



Incorporation Of International Human Rights Norms Into National Constitutions

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I. ABSTRACT

The growth of international human rights laws and agreement¹ has transformed international law and has produced robust international legal processes to promote human rights². We look at ideas of the interaction between international law and national legal system, as well as the wide discretion in determining how to implement international human rights in national constitutions. We also go over the significance of the legislative approaches for putting international human rights laws into effect as well as the monitoring mechanisms of international organizations³.

Everyone should have access to human rights as fundamental rights, according to the United Nations (UN)⁴ and the community of nations. The importance of integrating these international human rights into Welsh⁵ is the primary focus of this briefing.

We all have the fundamental right despite this human rights are regardless of our nationality, place of residence, sex, national or ethnic origin, color, religion, language, or any other status. However, countries have regularly avoided their obligations⁶ to protect the human rights of their citizens by ignoring international legal standards. Numerous methods that human rights are commonly included in constitutions are examined in this comment. In order to highlight the significant advancements in international law, it creates a unique classification scheme for every category. Amongst the actions governments are encouraged to take is to incorporate human rights treaties⁷ into national constitutions or in national law.

II. KEYWORDS

Incorporation, International human rights, Constitution, Tribunals, Enforcements, Implementation, Judicial Interpretation, Domestic Application .

III. INTRODUCTION

Unfortunately, there is still a lot of debate on the precise 'definition of incorporation.' Despite the fact that this section employs the most widely accepted definition of incorporation, it is crucial to remember that the techniques discussed

¹See universal declaration of human rights, UNGA Res 217(111)(10 December 1948)

² See international covenant on civil and political rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (CCPR).

³ For example, UN Human Rights Council, 'Universal Periodic Review',

<https://www.ohchr.org/en/hr-bodies/upr>

accessed 6 August 2025

⁴ Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945) 1 UNTS, Preamble and art 1(3)

⁵ Rights of Children and Young Persons (Wales) Measure 2011, s1

⁶ See Philip Alston and Ryan Goodman, *International Human Rights* (Oxford University Press 2013) 123.

⁷ See Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331, arts 26-27.

below are seldom, if ever, used in a clear and concise way in practice. This is because the selected approach and the specific conditions, such as judicial monitoring and accountability procedures, will both play a significant role in inclusion. Human rights are legally required of governments and public entities, and individuals can use this way to assert their rights before national tribunals or courts. Perhaps for the first time in history, international human rights are being acknowledged on a global scale in social, legislative, and business debate. Furthermore, institutional improvements could result from constitutional incorporation. Domestic constitutions in developed countries are frequently enforced by reputable, competent judges who would be better

able to monitor the government compared to the distant international machinery⁸. The more concerning possibility is that international accords are merely symbolic gestures intended to signify obligations that countries do not intend to fulfill.

Going into the Theory, Incorporating international human rights norms into national constitutions can be achieved through various methods, including direct incorporation which involves transforming an international human rights treaty and where the norms are explicitly written into the constitution or national legislation and the other is indirect incorporation where human rights treaty is given some legal effect through domestic legislation, and the national law is interpreted in light of international standard. This process aims to strengthen the protection of human rights at the domestic level by aligning national laws and practice with international obligation⁹. The availability of a successful concept which provides the temporary remedy for rights abuses will continue to depend on national legal system operation and the remedies that are accessible. One example of direct integration in the Human Rights

Act of 1998, which incorporates the Convention on Human Rights (ECHR)¹⁰ into the nation's legal system. However, indirect incorporation may be a useful remedy for those whose rights are referred to as mechanisms connected to direct incorporation.

In the UK, one example of indirect incorporation is the Rights of Children and Young People. The Rights of Children and Young Persons (Wales) Measure of 2011¹¹ is the Child Rights Measure. As a result, Welsh ministers are required to give children's rights "due regard" and the UN Convention on the Rights of the Child (CRC)¹² is incorporated into Welsh legislation. The main difference between direct and indirect

incorporation is that, although governments and other public entities are not legally bound by human rights, they are subject to some indirect consequences, such as being forced to adopt particular ethical considerations taking rights into account when creating policy. This Comment explores these potential explanations by analyzing whether the process of integrating human rights treaties into constitutions affects the jurisprudence of domestic courts on the integrated agreements. Part II examines and classifies the

⁸ See Martti Koskeniemi, *The Politics of International Law* (Hart 2011) 95.

⁹ See Vienna Convention on the law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331, arts 26-27.

¹⁰ Human Rights Act 1998, s 1; European Convention on Human Rights (adopted 4 November 1950, entered into force 3 September 1953) ETS No 5.

¹¹ Rights of Children and Young Persons (Wales) Measure 2011, s 1.

¹² Convention on the Rights of the child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3.

ways in which human rights treaties are integrated into national constitutions. Four case studies are presented in Part III to show how different incorporation strategies are used in domestic courts. The impact of constitutional systems on domestic courts' judiciary is examined in Part IV.

Human rights progress and protection are currently top priorities for the worldwide community. The International Human Rights Act (IHRL), which offers a thorough framework of standards and norms meant to defend human dignity and fundamental freedom, has evolved significantly since the 1948 adoption of the Universal Declaration of Human Rights¹³. The effectiveness of IHRL is mostly due to domestic implementation, even if it provides universal principles.

National formation plays an important role in this process. They serve as the primary legal documents of a state, defining the structure of the government, allocating powers, and—above all—enumerating fundamental rights. The conversation between the Constitution and IHRL is complex and dynamic. As constitutional provisions, international human rights standards can be integrated into national legal systems¹⁴, granting them legal standing and enabling citizens to ask for their appearance in national courts

a. UNDERSTANDING INTERNATIONAL HUMAN RIGHTS

In order, to protect and preserve the fundamental liberties and human rights of individuals or groups, governments are obligated under international human rights law¹⁵ to take particular acts or abstain from taking specific actions. One example of the challenges and conflicts that might arise when constitutionalism and

international human rights legislation¹⁶ collide is the conflict between national sovereignty and international obligations. One of the United Nations' greatest achievements is the creation of an accomplish body of human rights legislation, an internationally accepted norm that all nations may obey and to which all individuals can endeavor. The United Nations has developed a broad range of internationally recognized rights¹⁷, including civil, cultural, economic, political, and social rights. It has also established mechanisms to help governments carry out their responsibilities and to promote and protect fundamental rights. Human Rights are the rights which

are relating to life, liberty, equality and dignity¹⁸ of the individual guaranteed by the Constitution or embodied in the International covenants and enforceable by courts in India.

b. SOURCES OF INTERNATIONAL HUMAN RIGHTS

¹³ Universal Declaration of Human Rights, UNGA Res 217A(111)(10 December 1948)

¹⁴ See Manfred Nowak, *Introduction to the International Human Rights Regime* (Martinus Nijhoff 2003) 45-47.

¹⁵ international covenant on civil and political rights (adopted 16 December 1966, entered into force 23 march 1976) 999 UNTS 171 art 2.

¹⁶ See General Assembly , 'Vienna Declaration Programme of Action'(12 july 1993) UN Doc A/CONF.157/23, Part 1, para 5.

¹⁷ Universal Declaration of Human Rights, UNGA res 217A(111)(10 December 1948), arts 1-30

¹⁸ Constitution of India 1950, art 21; see also *People's Union for Civil Liberties v Union of India* AIR 1997 SC 568

International Human Rights are drawn its sources from various instruments including treaties, customary international law¹⁹. The statute of the international courts of justice (ICJ) identifies these as primary sources. The general legal standards recognized by civilized countries; court decisions and the counsel of each nation's top publicists as supplementary means of developing legal standards.

IV. ANALYSIS OF CONSTITUTIONAL INCORPORATION OF HUMAN RIGHTS

Despite being signatory to legally binding international agreements, several countries nevertheless choose to incorporate human rights laws in their constitutions. This section outlines the several constitutional categorization patterns. Incorporation of human rights agreements and provides examples of constitutional language. One important consequence of integration is the transfer of human rights from the international to the domestic sphere. If human rights are not taken into account, they may be seen as just top standards that are unrelated to the practical realities of domestic policy. Human rights become crucial to government operations whether through direct or indirect absorption. Human rights are part of the task that insulating them from current and future political whims by integrating them into the national legal system. Incorporation is also used to address the accountability gap. States' agreed-upon human rights obligations and their actual behavior differ²⁰, often depriving individuals and social groups of the levels which lack the means or safety to exercise even the most basic human rights.

Globally, there is some accountability for human rights. States are required to submit reports on a regular basis to the treaty body that oversees its implementation. At the conclusion of this procedure, which is repeated every four to

five years, the treaty body publishes "Concluding Observations"²¹ that specify the areas in which the reporting The state is failing to enforce human rights standards and provide advice on how to do so.

The international human rights movement was strengthened by the Universal Declaration of Human Rights (UDHR), which was adopted by the UN General Assembly on December 10, 1948²². Drafted as "a common standard of achievement for all peoples and nations," the Declaration establishes for the first time in history the fundamental civil, political, economic, social, and cultural rights that all people should enjoy. The obligations set forth in international human rights law must

¹⁹ Statute of International Court of Justice (adopted 26 June 1945), art 38 (1)

²⁰ See Andrew Clapham , *Human Rights: A very Short Introduction* (OUP 2015) 102 -104.

²¹ UN Office of the High Commissioner for Human Rights (OHCHR), 'Concluding Observation' <http://www.ohchr.org/en/treaty-bodies/tb-jurisprudence> accessed 6 August 2025

²² Universal Declaration of Human Rights, UNGA res 217A(111)(10 December 1948),

be followed by states²³. When states mark international agreements, they have obligations and duties under international law to protect, defend, and fulfill human rights.²⁴

A. WHY INCORPORATION IS IMPORTANT IN NATIONAL CONSTITUTION

A moral and practical basis for guiding public affairs is provided by human rights. However, international human rights are not incorporated into the legal system unless the government decides to include them in a law. A number of governments have refused to do this. Significant human rights standards are not effectively embedded (or mainstreamed) into policy decision-making or government action (or the actions of other public authorities); second, there is an accountability gap; and third, there are insufficient mechanisms for accountability and enforcement of unincorporated human rights. These factors make the Government's decision to exclude human rights noteworthy. On the one hand, they have a legal obligation to ensure that national laws comply to international human rights norms. In actuality, though, local courts may not agree with the vast collection of international court interpretations that are incorporated. Since 1945, a number of international human rights treaties and other instruments have been ratified²⁵, giving inherent human rights legal status and expanding the scope of international human rights. At the regional level, additional instruments have been enacted to deal with the region's unique human rights problems and provide particular protections. Additionally, most states have established constitutions and legislation that specifically protect fundamental human rights. Although international agreements and customary law serve as the foundation for international human rights legislation, additional instruments such as international declarations, guidelines, and principles²⁶ are also used in order to understand, apply, and to enhance it. For the protection of human rights, the rule of law must be created both domestically and internationally²⁷. Once the principles of international human rights law are integrated into national legislation and become a part of the local legal system, the state and its institutions are legally obligated by them²⁸.

This guarantees that human rights are not only idealist concepts but are actually taken into account when the government takes decisions and carries out programs. Without cooperation, human rights could possibly be seen as abstract

²³ Vienna Convention on the law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331, arts 26-27.

²⁴ International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1996, entered into force 3 January 1976) 993 UNTS, arts 2 and 12.

²⁵ Manfred Nowak, *Introduction to the International Human Rights Regime* (Martinus Nijhoff 2003) 45-47

²⁶ See United Nations, 'Basic Principles and Guidelines on the Right to a Remedy and Reparation' (2005) UN Doc E/CN.4/2005/102/Add.1

²⁷ Tom Bingham, *The Rule of Law* (Penguin 2011) 67.

²⁸ International Covenant on Civil and Political Rights (n 2 above), art 2(1)

ideas that have little significance in current governmental activities. It acts as a framework for protecting people's fundamental rights²⁹, which overcomes the gap between international agreements and local practice, and converts human rights from idealistic goals into legally binding standards.

B. INSTRUCTION FOR CONSTRUCTING INTERNATIONAL HUMAN RIGHTS

Some constitutions proceed so far as to stipulate that domestic laws shall be superseded³⁰ by the aforementioned human rights agreements. Although these articles do not expressly elevate the defined principles to the level of constitutional law, they nevertheless accord them considerable weight in the

country's legal system. The responsibilities stipulated by international human rights legislation must be followed by states. When states approve international treaties, they have a responsibility and obligation under international law³¹ to protect, defend, and fulfill human rights. According to the commitment to respect, states are forbidden from impeding or limiting the exercise of human rights. It is the responsibility of states to protect individuals and communities against human rights abuses. This involves

comprehending exactly what language was used, the goals of the nations who drafted the agreement, and the main goal of promoting and protecting human rights. It is also crucial to use interpretative concepts such as the principle of evolution, which allows interpretations to change in response to shifting circumstances and societal norms, and the principle of efficacy³², which stipulates that the interpretation should give the treaty's provisions practical impact.

The object and purpose of instruction for constructing International Human Rights is to determine the overarching goal of the instruments which is typically the protection and promotion of Human Rights. International human rights law mandates that states protect, defend, and enforce human rights.

These obligations include not abusing one's rights, stopping others from doing so, and ensuring that those who violate them have access to remedies³³.

C. Reference to International Tribunals

A third category includes constitutions that designate certain tribunals to decide cases involving human rights abuses. However, by utilizing

²⁹ Manisuli Ssenyonjo, *Economic, Social and Cultural Rights in International Law* (Hart 2009) 156.

³⁰ For example, Constitution of South Africa 1996, s 231(4); Constitution of Argentina 1994, s 75(22).

³¹ Vienna Convention on the Law of Treaties (n 4 above), arts 26–27

³² *Golder v United Kingdom* (1975) 1 EHRR 524, para 35.

³³ UN General Assembly, 'Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power' (1985) UN Doc A/RES/40/34.

Article 75(22), the provision that included the human rights accords, the Court has now twisted it against the petitioners rather than in accordance with international law. The Court said that in accordance with the constitution's language, no provision of a treaty might restrict the rights or protections specified in the Constitution³⁴.

D. Explicit Incorporation of Particular Human Rights Conventions

Constitutions that legally adopt certain human rights treaties³⁵ as part of their legal framework are among the rarest. Generally speaking, the constitution supersedes international law, with the exception of agreements that are deemed to be equal to constitutional law. Two-thirds of each legislative house must agree for the National Executive Power to reject these conventions and treaties the article goes on to say, legally incorporating, frequently used legislation³⁶, the provisions of these treaties into a nation's internal legal system. This process

transforms international human rights laws into enforceable domestic law³⁷, allowing people to instantly

exercise their rights in national courts.

V. FRAMEWORK OF INTERNATIONAL HUMAN RIGHTS WITH NATIONAL CONSTITUTION

This section examines the national framework for protecting the rights of individuals with disabilities. This study examines the role of non- governmental organizations in monitoring the protection of the rights of individuals with disabilities, the incorporation of international law into local laws, and the legal protections against violations of human rights provided by national law. International Human Rights provide a statute to the constitution in which treaties are being framed to protect the rights of the individuals. In an effort to give normative rights legal status, states use a variety of tactics for "internationalizing" treaty norms, or incorporating treaties into their legal systems so that state authorities can implement their provisions. International human rights laws may have a big impact on national systems, regardless of whether of the two scenarios described above is true. National courts may take regional and international human rights norms into consideration while interpreting and developing national legislation. National human rights systems can employ international and regional human rights legislation in a variety of ways.

These include basing the human rights claim on international or regional human rights law when such law is incorporated into or a part of national law, using international and regional human rights law as a guide when interpreting national law

³⁴ Constitution of Argentina 1994, art 75(22).

³⁵ For example, Constitution of Colombia 1991, art 93.

³⁶ See Dinah Shelton, *Advanced Introduction to International Human Rights Law* (Edward Elgar 2014) 41–43.

³⁷ Sarah Joseph and Melissa Castan, *The International Covenant on Civil and Political Rights: Cases, Materials, and Commentary* (3rd edn, OUP 2013) 78.

provisions, and using international human rights law as the minimal level of protection that national law should attain. The development of international human rights law and its integration into domestic law are discussed in the parts that follow. the right to social safety; the right to a decent standard of living; the right to work in fair and advantageous conditions; the right to education and the enjoyment of the benefits of scientific development and cultural freedom; and the right to the greatest possible physical and mental health.

VI. CASE LAWS RELATED TO INTERNATIONAL HUMAN RIGHTS

When discussing the laws of the case pertaining to the role of the Constitution in international human rights, the primary examples are cases where courts have used international human law treaties like the Universal Declaration of Human Rights (UDHR) to explain and implement domestic constitutional provisions—often referring to "life," "freedom of speech," or the "non- discrimination" principle to expand security for individuals within a nation. There are some important case law related to it are :

i. *State of Maharashtra and others v. Siddharam Satlingappa Mhatre* (2010)³⁸: Attracted to international human rights concepts, this Indian Supreme Court case examined the significance of human dignity in the context of life and personal freedom.

ii. *State of West Bengal, U.P. v. Mr. D.K. Basu v. Ashok K. Johri* (1996)³⁹: The lawsuit emphasized the need of preserving human dignity and the need to maintain it in all circumstances, citing international human rights equipment.

iii. The European Human Rights Court is pointed to the use of the proportionality criteria in administrative tasks in the case of *Union of India v. Om Kumar and ors* (2000)⁴⁰.

VII. IMPLEMENTATION OF INTERNATIONAL HUMAN RIGHTS

The National Human Rights Commission (NHRC), established by the Protection of Human Rights Act of 1993, is the principal body tasked with promoting and protecting human rights. The Act also mandates the establishment of State Human Rights Commissions (SHRC) and Human Rights Courts (HRC)⁴¹ at the district level in each state. The Human Rights Act grants the

³⁸ *State of Maharashtra v Siddharam Satlingappa Mhatre* (2010) 1 SCC 694 (India).

³⁹ *D.K. Basu v State of West Bengal* (1997) 1 SCC 416 (India).

⁴⁰ *Union of India v Om Kumar* (2001) 2 SCC 386 (India)

⁴¹ *Ibid*, ss 21–31.

NHRC a wide range of authority, but it has no real enforcement mechanisms and can only offer recommendations. The scope of the NHRC's work and the desire of victims of human rights violations to bring their concerns to the Commission's notice are demonstrated by the 50,634 complaints it received between 1999 and 2000, starting with 496 complaints in the first six months after its founding. There are no explicit provisions controlling the status and incorporation of foreign law into Indian law in the Indian Constitution. However, as per Article 51(c), the state shall endeavor⁴² to encourage adherence to treaty obligations and international law in organized people's dealings with each other. This is one of the guiding principles of state policy.

Implementation of Human Rights is needed for the protection of the rights which are being given to the individual so that no difference is done in the national constitution related to the matter with which they deals. Implementing is necessary for the better of nation and all treaties so no violation should me done. International agreements are not usually incorporated into national law. They must be made domestic law by a legislative act. Only the Union has the power to implement foreign agreements.

English common law and customary international law are equally recognized in domestic law⁴³. Therefore, as long as a customary international law standard does not clash with Indian law, it can be enforced in India. Even while national laws must be respected even if they clash with standards that are binding on India under international law, Indian courts—particularly the Supreme Court—have consistently construed legislation to ensure their compatibility with international law⁴⁴.

Indian legal opinion, which has been mirrored in several recent Supreme Court of India decisions, holds that international law and local law should be read harmoniously. Only in situations where there is an inevitable contradiction between international law and municipal law should the former take precedence. When interpreting the Constitution's provisions on fundamental rights, the Supreme Court has even gone so far as to repeatedly hold that courts can rely on the provisions of the International Covenant on Civil and Political Rights that define and implement the fundamental rights guaranteed by the Constitution as elements of those rights and are, therefore, enforceable.

Decisions on formation chemicals in international law usually consider the obligations of a state. They have a higher standing in domestic law thanks to the Constitution, which makes it possible to directly include particularly important international legal obligations. It could also be in it's is crucial to consider whether a state's constitutional restrictions prohibit it from upholding its obligations under international law. A constitution must explicitly state the fundamentals of international law. His position within the domestic judicial system. International standards are introduced into domestic law, made applicable by domestic courts, and clarified when they are included into a constitution. This is because international law

⁴² Constitution of India 1950, art 51(c).

⁴³ Gramophone Company of India Ltd v Birendra Bahadur Pandey AIR 1984 SC 667 (India)

⁴⁴ Vishaka v State of Rajasthan AIR 1997 SC 3011 (India).

is usually not absorbed into domestic law in dualistic states. Standing in accordance with domestic law. In any case, including international legal obligations into the constitution could be a more transparent way⁴⁵ to demonstrate a country's adherence to them than other, less evident effects.

VIII.

CONCLUSION

The Constitution has a major impact on the development and implementation of the International Human Rights Act. They are crucial instruments for translating international norms into national legislation, giving citizens the ability to assert their fundamental rights in front of national courts and hold governments responsible for their pledges to protect human rights. By strengthening the connection between these two legal systems, we can increase the safety of human rights globally and get closer to creating a society where everyone's basic freedom and dignity are upheld. It is essential that constitutional courts, international tribunals, and human rights defenders⁴⁶ have ongoing conversations and exchanges to ensure that the systems in place to fulfill. A constitution's incorporation of human rights agreements may have an impact on how such conventions are implemented to the extent that the court has the power to apply international law that conflicts with the constitution.

This has some unexpected repercussions. The strongest provisions for enforcing international human rights standards would seem to be the finest legal foundations for ensuring consistent enforcement.

The promise of the International Human Rights Act remain effective instruments. In a culture where the boundaries of human rights standards are constantly being questioned, incorporating international law into national constitutional frameworks may be the most effective way to protect human rights. uch formulations.

All nations acknowledge the UDHR as a moral code of behavior⁴⁷, notwithstanding the fact that it lacks legal authority. The Bangalore Principles state This Comment has looked at how the incorporation process affects domestic courts' ability to enforce their commitments under international human rights law. It has sought to identify the key trends in how constitutions treat international law and human rights accords in order to offer a framework for assessing the consequences of that where local legislation is absent, courts must adopt and apply the principles of international human rights law in their decisions. For example, India does not have

specific legislation for refugees⁴⁸, thus their rights might be protected by putting them under the human rights framework. However, the Principles forbid their application in cases where they clash with national laws. In order to provide residents with more Anne Peters, 'Supremacy Lost: International Law Meets Domestic Constitutional Law' (2009) 3 Vienna J Intl Const L 170.

⁴⁵ See Antonio Cassese, International Law (2nd edn, OUP 2005) 380–384.

⁴⁶ UDHR (n 1 above), Preamble.

⁴⁷ See Shuchi Sharma, 'The Protection of Refugees in India: A Human Rights Perspective' (2021) 5 IJLR 140.

human rights laws, the Indian legal system has adopted international norms. These norms are reflected in several Indian judicial decisions.

Other legislation have been passed, including the Human Rights Act of 1993⁴⁹, the Constitution of the Human Rights Commissions at the national and state levels, and the Human Rights Courts. India has ratified many international human rights treaties⁵⁰. All of these changes in the Indian legal system are the result of the global drive to follow these international human rights law rules.

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⁴⁸ The Protection of Human Rights Act 1993, s 3.

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