'International Law' is a strict term of Article connoting that system of law the primary function of which is to regulate the relations of States with one another¹. International law is thus a law amongst the States and is generally understood to be judicially interpreted and applied by the international tribunals. It may seem paradoxical, but the municipal courts are not infrequently called upon to interpret and apply the principles of international law, in matters like succession, diplomatic immunities, immunities of foreign states, their heads and property, and problems of acquisition of territorial sovereignty. They have also occasionally called to decide upon questions of nationality, denationalisation and statelessness. Extradition is another important aspect of international law with which, the municipal courts are concerned. Again some of the important matters on which these courts may be called upon to give their decision are effects of war on treaties, contracts, declaration of every character. These municipal courts thus, whose primary duty is to interpret and apply national law, encroach upon a vast area of international law. Further, States are not they only subjects of international law as was traditionally understood. Now the individual has also come to be accepted as a subject of international law. The Nuremburg Trials, Declaration of Human Rights and the establishment of European Court of Human Rights are

evidence of the fact that international law is a bearer of inter-
national rights and duties of the individual. Municipal courts
which are considered as the guardian and protector of the rights
of the individual become contributory to this horizontal legal
development at international level.

There are however, two important questions that need to be
discussed here before analysing the significance of the decisions
of the Supreme Court of India in the realm of international law.
Firstly, is there any importance or value of the judgments pronoun-
ced by the municipal courts concerning the subjects that fall
within the domain of international law, which bind a particular
State only. Conflicting opinions have been expressed by inter-
national lawyers and jurists. Writers like Triepel and
Anzilotti who represent the positivist school opine that municipal
decisions have no direct 'law creating effect' in the sphere of
international law. Oppenheim represents a moderate view. "Decis-
ions of municipal courts" he writes, "are not a source of law in
the sense that they directly bind the State from whose courts they
emanate. But the cumulative effect of uniform decisions of the
courts of the most important States is to afford evidence of inter-
national custom. Although Courts are not organs of the State for
expressing in a binding manner its views on foreign affairs, they
are nevertheless of the State giving, as a rule, impartial express-
ion to what they believe to be International Law. For this reason
judgments of municipal tribunal are of considerable

1. For a detailed discussion of the views of different jurists
refer to Lauterpacht's Article "Municipal Decisions as a
Source of Law", British Year Book of International Law, 1929,
practical importance for determining what is the correct rule of International Law."

Westlake on the other hand is of the view that "the best evidence of the consent which makes international law is the practice of states appearing in their actions, in the treaties they conclude, and in the judgments of their prize and other courts so far as in all these ways they have proceeded on general principles and not with a view to particular circumstances and so far as their actions and the judgments of their courts have not been encountered by resistance or protest from other States." Other publicists like Geffeken, Fenwick, Brierly and Rivier have asserted in their respective writings that municipal decisions are a source of international law proper.

Even if it is agreed that the decisions of municipal courts are not a source of law, the value of these decisions can not be undermined for there are many topics of international law which will for a considerable time to come, remain within the province of municipal law. The decisions of municipal courts relating to such topics have much impact on the development of international law as such. Besides that the decisions of the courts of every country show how the law of nations in the given case is understood in that country and it is in this context that Schwarzenberger suggests the study of municipal decisions "to re-establish the certainty of law and thus to renew respect for

international law."

The second question is, are the municipal courts bound by the principles of international law? There is no general rule of international law according to which the State is imperatively bound by the principles of international law. Full respect for international law would require that the rules of international law should be treated everywhere as superior to any rule of municipal law and that they should be applied directly by the courts. In most countries the courts have resorted to the doctrine of "incorporation" or "adoption" vis-a-vis the principles of international law. For example the Supreme Court of the United States has reiterated in many cases that international law is a part of the law of the land, and that the laws of the United States ought not be so construed as to infract the common principles and usages of nations. In the well known Paquette Habana case, the Court observed that "International Law is part of our law, and must be ascertained and administered by the courts of justice of appropriate jurisdiction, as often as questions of right depending upon it are duly presented for their determination." In West Rand Central Gold Mining Co. Ltd. v The King, Lord Alverstone C.J., observed that "whatever had received the common consent of civilised nations must have received the assent of our country, and that to which we have assented along with other

1. See Talbot v Seeman, 1801, Cranch 1.
2. 175 U.S. 166.
3. (1905) 2 K. B. 391.
nations in general may properly be called International Law, and as such will be acknowledged and applied by our municipal tribunals when legitimate occasion arises for those tribunals to decide questions to which doctrines of International Law may be relevant."

There are many other countries the constitutions of which expressly provide for the application of principles of international law. For example Article 10, Section 3 of the Constitution of Italy (1948) lays down that: "The Italian juridical system conforms to the generally recognised principles of international law."

Again Article II Section 3 of the Philippines Constitution lays down that:

"The Philippines renounces war as an instrument of national policy and adopts the generally accepted principles of international law as part of the law of the Nation."

The Constitution of India also makes a provision for the promotion of international peace and security. Article 51 lays down that:

"The State shall endeavour to -
(a) promote international peace and security;
(b) maintain just and honourable relations between nations;
(c) foster respect for international law and treaty obligations in the dealings of organised peoples with one another; and
(d) encourage settlement of international disputes by arbitration.

It may however be pointed out that these provisions couched as they are, in very general terms, are in the nature of directives rather than binding. Further the municipal courts apply only those principles of international law which have either been enacted into municipal law or which do not conflict with the municipal law.
The concept of State sovereignty has not been totally reconciled with international law. Consequently whenever there is a conflict between the municipal law and international law, the courts apply municipal law. In Chung Chi Cheung v The King, Lord Atkin clearly pointed out that only that rule of international law would be treated as incorporated into the domestic law, which was not inconsistent with rules enacted by statutes. In the United States also the Supreme Court follows this practice. In the case of over the Top, it was observed that the "International practice is law only in so far as we adopt it, and like all common or statute law it bends to the will of Congress." In Prize cases also it has been seen that though the Prize Courts are required to apply the principles of international law, when a contrary statute is there, it is the latter which prevails.

It is evident thus that there is no general rule of international law which binds the municipal courts that they must administer principles of international law and that there is no supremacy of international law though, every State claims to honour these principles. Anzilotti has rightly opined in this context that the relationship between municipal law and international law is that of "reference without reception."

1. (1939) A. C. 160.
2. The House of Lords in its recent decision unanimously held that a statute which is not ambiguous must be applied irrespective of any treaty to the contrary, See Inland Revenue Commissioner v Collico Dealings Ltd. (1961) 2WLR 401.
3. 5 Federal Reporter, 838.
4. "It can not be disputed" observed Lord Parker that "a Prize Court, like any other Court is bound by the legislative enactments of its own Sovereign State." See, The Zamora (1916) 2 A.C. 77.
The practice which obtains in India is in line as that obtaining other countries. Though the Constitution incorporates provisions for fostering respect for international law and treaty obligations, these provisions are non-enforceable and there is no obligation on the part of the States to follow these as they are contained in Part IV of the Constitution dealing with the Directive Principles of State Policy. The Indian Judges subscribe to the Blackstonian theory that international law is part of the law of the land, but they have refused to give superiority to international law over the municipal law. The Supreme Court has held that in case of conflict between a treaty and a legislative enactment, the Court is bound to enforce the legislation. Further the study of case law reveals that the persistence of the Court in restricting the application of international law is attributable to its unwillingness to weaken the hands of the executive in upholding the national interests in its dealings with other States. The doctrine of the 'act of the State' has been greatly relied upon to exclude the jurisdiction of the Court. Nonetheless, the doors of the Court are not closed to the wide absorption of

1. It may be pointed out here that Article 51 of the Constitution does not envisage the role of courts in fostering respect for international law because the word "State" used therein has the same meaning which is given in Article 12 of the Constitution, where the Courts are excluded.


4. An act of a State is an act of the Executive as a matter of policy performed in the Course of its relations with another State, including its relations with the subjects of that State (Wade and Phillips, Constitutional Law (1946) p. 176). For a detailed discussion of this doctrine see Miss Felice Morgenstern's Article: Judicial Practice and the Supremacy of International Law, British Year Book of International Law 1950, Vol. XXVII, pp. 42-92 (73-80).
international law into the Indian municipal law.  

Public International Law and the Supreme Court of India:  

In the realm of public international law many cases have come up before the Supreme Court concerning, international personality, various problems of State succession, effects of treaties, nationality and extradition.

The Supreme Court had an occasion to give its views on the question of international personality in Commissioner of Income Tax, Andhra Pradesh v Mir Osman Ali in which case the Nizam of Hyderabad sought immunity from taxation as a sovereign head of a State which enjoyed international personality. Justice Subba Rao, who delivered the judgment quoted Oppenheim, that four qualities of a State, namely, (i) equality, (ii) dignity, (iii) independence, and (iv) territorial and personal supremacy constituted the international personality of a State. Testing through this criteria the Judge observed that the history of the State of Hyderabad clearly indicates that it never acquired international personality. It was all through a vassal of the British Crown. Oppenheim and Hall were quoted again in this context. Oppenheim writes that "the position of the Indian States to Great Britain is like that of vassal States which have no international relations whatever either between themselves or with foreign States." Hall also

4. Ibid p. 171.
makes a similar observation that the States of the Indian Empire of Great Britain were protected states and that they were not subject to international law. "It is therefore clear", the Court held, "that Hyderabad State did not acquire international personality under the International Law and so its ruler could not rely upon International Law for claiming immunity from taxation of his personal properties."

State succession is another topic of public International Law upon which the Supreme Court has been frequently called upon to give its views. The cases in this field are many because of the accession of former princely States to India. The subject of State succession which involves the transfer of territory from one national community to another gives rise to legal problems of a difficult and complex character. State succession which may take place by means of conquest, annexation, cession or disintegration of a State, involves the study of the rights and obligations that the succeeding State inherits. These relate mostly to private rights, property and contracts. The theory and practice amongst the States vary in this regard. The Supreme Court of India has however, followed the English practice in these cases. The Court has reiterated in more than half a dozen of cases that cession of one territory to another is an "act of State" and the subjects of the former State may seek the protection of only those

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3. State succession is a factual situation which arises when a State is substituted for another over a given territory. See D.P. O'Connell, State Succession in Municipal Law and International Law, Vol. I, 1967, p. 3.
rights which the new sovereign has recognised.\(^1\)

Notwithstanding the decision of the Permanent Court of International Justice that the "private rights acquired under existing law do not cease on a change of sovereignty,"\(^2\) the Supreme Court has held that in a new set up the residents "do not carry with them the rights which they possessed as subjects of ex-sovereign and as subjects of the new sovereign they have only such rights as are granted or recognised by him."\(^3\) Further the Court has held that the process of acquisition of new territories is one continuous act of state terminating on the assumption of sovereign powers de jure over them by the new sovereign and it is only thereafter that rights accrue to the residents of those territories as subjects of those territories.\(^4\)

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4. Earlier the Privy Council had observed that "When a territory is acquired by a sovereign State for the first time that is an act of State. It matters not how the acquisition has been brought about...In all cases the result is the same. Any in-habitant of the territory can make good in the municipal Courts established by the new sovereign only such rights as that sovereign...has recognised....even if in a treaty of cession it is stipulated that certain inhabitants should enjoy certain rights, that does not give title to those inhabitants to enforce these stipulations in the Municipal Courts. The right to enforce remains only with the high contracting parties." Vaje Singh Ji Jorvarsingh Ji v Secretary of State for India, A.I.R. 1924 P.C. 216. Also see Hoani Te Henhen Tukino v Aotea District Maori Land Board, 1941 A.C. 308.
In cases of contractual liability also the Court has maintained that the liability of a former State is binding on the succeeding State only if it recognises that contractual liability. "It is not correct to say as a matter of law," observed Justice Ramaswami, "that the successor State automatically inherits the rights and obligations of the merged State. There is no question of subrogation - the successor State is not subrogated ipso jure to the contracts with the merged State. The true legal position is that the contract of the predecessor State terminates with the change of sovereignty unless the contract is ratified by the succeeding sovereign State." 1

It is thus clear that in most cases of succession the Court has denied jurisdiction to itself on the basis of the doctrine of "act of State" which is an exercise of sovereign power. Further the Court has also admitted that a sovereign State can acquire foreign territory and can cede a part of it in favour of foreign State in exercise of its treaty-making power. This power, is of course, subject to the limitations which the Constitution of a State may either expressly or by necessary implication impose in that behalf. Whether the treaty can be implemented by ordinary legislation or by constitutional amendment will naturally depend upon the provisions of the Constitution itself. The Court made this observation when its opinion was sought by the President under Article 143, by way of reference, on the Indo-Pakistan Agreement relating to the transfer of a part of Berubari Union and some of

Also see Shri Shubhlaxmi Mills Ltd. v The Union of India and other , A.I.R. 1967 S.C. 450.
the Cooch-Bihar Enclaves. The Court held that the Agreement amounted to cession of territory and it could be implemented by either amending Article I and provided in Article 368 or by passing a law amending Article 3 of the Constitution so as to cover the cases of cession of the territory of India. In another case again the Court affirmed its opinion that no cession of Indian territory can take place without a constitutional amendment. But a boundary dispute and its settlement by an arbitral tribunal, the Court has held can not be put on the same footing. An agreement to refer the dispute regarding boundary involves the ascertainment and representation on the surface of the earth a boundary line dividing two neighbouring countries and the very fact of referring such a dispute implies that the executive may do such acts as are necess-ary for permanently fixing the boundary. A settlement of a bound-ary dispute, can not, therefore, be held to be a cession. Cons-equently, there is no need of constitutional amendment. This was the stand taken by the Supreme Court in Maganbhai v Union of India, in which case several petitioners prayed for a writ of mandamus or any other appropriate writ under Article 32 of the Constitution, to restrain the Government of India from ceding without the approval of Parliament certain areas in the Rann of Kutch to Pakistan as a result of the arbitration award given by the Indo-Pakistan Western Boundary Case Tribunal on February 19, 1968. The Court dismissed the petitions on the ground that

4. The Tribunal was constituted as a result of the agreement reached by the Governments of India and Pakistan on June 30, 1965. It consisted of three members, one nominated each by the Government of India and the Government of Pakistan.

Contd.
Implementation of the award did not amount to cession of the territory of India since the boundary was always uncertain and the area was disputed one between the two countries. The case was one in which each contending State ex facie was uncertain of its own rights and therefore consented to the appointment of an arbitral machinery. "Such a case," the Court held, "is plainly distinguishable from a case of cession of territory known to be home territory." The Court also discounted the argument that if a power to settle boundaries be conceded to the executive, it might cede some vital part of India. "The same may even be said of Parliament itself," the Court reasoned, "but it is hardly to be imagined that such gross abuse of power is ever likely. Ordinarily an adjustment of a boundary which International Law regards as valid between two Nations, should be recognised by the Courts and the implementation thereof can always be with the Executive unless a clear case of cession is involved when Parliamentary intercession can be expected and should be had. This has been the custom of Nations whose constitutions are not sufficiently elaborate on this subject." 

Treaties: Again the treaties, which do not merely involve principles of international law, but are in fact a source of international law, the Court has held "concern the political rather than..."
the judicial wing of the State.\textsuperscript{1} Treaty making is an executive act and not a legislative act\textsuperscript{2}. But this power has to be exercised in the manner contemplated by the Constitution and subject to the limitations imposed by it\textsuperscript{3}. Legislation may be and is often required to give effect to the terms of a treaty. Whether a treaty may be implemented by ordinary legislation or by a constitutional amendment depends on the provisions of the Constitution itself\textsuperscript{4}.

Further, the Convenants entered into by the Rulers of independent States with the Government of India by which they gave up their sovereignty over their respective territories, have also been considered as treaties by the Court and covered by the doctrine of 'act of State'. Consequently the Court has held, that any violation of their terms can not form a subject of any action in any municipal court. Any guarantee given by the Government of India "was in the nature of a treaty obligation contracted with the sovereign Rulers of Indian States and can not be enforced by action in municipal courts. Its sanction is political not legal."\textsuperscript{5}

\footnotesize

2. Pandit Jawaharlal Nehru observed in the Lok Sabha that ".....the treaty making power under the Constitution rests with the executive Government. Of course, to give effect to the treaty, one has to come to the Parliament....But a treaty is completed the moment Government of India signs it. The Government of India, if it is doing a wrong things, may be punished for it. But it is a different matter." Lok Sabha Debates, December 19, 1960, Column 6265.
3. Entry 14 of the Union List gives the power to the Central legislature to make laws concerning: "Entering into treaties and agreement, with foreign countries and implementing of treaties, agreements, and conventions with foreign countries." So far the Parliament has enacted no law to restrict the power of the executive to make treaties.

*Emphasis is mine.
Nationality: Nationality is the most frequent and sometimes the only link between an individual and a State, ensuring that effect be given to that individual's rights and obligations at international law. Though it is for each State to determine under its own law who are its nationals, yet it is governed by principles of international law. Besides, its determination is essential because it has many incidents at international law. For instance when the interests of an individual are injured by the State where he resides, his interests are protected and looked after by the State of which he is a national. It thus becomes imperative to know about the nationality of a person.

Nationality and citizenship, it has been held by the Supreme Court are not interchangeable terms. Nationality according to it

The Permanent Court of International Justice had also made a similar observation earlier in 1923, in its Advisory Opinion on the Nationality Decrees in Tunis and Morocco(PCIJ Ser.B, No.4, p.24) "In the present state of international law," the Court stated, "questions of nationality are, in principle, within the reserved domain."
4. Josef L. Kunz in his illuminating article on the Nottebohm Judgment, observes that "international law gives to sovereign states the competence to determine by municipal law who are their nationals only in principle. They have a wide discretionary competence, but their competence, is not unlimited." American Journal of International Law, 19(1967), p.536.
6. There are many writers who believe that the two terms are interchangeable. For instance Oppenheim, Kelsen, define nationality in reference to citizenship.
"has reference to the jural relationship which may arise for consideration under international law. On the other hand 'citizenship' has reference to the jural relationship under municipal law. Nationality is a broader concept than that of citizenship. All the citizens of a State are its nationals, but all its nationals are not its citizens. This distinction has been maintained by the Supreme Court, though the Indian Citizenship Act of 1955, nowhere distinguishes nationality from citizenship. The case study on nationality in India is thus in the context of citizenship which is governed by the provisions of the Constitution and the Indian citizenship Act of 1955.

The Constitution of India contains provisions only as to who were the citizens at the commencement of the Constitution. It is the Indian Citizenship Act of 1955 which embodies detailed


2. Corporations in India have Indian nationality, but they are not citizens. See State Trading Corp. of India v Union of India, A.I.R. 1963 S.C. 1811.

3. In the United States of America, the distinction between nationality and citizenship has been recognised in the Nationality Act, 1940. Section 101 of the Act lays down: "For the purposes of this Act (a) the term 'national' means a person owing permanent allegiance to a State, (b) the term 'national of the United States' means (1) a citizen of the United States, or (2) a person who, though not a citizen of the United States, owes permanent allegiance to the United States. It does not include an alien."

4. In Constitution of India provides for three categories of Indian citizens, namely; (1) citizens by domicile (Article 5); (2) emigrants from Pakistan (Article 6); and (3) Indian abroad (Article 8).
provisions concerning the various modes of acquiring citizenship\(^1\), loss of citizenship\(^2\) and the Commonwealth citizenship.

Most of the cases involving the determination of citizenship, that have come up before the Supreme Court relate to the persons who have migrated to or from Pakistan. Article 7 of the Constitution lays down that a person shall not be deemed to be a citizen of India, who has after the first day of March 1947, migrated from the territory of India, to the territory of Pakistan. The protection of the said Article was sought by a Mohammadan family which migrated to Pakistan after January 26, 1950, and then returned to India on May 13, 1956 on the strength of a Pakistani Passport and continued to stay in India after the expiry of the visa on the plea that they were citizens of India. The prosecution alleged that the respondents had left India for Pakistan after January 20, 1950, and that they could not be deemed to be citizens of India under Article 7 of the Constitution. Rejecting this interpretation of Article 7, the Court held that it is true that the migration after January 26, 1950, would be migration after the first day of March 1947, but it is clear that a person who has migrated after January 26, 1950 can not fall within the relevant clause because the requirement of the clause is that he must have

1. There are five modes of acquiring citizenship enumerated in the Citizenship Act: (1) Citizenship by birth (Section 3); (2) citizenship by descent (Section 4); (3) Citizenship by registration (Section 5); (4) Citizenship by naturalisation (Section 6); and (5) Citizenship by incorporation of territory (Section 7).

2. There are only three modes by which termination of citizenship is recognised in the Citizenship Act, namely; (1) renunciation of citizenship (Section 8); (2) termination of Citizenship (Section 9); and (3) deprivation of citizenship (Section 10).
migrated at the date when the Constitution came into force. Article 7 of the Court held, "refers to the migration which has taken place between the first day of March, 1947 and January 26, 1950. The question about the citizenship of persons migrating to Pakistan from India after January 26, 1950, will have to be determined under the provisions of the Citizenship Act."¹

In cases where a person has pleaded the acquisition of Indian citizenship under Article 6 of the Constitution, that is, on the plea of "migration to the territory of India", the Court has interpreted the word "migration" to mean "come to the country with the intention of residing there permanently." The occasion for this decision arose in Shanno Devi v Mangal Sain², in which case Shanno Devi, a defeated candidate at the general elections, challenged the election of Mangal Sain on the ground that the respondent was not a citizen of India and hence was not qualified to contest the elections. The Supreme Court after going through the facts of the case, affirmed the decision of the Punjab High Court that after August 15, 1947, Mangal Sain who had earlier moved from a place now in Pakistan to Jullundur in India, had definitely made up his mind to make India his permanent home.

The Court has however expressed its inability to determine the question, whether a person has acquired the nationality of a foreign State or not, in view of Section 9(2) of the Citizenship

¹Emphasis is mine.

This was an appeal case against the decision of the Punjab High Court. See A.I.R. 1959 S.C. 175.
Act, which prevents the Court from making such determination. The Court has held that in all cases where action is proposed to be taken against persons residing in this country on the ground that they have acquired the citizenship of a foreign country and have lost in consequence the citizenship of India, it is essential that the question should be determined by the Central Government. In Government of Andhra Pradesh v Syed Peer Mohamad Khan, orders of deportation were passed by the State Government of Andhra Pradesh against the appellants who had obtained Pakistani passport implying thereby that there was an automatic statutory cessor of their citizenship by virtue of Section 9 of the Citizenship Act. The Court set aside the orders of the Government and held that it fell within the jurisdiction of the Central Government to decide such a question and it is only after that a State Government can deal with the persons as foreigners if the Central Government has declared so.

Private International Law and the Supreme Court:

Private international law is a body of those rules of foreign laws which are administered by the municipal courts in cases containing foreign element. It is municipal law and is enforced by

1. See Rule 30 of the Citizenship Rules, 1956. (These rules were made by the Central Government in exercise of the powers conferred by Section 18 of the Citizenship Act, 1955).
3. Also see Akbar Khan Alam Khan v Union of India, A.I.R. 1962 S.C. 70.
4. The word 'Private International Law' was coined by story in 1834. He defined it as "the jurisprudence arising from the conflict of the laws of different nations, in their actual application to modern commerce and intercourse." (Commentaries on Conflict of Laws). Cf. The collected papers of John Westlake on Public International Law, Ed. by L. Oppenheim (1914), p. 285.
the municipal courts. Consequently, there has been a controversy to the effect that it is not international law and many different names have suggested, like 'conflict of laws', 'choice of law', 'international private law', 'inter municipal law', 'comity', 'extra-territorial recognition of rights'. But international lawyers of repute, like West Lake and Cheshire prefer to use the expression 'private international law' because of the presence of a foreign element in a case. Westlake has observed that this branch falls under international law as it constitutes a department of law "which treats of the selection to be made in each action between various jurisdictions of law." In nature, however, it is undeniable that the private international law is essentially national law. It is a branch of the civil law of the State evolved to do justice between the litigating parties in respect of transactions or personal status involving a foreign element, though by the comity of nations certain rules have been adopted to adjudicate upon disputes involving a foreign element and to effectuate judgments of foreign courts in a certain manner, or as a result of certain international conventions.

Private international law being a State law is different in each country. In Indian diverse topics of private international

1. The Collected Papers of John Westlake on Public International Law, ed by L. Oppenhwim (1914) p. 285. Justice Gray makes a similar observation when he says that "International law in its widest and most comprehensive sense, includes not only questions of right between nations governed by what has been appropriately called the law of nations, but also questions arising under what is usually called the private international law." Hilton v Guyot 159 U.S. 113 (163).


law are covered by various statutes. In the absence of statutory provisions in a particular case, the Supreme Court has been influenced by the principles established by the Courts in England. In cases of domicile which is governed by the statutory provisions contained in Part III of the Indian Succession Act, the Court sometimes apply the English principles to decide the case, instead of the provisions of the said Act. For instance in Central Bank of India v Ram Narain\(^1\), the Supreme Court applied the English version of domicile that "that place is properly the domicil of a person in which his habitation is fixed without any present intention of removing from there." Further it upheld the English doctrine that no person can be without a domicile, though he may have no home. The law assigns in such cases what is called a 'domicile of origin.' This prevails till a new domicil is acquired, so that if a person leaves the country of his origin with an undoubted intention of never returning to it again, his domicile of origin adheres to him until he actually settles with the requisite intention in some other country.

This principle was applied in the Central Bank case where Ram Narain a businessman was accused of an offence under the Indian Penal Code, committed however, in a district which fell by the partition of India in Pakistan. Ram Narain took the plea that he could not be tried by the Courts of India as at the time of the alleged offence he was not a national of India\(^2\). Ram Narain had a considerable business in the district of Multan and had no home

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2. Under Section 4 of Indian Penal Code.
in India. The Court held that his 'domicile of origin' was in Multan (Pakistan) and that he was not a domicile of Indian at the time of the commission of offence as he had no residence or home in the Dominion of India. He may have had the animus to come to Indian but animus was indefinite and uncertain. The subsequent acquisition by him of Indian domicile can not affect the question of jurisdiction of courts for trying him for crimes committed by him while he did not possess an Indian domicile.

In cases of contract again the Court has followed the English doctrine of "proper law of the contrast." This tendency to follow the English Rules is the legacy of British rule when the courts in India looked to the Privy Council, as the highest judicial body setting precedents for them. Concern has however, been expressed in the juristic circles against this tendency of the Court. The Court should adopt only desirable features of other foreign systems. Now that the Supreme Court of India is the highest Court, not bound to follow the decisions of the Privy Council, it is free to establish its own rules of jurisprudence. Only if it takes an independent course that it shall be in a position to contribute to the private international law.


Conclusion:

It is evident thus that the Supreme Court which is a municipal court and whose primary task is to interpret and apply the municipal law is often called upon to interpret and administer principles of international law. The Supreme Court of India like its counterparts in other countries has reiterated the Blackstonian dogma that international law is a part of the law of the land, but in fact has refused to accord superiority to international law over the municipal law as the provisions embodied in the Constitution which provide for fostering respect for international law and treaty obligations are not mandatory in nature but are non-enforceable directives.

The Court has even been cautious to see that hands of the executive in upholding the national interests are not weakened in its dealings with other states by its undue interference. It has thus greatly relied upon the doctrine of 'act of the state' to deny jurisdiction to itself especially in cases of succession.

In cases both under public international law and private international law, the Court mostly follows the English practice. This tendency of the Court has been detested by the eminent jurists in India and it is felt that the Court should take an independent course. Being the highest Court in the country, it is free to establish its own rules of jurisprudence.