms at its disposal. It is clear that victims of human rights violations are eager to bring their cases to the attention of the NHRC, as evidenced by the fact that the number of complaints filed with the NHRC increased from 496 in the first six months after the organization was established to 50,634 in the following year (1999–2000).¹⁵

¹⁴ Id.

¹⁵ Routh, S. (2011). The Judiciary and (Labour) Law in the Development Discourse in India. *Verfassung Und Recht in Übersee / Law and Politics in Africa, Asia and Latin America*, 44(2), 237–257. <http://www.jstor.org/stable/43239609>.

Integration of “International Law into Domestic Law and Its Position in Domestic Law The Geneva Conventions”, the “Genocide Convention”, the and the “Convention on the Elimination of All Forms of Racial Discrimination” are all relevant international human rights and humanitarian law treaties that India has ratified. The Constitution of India does not include any provisions that specifically regulate the integration of international law or the position of international law inside the Indian legal system.¹⁶

Nonetheless, one of the “Directive Principles of State Policy” is outlined in Article 51 (c), which states that “The State must endeavor to develop respect for international law and treaty commitments in the interactions of organized persons with one another”. It is not always the case that international accords are incorporated into domestic legal systems. They become part of the legal system in this country as a result of a legislative act. must be the case The ability to put foreign agreements into effect is reserved only for the Union. The common law of England serves as a model for the standing of customary international law inside domestic legal systems. In light of this, a rule of customary international law is considered legally obligatory in India so long as it does not directly contradict Indian law. In the case of “Gramophone Company of India Ltd v. Birendra Bahadur Pandey”¹⁷, it was held that comity of nations dictates whether it is permissible for rules of international law to be incorporated into municipal law even in the absence of explicit legislative sanction, provided that such rules do not directly contradict any acts of parliament. However, in the event that they do come into such a conflict, the sovereignty and integrity of the Republic, as well as the supremacy of the constituted legislatures in the process of making laws, may not be subjected to the rules of any external bodies, unless and until such time as the constituted legislatures themselves legitimately accept those external rules.¹⁸

IV. IMPACT OF INTERNATIONAL LAWS ON INDIAN CONSTITUTION

The Indian Constitution, which was ratified on the 26th of January in 1950, is the highest and most authoritative law in India. It outlines the basic rights, obligations, and guiding principles that each citizen of India is responsible for upholding, as well as the framework for how government is to be carried out. As a result of the many changes that have been made to the Constitution throughout the course of its history, it is now considered to be one of the most intricate and extensive constitutions in the whole world. The Indian Constitutional Law has

¹⁶ Sharma, C. K. (2021). *The Political Economy of India's Transition to Goods and Services Tax: na*. German Institute of Global and Area Studies (GIGA). <http://www.jstor.org/stable/resrep28523>.

¹⁷ 1984 AIR 667

¹⁸ Bhat, P. I. (2015). Comparative Method of Legal Research: Nature, Process And Potentiality. *Journal of the Indian Law Institute*, 57(2), 147–173. <http://www.jstor.org/stable/44782499>.

been significantly influenced by international law in significant ways. In this essay, we will discuss the influence that international law has had on the constitutional law of India.

From the beginning of the Indian Constitution, international law has played a significant role as an important impact on Indian constitutional law. Many concepts of international law have served as inspiration for the drafting of some articles that are included in the Indian Constitution. For example, the preamble of the Constitution enshrines the ideals of justice, liberty, equality, and fraternity. These are also the fundamental precepts of international law. In addition, a number of the basic rights enumerated in the Constitution were modeled by international legal norms. For instance, the right to life and personal liberty is protected by “Article 21 of the Constitution”. This right is also protected by the UDHR and other international human rights agreements.¹⁹

In addition to this, the Constitution recognizes the importance of international law in determining how its provisions are to be interpreted and applied. The state is tasked under the Constitution, namely Article 51(c), with promoting respect for international law and the duties of treaties. This indicates that Indian courts are permitted to take into consideration international law when they are interpreting local legislation.²⁰

The influence of international law on the legal system in India cannot be overstated. The international conventions and treaties that India ratifies are legally enforceable in Indian courts, and the effects of these international agreements are the same as those of India's own laws. The highest court in India, the Supreme Court of India, has ruled in a number of cases that the principles of international law are incorporated into Indian law and that it is the duty of the courts to interpret domestic laws in light of international law principles.

For instance, in “*Vishakha v. State of Rajasthan*”²¹, the Supreme Court of India found that international agreements and standards might be applied to replace the gaps in domestic legislation. The court relied to the “Convention on the Elimination of All Forms of Discrimination Against Women” (hereinafter “CEDAW”) to create rules for the prevention of sexual harassment in the workplace. The court also drew on international precedent to determine that sexual harassment at the workplace is a breach of the basic rights of women.

Similarly, in “*M.C. Mehta v. Union of India*”, the Supreme Court of India concluded that the

¹⁹ Id.

²⁰ Tewari, M., & Saxena, R. (2017). The Supreme Court of India: The Rise of Judicial Power and the Protection of Federalism. In N. ARONEY & J. KINCAID (Eds.), *Courts in Federal Countries: Federalists or Unitarists?* (pp. 223–255). University of Toronto Press. <http://www.jstor.org/stable/10.3138/j.ctt1whm97c.12>.

²¹ (1997) 6 SCC 241

idea of sustainable development, which is a component of international environmental law, is an intrinsic aspect of Indian law. The court ruled that the state is obligated to safeguard the natural environment and see to it that all development efforts are carried out in a way that is compatible with long-term ecological health.

There are a few areas, like human rights, environmental law, and trade law, in which it is possible to see the influence of international law on Indian Constitutional Law.

India is a signatory to a number of international conventions and treaties pertaining to human rights. Some of them are the “International Covenant on Economic, Social, and Cultural Rights” (hereinafter “ICESCR”) and the “International Covenant on Civil and Political Rights” (hereinafter “ICCPR”). The constitutional law of India has been significantly influenced as a result of the aforementioned international instruments. While interpreting the basic rights sections of the Constitution, the Supreme Court of India has often looked to the aforementioned documents for guidance. For example, in the case “Francis Coralie Mullin v. Administrator, Union Territory of Delhi”²², the Supreme Court of India ruled that one's right to life includes the right to live with human dignity. To buttress its interpretation, the court cited many international human rights agreements.

Also, India has shown its commitment to protecting the environment by becoming a party to a number of international environmental treaties, including the “United Nations Framework Convention on Climate Change” (hereinafter “UNFCCC”) and the “Convention on Biological Diversity” (hereinafter “CBD”). The environmental legislation in India has been significantly influenced by these international mechanisms in recent years.²³

V. GLOBALIZATION AND ITS IMPACT ON THE INDIAN CONSTITUTION

The Indian constitution is not an exception to the rule that globalization has had an impact on the development of contemporary societies. Globalization is a phenomena that has impacted the development of modern societies. The influence that globalization has on the evolution of the Indian constitution in relation to human rights is a complicated topic that calls for an in-depth investigation of a variety of elements, including those that are political, social, and economic.

With the ratification of its constitution in 1950, India, along with a large number of other emerging nations, has gone through a period of substantial transformation. The country's economics, politics, and, as a direct consequence of all three spheres of influence, the creation of its constitution have all been significantly influenced by globalization. The process of

²² 1981 AIR 746

²³ *Id.*

globalization has resulted in a paradigm change in the manner in which people and countries interact with one another. As a result, this shift has had an effect on a variety of components of the Indian constitution, including human rights.²⁴

One may look at the effect that globalization has had on human rights in India from a variety of angles, including economic, social, and political ones. Globalization's impact on the economy has been mixed, producing both favorable and unfavorable outcomes. Over the course of the last several decades, the nation has seen an explosion in the amount of foreign investment, and its economy has expanded at an exponential rate. Because of this, employment have been created, and people's incomes have gone up, leading to an overall improvement in the quality of life for a great number of Indians. On the other hand, globalization has also resulted in the exploitation of low-cost labor and the displacement of native communities, both of which have had a negative impact on human rights.²⁵

On a societal level, globalization has caused a shift in how individuals see both themselves and the world around them. The rise of a global culture has resulted in the dissemination of novel concepts, norms, and ways of living all across the world. As a consequence of this, conventional social standards have become less prevalent, while new social behaviors have taken their place. This has also had repercussions for human rights, especially in connection to topics such as gender equality, LGBTQ+ rights, and the rights of minority groups. In recent years, India has made considerable strides in these areas, including the legalization of homosexuality and the recognition of the rights of transgender people. Yet, a significant amount of effort has to be done in order to guarantee that these rights will be adequately recognized and maintained.

Globalization has changed the organizational structure of, as well as the functioning of, the Indian state on a political level. Due to the fact that the nation has grown increasingly linked into the global community, there has been a higher emphasis placed on international norms and standards of human rights. The Constitution of India was shaped in part as a result of India's ratification of a number of international human rights treaties and conventions, which had a role in the formation of the Constitution. As a consequence of the many amendments that have been made to the constitution of India in order to bring it into conformity with the norms of human rights that have been established internationally, new rights have been recognized and old rights

²⁴ *Supra* note 4, at 430.

²⁵ RUPPEL, Oliver C. "International Trade, Environment And Sustainable Development." In *Environmental Law and Policy in Cameroon - Towards Making Africa the Tree of Life | Droit et Politique de l'environnement Au Cameroun - Afin de Faire de l'Afrique l'arbre de Vie*, edited by Oliver C. Ruppel and Emmanuel D. Kam Yogo, 1st ed., 771–813. Nomos Verlagsgesellschaft mbH, 2018. <http://www.jstor.org/stable/j.ctv941sr6.42..>

have had their protections increased.²⁶

The influence of globalization on the evolution of the Indian constitution in relation to human rights is a complicated topic that calls for a nuanced examination of the many different elements at play. In addition to having a substantial impact on economics, society, and politics, globalization has also had repercussions for human rights. There is still a lot of work to be done to ensure that human rights are properly recognized and safeguarded across the nation of India, despite the fact that India's constitution has changed throughout time to reflect these shifts and develop with the times.

VI. INTRODUCTION

The Indian legal system, specifically the Indian Constitution, has been significantly influenced by globalization. The phenomenon of globalization has facilitated the convergence of legal systems that were previously distinct, leading to the establishment of international agreements and protocols, such as the United Nations Convention on Contracts for the International Sale of Goods, which govern the operations of businesses across different countries.

The phenomenon of globalization has given rise to the development of transnational law, which transcends the boundaries of individual states. The Universal Declaration of Human Rights serves as an instance of transnational legislation that has been embraced by numerous countries and incorporated into their legal frameworks.

Globalization has led to a rise in the implementation of international law, facilitated by the creation of international institutions such as the International Court of Justice and the International Criminal Court, which are responsible for ensuring that individuals and countries are held responsible for their conduct.

The Constitution of India was ratified in 1949 and subsequently enforced in 1950. The establishment of an autonomous judiciary and a mechanism of checks and balances to avert the concentration of power in any single branch of the government were among the key provisions of the Constitution. The establishment of a robust federal government ensured the safeguarding of constitutionally protected rights for all citizens.

²⁶ Id.