the scope of its authority, international law declares that the state is responsible; international law prevails over municipal law. A state may not invoke its municipal law as a reason for evading performance of an international obligation. According to the practice of Britain and India a rule of customary international Law requires specific adoption by legislation before any rights can be founded upon such law before a Municipal Court. The principle that international law is *ipso facto* part of the law of the land is not accepted. In England International Law without legislation by Parliament is not enforced by the Courts. In the U.S.A. the theory of automatic incorporation applies and rules of customary international law are applied as part of the municipal law without the need for specific legislative adoption. The legal position was stated as follows by *Gray*, J. in the paquete Habana and the Lola ((1899) 175U.S. 677). "*International law is part of our law and must be ascertained and administered by the Courts of justice of appropriate jurisdiction as often as questions of right depending on it duly presented themselves for determination*".

According to the practice of the United States International Law is part of the law of the land. As observed by *Marshall*, C.J in the Nereide ((1815) 9 Cranch 383) the Court is bound by the law of nations, which is a part of the law of the land. International law having its source in a treaty to which the united states is a party is regarded as a part of the law of the United States. In India the "incorporation" theory was affirmed by the Supreme Court in *Jolly Verghese v. Bank of Cochin*, AIR 1980 S.C. 470. India is still subscribing to the "incorporation" theory An international treaty signed by India does not *ipso facto* become enforceable law, the provisions have to be incorporated-in suitable legislation and then only they will become part of the Law of India.

State responsibility arises as a result of the application of international Law in the Domestic sphere.

STATE RESPONSIBILITY UNDER INTERNATIONAL LAW

By

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State responsibility assumes paramount importance in the contest of globalization and a world Government under international law. Frequently action taken by one state results in injury to, or outrage on, the dignity or prestige of another state. The rules of international law as to State responsibility concern the circumstances in which, and the principles where by, the injured state becomes entitled to redress for the damage suffered. State responsibility has been authoritatively stated to be confined to the responsibility of states for internationally wrongful acts. This is State responsibility in the strict sense, the source of such responsibility being an act or acts in breech of international law. But can liability be cast upon states in respect of acts not constituting a violation of any rule of international law, *eg.* private conduct, regardless of whether such conduct is or is not in contravention of domestic law.

The law of State responsibility is still in evolution, and may possibly advance to the stage where states and individuals are fixed also with responsibility for breaches of international law which are international crimes. The United Nations General Assembly since 1978 and the International Law Commission since 1982 have continuously been concerned with the subject of international criminal responsibility, to be formulated in a code of offences against the peace and security of mankind. The principle that the state is responsible for acts and omissions of organs of territorial Governmental entities, such as municipalities, provinces and regions, has long been

unequivocally recognized in international judicial decisions and the practice of state.

Meaning of the State responsibility according to *Starke*, "The rules of International law as to State responsibility concern the circumstances in which, and the principles where by, the injured state becomes entitled to redress for the damage suffered." The law relating to State responsibility is in developing state and probably it may be developed to a stage wherein states may be held responsible for the violations of international law and international crimes. The State responsibilities during wars have been generally accepted in Article 5 of Hague Convention 1907. It provides that if a belligerent state violates rules of war, it shall be responsible for payment of compensation. It shall also be responsible for all acts committed by persons forming part of its armed forces.

Original and Vicarious Responsibility : Original responsibilities of the state are for the works of its Government and the vicarious responsibilities are for its citizens and the works done by its agents. In the words of Oppenheim, "original responsibility is borne by state for its own- that is for its Government's action and such actions of its agents or private individuals as are performed at the Government's command or with its authorization, the responsibility of state for acts other than their own is a vicarious responsibility.

International delinquency :—As pointed out by Prof. *Oppenheim*, "every neglect of an international duty constitutes an international delinquency and the injured state can, subject to its obligations of pacific settlement through' reprisals' or even war, compel the delinquent state to fulfill its international duties."

State responsibilities for the act of aliens :—It is generally agreed that aliens living in a states should be given same rights which are given to the citizen of that state. It is the responsibility of the state to protect the rights of aliens in the same way as they protect the rights of their own citizens.

State responsibility for the acts of individuals :— If a citizen of a state caused damage or harm to an alien, that alien gets the right to file a suit for the compensation to the law of that state.

State responsibility for the acts of Mob Violence :— A state may be held responsible for the harm caused to the aliens by mob violence only when it has not made due diligence to prevent it. If the alien person is some officer of a foreign country then the State responsibility increases. The responsibility of the state also extends to the officers or servants of the international organizations.

Calvo Doctrine :—It was propounded by Mr. *K. Calvo* of Argentina. In his view during civil war the state is not responsible for the losses suffered by alien persons because if the responsibility is accepted, big nations will get an excuse to intervene in the weaker states. Many states, such as, America and England do not accept this doctrine. They point out, since the revolt or insurrections are frequent in the states, the presumption that the states made 'due diligence' becomes weak.

State responsibility for the acts of Governmental organs :—A state is responsible for the acts performed by its representatives or high officials towards alien persons.

State responsibility for contracts with foreigners :— The state is not responsible under international law if there is a breach of contract entered into by a state with aliens. However, the alien person may avail the local means available to him in the law of state concerned. If he may fails to get the desired remedy, he may approach his home state to pursue the matter.

Obligations :—State responsibility as a result of the breach of the treaty will depend upon the provisions of the treaty. If there is a breach of treaty obligations, the state concerned shall be responsible to pay the compensation. This was held by the permanent Court of International justice in Chorzo Factory (indemnity) case. The World Court also held, although the rights of the individuals are different from those states, yet they may be taken into account while assessing the damages.

State Liability for Acts of Multinational Corporation :—There is lack of definite international law in respect of liability of transnational or multinational corporations. The Charter of Economic Rights and Duties adopted by the general Assembly on 12th December 1974, recognizes the right of each state "to regulate and supervise the activities of transnational corporations within its national jurisdiction and take measures to ensure that such activities comply with its laws, rules and regulations and conform with its economic and social policies." But developed countries such as U.S., U.K., Federal Republic of Germany and Japan voted against this. In *M.C. Mehta v. Union of India*, more popularly known as Oleum Gas Leak Case, the supreme Court of India held "the enterprise must be under an obligation to provide that the hazardous or inherently dangerous activity, in which it is engaged must be conducted with the highest standard of safety and if any harm results on account of such activity the enterprise must be absolutely liable to compensate for such harm. In Bhopal Gas Leak Case, the Supreme Court got an opportunity to further develop the rule but the Court abdicated its responsibility and even before the challenge to the Bhopal Gas Disaster (processing of claim) Act 1985 was decided, the Court passed settlement order awarding a very meager sum and ended all criminal and civil liability in respect of the Bhopal Gas Leak Disaster. The settlement order has been severely criticized.

Events and problems in International Law.

Use of Super 301 clause by America against India and its legality under International Law :—The American Congress passed Omnibus Trade and Competitiveness Act in 1988. This Act provides that if in the countries having trade relations with America, the internal trade practice is unfair, restrictive or protective as compared to America, the American Government can declare such countries as 'unfair trading partner'. According to America, in India, banking, insurance, foreign equity participation, patent and intellectual copyrights are not open for American firms. Under Super 301 clause on 15 June 1989 America declared India, Japan and Brazil as unfair trading partners. Subsequently Japan and Brazil were removed from the list because according to the Government of the United States of America the progress of talks with these countries was quite satisfactory.

Legal Aspects of the Issue:—Intervention is prohibited under International law. Through Super 301 clause, asking other states to bring about changes in their internal matters as desired by America, amounts to intervention. The charter of the United Nations, provides for the international co-operation for the solution of international economic problems, Under Article 56 of the charter, member states of the U.N. have undertaken a 'pledge' to take individual and joint action for International Economic Co-operation.

Iraq invaded Kuwait on 2 August 1990 :—There was strong reaction against Iraqi invasion and Iraqi action was condemned all over the world. An emergency session of the Security Council of the U.N. was immediately called on 2 August 1990, Security council passed resolution 660 condemning Iraqi action and asking Iraq to withdraw its forces unconditionally from Kuwait.

Situation in Somalia is due to war since 1991, interim Government of Somalia requested the Security Council of the United Nations to consider on the worsening situation in Somalia. First U.N. took action at the request of Somalia. The Security Council determined that humanitarian problem and civil war of Somalia posed a threat to international peace and security. When the Council found that action not involving use of force proved to be inadequate the Council allowed the use of "all necessary means" as it did earlier in case of Gulf war (1991) to establish a secure environment for humanitarian relief. Thus United Nations action in Somalia is fully justified under international law. State responsibility, today is multi-dimensional. A strong world organization like U.N.O. above is competent to solve the problems arising out of breach of state responsibility.