
THE ROLE OF DOMESTIC COURTS IN ENFORCING INTERNATIONAL LAW OBLIGATIONS

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1. Introduction

In the contemporary international legal landscape, domestic courts play a big role as mediators between global norms and local legal systems. The strict difference between international and domestic law is slowly fading, giving rise to a more dynamic interaction shaped by globalisation, interdependence, and the rise of cross-border issues like human rights protection, environmental control, and international trade.¹ by its design international law is still a decentralised system it lacks any supranational body for proper enforcement and so mostly depends on state institutions for its implementation and compliance in this situation domestic courts work as main instruments to give life to international obligations within national legal structure they make sure that international promises are not just political talks but actually turn into enforceable legal norms making rule of law and constitutional integrity.²

Through there judicial work, national courts not only interpret and apply treaties, customs of international law and rules of state responsibility, but also tries to balance international duties with there own constitutional limits, in doing so they act as a bridge between international legitimacy and domestic enforceability.³ More importantly domestic courts are not just followers of international law but also help in its growth through their reasoned judgments they explain general principles shape customs and promote better understanding a process often called the judicial globalization of international law.⁴

In this context the article looks at basic concepts and court practices to show how domestic courts and the international legal system are connected focusing mainly on Indian law it tries

¹ André Nollkaemper, *Nationality and global human right's obligation's, Courts and the International Rule of Law* (Oxford University Press 2012).

² Harold Hongju Koh, 'Transnational Public Law Litigation' (1991) 100 Yale Law Journal 2347.

³ Anthea Roberts, 'Comparative International Law: The Role of National Courts in Creating and Enforcing International Law' (Yale Law School 2011).

⁴ Claudio Grossman, 'The Role of Domestic Courts in the Enforcement of International Human Rights Law' (1998) American University International Law Review.

to study how courts balance national sovereignty with international responsibility looking at both the positive changes they bring and the limits that come with their role in implementing international law obligations.⁵

2. Theoretical Framework: Monism and Dualism

The interaction between international and domestic law finds its conceptual foundation in two main theories monism and dualism which defines how international obligations are internalised within national legal systems.⁶ Under the monist doctrine international and domestic legal orders form a unified system. International law automatically becomes part of the municipal legal framework after ratification, without the need for separate legislative enactment. In such systems, individuals may invoke international rights directly before domestic courts, and judges are empowered to apply international norms even in the absence of implementing legislation.⁷ France, Netherlands and Germany are good examples of this approach where treaties and customary norms have direct effect and in some cases, superiority over conflicting national laws. This model reflects a natural law perspective grounded in the belief that all law ultimately serves a unified moral and legal order.⁸

On the other hand, the dualist school treats international and municipal law as two separate legal spheres that operate independently. International obligations requires domestic incorporation through specific enabling legislation before they can acquire legal effect within a state's jurisdiction. Dualism rooted in positivist legal theory emphasises the sovereignty of national legal systems and the supremacy of domestic legislative acts over external norms. The United Kingdom, United States and India mainly follows this model, where treaties do not automatically create justiciable rights unless they are domestically enacted.⁹

In the Indian context the Constitution provides a dual structural balance. Article 51(c) of the Directive Principles of State Policy urges the state to “*foster respect for international law and treaty obligations*”, while Article 253 empowers the Parliament to make laws for implementing international treaties. Yet in practice treaties are non self executing and needs legislative

⁵ H Lauterpacht, 'Decisions of Municipal Courts as a Source of International Law' (1929) 10 BYIL 65.

⁶ Torben Spaak, Kelsen on Monism and Dualism (Uppsala University Legal Studies 2013).

⁷ Joseph G Starke, 'Monism and Dualism in the Theory of International Law' in Stanley Paulson (ed), *Normativity and Norms: Critical Perspectives on Kelsenian Themes* (Clarendon Press 1999).

⁸ 'Monism and Dualism in International Law' (Wikipedia, last updated 2025) https://en.wikipedia.org/wiki/Monism_and_dualism_in_international_law

⁹ Hersch Lauterpacht, *International Law and Human Rights* (Stevens & Sons 1950).

transformation inspite of this formal dualism Indian courts through interpretive innovation have taken a kind of quasi monist approach often using international conventions specially in human rights cases to expand constitutional guarantees through this interpretive evolution india shows a practical mix of monist ideas within a dualist constitutional structure.¹⁰ Indian case law such as *Jolly George Varghese & Anr v Bank of Cochin*¹¹ and *Gramophone Company of India Ltd v Birendra Bahadur Pandey*¹² illustrate this nuanced application.

3. Judicial Engagement with International Law

Domestic courts play a transformative role in bridging the gap between international obligation and municipal enforcement. Through their decisions, they serve as enforcers, interpreters and innovators of international law, ensuring that global norms resonate within national legal orders.

3. 1. Direct Application of International Norms

In monist jurisdictions courts directly apply treaty provisions that becomes part of domestic law once they are ratified. A landmark example is *Nicolo v. Etat (1989)*¹³ where the French *Conseil d'État* affirmed that ratified international treaties prevails over inconsistent domestic legislations under Article 55 of the French Constitution. This case established the court's competence to make sure that national laws are in conformity with international treaties, solidifying the supremacy of international commitments in France.

Similarly, in *Costa v. ENEL (1964)*¹⁴, the European Court of Justice held that European Community law makes a separate legal order that member states cannot override through domestic statutes. The court declared that member states had limited their sovereign rights by joining the European Community and that community law must prevail to maintain uniform application of EU law. This principle of EU law supremacy has now become a cornerstone of European integration jurisprudence.

¹⁰ JG Starke, Introduction to International Law (11th edn, Butterworths 1994).

¹¹ *Jolly George Varghese & Anr v Bank of Cochin* AIR 1980 SC 470 (Supreme Court of India).

¹² *Gramophone Company of India Ltd v Birendra Bahadur Pandey* (1984) 2 SCC 534 (Supreme Court of India).

¹³ *Nicolo v État, Conseil d'État*, 20 October 1989 (Recueil Lebon, France).

¹⁴ *Costa v ENEL* Case 6/64 ECR 585 (European Court of Justice).

3. 2. Interpretative Incorporation in Dualist Systems

Even in dualist systems where international law requires legislative incorporation, courts often rely on international instruments as interpretative guides. The Indian judiciary has played a pivotal role in this approach. In *Vishaka v. State of Rajasthan (1997)*¹⁵, the Supreme Court faced the absence of domestic legislation protecting women from workplace sexual harassment. Drawing upon the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Court framed binding guidelines under Articles 14, 15, 19(1)(g) and 21 of the Constitution. Chief Justice J. S. Verma reasoned that international conventions which are consistent with fundamental rights can be used to inform constitutional interpretation, thereby integrating global human rights standards into Indian law.

The Court affirmed this view in *Apparel Export Promotion Council v. A. K. Chopra (1999)*, emphasising that sexual harassment violates constitutional guarantees of equality, freedom and dignity. The judgement underlined that following CEDAW principles is vital to preserve women's fundamental rights, reinforcing India's commitment towards its international obligations. Extending this reasoning, in *People's Union for Civil Liberties v. Union of India (1997)*¹⁶ the Court invoked the International Covenant on Civil and Political Rights (ICCPR) to recognise the right to privacy as intrinsic to Article 21, it held that unauthorised telephone tapping infringes privacy and established procedural safeguards for interception, harmonising domestic law with international human rights standards.

Comparable judicial reasoning can be found elsewhere, in *R v. Lyons (2003)*¹⁷ the UK House of Lords held that while unincorporated treaties do not create enforceable domestic rights, courts should prefer interpretations that aligns with international obligations, provided statutory text permits such construction. Similarly, in *S v. Makwanyane (1995)* the South African Constitutional Court, citing the ICCPR, struck down the death penalty as unconstitutional, it ruled that capital punishment violated the rights to life and dignity enshrined in the new democratic Constitution, aligning domestic constitutionalism with universal human rights norms.

¹⁵ *Vishaka v State of Rajasthan* AIR 1997 SC 3011 (Supreme Court of India).

¹⁶ *People's Union for Civil Liberties v Union of India* (1997) 3 SCC 433 (Supreme Court of India).

¹⁷ *R v Lyons and Others* 1 AC 976 (House of Lords, UK); *S v Makwanyane* 1995 (3) SA 391 (CC) (Constitutional Court of South Africa).

3.3. Recognition of Customary International Law

Customary international law, derived from consistent state practise and opinio juris often get direct recognition in domestic courts, in *Trendtex Trading Corp. v. Central Bank of Nigeria (1977)*¹⁸ the English Court of Appeal (per Lord Denning) held that customary international law forms part of the common law unless it is explicitly overruled by statute, the court also refined the modern restrictive doctrine of sovereign immunity, excluding commercial transactions from protection. Adopting a similar stance, the Indian Supreme Court in *Gramophone Company of India Ltd. v. Birendra Bahadur Pandey (1984)*¹⁹ held that customary international law is enforceable domestically unless it conflicts with statutory law, the Court emphasised that respect for international norms and comity among nations constitutes an integral part of Indian jurisprudence, reflecting Indias dualist structure tempered by monist reasoning.

3.4. Judicial Review of Executive Action

Courts also employ international law as a benchmark for evaluating state conduct the regressive decision in *ADM Jabalpur v. Shivkant Shukla (1976)* where the Supreme Court upheld suspension of fundamental rights during the Emergency, represented judicial abdication in the face of international human rights standards this precedent was decisively over turned in *Justice K. S. Puttaswamy v Union of India (2017)*²⁰ where the Court emphasised that the right to life and personal liberty must be interpreted in harmony with Indias obligations under the ICCPR acknowledging the persuasive authority of international human rights instruments.

In *Medellin v. Texas (2008)*²¹, the US Supreme Court confronted the enforceability of an International Court of Justice (ICJ) decision requiring review of certain criminal convictions. The court held that without proper congressional implementation, the ICJ judgment couldn't be directly enforced in US courts. This reflected America's dualist approach and also showed the constitutional limits on how far international law can actually function within domestic systems.

Over time, through these evolving judicial engagements, national courts across the world have gradually blurred the line between international and domestic law, creating a body of

¹⁸ *Trendtex Trading Corporation v Central Bank of Nigeria* 1 QB 529 (Court of Appeal, UK).

¹⁹ *Gramophone Company of India Ltd v Birendra Bahadur Pandey* (1984) 2 SCC 534 (Supreme Court of India).

²⁰ *Justice K S Puttaswamy (Retd) v Union of India* (2017) 10 SCC 1 (Supreme Court of India).

²¹ *Medellin v Texas* 552 US 491 (2008) (Supreme Court of the United States).

jurisprudence that not only enforces international obligations but also shapes their normative development in real practice.

4. Challenges in Judicial Enforcement of International Law

While domestic courts play a major role in applying international law their efforts are often held back by complex constitutional institutional and political barriers these challenges reflect the longstanding tension between state sovereignty and the authority of international law.²²

4.1. Constitutional Supremacy vs. International Commitments

One main challenge is balancing constitutional supremacy with international obligations courts have to follow constitutional hierarchies and many times give priority to domestic laws over international norms when they clash for example the us supreme court in *Reid v Covert 1957*²³ said that no treaty can override the constitution showing that international agreements stay below the basic constitutional principles similarly the german federal constitutional court in its *Solange* decisions said that fundamental constitutional rights come first over European or international duties unless equal protections exist at the supranational level.²⁴ These examples show how judges try to balance loyalty to constitutional sovereignty with the goal of global legal harmony.

4.2. Lack of Legislative Incorporation

In Dualist systems international treaties need domestic incorporation through proper laws before courts can enforce them the absence of such legislation limits the power of judges to turn international commitments into enforceable rights the ruling in *Medellin v Texas 2008*²⁵ by the us supreme court showed this clearly the court refused to enforce an international court of justice decision because it was non self-executing saying that only congress not the judiciary had the power to implement it similar constraints exist in india where treaties even after ratification under article 51c do not create enforceable domestic rights unless parliament acts

²² Melissa A Waters, 'Creeping Monism: The Judicial Trend Toward Interpretive Incorporation of Human Rights Treaties' (2007) 107 Columbia Law Review 653.

²³ *Reid v Covert* 354 US 1 (1957) (Supreme Court of the United States).

²⁴ *Solange I*, BVerfGE 37, 271 (1974); *Solange II*, BVerfGE 73, 339 (1986) (German Federal Constitutional Court).

²⁵ *Medellin v Texas* 552 US 491 (2008) (Supreme Court of the United States).

under article 253 this gap between ratification and incorporation often causes partial or uneven compliance with international obligations.

4.3. Judicial Capacity and Competence

Another big limitation comes from lack of proper judicial training in international legal norms many judges have little exposure to public international law treaty interpretation or customary law which leads to inconsistent and sometimes overly cautious decisions a 2024 study on judicial engagement showed that courts with special benches for human rights or international law like in south Africa or the European union apply international standards more consistently but in developing legal systems limited institutional capacity and dependence on domestic precedents slows down the integration of international law into national decisions.²⁶

4.4. Political and Institutional Constraints

Judicial enforcement of international law is often limited by political sensitivities related to foreign policy defense or diplomatic matters courts usually show restraint to avoid stepping into executive powers in these areas in *Haig v Agee 1981*²⁷ and *Department of Navy v Egan 1988* the us supreme court warned against judicial interference in national security matters supporting the idea of giving space to executive discretion similarly in the united kingdom the doctrine of non-justiciability restricts courts from reviewing government actions that directly affect foreign policy this kind of caution while based on separation of powers ideas can sometimes weaken accountability for violations of international law.

4.5. Jurisdictional and Societal Barriers

Finally jurisdictional conflicts and public attitudes make enforcement even more difficult domestic courts at times refuse to take up transnational human rights or environmental cases sending them instead to international tribunals and this creates accountability gaps also limited public awareness about international legal rights reduces pressure on domestic authorities to follow international obligations lowering the overall impact of the law. overall, the mix of constitutional sovereignty legislative incorporation and institutional limits shows a real

²⁶ Monica Hakimi, 'International Courts and the Enforcement of International Law' (2017) Harvard Law Review.

²⁷ *Haig v Agee* 453 US 280 (1981) (Supreme Court of the United States); *Department of Navy v Egan* 484 US 518 (1988) (Supreme Court of the United States).

paradox in how modern international law functions while courts play a key role in bringing global norms to life their ability to act remains limited by domestic legal and political structures.²⁸

5. Transformative Role and Impact of Domestic Courts

Despite many structural and doctrinal issues domestic courts have become key players in shaping the connection between international and municipal law. they act as vehicles through which global norms enter domestic legal systems turning international obligations into enforceable rights and creating a shared legal consciousness across different jurisdictions while still respecting international legality.²⁹

5.1. Norm Internalization

Domestic courts play a main role in internalizing international norms by bringing treaty provisions and customary principles into constitutional and statutory interpretation judicial reliance on international standards helps fit human rights environmental and humanitarian values into domestic frameworks as seen in *Vishaka v state of Rajasthan* and *Puttaswamy v Union of India* Indian courts have used international conventions to interpret and expand constitutional rights thus making the states international commitments part of its own legal structure this process also supports a kind of dialogic constitutionalism where courts interpret domestic rights in light of global standards encouraging more unity between local justice and the international rule of law.³⁰

5.2. Development of Customary International Law

Judicial reasoning also helps in the growth of customary international law when domestic courts repeatedly use international standards it becomes part of state practice and *opinio juris* which are the two main parts of custom formation.³¹ research from Cambridge on customary international law pointed out that domestic court rulings can show *opinio juris* when judges

²⁸ Michael Reisman, *International Incidents: The Law That Counts in World Politics* (Princeton University Press, 1988).

²⁹ C Thomas Kotuby Jr, 'Domestic Courts and the Generation of Norms in International Law' (2022) Pittsburgh Law Review.

³⁰ Karen Alter, *The New Terrain of International Law: Courts, Politics, Rights* (Princeton University Press 2014).

³¹ Eyal Benvenisti and George W Downs, 'National Courts, Domestic Democracy, and the Evolution of International Law' (2009) European Journal of International Law.

apply international norms because they believe it is legally required not just a policy choice cases like *trendtex trading corp v central bank of nigeria* and *gramophone company of india ltd v birendra bahadur pandey* show this clearly by treating customary norms as part of common law or constitutional interpretation courts turn abstract international ideas into real and workable domestic rules.³²

5.3. Rule of Law and Accountability

Judicial enforcement of international law supports the rule of law by keeping governments answerable both at home and on the global level courts do this by checking executive actions to see if they follow treaty duties and charter commitments reaffirming constitutional supremacy while still respecting international legality. for example south *afrikas s v makwanyane* case not only ended the death penalty but also highlighted human dignity as a universal value drawn from international law similarly in *pucl v union of india* the Indian supreme court connected the right to privacy under article 21 with the ICCPR showing how international law can be used as part of constitutional accountability through such rulings courts turn abstract international promises into real tools of justice expanding accountability and making state actions more democratically legitimate.³³

5.4. Global Judicial Dialogue

Another important role is the idea of global judicial dialogue which means the interaction of judicial reasoning between national and international courts this kind of exchange helps in promoting consistency understanding and spreading the ideas of human rights across borders the inter-american European and african courts of human rights often refer to each other's judgments along with those of national courts creating a growing network of cooperation based on shared legal principles according to Eduardo Ferrer mac Gregor of the inter american court judicial dialogue helps build a common language of human rights that brings different legal systems closer and gives more moral strength to international justice.³⁴

³² Cambridge University Press, '*Judicial Dialogue Between International Courts in the Interpretation of Customary International Human Rights Law*' (2024).

³³ Eduardo Ferrer Mac-Gregor, '*What Do We Mean When We Talk About Judicial Dialogue?*' (2020) Harvard Human Rights Journal.

³⁴ Ibid.

Domestic courts are not just passive users of international law they are co authors in its interpretation growth and legitimacy it is through their ongoing engagement that international norms become part of domestic legal and moral life instead of staying separate or only theoretical.³⁵

6. The Way Forward

What is needed for domestic courts to truly act as bridges between international obligations and domestic enforcement are proper structural reforms better judicial training and stronger institutional coordination the future progress will not depend only on what judges do individually but on building systems that support consistent and practical application of international law at the national level.³⁶

6.1. Judicial Education

Regular judicial education is very important for improving how domestic courts understand and apply international law many countries have already set up judicial academies that focus on comparative and international law training the international organization for judicial training iojt and the national judicial college in the us are good examples of programs that train judges in human rights treaty enforcement and international cooperation countries like morocco japan and india should also include modules on treaty interpretation international case law and global legal standards in their judicial courses such steps would not only strengthen judges competence but also make sure international norms are applied more consistently across different courts.³⁷

6.2. Legislative Reform

For courts in dualist systems to really enforce international obligations there has to be clear and consistent legislation that brings treaties into domestic law without such laws courts are mostly limited to using treaties only for interpretation not for direct enforcement it is important to have clear rules that explain which treaty provisions are self executing how treaty norms work within domestic law and what enforcement systems exist this would help reduce confusion in judicial

³⁵ Ibid.

³⁶ Toby S Goldbach, 'Judges' Work in International Judicial Education' (2021) Cornell International Law Journal.

³⁷ International Organization for Judicial Training (IOJT), *Training that Strengthens Justice* (2025).

reasoning some countries solve this by using automatic incorporation where certain treaties like those on human rights or humanitarian law become enforceable once ratified others use hybrid systems that mix legislative approval with constitutional recognition of international law to ensure both democratic accountability and effective enforcement within the domestic setup.³⁸

6.3. Inter-Institutional Cooperation

Effective enforcement of international obligations also needs better coordination between the judiciary legislature and executive studies from the university of San Francisco and oxford law pro show that treaty implementation is not the duty of one branch alone it has to be a joint process supported by clear policies proper use of resources and regular monitoring to make sure there is real compliance judicial rulings that support international norms should be followed by practical steps from diplomatic offices and legislative bodies to keep compliance strong in the long run creating national level committees with members from the foreign ministry judiciary and law commissions can help bridge the gap between domestic and international legal systems making enforcement smoother and more effective.³⁹

6. 4. Comparative Jurisprudence and Judicial Dialogue

Encouraging comparative judicial citation helps make legal interpretation more steady and believable across borders when judges refer to rulings from other countries or international courts it widens their outlook and supports the development of shared legal standards that reach beyond national lines there is already a growing exchange between courts around the world judges and scholars meet at international events share rulings online and study each others decisions this has built stronger ties between constitutional courts especially in Europe and latin America where courts often mention each others reasoning in their judgments domestic courts should also join this kind of dialogue by taking part in global legal discussions they can include international ideas in their own interpretations especially in new fields like human rights environmental protection and technology law doing this not only improves the quality of domestic rulings but also helps create a more unified and cooperative vision of justice

³⁸ Oxford Law Pro, 'Domestic Application of Treaties' (2024).

³⁹ UN Department of Economic and Social Affairs, *Handbook for Parliamentarians: Chapter 5 – Incorporating Conventions into Domestic Law* (2024).

worldwide.⁴⁰

7. Conclusion

Domestic courts play a very important role in giving life to international law inside the country making it more than just words on paper they make sure that the promises made at the international level actually become part of the national system and not just stay theoretical by acting as both interpreters and enforcers courts perform what georges scelle called a dual role where judges apply local law while also upholding global standards of legality the Indian judiciary has shown this through many judgements starting from Vishaka v state of Rajasthan where the supreme court relied on CEDAW to protect women's rights at workplace and later in Justice K. S. Puttaswamy v Union of India.

Where ICCPR helped the court recognise privacy as a fundamental right Indian courts have often used international principles to fill constitutional gaps and protect human rights this shows how domestic judges can turn international commitments into real rights helping in achieving justice and equality within the country other countries have also shown similar examples the United Kingdom through the Human Rights Act has made international conventions part of their national law South Africa uses international law to promote dignity and equality while the United States though more cautious still shows this link in cases like *Medellin v Texas* these examples show that different legal systems are trying to balance national sovereignty with the growing influence of international law

In the end the strength of international law does not depend only on international courts or organisations but on how seriously domestic courts apply it through careful interpretation and courage judges make these global commitments work in real life scholars have also called this the feedback loop where domestic use of law helps strengthen international norms while showing the country's commitment to universal values therefore domestic courts are not just enforcing international law they are also helping to create and grow it they stand as protectors and builders of a legal order that connects national justice with global responsibility.

⁴⁰ Justarvo Legal, 'Understanding International Judicial Cooperation Procedures in Global Legal Frameworks' (2024).

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