

ABSTRACT

The increased impact of international law on the domestic legal system meant that both international law and domestic law came to govern same aspects of law such as environment, investments, trade and human rights which were exclusively dealt with by the domestic legal system prior to such arrival of international law at the domestic sphere. However, the status of international law within the domestic legal system is not properly defined in many of the jurisdictions including Sri Lanka. The matter has been exemplified by the fact that, international law itself fails to provide or even suggests how international law should be absorbed into the domestic legal system. Theories of monism and dualism, proposes two contrasting ideas on the issue of recognition and implementation of international law in a domestic context are criticised due to their diversified impact on separation of powers amongst the main organs of the government of a sovereign State. This has created a problem as to how a country should recognize and implement international law in a domestic context. In the absence of a proper mechanism for the recognition and implementation of international law in a domestic context, being one of the problems in the process of incorporating international law in a sovereign State, this study argues that, the best way to resolve this issue is by providing a constitutional provision for the recognition and implementation of international law in a domestic context. Using a doctrinal approach coming under the qualitative methodology with a help of a comparative analysis of the constitutional provisions of the selected jurisdictions of India, United Kingdom, United States and South Africa a proposal is made for a constitutional provision for the recognition and implementation of international law in Sri Lanka. The results have revealed that having a constitutional provision emphasising on recognising the place of international law within the domestic legal system, legislative scrutiny of treaties and proper allocation of powers and competencies to the respective branches of the government concerning the recognition and implementation of international law in a domestic context is the most viable solution available to resolve the issue. It is argued that having such provisions are paramount to uphold the constitutional fundamentals of separation of powers and the rule of law, to well define the roles of the three branches of the government in absorbing international law to the domestic sphere, making law more certain and predictable and to uphold the rights and duties of individuals in a domestic context while fulfilling international obligations of a country under the domestic legal system.

Key Words: International Law under Domestic Law, Monism and Dualism, Constitutional Recognition of International Law.