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Constitutional Recognition of Implementing International Treaties in Domestic Contexts: A Comparative Study with Special reference to Sri Lanka

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Abstract

International treaties have a profound impact and influence on the domestic legal system in the contemporary world. However, the status of international treaty law within the domestic legal system is hardly defined in many jurisdictions including that of Sri Lanka. International law does not provide a mechanism on how a country should implement its international treaty obligations at the domestic sphere, and the theories of monism and dualism too have failed to capture the realities of state practices regarding recognition and implementation of international treaties at the domestic contexts. 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 a constitutional provision would resolve the issue of recognition and implementation of international treaty law in a domestic context. Using a qualitative methodology followed with a comparative analysis of the constitutional provisions of India, United Kingdom, United States and South Africa, this paper submits a proposal for a suitable constitutional provision for the recognition and implementation of international treaty law in Sri Lanka. The findings have revealed that a constitutional provision would advance the separation of powers and the rule of law and well define the roles of the three branches of the government in absorbing international treaty law to the domestic sphere. Such a provision will help to make the incorporated international law principles certain and achievable in the domestic context, which would result in upholding the rights and duties of individuals in par with the international obligations of a country.

Keywords: *International Treaties, International Law, Constitution*