

Relationship of International Law and Municipal Law

while international law is applied in the relations of the states and to other subjects of international law, national or State Law which is called Municipal Law is applied within a state to the individuals and corporate entities which are the bearers of rights and duties thereunder. When there exists a conflict between the rules of International Law and Municipal Law, a court is faced with the difficulty of arriving at a decision. Before an international Tribunal, the question is one of primacy - whether International Law takes primacy over Municipal law, or vice versa. If the conflict arises before a Municipal Court, the answer depends on how far the constitutional law of the state allows International Law to be applied that directly by the courts. International Law cannot work without the cooperation and support of national legal systems. The views of the jurists on the question of relationship of International Law and Municipal Law are divergent which have led to the emergence of different theories.

DUALIST THEORY

according to dualist theory, International Law and Municipal laws of the several states are two distinct, separate and self contained legal systems.

Such a view avoids any question of the Supremacy of the one system of law over the other since they share no common field of application: each is Supreme in its own sphere.

Dualist view was developed by a prominent German scholar Triepke in 1899. For him, international law and domestic or Municipal Law existed on separate Planes, the former governing International relations, the latter relations between individuals and between the individual and the state. The theory was later on followed by Italian jurist Anzilloti.

The above authors are of the view that the two systems of Law differ from each other on the following grounds:

Regarding sources: according to dualists, while the sources of international law are custom grown up within the boundaries of the state concern and the statutes enacted by the sovereign, the sources of international law are custom grown up among the states and law making treaties concluded by them

Regarding subjects: dualists are of the view that the subject of International Law and Municipal Law are different from each other. While Municipal Law regulates the relations between the individuals and corporate entities and also the relations between the state and the individuals, International Law regulates primarily the relations between States.

Regarding substance of law : while Municipal Law is a law of sovereign over individuals, international law is a law not above, but between sovereign States. Municipal Law addresses itself to the subjects of the sovereigns, International Law to the sovereigns themselves.

Regarding principles : Anzilloti is of the view that while Municipal laws in a state are obeyed because they are the principles of state legislatures, international law is obeyed because of the principle of Pacta Sunt Servanda.

Regarding dynamism of the subject matter: transformation of international law into

Municipal Law may take place according to the constitutional provisions of the states, and therefore the procedure may be different from state to state.

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MONISTIC THEORY

Monistic theory was propounded in the 18th century. It was put forward by two German scholars Moser (1701- 1785) and Martens (1756-1821).

According to monistic theory, Municipal Law as well as International Law are parts of one Universal legal system serving the needs of the human community in one way or the other.

Exponents of monistic theory rejected the alleged differences between the two systems regarding sources, substance and subjects as laid down by dualists. According to them, subjects of both the system of law are ultimately individuals.

If one argues to the exponents of monistic theory that International Law regulates the relations of states and not that of individuals, they ask what is a state? According to them since a state consists of individuals, rules of international law are ultimately binding on them only like Municipal Law.

It may be said that dualistic and monistic theories are traditional and most popular but neither alone can be said to be appropriate. It is required that International Law and Municipal Law should be harmonized because it has been regarded that both have been made for human beings.

Indian constitution under Article 51 provides the general obligations of India to the world by stating that:

“The State shall endeavour to

- a) to promote International peace and security
- b) maintain just and honourable relations between Nations
- c) Foster respect for international law and Treaty obligations in the dealing of organised peoples with one another
- d) encourage settlement of international disputes by arbitration.

The above Article forms part IV of the constitution which Lays down the Directive Principles of State Policy. ***Vishaka versus state of Rajasthan***, the supreme court held that the international conventions and norms are to be read into them in the absence of enacted domestic law occupying the field when there is no inconsistency between them. In the above case, a writ petition was filed by certain social activists and NGOs for the realisation of the true concept of gender equality and to prevent sexual harassment of working women in all workplaces through judicial process to fill the vacuum in existing legislation.

Reference was given to Article 11 of the convention on the elimination of all forms of

discrimination against women which prohibits discrimination against women in the field of employment i.e., equality in employment. It was observed by the court that equality in employment can be seriously impaired when women are subjected to gender specific violence, such as sexual harassment at the workplace.

Since in India there is no law to formulate effective measures to check the evil of sexual harassment of working women at workplace, the court held that the contents of international conventions and norms are significant for the purpose of interpretation of the guarantee of gender equality, right to work with human dignity in Articles 14, 15, 19(1)(g) and 21 of the constitution and the safeguards against sexual harassment implicit therein.