

20

INTERNATIONAL LAW

*Manoj Kumar Sinha**

I INTRODUCTION

THIS SURVEY focuses on examining the application of international law by the Supreme Court and high courts in key cases decided during the year 2023. Through several landmark decisions, the courts reaffirmed their willingness to apply international law, particularly when its provisions align with the Indian Constitution. These notable rulings highlight a continued increase in judicial references to international treaties, a trend that has strengthened over time, including in 2023. It is important to note the Indian judiciary's positive and forward-thinking approach in this regard, demonstrating a clear readiness to invoke international law when necessary to ensure just outcomes.

The main goal of this review is to provide a thorough analysis of how effectively international law has been integrated into the Indian legal system by the courts. The judiciary's consistent practice of applying international law, especially when it harmonizes with constitutional principles, is evident from the significant rulings of 2023. These decisions reflect an ongoing and commendable rise in the judiciary's reliance on relevant international treaties, displaying a progressive and adaptive approach. The courts' dedication to upholding international legal standards underscores their commitment to ensuring that international law plays a pivotal role in resolving cases where its application is both appropriate and compelling.

II SUPREME COURT CASES

Worker's rights

In *ESI Corpn. v. Radhikha Theatre*¹, the respondent, operating a cinema theatre since 1981, paid Employee State Insurance ("ESI") contributions up to September 1989 but stopped afterwards as its workforce fell below 20 employees. ESI Corporation issued demand notices, prompting the respondent to challenge them on the grounds that the amended Section 1(6) of the ESI Act (inserted on 20.10.1989) should not apply retrospectively. The Employees Insurance Court ("EI Court") dismissed the challenge in 2010, but the High Court of Telangana overturned

* Director, Indian Law Institute.

¹ *ESI Corpn. v. Radhikha Theatre*, 2023 SCC OnLine SC 64.

this ruling in 2021. Thus, ESI Corporation appealed the decision before the Supreme Court.

The appeal centered around whether the ESI Act, 1948, as amended, would apply retrospectively to certain establishments. The amendment to Section 1(6) of the ESI Act expanded the scope of the Act, making it applicable to smaller establishments that previously were not covered. The appellant contended that the amendment should apply retrospectively, while the respondent argued against its retroactive application.

The Supreme Court, after considering the facts and legal arguments, emphasized the importance of social welfare legislation like the ESI Act, which is designed to ensure workers' access to health and social security benefits. To bolster this position, the Supreme Court invoked principles from international law, particularly focusing on India's commitments under international treaties. It referred to Article 25(2) of the Universal Declaration of Human Rights ("UDHR"), which enshrines the right to adequate living standards and access to social services, and Article 7(b) of the International Covenant on Economic, Social, and Cultural Rights ("ICESCR"), which highlights the need for safe and healthy working conditions.

By drawing upon these international legal norms, the Supreme Court highlighted India's obligation to protect workers' rights in line with global standards. It concluded that the amendment to the ESI Act was in harmony with these international commitments and, thus, should be applied prospectively from October 20, 1989, ensuring that workers in smaller establishments would receive the benefits envisioned by the Act. This approach helped align domestic law with international principles of social security and human dignity.

Right to privacy

In *Indrakunwar v. State of Chattishgarh*², the appellant, Indra kunwar, faced charges related to the alleged murder of a deceased child discovered in a dabri (a pit). The prosecution's case relied heavily on circumstantial evidence, asserting a presumed connection between Indra kunwar and the child based solely on her status as a woman living alone and her pregnancy. The trial court convicted her without establishing a clear link between the appellant and the alleged crime. Indrakunwar appealed her conviction to the high court, which upheld the initial ruling.

The Supreme Court's ruling underscored the significance of the right to privacy as a fundamental human right integral to human dignity. This principle is enshrined in various international treaties, including the Universal Declaration of Human Rights ("UDHR") and the International Covenant on Civil and Political Rights ("ICCPR"). These instruments affirm that the right to privacy is crucial for safeguarding individual autonomy and dignity, especially regarding personal relationships and reproductive choices. The court also referred to the

2 *Indrakunwar v. State of Chattishgarh*, 2023 SCC OnLine 1364.

K.S. Puttaswamy v. Union of India,³ which emphasized that privacy empowers individuals to make autonomous decisions about intimate aspects of their lives.

The judgment highlighted that a person's autonomy, particularly that of women, is essential in matters involving their bodily integrity and reproductive health. The Supreme Court ultimately quashed Indrakunwar's conviction, noting that the prosecution had failed to present compelling evidence establishing a link between her and the deceased child. The court criticized the lower courts for basing their conclusions on mere assumptions rather than solid proof. It reaffirmed that the right to privacy must be respected and cannot be infringed upon through unfounded judgments about a woman's character based on her living circumstances or marital status.

This decision not only vindicated Indrakunwar but also reinforced the importance of adhering to due process and protecting fundamental rights, particularly those of women. By recognizing the intersection of privacy and dignity, the court aligned its judgment with international legal standards, emphasizing the necessity of ensuring individual rights are upheld in the face of societal prejudices. Indrakunwar was acquitted of all charges, and her bail bonds were discharged, marking a significant victory for justice and the protection of personal liberties.

Paternity test

The Supreme Court in the case of *Aparna Firodia v. Arun Firodia*,⁴ revolves around a petition for divorce under Sections 13(1)(i) and (i-a) of the Hindu Marriage Act, 1955. One of the primary issues that emerged was the paternity of the second child, Master Arjun, born during the subsistence of the couple's marriage. The respondent (husband) sought a DNA test to ascertain the child's paternity, arguing that the appellant (wife) had engaged in an adulterous relationship and that the child may not be his biological offspring. The crux of the case lies in whether courts should permit a DNA test to determine paternity in matrimonial disputes where the legitimacy of a child born during a valid marriage is questioned, especially in light of the strong legal presumption of legitimacy under Section 112 of the Indian Evidence Act, 1872 ("IEA").

The Supreme Court reiterated that a child born during the subsistence of a valid marriage enjoys a strong presumption of legitimacy under Section 112 of the IEA. This presumption can only be rebutted by proving non-access between the spouses during the time of conception. The court highlighted that this presumption is not easily displaced, and DNA testing should not be ordered routinely.

The Court placed significant emphasis on the protection of children's rights as enshrined in international conventions, particularly the United Nations Convention on the Rights of the Child, 1989 ("CRC"). The CRC recognizes that children, for the full and harmonious development of their personality, should grow up in a family environment marked by love and understanding. The court

3 (2017) 10 SCC 1.

4 *Aparna Firodia v. Arun Firodia*, 2023 SCC OnLine SC 161.

invoked Article 3 of the CRC, which underscores the principle of the “best interests of the child” in all actions concerning children.

The court discussed the implications of subjecting a child to a DNA test, particularly focusing on the child’s right to privacy and bodily integrity. The judgment acknowledged that while parents generally act as decision-makers for their children in matters of healthcare and genetic testing, the child’s autonomy and evolving capacity must be respected. It relied on the CRC to hold that children should not be viewed as material objects and should not be unnecessarily subjected to such invasive procedures, especially when they are not parties to the legal dispute. The court further recognized their rights under Article 8 of the CRC to preserve their identity, including knowledge of their parentage.

In invoking the principle of the “best interests of the child,” the court concluded that ordering a DNA test in this case would be against the welfare of the child. It expressed concern about the potential psychological trauma that may arise if the test revealed that the child was not biologically related to the respondent’s husband. It noted that this could disturb the child’s sense of identity and jeopardize the mother-child relationship. Further, the reputation and dignity of the mother would be harmed if her fidelity and the legitimacy of her child were questioned without sufficient grounds.

The court held that the respondent’s husband failed to establish a *prima facie* case for adultery that would necessitate a DNA test. The husband had access to alternative evidence, such as call recordings and diary entries, to support his allegations. Therefore, a DNA test was not deemed the sole method to establish infidelity. Additionally, the court clarified that the mere decline of a DNA test cannot lead to an adverse inference regarding the appellant’s fidelity or the child’s legitimacy.

The court overturned the lower court decisions and ruled that ordering a DNA test in the present case was not justified or necessary. The court emphasized that the protection of the child’s identity and privacy, coupled with the presumption of legitimacy, outweighed the respondent’s desire to use the DNA test as evidence of adultery. The court reiterated that such tests should be ordered only in exceptional circumstances where no other evidence is available to resolve the dispute.

Land acquisition

In *Urban Improvement Trust v. Gordhan Dass*⁵ case, the dispute revolved around the acquisition of land by the Urban Improvement Trust (“UIT”) of Bikaner without giving proper notice to the rightful owners. Gordhan Dass and his co-owners had purchased three bighas of land in 1970, and they held peaceful possession until UIT claimed to have acquired it without following due process. Dass filed a civil suit for a permanent injunction, which was later amended to seek restoration of possession after UIT forcibly tried to take control of the land.

5 *Urban Improvement Trust v. Gordhan Dass*, 2023 SCC OnLine SC1368

While the UIT admitted the ownership of the respondents, it claimed that it had already legally acquired 24 *bighas* of land, including the disputed portion, and had compensated the original *khatedar* listed in the revenue records. The trial court partially ruled in favour of Dass, granting possession of one bigha meant for a petrol pump but rejecting claims over the remaining two bighas, based on UIT's acquisition. On appeal, the appellate court sided with Dass, ruling that UIT failed to provide proper notice or hold hearings during the acquisition. The high court upheld this decision, invalidating UIT's acquisition process for non-compliance with Sections 52 and 53 of the Rajasthan Urban Improvement Act, 1959, which mandates notice and compensation for landowners.

The Supreme Court addressed key constitutional concerns under Article 300-A of the Constitution, which protects the right to property, and emphasized the need for procedural fairness in compulsory land acquisition. It also relied heavily on international law principles to reinforce its judgment. It invoked several important international legal norms that emphasize the protection of property rights and the need for fairness in land acquisition. It cited Article 17 of the Universal Declaration of Human Rights ("UDHR"), which declares that "*Everyone has the right to own property alone as well as in association with others,*" and "*No one shall be arbitrarily deprived of his property.*" This principle is central to safeguarding individual property rights against arbitrary state actions, reinforcing that any deprivation of property must be in line with established legal procedures.

The Supreme Court also referenced self-determination principles enshrined in international treaties like the International Covenant on Economic, Social, and Cultural Rights ("ICESCR") and the International Covenant on Civil and Political Rights ("ICCPR"), which establish the right of people to freely dispose of their natural wealth and resources. The court connected this concept to the landowners' rights to control and enjoy their land without arbitrary deprivation.

Additionally, the Supreme Court highlighted the importance of the Free, Prior, and Informed Consent ("FPIC") doctrine, derived from the United Nations Declaration on the Rights of Indigenous Peoples. Though primarily designed for protecting indigenous peoples, the court recognized that FPIC's principles could be extended to all local communities in land acquisition contexts. FPIC emphasizes that communities must be properly informed, engaged, and consent to any acquisition affecting their land. The Supreme Court noted that this approach aligns with modern international development laws, which advocate for more inclusive decision-making processes to safeguard the rights and dignity of affected landowners.

The Supreme Court concluded that UIT had failed to adhere to legal procedures or provide compensation to the landowners, thereby violating both constitutional rights under Article 300-A and international norms. Nevertheless, the court allowed UIT the option of acquiring the land legally in the future by following the proper procedures, balancing public interest with the rights of the landowners. The appeal was dismissed, and the high court's judgment was affirmed, thus upholding procedural fairness and alignment with international legal standards.

III HIGH COURTS CASES

Refugee status

In *Neyatitus v. Regional, Passport Officer*⁶ the petitioner was born in India in 2002 to Sahayanathan, a Sri Lankan refugee, and Patchaiammal, an Indian citizen. The Petitioner's father had fled Sri Lanka due to civil unrest and was placed in a refugee camp in Tamil Nadu, while his mother was a native Indian who later converted to Christianity. After completing his education in India, he applied for an Indian passport in 2022. However, the authorities questioned his citizenship status, citing his father's refugee classification on his birth certificate. Concerned that this might lead to a denial of his passport, the petitioner filed a writ petition seeking recognition of his Indian citizenship.

The central issue was whether the Petitioner was entitled to Indian citizenship by birth under the Citizenship Act, 1955, despite his father being a refugee. Furthermore, the case raised concerns about whether labelling him as a Sri Lankan refugee violated his rights and to what extent international refugee law was relevant, given India's non-signatory status to the 1951 Refugee Convention.

In analyzing the case, the High Court of Madras, referred to Section 3(1)(b) of the Citizenship Act, 1955, which confers citizenship to individuals born in India between 1950 and 2003 if at least one parent is an Indian citizen. Since the petitioner was born in 2002 and his mother was an Indian citizen, the court concluded that he was entitled to Indian citizenship by birth. The court criticized the authorities for wrongly classifying him as a refugee based on his father's status, pointing out that such classification was not in line with Indian law. The court emphasized that this mislabeling not only violated Indian citizenship law but also contravened the principle of avoiding statelessness, a cornerstone of international human rights norms.

Although India is not a signatory to the 1951 Refugee Convention, the High Court of Madras highlighted the importance of international principles. It acknowledged India's reliance on general international human rights law, including Article 15 of the Universal Declaration of Human Rights, 1948, which asserts the right to nationality and protection from statelessness. By recognizing the petitioner's citizenship, the court ensured that India complied with global standards for preventing statelessness, even in the absence of formal international obligations. Additionally, the court invoked the Passport Act, 1967, which allows the government to issue passports where public interest is served, and found no legal grounds to deny his passport.

In conclusion, the court held that the petitioner was an Indian citizen by birth and directed the authorities to issue his passport within three weeks. This decision not only reaffirmed the petitioner's citizenship rights under Indian law but also reflected India's adherence to international human rights norms. The case highlights how domestic courts can incorporate global standards, particularly

6 *Neyatitus v. Regional, Passport Officer*, 2023 SCC OnLine Mad 2068.

when it comes to protecting individuals from statelessness and safeguarding basic human rights.

Matrimonial disputes

In *Kiran Kumar Chava v. Usha Kiran Anne*⁷, 2023 SCC, case, the Civil Revision Petitions were filed under Article 227 of the Constitution of India, seeking to strike off a family petition and a Domestic Violence Complaint. The case involves a matrimonial dispute between the revision petitioner and the respondent, who were both American citizens of Indian origin.

The couple was married according to Hindu rites and customs and initially lived happily in India before relocating to the United States. They have twin sons, who are now 15 years old. After the respondent travelled to India with the children in December 2020 and did not return to the United States, a series of legal proceedings unfolded. The petitioner sought divorce and custody in United States courts, while the respondent filed for restitution of conjugal rights in India under the Hindu Marriage Act, 1955, leading to conflicting legal proceedings across jurisdictions.

One issue that the court examined was the rights of Overseas Citizens of India (“OCI”) as outlined in the Citizenship Act, 1955. They also relied on several precedents which discussed that OCI cardholders have certain rights but lack specific political rights reserved for Indian citizens. Other cases have established that OCI holders can seek matrimonial relief in Indian courts, aligning domestic law with the principles laid down in international conventions. Specifically, Articles 15(2) and 16(1)(c) of the Convention on the Elimination of All Forms of Discrimination Against Women (“CEDAW”) emphasize women’s equality in civil matters and rights during marriage dissolution, supporting the jurisdiction of Indian courts to adjudicate these disputes.

In another issue, the court emphasized the importance of the children’s wishes in custody determinations, recognizing their agency as “matured minors.” The Convention on the Rights of the Child (“CRC”), 1989 plays a pivotal role here, particularly article 3(1), which mandates that the best interests of the child be a primary consideration in all actions affecting them. Article 12(1) reinforces the child’s right to express views freely, which was significant in this case as the children expressed a desire to remain in Chennai with their mother.

Furthermore, the court relied on the Supreme Court’s decisions which affirmed that foreign nationals cannot be denied rights equal to those of Indian citizens under the Constitution. The High Court of Madras echoed these sentiments, affirming that the children’s expressed preference and their ongoing education in Chennai must be respected. The court concluded that the children’s best interests would be served by considering their wishes, thus highlighting the alignment of domestic judicial practices with international human rights principles.

In light of the binding principles established by the Supreme Court, the deposition of the children, and the respondent’s status as an OCI cardholder, the

⁷ *Kiran Kumar Chava v. Usha Kiran Anne*, 2023 SCC OnLine Mad 474

court concluded that she is entitled to maintain matrimonial and domestic violence proceedings in Indian courts. The reliance on international conventions, such as CEDAW, the UDHR, and the Convention on the Rights of the Child, underpins the court's commitment to uphold the rights and welfare of the parties involved, particularly the children, in handling cross-jurisdictional family disputes.

Paternity leave

The present writ petition *S.B. Saravanan v. State*,⁸ concerns the quashing of an order that cancelled the petitioner's paternity leave and directed his reinstatement as Inspector of Police. Unable to return to duty due to his wife's condition and the birth of their child, the petitioner was deemed absent without leave and declared a deserter. This case brings to light the importance of recognizing paternity leave in India, particularly in line with international standards and human rights obligations.

The court observed that internationally, the recognition of parental responsibilities has gained significance through conventions and policies. The first International Labour Conference ("ILO") in 1919 introduced Convention No. 3 on Maternity Protection, recognizing the need for maternity rights. The adoption of the ILO Workers with Family Responsibilities Convention, 1981 further acknowledged the need for changes in societal roles of men and women to ensure equality. The United Nations Convention on the Elimination of All Forms of Discrimination against Women, 1979 ("CEDAW") also highlighted the need for gender equality in familial responsibilities. Over the last two decades, paternity leave has been recognized globally as vital for supporting both parents around childbirth, although India currently lacks comprehensive legislation for paternity leave in the private sector.

The court also observed that maternity protection is regarded as a fundamental human right, as underscored by the Universal Declaration of Human Rights ("UDHR"). The role of fathers is increasingly being recognized in ensuring the health and welfare of both mother and child during prenatal and postnatal care. This case marks the necessity for legislative protection of paternity leave in India, drawing attention to Articles 14, 15(3), and 21 of the Constitution, which collectively guarantee the rights of children and the importance of both parents in their care.

The court examined the relevant Indian legal provisions concerning paternity leave, with a focus on ensuring that both parents have equal responsibilities in the care of their children. While there is no specific law governing paternity leave in the private sector in India, the Central Civil Services (Leave) Rules, 1972 provides for 15 days of paternity leave for government employees. The court also referred to Article 21 of the Constitution, which guarantees the right to life and personal liberty, as extending to the protection of family life. Article 42 was also noted, placing the responsibility on the State to ensure just and humane conditions of work, including maternity benefits, which, by extension, could encompass paternity benefits.

⁸ *S.B. Saravanan v. State*, 2023 SCC OnLine Mad 5784

The court highlighted the Maternity Benefit Act, 1961, particularly the recognition of maternity as a critical period that needs legislative protection. Although the Act focuses on maternity benefits, the court emphasized that evolving social structures demand consideration for paternity leave, especially in cases of IVF pregnancies that require significant parental support.

Additionally, article 15(3), which allows for special provisions in favour of women and children, was discussed concerning paternity leave, drawing a parallel that both parents' roles should be recognized in safeguarding children's welfare. The Court also referred to India's commitments under CEDAW and other global conventions that emphasize gender equality in childcare.

The judgment underscores the urgent need for a comprehensive framework on paternity leave in India, considering international obligations under conventions like the ILO Workers with Family Responsibilities Convention, 1981, and the broader commitment to gender equality outlined in the CEDAW and the UDHR. As Indian society continues to evolve, the legislative framework must reflect the need for fathers to participate in early childcare, aligning with constitutional provisions on equality and children's rights.

Patent

In the case of *Chinese University of Hong Kong v. Assistant Controller of Patents & Designs*,⁹ the appellant challenged the decision made by the Assistant Controller regarding Patent Application 4812/CHENP/2012, which was rejected because the claimed subject matter was ineligible under Section 3(i) of the Patents Act, 1970. The invention at issue involved a non-invasive prenatal testing method designed to analyze fetal DNA from maternal biological samples. The assistant controller classified the method as diagnostic, thereby denying patentability under the aforementioned section, which excludes diagnostic methods.

The Madras High Court ("MHC") examined the relevance of international legal principles, particularly the Vienna Convention on the Law of Treaties ("VCLT"). This treaty establishes guidelines for interpreting legal provisions, emphasizing that they should be understood in their broader context and purpose. Additionally, the court took into account customary international law principles that advocate for a balanced approach to patent eligibility. This approach aims to promote innovation while also considering public health and ethical implications in medical practices.

The High Court of Madras determined that the claimed invention does not fit the definition of a diagnostic method as outlined in section 3(i). The invention's primary function is to identify the fetal fraction rather than diagnose any specific disease or condition. Thus, it concluded that the assistant controller's decision was unfounded and allowed the application to progress toward granting a patent based on the amended claims. Furthermore, the High Court of Madras urged

9 *Chinese University of Hong Kong v. Assistant Controller of Patents & Designs*, 2023 SCC OnLine Mad 6372

lawmakers to reassess the definitions surrounding “diagnostic” in light of evolving technologies while ensuring alignment with international legal standards.

This decision highlighted the importance of a nuanced interpretation of diagnostic methods, drawing upon the principles outlined in the VCLT and customary international law. This ruling promotes the advancement of genomic technologies while upholding ethical considerations, advocating for legislative revisions to address inconsistencies in patent law related to medical diagnostics.

Employment

In *T. Pugalenth v. T.N. Uniformed Service Recruitment Board*,¹⁰ the writ petition sought a certiorarified mandamus to quash an order rejecting the petitioner’s appointment as a Grade II constable in the Tamil Nadu Uniform Services, Police Department, and to direct the third respondent to appoint him. The petitioner, a B.Sc. Physics graduate, had successfully cleared all stages of the selection process, including written, physical, and interview tests. However, his candidature was rejected due to (i) suppression of details regarding a previous criminal case, which culminated in acquittal, and (ii) the petitioner’s alleged prior criminal antecedents.

The court addressed the issue of suppression, highlighting the ambiguity in the application form’s language. The Tamil translation of the question regarding criminal cases did not account for past concluded cases. The court found that the petitioner’s answer of “no” could not be deemed suppression since the query, interpreted in the context of the form, did not explicitly ask about past incidents, especially those where the petitioner had been acquitted. The court further emphasized that the form’s vague wording could not be used to disqualify the petitioner on grounds of suppression.

Significantly, the court referred to Article 11(1) of the Universal Declaration of Human Rights (“UDHR”) and Article 14(2) of the International Covenant on Civil and Political Rights (“ICCPR”). These provisions, which protect the presumption of innocence until proven guilty, were cited to underline the importance of international human rights principles in assessing the petitioner’s case. The Court emphasized that since the petitioner was acquitted after a full trial, and the charges against him were not proven, he should not be prejudiced in his employment prospects. This reliance on international conventions underscored the court’s reasoning that an honourable acquittal restores the individual’s rights, as recognized under international law.

Referring to several precedents, the court reiterated that an honourable acquittal signifies a complete exoneration, especially when the prosecution has failed to prove any charges. The trial court in the petitioner’s case had acquitted him honourably, meaning his past should not be held against him for future employment.

The court quashed the third respondent’s order and directed reconsideration of the petitioner’s application within six weeks. Emphasizing *international*

10 *T. Pugalenth v. T.N. Uniformed Service Recruitment Board*¹³, (2023) 1HCC (Mad) 611

conventions like the UDHR and the ICCPR, the court reinforced the presumption of innocence until proven guilty. It held that the petitioner's *honourable acquittal* restored his right to fair consideration for public employment, and disqualification based on past criminal charges was unjust. The court also highlighted the petitioner's scheduled caste background, underscoring the need for fairness and opportunity.

Equal wages

In the case of *Sita Mundu v. All India Institute of Medical Sciences*,¹¹ petitioner challenged the Central Administrative Tribunal's order. In this case, the petitioners, who were employed as staff nurses on a contractual basis at AIIMS, sought parity in pay with regular nurses. They argued that despite performing identical duties, they were compensated significantly less. The petitioners relied on past decisions where contractual employees in similar roles were granted equal pay. The respondents contended that contractual staff were not entitled to the same benefits as regular employees, citing differences in employment status.

The primary issue was whether the principle of "equal pay for equal work" under labor standards applied to contractual employees, entitling them to the same remuneration as their regular counterparts. The court emphasized that the principle of "equal pay for equal work" is a fundamental right, recognized under both national and international law. The Court referred to Article 7 of the International Covenant on Economic, Social and Cultural Rights ("ICESCR"), which mandates fair wages and equal remuneration for work of equal value, without any form of discrimination. It was determined that the duties performed by contractual nurses were identical to those of regular staff, rendering any pay disparity unjustifiable under international legal standards.

As a result, the court set aside the tribunal's order and directed AIIMS to pay the petitioners the minimum salary applicable to regular nurses, along with the dearness allowance. This decision reinforces India's adherence to international labor standards by upholding the principle of equal pay for equal work, ensuring contractual employees receive fair wages. The judgment aligns Indian jurisprudence with the country's international obligations, particularly the ICESCR, and reflects the vital role domestic courts play in protecting labor rights. The case highlights the importance of fair treatment for all workers, particularly in critical sectors like healthcare, and ensures constitutional rights are interpreted in harmony with international legal norms.

Rights of persons with disabilities

The case¹² in question involves a public interest litigation filed by a non-governmental organization ("NGO") *i.e.*, the petitioner under Article 226 of the Constitution of India. The petitioner, focused on advocating for the rights of persons with disabilities, alleged violations of the Right to Persons with Disabilities

11 *Sita Mundu v. All India Institute of Medical Sciences*, 2023 SCC OnLine Delhi 621

12 *PrhariSahoyg Association v. Union of India*, 2023 SCC OnLine Delhi 5796

Act, 2016 (“RPWD Act”) and the United Nations Convention on the Rights of Persons with Disabilities (“UNCRPD”). The case arose when the Department of Social Welfare, Government of NCT of Delhi (“GNCTD”), published an advertisement on October 26, 2019 in national newspapers, disclosing the identities and IQ scores of 59 women with disabilities residing at the Asha Kiran Center. The petitioner contended that this action compromised the dignity and privacy of these individuals.

Central to the case were several legal issues, including whether the publication violated the statutory provisions of the RPWD Act and whether it contravened Articles 22 and 31 of the UNCRPD, which pertain to privacy and data collection. The petitioner argued that the publication breached the right to privacy by revealing personal information without consent and failed to comply with the standards set by the UNCRPD. Conversely, the respondents maintained that the publication was intended to trace the families of the women and did not violate either the RPWD Act or the UNCRPD provisions. They emphasized their good faith efforts and compliance with the statutory framework, highlighting the necessity for rehabilitation.

In its judgment, the court acknowledged that while the publication raised privacy concerns, it was primarily aimed at facilitating family reunification for the women involved. The court recognized the state’s responsibility to ensure the rehabilitation of persons with disabilities while balancing this obligation with the rights protected under the RPWD Act and the UNCRPD. Ultimately, the court found that the respondents acted in good faith, and no violation of international law was established.

This case underscores the complex interplay between the rights of persons with disabilities and the state’s obligation to promote their welfare. The court’s ruling reflects a nuanced understanding of the relationship between national laws and international obligations, emphasizing the importance of context when evaluating actions taken in the interest of rehabilitation.

Medical insurance

This case¹³ deals with the issue of medical insurance for persons with disabilities (“PwDs”) in India. The petitioner, Mr. Saurabh Shukla, a professional with tetraplegia, was denied health insurance by Niva Bupa Health Insurance Co. Ltd. and Oriental Insurance Co. Ltd. Despite existing regulations, PwDs in India had limited access to health insurance. Shukla initially approached the Chief Commissioner for Disabilities and subsequently filed a writ petition, seeking a quashing of the rejection of his health insurance applications and requesting a mandamus to direct insurance companies to issue him a health insurance policy.

The court recognized the right to health as an integral part of the Right to Life under Article 21 of the Constitution and highlighted that PwDs cannot be discriminated against when seeking health insurance. It referred to international

13 *Saurabh Shukla v. Niva Bupa Health Insurance Co. Ltd.* 2023 SCC OnLine Del 5255.

conventions, including the United Nations Convention on the Rights of Persons with Disabilities, 2006 (“UNCRPD”), and Indian statutes like the Rights of Persons with Disabilities Act, 2016, emphasizing the principles of equality and non-discrimination.

During the proceedings, the court issued directions to the Insurance Regulatory and Development Authority of India (“IRDAI”) to ensure that health insurance products were introduced for PwDs. As a result, 29 insurance companies launched products for PwDs. However, concerns remained regarding the high premiums and loading charges imposed on such policies. The court allowed the petitioner to avail of the insurance policy offered by Niva Bupa and make a representation to IRDAI regarding the premium, loading charges, coverage, and exclusions for pre-existing diseases.

The IRDAI took steps, including constituting a committee and drafting a model policy for PwDs, and issued a circular in February 2023 directing insurers to launch products for PwDs. Despite some progress, the petitioner raised objections to specific details of the offered policy. The court acknowledged that while the products launched were not ideal, they represented a first step toward achieving equality for PwDs in the insurance sector.

The petition was disposed of with liberty for the petitioner to pursue legal remedies regarding the insurance terms, and the court reiterated the principle of reasonable accommodation as a means to ensure the full participation of PwDs in society. Furthermore, the court’s reliance on international conventions, such as the UNCRPD, underlines the importance of aligning domestic legal frameworks with global human rights standards. By recognizing the right to health as part of the Right to Life under Article 21 of the Constitution, the court reinforced the principle that discrimination against PwDs, especially in access to health insurance, is unacceptable.

Women’s rights

In this case¹⁴, the High Court of Delhi examined the constitutionality of a virginity test conducted by the Central Bureau of Investigation (“CBI”) on a female detainee accused in a homicide case during her custody in 2008. The petitioner contended that the test violated her fundamental right to dignity, as protected under Article 21 of the Indian Constitution. This case stands out not only for its constitutional implications but also for its grounding in international law principles concerning human rights, gender equality, and individual dignity.

The court’s examination drew heavily on various international legal frameworks, including the International Covenant on Civil and Political Rights (“ICCPR”), the International Covenant on Economic, Social and Cultural Rights (“ICESCR”), the Universal Declaration of Human Rights (“UDHR”), and the Convention on the Elimination of All Forms of Discrimination Against Women (“CEDAW”). These instruments collectively emphasize the importance of

14 *Sr.Sephiv v. CBI* (2023) 1HCC (Del) 646.

respecting individual rights and dignity, with the ICCPR specifically affirming the inherent dignity of all individuals and advocating for the eradication of discrimination. The court highlighted that practices such as virginity testing not only contradict these international standards but also perpetuate harmful stereotypes and discrimination against women, undermining their fundamental human rights.

By referencing these international treaties, the court reinforced the view that the right to dignity under Article 21 should be interpreted in light of India's obligations under these global instruments. The ruling confirmed that such tests are not only scientifically unfounded but also perpetuate outdated notions that infringe upon women's autonomy and dignity. This is consistent with the principles outlined in CEDAW, which advocates for the elimination of discriminatory practices against women.

In its judgment, the court directed that information regarding the unconstitutionality of virginity tests be circulated to relevant governmental bodies and judicial academies, aiming to incorporate these human rights principles into training and practice. This directive underscores a commitment to uphold international standards within India's domestic legal framework. Ultimately, the ruling affirmed the protection of individual rights and marked a significant step toward aligning India's legal standards with international human rights law. It represents a crucial affirmation of women's rights and dignity in the context of law enforcement practices, demonstrating the judiciary's role in safeguarding fundamental freedoms consistent with global norms.

Maternity leave

In this case,¹⁵ the high court addressed the fundamental right to maternity leave under Article 21 of the Constitution of India, emphasizing its significance for women in the workforce. The respondent, Sita Devi, a daily wage employee, sought maternity leave following the birth of her child in 1996. The Himachal Pradesh Administrative Tribunal granted her deemed maternity leave and work-charge status, which the State challenged, arguing the absence of formal provisions for maternity leave for daily wage workers at that time.

The high court rejected the State's petition, asserting that the right to maternity leave is a fundamental human right, which aligns with international commitments to protect women's rights. The court highlighted that India, as a signatory to various international treaties, is obligated to uphold these rights. Particularly, the Court referenced the Universal Declaration of Human Rights ("UDHR"), adopted in 1948, which under Article 25(2) asserts that "Motherhood and childhood are entitled to special care and assistance." This declaration underscores the need for states to provide support to mothers and children, which directly relates to maternity leave entitlements. Additionally, the court invoked Article 6 of the Convention on the Rights of the Child ("CRC"), which emphasizes

¹⁵ *State of H.P. v. Sita Devi*, 2023 SCC OnLine HP 657

that every child has an inherent right to life and the state's obligation to ensure the child's survival and development. The relevance of international conventions was further established through the Convention on the Elimination of all Forms of Discrimination against Women ("CEDAW"), ratified by India in 1993, which calls for the elimination of discrimination against women and the promotion of gender equality in all spheres, including maternity rights.

The International Labour Organization's ("ILO") Maternity Protection Convention 2000 was also pertinent, reinforcing the right to maternity leave for all women, irrespective of their employment status. The court asserted that such international standards should be reflected in domestic laws and that the absence of specific provisions for daily wage workers does not negate their entitlement to maternity leave.

The judgment highlighted several precedents which recognized that the provisions of the Maternity Benefit Act, 1961, extend to women on a casual or daily wage basis. It reinforced the principle that the dignity of motherhood and child care must be protected, thereby affirming the state's responsibility to ensure just and humane working conditions as mandated by Article 42 of the Constitution.

In furtherance of this, the high court upheld the tribunal's decision, emphasizing that denying maternity leave violates both constitutional rights and international obligations to protect and promote women's rights in the workplace. The petition was dismissed, affirming the importance of aligning domestic law with international human rights standards.

Human dignity

In the case of *Mohd. Sameer Rao v. State of U.P.*¹⁶, who challenged the Regional Secretary, Madhyamik Shiksha Parishad, Regional Office, Bareilly, U.P.'s refusal to change his name in his High School and Intermediate certificates, the court addressed key issues related to fundamental rights under the Constitution of India. The petitioner had publicly announced his name change through a Gazette Notification and a local newspaper, but his application was rejected due to an alleged failure to meet the limitation period set by the authorities. The court examined whether this limitation was reasonable and constitutional, particularly in light of the Uttar Pradesh Intermediate Education Act, 1921, and its Regulation 40.

The court found the restrictions imposed by the authorities to be disproportionate and in violation of the petitioner's fundamental rights. It emphasized the significance of human dignity as a core constitutional value. In its ruling, the court referenced several international human rights standards, including Article 24(2) of the International Covenant on Civil and Political Rights, which protects children's right to preserve their identity; Article 8 of the Convention on the Rights of the Child, which acknowledges the importance of maintaining a child's identity; Article 18(2) of the Convention on the Rights of Persons with Disabilities, which highlights respect for personal identity; Article 18 of the

¹⁶ *Mohd. Shahnawaz v. State of U.P.* 2023 SCC OnLine All 4207.

American Convention on Human Rights, which affirms the protection of personal identity; and Article 6(1) of the African Charter on the Rights and Welfare of the Child, which ensures recognition of a child's identity.

By aligning its judgment with these international principles, particularly regarding human dignity and the test of proportionality, the court ultimately ruled that the rejection of the name change application was unconstitutional. It ordered the authorities to permit the petitioner to change his name from "Shahnawaz" to "Md Sameer Rao" and mandated the issuance of updated identity documents.

This case highlights the importance of safeguarding fundamental rights and ensuring that state regulations do not impose unreasonable restrictions that violate individual dignity and identity. It highlights the relationship between domestic law and international human rights standards, affirming the need for legal frameworks to evolve to protect individual rights effectively.

Mandamus

In this writ petition,¹⁷ the petitioner, Pooja Sharma, sought a writ of mandamus from the court to sell her husband Vikas Sharma's property to fund his medical treatment. Vikas Sharma has been in a comatose state since an accident, and his wife, unable to meet the substantial medical expenses, has approached the court for permission to sell his land and receive government assistance for his care. The petitioner contends that there is no specific legislation in India for appointing a guardian for a person in a comatose state, unlike provisions available for minors or individuals with mental illnesses.

The court observed that the petitioner's husband cannot make decisions regarding his property due to his vegetative state, necessitating the appointment of a guardian. The doctrine of *parens patriae*, historically established in the United Kingdom and also recognized in India, places the state in the role of protector for individuals who cannot care for themselves. This doctrine has been invoked to deal with persons in a vegetative state, where there are no specific provisions under the Mental Healthcare Act, 2017 ("MHA") or the Guardian and Wards Act, 1890 to appoint a guardian.

International conventions, particularly the United Nations Convention on the Rights of Persons with Disabilities ("UNCRPD"), played a significant role in shaping the court's decision. The UNCRPD, broadens the definition of disabilities to include physical and intellectual impairments, advocating for the dignity and freedom of choice for persons with disabilities. Article 1 of the Convention stresses the need to protect the rights and freedoms of such individuals, and the Preamble of the Convention recognizes the family as the fundamental unit entitled to state protection. The Government of India has aligned its domestic laws with these international obligations, resulting in the enactment of the Rights of Persons with Disabilities Act, 2016 ("PWD Act") and the MHA. The PWD Act, under Section 14, provides for guardianship of persons with disabilities who cannot make decisions independently.

¹⁷ *Pooja Sharma v.State of U.P.* 2023 SCC OnLine 1047.

The court acknowledged that while the MHA focuses primarily on healthcare and rehabilitation, it does not address the management of financial assets for persons with mental illnesses, unlike its predecessor, the Mental Health Act, 1987. The 2017 Act allows for the appointment of a “nominated representative” who assists in making healthcare-related decisions but does not extend to property management. However, the PWD Act provides for the appointment of a guardian for persons with disabilities, including those in vegetative states, emphasizing their rights and welfare.

Based on international conventions and domestic legal provisions, the court invoked its *parens patriae* jurisdiction to appoint Pooja Sharma as the guardian of her husband. She was granted the authority to sell the property, manage her husband’s financial affairs, and use the proceeds for his medical care. The court established clear guidelines to ensure transparency in the sale process and stipulated that the sale proceeds be deposited with the Registrar General of the court to generate interest income for the family’s support. The writ petition was thereby allowed, and the petitioner was appointed as the legal guardian of her husband.

Environmental law

The petitioner¹⁸ entered a development agreement for a G+6 residential building, which was to be completed within three years. In June 2023, the petitioner was informed that the District Magistrate of Malda issued a directive halting the registration of deeds in five mouzas, including the petitioner’s property. This order was based on a National Green Tribunal (“NGT”) ruling concerning alleged encroachments on a waterbody (Chatra Beel). The petitioner sought to quash this directive and the NGT proceedings, arguing that the property in question was incorrectly categorized as a waterbody and that the NGT lacked jurisdiction.

The case references the Wetlands (Conservation and Management) Rules, 2017, which align with the principles of the Ramsar Convention - an international treaty focused on the conservation and sustainable use of wetlands. The NGT’s authority was questioned concerning its jurisdiction over properties not recognized as wetlands of international importance under the Ramsar criteria. The case highlighted the interplay between domestic law and international environmental treaties, emphasizing that jurisdictional authority must conform to established legal frameworks.

The court partially allowed the writ petition, setting aside the District Magistrate’s directive. It concluded that the NGT lacked jurisdiction over the property as it had not been declared a significant wetland under the 2017 Rules or recognized under the Ramsar Convention. The court clarified that the NGT could not impede the registration of validly executed documents and allowed the petitioner to present their jurisdictional concerns before the NGT. The ruling reaffirmed the significance of adhering to international environmental standards and the limits of domestic regulatory authorities concerning environmental governance.

18 *Tushar Kanti Das v.State of W.B.* 2023 SCC OnLine Cal 2608.

The decision reinforced the necessity for local regulatory bodies to comply with international environmental treaties like the Ramsar Convention when determining jurisdiction over waterbodies and wetlands. It also established that the absence of a declaration under international law standards may preclude domestic tribunals from exercising jurisdiction, ensuring that international legal principles guide national adjudications in environmental matters.

Environment

This case¹⁹ pertains to the environmental concerns raised due to the operation of brick kilns in Bihar. A total of 102 brick kilns were directed to close due to violations of environmental standards. The Bihar State Pollution Control Board emphasized that the production of traditional bricks was detrimental to the environment, causing significant agricultural land loss and high carbon emissions. The issue escalated as 49 units remained non-compliant despite the closure orders, prompting judicial intervention.

The Supreme Court of India invoked international law principles to underscore the importance of environmental protection, referencing the Stockholm Declaration, regarded as the “Magna Carta” of environmental rights. This declaration emphasizes the need to balance economic development with ecological sustainability. The court reaffirmed the precautionary principle and polluter pays principle as essential components of domestic environmental law, thereby reinforcing the state’s obligation to prevent environmental degradation.

In its ruling, the Supreme Court mandated the immediate closure of the remaining 49 non-compliant brick kilns and instructed local authorities to enforce these closure orders effectively. Additionally, awareness programs promoting the use of environmentally friendly fly ash bricks were mandated. This judgment emphasized the integral role of international law in shaping domestic environmental policies, aligning India’s obligations with global sustainable development goals. It also reiterated that the right to a healthy environment is fundamental to the right to life under Article 21 of the Indian Constitution, asserting that the government must take all necessary steps to promote sustainable development while ensuring strict compliance with environmental norms. Thus, this judgment not only provided immediate relief by addressing specific non-compliance but also reinforced the broader obligation of the state to protect the environment, illustrating the significant impact of international law on domestic judicial decisions.

Rights of the child

This writ petition²⁰ arose from a tweet made by the petitioner, Suvendu Adhikari, an elected Member and Leader of the Opposition in the West Bengal State Legislative Assembly. The tweet, referencing the security arrangements for a birthday party of “Koyla Bhaipo’s son,” resulted in a complaint by the respondent.

19 *Anmol Kumar v. State of Bihar*, 2023 SCC OnLine Pat 278.

20 *Suvendu Adhikari v. W.B. Commission for Protection of Child Rights*, 2023 SCC OnLine Cal 242.

The West Bengal Commission for Protection of Child Rights issued show-cause notices to Adhikari, alleging that the tweet violated child rights under the Commission for Protection of Child Rights Act, 2005, and the West Bengal Commission for Protection of Child Rights Rules, 2012. The petitioner sought the quashing of these notices.

The core issue in the appeal was whether the tweet amounted to a violation of child rights and whether the Commission had the jurisdiction to act under the 2005 Act. The respondent Commission invoked the United Nations Convention on the Rights of the Child (“UNCRC”) to justify its actions, citing provisions such as article 8, which provides for preserving a child’s identity, name, and family relations, and Article 16, which deals with protecting a child from arbitrary interference with privacy, honour, or reputation.

The petitioner’s counsel argued that the tweet did not specifically identify the child, nor was it intended to harm the child’s rights under the Act or the UNCRC. The high court agreed, concluding that the tweet was politically charged, with no direct reference to or violation of the child’s rights. It held that the Commission lacked the jurisdiction to issue the show-cause notices, as the tweet did not meet the threshold of violating child rights under the Act or the UNCRC. The court emphasized that the child’s privacy and dignity must be safeguarded under international law but noted that the political context and ambiguous language of the tweet did not constitute a breach of these protections.

In line with the principles of the UNCRC, the court underscored the seriousness of child rights protection but held that this particular case did not involve a legitimate violation of such rights. Consequently, the impugned notices were stayed until the matter could be fully adjudicated.

The judgment emphasizes the importance of aligning domestic laws, such as the Commission for Protection of Child Rights Act, with international standards laid out in conventions like the UNCRC. Ensuring this alignment enhances the protection of child rights, reflecting India’s commitment to uphold international legal norms. This harmonization is crucial to ensuring that domestic legislation not only adheres to international obligations but also effectively protects the rights and dignity of children within the country.

Protection of children from sexual offences

In this criminal appeal²¹, the appellant challenges his conviction under Sections 363, 366A, and 376(2)(n) of the Penal Code, 1860, alongside Sections 4 and 6 of the Protection of Children from Sexual Offences Act (POCSO). The trial court sentenced him to 10 years of imprisonment, of which he has already served over eight years. During the appeal process, the appellant sought interim bail, which was granted, but he faced difficulties in complying with the conditions and remained incarcerated. A report indicated that he is eligible for a remission of over a year, prompting the request for a final hearing of the appeal.

21 *Omkar Dattatraya Dangat v. State of Maharashtra*, 2023 SCC OnLine Bom 2251.

The appeal revolves around the circumstances of the case, where the victim, having developed a relationship with the appellant, became pregnant at the age of 16. This situation highlights significant issues regarding the protection of children's rights in India. The POCSO Act, enacted in 2012, serves as a crucial legal framework aimed at addressing the grave concerns of child sexual exploitation and abuse. The court observed that as India has the largest population of children globally, it is imperative to protect their rights as mandated in the Constitution and international conventions.

The court recognized India's commitment to international standards for child protection, which is evident through its ratification of the UN Convention on the Rights of the Child ("UNCRC"). It emphasizes the need for states to undertake measures ensuring the best interests of children. The POCSO Act emerged from recognizing the inadequacies in existing laws that failed to provide comprehensive protection for children against sexual offences. This Act aims to create a gender-neutral framework addressing various forms of sexual abuse and mandates the establishment of special courts for expeditious trials.

Moreover, the court also highlighted how the Indian Constitution empowers the state to enact laws for the welfare of children, reflecting its commitment to preventing exploitation and ensuring the healthy development of children. Articles 15 and 39 explicitly highlight the necessity for protective measures, underlining the state's duty to shield children from abuse. The stringent provisions of the POCSO Act, which prescribe severe penalties for offenders, aim to deter sexual offences against minors and reinforce the protection of children's rights. Thus, in light of the evidence presented and the legal framework, the court upheld the conviction of the appellant, emphasizing the importance of safeguarding children's rights in alignment with international standards.

Custody of child

This writ petition was filed by the petitioner²² seeking a writ of Habeas Corpus or any other order directing the respondent to produce Master Siddharth Sankar and ensure his custody is transferred to the petitioner, repatriating the child to Germany. The petitioner and respondent no. 2 were married in Bangalore, with their son born in Germany. Due to matrimonial disputes, the wife left Germany with the child, leading to custody petitions in both Germany and India.

The petitioner contended that the unilateral removal of the child from Germany contravened existing custody orders and emphasized the best interest of the child principle. Central to the petitioner's argument was the reliance on the United Nations Convention on the Rights of the Child ("CRC"), particularly article 9, which states that children should not be separated from their parents against their will, except when it is necessary in the best interests of the child. The petitioner argued that the child should return to his habitual residence in Germany to ensure his rights under the CRC are respected and upheld.

22 *Sankar Viswanathan v. State of Karnataka*, 2023 SCC OnLine Kar 9.

The petitioner's counsel asserted that the child's upbringing in Germany aligns with his status as a German citizen and that the CRC mandates the child's return to his habitual residence. This argument was further supported by the notion that the CRC obliges state parties to act in the best interests of the child, which, in this case, would mean repatriating him to Germany where he has established familial ties and stability. Conversely, the wife's counsel contended that the son's custody was legal and that the Indian Family Court had granted her interim custody, arguing that the child's current living situation in Bangalore provides stability and security, which the CRC also recognizes as vital to a child's development.

The court acknowledged the principles established in prior rulings, particularly from the Supreme Court, which underscore that the best interests of the child are paramount in custody matters. While recognizing the significance of the CRC in guiding child custody decisions, the court emphasized the need to consider the specific circumstances of the case, including the child's stability and well-being in India. The court noted the relevance of the CRC's provisions on preventing child abduction and protecting the rights of children to maintain contact with both parents, yet determined that the existing family dynamics in Bangalore warranted a careful consideration of the child's current environment.

Thus, the court concluded that the child's current living situation with his mother and grandparents in India was conducive to his welfare and emotional stability. It held that there was no illegal custody to warrant a writ of habeas corpus and emphasized that the welfare of the child remains the primary consideration in custody disputes. The court dismissed the petition and allowed the son to stay with his mother in India until the custody issues under the Guardian and Wards Act, 1890 were resolved. While the court's decision ultimately prioritized the child's immediate welfare and stability in India, it recognized that the principles outlined in the CRC serve as a vital framework for ensuring that children's rights are upheld in custody matters.

Rights of the child

In this Public Interest Litigation, the petitioners²³, a cultural organization and social activists, sought to challenge the practice of non-therapeutic circumcision on children, alleging it violates fundamental rights under the Indian Constitution. The petitioners argued that circumcision, when performed for religious reasons without medical necessity, infringes on a child's bodily autonomy, dignity, and protection from harm. They relied on international studies to claim that the practice is not an essential part of Islamic religious observance and causes irreversible physical and psychological harm. The petitioners also invoked international conventions such as the United Nations Convention on the Rights of the Child ("UNCRC") and the International Covenant on Civil and Political Rights ("ICCPR"). They emphasized that India, as a signatory to these treaties, has obligations to protect children's rights, including their rights to health, bodily

23 *Non Religious Citizens (N.R.C.). v. Union of India* MANU/KE/0732/2023.

integrity, and freedom from harmful traditional practices. The petitioners argued that non-therapeutic circumcision violates these international standards by subjecting children to irreversible harm without their consent.

The High Court of Kerala dismissed the writ petition, but not on the merits of the arguments related to circumcision or international law. The dismissal was primarily based on procedural grounds, with the court noting its reluctance to intervene in religious practices without clear legislative guidance. Despite the petitioners' reliance on international conventions and human rights arguments, the court did not find sufficient grounds to declare circumcision illegal or unconstitutional. The international law arguments were acknowledged but ultimately did not sway the court's decision, which deferred the matter for consideration by the legislature.

Right to a fair trial

In this case,²⁴ the applicant sought condonation of a delay of 838 days in filing an appeal under Section 21 of the National Investigation Agency Act, 2008 ("NIA Act"). The appeal was made against an order rejecting the applicant's bail application under charges related to terrorism and fraud. The key legal question was whether the appellate court could condone a delay beyond 90 days, as stipulated by the 2nd proviso to Section 21(5) of the NIA Act.

The court's analysis primarily centered on whether the strict 90-day limitation under the NIA Act could be extended through the application of the Limitation Act, 1963, and if the word "shall" in the proviso should be interpreted as mandatory or directory. The court explored various divergent judgments from different High Courts to determine the interpretation of the provision, concluding that the provision was directory, not mandatory.

A key aspect of the court's judgment involved the invocation of international legal principles, particularly the Universal Declaration of Human Rights ("UDHR") and the International Covenant on Civil and Political Rights ("ICCPR"). The court noted that Article 12 of the UDHR and Article 14(5) of the ICCPR enshrine the right to a fair trial, and these international conventions emphasize the fundamental human right to appeal and seek redress in criminal cases. The court also highlighted the relevance of Article 21 of the Indian Constitution, which guarantees the right to life and liberty, noting that this right includes the right to a fair trial and an appeal.

The court observed that the right of appeal, linked to Article 21, must be interpreted in a manner consistent with these international principles, ensuring that an accused person is not denied access to justice. The court emphasized that an appeal is not merely procedural but a substantive right, intrinsic to the right to fair trial, and cannot be restricted by procedural technicalities like a rigid limitation period. The judgment further pointed out that denying the right to appeal due to a procedural delay, despite sufficient cause, would violate fundamental rights, both

²⁴ *Faizal Hasamali Mirza v. State of Maharashtra*, 2023 SCC OnLine Bom 1936.

under the Indian Constitution and international law. Thus, the court decided to read down the mandatory language of the NIA Act to ensure access to justice, aligning domestic law with international human rights norms. Therefore, the court condoned the delay, allowing the applicant to file the appeal, affirming that the procedural restrictions under the NIA Act should not override the substantive right to appeal, as safeguarded by both national and international law.

Deportation

In this case²⁵, a United States citizen sought to challenge a deportation order issued by India's Bureau of Immigration under the Foreigners Order of 1948 and the Foreigners Act. The petitioner, who had resided lawfully in India for several years, had a criminal record that included offences related to children.

The petitioner highlighted the application of Article 13 of the ICCPR, which stipulates that an alien lawfully in a State's territory may be expelled only through a decision reached per the law. The petitioner contended that his deportation violated this principle, asserting that the legal procedures had not been adhered to adequately and that his circumstances warranted a more compassionate consideration.

In contrast, the respondents, including the Bureau of Immigration, emphasized the gravity of the petitioner's criminal history, particularly concerning child-related offences. They argued that his continued presence in India posed a potential threat to public safety, especially for children. The respondents maintained that the decision to deport him was both lawful and necessary for the protection of societal interests, asserting that the Foreigners Act permits the expulsion of individuals who may jeopardize national security.

In the end, the court ruled against the petitioner, dismissing his appeal. It was concluded that the petitioner failed to demonstrate a clear violation of his rights under the ICCPR or Indian law. While the court acknowledged the significance of international law, it ultimately favoured the government's prerogative to regulate immigration and uphold public order. This judgment highlights the intricate balance between safeguarding individual rights and ensuring public safety and illustrates the particulars inherent in immigration cases of this nature.

Right to live with family

In this case²⁶, the petitioner, a Senior Scientist working at the Centre for Development of Advanced Computing ("C-DAC"), Thiruvananthapuram, challenged an order transferring him to Jammu and Kashmir. The petitioner argued against the transfer on the grounds of his son Priyan's severe locomotor disability, which required continuous parental care. While the Central Administrative Tribunal ("CAT") dismissed the challenge, the High Court of Kerala intervened to examine whether the transfer order adequately considered the rights of the child with disabilities in light of international law.

25 *Dhanraj Rajendra Patel v. Union of India*, 2023 SCC OnLine Guj 148.

26 *Balan C. v. Union of India*, 2023 SCC OnLine Ker 1039.

The high court's decision hinged on various international treaties and conventions that India has ratified, especially those emphasizing the rights of persons with disabilities. The court relied extensively on the United Nations Convention on the Rights of Persons with Disabilities ("UNCRPD"), ratified by India on 1st October 2007, to render its judgment. Article 19 of the UNCRPD, which ensures the right of persons with disabilities to community life and to choose their place of residence on an equal basis with others, was central to the petitioner's argument. The court highlighted that the petitioner's child, Priyan, should have the right to live with his family, and the transfer order would severely impact the child's ability to live a life of dignity within the family environment.

Furthermore, the Court referred to Article 23(3) and Article 23(4) of the UNCRPD, which stipulate that children with disabilities must not be separated from their parents unless such separation is in the child's best interest. The court emphasized that no such necessity was established in this case and that the transfer order overlooked the importance of family life for the child's development.

The court also drew upon the United Nations Convention on the Rights of the Child ("UNCRC"), particularly its Preamble, which underscores the significance of family as the fundamental unit for a child's growth and well-being. It stressed that Priyan's familial environment should be maintained for his harmonious development, in line with international norms. Rule 9 of the 1993 UN Standard Rules on the Equalization of Opportunities for Persons with Disabilities, which recognizes the right of persons with disabilities to live with their families, was also invoked to support this position.

In addition to international conventions, the high court referred to India's domestic law, specifically the Rights of Persons with Disabilities Act, 2016 ("PWD Act"), which reflects principles from the UNCRPD. Section 5 of Chapter II of the PWD Act enshrines the right of persons with disabilities to live in the community and mandates government support to enable them to enjoy this right equally. The Court found that the petitioner's transfer would violate these legal protections, as the child's care needs were not adequately addressed.

The high court concluded that the transfer order was illegal as it failed to consider the petitioner's unique family circumstances, which are protected under international conventions and domestic law. The court set aside the impugned orders and directed C-DAC to reconsider the transfer in line with the principles of international law, ensuring that the rights of the petitioner's child were prioritized.

IV CONCLUSION

The analysis of recent cases underscores the significant influence of international treaties and conventions on shaping domestic legal rulings in India. These cases highlight the growing alignment between international legal norms and India's constitutional framework, showcasing how international commitments are increasingly being integrated into the country's legal system. However, it remains essential to recognize that international treaties do not automatically become part of Indian law; they require explicit legislative approval by the Indian

Parliament. This ensures that treaty obligations are effectively implemented and enforced within the Indian legal context. The Constitution grants the Indian government the authority to enter into international agreements, reflecting the crucial relationship between international law and domestic law.

The Indian judiciary has adopted a forward-thinking and dynamic approach to addressing complex legal issues, blending both domestic and international legal principles. This has led to notable advancements across various legal fields, including social justice, environmental preservation, and other public international law matters. The judgments discussed have played a pivotal role in bridging gaps within the national legal framework while aligning it with global legal standards, thus contributing to the progressive implementation of international law in India. These cases also emphasize the judiciary's commitment to upholding the general principles of international law as well. The proactive stance of the judiciary in safeguarding these principles demonstrates its dedication to maintaining human rights and adhering to international legal standards.

Moving forward, there is a growing need to continue harmonizing national laws with international obligations. As legal principles evolve in response to changing global realities, the Indian judiciary's role in interpreting cases from multiple perspectives will be essential to this process. This ongoing reconciliation between domestic and international law will contribute to the development of a more cohesive global legal framework, advancing the goals of international law and global organizations.

