

B.A. LL.B X SEMETER

PUBLIC INTERNATIONAL LAW AND HUMAN RIGHTS

TOPIC:-WHAT IS THE RELATIONSHIP BETWEEN INTERNATIONAL AND MUNICIPAL LAW

DR.TRIPTI SHARMA

INSTITUTE OF LAW

98272-26254

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Q. 6: - What is the relationship between International and Municipal Law?

Ans:- Apparently there seems no relationship between international law and municipal law. But if examined with philosophical eye then it would be seemed that there is a relationship between both the legal orders. The test as to observe the relationship between the two systems may be conducted in case of a conflict between the two legal orders. The situation would arise that what law shall be applicable to the case in question.

Relationship between Municipal Law and International Law

As to relationship between municipal law and international law there are many theories the most prominent one of which may be discussed as under:

I. Dualistic Theory: - According to the followers of this theory Municipal law and International law are two separate, distinct and self-contained legal orders, independent from each other. Both the orders enjoy its own spheres and each one is the supreme in its own sphere. They accepts the separate and independent existence because, according to them, there are following points of distinctions between both the orders:

1. Sources: - The sources of both the systems are quite different. Municipal law has its source in the land legislature, while International law has its sources in treaties, entered

into by different sovereign states, international customs and general principals of law etc.

2. Subject: - The subjects of both the systems are different. As for as, Municipal is concerned that is an order of the sovereign of the state addressed to the individuals, while at the other hand the subjects of the international law are the states, and to the lesser extent other actors including individuals. In other words Municipal law is between the individuals and international law is between the sovereign states.

3. Principles: - Municipal law is the aggregate of the principles of state legislature, while International law is obeyed because of principle "Pacta sunt servanda." At the other hand, municipal law has a legal sanctity while International is obeyed because states are morally bound to observe.

4. Dynamism: - It is a unique characteristic of International law that it continuously changes and expands while municipal law remains limited.

So, on the basis of the following points of distinction between the two legal systems the supporters of Dualistic Theory contend that they both are separate and distinct orders having separate spheres of application.

II. Monistic Theory: - According to the followers of this theory International law is not distinct and autonomous body of law, rather there exists only one sets of legal system i.e. the domestic legal order. They have criticized the view adopted by Dualists, and also rejected the alleged distinction between Municipal law and International law as pointed out by the dualists. According to them both the international law and municipal law are related with the same legal system. And it is not possible to treat them severely.

i. Harmonization Theory: - Dualistic and Monistic both are the extreme views. They both are opposite to each other. But the Harmonization theory impliedly accepts the distinction between the two legal orders but they contend that the differences or conflicts between them may be harmonized. They are of the view that both the systems have been framed ultimately for the conduct of human behavior, so both of them are supreme in that sense. As for as the conflicts are concerned they may be harmonized and should be harmonized. The areas where both the systems are contradicted should be brought to test of harmonization. But such contradiction shall not mean that one of them is void. They exerts a duty on the judges of both municipal courts as well as international courts, to point out those points at which the two systems are collide with each other. According to them the two systems are not like a gear, but like two wheels revolving upon the same axis.

According to this theory, neither Municipal law nor International law has supremacy over each other.

Conclusion: - It may be concluded that as for as, the Dualistic and Monistic Theories are concerned they are primitive and traditional, due to which they are most popular. However, the Harmonization Theory is comparatively modern. Although no theory can be said to be appropriate, but Harmonization Theory appears to be better because it has regarded that International law, as well as, Municipal law have been so framed for the conduct of the human being, so there should be no contradiction between them, and

if any contradiction exist, that should be harmonized, either by courts or the legislature of the concerned state.