

International Treaties vis-à-vis Domestic laws

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Abstract:

Co-jointly reading Article 253 and Entries 13 and 14 of List I, Schedule VII, Parliament has power to make any law for the whole or any part of the Territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any International Conference, Association or Other body.” The Parliament can make any law for whole or any part of India for implementing international treaties without the consent of any State. There are various international treaties where India has adopted and ratified into law i.e. Arbitration laws, Air laws etc.

In International law, many different terms may be used to describe agreements which entered into between countries. In simple word, the term “treaty” is defined as per Cambridge Dictionary as a written agreement between two or more countries, formally approved and signed by their leaders. Historic treaties promised Indigenous peoples reserve land, the government paid schools and teachers on reserves, hunting and fishing rights on unoccupied Crown land, and one-time benefits (such as farm equipment and animals, ammunition, and clothing).¹ International treaties are called conventions, protocols, and covenant. Memorandum of understanding, status and so on. The terminology can be used different but the meaning stands still as willingness of two or more countries for regulating their international interest.

According to Article 1,1 of the UN regulations regarding the registration and publication of treaties and international agreements under Article 102 of the UN Charter, the nature of the international agreement is important, not the descriptive name (emphasis added):

1. Every treaty or international agreement, whatever its form and descriptive name, entered into by one or more Members of the United Nations after 24 October 1945, the date of the coming into force of the Charter, shall as soon as possible be registered with the Secretariat in accordance with these regulations.

The Vienna Convention on the Law of Treaties 1969 defines several common treaty terms, including the term "treaty":

Article 2,1(a) states:

*"Treaty" means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation;*²

¹ Article “importance of Treaties”, Available at https://easyrelocated.com/what-is-the-importance-of-treaties/#google_vignette, last visited on 21st September 2023.

² Charter of the United Nations, available at <https://legal.un.org/repertory/art1.shtml>, last visited on 21st September 2023.

The Supreme Court of Canada, in *R. v. Sioui*, 1990³, noted “What characterizes a treaty is intention to create obligations, the presence of mutually-binding obligations and a certain measure of seriousness. Treaties form the basis of international law. They maintain stability and diplomatic relations between the States. They are thus the most important elements to guarantee international cooperation, peace, and security. This is one of the reasons why treaties are regarded as the fundamental source of international law.”⁴

Article 36 (2)⁵ of the Statute Of the International Court Of Justice states that without any specific jurisdiction with regard to jurisdiction, treaties plays an important role to determine question of jurisdiction. Article 38(1) of the International Court of Justice’s statute identifies treaties as a source of law, along with general principles and customs. Treaties occupy a very eminent position in international law. They ensure friendly and peaceful relations of states with one another and are a means by which international organizations take form, regulate and monitor their affairs. The concept of the treaty has undergone significant changes over time. Treaties can be bilateral (between two States) or multilateral (between three or more States). Treaties can also include the creation of rights for individuals. Treaties involving two entities are bilateral treaties. It is not necessary that the treaty can only have 2 parties; there may be more than two parties, however, there should be only two states involved. Treaties between three countries or more are multilateral treaties. They might be international or domestic. They give rise to rights and obligations among all the parties, i.e. each signatory has obligations towards all the other signatories.⁶ There are different types of treaties depending upon subject matter. : law making treaties; peace and friendship treaties etc.,. Treaties also have been classified according to their object, as follows: (1) political treaties, including peace treaties, [alliances](#), territorial cessions, and disarmament treaties; (2) commercial treaties, including tariff, consular, fishery, and navigation agreements; (3) [constitutional](#) and administrative treaties, such as the conventions establishing and regulating international unions, organizations, and specialized agencies; (4) treaties relating to [criminal justice](#), such as the treaties defining international crimes and providing for [extradition](#); (5) treaties relating to civil [justice](#), such as the conventions for the protection of human rights, for trademarks and copyright, and for the execution of the judgments of foreign courts; and (6) treaties codifying international law, such as the procedures for the peaceful settlement of international disputes, rules for the conduct of [war](#), and definitions of the rights and duties of states.⁷

Treaty-Making Power Under the Constitution of India:

Prior to the commencement of the Constitution, India did not enjoy full external sovereignty, "the implementation of treaties and agreements with other countries" was a federal subject under Item 3 of List I of Schedule VII under the Government of India Act, 1935, although this power was restricted by Section

³ 1990 CanLII 103 (SCC)

⁴ Article “importance of Treaties”, Available at https://easyrelocated.com/what-is-the-importance-of-treaties/#google_vignette, last visited on 21st September 2023.

⁵ The states parties to the present Statute may at any time declare that they recognize as compulsory ipso facto and without special agreement, in relation to any other state accepting the same obligation, the jurisdiction of the Court in all legal disputes concerning: the interpretation of a treaty.

⁶ Article “Concept of Treaties in International Law” by Mehak Jain, available at <https://blog.ipleaders.in/concept-treaties-international-law/>, last visited on 22nd August 2023.

⁷ Ibid, last visited on 19th September 2023.

106 of the Act which laid down that in the exercise of the above power, the Federal legislature could not make any law for any Province or Federal State without the consent of the Governor.⁸

Draft Article 230 (Article 253) was discussed in the Constituent Assembly on 13 June and 14 October 1949. The Draft Article gave the Union Parliament the exclusive power to make laws for any part of India's territory in order to implement any treaty, agreement or convention involving one or more countries.

On 13 June 1949, the Assembly President moved an amendment to replace the words '*for any State or part thereof*' with '*for the whole or any part of the territory of India*'; This amendment was adopted without any debate on this day. Then on 14 October 1949, a member proposed that the following words be added at the end of the Draft Article '*or any decision made at any international conference, association or other body.*' This amendment too was adopted without any debate.⁹

The Preamble to the Constitution of India declares that India is a sovereign Democratic Republic. Sovereignty has an internal as well as an external aspect. As regards external sovereignty, it has been said that "in consequence of its external independence, a State can, unless restricted by treaty, manage its international affairs according to its discretion; in particular, it can enter into alliances and conclude other treaties, send and receive diplomatic envoys, acquire and cede territory, make war and peace".¹⁰

It is thus evident that treaty-making power is an aspect of external sovereignty. Article 253 of the Constitution of India runs thus:

"Legislation for giving effect to international agreements.—Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body."

Procedure adopted in India for making legislation to implement treaty, Agreement or convention:

The first stage is "Negotiation" which means to produce the credential which authorise to participate in the negotiations as representatives of the Government of India by MOEA. All international agreements or treaties require Cabinet Approval before they are signed and ratified. Before signing, the text of the treaty should be cleared by Ministry of External Affairs from legal and drafting angle by the Legal and Treaties Division and by the concerned Territorial Division from the political angle. In case of Cultural Agreements and Agreements on Science and Technology; Foreign Aid Agreements and Commercial Agreements which are within the broad framework already approved by the Cabinet. The draft note for Cabinet circulated by the Administrative Ministry should also be sent for the Ministry's clearance. Once the prescribed approvals are obtained, the person authorized to sign the treaty/agreement on behalf of India requires to be invested with the necessary "Full Powers" to sign the said treaty or agreement. The Legal and Treaties Division prepares the instruments of "Full Powers" for signature of the President of India

⁸ Basu "*Commentary on the Constitution*," 4th Edition, Vol. IV, p. 182.

⁹ Article "Legislation for giving effect to international agreements" Available at <https://www.constitutionofindia.net/articles/article-253-legislation-for-giving-effect-to-international-agreements/>, last visited on 21st September 2023.

¹⁰ Oppenheim, "*International Law*", 8th Edition, Vol. I, p. 209

under which the person specifically named in the instrument is authorized to sign the treaty on behalf of India. A treaty may come into force on signature. In case of Multilateral treaties, treaties may require ratification. The instruments of ratification or accession are prepared by the Legal and Treaties Division and put up for the President's signature. In case of a bilateral treaty, the Instruments of Ratification become effective only after they are exchanged, which may be done through the concerned Territorial Division. In case of a multilateral treaty, the instrument of ratification is to be deposited with the depositary to the treaty.

Conclusion:

Co-jointly reading Article 253 and Entries 13 and 14 of List I, Schedule VII, Parliament has power to make any law for the whole or any part of the Territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any International Conference, Association or Other body." The Parliament can make any law for whole or any part of India for implementing international treaties without the consent of any State. There are various international treaties where India has adopted and ratified into law i.e. Arbitration laws, Air laws etc.