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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provide dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

IS INTERNATIONAL LAW IS THREAT FOR INDIA

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Abstract

The relationship between India and international law is complex and multifaceted, encompassing a range of legal, political, and economic considerations. As India increasingly integrates into the global system, questions arise regarding the potential threats and opportunities posed by international legal frameworks. This paper examines whether international law is a threat to India, considering its impact on India's sovereignty, economic interests, national security, and human rights obligations. Through a critical analysis of India's legal interactions with global institutions, treaties, and conventions, the paper aims to evaluate the potential conflict between national interests and international legal requirements. Key issues such as the Nuclear Non-Proliferation Treaty, trade disputes, climate change agreements, counterterrorism initiatives, and humanitarian interventions will be analyzed to understand the extent to which international law may pose a challenge to India's autonomy. The findings suggest that while international law provides essential frameworks for cooperation, it also raises concerns about India's strategic independence, especially in areas where national sovereignty may conflict with global norms. The paper concludes with recommendations for a balanced approach that allows India to navigate the complexities of international law while safeguarding its core national interests.

Keywords: International law, India, Judiciary, threat.

Introduction

India's engagement with international law has significantly evolved over the decades, reflecting its growth from a newly independent nation to one of the most influential global players. Since gaining independence in 1947, India has steadily embraced the international legal order, recognizing the importance of global cooperation on a range of issues, from trade to human rights. However, as India rises on the global stage, it faces growing challenges in aligning its

national interests with the obligations imposed by international legal frameworks.

India's commitment to various international treaties, conventions, and agreements has often been tested by the tension between national sovereignty and international obligations. India's interactions with international law are particularly complex because of its dual aspirations: on one hand, to be a leading player in the global political arena, and on the other, to safeguard its sovereign autonomy, economic independence, and national security. This balance becomes more difficult as India continues to engage with multiple international organizations, ranging from the United Nations to regional and bilateral treaties, and as the country deepens its economic integration with the world.

India's relationship with international law is particularly apparent in areas such as trade, defense, human rights, and environmental policy. The trade agreements India enters into often have implications for its domestic industries, leading to tensions when global rules clash with national priorities. The commitment to multilateralism, while facilitating cooperation in global trade and economic governance, sometimes limits India's flexibility in policymaking, especially in sectors where India seeks to protect its domestic industries, like agriculture and pharmaceuticals. In defense, India's policy of strategic autonomy often finds itself at odds with international security treaties and alliances, particularly in the context of global arms control agreements and security pacts that limit India's freedom to act.¹

India's human rights commitments under international conventions also create a paradox between its national policies and its obligations to global standards. On one hand, India is committed to respecting fundamental human rights through its membership in various human rights conventions and treaties; on the other hand, the country's diverse social and cultural landscape requires a nuanced approach to the interpretation and implementation of those rights. For instance, issues related to religious freedom, minority rights, and autonomy in regions like Jammu and Kashmir and the North East often place India's sovereignty in tension with international human rights standards.²

Furthermore, India's approach to environmental law under international frameworks like the

¹ AD Muraviev, D Ahlawat, D. & L Hughes, India's security dilemma: Engaging big powers while retaining strategic autonomy, 59 International Politics 1119 (2021).

² Ibid.

Paris Agreement presents another challenge. India, while deeply committed to addressing climate change and transitioning to a sustainable energy model, has also expressed concerns over the economic costs of strict environmental commitments, especially considering its developmental aspirations. The international community expects developing nations like India to reduce carbon emissions, but balancing these expectations with the imperative of sustaining rapid economic growth remains a significant challenge.

The core question then becomes whether international law poses a threat to India's sovereignty, security, and economic interests. This paper seeks to explore this issue by critically examining how India negotiates its participation in international legal frameworks while safeguarding its national interests.

Research Problem

The core research problem addressed in this paper is the perceived tension between India's national interests and its obligations under international law. While international law is designed to promote global cooperation, security, and human rights, it sometimes conflicts with India's domestic priorities and strategic goals. This raises the question of whether international legal frameworks pose a threat to India's sovereignty and economic well-being. As India continues to integrate with global institutions, the challenge is to determine how international law can coexist with India's national imperatives. The paper aims to analyze specific areas where international law has conflicted with India's policy decisions and explore possible solutions to this challenge.

Research Questions

The research questions guiding this study are as follows:

1. To what extent does international law conflict with India's sovereignty and national security interests?
2. How do India's obligations under international treaties and agreements impact its domestic policies, particularly in areas like trade, defense, and human rights?
3. What are the economic implications of India's adherence to international trade laws and environmental agreements?
4. Does India's strategic autonomy face limitations due to international legal obligations, especially in the context of global security and geopolitical dynamics?

5. How can India navigate its role in global governance without compromising its core national interests?

Research Objectives

The objectives of this paper are:

1. To examine the interplay between India's national interests and its obligations under international law, with a focus on sovereignty and security.
2. To identify specific instances where international law has conflicted with India's domestic policies and analyze the consequences of such conflicts.
3. To assess the socio-economic impact of India's compliance with international law, particularly in the areas of trade, defense, and human rights.
4. To evaluate the limitations imposed by international law on India's foreign policy and strategic autonomy.
5. To provide recommendations on how India can balance its participation in international law while safeguarding its national interests.

India's Sovereignty and International Law

India's engagement with international law has been shaped by the desire to protect its sovereignty while participating in global governance.³ As a major democratic country with a unique political system, India places great importance on its autonomy in the face of international norms, treaties, and agreements. However, sovereignty is often challenged when India's interests come into conflict with international obligations. The tension between India's national identity and global legal frameworks is particularly evident in areas like trade, defense, and security.⁴

The principle of sovereignty, rooted in the nation's historical context, is integral to its legal identity. India's foreign policy emphasizes non-alignment and strategic autonomy, which reflects the nation's aim to retain its political independence while engaging with international legal mechanisms. India's stance on international law remains shaped by its constitution, which vests all executive authority within the union but allows for cooperation with foreign states within the legal bounds of international frameworks. The 1947 Constitution, with its emphasis

³ Narlikar, A. (2017). India's role in global governance: a Modification?. *International Affairs*, 93(1), 93-111.

⁴ Held, D., *The Changing Structure of International Law: Sovereignty Transformed?*, in *The Global Transformations Reader* 162 (2nd ed., 2003).

on national integrity, sovereignty, and the rule of law, presents a complex picture when juxtaposed with India's growing global commitments.⁵

International law, which regulates state behavior through treaties, conventions, and norms, often limits India's flexibility in areas where national interests are at stake. For instance, the country's obligations under multilateral agreements like the World Trade Organization (WTO) and the United Nations (UN) sometimes create a paradox where India's need to protect its economic and security interests conflicts with its international commitments. In defense, India's policy of strategic autonomy and its doctrine of non-interference in foreign interventions often faces tension with international security frameworks, such as the UN's position on peacekeeping operations and arms control agreements.

India's involvement in international law also finds itself complicated by the obligations it has under global trade law, including the WTO's agreement on trade-related aspects of intellectual property rights (TRIPS) and other agreements that limit the protection of India's national industries. These complex intersections between India's strategic and sovereign interests and international law are pivotal in shaping the national discourse.

India's Trade and Economic Engagement with International Law

India's economic engagement with international law is intricately linked to global trade agreements, particularly those under the World Trade Organization (WTO). These agreements regulate tariffs, intellectual property rights, and market access, with the primary aim of facilitating free trade among member nations. However, these regulations often create a tension between India's domestic economic priorities and its international obligations.

The issue of trade imbalances is one of the most prominent challenges India faces in its economic relationship with the global community. Despite the Comprehensive Economic Partnership Agreement (CEPA) signed between India and several countries, trade deficits remain in favor of developed countries, particularly in high-tech sectors like electronics and pharmaceuticals. India's approach to intellectual property rights (IPRs), especially in the pharmaceutical industry, exemplifies the tension between global obligations and national

⁵ Singh, M. P., & Deva, S., The Constitution of India: Symbol of Unity in Diversity, 53 Jahrbuch des Offentlichen Rechts der Gegenwart, Yearbook of Public Law 649 (2005)

interests. The 1970s Doha Declaration on Trade-Related Aspects of Intellectual Property Rights (TRIPS) allowed India and other developing nations to manufacture generic medicines without violating international patent laws, ensuring access to affordable healthcare.⁶

However, India's compliance with global IPR norms has drawn domestic resistance, particularly in the pharmaceutical sector. The government's commitment to the TRIPS agreement under the WTO is seen as potentially detrimental to the domestic pharmaceutical industry, which has historically thrived by producing affordable generic medicines. In this context, India's approach to international trade law must be cautious and balanced, ensuring that it does not sacrifice its economic sovereignty for the sake of compliance with international regulations.

International Security and India's Strategic Autonomy

India's security policy is largely influenced by its position within international legal frameworks. The country has long pursued a policy of strategic autonomy, avoiding formal military alliances and emphasizing self-reliance in defense matters. International law governs the use of force, arms control, and conflict resolution, often through organizations like the United Nations (UN) and treaties like the Treaty on the Non-Proliferation of Nuclear Weapons (NPT). However, these frameworks can sometimes limit India's ability to act independently in defense matters.⁷

For instance, India's strategic autonomy is constrained by its commitment to non-proliferation norms and the global arms control regime. As a non-signatory to the NPT, India has faced international pressure to adhere to nuclear non-proliferation standards. India, however, has maintained a policy of nuclear deterrence and has been vocal about the need for a fair, non-discriminatory approach to arms control that does not disproportionately burden nations like India. In 1998, India conducted nuclear tests in Pokhran, which resulted in sanctions from the global community, yet India's stance on nuclear security and arms control has been driven by its strategic considerations and sovereignty.

⁶ Correa, C., *Trade Related Aspects of Intellectual Property Rights: A Commentary on the TRIPS Agreement* (OUP Catalogue, 2007).

⁷ Moxley Jr, C. J., Burroughs, J., & Granoff, J., *Nuclear Weapons and Compliance with International Humanitarian Law and the Nuclear Non-Proliferation Treaty*, 34 *Fordham International Law Journal* 595 (2010).

India's defense and security policy often aligns with international law, but it also reflects a pragmatism rooted in national security imperatives. India's role in international peacekeeping operations, its support for the United Nations Security Council (UNSC) reforms, and its growing military ties with countries like the United States, France, and Russia all reflect India's evolving approach to international security law. Yet, India continues to assert its policy of strategic autonomy, particularly in defense and security matters, where its sovereignty and national interest must remain paramount.⁸

Environmental and Human Rights Law: India's Legal Obligations

India's participation in global environmental and human rights treaties also reveals tensions between international commitments and national concerns. India's approach to environmental law, particularly in relation to the Paris Agreement on Climate Change, underscores the challenge of balancing development with sustainability. India, as a developing country, has raised concerns about the economic costs of strict environmental standards, particularly in light of its energy requirements. The country's reliance on coal as a major energy source has raised significant questions about its ability to meet emission reduction targets under the Paris Agreement, while simultaneously striving for industrial growth.

Similarly, India's adherence to international human rights conventions sometimes conflicts with its domestic policies. India's commitment to various UN human rights frameworks, including those focused on religious freedoms, minority rights, and the rights of refugees, is tested by internal security measures, particularly in regions like Kashmir and the Northeast. The counterterrorism operations, security-related restrictions, and emergency laws enacted in such regions sometimes create tensions between India's international human rights obligations and its national security concerns.

India's legal challenges in the areas of environmental law and human rights law reflect the complexities of reconciling international expectations with domestic priorities. The question remains: to what extent can India comply with international law without sacrificing its developmental goals, security concerns, and sovereignty? The balance between these competing interests is at the heart of India's approach to international law.

⁸ Acharya, S., Role and Function of United Nations Security Council (UNSC) in Maintaining Peace and Harmony amongst the Nation-A Special Reference to India's Claim in Becoming Permanent Member in UNSC, 28 *Supremo Amicus* 518 (2022).

Judicial Approach

India's judicial approach to international law has been a complex balancing act between honoring international obligations and safeguarding its constitutional sovereignty. The Indian judiciary has adopted a pragmatic stance in integrating international law, ensuring that global legal frameworks align with domestic constitutional principles, particularly with respect to sovereignty, national security, and constitutional rights. India's dualist approach to international law means that international treaties and conventions do not automatically become part of the domestic legal system. Instead, they must be explicitly adopted by the Indian legislature, reflecting the judiciary's preference for ensuring that any external legal obligations conform to the country's constitutional provisions.

A significant aspect of India's judicial approach lies in its interpretation of international treaties and their enforcement within the country. In **Vishaka v. State of Rajasthan (1997)**⁹, the Supreme Court applied international law, specifically the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), to frame guidelines on sexual harassment at the workplace. While the Court referred to international law, it carefully aligned these guidelines with India's constitutional guarantees of women's rights, thus preserving the nation's legal framework while meeting global standards. This case illustrates the judiciary's willingness to incorporate international principles when necessary, without compromising constitutional supremacy.

India's approach to international law is also shaped by the nation's strategic interests, especially in areas like defense and national security. The judiciary has been cautious when international law intersects with national security concerns. India's reluctance to join the **International Criminal Court (ICC)**, despite being a member of the United Nations, is a case in point. India has expressed concerns about the potential erosion of its sovereignty and the threat of foreign interference in its internal legal processes, particularly regarding national security. The judiciary has consistently upheld the primacy of the Constitution and the protection of India's territorial integrity, as seen in **S.R. Bommai v. Union of India (1994)**¹⁰, where the Court reinforced the principles of federalism and autonomy despite external legal pressures.

⁹ AIR 1997 SC 3011.

¹⁰ 1994 SCALE (2) 37.

In the domain of environmental law, India's participation in international agreements such as the **Paris Agreement** on climate change has raised tensions between domestic development goals and global environmental responsibilities. The **Indian Council for Enviro-Legal Action v. Union of India (1996)**¹¹ case exemplifies the judiciary's approach to balancing India's international environmental obligations with its domestic priorities. The Supreme Court, while applying international environmental law, ensured that the implementation of these obligations did not undermine India's right to pursue its economic development. Similarly, India's reliance on coal as a primary source of energy often puts it at odds with global environmental standards, and the judiciary plays a critical role in reconciling these challenges.

On the issue of human rights, the Indian judiciary has consistently emphasized the need to respect international norms, particularly in areas like the right to life, the protection of refugees, and freedom of expression. However, it has also maintained that India's sovereignty cannot be compromised by international obligations, especially in sensitive areas like counterterrorism operations or the Kashmir dispute. In these instances, the judiciary has balanced international human rights standards with national security imperatives, ensuring that India's sovereignty remains intact while meeting its global commitments.

India's judicial approach to international law underscores the nation's commitment to upholding international norms while safeguarding its constitutional values and sovereignty. The judiciary's cautious and selective application of international law ensures that India remains an active participant in the global legal framework without sacrificing its national interests.

Conclusion and Recommendations

India's engagement with international law is both complex and multifaceted, shaped by the tensions between global commitments and national sovereignty. India must continue to strengthen its participation in international frameworks while safeguarding its autonomy and national interests. This will require a pragmatic approach to legal engagements, one that allows India to uphold its commitments without compromising its strategic, economic, and social objectives.

¹¹ 1996 SCC (3) 212.

To address these challenges, it is recommended that India adopt the following strategies:

- 1. Enhancing Multilateralism with Safeguards:** India should continue its active participation in global forums like the UN and WTO but with safeguards in place to protect its sovereignty in critical areas such as defense, trade, and environmental policy.
- 2. Reforming Trade Agreements:** India should advocate for reforms in international trade agreements that take into account its developmental needs and economic realities. This includes pushing for greater flexibility in areas like intellectual property rights and trade imbalances.
- 3. Strengthening Strategic Autonomy:** India should continue prioritizing its strategic autonomy, particularly in defense and security, while working within international legal frameworks that support regional stability and peace.
- 4. Balancing Development and Sustainability:** India must strike a balance between its economic growth and environmental obligations, ensuring that it fulfills its commitments under international environmental law without hindering its development goals.
- 5. Promoting Domestic Legal Reforms:** India should focus on strengthening its domestic legal frameworks to align with international norms, especially in areas like human rights and environmental protection, while ensuring that these reforms do not impede its national interests.

In conclusion, India's relationship with international law is evolving, and while challenges remain, the country's approach must be flexible, pragmatic, and focused on balancing international cooperation with the preservation of its sovereignty and security. By following the recommended strategies, India can continue to engage with international law while safeguarding its national interests and advancing its global position.

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