PREFACE


The primary mechanism contemplated by these treaties is domestication of treaty rights through necessary measures including legislative, administrative or judicial by the States Parties. However, domestic application of international human rights treaties has been subject of great debate because of divergent national practices on theoretical, stylistics and applicational fronts. In the common law tradition, International Treaties do not automatically become part of the law of land, except to the extent to which they are legislatively incorporated as part of the domestic law. This is because of the divergent perception of the relationship between international law and the municipal law. Factors like State sovereignty, separation of power theory, dualist view on the relationship between international law and the municipal law (incorporation or transformation theory) and the democratic deficit are the major impediments for the direct application of International Human Rights Law in the common law countries including India. The main criticism against direct application of International Conventions and Covenants is the one pointed out by Mason C.J. in Minister for Immigration and Ethnic Affairs v. Teoh, that ratification of international treaties is done by executive acting alone and that the prerogative of making the law is that of Parliament unless parliament legislates, no law can come into existence.

These reasons have weakened the direct application of the international human rights treaties. There is a need to emphasize the legal and binding nature of international obligations at the domestic level involving the all three organs of State viz., legislature, executive and judiciary to ensure compliance. The importance and contemporary movement for the protection and promotion of human rights has further underlined this need. The increasing recognition of individuals as subjects of international law, especially international human rights law, has added new dimension in the area of invocation of international human rights law at the domestic level.

The problem of Domestic Application of International Human Rights Law is a matter of concern not only for the UNO but also for the National Courts whose primary function is to render justice. Judicial Colloquiums under the auspicious of Commonwealth Secretariat and INTERIGHTS have been held worldwide to find out ways and means to enforce International Human Rights Law at the Domestic Level. The first Colloquium was held in Bangalore, in the year 1988 and the eighth was also held in Bangalore 1998. The 1988 Colloquium adopted a statement endorsing the so-called *Bangalore Principles on the Domestic Application of International Human Rights Norms*. The “*Bangalore Principles*” did not challenge dualist view prevailing in Commonwealth countries. It simply recognized the growing tendency of national Courts taking recourse to the International Human Rights Conventions for the purpose of deciding cases where the domestic law was uncertain or incomplete (Principle 4). They accepted that, where municipal law was clear and inconsistent with the international obligations of the State concerned, national Courts were required to give full effect to the local law, although they might draw discrepancy to notice. Thus the *Bangalore Principles* did not undermine the dualism. Nor did they purport to authorize judicial incorporation of treaty or customary international law by the backdoor. They simply noted that occasionally, municipal Courts might find assistance for their own intellectual tasks by having regard to the growing body of international law, particularly as that law expresses universal principles of human rights.

India is a Party to six of the UN nine core human rights treaties and has signed the other two except ICRMW. It is in this background that the study is undertaken to examine critically the application of international human rights law in India and the efforts made by the three organs of the State i.e., Legislature, Executive and Judiciary.