15

INTERNATIONAL LAW

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I INTRODUCTION

THE RESILIENCE of customary international law is well known. What is equally well known is that the protracted manner of its formation made it unsuitable to keep up with the pace of development.[1] Emergence of treaties was therefore an inevitable development and today treaties are the most prolific means *via* which new rules of international law are made. India being a country which follows the dualist system does not allow for automatic enforcement of international treaties until they are incorporated into domestic law. This survey aims to scrutinize those instances wherein the Indian high courts and Supreme Court have employed international law to arrive at its judgments in the year 2019. The past few years have shown that there is a proclivity of the courts to use international treaties and principles of international law while rendering judgments and 2019 was no different. Keeping in mind the best global practices, 2019 saw the Indian courts playing a positive, progressive and proactive role on issues of environment and human rights among other things. However, time and again the courts have mentioned that provisions of international treaties are only applicable when they are consistent with the Constitution of India.

II APPROCH OF THE SUPREME COURT

In *Ashwini Kumar* v. *Union of India,*[2] a writ petition, which sought directions to the Parliament to enact an appropriate standalone comprehensive law based on the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as the UN Convention), was rejected. The Supreme Court in this judgment has clarified that in spite of what has been held in this judgment, it would not in any way affect the courts when presented with the individual cases of alleged custodial torture and pass appropriate orders. The moot question in this case was whether it is within the constitutional scheme for the Supreme Court to issue any direction to the Parliament to enact a new law based solely on the

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1 Although there have been circumstances where customary law developed rather quickly leading to proclaim that "instant" customary law is possible. Customary law relating to a state's sovereignty over its airspace and principle of non-sovereignty over the space route followed by artificial satellites developed quickly. See, Bin Cheng, "United Nations Resolutions on Outer Space: 'Instant' International Customary Law?" 5 *Indian Journal of International Law* 35-40 (1965).

United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT).[3] It is pertinent here to note that India has signed the UN Convention but has not ratified it. The court held that any direction by the Supreme Court which compels the Parliament to frame legislation or modify an enactment in a particular manner would be violative of the doctrine of separation of powers which is a basic feature of the Indian Constitution. The court observed that the UN Convention hasalready been considered by the government and the states and Union Territories have been asked for their opinion as it is a matter which falls within the Concurrent List of the Indian Constitution. The court held that judicial directions must not be given when the matter is already pending consideration and debate with the executive or the Parliament.

The apex court in *Tata Housing Development Company* v. *Aalok Jagga* [4] held that a housing colony of Tata which was located near Sukhna Lake in Chandigarh violated environmental norms. The housing project lay within the catchment area of Sukhna Lake and the boundary of Sukhna Wildlife Sanctuary was 123 meters. The court quashed the clearance obtained to execute the project and observed that the court will perform its duty in a situation when the authorities had failed to protect the wildlife sanctuary eco-sensitive zone.The court observed that human civilization and the world are facing "*the most potent threat*" in the form of environmental harm and wildlife degeneration, and it slammed the Government of Punjab for giving sanction to the housing project where 95 state MLAs were to get an apartment each. The court referred to the concept of sustainable development and mentioned that the concept has been accepted as a part of customary international law.[5] The court also observed that India is a member of all the major international conservation treaties related to habitat, species and environment like Ramsar Convention, 1971, Convention on International Trade in Endangered Species of Wild Fauna and Flora, 1973, Convention on Migratory Species, 1979; Convention on Biological Diversity, 1992 *etc*. It can be said that the judgment given by the court in this case reaffirms India's commitment towards upholding international environmental law norms and principles.

In March 2019, in the case of *Hanuman Laxman Aroskar* v. *Union of India*,[6] environmental clearance (EC) which was granted for the development of Greenfield international airport at Mopa, Goa was suspended by the Supreme Court. This case is related to the protection of biodiversity of the Western Ghat. The bench ruled that there were many procedural flaws in the grant of EC and it would be appropriate if the expert appraisal committee (EAC) revisited the conditions subject to which it granted its EC. The court observed that there should be a wholesome balance between the development of a public project as significant as building an airport and the preservation of the environment. The court emphasised on the concept of environmental

2 (2019) 2 SCC 486.

3 The UNCAT was adopted on Dec. 10, 1984 and entered into force on June 27, 1987. The Government of India signed this treaty on Oct. 14, 1997.

4 2019 SCC OnLine SC 1419.

5 A. Boyle and D. Freestone, (ed.) *Introduction. International Law and Sustainable Development, Past Achievements and Future Challenges* (Oxford University Press, Oxford, 1999).

rule of law (ERL) which means "*a quest for environmental governance within a rule of law paradigm*." ERL provides an essential platform underpinning the four pillars of sustainable development— economic, social, environmental, and peace. The court referred to Decision 27/9 which was adopted by the United Nations Environment Programme's Governing Body at its first universal session in 2013 on 'Advancing Justice, Governance and Law for Environmental Sustainability' and observed that sustainable development can get undermined by the violation of environmental law.[7] The court finally held that the health of the environment is the most important factor in preserving the right to life under article 21 of the Indian Constitution and there has been a failure of due process commencing from the non-disclosure of vital information.

After EAC was informed to revisit its decision by the apex court, it met on April 23, 2019. Later it recommended the grant of an EC to the project with additional environmental safeguards and conditions, over and above those which were stipulated in the EC dated October 28, 2015.The court was also apprised later in January 2020 that Zero Carbon Programme will be adopted in the constructional and operational phases of the airport. Finally the court lifted the suspension from the project's EC.

In the State of *Madhya Pradesh* v. *Lafarge Dealers Association*,[8] the facts revealed that to attract investors and increase industrial output in Madhya Pradesh, the state adopted a policy for granting sales tax exemption to industrial units which had fixed assets above the value of Rs. 100 crores. The assesses in the present case were entitled to the tax exemption and were issued an eligibility certificate for tax exemption by the Directorate of Industries in the unified State of Madhya Pradesh *i.e.,* before Madhya Pradesh was bifurcated. The bifurcation of Madhya Pradesh was effected *via* the Madhya Pradesh Reorganisation Act, 2000 and the state got divided into Chhattisgarh and Madhya Pradesh. So the main question before the apex court was whether the industrial units, which were granted exemption and were after the bifurcation, located either in the reorganised State of Madhya Pradesh or the new State of Chhattisgarh, would continue to get the tax exemption in the other state while conducting inter-state transactions from the state they are presently located in to the new State of Chhattisgarh or the reorganised State of Madhya Pradesh. In 2004, a two-judge bench had held, in the case of *Commissioner of Commercial Tax* v. *Swarn Rekha Cokes and Coals Pvt.*[9]

that in spite of the creation of two states (Bihar and Jharkhand), exemption of tax applicable before the division would continue to apply in the newly formed state. The apex court stated that for the purpose of sales tax, the two newly formed states were deemed to be one as a legal fiction. Both Chhattisgarh and Madhya Pradesh put forward to the court that after the bifurcation of the states the trade between the two states would be inter-state sales and not intra-state. Therefore, the units situated within the boundaries of the new Madhya Pradesh state and the new State of Chhattisgarh would continue to receive exemption benefits in respect of intra-state trade within

6 Civil Appeal No 12251 of 2018.2019 (5) SCALE 484.

7 UNEP/GC.27/17 at, 25-27, *available at*: http:// wedocs.unep.org(last visited on Dec. 10, 2020).

8 (2019) 7 SCC 584.

9 (2004)6 SCC 689 ; 2004(5) SCALE 596.

that particular state and not in respect of inter-state trade between these two states. The three-judge bench in this case overruled the judgment given in *Commissioner of Commercial Tax* the court held that, section 78 of the Reorganisation Act has two parts. The first part states that, "*the law in force before the appointed date, which in the present case is 1st November, 2000, would continue to apply to the successor or reorganised State of Madhya Pradesh as it existed before bifurcation.*" The second part of section 78 deals with a deeming fiction and lays down that "*that the laws enacted by the State of Madhya Pradesh before the reorganisation would continue to apply to the areas forming part of the new State of Chhattisgarh and also the reorganised State of Madhya Pradesh, but within their territorial confines."* So, the legislations which were in force in the unified Madhya Pradesh will also apply in the two newly formed states. But it will be in force as two separate enactments and not as the same enactment. While interpreting the second part of section 78, the court held that it should be careful while dealing with a legal fiction and should not extend this fiction beyond the legitimate field. The court also observed that article 3 of the Indian Constitution empowers the Parliament to form a new state by bifurcating a state or by uniting two or more states. The court in this case referred to the concept of clean slate which is a principle in international law. The principle of clean slate basically means that a successor state usually does not inherit any of the prior treaty obligations of the pre-existing state. The court in this case pointed out that the principle of clean slate, which is applicable in international law,[10] is not applicable when article 3 of the Indian Constitution is in operation and the re-organised states are basically the successors of pre-existing states.

III APPROACH OF THE HIGH COURTS

The High Court of Calcutta, in *Abdur Sukur @ Adi Sukur* v. *State of West Bengal*, gave relief to petitioners who belonged to the Rohingya community and were facing deportation to Myanmar. The petitioners argued that such deportation would be like a death sentence to them as Myanmar has a policy of an "*all-out onslaught of the Rohingya community*". The High Court of Calcutta not only restrained the respondents by an order of injunction during the pendency of the writ petition from deporting the petitioners but also directed the state authorities to ensure that the petitioners are given the basic amenities which would help them to lead a life worthy of respect. The court held that the petitioners were being given the protection in accordance with the fundamental rights of the Indian Constitution as well as the Charter of the United Nations in order to uphold the spirit of humanity. Though India is not a signatory of the 1951 United Nations Refugee Convention, this High Court of Calcutta judgment is in congruence with the principle of non-refoulement which is a part of customary international law.

In the *State of West Bengal* v. *Tathagatha Ghosh*, the petitioner who was suffering from mental illness of more than 40 % obtained 162 out of 720 marks in the National Eligibility-cum-Entrance Test-under graduate (NEET-UG) 2018 examination as OBC

10 Matthew C.R. Craven, "The Problem of State succession and the Identity of States under International Law" 9(1) *European Journal of International Law* 142-162 (1998).

(Other Backward Classes - 'B') under physically handicapped (PH4) category having mental behavioural disability. He secured a rank of 460 under the physically handicapped ranked category.The petitioner actually suffered from delusion of persecutions and auditory hallucination. He was denied admission in the undergraduate medical course of Nil Ratan Sirkar (NRS Medical College and Hospital, Kolkata) for the academic year 2018-2019. Though he was given a seat initially but later the seat was cancelled. In a November 2018 judgment, a single-judge bench directed the state to take the student as admission in the medical college, however, the state challenged the order. The High Court of Calcutta in this case directed the respondent authorities to admit the petitioner in medical course in NRS Medical College in the coming session. While rendering the judgment the court referred to the United Nations Convention on Right of Person with disabilities (UNCRPD)[11] and held that the Rights of Persons with Disabilities Act (RPWD Act)[12] though based upon the UN Convention, has imbibed within its fold the right of equality enshrined under article 14 and 15 of the Indian Constitution which includes the equal right to be considered for admission to educational institutions and its related benefits. Since the petitioner lost a year, the high court directed the state government to compensate the petitioner for the loss of a year and ordered it to pay 3 lakh Indian rupees within two weeks from the date of the judgment. The high court also directed NRS Medical College to admit the boy as a student in the next session.

In the case of *Anshu Rani* v. *State of U.P.*[13] the petitioner instituted the writ petition in the High Court of Allahabad and sought a writ of *Mandamus* which would direct the District Basic Education Officer, Bijnor to grant the petitioner maternity leave with honorarium. She was granted maternity leave for only 90 days though she requested for a 180 day leave. Further, no reason for reduction in the number of days of the leave was provided. The counsel for the petitioner contended that as per the Maternity Benefit (Amendment) Act, 2017 the period for grant of maternity leave is 26 weeks. The court relied on the Supreme Court case of *Municipal Corporation of Delhi* v. *Female Workers (Muster Roll)*[14] wherein the Supreme Court alluded to the Universal Declaration of Human Rights which set into motion the universal thinking that human rights are supreme and ought to be preserved at all costs. In this case the High Court of Allahabad further cited article 11 of the UN Convention on the Elimination of all forms of Discrimination against Women (CEDAW), which states that "*State Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights....*". The court went on to observe that "*motherhood is an essential part of family responsibility*" in India. It further observed that dignity

11 The UNCRPD and its Optional Protocol (A/RES/61/106) was adopted on Dec. 13, 2006 New York, and was opened for signature on Mar. 30, 2007. There were 181 countries have ratified the treaty. The Government of India has ratified this treaty on Oct. 1, 2007.

12 To give the effect of UNCRPD, the Government of India adopted the Rights of Persons with Disabilities Act, 2016.

13 2019 SCC OnLine All 5170.

14 (2000) 3 SCC 224.

of a woman and also the family is protected by international human rights. Hence, the Constitution should be interpreted by keeping in mind this background. It ruled that no service regulation can stand in the way of a woman for claiming protection of her fundamental right of dignity as a mother and hence the petitioner was entitled for maternity leave for a period of six months.

In *Rajiv Kumar* v. *State of U.P.*,[15] the petitioner was appointed as a constable in the Provincial Armed Constabulary on August 26, 2006. However, the appointment of the petitioner was cancelled by order dated 23 August 2007 passed by the Commandant 15th Battalion, P.A.C./ Incharge Commandant 43rd Battalian, P.A.C., Etah due to a false declaration at the time of his recruitment. In this writ petition the petitioner has challenged the order of cancellation of his appointment. The counsel for the petitioner did not contest the fact that the petitioner had faced criminal prosecution before the offending declaration was madeby the petitioner at the time of his recruitment. It was also submitted when the criminal case was instituted the petitioner was a 10-year old minor. On the other hand it was argued by the respondent that the appointment was invalidated once it was admitted that the petitioner had made a false declaration regarding the pending criminal case at the time of his employment. The court held that if a past prosecution of a child in a criminal case is considered then reintegration of the child in the mainstream of the society will not be possible. And will thus be an obstacle in the reformation of the child and the growth of the child into a responsible adult. The court further held that it will preclude realization of the mandate of article 39 of the Constitution of India. These circumstances will violate the child rights regime and the "life" of a child as guaranteed under article 21 of the Constitution of India will be devoid of meaning.Finally the court came to the conclusion that the petitioner's declaration was not a relevant factor in the appointment of the petitioner and therefore even a false declaration could not invalidate his appointment. While giving the judgment the High Court of Allahabad referred to the case of *Subramanian Swamy* v. *Union of India*[16] and quoted that many international covenants have stressed on the significance of reputation and honour in a person's life. The court stressed on the point that the intention of the legislature was to treat children as a separate class in prosecution of offences committed by the children and the Juvenile Justice Act made numerous references to the international law.

In *Rita Solomon* v. *Republic of Italy*,[17] the High Court of Delhi rejected a petition filed by an Indian citizen against the Republic of Italy on discrimination against the plaintiff in determination of salaries on the basis of nationality. The plaintiff claimed that the defendant had violated article 157 of the Italian Presidential Decree and stated there cannot be disparity in payment in the same job between Italian citizen and citizen of host employed. Plaintiff prayed for full payment of wages and damage for the mental injury and distress caused to the plaintiff. The defendant submitted before the court that section 86 of the Code of Civil Procedure, 1908 (CPC) recognized the

15 2019 SCC OnLine All 4658.

16 (2016) 7 SCC 221.

17 2019 SCC OnLine Del 8331.

importance of protecting the autonomy of foreign sovereign states from frivolous litigations. The defendant further contended that immunities could not be trifled by the Executive. The counsel for the defendants emphasised that the consent certificate issued by the Central Government did not discuss or make a reference to any of the conditions mentioned in CPC which made the consent of the Central Government *void ab initio*. Defendants further stated that the court had no jurisdiction to decide the suit as it is based on Italian law. Counsel of the defendant also argued that the plaintiff was aware of the alleged discrimination while entering into the contract with the defendant, therefore the suit was barred by limitations. The plaintiff however noted that the validity of the decision by the Central Government under CPC should not be inquired as the permission was not refused by the Central Government. Counsel of the plaintiff mentioned that there was no scope of interference by courts under CPC in what was a purely political decision. The plaintiff further argued that a certificate issued by or under the authority of the Secretary to the Government of India was conclusive evidence as regards the question as to whether a person was entitled to any privilege or immunity under section 9 of the Diplomatic Relations (Vienna Convention) Act, 1972. Plaintiff also stated that they had not relied on Indian law whilst filing the suit but relied on Italian Presidential Decree. They also submitted that under UN Convention on Jurisdictional Immunities of States and Their Property, 2004, which deals with Contracts of Employment, Italy had no immunity from legal proceeding where a contract of employment took place on Indian soil. The court rejected plaintiff's submission of not inquiring into the validity of the decision by the Central Government under the CPC. However, the court held that due to the absence of Central Government in this suit, the validity and legality of the sanction under CPC could not be examined and/or tested. The court stated that the Central Government should provide opportunity of hearing to the foreign sovereign nation under the CPC. Despite the fact that the suit was based on Italian law, the court viewed that it had the jurisdiction to preside over the suit by following article 154 which confers local jurisdiction to settle any dispute between plaintiffs and defendants. The court here cited the *Vishaka*[18] case of the Supreme Court wherein it was held that in absence of a proper law, courts can rely upon international treaty, convention and norms so far as they are consistent with the spirit of Indian Constitution. As article 157 of the Italian Presidential Decree was not opposed to public policy and was in conformity with the Indian law, the court viewed that it was competent to preside over the suit. However, the court viewed that article 157 of Italian Presidential Decree does not grant absolute pay parity between Italian citizens and citizens of host or local country. Furthermore, the court also held that it was not empowered to create or re-write a new contract/ agreement between two parties.

In *Mohd. Javed* v. *Union of India*, [19] High Court of Delhi quashed a 'Leave India Notice' which was served on Nausheen Naz, a Pakistani citizen, who is the wife of an Indian citizen Mohd. Javed. The petitioner was staying in India from 2015 on the basis of a Long-Term Visa (LTV) which was valid till June 8, 2020 but in spite of

18 *Vishakha* v. *State of Rajasthan*, AIR 1997 SC 3011.

19 2019 SCC OnLine Del 8741.

this, the 'Leave India Notice' was served to her on February 7, 2019 which directed her to leave India within 15 days of receiving the notice. During the pendency of the proceedings of this case Nausheen applied for citizenship of India and it was pending before the authorities. The petitioners argued that the notice which was issued to her without any communication or information preceding the same in relation to the directive to leave India was arbitrary and against notions of natural justice, equity and fair-play as there was no reason why she should be directed, suddenly, to abandon her family in India when she still held a valid LTV. The government argued that it had served her the notice as it was in the interest of the security of India and under the Foreigners Act, 1946, the Central Government has absolute and unfettered discretion when it is deciding in matters similar to the present case and as there is no provision fettering this discretion, an unrestricted right to expel remains with the government. The government also added that there is no statutory obligation on the Central Government to serve a show cause notice to a foreigner. The government placed before the court two separate reports in sealed cover which contained 'inputs' that it had received from the Intelligence Bureau and informed the court that it is because of this reason that the government had directed Nausheen to leave India. The court observed that it did not find any information contained in the 'inputs' that would warrant the impetuous action of requiring Nausheen to leave India. The court further observed that if authorities are allowed to direct valid visa-holders to leave India without giving any reasoning for such direction, it would be an arbitrary action, and the law would never permit this. The court while referring to articles 13, 17, 23 and 24 of the International Covenant on Civil and Political Rights (ICCPR) held that the facts of this case reveal that the mandate of articles 13, 17 and 23 had been thrown to the winds. The court observed that Nausheen had not indulged in any unlawful conduct and the 'inputs' of the government also does not reveal any activity on Nausheen's part which would warrant the notice which the government has served to her. The court further referred to the view taken by the United Nations Human Rights Committee at its 72nd Session in the case of *Hendrick Winata* v. *Australia,*[20] while interpreting articles 17, 23 and 24 of the ICCPR and held that forcing Nausheen to leave India would be arbitrarily interfering with her family life. The court quoted the United Nations Human Rights Committee - "*While aliens may not, as such, have the right to reside in the territory of a State party, States parties are obliged to respect and ensure all their rights under the Covenant. The claim that the State party's actions would interfere arbitrarily with the authors' family life relates to an alleged violation of a right which is guaranteed under the Covenant to all persons.*" The court referred to the provisions contained in the ICCPR and held that family being the natural and fundamental unit of society, is entitled to protection of its integrity against arbitrary interference by the state. The court finally held that the right to life under article 21 of the Indian Constitution would include the right of young children to live with their mother and the right of a husband to consortium with his wife and quashed the notice issued by the government to Nausheen.

20 2001 SCC OnLine HRC 31.

In *MRF Limited* v. *Metro Tyres Limited*, [21] the main question before the High Court of Delhi was whether in a suit for copyright infringement of a cinematograph film, the infringing copy has to be an exact copy made by a process of duplication or a substantial/material copy. MRF Limited, the plaintiff, engaged in the business of manufacture, marketing and sale of tyres. To publicize their goods in the market the plaintiffs made an advertisement in the audio-visual format which was titled as "MRF NV Series REVZ".Metro Tyres Limited, the defendant, was also involved in the same business as MRF and produced similar advertisement titled 'Bazooka Radial Tyres'. The defendant argued that the word 'original' used in section 13(1) of the Copyright Act, 1957 is not with respect to cinematograph film and the expression 'to make a copy of the film' means to make a physical copy of the film itself and not another film which merely resembled the original film. The high court referred to the Berne Convention and held that the Berne Convention lays down that a cinematographic work has to be protected as a work which is original and that the owner of a copyright in a cinematographic work shall enjoy the same rights as the author of an original work. The court held that making a copy of a film does not mean just to make a physical copy of the film by a process of duplication, but it also refers to another film which substantially, fundamentally, essentially and materially resembles/reproduces the original film. The court after applying the test laid down in *R.G. Anand* v. *Deluxe Films* held that the two advertisements are neither substantially nor materially or essentially similar.

In *Samson Maritime Ltd.,* v. *Union of India*[22] the High Court of Delhi quashed a notification which had been issued pursuant to the "The Make in India" policy which gave special preferential treatment to "Indian Built Ships". The case of the petitioners was that the impugned notification introduced the concept of "Indian Built Ships" as completely extraneous/alien to the Merchant Shipping Act, 1958, which destroys any statutory recognition and preference available to an Indian flag vessel. The petitioners further argued that the impugned notification with its concept of "Indian Built Ships" would deprive the Indian ships of business as under the notification a ship with foreign ownership may get first preference if it is of Indian built. The counsel further added that under the impugned notification the concept of flagging/ownership had been arbitrarily destroyed which was outside the ambit of the provisions of the Act. Counsel on behalf of the respondents submitted that the notifications had been issued in larger public interest under the "Make in India" policy and did not violate any right of the petitioners and hence no irreparable and grave harm would be caused to the petitioners. The court noted that the 1958 Act governs ownership of and not where the ship is built, and that this essential difference was not appreciated by the respondents. The court cited the case of *Halliburton Offshore Services Inc.* v. *Principal Officer of Mercantile Marine Department*[23] where the Supreme Court had held that nationality is bestowed upon a ship by means of registration which makes the Indian

21 2019 SCC OnLine Del 8973.

22 2019 SCC OnLine Del 8727.

23 (2017) 14 SCC 238.

ship entitled to fly Indian Flag and claim benefits and privileges under the 1958 Act. The apex court further held that under customary international law, ships are regarded as part of the territory of the Flag State *i.e.,* an extension of the country and so registration extends nationality rights to the ship. The court elucidated that Indian Ships are a class by themselves and equalisation of Indian Ships with Foreign Flag Ships amounts to treating unequals equally which violates article 14 of the Constitution of India. The bench pointed out that, "*the effect of the impugned Regime would be that the entire Indian trade would fall in the hands of Foreign Flag Vessels and Indian Ships would be rendered completely out of the market.*"

The facts *of Lennox James Ellis* v. *Union of India*[24] in High Court of Delhi revealed that a 74 year old British national was arrested from Goa on the basis of a red corner notice issued by Interpol on the request of the Government of the Republic of Philippines. He was remanded to judicial custody in New Delhi's Tihar jail and in the meantime Republic of Philippines requested for extradition of Lennox on August, 4, 2016. A notified order issued on August 23, 2016 under section 3(1) of the Extradition Act, 1962 was given retrospective effect and the Act became applicable to Philippines. The counsel for the petitioner argued that that the extradition request was received on August 4, 2016 and so is liable to be quashed as invalid because the Extradition Act, 1962 was not made applicable to the Republic of Philippines on the said date as the Extradition Act, 1962 becomes applicable to a foreign State only when a notified order under section 3(1) of the Act is issued which in this case was issued on August 23, 2016. The court held that the Extradition Act, 1962 is not a penal statute and hence a notified order which makes applicable the provisions of the Extradition Act, 1962 to the foreign country can be given retrospective effect. The court cited the case of *Marie-Emmanuelle, Verhoeven* v. *Union of India*[25] which ruled that binding extradition treaty between India and a foreign state is not required for the requisition for extradition made by the said foreign state and it would be maintainable under the general principles of reciprocity and the general principles of international law for extradition. However, it is pertinent here to note that there was an extradition treaty between India and Philippines which was signed on March 12, 2004 and the Instruments of Ratification of the said treaty were exchanged at New Delhi on October14, 2015.

In *Sanjaya Bahel* v. *Union of India*[26] the High Court of Delhi held that United Nations does not come within the meaning of article 12 of the Constitution of India and so is not a state. Hence, it is not amenable to the jurisdiction of the court under article 226 of the Indian Constitution. The petitioner was an employee with the United Nations Organization (UNO) and was charged with misconduct. As a result he was suspended from duty for three months. The petitioner's case was put forward before the US Federal Court and the immunity of the petitioner was waived on the request of United States. In 2007, the trial of the petitioner commenced before the United States

24 2019 SCC OnLine Del 6414.

25 (2016) 6 SCC 456.

26 W.P.(C) 981/2019 and CM APPL. 4407/2019 & 6592/2019.

Federal Court and he was sentenced to 97 months of imprisonment and two years of mandatory probation. Appeal and review petition was filed by the petitioner consecutively but they were dismissed. Also, a writ petition was filed before the Supreme Court of United States in 2016 and same was dismissed in 2017. In November 2018, the petitioner wrote a letter, to Ministry of External Affairs, New Delhi, seeking grant of permission to initiate legal action against respondents' under section 86 of Civil Procedure Code, 1908. In its reply, the Ministry stated that the consent of Government of India is not required to initiate a legal suit against the respondent as it is not a foreign state and is only an Internal Organization of UNO. It also said that respondent and its officials enjoy immunity under the United Nations (Privileges and Immunities) Act, 1947. The court held that a writ under article 226 lies only when the petitioner establishes that his or her fundamental right or some other legal right has been infringed. The claim as made by the petitioner would not be maintainable against the respondent unless the said respondent is a state or other authority within the meaning of article 12 of the Constitution of India.

In *X* v. *State of Uttarakhand,*[27] the petitioner was a trans-woman who had undergone gender reassignment surgery and claimed that she identified herself as a female but the state denied it. The petitioner had prayed in this petition that the state government should be directed to treat the petitioner as a woman in the ongoing criminal case registered by her. The facts reveal that the petitioner wanted to file a FIR under section 375 but it got registered under section 377. On May 31, 2019, a single judge bench of the High Court of Uttarakhand held that a transgender woman has a right to self-determine her gender, without any further confirmation from any authority. The high court in this case observed that India does not have a statute which prescribes any procedure for any declaration confirming the self-identified gender or sex of tansgenders. The high court extensively cited the case of *National Legal Services Authority* v. *Union of India*.(NALSA)[28] which by keeping in mind the different international conventions and principles to which India is a party upheld the right of transgender persons to determine their own sex and gender due to the absence of suitable legislation which protects the rights of the transgender community.The court rejected the argument of the state that the right of transgender persons to determine their gender had to wait for a legislation to come into operation. However, the Transgender Persons (Protection of Rights) Bill 2019 has been passed by the Parliament and became an Act on December 5, 2019 *i.e.,* after this judgment was passed. The Act specifies a particular process for legal gender recognition. It first requires a transgender person to apply for a "transgender certificate." This can be done on the basis of a person's self-declared identity. After that, a transgender certificate holder can apply for a change in gender certificate, which signals to authorities to change the legal gender to either male or female. The second step requires surgery and confirmation by a medical authority. The Act empowers the district magistrate to judge the "correctness" of the application and decide whether to issue the change in

27 2019 SCC OnLine Utt 1097.

28 *NALSA* v. *Union of India*, AIR 2014 SC 1863.

gender certificate, however, it provides no guidelines on how this would be done. These provisions violate the NALSA directions which clearly outlawed any requirement of a sex re-assignment surgery before gender identity could be claimed. Multiple United Nations agencies advocate for separation of legal and medical processes of gender reassignment for the transgender community.

In *Joshua Sadagursky* v. *Union of India,* [29] the High Court of Bombay dismissed a petition filed by a United States national which dealt with his arbitrary deportation from India within few hours of his arrival at the Chhatrapati Shivaji International Airport in Mumbai. The petitioner arrived in India in 2017 on a valid business visa for a fellowship programme with Teach for India and overstayed. His request for extension of visa was denied and so he returned to the United States. The petitioner then applied for a new business visa and a five-year multiple-entry visa was issued to him. Sadagursky claimed that it was issued to him due to his noteworthy contributions in India. However, the judges observed that there is no evidence of this and this reason "seems to be a self-serving figment of the petitioner's imagination". The judges also observed that the petitioner's argument, that with a five-year multiple entry visa he could not be stopped from entering India, is faulty and without merit as then it means that all immigration authorities and protocols are redundant. Moreover, it came to the notice of the court that he had previously overstayed the duration stipulated on his visa when he visited India as a student prior to 2017. It has been further observed by the court that the petitioner was not eligible for employment in India under the visa which was issued to him earlier as well as the under the new five-year multiple entry business visa. But even after this, he took employment in India in a full-time position as a team leader in the non-profit organisation called 'Global Citizen Year' under whose aegis teach for India operated. The petitioner argued that article 13 of the International Covenant on Civil and Political Rights, 1966 to which India is a signatory applied to him and as per the article, an alien *lawfully in the territory of the state party may be expelled* only in pursuance of a decision reached in accordance with law and shall ordinarily be allowed to submit reasons against his expulsions and to have his case reviewed and represented before a competent authority. The court held that he was *never lawfully in the Indian territory* when he was forced to return to the United States on his arrival at the airport in Mumbai. The court observed that he had already left India when his visa expired and as per the facts of the case he was attempting to re-enter India. The court held that he was actually denied entry into India and was not expelled, which implies the ejectment from Indian Territory of someone already within its borders. The court while referring to books like Introduction to International Law by J.G. Starke (1st Indian Reprint 1994) and Oppenheim's International Law (9th edition 1992) observed that unless bound by an international treaty to the contrary, states are not subject to a duty under international law to admit aliens or has any duty not to expel them. The court further observed that as the sovereign the state has an unqualified right to exclude all aliens at will. The court held that at the time of his deportation he was not legally in India as he had not crossed the

29 2019 SCC OnLine Bom 1831.

immigration borders and just because he possessed a visa he did not have an unrestricted right to enter India.

In *Vinit Kumar* v. *Central Bureau of Investigation*[30] the High Court of Bombay held that telephone can be tapped only in case of public emergency or in interest of public safety. The Home Ministry of India had given the order to intercept a businessman's communication as he was accused of bribing a public servant who is a bank official to get certain credit related favours. The businessman challenged the interception orders and contended that they were unlawful and violated his right to privacy. The court held that there existed no lawful justification for intercepting the businessman's communications and set aside the orders while instructing that the intercepted messages/ recordings be destroyed. The court referred to Universal Declaration of Human Rights, 1948 to which India is a signatory and observed that privacy is an international human right as per the Declaration. The court also referred to article 17 of the International Covenant on Civil and Political Rights, 1966 which recognizes the right to privacy and held that right to privacy would include telephonic conversations in the privacy of one's home or office.

Begging is considered a crime in 20 states and two union territories of India. In *Suhail Rashid Bhat* v. *State of Jammu and Kashmir*,[31] the High Court of Jammu and Kashmir held that criminalization of beggary which makes poverty an offence, is unconstitutional and struck down the provisions of the Jammu and Kashmir Prevention of Beggary Act, 1960 and the Jammu and Kashmir Prevention of Beggary Rules, 1964. It has been held that the act of begging which involves peaceful communication conveys a request for assistance, verbally or non-verbally and is a part of the valuable right of freedom of speech and expression guaranteed to all under article 19(1)(a) of the Indian Constitution. The court further held that prohibition of communicative activity by beggars in public spaces violates their rights guaranteed under article 19(1)(d) of the Indian Constitution which guarantees to all citizens of India the right to move freely throughout India. Moreover, the court held that article 21 of the Indian Constitution also got violated by the Act and Rule in question. While rendering the judgment the court provided examples of countries like Finland and Greece where begging has been decriminalised and noted that India is a party to the International Covenant of Civil and Political Rights where article 17 lays down that "*no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home and correspondence, nor to unlawful attacks on his honour and reputation.*" Article 12 and 23(1) of Universal Declaration of Human Rights, 1948 and article 6(1) and 11 of the International Covenant of Civil and Political Rights were also referred to by the court. The court elucidated that the legislations which the court was examining in this case violated the rights of the most marginalised in the community. The court held that the international instruments which were ratified by India impose obligations on it to protect all individuals from violation of the rights mentioned in these instruments. It was laid down by the court that penal provisions must comply with the principles of

30 2019 SCC OnLineBom 3155.

31 2019 SCC OnLine J and K 869.

the international instruments that India had ratified while guaranteeing the rights guaranteed to all individuals under the Indian Constitution. The court held that the legislations in question here so far as beggars were concerned, failed to even recognize the rights ensured to all individuals under the international instruments which India has ratified.

In *P.Ulaganathan* v. *The Government of India*,[32] the High Court of Madras gave an important judgment which recognised asylum-seekers' right to apply for citizenship in India. The petitioners were 65 India-origin Tamil refugees who fled to India from Sri Lanka during 1983 to 1985 due to a brutal ethnic strife and moved to the courtto seek conferment of citizenship. Since then they were staying in Kottapottu Transit Camp in Trichy as refugees and in other refugee camps in Madurai, Perambalur, Karur, *etc*. The Government of Tamil Nadu argued that citizenship could not be given to them as it was a policy matter to be decided by the Government of India and stated that they would be only recognised as refugees. The Government of Tamil Nadu further stated that as they did not arrive in India through a legal route and with an appropriate passport they are illegal migrants and illegal migrants are not eligible for grant of Indian citizenship under section 5 and section 6 of Indian Citizenship Act, 1955 and the rules framed thereunder. The counsel of the petitioners referred to international instruments like Universal Declaration of Human Rights, 1948 and Conventions relating to status of stateless persons and resolutions passed in various conventions. The counsel stated that India was not a party to any of these conventions. But he invoked article 51(c) of the Constitution of India which mandates the government to foster respect for international law and treaty obligations in dealings of the organised people with one another. The court held that the reference to international instruments were of no use as India already has the Indian Citizenship Act, 1955 and particularly pointed out that when a comprehensive law governing citizenship was already there then, it was futile to look to international law, especially when India was not a party to those conventions. The court held that the petitioners can invoke article 21 of the Indian Constitution which applies to citizens as well as non-citizens and especially to the petitioners as they spoke the Indian language, belonged to the Indian culture and were genealogically traced their roots to the Indian soil. The court further elaborated this point by saying that article 21 had been violated as the petitioners were staying in the camps for around 35 years where the camp conditions were *"hellish*" and they were stateless. The court elucidated that the petitioners came to India and sought asylum when they faced a grave threat to their life and a person who is running for his life could not be expected to wait for a visa. The court finally held that Government of India has the implied power to relax the rigour set out in the opening clause of section 5(1) of the Act and an illegal immigrant can claim such a relaxation if he has not merged with the society secretively. The court held that government has the power to consider the applications seeking citizenship favourably in spite of the technical status of the applicants as that of illegal migrants keeping in mind the unique situation of the petitioners.

32 2019 SCC OnLine Mad 8870.

In *AE and E Chennai Works (P) Ltd* v. *The Presiding Officer*[33] the petitioner company received a sexual harassment complaint in 2010 which revealed that the second respondent in the case who is a team leader at the company had sexually harassed a woman. An enquiry committee of the company found that the second respondent was guilty. However, after a few days the woman withdrew the allegation against the second respondent. A case was raised in front of the Labour Conciliation Officer II regarding the second respondent's termination from the company. The dispute was further referred to the labour court which held that the 2nd respondent should be reinstated in the service and this writ challenged the labour court award. Complaint by the woman was made before the enactment of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 and so the company dealt the case by following the rules laid down in *Vishaka* v. *State of Rajasthan* the High Court of Madras held that the award passed by the labour court is perverse and in violation of the legal principles settled by the Supreme Court of India in "Vishaka Judgment". The court pointed out that the World Conference on Human Rights at Vienna in 1993, was one of the main turning points in women's right and declared that human rights of women and of the girl child are inalienable, integral and indivisible part of universal human rights. The court held that all suitable actions both under the criminal law as well as under the Sexual Harassment Act are to be initiated against the respondent, who had been involved in the misconduct and finally held the labour court's decision as legally unsustainable.

The case of *Rahmath Nisha* v. *Additional Director General of Prison*,[34] in High Court of Madras, concerns the writ petitioner's brother, Mohamed Shalin, who as a remand prisoner had been confined at Palayamkottai Central Prison. The writ had been filed so that Mohamed Shalin could get 10 days leave as his wife was seriously ill. Shalin was remanded by National Investigation Agency Special Court in Chennai in a bomb blast case. When his wife fell ill, he moved an application for meeting her. Though the National Investigation Agency Court had allowed the application and permitted him to go home, by the time he reached his home, his wife was taken to the hospital. The escort police did not take him to the hospital by taking a view that the court had allowed him to meet his wife only at home. Since the purpose of filing the previous petition was not fulfilled this writ petition was filed. The additional public prosecutor argued that the writ petition was not maintainable as it had not been filed by the prisoner concerned or his wife. The prosecutor further contended that there was a possibility that the prisoner might escape if he was allowed the leave. He further explained that the cases in which Shalin had been accused had national security implications and were very grave. He also alleged that the prisoner was a terrorist who had supplied bombs and ammunitions to Jihadi terrorists. The court observed that he was not only a prisoner but a person too and so was entitled to certain fundamental rights even during custody. It held that article 21 of the Constitution of India embraces even prisoners, murderers and traitors and so they are entitled to the

33 2019 SCC OnLine Mad 5320.

34 2019 SCC OnLine Mad 1693.

right that it declares. The court quoted the United Nations Standard Minimum Rules for the Treatment of Prisoners which says that- "*Prisoners shall be allowed, under necessary supervision, to communicate with their family and friends at regular intervals".* The court ruled that if a prisoner's spouse cannot come to the prison due to immobility the authorities must allow the prisoner to make a visit to his wife as this was the spousal right of the prisoner's wife. One particular contention which was put forward by the additional public prosecutor was that meeting between the prisoner's wife and the prisoner could only take place in the presence of the escort police, but this contention was negated by the court. The court recognised the prisoner's right to visit his wife who was critically ill and directed the prison authorities to take Mohamed Shalin under escort to his wife to Rosemary Mission Hospitals and Research Centre, Vannarpettai, Tirunelveli or wherever she was so that the prisoner could be with his wife between 10.00 A.M to 05.00 P.M on May 29, 2019. Another important aspect which was discussed in the case was privacy while meeting spouses in the case of prisoners. The court observed that "*while private prison cottages may be a distant prospect, the privacy and dignity of the prisoners should be scrupulously protected.*" The court held that conversations between a prisoner and his spouse should not be monitored. However, it added in a precautionary tone that not only the prisoner but also the spouse shall be carefully searched before and after the meeting.The Madurai bench of the High Court of Madras thus read down Rule 531(2) of the Tamil Nadu Prison Rules, 1983 which stated that every interview with a convicted prisoner should take place in the presence of an experienced prison officer.

In *P.S. Govindaswamy Naidu and Sons' Charities* v. *V. Prakas*h,[35] the High Court of Madras ruled that the court can issue summon or notice to the US Consular Office at Chennai. In this review petition the respondent (earlier the plaintiff) claimed that the he is entitled to be recognised as founder trustee in the public charitable trust of the petitioner (earlier the defendant) as he is the sole surviving adult male member of the PSG Narayanaswamy Naidu Branch of the family. Narayanaswamy Naidu was one of the four founder trustees. The petitioner stated that one of the essential qualifications to become a Trustee of the Trust Board is that the person must permanently reside in Madras Presidency. The petitioner argued that the respondent is a Green Card holder which was issued by the US Administration. In the card it was clearly mentioned that he was United States of America's Permanent Resident and the relevant Rules of Travel by a Green Card holder state that all his travels to India were "Trips Abroad". Therefore, the petitioner contended that the respondent was not a permanent resident of India. The petitioner prayed to pass an order issuing summons/ subpoena to the Chief of the Consular Section, office of the Consulate General of United States, Chennai to produce a specimen green card of United Stateswith the Rules and Regulations document and also give evidence regarding the rules and regulations governing the green card of United States. The respondent raised objection by citing the Vienna Convention on Diplomatic Relations, 1961 and the Diplomatic and Consular Relations, Privileges and Immunities mentioned in the signed agreement

35 2019 SCC OnLine Mad 6106.

between the United States and India, where it says that the courts in India cannot issue summons or subpoena to the foreign diplomats and its officers in Indian soil. The court rejected petitioner's argument by stating that the respondent was the citizen of India and mere holding of the United States Green card would not mean that the person was permanent resident of the United States. By citing the Vienna Convention, the court further stated that a diplomatic agent including Consular General or Consular office people are not obliged to give evidence in India. Hence, the court held that no directive can be issued by the court to summon the chief of staff of the Consulate General of United States at Chennai to give evidence regarding the rules and regulations governing the Green card of United States. However, as per the Code of Civil Procedure, 1908 the court might issue summon or notice through post to the United States Consular Office only for the purpose of production of rules and regulations regarding Green card, only as an information in order to assist the court and not for the purpose of summoning any one from the consular office as a witness. If no response is provided by the diplomatic mission, the court would not be able to exercise its power under CPC against the foreign diplomat or foreign consulate or high commission or any other official or staff attached with those offices. However, any information provided by the United States Consular Office Chennai against such summon can be utilised as supporting evidence or secondary evidence under Indian Evidence Act, 1872.

In *Mahaveer Nath* v. *Union of India*[36] the High Court of Madhya Pradesh dismissed a petition, which was filed by a person belonging to the 'snake-charming' community. It challenged the constitutional validity of section 9 and 11 of the Wild Life (Protection) Act, 1972. The petitioner contended that he was being deprived to carry out the vocation of snake charming for his livelihood as it had been abruptly put to an end by prohibiting the keeping of snakes. He also submitted that the "snake-charming" community lives in cluster in the remote area near Gwalior and were dependent on snake showing for their livelihood. The petitioner also urged that the members of this particular community play a major role in sensitizing people to reptiles and possess a high level of indigenous knowledge of wild animals. The court observed that the petitioner failed to bring on record any other authentic or genuine information or an empirical study which would establish that except 'snake charming', the community had no other source of livelihood. The Union of India contended that despite the enactment of 1972 to protect wildlife, there was need for more stringent provisions to save the wildlife which led the Parliament to amend sections 9 and 11 of 1972 Act. The court referred to the World charter for nature" which was adopted in 1982 by the United Nations General Assembly and quoted it*"Mankind is a part of nature and life depends on the uninterrupted functioning of natural systems which ensure the supply of energy and nutrients. Civilization is rooted in nature which has shaped human culture and influenced all artistic and scientific achievement and living in harmony with nature gives man the best opportunities for the development of his creativity, and for rest and recreation."* The court finally held that the right conferred

36 AIR 2019 MP 193.

under article 19(1)(g) [Right to practice any profession or to carry on any occupation, trade or business] of the Indian Constitution is not an absolute right but is liable to restriction under clause (6) of article 19. Furthermore, while dismissing the plea it ruled that mere hardship cannot be the reason for invalidating a valid legislation unless it suffers from the vice of discrimination or unreasonableness.

In *Arman Ali* v. *Union of India*,[37] the petitioner is Arman Ali served as the Executive Director of Shishu Sarothi, a centre established at Guwahati for rehabilitation and training for multiple disability. He himself suffers from Celebral Palsy and is also a leading disability rights activist of the country. In his writ petition under article 226 of the Indian Constitution he narrated that when he tried to avail the facilities offered by a private gym named Gold's Gym in Guwahati he faced discrimination as he had to pay more than other customers as a personal trainer was being provided to him by the gym. Also, certain irrelevant questions were posed to him by the representatives of the gym on the pretext of having a better understanding of his physique and disability. The respondents argued that the gym is a private entity and not a "State" or "other authority" within the meaning of article 12 of the Constitution of India. Also, the gym does not discharge any public duty or function and hence the writ petitionwould not be maintainable. When this writ petition was filed the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 ('the 1995Act') was in force. The court observed that India is a signatory to the Proclamation on the Full Participation and Equality of People with Disabilities in the Asian and the Pacific Region which was adopted in Beijing in the year 1992. As a consequence India enacted the 1995 Act to give effect to the Proclamation. The court noted that India is also a signatory to the United Nations Convention on the Rights of Persons with Disabilities, 2008 which lays down the principle of full and effective participation of persons with disabilities as well as inclusion of them in the society. Later the 1995 Act was replaced with Disabilities Act, 2016 ('2016 Act') and it majorly focuses on the issues of equality and non-discrimination. The high court mentioned that this particular case highlights the plight of not only the petitioner but also others like him who face similar or worse situations. The high court finally held that private establishments have a duty to ensure that its facilities are friendly to the persons with disability. Also, among other things the court held that Commissioner and Secretary of the Social Welfare Department, Government of Assam should issue general circulars to all government and private establishments highlighting the salient features of the 2016 Act.

In *Banashree Gogoi* v. *Union of India*[38] the High Court of Guahati directed the Government of Assam for immediate restoration of mobile internet services in the state. The outbreak of violence and protests which was related to the amended Citizenship Act, 1955 was the reason for the suspension.The petitioners challenged the notifications imposing internet shut down. They argued that periodic review of the ban was not carried out to ascertain its necessity. The petitioners also pointed out

37 2019 SCC OnLine Gau 4822.

38 *Available at*: https://indiankanoon.org/doc/147345132/(last visited on Dec. 20, 2020). PIL 78/2019.

that the situation in Assam had been normal during last three days and demonstrations were being done in a peaceful manner. It was also pointed out that ban on broadband services was lifted later and hence there was no justification in continuing mobile internet services ban. The moot question before the court was whether the State of Assam had enough evidence to justify its continued suspension of mobile internet services in the state. The court held finally that no material was placed by the state to demonstrate and satisfy it that there exists, as on the date, disruptions on the life of the citizens of the state with incidents of violence or deteriorating law and order situation which would not permit relaxation of mobile internet services. The court observed that in the present day and age mobile internet services play a major role in the daily walks of life and its shut-down brings life to a grinding halt. This judgment assumes significance as India is a party to International Covenant on Civil and Political Rights, 1976 (ICCPR) where article 19 gives protection to the freedom of expression. In 2018 a resolution was adopted by the United Nation Human Rights Council (HRC) which affirmed that "the same human rights that people have offline must be protected online". Also, in 2016 United Nations Human Rights Council passed a resolution for "promotion, protection and enjoyment of human rights on the Internet".

In *Mir Asgar Husain* v. *The State of Telangana*, [39] the High Court of Telangana set aside the state's June 18, 2019 cabinet decision to demolish the 150-year old Irrum Manzil heritage building located in the city of Hyderabad. Actually, state had the plan to build a legislative complex there at the site of the palace. The court observed, while citing the Apex court judgment of *Brij Mohan Lal* v.*Union of India*,[40] that though the court cannot give its own decision in place of the decision of the government, but, it can interfere with the decision provided that provisions of law and/or relevant factors have been ignored by the government in the process of taking the decision. The court held that among other things the government had ignored the fact that if any modification, development or demolition of a heritage building was required, then the procedure prescribed under the Regulation 13(2) of the Zoning Regulations, 1981 must be followed. In spite of this, the government had not taken any permission from the Hyderabad Metropolitan Development Authority prior to taking the decision on June 18, 2019. The court further held that India, being a signatory of the World Heritage Convention, 1972, has a duty to protect and conserve the cultural and natural heritage situated in its territory and has a duty to integrate the protection of heritage into its comprehensive planning programmes. The court came to the conclusion that the cabinet decision of June 18, 2019 was arbitrary and legally unsustainable.

In *Faheema Shirin. R.K* v. *State of Kerala*,[41] the High Court of Kerala held that article 21 of the Indian Constitution encompasses within itself right to access internet and thus is a part of right to privacy. It is also part of right to education. This judgment was given after a female student challenged restrictions on usage of mobile phones in

39 Writ Petition (PIL) Nos. 79 of 2019 and 86 of 2019.

40 (2012) 6 SCC 502.

41 WP(C).No.19716 OF 2019(L).

a girls' hostel. The facts revealed that such restrictions were only there in the girls' hostel and so it amounted to discrimination based on gender and was in violation of Clause 5 of Ext. P8 Guidelines issued by the University Grants Commission (UGC). It was also argued that such restrictions amounted to violation of principles which are laid in the Convention on Elimination of All Forms of Discrimination against Women, 1979, the Beijing Declaration and the Universal Declaration of Human Rights. It was further contended by the petitioner that her right to acquire knowledge through internet was being impaired and this in turn will affect the quality of her education. The petitioner claimed that the right to access internet is a part of freedom of speech and expression guaranteed under article 19(1)(a) of the Indian Constitution and the restrictions imposed in this case do not come within the ambit of the reasonable restrictions covered by article 19(2) of the Indian Constitution. The court held that "*United Nations have found that right to access to Internet is a fundamental freedom and a tool to ensure right to education, a rule or instruction which impairs the said right of the students cannot be permitted to stand in the eye of law.*"

In Preetam Sonwani v. *State of Chhattisgarh*,[42] the petitioner an unmarried person was subjected to vasectomy operation when he went to Government hospital Dongargarh for treatment of stomach pain. The petitioner claimed that he had never given consent for undergoing vasectomy and when state officials conducted enquiry it was found that that the erring doctors were responsible for performing vasectomy operation on the petitioner and the penalties were proposed. The petitioner further contended that in spite of receiving several notices the doctors did not turn up and hence on the basis of available documents *i.e.*, register and papers of hospital, it was found that the respondents had indeed committed negligence in performance of their duties. However, state contended that necessary papers were signed by the petitioners before the vasectomy was done and after undergoing the operation, the petitioner received an amount of Rs. 1100 as a whole. On the other hand the petitioner argued that though papers were signed by the petitioner but they were signed only for treatment of stomach and not anything else. Further it was contended that the state itself had found that doctors and other medical staff were responsible for the vasectomy operation performed on the petitioner and penalties were proposed and so now it could not deny the negligence of the doctors and go back from its own documents and the findings. State counsel also submitted that the documents filed by the state could not be disputed and if it had been found proved in enquiry that the negligence had been committed on the part of doctors who had wrongly conducted the vasectomy operation on the petitioner, and that the state could not be held responsible for such act. The court while rendering the judgment referred to the Universal Declaration of Human Rights, 1948 and the International Covenant on Economic, Social and Cultural Rights, 1976 and held that right to marry and forming a family is also a human right coupled with the fact that no one should be subjected to torture or cruel treatment. Hence, when a person is sterilized against his/her consent, it amounts to infringement of international human rights. The court also observed that the United Nations Human

42 2019 SCC OnLine Chh 66.

Rights Committee recognizes forced sterilization as a violation of the right to be free from torture and cruelty, inhuman or degrading treatment or punishment. The court further ruled that sterilization without taking consent breached the petitioner's right to marry and forming a family and also interfered with his right to privacy. The state was directed by the High Court of Chhattisgarh to pay a compensation of Rs. 2,50,000 to the petitioner.

Right to life is dealt by articles 6,7, 9, 10, 14 of International Covenant on Civil and Political Rights,1976 which India has signed and ratified. Indian government has turned down all recommendations to ratify the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED), and the Rome Statute of the International Criminal Court. In *Ram khilawan Dansena* v. *State of Chhattisgarh*[43] the son of the petitioners was working as a teacher at Government High School in Bilaspur. He was arrested by the police under sections 107, 116 and 151 of Cr PC., due to a dispute which arose with the SDM while attending a pre-poll meeting. The petitioners being parents, did not get any information about the arrest and they came to know about it much later. Subsequently, custodial death of the arrestee was reported. The counsel for the petitioners submitted that the state initially had filed the return and along with the return magisterial enquiry report was filed and deliberately the conclusion part was omitted and the return by state was signed by the officer-in-charge against whom the allegations were levelled he being the jail superintendent. He further submitted that the deceased was illegally detained by the state at the instance of few of the officers and thereafter was brutally beaten with the motive of teaching him a lesson as he landed into argument with the SDM. Hence, the counsel argued that the family members of the deceased are entitled to get compensation as the cause of death of the deceased was torture and inhumane behaviour in the jail. The respondents argued that the deceased son was into alcohol heavily and as he was not able to get alcohol heavily he got angry and caused grievous hurt to himself. Also, it was claimed by the state that the state was not liable as the negligent act was done by a few officers and taking into account the economic condition of the deceased, Rs. 50,000 was given to the petitioners by the state and apart from that Rs.20,000 was given to the petitioners by the Collector of Bilaspur. The court observed that the postmortem report revealed that the deceased was brutally beaten in the jail which ultimately resulted into his death. The court cited the Supreme Court case of *Rudul Shah* v. *State of Bihar*[44] and quoted an extract from the judgment- "*Article 21 which guarantees the right to life and liberty will be denuded of its significant content if the power of this Court were limited to passing orders of release from illegal detention. One of the telling ways in which the violation of that right can reasonably be prevented and due compliance with the mandate of Article 21 secured, is to mulct its violators in the payment of monetary compensation……If civilization is not to perish in this country as it has perished in some others too well-*

43 2019 SCC OnLine Chh 70.

44 (1983) 4 SCC 141.

known to suffer mention, it is necessary to educate ourselves into accepting that, respect for the rights of individuals is the true bastion of democracy." The court held that any form of cruel or inhuman treatment to the inmates of a jail during investigation, interrogation or otherwise would fall within the inhibition of article 21 of the Indian Constitution. The High Court of Chhattisgarh finally ruled that 15 lakhs would be given to the deceased person's legal heirs within a period of two months from the date of the judgment. Even though India is a signatory to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,1987 it has not ratified it till date by enacting a law on torture.

IV CONCLUSION

The Constitution of India *via* its Directive Principles of State Policy as per article 51 (c) enjoins the State to "foster respect for international law and treaty obligations in the dealings of organised peoples with one another". Article 51 should be read with article 37 of the Indian Constitution which lays down that the Directive Principles are not enforceable by the Indian courts but are "fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws". India being a founding member of the United Nations has an intricate and close relationship with international law and plays a proactive role in the international legal sphere. The aforementioned judgments reveal that the role of the Indian courts with respect to international law is evolving constantly. The Constitution of India is greatly influenced by the principles and values which form the bedrock of international law. Though in the absence of specific legislation India's international obligations are not enforceable, still in some instances courts do play an activist role and fill gaps in municipal law with the help of international law as long as they are consistent with the Indian Constitution. The examination of the trend of Indian courts with regard to application of International law is extremely important in understanding how international law has influenced the Indian judiciary. Though the trend as shown in this survey can make a reader to conclude that the judiciary is playing a proactive role when it comes to implementation of international law, still India has a long way to go before it can achieve the perfect synergic relationship between international law and domestic law.