

Domestic Implementation of International Air Laws (IAL)

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Scheme of Discussion

- ▶ Relation between IL, IAL and Municipal Law
- ▶ Why and How Domestic Implementation?
- ▶ Domestic Implementation of IL in Indian
- ▶ Indian Constitution and IL and IAL
- ▶ Indian Judiciary IL and IAL
- ▶ Indian's Ratification of International Air Law Treaties
- ▶ Indian Judiciary and IL Cases

Domestic and Int. Legal Environment

- ▶ What is Law and What is IL
- ▶ At a very basic level, international law and domestic law differ in magnitude.
- ▶ Domestic law governs the behavior and actions of individuals, whereas IL governs the behavior and actions of bodies of government: states or countries.
- ▶ Domestic law, which can also be called national law or municipal law, come from legislature and customs, whereas international law consists of treaties and customs.
- ▶ The difference between IL and ML is how they are enforced. IL lacks a common executive
- ▶ Thus, the states operating under international law often have a weak sense of community
- ▶ Domestic law, on the other hand, consists of all three branches of government – executive, judicial, and legislative.
- ▶ these three branches are separate from each other and are based on a system of checks and balances. This limits the power of each branch so that no one becomes too powerful.
- ▶ Unlike IL, those who violate domestic law will receive a punishment deemed fit by a court executive, and this punishment will be enforced.

Why implementation of I.L.?

- ▶ Changing Notions of State Sovereignty
- ▶ Globalization and its Impact on Society
- ▶ Independent States to Interdependent states
- ▶ Law Makers to Law Takers
- ▶ Role of States as Regulator to Facilitator
- ▶ Status of IL is changing from a weak (unenforceable) to strong (enforceable) Law
- ▶ Implementation not by coercion or compulsion but by consensus or cooperation

How States Implement IL

Is IL and ML are same are different?

Difference of opinion among the scholars

1. Monist School
2. Dualist School
3. Transformation or Specific Adoption Theory
4. Delegation Theory
5. Harmonization Theory

Monistic Theory

- ✓ This theory initially was forwarded by Moser and Martens. It was later developed by jurists like Kelsen, Westlake and Lauterpacht.
- ✓ What is a "State"?
- ✓ Municipal law as well as International law are parts of one universal legal system.
- ✓ Municipal law is binding on individuals directly and International law is binding on them through States.
- ✓ Individuals are the root of all legal systems.

Dualistic Theory

- ✓ This theory was developed by German scholar Triepel in 1899. It was later followed by Italian jurist Anzilotti
- ✓ International law and Municipal law are two distinct, separate and self-contained legal systems.
- ✓ The two systems are distinct when it comes to sources, subjects, substance of law, principles and dynamism of subject matter.

Other Theories

Specific Adoption or Transformation Theory:

- Supported by dualist.

Delegation Theory:

- Supported by monists.

Harmonisation Theory- Fitzmauric.

Compromise Formula:

National Law before Int. Courts and Tribunals.

Sources:

- Art 38(1)(c) General Principles of Law Recognized by Civilized States
- *Resjudicata*, Estoppel, Principal of Natural Justice, etc.,
- Ex. Barcelona Traction Case 1970,
(Concept of limited liability)

National Law & Int. Obligations

States cannot plead the provisions of National law as a valid reason for violating Int. obligations.

Ex. 1. Alabama Claims Arbitration, 1872.

2. Exchange of Greek & Turkish population case

3. Lockerbie case.

4. Art 13 Draft Declaration on Rights and Duties of States, 1949.

5. Art 27 of Vienna Convention on Law of Treaties, 1969.

Globalization and Its Impact on Civil Aviation

- ▶ Globalization is the term used to characterize the processes of growing interconnection and interdependence among the different nations of the world.
- ▶ Globalization of markets was one of the most fascinating developments of the 20th Century. It involves the growing interdependence among the economies of the world.
- ▶ Globalization has been catalyzed by developments in technology, communications and international trade, which have also changed the traditional understanding of trade and commerce.
- ▶ In this age of globalization and interdependence, principles of international business transactions affect all states, small and large, rich and poor, weak and powerful alike.
- ▶ Many of the structural changes that have taken place in the world economy since the early 1980s resulted liberalizing of capital markets and the capital remains no longer domestic; it moved freely across borders.
- ▶ Manufacturing was also no longer a domestic process. This lead to the loss of control on local markets, goods, financial services including the banking sector by the National governments.

Positive and Negative Impact of Globalization

- ▶ On the positive side, it generated by growing international economic, cultural, and political cooperation and solved many global problems which were not answered.
- ▶ On the negative side, globalization also has profound implications for states such as the autonomy and policy-making capability of states is being undermined by economic and cultural internationalization.
- ▶ Role of States have Changed from Law-maker to Law-takers
- ▶ Regulators to Facilitators
- ▶ Many governments see their role as not to regulate markets but to facilitate their expansion.
- ▶ Globalization and regional interactions are wiping out national borders and weakening national policies.

Globalization and India

- ▶ India Globalized its economy in 1991 With Mounting problems-- huge fiscal deficits, BoP crisis and foreign exchange crisis, Foreign investors and NRIs had lost confidence in Indian economy
- ▶ Major measures as a part of the Globalization strategy, Devaluation of Currency, Disinvestment, Dismantling of The Industrial Licensing Regime Abolition of the MRTP Act , Allowing Foreign Direct Investment, Wide-ranging financial sector reforms
- ▶ Reforms relating to the banking system-- Capital base of the banks were strengthened by recapitalization, public equity issues and subordinated debt, Prudential norms were introduced and progressively tightened for income recognition, classification of assets, provisioning of bad debts, marking to market of investments
- ▶ New private sector banks were licensed and branch licensing restrictions were relaxed., Credit delivery was shifted away from cash credit to loan method

Globalization and India Cont..

- ▶ Exchange Control and Convertibility-- Exchange controls on current account transactions were progressively relaxed culminating in current account convertibility.,
- ▶ Foreign Institutional Investors were allowed to invest in Indian equities subject to restrictions on maximum holdings in individual companies.,
- ▶ Restrictions remain on investment in debt, but these too have been progressively relaxed., Indian companies were allowed to raise equity in international markets subject to various restrictions.,
- ▶ Indian companies were allowed to invest a small portion of their assets abroad, Indian companies were given access to long dated forward contracts and to cross currency options.(Derivatives)
- ▶ Reforms in the capital market□ SEBI- the apex regulator of the Indian capital markets□ Regulations were framed for insider trading□ Abolition of capital issues control□ Introduction of free pricing of equity issues□ On-line trading was introduced at all stock exchanges

Globalization of Civil Aviation in Different Regions

- ▶ Since the passing of the De Regulation Act of 1978 in the United States of America, the international air transport is undergoing the most dramatic changes in its history. Globalization, deregulation, liberal bilateral air transport agreements, international alliances, privatization of airlines and airports, and economic constraints are some of the factors challenging established management and business practices.
- ▶ Globalization process, each region plays variations on a common theme. In North America, air travel is the normal way of moving people, mail and increasingly, freight.
- ▶ In the European Union, we have liberalization, consolidation, concentration and decentralization.
- ▶ Civil aviation in Eastern Europe and the Former Soviet Union is being restructured and needs strengthening –while adjusting to a free market economy.
- ▶ Impressive Aviation expansion is seen in India, China and ASEAN. Latin America shows promise.

Impact of Globalization on Civil Aviation

- ▶ With the increasing globalization of economies, liberalization and technological developments in air transport, new trends are emerging on the horizon.
- ▶ Privatization, cross-border acquisitions, market alliances, merger and restructuring of airlines in the wake of liberalization of air transport and deregulation are all leading towards market oriented international aviation environment.
- ▶ Airlines of many countries are in various stages of privatization. Airports Privatization is happening in many parts of the world

Domestic Implementation of IL in USA

- ▶ Customary Law: American practice regarding customary rules of international law is more or less same as the British practice as the American law has its roots in the English legal system so customary rules or international law are treated as a part of American law
- ▶ **In the Paquete Habana** - Justice Gray remarked that - International law is a part of our law, 175 U.S. 677 (1900). In the event of conflict between alleged international law and municipal legislation, the domestic courts will uphold the municipal provisions.
- ▶ **(B). American practice** regarding rules laid down by treaties is different from British practice. American Constitution Art. VI provides that constitution of United States, all laws made in pursuance thereof and international treaties entered into under the authority of the United States shall be the supreme law of the land.
- ▶ Thus international treaties have been placed in the same categories as state law of the land. American legislatures participate in the treaty making process. The president has power to make a treaty, but he may only ratify a treaty after the senate has given its advice and approval.
- ▶ In the event of conflict between a treaty and a subsequent statute, the latter prevails in *Edye v. Roberson* the court held that a treaty was a law of the land. As an act of congress was and there was nothing which made a treaty irreparable or unchangeable and that the constitution gave it no superiority over an act of congress in this respect, which may repeated or modified by an act of later date.

Self-executing Treaties and Non-self-executing Treaties

- **self-executing treaties:** directly incorporated into domestic law; can be directly applied in domestic system.
- **non-self-executing treaties:** directly incorporated, but need for additional implementing legislation before application in domestic system.
- **Self executing treaties:** Self executing treaties are those treaties which become applicable in America without any act or consent of the congress they become automatically part of American domestic law.
- **Non-self executing treaties:** Non-Self executing treaties are those treaties which can become applicable in America only after consent of congress or through its adoption by specific statute.

Domestic Implementation of Int. Air Law in USA

- ▶ **FAA** is the Federal Aviation Administration. As the Civil Aviation Authority of the USA, it is responsible for establishing aviation regulations in the US. These are known as FARs (Federal Aviation Regulations).
- ▶ The Federal Aviation Administration (FAA) is an agency of the United States (US) Department of Transportation (DoT) it is responsible for the safety of American civil aviation and regulates and oversees all aspects of civil aviation in the US.
- ▶ The FAA aims to regulate civil aviation to promote safety, encourage and develop civil aeronautics including new aviation technology, develop and operate a system of air traffic control and navigation for both civil and military aircraft and research and develop the National Airspace System including regulating air navigation facilities and flight inspection standards.
- ▶ The FAA develop and carry out programs to control aircraft noise and other environmental effects of civil aviation and also regulates U.S. commercial space transportation. (Federal Aviation Administration, 2005)

FAA and Aviation Regulations

- ▶ The FAA's roles include:
- ▶ Regulating U.S. commercial space transportation
- ▶ Regulating air navigation facilities' and flight inspection standards
- ▶ Encouraging and developing civil aeronautics, including new aviation technology
- ▶ Issuing, suspending, or revoking pilot certificates
- ▶ Regulating civil aviation to promote transportation safety in the United States, especially through local offices called Flight Standards District Offices
- ▶ Developing and operating a system of air traffic control and navigation for both civil and military aircraft
- ▶ Researching and developing the National Airspace System and civil aeronautics
- ▶ Developing and carrying out programs to control aircraft noise and other environmental effects of civil aviation

De-Regulation in USA

- ▶ The deregulation process in the USA started first in air cargo sector in 1977, followed by the passenger deregulation by passing deregulation Act, in 1978
- ▶ The aim of the above act was that the market place should determine the airlines business decisions in the future. This fundamental change in policy meant that the U.S.Government's role in the new regulatory environment would be to protect the competitive process, not individual competitors.
- ▶ The scope of regulatory reform was limited essentially to commercial matters, such as pricing (which include fares, rates, and charges) market entry, capacity and frequencies, but did not include any relaxation of government controls over such matters as safety, air traffic control, airworthiness, personnel licensing and aircraft maintenance.

Liberalization in other countries

- ❖ Under the influence of deregulation in the United States, other industrialized countries, such as Australia, Canada, European Union (EU) countries and Japan adopted policies to liberalize the aviation industry and to bring about a more competitive environment.
- ❖ The structural changes in the Canadian airline industry bear a great similarity to developments in the US. In a period of de facto deregulation, starting in 1984, the airline industry in Canada moved rapidly toward a high degree of market concentration, before the new National Transportation Act came into effect in 1987.

EU Background

- ▶ The European Union (EU) is an economic and political union of 27 member states, located primarily in Europe. It was established by the Treaty of Maastricht on 1 November 1993 upon the foundations of the pre-existing European Economic Community
- ◉ The **Treaties of Rome** are two of the treaties of the European Union signed on March 25, 1957. Both treaties were signed by The Six: Belgium, France, Italy, Luxembourg, the Netherlands and West Germany.
- ◉ The first established the European Economic Community (EEC) and the second established the European Atomic Energy Community (EAEC or Euratom).
- ◉ They were the first international organizations to be based on supranationalism, after the European Coal and Steel Community (ECSC) established a few years prior.

EU and Institutions

- ① **EU Parliament** – **Currently 785 MEPs. Based in France, Belgium and Luxembourg**
 - Passes laws, monitors budget, monitors EU institutions
- ① **EU Council** – **Ministerial representations from each member state**
 - Passes laws, approves EU budget, co-ordination of economic policies, develops foreign policy, co-ordinates anti-crime strategies
- ① **EU Commission** – **20 Commissioners appointed by each member state every 5 years**
 - Proposes legislation, implements EU policies, law enforcement, international co-ordination

EU and Institutions

- ▶ European Central Bank – inflation target of less than 2% per year, sets short term interest rates for the whole euro zone area,
 - Implements and monitors Euro zone monetary policy
- ▶ European Investment Bank – 'owned' by member states. Raise finance through financial markets,
 - Invest in projects to promote aims of EU – large scale projects
- ▶ Court of Auditors – monitors legality and efficiency of EU income and expenditure
- ▶ Court of Justice – one judge from each member state Interprets and applies EU legislation; **Recent ruling from the European Court of Human Rights- Landmark decision on discrimination backs UK unions' campaign.**

Liberalization in EU

A major landmark was the decision of the European Court of Justice in the *Nouvelles Frontières* case in April 1986, that air transport agreements are subject to the competition rules of the Treaty of Rome, Signed in 1957 by six European Countries. This meant that airlines may be prosecuted for violation unless exemptions have been granted to them under policies agreed upon by the Council of Ministers.

The implications of this judgment put considerable pressure upon the European Community (EC), presently European Union (EU), to develop and agree upon an air transport policy. In December 1987, the Council of Ministers adopted a package of legal instruments put to them by the Commission and thus took the first step toward a general liberalization of the European air transport industry.

In addition, the European Civil Aviation Conference (ECAC), currently comprised of thirty-three European States, developed two International Agreements on intra-European airfares and capacity sharing.

EU Aviation Regulations

- ▶ There are three different regulations:
- ▶ Regulation NO. 2407—the licensing regulation, dealing with the requirements for the issue and revocation of operating licenses to air carriers established in the Community
- ▶ Regulation No. 2408—the access regulation, giving access to intra-Community routes to Community air carriers, and
- ▶ Regulation No. 2409—the fares regulations, whose purpose is to abolish government intervention in the determination of fares on intra-Community routes⁷.(3 ,see Aviation Industry Developments 1997,p.115)
- ▶ As a result, all air services within EU countries may be regarded as having a special status under the EU third aviation package a domestic traffic and thus providing EU-based airlines with the opportunity to open new routes, whereas non-EU airline services within EU-countries may be considered cabotage traffic. This could bring about a new dimension in future negotiations concerning air service agreements.

EU Regulations Cont...

- ▶ **The EC and ECAC liberalization measures adopted in 1987 were followed by other regulatory changes, covering further reductions in capacity and tariffs control and additional provisions for freer market process, prior to the completion of a single European market by the end of 1992. The EU third package on air transport regulations became effective on 1 January 1993. There are three different regulations:**
- **Carriers from the European Union are now free to operate any route within the Union, without restriction on price or capacity, including cabotage.**
- **In addition, all restrictions on airline ownership have been removed for it's citizens (e.g. an air carrier operating from France can be 100% owned by investors from the UK; however, investment by non-EU citizens is restricted to 49%).**
- **Open Skies agreements also allow partner carriers to coordinate airline operations, including pricing, scheduling, market strategy, fleet structure, and networks.**

Soviet Practice

- ▶ In U.S.S.R, municipal law and international law were treated as two separate legal system not subordinate to each other. Article 29 of soviet constitution, the relation of the U.S.S.R with other states were based on the following principles.
- ▶ Sovereign equality
- ▶ Mutual renunciation of theat or use of force
- ▶ Territorial integrity of states
- ▶ Peaceful settlement of disputes
- ▶ Non-intervention in internal affairs.
- ▶ Respect to human rights and fundamental freedoms
- ▶ Co-operations among states ,and
- ▶ Fulfilment in good faith of obligations arising from gererally recognised principles and rules of international law and from treaties signed by U.S.S.R.
- ▶ In U.S.S.R international treaties and internal statutes were given equal statutes.

Impact on Developing Countries

- ▶ The most serious impact of deregulation and liberalization of the aviation industry is being felt by airlines in developing countries.
- ▶ This lead to the formation of regional airlines from a number of small carriers in order to improve efficiency and productivity, to reduce cost and to maintain market share. Alternatively airlines also combined operations and joint projects, such as joint scheduling, sharing of equipment, crews and ground facilities, pooling of aircraft parts and support equipment, and cooperative arrangements for aircraft overhaul and maintenance.
- ▶ The rapidly changing environment of world air transport makes it essential that governments of developing countries and airline management should be very clear about their objectives and the need for close cooperation and sharing of scarce national resources.

Impact on Asia/Pacific Region

- ▶ The Asia/Pacific region offers abundant opportunities as the fastest growing aviation region in the world.
- ▶ The reasons for this optimism includes the strong economic expansion, significant ethnic ties with various countries, increase in leisure time, moves towards air transport liberalization and vigorous efforts to promote tourism to/from the region.
- ▶ The size and economic potential of the region has acted as a catalyst for development of new aircraft types, and manufacturers foresees a big market for future new aircraft.

Impact on India

- ▶ Within this region, India is a long-term potential giant.
- ▶ The size and importance of India's potential market is not matched by the size of its national carriers due to a variety of factors , an important one being the low priority that was attached to Civil Aviation in a resource constrained economy.
- ▶ The basic thrust of India's aviation policy is two-fold,
 - ▶ To widen air links through negotiation of new agreements and review of existing ones.
 - ▶ To formulate a comprehensive approach to obtain increased opportunities for its national carriers abroad¹.

Domestic Enforcement of I.L. in India

- ▶ India followed the Dualism and Transformation and adoption
- ▶ Constitutional provisions relating to I.L.
- ▶ Pre-constitution: British practice
- ▶ Constitutional provisions (a) General art. 51
(b) Executive Provisions art. 53, 73, & 77
and Legislative Provisions art. 245, 253, etc.

Pre-Constitutional Period:

- ▶ In this period Indian practice of international law is as if British practice. The British practice of implementation of international law with regard to their own domestic or municipal laws can be dealt in two heads.
- ▶ **With regard to the customary rules of international law and the other:** British used to treat customary rules of international law as a part of their own laws. But subject to the conditions that The customary rules of International law should not be inconsistent with the British statutes.
- ▶ **In connection to the rules laid down by the treaties:** Regarding the practice as to the treaties it can be specifically mentioned that in Britain there are some exclusive treaties which requires the consent of the British Parliament for its enforcement. Such consent can be given directly or those treaties can be adopted in the state laws with the help of the statutes by the parliament.

General Provisions

- ▶ To know the provisions of international law it is necessary to examine the relevant provisions of Constitution of India. The most relevant provision is contained in article 51 which runs as: "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 & treaty obligations in dealings of organised people with one another.
 - ▶ (d) Encourage settlement of international disputes by arbitration.
- ▶ In *Keshavanand Bharati v State of Kerala*, Chief Justice Sikri observed;
- ▶ "In view of Article 51 of the constitution this court must interpret language of the Constitution, if not intractable, which is after all a municipal law, in the light of United Nations Charter and the solemn declaration subscribed to by India" AIR 1973 SC 1461

Executive powers of the union

- ▶ In India the executive was given the power to make laws through article 53, 73, 77. These Articles say that the executive power is vested in the president and it shall be exercised by him in accordance with the constitution either directly or through officers subordinate to him.
- ▶ And all the executive functions are executed in the name of the president. But subject to the provision that he should not encroach into the spheres of Legislature and Judiciary.
- ▶ **Article 53:** Executive Power of the Union:“(1) The Executive Power of the Union shall be vested in the President and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution.”
- ▶ **Article 73:** Extent of executive power of the Union;“Subject to the provisions of this Constitution, the executive power of the Union shall extend-
 - ▶ a) to the matters with respect to which Parliament has power to make laws, and
 - ▶ b) to the exercise of such rights, authority and jurisdiction as are exercisable by the Government of India by virtue of any treaty or agreement

Legislative Provisions

- ▶ **Article 246:** Parliament's exclusive power to make law on the matters enumerated in Schedule VII, List I
- ▶ **Article 245 (2):** extra territorial jurisdiction to the laws made by the Parliament of India
- ▶ **Article 253,** read with entry 14 of the Union List in Schedule VII, Parliament's exclusive power to make any law for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or body.
- ▶ ***Entry 41, List I, Schedule VII, Parliament's exclusive jurisdiction with respect to trade and commerce with foreign Countries, import and export.***

Legislative Provisions Cont..

- ▶ **Art. 260** recognizes the Central Government's competence to act in legislative, executive, judicial capacity for any territory which is not part of India by agreement with the government of that territory, subject to any law relating to foreign jurisdiction for the time being in force

Observation: Delegated legislation as an Important means of domestic implementation of International Trade Law

- ▶ **Art. 363**, bars the jurisdiction of Indian Courts except the Advisory jurisdiction (Art. 143) in any dispute arising out of any provision of a treaty, agreement, covenant, engagement, sanad or other similar agreement entered into before commencement of constitution of India
- ▶ **Art. 372**, pre- constitution laws to be continued in force unless repealed, altered or amended by a legislature or competent authority

Indian Judiciary and IL

- ▶ The Indian Supreme Court has decided numerous cases in which it has invoked international law in support of a constitutional holding and then “legislated from the bench” to remedy the constitutional violation.
- ▶ For example, in *Basu v. State of West Bengal*,¹⁵⁶ a case involving deaths in police custody, the Court invoked the ICCPR in support of its constitutional holding.
- ▶ It also issued a set of “eleven requirements to be followed in all cases of arrest or detention,” and ordered those requirements to be disseminated to every police station throughout the country.
- ▶ The Indian Supreme Court has also adopted procedural innovations so that public interest litigation “can now be initiated not only by filing formal petitions in Court but also by writing letters and telegrams or through the Court taking notice of articles in newspapers.”
- ▶ The Court has “evolved the practice of appointing commissioners for the purpose of gathering facts and data in regard to a complaint of breach of a fundamental right made on behalf of the weaker sections of society.”

Indian Judiciary and IL

- ▶ Indian Judiciary, though not empowered to make legislations, is free to interpret India's obligations under international law into the municipal laws of the country in pronouncing its decision in a case concerning issues of international law.
- ▶ In this respect, the Indian judiciary has played a proactive role in implementing India's international obligations under International treaties, especially in the field of human rights and environmental law.
- ▶ In plethora of cases beginning with **In re Berubari , Magan Bhai v. U.O.I, Keshavanada Bharati v. State of Kerala, Vishakha v. State of Rajasthan**, the Supreme court re-iterated that various international covenants, particularly to which India is a signatory or party, becomes part of national law, in so far as there is no conflict between the two.
- ▶ Supreme Court in **Bishambhar v. State of Uttar Pradesh** held that in the exercise of the inherent sovereign powers of the state, the parliament can even enact laws for extra territorial operation AIR 1982 SC32

Indian Judiciary and IL

- ▶ The Supreme Court reflect the dualist approach of the Indian legal system. In the words of justice Krishna Iyer in Jolly George Vergese v. Bank of Cochin, “until the [m]unicipal Law is changed to accommodate the [treaty], what binds the courts is the former not the latter”. Further, Supreme Court in State of West Bengal v. Kesoram Industries reiterated that India follows the “doctrine of dualism” and that “a treaty entered into by India cannot become law of the land...unless Parliament passes a law as required under Article 253”.
- ▶ Vishaka v. State of Rajasthan, 1997, a landmark judgment on sexual harassment of women at workplaces, it was noted that “regard must be had to international conventions and norms for construing domestic law when there is no inconsistency between them and there is a void in the domestic law”

Int. Law and Indian Judiciary

- ▶ *National Legal Services Authority v. Union of India*, 2014 – The case that recognised transgender as a third category of gender. The Supreme court said: 'If parliament has made any legislation which is in conflict with the international law, then Indian courts are bound to give effect to the Indian law, rather than international law. However, in the absence of a contrary legislation, municipal courts in India would respect the rules of international law.
- ▶ In *Vellore Citizens' Welfare Forum v. Union of India*, 1996, the court said that there is no difficulty in accepting Customary International Law, not contrary to domestic law, as part of the Indian legal system
- ▶ the Supreme Court in **Peoples' Union for Civil Rights v. Union of India**, held that it is an accepted proposition of law that the rules of customary international law which are not contrary to the municipal law shall be deemed to be incorporated in the domestic law.

Indian Judiciary and IL

- ▶ The Supreme Court's recent judgment in *Jeeja Ghosh v. Union of India* needs to be celebrated for reaffirming the rights of persons with disabilities to live with dignity.
- ▶ This case arose from a public interest litigation that was filed when Spice Jet forcibly de-boarded Jeeja Ghosh because of her disability.
- ▶ The court held the airline's action illegal and ordered it to pay Rs. 10 lakh to the petitioner.
- ▶ In reaching this conclusion, the court also referred to international law to underline the rights of persons with disabilities.
- ▶ For instance, para 13 of the judgment says: "The Vienna Convention on the Law of Treaties, requires India's internal legislation to comply with international commitments.
- ▶ Article 27 states that a "State party... may not invoke the provisions of its internal law as justification for its failure to perform a treaty

Indian Judiciary & IL: Conclusion

- ▶ Indian constitution embodies the basic framework for the implementation of international treaty obligations undertaken by India under its domestic legal system
- ▶ International treaties do not automatically become part of national law in India. They must be incorporated into the legal system by an act of Parliament, which has the legislative powers to enact laws to implement India's obligations under the international treaty.
- ▶ Thus, in absence of specific domestic legislation enacted by the Parliament, the India's international obligations are not justiciable in Indian Courts.
- ▶ However, a perusal of the jurisprudence shows that a pro-active role is being played by Indian judiciary in implementing India's international obligations under International treaties, especially in the field of human rights and environmental law.
- ▶ Thus, Indian judiciary through „judicial activism“ fills up of the gaps in the municipal law of India and International law, thereby playing an important role in the implementation of international law in India.

Conclusion

- ▶ Thus, the Government of India, though, has been becoming party to many international Air Law documents, to show its intention to implement International air law.
- ▶ This practice of the Government also indicates Government's failure to fulfill norms under international law.
- ▶ The Government of India, from time to time has been enacting many draconian laws to face insurgency like situations, which do not comply with international standard of human rights and humanitarian principles
- ▶ India being a country beset with insurgency problems of various degree national security laws are indispensable to maintain the sovereignty and integrity of the country