

19

INTERNATIONAL LAW

*Manoj Kumar Sinha**

I INTRODUCTION

THE PRIMARY objective of this survey has been a comprehensive analysis of the proficient implementation of international law by both the Supreme Court and the high courts in a set of significant cases decided in the year 2022. The judiciary's clear preference for incorporating international law into local legal systems, especially where it aligns with the constitution, is readily apparent when examining significant court decisions. The subsequent discussion on significant judicial decisions highlights a clear and commendable increase in the frequency of court citations to pertinent international treaties over a period of years, a tendency that continues consistently through the year 2022. Significantly, the judiciary demonstrates an optimistic and dynamic approach towards the adoption of international law. The below mentioned rulings clearly emphasise the judiciary's firm commitment to utilising the fundamental principles of international law in the process of adjudicating cases, especially when such application is deemed necessary and compelling.

II APPROACH OF THE SUPREME COURT JUDGMENTS

In the case of *X v. Health and Family Welfare Department*,¹ the appellant was an unmarried girl originally from Manipur and currently residing in New Delhi. During the initiation of the writ petition before the High Court of Delhi she was in her twenty-second week of pregnancy. Her pregnancy was a result of a consensual relationship, and she was intent on terminating it due to the refusal of her partner to marry her. Her impetus for seeking termination also stemmed from concerns about societal stigma and harassment faced by unmarried single parents, particularly women. Additionally, her lack of a livelihood rendered her unprepared to raise a child as a single mother, leading her to believe that continuing the pregnancy would pose a significant risk to her mental health.

In her pursuit of termination, she invoked Section 3(2)(b) of the Medical Termination of Pregnancy Act 1971 and Rule 3B(c) of the Medical Termination of Pregnancy Rules, 2003 ("MTP"). She filed a Criminal Miscellaneous Application seeking interim relief to terminate the pregnancy during the pendency of her Writ

* Director, Indian Law Institute.

¹ (2023) 9 SCC 433.

Petition. On 15 July 2022, the DHC issued a notice restricted to a specific prayer of the Writ Petition and denied the Criminal Miscellaneous Application along with the other prayers. The High Court of Delhi rationale was that Section 3(2)(b) of the MTP Act did not apply since the appellant, an unmarried woman with a pregnancy from a consensual relationship, did not fall within any sub-clauses of Rule 3B of the MTP Rules.

The appellant appealed High Court of Delhi decision, before the Supreme Court of India. The Supreme Court modified the High Court of Delhi order, permitting the appellant to terminate her pregnancy. The Supreme Court directed the Director of the All India Institute of Medical Sciences (“AIIMS”) to form a Medical Board as per Section 3(2D) of the MTP Act. If the Medical Board deemed it safe to terminate the pregnancy, AIIMS was instructed to proceed with the procedure, considering the appellant’s wishes and obtaining her written consent. Subsequently, a Medical Board was formed at AIIMS, which concluded that the appellant’s pregnancy could be terminated without endangering her life. The procedure was safely conducted. The case was taken up by the Supreme Court for further consideration due to the substantial question of law involved. The writ petition was initially presented before the High Court of Delhi was transferred to the Supreme Court. The focal issue for determination in this appeal revolved around the interpretation of Rule 3B of the MTP Rules.

The Supreme Court conducted a meticulous examination of India’s commitments under international law, particularly pivotal human rights conventions. Among these, the International Covenant on Civil and Political Rights (“ICCPR”) stood out, as it not only acknowledges the inherent right to life but also emphasizes the responsibility of state parties to provide secure and lawful avenues for abortion. Additionally, the International Covenant on Economic, Social and Cultural Rights (“ICESCR”) brought into focus the right to both mental and physical health, extending to sexual and reproductive well-being. Further reinforcing the international legal framework, the UN Convention on the Elimination of All Forms of Discrimination against Women (“CEDAW”) accentuated the need to eradicate gender-based bias in healthcare services about pregnancy and post-natal care.

The intersection with international law wielded substantial influence over the final judgment. The Supreme Court interpretation of Rule 3B of the MTP Rules, encompassing unmarried women within its ambit, resonated harmoniously with the principles of equity, non-discrimination, and reproductive rights underscored in the international conventions. The ruling underscored the paramount significance of ensuring secure abortion access while eliminating gender-linked prejudices, thereby championing the woman’s prerogative to reproductive self-determination and preserving her dignity. By anchoring the judgment in international benchmarks, the Supreme Court set a groundbreaking precedent, ushering in an inclusive and rights-oriented paradigm for domestic legal constructs. This verdict signified India’s unwavering adherence to international human rights tenets, ultimately catalyzing broader advancements in the realm of reproductive rights and gender parity within the contours of Indian jurisprudence.

In the case of *Board of Control for Cricket in India ("BCCI") v. Employees' State Insurance Corporation*,² the central issue revolved around the classification of professional cricket players engaged by the BCCI as "employees" within the purview of the Employees' State Insurance Act, 1948 ("ESI Act"). The fundamental question was whether these players could avail themselves of the social security benefits provided by the ESI Act.

The Supreme Court of India ("SCI") conducted a comprehensive analysis of the contractual relationship between the BCCI and the players, delving into aspects such as the nature of the contract, the extent of control exerted by the BCCI over players, the regulatory framework governing players, and the overall economic dependence of players on the BCCI. The SCI recognized that the players' professional roles were integral to the BCCI's revenue generation and commercial success. A critical precedent cited in the judgment was *ESI Corpn. v. Francis De Costa*,³ wherein the SCI emphasized the need for an inclusive interpretation of social welfare legislation to fulfill its underlying objectives. By referencing not only Articles 38 and 39 of the Indian Constitution but also Article 7(b) of the International Covenant on Economic, Social and Cultural Rights ("ICESCR"), the Supreme Court underscored the significance of securing workers' rights, promoting economic justice, and ensuring access to essential benefits.

In its deliberation, the court highlighted that the ESI Act is a vital social security measure that seeks to safeguard the health and well-being of workers and that the concept of the employee-employer relationship should be interpreted beyond traditional paradigms to encompass contemporary work scenarios. The Supreme Court ruled in favour of professional cricket players, affirming their status as employees under the ESI Act. This decision reaffirmed the judiciary's commitment to worker welfare and emphasized the alignment of domestic laws with international human rights principles, particularly those enshrined in ICESCR.

The case of *Net Ram Yadav v. State of Rajasthan*⁴ pertains to an appeal filed against a judgment and order dated February 28, 2018 by a Division Bench of the Jaipur Bench of the High Court of Judicature for Rajasthan. The Division Bench dismissed the appellant's appeal, affirming an order dated December 13, 2017 passed by a single bench, which had previously dismissed the appellant's writ petition. The writ petition challenged the downgrading of the appellant's seniority in the context of his transfer as a handicapped candidate within the Rajasthan Education Department. The appellant, classified as a handicapped candidate of the "OBC" category, was appointed as a senior teacher in the Education Department of the Government of Rajasthan. The appellant's transfer from *Deeplana* to *Goonti* in Alwar District was requested by him due to his physical disability and was based on a Circular issued by the Finance Department of the Rajasthan Government dated July 20, 2000, which allowed disabled employees to opt for

2 2022 SCC OnLine SC 1116.

3 [1993 Supp (4) SCC 100].

4 2022 SCC OnLine SC 1022.

postings near their residence. However, the transfer resulted in a downgrading of the appellant's seniority as per Rule 29 of the Rajasthan Educational Subordinate Services Rules, 1971. This rule stated that when an employee is transferred to a new district/range at their request, their seniority would be adjusted from the date of joining the new district/range.

The appellant's appeal argued that the explanation to Sub-Rule (10) of Rule 29, as interpreted by the respondent authorities, violated Articles 14 and 16 of the Constitution of India. The appellant contended that this interpretation unjustly deprived handicapped employees of the opportunity to benefit from the Circular that allowed for transfers near their residences. The Supreme Court of India ("SCI") ruled in favour of the appellant. The Supreme Court highlighted that the interpretation of the rule resulted in the arbitrary deprivation of seniority for handicapped employees and violated their right to equality under the Constitution of India. The court also emphasized that the United Nations Convention on the Rights of Persons with Disabilities ("UNCRPD"), ratified by India, protected the rights and dignity of persons with disabilities, including their right to non-discrimination and reasonable accommodation.

The Supreme Court concluded that the circular issued by the government aimed to address the specific needs of handicapped individuals and should apply even to those appointed before its issuance. The court stressed that any rule or regulation that took away service rendered by deputation-ists in an equivalent cadre would violate Articles 14 and 16 of the Constitution of India. The court ultimately set aside the order that downgraded the appellant's seniority and directed the restoration of his original seniority position. The court extensively referred to the UNCRPD and the principles it laid out for the protection of the rights and dignity of persons with disabilities. The court pointed out that the UNCRPD, ratified by India, emphasized equality, non-discrimination, and reasonable accommodation for persons with disabilities. The Indian laws and regulations were interpreted in light of the principles of the UNCRPD to protect the rights of the appellant, a handicapped individual. This application of international law influenced the judgment, as it used the UNCRPD to strengthen the appellant's argument that he should not be unfairly deprived of seniority due to his transfer.

In the case of *Bhagwandas B. Ramchandani v. British Airways*,⁵ the Supreme Court of India ("SCI") examined the interplay between the provisions of the Carriage by Air Act, 1972, and the Limitation Act, 1963, in the context of claims arising from international carriage by air. The case revolved around the interpretation of Rule 30 of the Carriage by Air Act, which governs the limitation period for bringing an action for damages arising from international air travel.

The appellant's claim was based on her alleged right under the Warsaw Convention, as incorporated into the Carriage by Air Act, to bring an action for damages resulting from personal injuries sustained during international air travel. The central issue before the Supreme Court was whether the provisions of the

5 2022 SCC OnLine SC 939.

Limitation Act were applicable to claims brought under the Carriage by Air Act. The case involved the application and interpretation of international conventions governing the liability of carriers in cases of injuries sustained by passengers during international air travel. The relevant international conventions were the Warsaw Convention of 1929, as amended by The Hague Protocol of 1955, and the Montreal Convention of 1999. These conventions aimed to establish a uniform legal framework for addressing issues related to international carriage by air.

The Supreme Court analyzed the provisions of Rule 30 of the Carriage by Air Act, which deals with the limitation period for claims arising from international air travel. Rule 30(1) stipulated that the right to damages would be extinguished if an action was not brought within two years from specific triggering events. Rule 30(2) further provided that the method of calculating the limitation period would be determined by the law of the court seized of the case. The court examined the *travaux préparatoires* of the Warsaw Convention and its amendments to understand the intent of the drafters. The court noted that the drafts of the convention had undergone multiple revisions before settling on a two-year limitation period. The court emphasized that the intent was to create a uniform international code that would apply without reference to domestic laws.

The court further, analyzed the pertinent legal provisions, particularly focusing on Rule 30(2), which delineates that the court's law governing the case determines the calculation method for the limitation period. Emphasizing the nuanced interpretation of this provision, the SCI elucidated that such determination did not imply the susceptibility of the limitation period itself to be suspended, interrupted, or extended by domestic legal norms. Firmly affirming its stance, the SCI unequivocally pronounced that the prescribed two-year timeframe, within which a legal action must be initiated as per the Carriage by Air Act, remained impervious to suspension, interruption, or extension under any conceivable circumstances.

Additionally, the court underscored the significance of international jurisprudence by referencing judicial decisions from diverse jurisdictions, including the United Kingdom and the United States. These decisions consistently interpreted analogous provisions of the Warsaw Convention as inherently precluding the application of domestic laws governing limitation periods. Relying upon this international legal consensus, the Supreme Court expounded that Rule 30 of the Carriage by Air Act explicitly excluded the reach of the Limitation Act, 1963, owing to the former's distinctive character as a statute singularly tailored to regulate matters of international air carriage. This unwavering elucidation of the interplay between domestic and international legal frameworks fortified the courts ultimate determination.

The case of *Mohd. Irfan v. State of Karnataka*⁶ carries profound implications both within the domestic legal framework and resonates deeply with broader international law principles. The Supreme Court of India's analysis of Sections 121

6 2022 SCC OnLine SC 856.

and 121A of the Indian Penal Code (“IPC”) offers insights that have implications in the realm of international law, particularly in areas concerning armed conflicts, terrorism, and the protection of state sovereignty. The accused were found to have engaged in a planned operation involving the acquisition of arms and explosives, as evidenced by minutes of meetings and diary entries. The trial court sentenced the accused to seven years, which was later enhanced to life imprisonment by the high court.

The Supreme Court discerning interpretation of the term “waging war” within Section 121 of the IPC reverberates in the context of International Humanitarian Law (“IHL”). The court explication of the necessity for a meticulously planned operation aimed at subduing government forces closely aligns with the foundational principles of IHL, notably the principles of distinction and proportionality. This alignment with IHL principles is particularly resonant with the guiding framework provided by the Geneva Conventions. The court emphasized the imperative of distinguishing between combatants and civilians, as well as the call to ensure military operations remain proportionate and avoid excessive harm to non-combatants, echoes the principles enshrined in these conventions. Furthermore, the Supreme Court highlighted the need for a coordinated and organized operation, resonating with IHL’s pivotal concept of military necessity.

The court also interpreted “overawe” under Section 121 of the IPC. This interpretation of “overawe,” encompassing acts that compel officials through force or expose them to grave danger, aligns seamlessly with the global efforts in counter-terrorism. The international community’s obligations to counter and prevent acts of terrorism underscore the importance of curbing the planning and conspiring of such acts, in line with the court’s interpretation. Through this interpretation, the court has bolstered India’s capacity to address instances of domestic terrorism while remaining firmly grounded within the contours of international legal responsibilities.

Moreover, the Supreme Court’s recognition of the gravity of conspiracies endangering public property and safety finds resonance in the broader international principle of safeguarding state sovereignty and security. It reaffirms that states possess an inherent right to protect their territories and populations from security threats. This principle has deep roots in international law, which acknowledges the authority of states to adopt measures, including legal actions, to preserve their sovereignty and ensure the safety of their citizens. By acknowledging this principle, the court has aligned itself with the shared global concerns over activities that could destabilize states and compromise their security.

Crucially, the case’s examination of conspiracies extends beyond national borders. The Supreme Court interpretation of the term “overawe,” encompassing the potential harm not only to government officials but also to public property and general public safety, carries significant implications in discussions surrounding transnational threats. The court has rightly captured the nature of transnational security concerns, where actions that jeopardize public safety can have far-reaching

consequences, impacting regions and even the global arena. This case encapsulates the symbiotic relationship between domestic legal interpretations and broader international law principles. The court's analysis supplements the domestic legal landscape while providing an interpretation that seamlessly intersects with international law.

In the case of *State of H.P. v. Nirmal Kaur*,⁷ the issue revolved around the interpretation of the Narcotic Drugs and Psychotropic Substances Act, 1985. The accused, Nirmal Kaur, was charged with possessing contraband 'poppy straw' containing 'morphine' and 'meconic acid.' The high court acquitted the accused on the basis that the Chemical Examiner's report did not establish the material's origin from '*papaver somniferum L*', the specific plant species mentioned in the Act's definition of 'opium poppy.' The central issue was whether the presence of 'morphine' and 'meconic acid' in the seized 'poppy straw' was sufficient to establish its origin from '*papaver somniferum L*', as defined in the Narcotic Drugs and Psychotropic Substances Act, 1985.

The Supreme Court emphasized that the primary purpose of enacting the 1985 Act was to combat the growing challenges posed by drug trafficking. The deficiencies of earlier laws, coupled with international developments and obligations arising from treaties, led to the necessity for a comprehensive law. The court noted that the Act's main intent was to deter drug trafficking and address the inadequacies of previous enactments.

The court rejected the high court's narrow interpretation that a material's origin from '*papaver somniferum L*' was a prerequisite for conviction. It highlighted the plant's historical recognition and its status as a source of opium production. Additionally, it underlined the legislative intent to encompass other species capable of producing opium or related alkaloids, provided they were notified by the Central Government. The court stressed that the Chemical Examiner's report indicating the presence of 'morphine' and 'meconic acid' in the seized material should suffice to establish its origin from '*papaver somniferum L*'. It stated that this interpretation aligned with the Act's purpose and would prevent the frustration of its objectives.

The judgment reflected the significant influence of international law in shaping the interpretation of the Narcotic Drugs and Psychotropic Substances Act, 1985. The court highlighted the evolving international treaties, protocols, and conventions related to narcotics control. It acknowledged India's participation in these agreements and the resulting obligations. The court emphasis on these international developments showcased how the Narcotic Drugs and Psychotropic Substances Act's enactment and interpretation were influenced by the evolving global legal landscape. The Supreme Court allowed the appeal and remanded the case to the high court for reconsideration based on the broader interpretation presented. It suspended the sentence pending the high court's decision on the merits.

7 2022 SCC OnLine SC 1462.

In the case of *Deepika Singh v. Central Administrative Tribunal*,⁸ the appellant, a Nursing Officer at the Post Graduate Institute of Medical Education and Research (“PGIMER”) in Chandigarh, sought maternity leave for her first biological child born on June 4, 2019. The issue arose due to her spouse’s prior marriage, which ended with the death of his former wife in 2013, leaving him with two surviving children. The appellant had previously availed child care leave for these children from her spouse’s first marriage. She applied for maternity leave as per Rule 43 of the Central Civil Services (Leave) Rules 1972. However, her request was rejected by the administrative authorities at PGIMER on the grounds that she already had two surviving children, making her ineligible for maternity leave under the rule.

The appellant then appealed to the Supreme Court, the court delved into the interpretation of Rule 43 of the Central Civil Services (Leave) Rules 1972. The court emphasized the need for a purposive interpretation of the rule, considering the broader objectives of promoting women’s rights and gender equality. The court noted that maternity leave is distinct from childcare leave and serves the specific purpose of facilitating a woman’s continuity in the workplace after childbirth. The SCI also referred to international obligations, including the Universal Declaration of Human Rights (UDHR) and the Convention on the Elimination of All Forms of Discrimination Against Women (“CEDAW”), which emphasize the importance of maternity benefits for women’s well-being.

The Supreme Court highlighted that denying maternity leave based on the appellant’s previous childcare leave for her stepchildren would defeat the purpose of maternity benefits and discourage women from remaining in the workforce after giving birth. The court recognized the changing dynamics of families and stressed that the law should accommodate various family structures. The court allowed the appellant’s appeal, setting aside the judgments of the CAT and the high court. The court held that the appellant was entitled to maternity leave under Rule 43 of the Rules and emphasized the need for a purposive interpretation that upholds the spirit of promoting gender equality and women’s rights. The decision reinforces the importance of granting maternity benefits to women to support their well-being and participation in the workforce while considering the evolving nature of family structures and societal expectations.

The case of *Rohith Thamma Gowda v. State of Karnataka*⁹ centres around a complex child custody dispute with international dimensions. The appellant, residing in the United States, sought the custody of his minor child, who had been taken to India by respondent no. 3, the child’s mother, without the appellant’s consent. The child was not only a naturalized American citizen but was also born and had been primarily residing in the United States. The appellant initiated legal actions both in the United States and Indian courts in an attempt to secure the child’s return to the United States.

⁸ 2022 SCC OnLine SC 1088.

⁹ 2022 SCC OnLine SC 937.

The high court, in the initial proceedings, rejected the appellant's *habeas corpus* writ petition, determining that the child was secure and content in the custody of respondent no. 3 in India. The court's assessment was largely based on its interaction with the child, wherein the child expressed comfort with his current environment. Furthermore, the high court opined that the United States courts lacked jurisdiction over the matter due to the origin of the marriage in India. As a result, it concluded that the appellant's claims based on orders from the United States courts were irrelevant.

The Supreme Court's judgment, while referring to the *V. Ravi Chandran (2) v. Union of India*,¹⁰ invoked the Hague Convention on the Civil Aspects of International Child Abduction, 1980. It allowed the appellant's appeal and ordered the prompt return of the child to the United States. The judgment emphasized the paramount consideration of the child's best interests, aligning with the guiding principle of the Hague Convention. The court also acknowledged the existence of orders from the United States courts directing the child's return, indicating the recognition of foreign court decisions in international custody disputes.

The judgment underscores the significance of respecting foreign court orders and prioritizing the welfare of the child. It highlighted the fact that the child's upbringing and life experiences had predominantly been in the United States. The child, being a naturalized United States citizen, was intertwined with American culture, language, and education. Therefore, for his overall well-being and prospects, the court held that returning to the United States was in the child's best interests.

The Supreme Court ("SCI") in its judgment in *Abu Salem Abdul Kayyum Ansari v. State of Maharashtra*¹¹ illuminated the intricate interplay between international law, conventions, and domestic legal proceedings. This case centered around Abu Salem, a petitioner and convict implicated in the 1993 Mumbai bombings and his legal dispute with the State of Maharashtra.

At the heart of the case was the sovereign assurance provided by the Government of India to the Portuguese Court during the extradition process. The petitioner contended that this assurance, which limited his imprisonment to a maximum of 25 years, retained its validity despite opposing views from TADA Courts. The petitioner's argument was anchored in the premise that extradition proceedings were deeply embedded in international law and diplomatic relations. In response, the SCI not only acknowledged the significance of international commitments but also underscored their profound influence on the case. The court highlighted that India's commitment to Portugal was a cornerstone of international relations and obligations. This recognition reinforced the importance of upholding sovereign guarantees within the global framework.

The court interpretation of the separation of powers, as enshrined in the Indian Constitution, played a pivotal role in its deliberations. While affirming the

¹⁰ (2010) 1 SCC 174.

¹¹ 2022 SCC OnLine SC 852.

judiciary's independence, the court emphasized the government's binding nature to its international obligations under the Extradition Act. This delicate equilibrium between domestic legal principles and international responsibilities underscored the court's reliance on international law as a guiding factor. Furthermore, the case delved into the concept of "comity of courts," a fundamental principle rooted in international legal cooperation. The court illustrated that comity transcended geographical boundaries and highlighted the necessity of honouring the solemn sovereign assurances provided by the government. This approach not only safeguarded international law principles but also shaped the consideration of the petitioner's claims.

Significantly, the case also demonstrated the application of the International Convention for the Suppression of Terrorist Bombings. The Supreme Court recognized the assurance of reciprocity embedded in international law and the rule of traditional estoppel doctrine, emphasizing the principle of reciprocity within International Public Law. These tenets, fundamental in international relations, influenced the court perspective. Addressing the plea for set-off, the court focus on the domestic application of international law became evident. The SCI assessed the relevance of detention in another jurisdiction and concluded that the petitioner's period of confinement in Portugal was not pertinent to set-off calculations. This nuanced approach underscored the court's commitment to domestic legal proceedings while remaining mindful of international implications.

The judgment in this case vividly illustrates the harmonization of international law, conventions, and domestic legal proceedings. The court scrutiny of sovereign assurances, separation of powers, and the principles of comity, underpinned by international law principles, showcases how international law serves as a guiding framework for resolving intricate extradition cases with global dimensions.

In the case of the *State of Maharashtra v. Maroti*,¹² the Supreme Court applied the United Nations Convention on the Rights of the Child ("UNCRC"). The UNCRC placed certain obligations on state parties to safeguard children from all forms of exploitation and abuse, including sexual offences.

The case revolved around the failure of the respondent, a medical practitioner, to report a sexual assault against minor tribal girls in a girls' hostel, as required by Section 19(1) of the POCSO Act. The case originated with an FIR filed against unidentified persons for the alleged sexual assault of minor tribal girls residing in a girls' hostel. The Assistant Project Officer, Integrated Tribal Development Project, lodged the complaint after receiving information about the victims' deteriorating health conditions and suspicions of sexual abuse from medical examinations. The respondent, a medical practitioner responsible for treating the girls, was accused of having knowledge of the sexual assaults but failing to report them, as mandated by the POCSO Act. The High Court of Judicature at Bombay, Nagpur Bench, quashed the FIR and charge sheet against the respondent, citing a lack of evidence implicating him in the crime. The high court's decision was based on a review of

12 (2023) 4 SCC 298.

statements from victims and a teacher, which was considered improper given the inadmissibility of such statements. Thus, the decision was appealed before the SCI.

The court emphasized the seriousness of the non-reporting of sexual offences against minors and the importance of prompt reporting under the POCSO, Act. It highlighted that the purpose of the Act was to protect children from sexual exploitation and abuse, and thus, non-reporting by individuals who had knowledge of such offences amounted to shielding offenders. This was aligned with Article 15 of the UNCRC.

The court recognized the right of children to develop in an environment that ensured their health, freedom, and dignity, per Article 39(f) of the UNCRC. Furthermore, it emphasized the UNCRC's call for state parties to take preventive measures against the coercion and inducement of children into unlawful sexual activities. This imperative extended to addressing sexual offences committed against children. The enactment of the POCSO Act reflected the UNCRC's intent to prevent child exploitation and hold perpetrators accountable for their actions.

While not explicitly stated, the concept of the best interests of the child, a fundamental principle of the UNCRC, permeated the entire analysis. The court emphasis on proper reporting, thorough investigation, and effective prosecution of sexual offences underscored the imperative of prioritizing the child's well-being and safety throughout legal proceedings. The case exemplified the application of the UNCRC by aligning its principles and objectives. The case reinforced the commitment to shielding children from sexual exploitation, upholding their rights, and ensuring their overall welfare, in consonance with the UNCRC's foundational principles. Consequently, the court set aside the high court's judgment and allowed the appeal, emphasizing the importance of upholding the provisions of the POCSO Act and ensuring the proper investigation and prosecution of sexual offences against minors.

In *Children in Street Situations, In re*¹³ the Supreme Court of India addressed the rights and protection of child witnesses and victims of human trafficking, especially in the context of recording their evidence during criminal trials. The appeal was filed to ensure the welfare and rights of children who were victims of trafficking and forced to provide testimony in distant trial courts, often leading to their physical and emotional discomfort. The petitioner sought directives to facilitate the remote recording of evidence, particularly via video conferencing, to alleviate the hardships faced by these children.

The court recognized the constitutional and international obligations to protect the rights of children, emphasizing Articles 24 and 39(f) of the Indian Constitution, which focus on safeguarding children from exploitation and ensuring their healthy development. The court also highlighted the significance of the United Nations Convention on the Rights of the Child ("UNCRC") and the

13 2022 SCC OnLine SC 189.

International Labour Organization's ("ILO") efforts to eliminate child labour and exploitation.

The court attention was drawn to a proposed pilot project by the *Amicus Curiae*, in consultation with the petitioners, which aimed to alleviate the challenges faced by child witnesses. This project was set in three stages: assessing the state of infrastructure at Court Points and Remote Points, fixing dates for examination, and ensuring proper examination procedures. The SCI acknowledged the importance of technology in judicial proceedings and the potential of video conferencing to simplify the testimony process for child witnesses.

A draft Standard Operating Procedure ("SOP") was presented by the *Amicus Curiae*, detailing a comprehensive framework for recording the evidence of child witnesses via video conferencing. The court noted that this SOP would provide a structured approach to protect child witnesses' rights and ensure their comfort and safety during the testimony process. The court directed that the SOP should be followed in all criminal trials involving child witnesses who are not located near the trial court. Importantly, the Supreme Court recognized the financial aspect of implementing the SOP and the need for proper compensation for Remote Point Coordinators ("RPCs") who oversee the video conferencing process. The National Legal Services Authority ("NALSA") offered to pay an honorarium to RPCs and provide legal assistance to child witnesses, ensuring their adequate representation and support.

The SCI's judgment emphasized the need to prioritize the best interests of the child in judicial proceedings, respecting their rights and well-being. By leveraging technology and international principles outlined in the UNCRC and ILO's initiatives against child exploitation, the court judgment laid the foundation for a more child-friendly and protective approach to testimonial procedures in cases involving child victims and witnesses of human trafficking.

In the case of *Maniben Maganbhai Bhariya v. District Development Officer*,¹⁴ the Supreme Court delivered a significant judgment that centered around the applicability of the Payment of Gratuity Act, 1972 to Anganwadi workers and helpers ("AWWs and AWHs") in Gujarat. The case highlighted the roles played by AWWs and AWHs in providing essential services to children and women through the Anganwadi system.

The court analysed and considered the nature of duties carried out by AWWs and AWHs, the statutory status conferred upon Anganwadi centres by the Integrated Child Development Services Act, 2013 ("ICDS Act"), and the relevant provisions of the Payment of Gratuity Act, 1972. A pivotal aspect of the court's deliberation was the exploration of how international law could inform and support the legal arguments put forth, especially under the International Covenant on Civil and Political Rights (ICCPR) and the Universal Declaration of Human Rights (UDHR).

¹⁴ 2022 SCC OnLine SC 507.

The court recognized the considerable responsibilities of AWWs and AWHs, encompassing child growth monitoring, health and nutrition services, pre-primary education activities, and more. The court further acknowledged that Anganwadi centres, under the aegis of the ICDS Act, had gained statutory recognition, thereby requiring AWWs and AWHs to perform specific statutory duties per this legislation. This recognition marked a departure from the traditional view that their roles were merely honorary or temporary.

Incorporating international law principles, the court highlighted the broader significance of recognizing and safeguarding the rights and contributions of workers engaged in community development and social welfare activities. This perspective highlighted the inherent value of AWWs and AWHs in contributing to public welfare, child development, and overall societal well-being. This alignment with international norms strengthened the court interpretation of the statutory duties carried out by these workers, reinforcing their integral role within the framework of public welfare initiatives. The court concluded that AWWs and AWHs were entitled to gratuity benefits under the Payment of Gratuity Act. The judgment not only acknowledged the substantive contributions of these workers but also signaled a departure from the past understanding of their roles. This case stands as a noteworthy example of how international law can play a crucial role in influencing legal interpretations and facilitating the just recognition of workers' rights, particularly within the realm of social welfare and community development initiatives.

III THE APPROACH OF THE HIGH COURTS

The case of *K.R. Raja v. State of Tamil Nadu* was brought under Article 226 of the Indian Constitution. The High Court of Madras deliberated upon a writ of *mandamus* aiming to compel relevant authorities to ensure the accessibility of tourist sites, specifically highlighting the Coutrallam Water Falls in Tirunelveli, Tamil Nadu. The petitioner, contending with lower limb disabilities, sought access to the waterfalls for therapeutic purposes, but encountered barriers due to inadequate accessibility. The core argument was that the government's failure to facilitate accessibility amounted to discriminatory treatment.

The court meticulously engaged with the applicable legal framework, and notably, the case was profoundly influenced by international law, particularly the United Nations Convention on the Rights of Persons with Disabilities ("UNCRPD"). The UNCRPD, a globally recognized human rights treaty ratified by India, played a pivotal role in shaping the MHC's perspective. One of the salient aspects highlighted was Article 30(5) of the UNCRPD, which underlines the principle of equal participation of persons with disabilities in cultural and recreational activities.

Delving into the domestic legal context, the MHC meticulously examined various sections of the Rights of Persons with Disabilities Act, 2016 ("RPwD Act"). These included section 2(s), which distinctly defines a "person with a disability" to encompass those afflicted with long-term impairments, further compounded by societal barriers. Similarly, section 2(c) presents a comprehensive

definition of “barrier,” encompassing a spectrum of obstacles that hinder the seamless participation of individuals with disabilities. Furthermore, section 2(y) introduces the concept of “reasonable accommodation,” aimed at ensuring that the enjoyment of rights remains equitable for all, while section 3 unequivocally mandates equality, non-discrimination, and essential accommodations for individuals with disabilities.

Crucially, the high courts final judgment was notably influenced by the tenets of international law, specifically the UNCRPD. The UNCRPD’s emphasis on equality, non-discrimination, and the principle of “reasonable accommodation” substantially informed the court analytical approach. The court acknowledged that international obligations, as enshrined in the UNCRPD, impose an affirmative duty on states to actively provide support and accommodations for individuals with disabilities, thereby enabling their complete and unencumbered participation in societal activities. In arriving at its verdict, the court remained aligned with the principles enshrined in the UNCRPD, with specific reference to the significance of accessible tourism for individuals with disabilities. The outcome of the case established a significant legal precedent, mirroring the UNCRPD’s overarching objective of advancing equal participation and inclusivity for all, irrespective of disabilities. The case serves as a compelling illustration of the application and the profound influence of international law within the domestic legal framework, especially when addressing the rights and privileges of persons with disabilities.

In the case of *Pappini Amman Traders v. T.N. Pollution Control Board*,¹⁵ a series of writ petitions were filed under Article 226 of the Constitution of India, challenging an order issued by the National Green Tribunal (“NGT”) concerning charcoal manufacturing units operating in the southern states of India. The NGT’s order, dated, required all charcoal units in the region to transition from the existing “below ground level technology” to a new “above ground level technology” approved by expert committees, aimed at reducing pollution. Until the new technology was adopted, the units were prohibited from operating under the old technology.

The petitioners, who were operators of charcoal units in Tamil Nadu’s Tiruppur District, contested the NGT’s order. They argued that their current method of converting coconut shells into charcoal using the old technology was safe and did not pose environmental risks. They asserted that they had obtained proper permissions and had taken measures to control emissions and pollution, such as installing water sprinklers, scrubbers, and chimneys. They claimed that they were not part of the proceedings that led to the NGT’s order and therefore were unfairly affected by the decision. They emphasized their right to conduct business under Article 19(1)(g) of the Constitution and contended that the NGT’s order infringed upon this right. Furthermore, they argued that the NGT’s order should apply only to new units and not existing ones.

15 2022 SCC OnLine Mad 3538.

In its judgment, the High Court of Madras thoroughly examined the petitioners' arguments, with a particular focus on the application of international legal principles. The court stressed the importance of achieving a balance between economic development and environmental protection, citing the principles enunciated in the *Vellore Citizens' Welfare Forum v. Union of India*.¹⁶ The high court referred to the doctrine of sustainable development, which involves meeting current needs without compromising the ability of future generations to meet their own needs. The court underscored that sustainable development must be prioritized and that the right to a clean environment takes precedence over purely economic interests. The court acknowledged the doctrine of public trust, which designates certain resources as being held in trust by the government for the common good, as mentioned in the *Vellore Citizens' Welfare Forum* case. It highlighted the state's duty to protect the environment and natural resources for the benefit of all citizens.

The court also referred to notable international treaties and principles, underscoring its consideration of the broader legal landscape. Among these were the Stockholm Declaration of 1972, the Brundtland Report of 1987, and the Earth Summit held in 1992 at Rio de Janeiro. These international documents underscored the paramount importance of "sustainable development" and the delicate equilibrium between economic progress and environmental preservation. The court astutely recognized that the judicious approach adopted by the NGT was in harmony with these foundational principles and past determinations. This measured stance by the NGT permitted the charcoal units to continue their operations provided they adopted the new pollution-reducing technology.

The MHC concluded that the NGT's order harmonized with the tenets of sustainable development, the fundamental right to a clean environment, and the tenet of public trust. In this context, the MHC upheld the NGT's decision, concurrently offering a reasonable timeline for the petitioners to transition to the new technology. The MHC effectively underscored the imperative of safeguarding the environment for both the present and future generations, thereby aligning itself with both the domestic and international legal framework's guiding principles.

In the case of *Sk. Mohd. Rahamatullah v. State of A.P.*,¹⁷ the dispute centred around the conservation and preservation of a water body known as "Koneru," located at Sy. No. 697 in Rayachoti town, Y.S.R. Kadapa District. The petitioner raised concerns over unauthorized de-silting and construction activities that were underway within the water body's vicinity. The primary legal contention rested upon the examination of whether these actions constituted a breach of constitutional obligations under Article 48A and 51A(g) of the Indian Constitution, which enshrine the state's responsibility towards environmental protection. Additionally, the court grappled with the question of whether the actions in question ran afoul of international human rights norms, particularly as outlined in Article 25 of the

16 *Vellore Citizens' Welfare Forum v. Union of India* case (1996) 5 SCC 647.

17 2022 SCC OnLine AP 2639.

Universal Declaration of Human Rights (“UDHR”) and Article 12 of the International Covenant on Economic, Social and Cultural Rights (“ICESCR”).

Delving into the constitutional dimension, the High Court of Andhra Pradesh emphasized the vital role of water bodies in the overall ecological balance and noted that their protection was not just a prerogative, but a constitutional obligation of the state. The high court referred to previous legal precedents and cited the imperative to secure a dignified life for citizens, encompassing access to necessities such as clean water and a pollution-free environment, as enshrined in Article 21 of the Indian Constitution. The high court illustrated that these rights encompassed not only the present generation but also extended to future generations, ensuring the sustainability of the environment. Incorporating international legal principles, the high court examined the significance of the right to a secure and ecologically sound environment, as advocated by Article 25 of the UDHR and Article 12 of the ICESCR. The high court recognized that these principles were intended to be universally applicable and that the protection of water bodies fell squarely within their purview. These international norms reinforced the state’s duty to prevent environmental harm and promote the conservation of natural resources for the benefit of both current and future generations.

In its judgment, the high court concluded that the de-silting and construction activities on the water body contravened constitutional mandates aimed at safeguarding the environment and violated the international human rights principles of a secure and healthy environment. As a result, the high court declared the actions of the respondents illegal and directed an immediate halt to activities altering the physical attributes of the water body. This case highlights the alignment between constitutional commitments and international human rights standards, highlighting the imperative of environmental stewardship and the responsibilities borne by the state in this regard.

In *Snehalata v. Premchand Abhyakumar Mishrikotkar*¹⁸ the appellant challenged the ruling of the claims tribunal, which had granted partial compensation for injuries sustained in a motor vehicle accident. The accident was attributed to the negligent driving of a jeep owned by respondent no. 1 and insured by respondent no. 2, resulting in severe fractures suffered by the appellant. The evaluation of a homemaker’s income became pivotal in this context, as the accident was caused by the negligent driving of a jeep. The collision inflicted severe injuries upon the claimant, who was a homemaker. The appeal stemmed from the contention of inadequate valuation of notional income and an overall insufficiency in the quantum of compensation awarded by the tribunal.

The High Court of Bombay analyzed the relevant international legal principles governing the valuation of contributions made by homemakers. The court specifically invoked the principles enunciated in international human rights instruments, such as the Convention on the Elimination of All Forms of Discrimination Against Women (“CEDAW”), which underscores the need to

18 2022 SCC OnLine Bom 407.

recognize and value the significant unpaid work carried out by women, particularly within households.

The high courts' approach was underpinned by key legal precedents that underscore the evolving global trend towards acknowledging and assigning appropriate value to the pivotal contributions of homemakers within familial and societal contexts. Notably, the high court referenced cases such as *Arun Kumar Agrawal v. National Insurance Company, National Insurance Company Limited v. Pranay Sethi, and Kirti v. Oriental Insurance Company*. These cases illuminated the progressive international legal norms that resonate with the evolving societal recognition of the significance of homemakers' roles.

The court applied this international legal framework to the case, observing that the initially determined notional income of Rs. 15,000/- per annum inadequately encapsulated the contributions of a homemaker. Consequently, the court opted for a revised valuation of Rs. 3,000/- per month, effectively acknowledging the pivotal role that homemakers play in the holistic functioning of households and their broader socio-economic fabric. The court elevated the total compensation to Rs. 1,38,000/-.

The court's decision is an embodiment of evolving international legal standards that underline gender equality, human dignity, and the imperative to recognize and value the significant contributions of homemakers. In essence, the judgment reflects a thoughtful alignment of legal interpretation with the contemporary fabric of societal norms and international commitments, effectively echoing the global consensus to rectify historical disparities in the valuation of the invaluable work undertaken by women within households and societies.

The case of *Umakant Havgirao Bondre v. Sakshi*¹⁹ centred on the marital discord between Suraj Umakant Bondre and Sakshi, which led to Sakshi's departure from the shared household. The dispute revolved around two challenged court orders: one permitting Sakshi to inhabit the shared household and another directing the applicants to provide specific accommodation to her within the property. The significance of international law was evident as the case arose under the Protection of Women from Domestic Violence Act, 2005, enacted in response to international conventions advocating for women's protection within family settings. These conventions underscored the importance of addressing domestic violence within legal frameworks.

The High Court of Bombay's analysis drew on judicial precedents, including the case of *Juveria Abdul Majid Patni v. Atif Iqbal Mansoori*, which permitted divorced women to invoke remedies under the Domestic Violence Act for obligations arising from their past relationships. The High Court of Bombay also considered the High Court of Kerala's judgment, asserting that a divorced woman could approach the magistrate's court for orders under the Act.

19 2022 SCC OnLine Bom 3168.

The high court concluded that Sakshi, as a divorced wife, could not claim the right to reside in the shared household post-divorce. This decision took into account the changed circumstances after the divorce and the fact that Sakshi was no longer in possession of the shared household. The judgment underscored the complexity of familial disputes and the delicate balance between domestic laws and international conventions safeguarding women's rights and protection from domestic violence.

In the case of *Pragati v. State of Maharashtra*,²⁰ the High Court of Bombay reviewed the Scrutiny committee's approach to migration as a determining factor in its decision-making process. The central issue was whether a woman returning to her parental home due to abandonment or marital discord should be classified as migration. The court found fault with the committee's strict interpretation, asserting that such a circumstance should not be equated with migration.

The high court's analysis underscored the need for pragmatism and empathy when addressing the unique predicaments faced by women in such situations. The court emphasized that the term "migration" cannot be rigidly applied to a woman compelled to leave her matrimonial home due to adverse circumstances. The court highlighted the importance of considering the human aspect, particularly when dealing with cases involving vulnerable individuals. A pivotal aspect underscored by the court was the resonance of international law in guiding its interpretation. The high court hinged its reasoning on the principles enshrined in international instruments such as the UN Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW") and the Beijing Declaration, emphasizing India's commitment to preventing gender-based discrimination.

The court subsequently set aside the committee's impugned order, effectively validating the petitioner's caste certificate. Notably, the court also reinstated the petitioner's proposal for caste validity, urging a prompt resolution and cooperative engagement in this regard. The judgment went beyond the immediate context, resonating with a broader message about the necessity of adhering to established legal principles while simultaneously embracing a compassionate and human-centred approach in decision-making.

In *C. Selvi v. Director of Govt. Examination*²¹, the High Court of Madras deliberated on a significant matter revolving around maternity leave, its implications on employment probation, and the integration of international principles. The petitioner challenged the delay in her promotion attributed to the treatment of her maternity leave.

The petitioner was employed as a typist by the respondent department since February 2013, and had availed maternity leave between May and November 2013, with due approval. Interestingly, her maternity leave was regarded as a "full duty period." However, the completion of her probation was delayed in comparison to

20 2022 SCC OnLine Bom 7236.

21 2022 SCC OnLine Mad 4651.

her junior colleagues. Consequently, the petitioner's juniors received promotions before her. In response to her request for treating maternity leave as service and ensuring her promotion parallel to her juniors, the authorities rejected her plea based on the absence of regulations substantiating her claim.

The petitioner referenced the Universal Declaration of Human Rights ("UDHR"), alongside Article 11 of the Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW"). This article emphasizes equal employment rights, protection during pregnancy, and prevention of discrimination in dismissals based on maternity. Drawing from judicial precedents, such as the Supreme Court's decision in the case of *Municipal Corporation of Delhi v. Female Workers (Muster Roll)*,²² the high court underscored the imperative of incorporating these international principles into employment contracts to counteract gender discrimination, aligning with global treaties.

The court concluded that designating maternity leave as a "full duty period" obligates a prompt declaration of probation equivalent to that of juniors. The court notably stressed that explicit regulations were not a prerequisite to acknowledge maternity leave as a valid service duration. In this light, the high court directed the authorities to issue fresh promotion orders, reinforcing the significance of harmonizing domestic legislation with international norms for gender equality and women's rights, as endorsed by the Maternity Benefit Act and the UDHR.

The case of *National Investigation Agency v. Amritpal Singh*,²³ presented a substantial legal analysis of jurisdictional conflicts between the National Investigation Agency ("NIA") Act, 2008, and the Juvenile Justice Act, 2015 ("JJ Act"), with a focal point on the application of international law, particularly the Hague Conventions and other pertinent international legal norms.

The Punjab and Haryana High Court's deliberation extensively acknowledged the application of international law in shaping the domestic legal framework. It notably invoked the Convention on the Rights of the Child, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985 ("the Beijing Rules"), the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, 1990, the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, 1993, and other related international instruments that emphasize safeguarding children's rights within the justice system. The P&H HC found these instruments to harmonize with the objectives of the JJ Act and were pivotal in influencing the high court's perspective.

The petitioner argued that offences falling under the purview of the Unlawful Activities (Prevention) Act ("UAPA") should come under the jurisdiction of Special Courts designated by the NIA Act, citing its provisions for expeditious trial. Conversely, the respondent, Amritpal Singh, a juvenile, contended that Section

22 (2000) 3 SCC 224.

23 2022 SCC OnLine P&H 3315.

1(4) of the JJ Act, 2015, with its overriding effect, mandates jurisdiction for such cases to be within the purview of the Children's Court under the JJ Act. The high court highlighted the significance of international norms guiding children's rights. It emphasized that Section 1(4) of the JJ Act, 2015, was a manifestation of India's commitment to international principles, reflecting the nation's dedication to the welfare and protection of juvenile offenders, consistent with the United Nations Convention on the Rights of the Child and other relevant international standards.

The high court referenced specific sections of the JJ Act, including Sections 3, 5, 6, 8(3), 16(3), 21, and 23, and aligned them with international legal standards. It highlighted that these provisions resonated with the spirit of the relevant international instruments, particularly the principles of a child-centric approach and the protection of children's rights in legal proceedings.

The court reiterated the paramount importance of adhering to international norms embedded in the JJ Act, 2015. It rejected the petitioner's argument that the gravity of offences should determine jurisdiction, asserting that the core issue was the court's jurisdiction rather than the nature of the charges. The judgment ultimately upheld the significance of international legal principles enshrined in the JJ Act, 2015. It underscored that the safeguards provided to juveniles under the Act must remain intact, irrespective of the charges' nature. In dismissing the petition, the court affirmed the jurisdiction of the Children's Court under the JJ Act for cases involving juvenile offenders, highlighting the congruence between domestic legal provisions and international norms.

In the case of *Harsh Vibhore Singhal v. Union of India*,²⁴ the petitioner filed a Public Interest Litigation ("PIL") with the intention to challenge and annul the Impugned Notification Ref. F. No. CAS-7(1)/2008/Div-I (Restricted Articles) 96898 dated March 4, 2022 in the Avsec order 02/2022, along with its corrigendum issued on 12 March 2022. The petitioner contended that these notifications were unconstitutional and infringed upon Articles 14, 15, and 21 of the Indian Constitution, in addition to posing significant security risks to civil aviation in India.

The central issue revolved around the petitioner's demand for the formation of an Empowered Working Committee ("EWC") to safeguard the religious expression of carrying Kirpans (religious swords) in public places, particularly within the context of civil aviation. The petitioner sought the constitution of this committee, chaired by a retired high court justice, to ensure a pragmatic solution that balances religious freedom with security concerns. This solution proposed the carriage of specifically designed Kirpans within certain size and material limitations to prevent misuse and potential security risks.

The petitioner contended that the Impugned Notification, issued by the Ministry of Civil Aviation, Bureau of Civil Aviation Security, Government of India, had disregarded the safety of passengers and was against international

²⁴ 2022 SCC OnLine Del 4556.

conventions. These conventions include the Tokyo Convention Act, 1975, the International Civil Aviation Organisation (“ICAO”), and the Convention for the Suppression of Unlawful Seizure of Aircraft signed at Hague. These conventions aimed to prevent unlawful interference with civil aviation, and India’s adherence to these agreements was expressed through the Anti-Hijacking Act, 1982, and the Anti-Hijacking Act, 2016.

The government’s response in the form of a counter affidavit argued that the policy decision to grant an exemption for Sikh passengers to carry Kirpans on domestic flights within certain dimensions was taken after careful deliberations and considerations for passenger safety. The counter affidavit also outlined various security measures in place to ensure safety onboard, including deployment of Sky Marshals, cockpit door safety measures, training for cabin and crew members, and restraining equipment for crew members.

The High Court of Delhi emphasized on the limited scope of judicial review concerning policy decisions. It cited precedent cases where the judiciary has refrained from interfering in matters of policy unless there was a clear infringement of fundamental rights. The court highlighted that it should not usurp the executive’s power and must ensure the policy decisions’ legality, rather than judging their wisdom.

The court found that the decision to grant the exemption for carrying Kirpans by Sikh passengers was a matter of policy, and given the thorough deliberations that led to this decision, it should not be interfered with by the judiciary. The high court stated that while the petitioner had concerns about safety and misuse, these issues were addressed through the government’s precautions and measures. The court dismissed the PIL, emphasizing the principle of limited judicial interference in policy matters and highlighting that the policy decision to allow Kirpans on domestic flights by Sikh passengers was arrived at after due consideration and deliberation.

This case exemplifies the court’s restraint in interfering with policy decisions and its recognition of the balance between religious freedom and security concerns. International conventions, such as the Tokyo Convention Act and the Hague Convention, were referenced in the case, emphasizing their significance in framing domestic policy decisions related to civil aviation safety and religious practices.

In the case of *Saurabh Shukla v. Max Bupa Health Insurance Co. Ltd.*,²⁵ the High Court of Delhi addressed issues concerning the denial of health insurance to persons with disabilities, emphasizing the importance of upholding the rights of such individuals. The petitioner, Saurabh Shukla, suffered from Tetraplegia and paralysis below his chest due to a spinal cord injury sustained in 2011. Despite his disability, he was employed as an investment professional and sought health insurance coverage. He approached two insurance companies, Max Bupa Health Insurance Co. Ltd. and Oriental Insurance Co. Ltd., for a Mediclaim/Health Insurance

25 2022 SCC OnLine Del 4471.

policy. However, both companies rejected his applications. Shukla then submitted a representation to the Court of the Chief Commissioner for Disabilities, which prompted the Deputy Chief Commissioner to bring the matter to the attention of the Insurance Regulatory and Development Authority of India (“IRDAI”) under Section 75 of the Rights of Persons with Disabilities Act, 2016. In response, the IRDAI defended the insurance companies’ denial of coverage, citing their discretion to issue policies based on underwriting policies. The IRDAI referred to Regulation 8 of the IRDAI (Health Insurance) Regulations, 2016, which outlines the underwriting process and the discretion insurers have to accept or deny proposals. Despite this, the IRDAI was reminded of its role in overseeing and ensuring compliance with regulations to prevent discrimination against persons with disabilities.

The court emphasized that the right to life includes the right to health, and insurance companies have a duty to provide fair and reasonable coverage to persons with disabilities, as mandated by both domestic and international laws. The Rights of Persons with Disabilities Act, 2016, highlighted the entitlement of persons with disabilities to healthcare without discrimination. Additionally, the United Nations Convention on the Rights of Persons with Disabilities (“UNCRPD”), ratified by India, prohibited discrimination in providing health insurance and required equitable access to coverage. Article 25 of the UNCRPD explicitly states that persons with disabilities have the right to the highest attainable standard of health without discrimination.

The high court directed the IRDAI to ensure that insurance companies develop products specifically designed for persons with disabilities, following its circular dated June 2, 2020. It also called for the IRDAI to modify its terminology to remove the phrase “sub-standard lives” when referring to persons with disabilities in their regulations. This reflects the UNCRPD’s call for reasonable accommodation and equal treatment for individuals with disabilities. Furthermore, the court permitted Shukla to approach the insurance companies again, directing them to reconsider his application for health insurance coverage. This case underscored the importance of recognizing the rights of persons with disabilities and ensuring that insurance companies provide fair and reasonable coverage to them, in alignment with domestic and international legal frameworks.

In the case of *Kader Khan v. State of West Bengal*,²⁶ the High Court of Calcutta delivered highlighted the significant influence of international law on the trajectory of the proceedings. Central to the case was the interpretation and application of Section 299(1) of the Code of Criminal Procedure, 1973 in the context of trial in absentia for absconding accused individuals. The crux of the matter revolved around the admissibility of evidence recorded during the trial of co-accused persons against the absconding accused in subsequent proceedings. Throughout the trial, the court conducted a meticulous analysis of the provisions enshrined in Section 299(1) of the Cr.P.C, and notably, its intersection with

26 2022 SCC OnLine Cal 1038.

international legal norms. The court, acknowledging the evolving landscape of criminal jurisprudence on a global scale, underscored the importance of harmonizing domestic legal frameworks with international standards to ensure the expeditious and equitable administration of justice.

Amidst this deliberation, the high court while referring to the case of *Jayendra Vishnu Thakur v. State of Maharashtra*,²⁷ turned its focus towards international legal precedents, particularly the application of the International Covenant on Civil and Political Rights (“ICCPR”), in advocating for a fair trial. Drawing from the principles enshrined within the ICCPR, the high court highlighted the imperative to safeguard the rights of both the accused and the prosecution, while also ensuring the preservation of evidence and preventing unwarranted delays in the trial process.

Through its judicious examination of international legal norms and an astute interpretation of domestic law, the court expounded that Section 299(1) of the Cr. P.C., while inherently enabling, necessitates the proactive involvement of the prosecutor during the initial trial of co-accused individuals to retain the option of utilizing the evidence against the absconding accused in subsequent proceedings. This case exemplifies the dynamic interplay between domestic legal frameworks and international legal principles. The court’s nuanced understanding of global jurisprudential trends, in conjunction with its meticulous interpretation of relevant provisions, underscores the pivotal role of international law in shaping and guiding the outcome of this judgment.

The case of *Eisa Nooh Zetnan Zetan v. Commissioner of Customs*²⁸ revolved around a fishing vessel named “Al Thriaya-3,” registered with the Republic of Yemen, which was initially fishing in the high seas near Yemen. The vessel was seized by its crew members, who brought it near the territorial waters of India after an alleged distress call was made to the Indian Coast Guard at Kochi. Consequently, the Indian Coast Guard brought the fishing vessel into Indian territorial waters, leading to its eventual seizure by the Coastal Police in Fort Kochi. Subsequently, an order for the confiscation of the vessel and its goods was issued by the Commissioner of Customs (Preventive) Cochin under section 111 of the Customs Act, 1962. The owner of the vessel, a national of the Republic of Yemen, approached the High Court of Kerala challenging the order of confiscation, seeking the release of the vessel and goods without the requirement to pay a redemption fine or duty.

To arrive at a decision, the court invoked international law principles and treaties to analyze the circumstances surrounding the vessel’s entry into Indian waters. The judgment notably referred to provisions in the United Nations Convention on the Law of the Sea (“UNCLOS”) and the Safety of Life at Sea (“SOLAS”) treaty. The KHC underscored that these international treaties established a duty for coastal states to assist vessels in distress and highlighted the context in which distress calls are made and responded to internationally. The

27 (2009) 7 SCC 104.

28 2022 SCC OnLine Ker 238.

high court interpretation of international law norms and principles significantly influenced its decision-making process. It noted that the vessel's entry into Indian waters was not a voluntary act by the owner, but rather a result of actions taken by its crew members. The court determined that this did not amount to an "import" as contemplated under the Customs Act, as the vessel had not been voluntarily brought into India for consumption or use.

The court concluded that the circumstances of the case aligned more with the vessel being in transit or distress rather than being imported for commercial purposes. The high court held that confiscating the vessel and imposing customs duty in this scenario would be arbitrary and not in line with the legal framework or international principles.

As a result, the court set aside the orders of confiscation and corrigendum, directing the respondents to release the vessel and its goods to the petitioner without imposing any charges. The KHC's decision highlighted the importance of considering international law and context-specific circumstances while interpreting domestic legal provisions, demonstrating how international law significantly informed and influenced the judgment in this case.

In the case of *Matam Gangabhavani v. State of A.P., the Andhra Pradesh High Court*²⁹ deliberated upon the complex issue of providing reservations for transgender individuals in the realm of public employment in India. The case revolved around the interpretation and implementation of various legal judgments and provisions, with a particular focus on the principles laid down under the International Covenant on Civil and Political Rights ("ICCPR").

The High Court of Andhra Pradesh analysis primarily centered around the National Legal Services Authority ("NALSA") judgment,³⁰ which directed both the Central and State Governments to take affirmative measures to extend reservations to transgenders, treating them as socially and educationally backward classes. However, the central question that arose was the nature of reservation – whether it should be vertical (based on social and educational backwardness) or horizontal (based on gender identity). The High Court of Andhra Pradesh examined conflicting judgments, including the High Court of Karnataka's stance in *Jeeva Intervention in Sangama v. State*,³¹ which advocated for horizontal reservation based on gender, contrary to the principles outlined in the NALSA judgment. Moreover, the High Court of Andhra Pradesh referred to the High Court of Madras decision in *Swapna v. The Chief Secretary*,³² which also leaned towards horizontal reservation based on gender identity. This was deemed in conflict with the NALSA judgment's directive for vertical reservation. The High Court of Andhra Pradesh highlighted the inherent tension between these two reservation principles and

29 2022 SCC OnLine AP 200.

30 (2014) 5 SCC 438.

31 W.P. No. 8511 of 2020 dated June 11, 2020.

32 W.P. No. 7284 of 2021 dated Dec. 23, 2021.

underscored the need to adhere to the NALSA judgment's guidance for vertical reservation for transgenders.

The High Court of Andhra Pradesh acknowledged that the ICCPR's principles informed the broader context of human rights and non-discrimination, which were relevant to the case's central issue of extending reservations to transgender individuals in public employment. The ICCPR upholds the principle of equality before the law and prohibits discrimination on various grounds, including gender. This international standard contributed to the High Court of Andhra Pradesh understanding of the need to address historical discrimination against transgender individuals and to ensure their equal participation in various aspects of society, including public employment.

The High Court of Andhra Pradesh recognized that the Transgender Persons (Protection of Rights) Act, 2019, and the subsequent rules did not explicitly provide for reservations for transgenders in public employment. However, the High Court of Andhra Pradesh analysis took into account the broader international legal obligations that India has committed to under the ICCPR. The high court considered the principles of non-discrimination and equality enshrined in the ICCPR as guiding factors in interpreting domestic laws and legal judgments. The court emphasis on the NALSA judgment's directive to provide reservations to transgender individuals as socially and educationally backward classes were, in part, influenced by the broader international legal standards laid out in the ICCPR. The court recognized that by extending reservations, the state government would be fulfilling its obligations to provide equal opportunities and address historical injustices faced by transgender individuals, in alignment with the principles of non-discrimination and equality under the ICCPR.

The petitioner's claim for selection as a Stipendiary Cadet Trainee Sub-Inspector of Police was dismissed. It was highlighted that the minimum marks required for qualification were not gender-specific but were grounded in considerations of social status and representation. The court concluded by affirming the necessity of adhering to the NALSA judgment's directions for vertical reservation while urging the state government to conduct a comprehensive study on the challenges faced by transgenders and to implement the NALSA judgment's directives within a stipulated timeframe.

OMKAR MAHADEO SUPEKAR V. MUNICIPAL CORPN. OF GREATER MUMBAI³³

In this case, before the High Court of Bombay the significance of the Ramsar Convention on Wetlands came to the forefront, highlighting its application and role in environmental protection and regeneration. The petitioners in the case expressed concerns over the construction activities for a proposed cycling and jogging track within Powai Lake by the Municipal Corporation of Greater Mumbai ("MCGM"). They contended that the activities violated regulations and posed a threat to the ecological balance of the lake. Importantly, they invoked the Ramsar

33 2022 SCC OnLine Bom 1008.

Convention's principles and provisions, asserting that the Powai Lake had been designated as a wetland in the National Wetland Atlas 2011, which was sponsored by the Ministry of Environment and Forest, Government of India, in line with the Ramsar Convention's objectives.

The Ramsar Convention on Wetlands, adopted in 1971 in Ramsar, Iran, seeks to promote the conservation and wise use of wetlands globally. It designates wetlands of international importance, also known as Ramsar Sites, to ensure their protection and sustainable use. The Powai Lake, being designated as a wetland in the National Wetland Atlas, carried implications under the Ramsar Convention. The court acknowledged the significance of the Ramsar Convention's principles in the case. However, it highlighted that while Powai Lake was designated as a wetland in the National Wetland Atlas, it had not been formally notified as a wetland under the Notification dated September 26, 2017, issued by the Ministry of Environment, Forest and Climate Change, Government of India. The courts's focus was on the specific notification requirement, underscoring the need for formal recognition.

The judgment emphasized the need for responsible development and ecological regeneration. It meticulously evaluated the proposed "Gabion Technology" put forward by the MCGM as a sustainable means of construction. The courts scrutiny of the technology's efficacy and environmental implications reflected its commitment to ecological balance and regeneration. By interpreting the term "construction" in the absence of a formal definition, the court demonstrated a dedication to promoting sustainable practices.

The case underscored the importance of adhering to both international and domestic regulations to ensure environmental protection and regeneration. By addressing the Ramsar Convention in the context of formal notification and applying it to broader principles of ecological sustainability, the case highlighted the interconnectedness of global conservation efforts and local legal interpretations.

The case of *Anish Mohd. Rawther v. Directorate of Enforcement*³⁴ originated from an investigation by the Anti-Corruption Bureau in Srinagar, Jammu and Kashmir, registering a case against the petitioners for offences related to the Jammu and Kashmir Prevention of Corruption Act and the Ranbir Penal Code. The allegations pertained to financial irregularities, diversion of funds, and misutilization of credit facilities by a company named S.A. Rawther Spices Pvt. Ltd. The Directorate of Enforcement initiated an investigation under the Prevention of Money Laundering Act ("PMLA") based on these allegations.

The High Court of Karnataka delved into the international legal context that informed the creation of the PMLA. It referred to United Nations Conventions on the prevention of money laundering, which guided the PMLA's formulation. The Financial Action Task Force's recommendations were crucial in shaping the PMLA's provisions, emphasizing the global concern of preventing money

34 2022 SCC OnLine Kar 18.

laundering and terrorist financing. The high court highlighted the legislative intent behind it and highlighted that PMLA was enacted to implement international agreements and conventions concerning money laundering. The PMLA aimed to prevent money laundering not only within India but also to uphold the principles outlined in international agreements. The court also pointedly referred to Article 253 of the Indian Constitution, which empowers Parliament to enact laws for implementing international law. This provision was invoked to underscore the legislative backing for incorporating international standards into domestic legal frameworks.

The high court analyzed the PMLA's provisions in the context of international obligations. It addressed the contention that the Ranbir Penal Code, 1989, under which the offences were registered, did not find a place in the PMLA's Schedule of offences. The court rejected this argument, stating that the PMLA's scope and intent extended beyond its dictionary clause and encompassed the principles of preventing money laundering. The court also considered the legislative development of extending the Indian Penal Code to the State of Jammu and Kashmir through the Jammu and Kashmir Reorganization Act, 2019. This development clarified that IPC's applicability extended to the region, further supporting the high courts' interpretation of PMLA.

The judgment's culmination exemplified the influence of international law on the verdict. The court found that the PMLA's purpose and intent transcended regional boundaries and aligned with international efforts. The court interpretation considered the legislative history, international conventions, and the Act's aim to prevent money laundering.

In the case of *Omkar Mahadeo Supekar v. Municipal Corporation of Greater Mumbai*,³⁵ the petitioners raised concerns over the construction and reclamation activities related to a cycling and jogging track project within the Powai Lake by the Municipal Corporation of Greater Mumbai ("MCGM"). The MCGM was accused of engaging in reclamation, uprooting trees, and dumping materials in the water body, water catchment area, and crocodile habitat of the Powai Lake Wetland. The petitioners contended that Powai Lake was designated as a wetland according to the National Wetland Atlas and was included in the National Plan for Conservation of Aquatic Ecosystems ("NPCA"). The central issues revolved around violations of the Maharashtra Regional Town Planning Act, 1966 ("MRTP Act") and the notified Development Control Regulation for Greater Mumbai 2034 ("DCR").

The petitioners contended that the construction and reclamation activities would have detrimental effects on the ecosystem of the lake, leading to erosion, siltation, and destruction of native water plants. They sought to protect and conserve the Powai Lake Wetland from such activities, citing violations of the MRTP Act and DCR. The MCGM argued that the construction of the cycling and jogging track using "Gabion Technology" would not impede water flow and would

35 2022 SCC OnLine Bom 1008.

create a community open space, thereby benefitting the citizens of Mumbai. They emphasized that the technology did not involve conventional construction or reclamation methods and would contribute to the rejuvenation of the lake.

The High Court of Bombay examined the arguments and counter-arguments presented by both parties. It addressed the issue of whether “Gabion Technology” constituted construction or reclamation within the context of the DCR regulations, which did not explicitly define these terms. The high court recognized that international law played a role in determining whether the activities could be considered construction or reclamation, given the impact on wetlands and aquatic ecosystems.

The courts analysis was significantly influenced by international norms, including the Ramsar Convention’s principles on wetland conservation. While the Powai Lake was designated as a wetland in the National Wetland Atlas, the court considered it imperative for the lake to be officially notified as a wetland under the Ministry of Environment, Forest and Climate Change’s Notification dated September 26, 2017.

In its verdict, the court concluded that Powai Lake had not been officially notified as a wetland, as per the required government notification. It highlighted the lack of a Notification explicitly designating the lake as a wetland under the Ramsar Convention and, thus, deemed the argument based on wetland conservation principles to be unsupported. Nonetheless, the court observed that the construction and reclamation activities, including the use of “Gabion Technology,” appeared to be inconsistent with the MRTP Act and DCR regulations. The BHC ordered the removal of all construction within the lake and its catchment area, directing the MCGM to restore the reclaimed sites to their original condition.

In the case of *Laltu Ghosh v. State of W.B.*,³⁶ the appellant challenged the judgment and order passed by the Additional District and Sessions Judge, which convicted him under Section 6 of the Protection of Children from Sexual Offences Act (“POCSO Act”) and Section 376(2)(n) of the Indian Penal Code, 1860. The judgment handed down a rigorous imprisonment of ten years and a fine of Rs. 50,000/-, with a directive that 90% of the fine be paid to the victim as compensation. The appellant was accused of abducting and sexually assaulting a 13-year-old girl. The prosecution contended that the victim had been abducted by the appellant and had been detained in his residence where she was sexually assaulted. However, the appellant pleaded not guilty and claimed to be tried. During the course of the trial, a significant contention emerged regarding the appellant’s right to cross-examine witnesses, particularly the victim. The defence argued that the appellant’s fair trial rights were violated due to the denial of adequate opportunity for cross-examination.

The High Court of Calcutta meticulously navigated the delicate balance between the rights of the accused and the rights of minor victims, particularly

36 2022 SCC OnLine Cal 1522.

concerning the repeated summoning of child witnesses for testimony. The court highlighted the necessity to minimize the trauma experienced by minor victims of sexual offences and to ensure a humane examination procedure for them. This stance aligned with international standards and principles, emphasizing the universal applicability of these norms. It pointed out that every accused has the right to a fair trial, a principle rooted in international covenants such as the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. These international norms were interpreted within the framework of the fundamental right enshrined under Article 21 of the Indian Constitution.

The appellant's attempts to delay the trial by employing vexatious applications and unjustified excuses were scrutinized by the high court. It acknowledged the statutory mandate for timely trial proceedings under the POCSO Act and rejected the appellant's requests for adjournment. Furthermore, the court assessed the victim's deposition and evidence provided by witnesses, considering the inconsistencies in her statements. The appellant's argument regarding the victim's age and consent was scrutinized in light of medical evidence and the POCSO Act provisions. Finally, based on international human rights standards and principles, the CHC modified the appellant's conviction to one under Section 4 of the POCSO Act and under Section 376 of the IPC. The appellant's sentence was reduced, and the court directed compensation to be paid to the victim.

In the case of *Vasmi Sudarshini v. Sub Registrar*,³⁷ a Writ Petition was filed under Article 226 of the Constitution of India, seeking a writ of *mandamus* to direct the respondent, the Sub Registrar, to solemnize the marriage between the petitioner and the bridegroom, Rahul Leena Madhu, through video conference and register the same under the Special Marriage Act, 1954. The central issue was whether virtual presence through online means could meet the requirements of the law for solemnizing a marriage.

The facts of the case revolved around a couple, *Vasmi Sudarshini and Rahul L. Madhu*, who sought to get married. Rahul was an American national, and both parties fell in love. Rahul applied with Vasmi before the sub registrar under Section 5 of the Special Marriage Act, 1954. Following a period of objections, the mandatory 30-day period passed, and the parties appeared before the respondent. Due to unforeseen circumstances, the marriage could not be solemnized in the respondent's presence. Rahul was in the United States due to visa requirements.

The High Court of Madras referenced Section 12 of the Special Marriage Act, 1954, which grants parties the choice to adopt any form of marriage solemnization. The judgment drew upon historical and international legal examples, including the recognition of proxy marriages and virtual marriage solemnizations in other jurisdictions. The court also referred to international human rights principles, specifically Article 23(2) of the International Covenant on Civil and Political Rights and Article 16(1) of the Universal Declaration of Human Rights, both emphasizing the right to marry.

37 2022 SCC OnLine Mad 3875.

The court took a pragmatic approach, considering the societal changes and technological advancements, and held that virtual presence through online means could meet the requirements of the law for marriage solemnization. It ruled in favour of the petitioner and directed the respondent to facilitate the solemnization of the marriage through virtual mode, as the parties had chosen this method. The high court cited the flexibility of Section 12 of the Act, stating that the parties' choice of online mode was valid. This judgment showcases how international human rights principles and technological advancements influenced the interpretation of domestic law. The court's decision to allow marriage solemnization through virtual means demonstrates the importance of adapting legal frameworks to accommodate changing societal norms and technological progress.

IV CONCLUSION

The aforementioned analysis of case compilation highlights the substantial impact exerted by international treaties and conventions on the formulation and impact of local legal rulings in India. These instances have brought attention to the harmonization of international legal concepts and constitutional provisions, underscoring the integration of international commitments into the legal structure of India. The judgments covered in the compilation highlight the fact that international treaties do not automatically become part of domestic law but rather necessitate explicit legislative approval by the Indian Parliament. This method guarantees the effective implementation and enforcement of international treaty obligations within the legal framework of India. The Indian Constitution grants the Government of India the power to engage in international accords and implement them within the country, so demonstrating the symbiotic connection between international law and domestic law.

The Indian judiciary has exhibited a progressive and inventive stance in dealing with intricate legal matters, encompassing both domestic legislation and international legal standards, as seen by its interpretations. This methodology has resulted in noteworthy advancements in diverse fields of law, encompassing social equity, safeguarding of intellectual property, preservation of the environment, and handling of international business affairs. The aforementioned judicial rulings have successfully served to reconcile discrepancies within the national legal system and align it with established international legal principles, hence facilitating the progress of international law's implementation in India. The aforementioned cases further underscore the importance of refraining from transgressions against *jus cogens* principles, which embody the most fundamental standards of international law that are inviolable under all circumstances. The proactive approach of the Indian judiciary in protecting these principles signifies a dedication to maintaining fundamental human rights and adhering to international legal standards. The ongoing process of harmonising national laws with international legal duties is a subject of future consideration. The judiciary's proactive involvement in the interpretation of cases from multiple perspectives is crucial in facilitating this process of reconciliation. The anticipation arises from the ongoing evolution and

adaptation of legal principles in response to shifting global dynamics, to achieve a peaceful coexistence between national laws and international legal standards. This would facilitate the achievement of a more efficient global legal framework and the attainment of the goals set forth by international law and global organisations.

