

Challenges and Opportunities in Indian Domestic Implementation of International Human Rights Standards

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Abstract—Despite India’s ratification of core international human rights instruments such as the ICCPR, ICESCR, and CEDAW, the transformation of these normative commitments into enforceable domestic rights remains inconsistent, fragmented, and fraught with systemic challenges. The Indian legal system’s dualist orientation necessitates enabling legislation for treaty enforcement, thereby creating a discretionary space often exploited by political and bureaucratic inertia. Moreover, judicial engagement with international human rights norms has been uneven, oscillating between progressive incorporation and cautious restraint, reflecting deeper tensions between universalist legal ideals and domestic legal realism. This research critically examines the complex interplay between India’s international human rights obligations and their domestic implementation within a constitutional, institutional, and sociopolitical context. This research identifies critical barriers to implementation, including legislative gaps, institutional incapacity, socio-cultural resistance, and federal asymmetries in rights enforcement. Through judicial rulings on gender justice, child rights, and custodial torture, it illustrates how international norms are often subordinated to domestic political calculations and social hierarchies. Simultaneously, the research acknowledges emergent opportunities through constitutional interpretation, judicial innovation, and civil society mobilization that have advanced the domestic internalization of human rights standards. Arguing against a purely formalist approach to compliance, the research calls for a transformative paradigm, one that foregrounds the intersectionality of rights, dismantles structural inequalities, and reimagines sovereignty not as resistance to international norms but as a vehicle for their realization. In doing so, it offers normative and pragmatic pathways to bridge the gap between India’s international commitments and lived human rights realities.

Index Terms—International Human Rights, Domestic Implementation, Dualism, Treaty Obligations, ICCPR, ICESCR, CEDAW, Human Rights Enforcement

I. INTRODUCTION

The international human rights framework, emerging primarily in the aftermath of the Second World War, represents a concerted global effort to articulate and protect the inherent dignity and equal rights of all individuals. Anchored in the UDHR, 1948 and concretized in legally binding treaties, such as ICCPR & ICESCR, these instruments collectively form what is often referred to as the International Bill of Human Rights.¹ While the UDHR itself is declaratory and non-binding, its provisions have acquired the status of customary international law over time, informing the interpretation of binding treaties and influencing constitutional frameworks across jurisdictions.

The ICCPR and ICESCR, together with their respective Optional Protocols, impose upon state parties a range of substantive and procedural obligations. These include, inter alia, the duty to respect, protect, and fulfil a spectrum of civil, political, economic, social, and cultural rights.² Moreover, subsequent thematic treaties, such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), Convention on the Rights of the Child (CRC), and Convention on the Rights of Persons with Disabilities (CRPD), have expanded the normative architecture of international human rights law, emphasizing non-discrimination, participation, and accountability.³

Notwithstanding the expansive reach of these norms, the efficacy of international human rights law is contingent upon its domestication, that is, the

¹ International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3.

² International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171.

³ Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13.

translation of international obligations into enforceable rights within national legal systems. In dualist legal systems, such as India's international treaties do not possess the force of law unless incorporated through domestic legislation. This structural feature creates a disjuncture between normative aspiration and legal reality, rendering domestic implementation a necessary condition for the actualization of international human rights standards. Absent effective domestic legal frameworks and institutional mechanisms, international human rights risk being reduced to aspirational rhetoric devoid of justiciable substance. Therefore, the interface between international law and domestic legal systems assumes critical importance in the realization of human rights in practical terms.

India has historically positioned itself as an active participant in the evolution of the international human rights regime. As a founding member of the United Nations and a signatory to the UDHR, India's engagement with global human rights norms has been consistent, albeit marked by a calibrated assertion of sovereignty. Over the decades, India has ratified a significant number of core international human rights treaties. However, India has refrained from ratifying certain crucial instruments, most notably the Convention Against Torture (CAT) & International Convention for the Protection of All Persons from Enforced Disappearance, citing concerns related to sovereignty, legal incompatibility, and administrative feasibility.

In terms of the domestic legal framework, India's Constitution is notable for its deep normative resonance with international human rights instruments. Part III of the Indian Constitution, which enumerates Fundamental Rights, reflects many of the core civil and political rights enshrined in the ICCPR. Simultaneously, Part IV, which contains the Directive Principles of State Policy, echoes the ICESCR's emphasis on socio-economic rights, albeit as non-justiciable directives. Articles such as Article 14 (equality before law), Article 21 (right to life and personal liberty), Article 19 (freedom of expression and association), and Article 15 (non-discrimination) have been interpreted expansively by the Indian

judiciary to align with international human rights standards.⁴

Furthermore, Article 51(c) of the Constitution directs the state to "foster respect for international law and treaty obligations," while Article 253 empowers Parliament to enact laws necessary to implement international treaties. Nevertheless, India's dualist orientation implies that ratification alone does not render treaty provisions enforceable, unless accompanied by enabling legislation. The Protection of Human Rights Act, 1993, which established the NHRC, represents a key statutory effort to institutionalize human rights norms.⁵ However, critics argue that this framework remains fragmented, weakly enforced, and selectively operationalized, especially in areas concerning marginalized groups.

In judicial practice, Indian courts have frequently invoked international human rights instruments to inform constitutional interpretation, especially in cases involving the expansion of Article 21. The Supreme Court, in decisions such as *Vishaka v. State of Rajasthan*⁶ and *Apparel Export Promotion Council v. A.K. Chopra*,⁷ has affirmed that international conventions, though not incorporated by legislation, can be relied upon so long as they are not in conflict with domestic law. This doctrine of "harmonious construction" reflects a pragmatic approach to international law, but it also underscores the discretionary and non-systematized nature of India's engagement with international human rights at the domestic level.

II. INTERNATIONAL HUMAN RIGHTS FRAMEWORK AND INDIA'S POSITION

India's engagement with the international human rights framework is marked by both active participation in the global normative order and a cautious approach to domestic incorporation. India is a State party to core international human rights treaties, such as the ICCPR, ICESCR, CEDAW,

⁴ Dinah Shelton, *The Role of International Law in the Protection of Human Rights in Domestic Systems*, 1 U.C. Irvine L. Rev. 9 (2011).

⁵ The Protection of Human Rights Act, No. 10 of 1994, § 3, India Code (1994).

⁶ (1997) 6 SCC 241.

⁷ (1999) 1 SCC 759.

CRC, & CRPD. However, it has conspicuously refrained from ratifying critical treaties, such as CAT & ICCPED. Even with ratified instruments, India has entered significant reservations and interpretative declarations, notably under CEDAW (e.g., concerning personal laws under Article 5(a) and 16(1)) & ICCPR (particularly with respect to Article 1 on self-determination), which reflect the tension between international obligations and domestic political or cultural sensitivities. This cautious treaty posture underscores India's insistence on preserving sovereign discretion, particularly in areas of law intersecting with religion, caste, and internal security.⁸

India's dualist legal structure, wherein international treaties do not have the force of law unless incorporated through domestic legislation, further compounds the disconnect between ratification and implementation. Article 51(c) of the Constitution enjoins the State to foster respect for international law, but this provision is non-justiciable, being located in the Directive Principles of State Policy. In contrast, Article 253 empowers Parliament to enact legislation necessary to implement international obligations. Despite this enabling provision, legislative inertia and political reluctance often impede incorporation. The Indian judiciary has occasionally adopted a transformative interpretative approach, as evidenced in *Vishaka v. State of Rajasthan*, where CEDAW norms were judicially invoked in the absence of legislative action. Nevertheless, such instances are episodic rather than systemic. The lack of an automatic incorporation mechanism results in selective and uneven application of international standards, leading to a fragmented domestic human rights regime that is vulnerable to political expediency and institutional inefficacy.

III. CHALLENGES IN DOMESTIC IMPLEMENTATION

The domestic implementation of international human rights standards in India is hampered significantly by constitutional and legislative ambiguities. Although

the Indian Constitution affirms the State's obligation to foster respect for international law and treaty obligations under Article 51(c), this provision is non-justiciable and does not translate into enforceable rights. India follows a dualist system wherein international treaties do not acquire the force of law unless incorporated through domestic legislation. This creates a fundamental constitutional lacuna, treaties ratified by India remain ineffectual unless the Parliament enacts enabling laws, a process often delayed or neglected altogether. For instance, despite ratifying the Convention Against Torture, India has failed to enact a comprehensive anti-torture law, thereby undermining its credibility and leaving victims without adequate legal recourse. The lack of clear constitutional guidelines on the status of international law in domestic jurisprudence exacerbates this problem, creating uncertainty for courts and lawmakers alike.⁹

Judicial engagement with international human rights standards, while sometimes progressive, remains inconsistent and doctrinally underdeveloped. The Indian judiciary has occasionally relied on international instruments to expand the ambit of fundamental rights, particularly under Article 21, as seen in *People's Union for Civil Liberties v. Union of India*.¹⁰ However, this reliance is selective and discretionary, often lacking a coherent methodology for interpreting and applying international norms. The judiciary's approach is complicated by the absence of codified rules regarding the enforceability of unincorporated treaties. Consequently, even when courts invoke international standards, they are unable to confer justiciable rights upon individuals based solely on treaty provisions. This judicial reluctance or inconsistency leads to a fragmented implementation landscape, where the invocation of international law is more aspirational than binding.

Institutional and bureaucratic inefficiencies further weaken India's ability to domesticate international human rights norms effectively. The multiplicity of ministries and agencies involved in treaty implementation, often working in silos, results in a disjointed administrative framework. There is no central coordinating mechanism to oversee

⁸ Surya Deva, *Implementing Human Rights in the Indian Legal System*, 19 BUFF. HUM. RTS. L. REV. 125 (2013).

⁹ Vicki C. Jackson, *Constitutional Engagement in a Transnational Era* (Oxford Univ. Press 2010).

¹⁰ (1997) 1 SCC 301.

compliance with international obligations, leading to policy inertia and accountability gaps. Furthermore, human rights institutions, such as the NHRC & SHRCs, suffer from statutory limitations, underfunding, and lack of independence. The NHRC, for instance, has limited jurisdiction over violations by the armed forces and often lack enforcement powers, reducing its role to one of recommendation rather than redress. These institutional deficits weaken the monitoring, reporting, and enforcement functions critical to the operationalization of treaty-based obligations.¹¹

Political reticence and deeply entrenched socio-cultural hierarchies present formidable obstacles to implementation. Indian political discourse frequently invokes sovereignty as a shield against external critique of its human rights record, particularly in areas like Kashmir, counterterrorism, and treatment of minorities. This political defensiveness translates into resistance toward aligning national laws with international standards perceived as infringing upon “domestic sensibilities”. Further, patriarchal, casteist, and communal social structures often clash with the universalist ethos of international human rights law. Resistance to rights-based narratives in rural or less-educated populations, coupled with politicization of identity, impedes the dissemination and acceptance of international norms. Adding to this complexity are implementation disparities across India’s federal structure, where certain states exhibit progressive human rights practices while others remain regressive due to divergent political priorities and administrative capacities. This asymmetry undermines the uniform application of treaty obligations and highlights the urgent need for a coordinated, whole-of-government approach.¹²

IV. INSTANCES OF IMPLEMENTATION GAPS

Despite India’s ratification of **CEDAW in 1993**, the domestic legal framework continues to fall short in ensuring substantive equality and protection from gender-based violence. Although constitutional guarantees under Articles 14, 15, and 21 lay a foundational commitment to gender equality, the

persistence of honor killings, acid attacks, dowry-related deaths, and marital rape, which remains outside the criminal definition of rape under Indian Penal Code (now being replaced by Bharatiya Nyaya Sanhita, 2023) reflects a severe normative and enforcement gap. The judiciary has played an expansive role in interpreting constitutional rights to include protections aligned with international standards (e.g., *Vishaka v. State of Rajasthan*), yet such interventions are episodic and largely remedial rather than transformative. Furthermore, the co-existence of personal laws, often shielded under Article 25 (freedom of religion), has created legal pluralism that perpetuates structural inequality in matters of marriage, inheritance, and divorce, particularly affecting Muslim and Christian women. This dualism entrenches a hierarchy of rights and undermines the principle of universality that CEDAW seeks to affirm.

Similarly, India’s ratification of the CRC in 1992 has not effectively translated into the eradication of child labor, exploitation, or trafficking, particularly among children from socio-economically vulnerable groups. While domestic statutes like the Right to Education Act, 2009 & Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 aim to uphold CRC mandates, lax implementation, corruption, and underreporting significantly blunt their impact.¹³ Reports of bonded labor in informal sectors, trafficking of girls for domestic work or sexual exploitation, and children employed in hazardous occupations reveal systemic failures. Legal and institutional mechanisms such as the National Commission for Protection of Child Rights (NCPCR) are inadequately empowered to challenge entrenched economic and social practices. The disjuncture between legislative promises and administrative action reflects a state structure more performative than substantive in its rights obligations, undermining the doctrine of best interest of the child that lies at the heart of CRC jurisprudence.¹⁴

The gap between India’s human rights rhetoric and its on-ground practices is most stark in its engagement with the CAT, which India has signed but not ratified, citing the adequacy of domestic laws. However, this

¹¹ Usha Ramanathan, *Of Slippery Slopes and Human Rights*, 8 Indian J. Const. L. 1 (2014).

¹² *Id.*

¹³ The Right of Children to Free and Compulsory Education Act, No. 35 of 2009, India Code (2009).

¹⁴ *Id.*

position is contradicted by rampant custodial torture, extra-judicial killings, and impunity, particularly affecting Dalits, Adivasis, and religious minorities. Judicial precedents, including *DK Basu v. State of West Bengal*,¹⁵ have articulated procedural safeguards, yet custodial violence persists with systemic regularity, facilitated by institutional silence and procedural opacity. Marginalized communities remain disproportionately subject to surveillance, false arrests, and denial of legal aid, violating both Articles 14 and 21 of the Constitution as well as core ICCPR guarantees. The Prevention of Atrocities Act (1989), intended to protect SC/ ST communities, is often rendered ineffective by compromised enforcement and political interference. The non-ratification of CAT symbolizes a deeper reluctance to subject domestic institutions to international scrutiny, reflecting a constitutional dualism that defers justice and obstructs India's full alignment with universal human rights norms.

V. OPPORTUNITIES FOR STRENGTHENING IMPLEMENTATION

The progressive interpretation of international human rights standards by the Indian judiciary, particularly through the constitutional prism, represents a significant vector for domestic implementation. The Judiciary have, through an evolving jurisprudence, increasingly invoked international norms in their reasoning, even when not expressly incorporated into municipal law, on the basis that such norms are not inconsistent with fundamental rights. Notably, in *Vishaka case*, the Court laid down binding guidelines against sexual harassment at the workplace by directly invoking CEDAW, exemplifying judicial innovation to fill legislative lacunae. This trend of harmonizing domestic law with international obligations is further facilitated by PILs, which have democratized access to justice and enabled courts to act as custodians of rights beyond conventional adversarial frameworks. However, the lack of a systematic framework for judicial engagement with international law can lead to ad hoc application, which may undercut coherence and predictability in rights enforcement.

The Indian Constitution itself provides a fertile normative soil for the growth of international human rights standards, particularly through its Fundamental Rights and Directive Principles of State Policy. Article 21, interpreted expansively to encompass a wide array of rights such as privacy (*Puttaswamy*),¹⁶ health, education, and clean environment, has become a constitutional bridge to incorporate international human rights obligations. The courts' willingness to interpret Article 21 in light of international instruments like the ICCPR and ICESCR has allowed for the infusion of global human rights norms into domestic law, even in the absence of enabling legislation. Nevertheless, this jurisprudential reliance cannot substitute the state's positive obligations to enact comprehensive legislation that operationalizes treaty standards. For instance, the continued non-ratification of the UN Convention Against Torture, despite multiple judicial urgings, reveals a disconnect between interpretive expansion and legislative inertia.

Institutional and structural reforms present another critical site for strengthening human rights implementation. The NHRC and its state counterparts, SHRCs, though statutorily mandated to promote and protect human rights, often suffer from inadequate independence, limited enforcement powers, and underfunding. Reforms must aim to insulate these bodies from political interference, ensure transparency in appointments, and strengthen investigative and remedial capacities. Parallely, legislative action is imperative to translate India's international obligations into concrete legal rights. This includes the long-pending ratification of CAT and enacting a comprehensive anti-torture law, as recommended by the Law Commission. Civil society actor, particularly grassroots organizations, journalists, and rights advocates, play an indispensable role in norm diffusion, rights awareness, and accountability, often serving as conduits between international standards and local realities. Finally, India's engagement with international mechanisms such as the Universal Periodic Review provides a platform for peer review and norm internalization, yet the state must move beyond perfunctory compliance and utilize such

¹⁵ (1997) 1 SCC 416.

¹⁶ (2017) 10 SCC 1.

processes to recalibrate domestic reforms in line with global human rights commitments.¹⁷

VI. CONCLUSION & THE WAY FORWARD

While India maintains a robust constitutional architecture and has ratified key international human rights instruments, the persistent lacunae in translating these global commitments into enforceable domestic norms reveal a complex dialectic between international legal obligations and sovereign constitutional praxis. The dualist orientation of India's legal system, in the absence of a consistent enabling legislative framework, impedes the full internalization of treaty norms, thereby rendering international standards aspirational rather than operational. Judicial efforts, though commendable in instances of progressive interpretation, remain inconsistent and often contingent upon the ideological leanings of the bench rather than on a uniform doctrinal commitment to internationalism. Moreover, the institutional inertia of human rights bodies, coupled with socio-political resistance to perceived "foreign" standards, exacerbates the implementation deficit.

Moving forward, a transformative shift is imperative, one that recalibrates the normative hierarchy to recognize the binding character of ratified international obligations and operationalizes them through comprehensive statutory mechanisms, enhanced judicial training, and decentralized rights awareness initiatives. Only through a deliberate and principled harmonization of domestic law with international human rights standards, grounded in constitutional morality and democratic pluralism, can India reconcile its global human rights commitments with its lived legal realities.

¹⁷ M.P. Singh, *Vishaka Case: A New Dimension of Judicial Activism*, in *Indian Constitutional Law* (Eastern Book Co. 2011).