15

INTERNATIONAL LAW

*Manoj Kumar Sinha**

I INTRODUCTION

THE FOCUS of this research has been to analyse the use of international law and norms by the high courts and Supreme Courts in India. The cases are only taken from the year 2020. The courts through different judgements set up that courts are not opposed to applying international law and conventions where courts discovered the arrangements of international settlements to be reliable with the Indian Constitution. The significant choices examined underneath will build up that reference to be applicable by the courts, has expanded altogether throughout the long term. It is relevant to feature here that the methodology of the Indian legal executive in the application of international law might be viewed as certain and proactive. The decisions evidently show that the judges are not reluctant to apply international law, conventions or treaties while deciding cases at whatever point is fundamental.

II LEADING SUPREME COURT CASES

In the case *K.J Tommy S/O of Joseph* v. *State of Kerala*.,[1] the petitioner was a resident of the Vara-konturuthy region who took up the cause of the Konthuruty river before several authorities and filed W.P.(C) No.13927 of 2012 before the High Court of Kerala, which was later transferred to the National Green Tribunal, Chennai. Konthuruty River is situated in SY NO.1006 of Elamkulam village, kanayakunnur taluk and Ernakulam district. The tribunal observed that since the issue involved did not relate to pollution, but that of encroachment, it could be tried only under article 226 of the Constitution of India. The Konthuruty River faced a slow death due to the encroachments by the members of the 5th respondent, according to the petitioner. The commencement happened with the destruction of a bridge 26 years ago. A road was constructed over the river without leaving access for the flow of river water. As stated by the 3rd respondent in exhibit-P13, several persons have illegally encroached Konthuruthy River and reduced its width by 3 metres from its original width of 48 metres. Petitioner has further contended that respondents 1 to 3 are bound to take action under the law to evict the illegal encroachers of Konthuruthy River and to store its width to 48 metres. In *M.C Mehta* v. *Union of India.*,[2] when faced with a

* Director Indian Law Institute.

1 2020 KER 4890. (decided on June 9, 2020 High Court of Kerala).

2 1997 3 SSC 715.

similar case, the court ruled that the state must make every effort to prevent environmental destruction where irreversible harm is a danger. In the said decision, the precautionary principle was debated in light of articles 21, 47, 48A and 51A (g) of the Constitution. The court found the value of water resource management, the principle of sustainable development and the government's and other authorities' responsibility to conserve natural resources in *Tirupathi* v. *State of A.P.*,[3] the idea that the government has a duty to protect the environment is now well recognised in all countries. This concept gives birth to the idea of "State Duty" for emissions occurring within one's own borders in International Law. In the United Nations Conference on the Human Environment Stockholm, 1972 (Stockholm Convention), to which India was a party, this obligation is explicitly stated. In this case, the main clause of this declaration is in para 2, which states, "The natural resources of the earth, including the air, water, land, flora and fauna and especially representative samples of natural ecosystems, must be safeguarded for the benefit of present and future generations through careful planning or management, as appropriate." has been extensively used.

In the case of *Pranav Bajpe* v. *State of Karnataka*,[4] a writ was filed by an OCI (Overseas Citizens of India) Cardholder. The petitioner holds a foreign passport but has been living in the state of Karnataka for more than 10 years. The Karnataka Examination Authority invited "eligible Karnataka candidates" applications for the registration of the CET-2019 test for the academic year 2019-2020. The petitioners were informed that only Indian citizens are eligible to apply for this Common Entrance Test-2019. The petitioners mentioned that a notification was issued by the Government of India through the Ministry of External Affairs on January 5, 2009 that OCI Cardholders are eligible to apply/appear in the All India Pre-Medical Test or any other test to make them eligible for admission. The petitioners mentioned that in the academic year 2017-2018, the state government did not permit OCI Cardholders to participate in online counseling. On July 7, 2017, the court had responded to a petition that OCI Cardholders will be treated on par with NRI's in the matter of admission for MBBS/BDS course. This is only for the admission for MBBS/BDS and not for engineering admissions. While deciding on the case, few relevant articles from the following International Conventions was considered to be useful. Application of Universal Declaration of Human Rights as it mentions freedom of movement, right to nationality, motherhood and care and International Covenant on Civil and Political Rights, 1966 as it discusses respecting all individuals within its territory, equal and effective protection without any discrimination. The Convention of the Rights of the Child was also used as discusses the right of the child to an education. It was concluded that the minor children of Indian citizens born overseas must have the same status, rights and duties as Indian citizens, who are minors.

In the case of *Chandan Kumar* v. *State of Uttarakhand,*[5] the petitioner was working as the Registrar of Vipin Tripathi, Kumaun Institute of Technology.

3 Civil Appeal No. 1251 of 2006, Ruma Pal and A.R. Lakhsmanan, JJ.

4 MANU/KA/4440/2020. (decided on Dec. 9, 2020 High Court of Karnataka).

5 MANU/UC/0369/2020 (decided on Dec. 24, 2020, High Court of Uttarakhand).

Respondent 2 (referred to as the "aggrieved woman") was working as a caretaker in one of the hostels, respondent no. 3, D.S Pundir was the director of the institute and respondent no. 3 was working as a caretaker in one of the hostels. On March 13, 2014, respondent 2 filed a complaint to D.S Pundir alleging that the petitioner has been harassing her by calling her at odd hours and taunting her on her body structure. The director constituted a committee comprising of 7 members on the same day. The committee on May 13, 2014 concluded the petitioner guilty of sexual harassment. The director forwarded the report to the committee of police and lodges an FIR on June 3, 2014. After the investigation, the charge sheet has been submitted by the investigating officer on December 5, 2014 and the court took cognizance of the charge sheet on July 23, 2015. The counsel for the petitioner argued that it was incumbent upon the Institute to constitute an internal complaints committee- which was not done and the committee which was constituted by the director on March 13, 2014 can also be termed as an *ad hoc* committee. The counsel for the petitioner also argued that the complaint given by the aggrieved woman was unsigned. In the case of *Vishaka* v. *State of Rajasthan,*[6] the Supreme Court considered the provisions in the Convention on the Elimination of All Forms of Discrimination against Woman (CEDAW). It is a treaty adopted by the United Nations General Assembly. It guarantees that any acts of violence against women by individuals, organizations are prohibited. It establishes principles and standards for the effective implementation of basic human rights such as gender equality and the protection against sexual assault and violence, especially at the workplace.

The writ petition in *Chandrawati Devi* v. *State of Uttar Pradesh,*[7] claims that the complainant has been employed as a cook at Basic Primary School Pinesar, Basti since 2005 and that she is also a member of Mandhyan Bhojan Rasoiya Mazdoor Sangh. The complainant has come before the court claiming that, considering the fact that she has been employed since 2005, she has been fired. It is also said that the complainant was paid Rs. 1000 per month since her appointment in 2005, despite the fact that she has served over 14 years. The petitioner has no other source of income, but she managed to raise funds to come before this court to highlight the petitioner's exploitation at the hands of the government and state authorities, as specified by article 12. The High Court of Allahabad expressed its dissatisfaction with the way the poor lady had been abused for more than 14 years by paying a negligible amount of Rs. 1000 per month and had ordered the respondents to file a counter affidavit detailing why and how the complainant had been exploited for so long by paying a meager amount of Rs. 1000 per month. The current case demonstrates how, even after 70 years of democracy, the tradition of forced labour persists in India and that helpless citizens like the petitioner continue to endure slavery. The convention no. 29 of the International Labour Organization was introduced stating that every member of the ILO who ratifies is bound by its provision shall "suppress the use of forced or compulsory labour in all its forms". The prohibition was detailed in convention no.

6 AIR 1997 SC 3011.

7 MANU/UP/2368/2020; 2021(2) ALJ 107 (decided on Dec.15, 2020).

105. Article 4 of the European Convention of Human Rights and Article 8 of the International Covenant on Civil and Political Rights that forbid forced labour. Cooks working throughout the State of Uttar Pradesh are being paid such pitiful wages that they simply qualify as slave labour and they continue to work without protest. The High Court of Allahabad finds it difficult to believe that an individual making Rs.1000 per month will be able to approach this court, particularly given their socio-economic circumstances, which required them to accept the services on the terms imposed by the state. The high court held that the amount paid to the cooks will not be below what is mentioned in the "Minimum Wages Act, 1948".

In *Jayant* v. *State of Madhya Pradesh*[8] the mining inspectors tested the private appellants' tractors and trolleys as well as the minor minerals loaded in them, during a surprise inspection in this case. They hand over the tractor and trolley to the appropriate police stations for safekeeping. The private appellants were found to have engaged in illicit extraction and shipment of minor minerals. The mining inspectors prepared their cases in accordance with Rule 53 of the Madhya Pradesh Minor Mineral (MMDR) Rules, 1996 and presented them to the mining officers with a recommendation to compound them for the quantity measured in accordance with the 1996, Rules. The collector accepted the request after the concerned mining officers presented their cases to him. The violators agreed to the decision and paid the amount set by the collector for the cases to be compounded and subsequently their tractors and trolleys as well as the minerals were released. Later, according to a news report, notwithstanding the fact that the Indian Penal Code, 1860 sections 379 and 414 as well as the MMDR Act and the 2006 Rules were found attracted, no relevant disciplinary action was taken, and the violators were allowed to continue compounding the crime under Rule 53 of the 1996 Rules. After hearing this, the judicial magistrate was directed to register a criminal case for illegal mining and transportation of sand. The idea that the government has a duty to protect the environment is now well recognized in all countries. This concept gives birth to the idea of 'state responsibility' for emissions occurring within one's own borders in international law. The United Nations Conference on the Human Environment held in Stockholm in 1972 stated this obligation in Stockholm Declaration paragraph 2 as "the natural resources of the earth including the air, water, land, flora and fauna and especially representative samples of natural ecosystems must be safeguarded for the benefit of present and future generations through careful planning or management as appropriate". As a result, there is no question that the government has a duty to maintain and conserve the tanks which are an internal part of the ecology in the region.

High Court of Allahabad in *Suhel Ahmad* v. *State of Uttar Pradesh*[9] held that Mahendrapal, who was the station officer at the police station is Behat (Sharanpur District) lodged an FIR on October 4, 2017 against Sarvar, Sonu, Banta, Anil, Jagdish and about 70 other persons under sections 147, 148, 149, 336, 353, 307 of Indian Penal Code, 1860 and section 4/21 of the Mines and Mineral (Development and

8 2020(6)KLT 849; 2020(4)Crimes 485 (SC (decided on Dec. 3, 2020, High Court of Telangana).

9 MANU/UP/0319/2020 (decided on Feb.4, 2020).

Regulation) Act, 1957. Mahendrapal, along with constable Dipendra Singh and driver, Jhalak Singh were patrolling and near the bank of Yamuna river they saw some people engaging in illegal mining of sand by a J.C.B machine, dumper, *etc*. The minerals which were loaded were also standing on the spot. The Platoon Commander Officer, Khadak Singh along with his team also reached the spot. Following the question of an alert, those present with a shared objective began pelting stones at the police officers, as well as opening fire with a country-made weapon. Regardless, police officers spared their lives. In the name of self-defense, they fired the police personnel and escaped along with their J.C.B and dumper. The apex court in the case of *Intellectuals Forum* v. *State of Andhra Pradesh* observed that "in international law, gave rise to the principle of "State responsibility" for pollution emanating within one's own territories (*Corfu Channel* case). This responsibility is clearly enunciated in the United Nations Conference on the Human Environment, Stockholm 1972 (Stockholm Convention), to which India is a party. The relevant clause of this declaration in the present context is para 2, which states: "The natural resources of the earth, including the air, water, land, flora and fauna and especially representative samples of natural ecosystems, must be safeguarded for the benefit of present and future generations through careful planning or management, as appropriate." Thus, there is no doubt about the fact that there is a responsibility bestowed upon the government to protect and preserve the tanks, which are an important part of the environment of the area. It was noted that this court should not intervene with the IPC, and the lower court is free to proceed against the claimant in compliance with the rule based on the charge sheet.

The petitioner in *M.S Vineeth* v. *State of Kerala*[10] is a resident of a town in Kerala called Kozhikode and claims to be an advocate by profession and a former Central Government Standing Counsel. The Kerala State Election Commission on October 21, 2020 announced that the local body election in the State of Kerala will be conducted and the final list of voters will be published on October 1, 2020. Respondent no. 2, on October 21, 2020 issues guidelines prescribing the precautionary measures which are to be taken by the political parties, government officials and candidates in view of the COVID-19 pandemic. The petitioner claims that during the campaigning period, candidates may make Poly Vinyl Chloride (PVC) flex boards for advertisements. The Government of Kerala banned the use of PVC as per G.O.K.-111/2019/LSGD. The petitioner also claimed that there are manufacturers who manufacture fake compostable bags which are not distinguishable from real compostable ones. A government P1 order mentioned that non-recyclable plastic usage is banned. As per Exhibit P1 plastic--free bags, clothes and polyethylene materials for hoardings are allowed. If banned materials are used, there is a penal provision mentioned in Exhibit P1. The petitioner states that though the government has issued various orders, they are not being implemented effectively and followed. Since the elections were soon to be conducted, a large number of PVC hoardings and plastic wastes will be dumped in public places. This will very badly affect the ecological balance and subsequently cause pollution. While deciding on this case, the judge

10 MANU/KE/3280/2020 (decided on Nov. 4, 2020 High Court of Kerala).

stated that "if injustice is meted out to a large number of people, the court will not hesitate in stepping in". The International Conventions on human rights provide for a reasonable fair trial. It was held that "Assurance of a fair trial is the first imperative of the dispensation of justice and the central criterion for the court to consider when a motion for transfer is made is not the hypersensitivity or relative convenience of a party or easy availability of legal services or like mini-grievances. Something more substantial, more compelling, more imperiling, from the point of view of public justice and its attendant environment, is necessitous if the court is to exercise its power of transfer. This is the cardinal principle although the circumstances may be myriad and vary from case to case. We have to test the petitioner's grounds on this touchstone bearing in mind the rule that normally the complainant has the right to choose any court having jurisdiction and the accused cannot dictate where the case against him should be tried."

In *Ragini Dwivedi* v. *State of Karnataka,*[11] B.K Ravishankar made a statement under section 17 of Narcotic Drugs and Psychotropic Substances Act, 1985, (NDPS Act) before K.C Goutham, Assistant Commissioner of Police disclosing the supply, trafficking and consumption of drugs in various parties arranged in the city. Based on this statement, the assistant commissioner made a report to the Cottonpet Police Station inspector to take according to actions under the NDPS act. In his statement, he mentioned Ragini Dwivedi and 12 others as accused. An anticipatory bail to the petitioners was declined by the special court under section 438 of the code. The accused number 14 was compelled to share the password to open the gadget which is against her right to privacy under article 21 of the Constitution of India. She was detained in custody without any reasonable cause which is a clear violation of human rights. There was a deliberate intention of the police to falsely implicate Ragni Dwivedi as B.K Ravishankar's statement was recorded after he was taken into custody. The order sheet showed that he was arrested on September 2, 2020 and he was produced in front of the magistrate on September 3, 2020. The FIR registered crime number 109/2020 but there is no reference to crime number 588/2018. While discussing, the judge took into consideration of United Nations Conventions against Illicit Trafficking in Narcotic Drugs and Psychotropic Substances which was held in Vienna in 1988. India has ratified this convention and the first effort which was taken at an international level was to tackle drug trafficking throughout the comity of nations. The judge found no case in granting bail and the case was dismissed.

In *Jan Kalyan Samiti* v. *State of Haryana*[12] the petitioner was registered under the provisions of the Haryana Registration and Regulation of Societies Act, 2012. It is noted that Faridabad Township came into existence after the partition of the country. A plan was drawn for the development of the township which had provisions for schools, parks and green areas and township was divided into five parts where the total area of the parks was 7.5 acres. In a later period, houses, workshops, *etc* came up unauthorizedly in the open areas. The court in 2006 had stated that encroachments in

11 MANU/KA/3889/2020 (decided on Nov. 3, 2020).

12 MANU/PH/1149/2020.

these areas will be removed. The committee is determined that the jhuggi dwellers had encroached on public property without permission and were in danger of being evicted and following that, the action was taken. The learned counsel stated that a park cannot be turned into a residential region. The petitioner's council claims that the decision to turn the public park into a residential area was made in violation of court orders. Finally, counsel for the plaintiff argued that the respondents' decision to turn a public park into a residential area was irrational and unconstitutional and in violation of articles 21 and 48 of the Indian Constitution. The judge, while deciding upon this case stated that "Environment is a poly-centric and multi-facet problem affecting the human existence. Environmental pollution causes bodily disabilities, leading to the non-functioning of the vital organs of the body. Noise and pollution are two of the greatest offenders, the latter affects air, water, natural growth and the health of the people. Environmental pollution affects, thereby, the health of the general public." The Stockholm Declaration of United Nations on Human Environment, 1972, reads it's Principle no. 1, *inter alia*, thus: "Man has the fundamental right to freedom, equality and adequate conditions of life. In an environment of equality that permits a life of dignity and well-being and he bears a solemn responsibility to protect and improve the environment for present and future generations." It was held that the action of the respondents is unconstitutional and contrary to the law. And the aesthetic characteristics of the city must be promoted and preserved.

In *Miraj Ahmed* v. *The State f Telangana,*[13] on January 26, 2016 MD Imran lodged a complaint in the police station alleging that the petitioner threatened to give him Rs. 2,00,000 in a month's time and if he does not give the money he will face grave consequences. Petitioner alleges that the next day he was standing opposite Omar hotel where the petition came from the backside and attacked him with a knife on his neck. He claimed that the petitioner had attempted to murder him. He was shifted to Osmania General Hospital from Esra Hospital because the on duty doctor at Esra Hospital had advised so. Based on the complaint filed, crime no. 15/2016 was registered under section 307 and 506 of the IPC. Based on the complaint which was filed the petitioner was arrested and sent to judicial custody on January 26, 2016. Counsel for the petitioner stated that rowdy-sheet cannot be opened based on a solitary instance of reporting crime. He stated that a person has to be held committing an offense involving breach of peace, disturbance to public order and security until then the said clause is not attracted. The judges while deciding this case held that the guarantee in article 8 of the European Convention on Human Rights that everyone has the right to respect for his private and family life, his home and his correspondence" reflects both the individual's psychological need to preserve an intrusion-free zone of personality and family, and the anguish and stress that can be suffered when that zone is violated. The saying that 'an Englishman's home is his castle' would be equally applicable to the Indian situation and it can be said that an 'Indian citizen's home is his castle.' The writ petition was allowed, and the respondents were directed to close the rowdy sheet.

13 MANU/TL/0336/2020(decided on Nov. 3.11, 2020 High Court of Telangana).

In *Ngaitlang Suchiang* v. *State of Meghalaya,*[14] on August 27, 2020, an intimation report was received from a doctor non-clue to the zoo by police stating that on examination of the alleged victim who is of 16 years old the victim was pregnant and she mentioned that she had a physical relationship with one saving Suchiang. This issue was forwarded to the learned special judge, POCSO Court, Khliehriat. The learned special judge on examination of the birth certificate came to a finding that the victim is about 17 years of age and the case was transferred to the Juvenile Justice Board who directed that the "Child in Conflict with Law" (CCL) be kept at the observation home in Shillong. The mother of the CCL applied for a bail application under section 12 of Juvenile Justice Care and Protection Act, 2015 a point just pointed out by the petitioner is that the principal magistrate without considering the fact that the elites of ever was in a relationship with the CCL it should be noted that they offence was entered into was mutually and there's no question of abbreviation of any danger or harm either to the alleged survivor or the CCL. While deciding on this case the judge took into consideration United Nations Convention on the Rights of Children, which is ratified by India on December 11, 1992 and that requires the "State parties to undertake all appropriate measures in case of a child alleged as, or accused of, violating any penal law, including (a) treatment of the child in a manner consistent with the promotion of the child's sense of dignity and worth (b) reinforcing the child's respect for the human rights and fundamental freedoms of others (c) taking into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society." Thus, the interim bail was granted to the CCL who shall be released on bail provided his mother shall ensure that counselling is given to him in this connection and that the CCL will provide a personal surety of Rs. 10,000.

The High Court of Delhi in *Sarah Khan* v. *Union of India*[15] the petition is filed by Sarah Khan and Shazaan Mohammed Khan. They were the students of the International Indian School in Saudi Arabia. The school is an International School sponsored by India and the school is affiliated with the Central Board of Secondary Education (CBSE). They claimed that they have been transferred out of the school vide impugned transfer certificate number 012004 and 012005 on April 6, 2020. The relief which is sort by the petitioners is to quash the transfer certificate against the petitioners and petition to be reinstated back in the school and to allow them to participate in the online classes. Saurav Aggarwal, counsel appearing for the school stated that the registration certificate of the school is issued by the Department of Education in the Kingdom of Saudi Arabia and the school management council constitutes of parents as well as officials from the foreign embassy. The counsel further submits that the first dispute arose because the father of the petitioners wanted to be elected to the management of the council in 2015 and he made false allegations against the other members. He was given the permission to contest however he could not be chosen. In the year 2018 his candidature was rejected following which the candidates'

14 MANU/MG/0069/2020(decided on Nov. 12, 2020 High Court of Meghalaya).

15 MANU/DE/2065/2020.

father filed a suit for defamation against the members of the school. But the suit was rejected in January 2020. Even after this, the petitioner's father continues to malign the school in various ways. Khan, counsel appearing for the petitioners relied upon the Vienna Convention on Diplomatic Relations 1961 argue that under article 31 the ambassador may not be questioned on his decision and recommendation as the agent enjoys an immunity. He states that "Article 31 of the Vienna Convention on Diplomatic Relations, 1961, would have no application in the present case, inasmuch as the grievance of the petitioners is not against the Indian Ambassador or the Indian Embassy. Rather, the allegation is against the school, which has issued transfer certificates due to a violation of the charter, which governs the school. The Charter by itself may have been prescribed by the Indian Embassy; however, such a prescription only means that the school functions under the said Charter, and nothing more. The Charter, thus, recognizes the role of the various bodies including the Department of Education, Management Committee of the school and various nominees therein, with respect to the manner and conduct of day-to-day administration and management of the school. Merely because the Charter is prescribed by the Indian Embassy cannot make the school amenable to writ jurisdiction of this Court." The court held that the present writ petition is not maintainable as the quashing of transfer certificate is an action within the administration, control, and management of the school. With the other observations, the writ petition is dismissed as being not maintainable but the remedy of the petitioners to approach the appropriate forum in accordance with the law was still kept open.

The High Court of Kerala in *Prasad Pannian* v. *The Central University of Kerala*[16] stated that no form of sexual harassment was disclosed by the 8th respondent. The judge referred to *Anil Rajagopal* v. *State of Kerala*[17] for the definition of "sexual harassment". The judge stated that "The intent of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, as seen from its statement of object and reasons, is to ensure an equities, safe, secure and enabling environment for women to work with dignity, free from all sorts of sexual harassment and thereby to encourage women's participation in work". He referred to the Convention of Elimination of All Forms of Discrimination (CEDAW) which mandates that all parties which have ratified this convention must take all measures to eliminate discrimination against women. The senior counsel appearing on behalf of the petitioner stated that the provisions of the 2013 Act cannot be given a wide interpretation. He stated that "harassment can be meted out against an individual in different forms and only in instances where the harassment has an element of sexual advance in some form, it becomes sexual harassment. A mere difference in sex between two individuals cannot give rise to sexual harassment even though there might be harassment." The judge was not justified in taking a stance that differs from that of *Anil Rajagopal.* Apart from that, it is claimed that the 2013 Act must be given a striking reading because any action taken in response to an accusation of sexual assault would damage the credibility and dignity of the opposite sex, and those activities which result in

16 MANU/KE/3422/2020.

17 MANU/KE/1462/2017.

criminal penalties. The judge stated that "we do not think that *Anil Rajagopal* (supra) requires any reconsideration. We would only clarify that any form of sexual approach or behaviour that is unwelcome will come under the definition of 'sexual harassment' and it is not confined to any of the sub-clauses mentioned in section 2(n), which of course will depend upon the materials placed on record and on a case-to-case basis. But it is made clear that in order to take action under the 2013 Act, the acts complained of should come within the purview of Section 2(n) and section 3 of the Act or any other form of sexual treatment or sexual behaviour on the part of the respondent." He also mentioned that sexual harassment is to be construed in the light of the provision contained with section 3 of the 2013 Act as well as the provisions of Regulation 2(k) of the University Grants Commission (prevention, prohibition and redressal of sexual harassment of women employees and students in higher educational institutions) Regulations, 2015 (UGC Regulations, 2015).

III LEADING HIGH COURT CASES

In *Amish Devgan* v. *Union of India*[18] the petitioner is a journalist who hosts and anchors debate shows "Aar Paar" on News 18 and 'Takkar', and on June 15, 2020 at around 7:30 PM the petitioner had hosted anchor debate on the enactment of the place of worship special provisions act 1991 on CNBC Awaaz. The petitioner had hosted an anchored debate on the enactment (The Places of Worship (special provisions) Act, 1991) that forbids conversion and provides for the preservation of the religious character of places of worship as it existed on August 15, 1947 while excluding Ayodhya. A few Hindu priest organizations had found a petition with the Supreme Court challenging the Act's constitutionality, and a Muslim group had filed a petition rejecting the appeal. After the show was aired, there were several First Information Reports (FIRs) which were filed against the host from states like Telangana, Maharashtra and Madhya Pradesh, and the gist of the FIRs were identical. The petitioner stated that post the airing of the show he had received a lot of threats through social media platforms. It was noted while deciding the judgement that the Law Commission Report analyze the legal standards under various instruments of international law that speak or mention controlling and preventing hate speech. It is to be noted that article 4 and 6 of the International Convention on the Elimination of All Forms of Racial Discrimination, 1966 (CERD) prohibits 'dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin...'. It was further noted that, "freedom of expression can be restricted on grounds like hate speech (to protect rights of affected communities), defamation (to protect the rights and reputation of individuals against unwarranted attacks), and 'advocacy' of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence (to protect the rights of others)." The article 10 of the European Convention guaranteed the right to freedom of speech and expression. The petitioner was granted interim protection against arrest to the subject applying the above international principles and norms.

18 MANU/SC/0921/2020.

The Reserve Bank of India released a statement on the development and regulatory policies, instructing organisations controlled by the RBI not to provide services to any person or business entity dealing with or settling virtual currencies and to end partnership with such individuals or business entities if they already have one. In *Internet and Mobile Association of India* v. *Reserve Bank of India*[19] the petitioner is contesting the statement and circular and requesting the respondents not to prohibit or restrained banks and financial institutions control by RBI for offering banking services to those engaging in crypto-asset transactions. The judge, while deciding stated that, "The European Convention varies according to the nature of the right at stake and the context in which the interference occurs. Those are not however the only relevant factors. One important factor in relation to the Convention is that the Strasbourg court recognises that it may be less well placed than a national court to decide whether an appropriate balance has been struck in the particular national context. For that reason, in the Convention case law the principle of proportionality is indissolubly linked to the concept of the margin of appreciation. That concept does not apply in the same way at the national level, where the degree of restraint practised by courts in applying the principle of proportionality, and the extent to which they will respect the judgment of the primary decision maker will depend upon the context, and will in part reflect national traditions and institutional culture" The judge issued a judgement which stated that the petitioners can set aside the circular on the ground of proportionality while citing the above Convention.

In *Bharath S. S/o B. Sampath* v. *Secretary, Education Department, Bengaluru*,[20] the petitioner is a student who was pursuing his 10th grade under the Karnataka State Board Education. The student is differently-abled diagnosed with osteogenesis imperfecta. It is a genetic disorder that affects bone formation. The examination is conducted under the provisions of the Karnataka Secondary Education Examination Board Act, 1966. The board does not allow eliminating an important exam like this, regardless of the situation or the circumstance. In the case of the *State of Rajasthan* v. *Om Prakash,*[21] the court has focused on the requirement for a methodology when managing the matter identifying with kids disabilities. The office memorandum dated February 26, 2013 given by the Government of India engages school/assessment specialists to accord relief to such understudies by making proper arrangements. A part in the second paragraph from this judgement reads as "*The words 'extra time or additional time' that are being currently used should be changed to 'compensatory time' and the same should not be less than 20 minutes per hour of examination for persons who are making use of scribe/reader/lab assistant. All candidates with disability not availing the facility of scribe may be allowed additional time of minimum of one hour for examination of 3 hours duration which could further be increased on case to case basis*". The government being the watchdog of the citizens *vide parens patria* has shown an obvious signal in figuring a compassionate approach through the

19 MANU/SC/0264/2020 (decided on Mar. 4, 2020; Supreme Court of India).

20 2020 IndLaw KAR 10275.

21 2002 IndLaw SC 1674.

said judgment (*State of Rajasthan* v. *Om Prakash*) predictable with the strategy. Specialists liable for direct of assessments need to show unwinding and relief to the enduring studies of the sort; practically equivalent to arrangements are additionally found in unfamiliar fliers referable to 'No Child Left Behind Act of 2001' and its improved form that is 'Every Student Succeeds Act 2015' sanctioned by the United States Congress parliament keeping the Human Rights Jurisprudence in mind. There are a few global shows which manage child rights and almost specially contrastingly abled adolescents, The United Nations Convention on the Rights of People with Disabilities, 2006 is ratified by India. The United Nations Millennium Development Goal incorporates admittance to finish widespread essential training by 2015 giving a fundamental arrangement structure to incorporating the youngsters with exception requirements and handicaps the age of 18. In the above conditions, this writ appeal prevails to a limited extent; a writ of *mandamus* is issued to the respondent to stretch out to the applicant and other comparably up comers unwinding by extending the length of assessment of 10th standard through extra 2; tact lies with the specialists to give longer argumentation also keeping in check with the level of severity subject to the rider that this concession is not mishandled by the deceitful.

In *Barnali Ghosh* v. *State of West Bengal*[22] a memo was issued to the writ petitioner on June 11, 2020, bearing memo number 1187 which was issued by the Chairman of District Primary School Council, Purba Bardhaman. A relevant portion of the writ petition stated "*In terms of West Bengal Board of Primary Education's No.926/BPE/2020 Date 11/06/2020 Smt. Barnali Ghosh, Teacher In Charge, Burdwan Municipal Girls' High School (Primary Section) is placed under suspension on disciplinary grounds from her post as Teacher In Charge and Assistant Teacher with immediate effect"*. The petitioner stated that she joined the Bardhaman Municipal Girls Junior Basic School as an assistant teacher in the year 2010. She used to teach mathematics for class third and English for class first. She stated that the Head Mistress of the junior school, Shyamali Mondal was about to retire in December 2016. The next in line for the position was Shefali Roy. Shefali Roy communicated her failure to assume the responsibility for the said Junior School as teacher-in-charge accordingly whereof, the petitioner was approached to work as the teacher-in-charge of the Junior School in December 2016. A memo was issued by the Commissioner, School Education, West Bengal affirming the important course of action for a blend of two administration bodies, one being that of Bardhaman Municipal Girls School and the other being that of the said Junior School based on the current guidelines and methods. The school was known as Bardhaman Municipal Girls School (HS). The petitioner says that all unexpected candidates got a memo bearing no. 377 dated June 11, 2017 given by the District Inspector of Schools Primary Education, Purba Bardhaman, wherein the applicant was portrayed as the teacher-in-charge. The pertinent bit of the said update bearing number 377 dated level June 2020 is set out here- "*It is come to the notice of the undersigned that a report has been published in daily News Paper (Pratidin) on 08.06.2020 about CHILD'S STUDY book in Pre-Primary Class (Copy*

22 2020 Indlaw CAL 762(decided on Oct. 21, 2020; High Court of Calcutta).

enclosed).” In the given circumstance, the Head of the Institution was asked to explain the matter and furthermore requested what valid reason the school authority has educated the understudies with respect to pre-primary class to purchase the book named CHILD'S STUDY, published by a private company, which is in opposition to the current government rules. The petitioner and her composed explanation say that she has no task to carry out in this call stick committee of the school and had nothing to do with the choice of the book being referred to. Petitioner was never asked or welcomes to go to any authority meeting after the arrangement of the said coordinated school and that she is just an associate instructor and not the educator countable for the primary section of the said incorporated school. It is mentioned in the affidavit that "*3....the depiction of a human face to elucidate the word "U for Ugly" amounts to racial profiling or in other words racism/racist action. The Book and the picture of a man annexed as "R-1" to the Affidavit in Opposition amounts to racial profiling. On the basis of the query fallen from the Hon'ble Court it is stated that the picture denoting "Ugly" is that of a Black Man (a man having very deep skin tone) and such depiction is extremely racist and vile in nature amounting to polluting young mind. It is further clarified that the answering respondents do not encourage and/or support the usage of words like "Black Man" and the same is being made only to answer the query fallen from the Hon'ble Court".* The International Convention on Elimination of All Forms of Racial Discrimination which is ratified by India in 1968 and now we are duty bound to enforce its obligation under the law. The provisions of this Convention are designed to protect fundamental human rights and must be read into the constitutional guarantee against racial discrimination. As per CERD, the role of the petitioner is to be looked into. Regardless of whether it is expected that the petitioner had proposed the addressed book which has been, notwithstanding, denied by the candidate it cannot be said that her demonstration is simply limited to such ideas as racial profiling, especially without any further demonstration from the applicant side validating racial profiling, there is no charge as against the petitioner as an instructor in the school. The judgement stated that "Unless the petitioner's act is unlawful in behaviour, is wilful in character and as such forbidden in law, the petitioner cannot be said to be guilty of misconduct. It is not found from the materials on record that the petitioner believed in the fact that a "Black Man" (a man having very deep skin tone) is a symbol of "Ugly" or "Kutshit" in Bengali and propagated such feeling amongst students while teaching. The petitioner's act is, therefore, not wilful in character to be termed as forbidden in law thereby indulging in racism by making a distinction on the basis of race. The petitioner is, therefore, not guilty of misconduct for being suspended on the disciplinary ground on a contemplation of disciplinary proceedings."- The writ petition was dismissed.

The issue before the High Court of Patna in *Kiran Gupta W/o Ashok Prasad Gupta* v. *State Election Commission*, *through Secretary, Bihar* [23] was whether Kiran Gupta is a citizen of India or not. The appellant was born and raised in Nepal and married to Ashok Prasad Gupta on June18, 2003 and started living with him in India

23 2020 Indlaw PAT 1233.

from then. In the year 2008, she got her name on the voters' list for the Bihar assembly elections and she has a PAN card, Aadhaar Card, a bank account in India, immovable property. On February 24, 2016, she gave up her Nepali Citizenship. Later she was elected as a Mukhiya of Gram Panchayat and that is when her nationality became an issue when Ranjit Kumar Rai challenged her election. On August 30, 2019, the Election Commission set aside her election. The action of the Election Commission was challenged by her by a writ petition under articles 226 and 227 of the Constitution of India. The court said that she had voluntarily given up her Nepali Citizenship and that does not make her a citizen of India. The United Nations Human Rights Council's 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness are still the most important multilateral treaties on statelessness prevention and reduction. Both conventions clearly reaffirmed the long-standing international law tradition of a state's obligation to discourage and minimise statelessness. About the fact that India is not a signatory of any Statelessness Convention, the obligation to avoid statelessness has been codified in a variety of other international legal frameworks to which India is a member. The international frameworks include article 15 of UDHR, article 24 of ICCPR, article 9 of CEDAW, article 5 of ICERD,- article 7 of CRC and Convention on the Nationality of Married Women. The High Court of Patna said that just having a PAN card and registering your name in the electors list will not constitute citizenship. The judge stated that "However, in light of peculiar situation of petitioner; her ordinary residence and family life in India; and India's international law obligations to prevent statelessness, we direct that upon receipt of petitioners' application, if so filed, the appropriate authority may consider her application expeditiously, keeping in mind complications that have emerged in her legal status as enumerated above."

In *Jitu Murmu @ Sukul Murmu* v. *State of Odisha*,[24] it was said, among other things, that the deceased Sambari Murmu had visited the home of one Rame Murmu, who happened to be her maternal uncle and the father of the petitioners. According to the FIR, the deceased had been feeling unwell for a few days, prompting her to visit her maternal uncle, a self-proclaimed spiritual medicine specialist, for indigestion. Surprisingly, on April 25, 2018, Sambari Murmu (deceased) was attacked with a Trisul/ Trident, chain, and iron rod as part of a therapy practise, as a result of which she sustained several fatal injuries and died. The petitioners, who are often the authors of such treatment, killed the dead in the guise of doing an exorcism, which resulted in the infliction of horrific injuries. The petitioners herein allegedly suspected that an evil spirit had overpowered the deceased's body, resulting in her odd actions. The key accused Rame Murmu, along with his wife Mahi Murmu and elder son Sukul Murmu, set out to exorcise the "evil spirit." The misadventure was carried out in order to extract the alleged traces of harmful energies from the deceased's body, but it resulted in the death of the Sambari Murmu. Following receipt of the FIR from the informant, the IIC designated it as Kuliana P.S.Case No. 35/2018 for the commission of an offence punishable under section 302, 307, 323, 324, 325, 326 and -34 of the Indian Penal

24 2020 Indlaw ORI 105.

Code, 1860 and sections 5 and 6 of the Odisha Prevention of Witch-Hunting Act, 2013, and began the investigation. The counsel appearing for the petitioners states that due to a competition dispute, petitioners who are relatives of the informant have been wrongly accused. He said that the trial had already begun and that 16 witnesses had been interrogated, but that none of them had implicated the petitioners. The United Nations Committee on the Elimination of Discrimination against Women (CEDAW) recognised witch-hunting as a racist activity in its 51st Session, held between February 13 and March 2, 2012, and voiced its concern about certain customs and practises, which perpetuate discrimination against women and children. A report of the independent authority on the enjoyment of human rights by people of albinism on the expert workshop on witchcraft and human rights, dated January 23, 2018 had documented a number of negative consequences of witchcraft practises, many of which amount to extreme human rights abuses, such as assaults and mutilation, human slavery, and human sacrifice. The report also read that "... *witchcraft involves harmful practices in breach of international human rights standards and obligations, notably regarding human trafficking, violence against women, the duty of due diligence, the right to life and the duty of protection requiring firm and immediate action, and the duty to prevent and prosecute harmful practices and hate crimes.... Children are particularly vulnerable and need safeguarding, including early interventions to tackle risks of witchcraft accusation or ritual killings...*" After taking all this into consideration, the court is not willing to let the petitioners out on bail.

The Supreme Court in *Rana Nahid @ Reshma @ Sana* v. *Sahidul Haq Chisti* [25] dealt with the maintenance of a divorced Muslim wife who filed a petition under section 125 of the Code the marriage of appellant no.1-Rana Nahid and respondent Sahidul Haq Chisti was performed according to Muslim rituals on March 8, 1998, and appellant no.2 son was born out of wedlock. Appellants lodged a petition under section 125 Cr PC against the respondent, charging that appellant no.1 (Rana Nahid) was exposed to violence and abuse for extra dowry and that she was thrown out of the matrimonial home. Following that, on March 24, 2008, appellant no. 1 modified the petition based on the respondent-divorce Sahidul's granted on April 23, 2008. The appellants said that the respondent is employed as a lecturer at Rajkiya Moiniya Senior Secondary School in Ajmer, where he earns approximately Rs. 20,000/- per month, and that he also works at "Mehmani ki Dargah," where he earns approximately Rs. 20,000/- per month. Thus, she sought Rs. 6,000/- per month in maintenance for herself and Rs. 2,500/- per month in maintenance for her son, appellant no. 2 herein. The respondent has acknowledged that he works as a lecturer for the government and earns Rs. 18,500 per month. The family court ruled that the appellant No.1's petition for maintenance under section 125 Cr PC is not maintainable since she is a Muslim divorced woman. The said application under s ection 125 Cr PC was considered by the family court as an application under section 3 of the Muslim Women (Protection of Rights on Divorce) Act, 1986 (Muslim Women's Protection Act). The family court

25 2020 Indlaw SC 370.

directed respondent Sahidul Haq to pay appellant Rana Nahid a lump sum of rupees three lakh for her preservation and future livelihood. The respondent has been required to pay Rs. 2,000/- every month for the son's maintenance before he reaches the age of majority, as per his application for maintenance filed under section 125 Cr PC. The right to freedom, regardless of religion, is a fundamental human right that was recognised, reaffirmed, and reiterated by the United Nations in its Universal Declaration on Human Rights on December 10, 1948. The declaration's second article states "*Everyone is entitled to all the rights and freedoms set forth in the declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."* The International Covenant on Civil and Political Rights (ICCPR) requires state parties to ensure that women have fair access to all of the covenants' rights. This right applies to all, regardless of religion. The International Covenant on Civil and Political Rights (ICCPR) mandates in article 14 that *"*All persons shall be equal before the Courts and Tribunals" and article 26 states that "all persons are equal under the law and are entitled without any discrimination, to equal protection of the law…". Article 2 of Convention on the Elimination of All Forms of Discrimination against Women 1979, emphasizes and exhorts state parties to ensure that a woman-friendly judicial framework, as well as laws and procedures, are adopted. There was a difference of opinion in distinguished judgements and hence this case was transferred to a larger bench.

The petitioner in *Chandrakant S/o Tammanna Majagi* v. *Karnataka State Bar Council, represented by its Chairman, Bengaluru*[26] has filed this writ petition challenging the resolution dated October 3, 2020 passed by the Management Committee appointing respondent as the chairman of the Bar Association , the third respondent was the association is a society that was founded on February 12, 2009 under the Societies Registration Act. The appellant/petitioner is a practising lawyer and a member of the third respondent's bar association. That the appellant/petitioner was elected vice president of the managing committee for the term 2019-2020 to 2020-21 in the elections held to fill different positions on the Managing Committee as specified by law 17. The Returning Officer issues a list of candidates and the notes they have obtained, which is attached to the writ petition as Annexure - C. That one late A.G. Mulawadmath was declared victorious in the elections held on August 1, 2019 for the post of President of the 3rd respondent Association, defeating the 4th respondent, who unsuccessfully contested against the aforementioned A.G. Mulawadmath for the said post. The said A.G. Mulawadmath died on August 9, 2020. In light of the President's untimely death, the Managing Committee decided at its meeting on August 11, 2020 to allow the appellant/petitioner to manage the bank accounts and perform other official duties related to the President's office. That some members of the Managing Committee approached the 3rd respondent Association with a letter and the 3rd respondent Association convened a meeting on September 25, 2020 to co-opt a candidate to fill the vacant position of President. That the conference

26 2020 Indlaw KAR 11059.

was held at 10:30 a.m. on October 3, 2020, in violation of the organization's own bylaws. Despite the absence of the appellant/petitioner, who was delegated by the Managing Committee to meet with the Chairman of the Karnataka Administrative Tribunal to argue for the Tribunal's resumption of operations in Belagavi, a meeting notice was issued in his absence. That on September 30, 2020, the appellant/petitioner sent a letter to the 1st respondent, the State Bar Council, requesting advice on unconstitutional efforts to co-opt a non-elected member to an elected office, specifically the position of President, in violation of the mandate of bylaw 17(b), which explicitly states "that the holders of the office of president, two vice presidents and two secretaries, one general secretary and a joint secretary and six members "shall be elected". That despite opposition and objections, a meeting was held on October 3, 2020 at 10:30 a.m. and subsequently adjourned and reconvened at 01:30 p.m. and resolution was passed co-opting the 4th respondent to the post of President" In light of the above, the writ petition was filed, and the single judge was satisfied to issue a temporary restraining order against the 4th respondent. The 3rd respondent Bar Association lodged a declaration of objections and a preliminary challenge to the writ petition's maintainability, arguing that since the 3rd respondent Association is a Society and a private body, a writ petition is not maintainable. The Universal Declaration of Human Rights, European Convention of Social, Economic and Cultural Rights and the Convention on Right to Development for Socio-economic Justice all state social security is a facet of socio-economic justice to the people and a means to livelihood. Taking it into that consideration, the judge stated that "It is held that the writ petition against the 3rd respondent Bar Association, a Society registered under the Societies Registration Act, is maintainable. The Writ Petition is remitted back to the learned Single Judge for consideration of the Writ Petition on merits excluding the point of maintainability but including the prayer for interim relief."

The present appeal stems from a Guardianship Petition filed by the respondent before the District Courts of Saket, New Delhi, under sections 7, 8, 10, and 11 of the Guardian and Wards Act, 1890, for the custody of his minor child. In *Smriti Madan Kansagra* v. *Perry Kansagra*

Aditya Vikram Kansagra,[27] Smriti, the appellant mother, worked as a lawyer in New Delhi before marrying the respondent. Perry, the respondent's father, is of Indian and Gujrati descent, and his family has lived in Kenya for three generations, beginning with his grandfather's migration in 1935. Perry and his family have made their home in Kenya, where they have established a large business empire in both Kenya and the United Kingdom, and Perry holds dual citizenship in both Kenya and the United Kingdom. Prior to their marriage, Smriti and her mother travelled to Kenya to learn more about Perry's family, social and financial status, and lifestyle. Smriti married Perry on July 29, 2007 in New Delhi. Smriti moved to Nairobi, after her marriage and settled in her matrimonial home. Smriti moved to India for her delivery and her son Aditya was born on December 2, 2009. Aditya and his parents travelled to Kenya on July 1, 2010, just six months after his birth. Smriti lived in Kenya for five

27 2020 Indlaw SC 524.

years after her marriage with Perry, and she visited Delhi on occasion since her mother lives there. The entire family travelled to Kenya in February 2012 to visit a school where Aditya will be accepted for his studies. Aditya arrived in New Delhi with both of his parents on March 10, 2012. Smriti filed a Suit seeking a Permanent Injunction against Perry and his parents in the High Court of Delhi on May 26. This was the point at which the parties started a court fight over custody of the minor boy. A single judge in the High Court of Delhi said that the child will have to be under the mother's care as he is only two years old. In the pending Suit, Perry filed I.A. No.12429/2012, requesting directions to meet Aditya at a popular location and overnight entry. Smriti stated that she was not opposed to the defendants meeting the girl, but that the meeting should only take place under her oversight. The meeting will take place at Select City Walk's 'Hang Out,' which is open for 2-3 hours on Saturday and Sunday. The High Court of Delhi , in an order dated July 13, 2012, allowed Perry to visit the child for three days from 5 p.m. to 7 p.m. at "Hangout" in Select City Walk, under the guidance of Smriti, who will keep a comfortable distance throughout the meeting. Similar Orders were passed for the months of August 2012 to January 2013, when Perry and his parents travelled from Kenya to India. Meanwhile, the guardianship suit was still pending. While deciding on this case, the Hague Convention was considered. It was stated that *"Hague Convention gives the opportunity for collaborative judicial function. In Re E (Abduction: Non-Convention Country) [1999] 2 FLR 642, the return of a child to the Sudan, a non-convention country, was approved by the Court of Appeal. In the leading judgment Thorpe LJ observed that:... the maintenance of mutual confidence within the member States is crucial to the practical operation of the [Hague]Convention. But the promotion of that confidence is probably most effectively achieved by the development of channels for judicial communication... The further development of international collaboration to combat child abduction may well depend upon the capacity of States to respect a variety of concepts of child welfare derived from differing cultures and traditions. A recognition of this reality must inform judicial policy with regard to the return of children abducted from non-member States." Taking the convention and a few other sources into consideration, the appeal was allowed with a few rules.*

This appeal raises significant legal issues about the application and meaning of the Protection of Women from Domestic Violence Act of 2005. (hereinafter referred to as "Act, 2005"). *Satish Chander Ahuja* v. *Sneha Ahuja*[28] the appellant acquired land in New Friends Colony, New Delhi. Raveen Ahuja, the appellant's son, was married to Sneha Ahuja, the respondent. Following her wedding, the respondent and her husband moved into the first floor of a house in Friends Colony, New Delhi. Raveen moved out of the first floor and began living in the ground floor guest room in July 2014 due to marital strife between him and Sneha. The respondent had a new kitchen on the first floor of the house in the year 2004. On November 28, 2014, Raveen, the respondent's husband, filed a Divorce Petition under the Hindu Marriage Act, 1955, seeking a declaration of divorce on the grounds of cruelty against the

28 2020 Indlaw SC 501.

respondent, Sneha Ahuja, which is still pending. The respondent, Sneha Ahuja, filed an application under section 12 of the Act, 2005 on November 20, 2015, i.e., after filing the Divorce Petition, impleading Raveen Ahuja as respondent no.1, Satish Ahuja as respondent no.2, and Dr. Prem Kanta Ahuja (the respondent's mother-in-law) as respondent no.3. Sneha Ahuja was allegedly subjected to serious physical and mental violence, according to the lawsuit. Respondent requested multiple orders under the Act of 2005 in his application. On November 26, 2016, the Chief Metropolitan Magistrate before whom the case was filed issued the following interim order: "The respondents shall not alienate the alleged shared household nor would they dispossess the complainant or their children from the same without Orders of a Competent Court. These directions shall continue till next date." Two International Conventions were referred to, while deciding this case- the United Nations Committee on Elimination of All Forms of Discrimination and The Committee on the Elimination of Discrimination against Women. The judge stated that *"the pendency of proceedings under Act, 2005 or any order interim or final passed under D.V. Act under Section 19 regarding right of residence is not an embargo for initiating or continuing any civil proceedings, which relate to the subject matter of order in-terim or final passed in proceedings under D.V. Act, 2005. The judgment or order of criminal court granting an interim or final relief under Section 19 of D.V. Act, 2005 are relevant within the meaning of Section 43 of the Evidence Act and can be referred to and looked into by the civil court. A civil court is to determine the issues in civil proceedings on the basis of evidence, which has been led by the parties before the civil court. In the facts of the present case, suit filed in civil court for mandatory and permanent injunction was fully maintainable and the issues raised by the appellant as well as by the defendant claiming a right under Section 19 were to be addressed and decided on the basis of evidence, which is led by the parties in the suit. In view of the foregoing discussions, we are of the considered opinion that High Court has rightly set aside the decree of the Trial Court and remanded the matter for fresh adjudication. With the observations as above, the appeal is dismissed. No Costs."*

The High Court of Delhi in *Harper Collins Publishers India Private Limited* v. *Sanchita Gupta @ Shilpi*[29] the appellant challenges a additional district judge's order dated September 4, 2020 granting an *ex parte* injunction to respondent Sanchita Gupta @ Shilpi (plaintiff Shilpi) apropos what she finds defamatory content, which was expected to be published in a book titled "Gunning for the Godman: The Story Behind Asaram Bapu's Conviction?" On April 25, 2018, Asumal Harpalani, also known as Asaram Bapu, was found guilty of sexual assault on a minor under sections 342, 370(4), 120-B, 376-D, 376(2)(F), 509 of the Indian Penal Code, 1860 and section 23 of the Juvenile Justice (Care and Protection of Children) Act, 2000 by the Special Court (POCSO Act) in Jodhpur. Shilpi, the plaintiff, was the warden of an Asaram-run ashram. By the same order, she was found guilty of violating sections 370(4), 376D, and 120-B of the Indian Penal Code, 1860. The High Court of Rajasthan , in response to her appeal against her imprisonment, postponed her sentence until the

29 2020 Indlaw DEL 1637.

appeal was resolved. On September 5, 2020, the present plaintiff - Harper Collins Publishers India Pvt. Ltd. - planned to release a book titled "Gunning for the Godman: The True Story Behind Asaram Bapu's Conviction." Shilpi's application in the suit, filed under Order 39 Rule 1and 2 Code of Civil Procedure, requested an ex-parte injunction against the book's publication/distribution on the grounds that it is defamatory. On September 4, 2020, an ex-parte injunction was issued prohibiting the appellant from writing or selling the Book before the next date of hearing. The counsel for the plaintiff stated that she did not tell the trial court that anything in paragraph 14 of the complaint, which was taken from the book and which she finds defamatory, is based on the testimony discussed in the judgement convicting her of the crimes alleged, so the proven facts are public record. The counsel also stated that the author's account, as the case's investigating officer, is based on the facts presented during the trial, which led to Shilpi and Asaram's conviction by the Special Judge (POCSO Act), Jodhpur, in an order dated April 25, 2018. The European Convention of Protection of Human Rights was referred to while deciding this case. It is mentioned that the right to free speech and expression comes with a set of obligations and commitments, one of which is that the exercising of such a right does not jeopardise the dignity or rights of others. Similarly, in order to preserve the authority and impartiality of the courts, required restrictions and limitations on the exercising of an individual's right to freedom of expression must be imposed. The court said that "*disclaimer made at page xxiii of the Book should be printed separately on a flier and stuck either on the inside of the front cover or the inside of the back cover of the Book or a note to the effect that 'the appeal of Sanchita Gupta @ Shilpi is pending adjudication before the Rajasthan High Court and her sentence has been suspended till disposal of the appeal' be so pasted, so that the discussion apropos her is appreciated in the factual context, while simultaneously enabling the prospective buyer to make an informed decision regarding purchase of the Book. The court is informed that the current print run is only 5000 copies. However, for online sales this information need be provided only electronically, whenever the book is accessed for likely purchase."*

In *Sarvesh Verma* v. *State of Uttar Pradesh* [30] there was a clear note that O.P. no. 2's husband died and that there was no shared property or Hindu Undivided Family Property entitling the deceased husband to inherit it. Rather, the alleged house was solely owned by claimant no. 1, Sarvesh Verma, as she bought it through a recorded selling deed in her name, and neither the mother-in-law nor the husband of O.P. no. 2 were entitled to any share in the property. More importantly, O.P. no. 2 and her two daughters do not live in the above house and have no interest in it. Nothing was found as Hindu Undivided Family property of which O.P. no. 2's deceased husband had a share for inheritance. As a result, neither the submission under section 12 of the Protection of Women against Domestic Violence Act, 2005, nor the temporary reward application under section 23 of the Act could be maintained. While deciding the case, the United Nations Committee on Convention on Elimination of All Forms of Discrimination Against Women was considered. According to its General

30 2020 Indlaw ALL 676.

Recommendations, states parties should take steps to protect women from all forms of abuse, including domestic violence. Domestic abuse is a common occurrence in India, but it is largely unknown to the general public. Domestic abuse is being committed by the mother-in-law and father-in-law against a widowed woman and her two minor daughters. As a result, the Magistrate must decide on the claim made in the application, and an opportunity to provide proof is therefore needed. This court can never steer a decision without a hearing or the ability to show evidence. As a result, there is no legal procedure violation.

III CONCLUSION

The preceding decisions have shed light on how international treaties, agreements and norms are applied in domestic cases. It also notes that it is against the rules to break *jus cogens*. International conventions are in consonance with our legislative provisions in number of situations. Our Indian Constitution enshrines the fundamental basis for India's domestic legal structure to carry out its international treaty obligations. According to this, the Indian government has exclusive authority to sign and implement international treaties and agreements. In India, international conventions do not form part of the national legislation by default. They must be introduced into the legal system through an act of Parliament, which has been given the constitutional power to pass legislation to carry out India's international treaty obligations. The aforementioned cases have been interpreted by the judges in terms of both municipal and foreign rules. They used a modern view of the rules and broadened the definitions in order to derive a new and broader definition. Any Supreme Court decisions have resulted in significant new rulings in areas such as social security, intellectual property rights regulation, environmental protection, international commercial matters, and so on. Thus, the Indian judiciary has filled in the holes in Indian municipal law and international law through judicial advocacy, thereby playing a crucial role in the enforcement of international law in India. The slow progress of rapprochement between national laws and international legal obligations is urgently needed. There can come a day when international and domestic law can be somewhere reconciled, enabling the hope of successful universal law and world institutions to come true.