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INTERNATIONAL LAW

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I INTRODUCTION

THE CONSTITUTION of India lays down clearly the bases on which foreign policy should be framed and respected. Article 51 of the Constitution stipulates that international peace and security, international relations and international obligations are matters which, under the Indian Constitution, fall exclusively within the domain of the Union. Though, article 51(c) does not deal with the enforcement of implementation of treaties; it only obligates the state to foster respect for "international law and treaty obligations" in inter-state relations. This survey embodies the object of India in the international sphere. However, it does not lay down that international treaties or agreements entered into by India shall have the force of municipal law without appropriate legislation undertaken under article 253. This article is in conformity with the objectives as declared by article 51(c), *i.e.*, treaty making and implementing of treaties. Article 51(c) does not deviate from the well-established principle that every state is bound by the principles of international law. Technically speaking, obligations arising from treaties are not judicially enforceable in India unless they are backed by legislation.

An attempt has been made under the study to find out the application of international treaties by the Supreme Court of India in the year 2013 in some important decided cases. It is interesting to highlight that the court has referred to international treaties in a good number of cases, which clearly indicates that courts in India are well aware of the importance of international law and its application and are not hesitant to apply it whenever necessary to support their judgments.

II HUMAN RIGHTS AND INTERNATIONAL PRESPECTIVE

Lillu@Rajesh v. *State of Haryana*[1] this criminal appeal was filed against the judgment passed by the High Court of Punjab & Haryana affirming the judgment of Additional Sessions Judge, Jind convicting the appellant under section 376 of the Indian Penal Code, 1860 (IPC) and awarding the sentence of seven years rigorous imprisonment with a fine of Rs. 5,000. Counsel for the appellant submitted

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1 AIR 2013 SC 1784.

before the court that the prosecution had failed to prove the date of birth of the prosecutrix was about 17-18 years old at the time of the incident and thus was a clear cut case of consensual sex and not rape. The apex court stated that according to two important international instruments, namely the International Covenant on Economic, Social, and Cultural Rights 1966[2] and the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power 1985[3], rape survivors are entitled to legal recourse that does not retraumatize them or violate their physical or mental integrity and dignity.[4] They are also entitled to medical procedures conducted in a manner that respects their right to consent. Medical procedures should not be carried out in a manner that constitutes cruel, inhuman, or degrading treatment and health should be of paramount consideration while dealing with gender-based violence. The state is under an obligation to make such services available to survivors of sexual violence.[5] Proper measures should be taken to ensure their safety and there should be no arbitrary or unlawful interference with their privacy. The court upheld the decision of the high court and dismissed the appeal.

Restitution and compensation

Ankus Shivaji Gaikwad v. State of Maharashtra[6]

This appeal arises out of a judgement of 24.08.10 passed by the High Court of Judicature at Bombay, Aurangabad Bench, upholding the appellant's conviction for the offence of murder punishable under section 302 of the IPC and the sentence of imprisonment for life with a fine of Rs.2, 000/- awarded to him. In default of payment of the fine the appellant has been sentenced to undergo a further imprisonment for a period of three months. From an international law perspective, this case is important because the court referred to the UN Basic Principles and Guidelines on the Right to Reparation for Victims of Violation of Human Rights and highlighted the relevant provisions:[7]

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2 International Covenant on Economic, Social and Cultural Rights was adopted on 16 December 1966 and entered into force in 3 January 1976. 162 States are parties to the Convention. The Government of India ratified the Convention on 10 April 1979.

3 Adopted by the United Nations General Assembly on 29 November 1985, A/RES/40/34, *available at*: < http://www.un.org> (last visited on July 15, 2004).

4 The Supreme Court in *State of Punjab* v. *Ramdev Singh***,** AIR 2004 SC 1290, held that rape is violative of victim's fundamental right under art. 21 of the Constitution. So, the courts should deal with such cases sternly and severely. Sexual violence, apart from being a dehumanizing act, is an unlawful intrusion on the right of privacy and sanctity of a woman.

5 *Supra* note 1 at 1787 .

6 AIR 2013 SC 2454.

7 *Id*. at 466.

> Restitution shall be provided to re-establish the situation that existed prior to the violations of human rights or international humanitarian law. Restitution requires inter alia, restoration of liberty, family life citizenship, return to one's place of residence, and restoration of employment or property.
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> Compensation shall be provided for any economically assessable damage resulting from violations of human rights or international humanitarian law, such as:[8]
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> (a) Physical or mental harm, including pain, suffering and emotional distress;
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> (b) Lost opportunities including education;
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> (c) Material damages and loss of earnings, including loss of earning potential;
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> (d) Harm to reputation or dignity;
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> (e) Costs required for legal or expert assistance, medicines and medical services

The court allowed the appeal but only to the extent that instead of section 302 IPC the appellant shall stand convicted for the offence of culpable homicide not amounting to murder punishable under section 304 Part II IPC and sentenced to undergo rigorous imprisonment for a period of five years.

Intellectual Property Rights

On 01.04.13, the Supreme Court of India rendered judgment on an appeal filed by *Novartis*[9] against the decision of Indian Patent Office rejecting a product patent application for a specific compound, the beta crystalline form of *imatinib mesylate*. Imatinib mesylate is used to treat chronic myeloid leukemia and is marketed by Novartis as "Glivec" or "Gleevec". The apex court upheld the rejection by the Indian Patent office, and confirmed that the beta crystalline form *of imatinib mesylate* failed the test of section 3(d).[10] Section 3(d) stipulates the conditions to

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8 *Ibid.*

9 *Novartis A.G.* v. *Union of India,* (2013) 6 SCC 1.

10 In May 2006, Novartis had filed two writ petitions before the Madras High Court under art. 226 of the Indian Constitution to declare that section 3(d) of the Patents Act, 1970 as substituted by the Patents (Amendment) Act, 2005 is non-complaint with the World Trade Organisation Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)) and is unconstitutional being vague, arbitrary and violative of art. 14 of the Constitution of India and consequentially to direct the Controller General of Patents & Designs to allow the Patent Application. The challenges on TRIPS compliance and constitutionality of s. 3 (d) were heard by

be fulfilled for patenting of an invention. The *efficacy* criterion is discussed in the section as:[11]

> For the purposes of this clause, salts, esters, ethers, polymorphs, metabolites, pure form,
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> particle size, isomers, mixtures of isomers, complexes, combinations and other derivatives of known substance shall be considered to be the same substance, unless they differ significantly in properties with regard to efficacy.

The court clarified that efficacy as contemplated under section 3(d) is therapeutic efficacy. The judgment has received severe criticism from a number of originator pharmaceutical companies on the ground it has dealt a harsh blow against the future of innovation. However, the judgment is well-crafted and court took a balanced view of the matters brought before the court.

Environment

Centre for Environment Law, WWF-I v. UOI

In *Centre for Environmental Law, WWF- I* v. *UOI*,[12] the petitioner approached the Supreme Court to decide the necessity of a second home for Asiatic Lion, an endangered species, for its long term survival and to protect the species from extinction. In this case the court extensively referred to various international environmental treaties and their applicability at the national level while delivering the final judgment. At the international level, concern for protection of the environment was reflected for the first time at the Stockholm Conference on Human Environment in 1972, in which India also participated. This was an important step towards protection of the environment by the international community. The outcome of the conference was adoption of the Stockholm Declaration, which laid down the foundation of sustainable development and urged the nations to work together for the protection of the environment.[13] After 20 years once again the international community met in Rio De Janerio, in the year 1992 and adopted Conventions on Biological Diversity. The Biological Diversity Convention recognized for the first

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the Madras High Court. The court held that it did not have jurisdiction to decide a case concerning the compliance of domestic law with an international treaty. The Madras High Court dismissed both writ petitions and the judgment was not appealed.

11 *Available at:* http://ipindia.nic.in/ipr/patent/patent_Act_1970_28012013_book.pdf. (last visited on Aug. 20, 2014).

12 (2013) 8 SCC 234.

13 The Stockholm Declaration had an impact on development of environmental law in India. 42nd Constitutional Amendment has added art. 48 (A) and 51(g) under the Indian Constitution. According to art. 48 and art. 51-A of the Constitution of India the state has a duty to protect and improve the environment and safeguard the forests and wildlife in the country, a duty cast upon all the states in the Union of India.

time in international law that the conservation of Biological Diversity is a common concern of human kind and is an integral part of the development process. Subsequently the Indian Parliament also passed the Biological Diversity Act in the year 2002, followed by the National Biodiversity Rules in the year 2004. The main objective of the Act is the conservation of biological diversity, sustainable use of its components and fair and equitable sharing of the benefits arising out of the utilization of genetic resources. Bio- diversity and biological diversity includes all the organisms found on our planet *i.e.*, plants, animals and micro-organisms, the genes they contain and the different eco-systems of which they form a part. Once again the states renewed their commitment to sustainable development at Rio+20—promising to promote an economically, socially and environmentally sustainable future for our planet and for present and future generations.[14]

International Union for Conservation of Nature (IUCN) has highlighted that the only living representative of lions once found throughout much of south-west Asia is now available in Gir Forest in India. IUCN has identified the Asiatic Lion as a critically endangered species in the IUCN Red List. The IUCN adopted a resolution in 1963 by which a multi-lateral treaty was drafted as the Washington Convention also known as the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), 1973.[15] The court observed that the Government of India in the light of articles 48A and 51A (g), adopted various Policies and legislations for proper implementation of the Convention on Biological Diversity (CBD), IUCN and CITES.

The National Board of Wild Life (NBWL) was constituted by the Parliament to frame policies and advise the Central and state governments on the ways and means of promoting wild life conservation and to review the progress in the field of wild life conservation in the country and suggest measures for improvement. The Central and the state governments cannot brush aside its opinion without any cogent or acceptable reasons.[16]

Anthropocentric v. *Eco-Centric*

Anthropocentrism is always human interest focussed thinking that non-humans have only instrumental value to humans, in other words, humans take precedence and human responsibilities to non-humans are based on benefits to humans. Eco-centrism is nature-centred, where humans are part of nature and non-humans have intrinsic value. In other words, human interest does not take automatic precedence

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14 The United Nations Conference on Sustainable Development (Rio+20) held in Rio de Janeiro, Brazil, on 20–22 June 2012, and adopted an outcome document entitled "The Future We Want".

15 CITES entered into force on 1st July, 1975, which aims to ensure that international trade in specimens of wild animals and plants does not threaten the survival of the species in the wild.

16 *Supra*. note 12 at 252.

and humans have obligations to non-humans independently of human interest. Eco-centrism is, therefore, life-centred, nature-centred where nature includes both humans and non-humans.[17]

The court, while examining the necessity of a second home for the Asiatic lions, adhered to eco-centric approach. It held that the Asiatic Lion currently exists as a single sub-population and is thus vulnerable to extinction from unpredictable events, such as an epidemic or large forest fire *etc.* and thus it is important to safeguard this endangered species because this species has a right to live on this earth, just like human beings.

Environment and rights of indigenous peoples

Orissa Mining Corporation Ltd. v. *Ministry of Environment and Forests*[18]

Orissa Mining Corporation (OMC), a State of Orissa Undertaking, approached the Supreme Court seeking a Writ of *Certiorari* to quash the order passed by the Ministry of Environment and Forests (MoEF) of 24.08.10 rejecting the stage-II forest clearance for diversion of 660.749 hectares of forest land for mining of bauxite ore in Lanjigarh Bauxite Mines in Kalahandi and Rayagada Districts of Orissa and also for other consequential reliefs.

The facts of the case are as follows: on 28 February 2005, the Orissa government forwarded a proposal to the MoEF for diversion of around 661 ha of forest land for mining bauxite ore (the Bauxite Mining Project) in favour of the state-owned OMC in the Kalahandi and Rayagada Districts. On 02.03.05, the Central Empowered Committee (CEC) wrote to the MoEF stating that CEC was examining the project proposal for diversion of forest land and that, till CEC takes a final decision in this regard, this matter should not be decided by the MoEF. However, Vedanta Resources (Vedanta) approached the Supreme Court seeking a direction to the MoEF to take a decision on the application for forest clearance for bauxite mining submitted by the state government on 28.02.05.

The question posed by the court in deciding the application was whether Vedanta should be allowed to set up an Alumina Refinery Project (the ARP) in Lanjigarh Tehsil of District Kalahandi. The CEC had objected to the grant of clearance sought by Vedanta on the ground that the ARP would be totally dependent on mining of bauxite from Niyamgiri Hills, Lanjigarh, which was a vital wildlife habitat and formed part of an elephant corridor. The CEC had also objected on the ground that the ARP would obstruct the proposed wildlife sanctuary and the residence of tribes like Dongaria Kondh. On 23.11.07, the court held that it was not agreeable to grant clearance to the ARP and disposed of Vedanta's application. However, the court did grant liberty to Sterlite (a parent company of Vedanta) to

17 *Supra* note 12 at 256.

18 (2013) 6 SCC 476.

move the court if they would agree to comply with the conditions suggested by the court. Sterlite, the state government and OMC subsequently accepted the conditions suggested by the court. The MoEF subsequently agreed in principle with the proposal forwarded to it by the state government April 2009 and granted environmental clearance to OMC (stage-I approval). Although stage-I approval was subject to various conditions, including a requirement for OMC to obtain the necessary forestry clearances under the Forest (Conservation) Act, 1980 (India).

The state government then forwarded the final proposal to the MoEF on 10.08.09 stating that the user agency had complied with all the conditions stipulated in the letter of MoEF dated 11.12.08. The final proposal was subsequently placed before the Forest Advisory Committee (the FAC) on 04.11.09. The FAC recommended that the final clearance should be considered only after the Gram Sabha had determined the community rights of forest dwelling scheduled tribes (FDSTs) and other traditional forest dwellers (TFDs) pursuant to section 6 of The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006.[19] After further expert investigations had taken place into the issue of community rights, the FAC opined that it was a fit case for applying the precautionary principle and recommended for the temporary withdrawal of the in principle stage-I approval accorded previously to OMC by MoEF. On 24.8.10, MoEF considered the recommendations made by the FAC and decided to reject the request by OMC for stage II clearance approval to divert around 661 hecters of forest land for the Bauxite Mining Project, making orders to that effect.

It was the legality of those orders that OMC sought to challenge in this case. More specifically, OMC sought *Certiorari* to quash the orders made by the MoEF on 24.08.10.

The court duly recognised in this case the customary and cultural rights of indigenous people and also made it clear that these rights are the subject matter of various international conventions. It referred to international instruments which emphasised the protection of social, political and cultural rights of indigenous populations. International Labour Organization (ILO) Convention on Indigenous and Tribal Populations Convention, 1957 (No.107), ILO Convention (No.169) and Indigenous and Tribal Peoples Convention, 1989 and United Nations Declaration on the rights of Indigenous Peoples (UNDRIP), 2007 were highlighted in this case. In addition to above mentioned conventions, some other relevant instruments, the importance of the Convention on the Biological Diversity (CBA),

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19 According to s. 6(1) of the FR Act, the Gram Sabha was the authority with power or responsibility for initiating the process for determining the nature and extent of individual or community forest rights or both that may be given to FDSTs and TFDs within the local limits of its jurisdiction under the FR Act. Examples of such rights that could be determined by the Gram Sabha to exist included the right to use and collect forest products (including fish and other products from forest water bodies) and the right to occupy forests for habitation.

which highlights the necessity to preserve and maintain knowledge, innovation and practices of the local communities relevant for conservation and sustainable use of bio-diversity.[20]

The necessity to respect and promote the inherent rights of indigenous peoples which derive from their political, economic and social structures and from their cultures, spiritual traditions, histories and philosophies, especially their rights to their lands, territories and resources have adequately in the United Nations Declaration on Rights of Indigenous Peoples. STs and other TFDs residing in the scheduled areas have a right to maintain their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands.

The court gave direction to the State of Orissa to place these issues before the Gram Sabha and its decision should be communicated to the MoEF. MoEF shall take a final decision on the grant of stage-II clearance for the Bauxite Mining Project in the light of the decisions of the Gram Sabha within two months thereafter.

Nuclear power plant

G.Sundarajan v. UOI[21]

The Supreme Court, while disposing of this case, issued 15 directions to various authorities to take appropriate measures under the law to alleviate the apprehensions raised in the appeals. This writ petition was heard along with few other writ petitions and the same were disposed of by a common judgment. This appeal was concerned with an issue of considerable national and international importance related to the setting up of a nuclear power plant in the south-eastern tip of India, at *Kundankulam* in the State of Tamil Nadu. The court observed that it is necessary to balance "economic scientific benefits" with that of "minor radiological detriments" on the touchstone of our national nuclear policy. Economic benefit has to be viewed on a larger canvas which not only augments our economic growth but alleviates poverty and generates more employment.

The court referred to past nuclear incidents occurring in various parts of the world. Three Mile Island Power Plant USA, Chernobyl, Ukraine, USSR, Fukoshima, Japan, Union Carbide, Bhopal might be haunting the memory of the people living in and around Kudankulam, leading to large-scale agitation and emotional reaction to the setting up of the Nuclear Power Plant (NPP) and its commissioning. The nature of the potential adverse effect of ionizing radiation adds to fears and unrest which might not have even been thought of by Enrico Fermi, a noble laureate in physics in 1938, who was responsible for the setting up of the first nuclear reactor in a doubles quash court at Slagg Field, at Chicago University, USA. Since then, it is history, India has now 20 nuclear reactors in place, and the world over about 439, but people still react emotionally, for more reasons than one, when a new one is being established.

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20 *Id*. at 105.

21 (2013) 6 SCC 620.

In this case the court looked into India's stand regarding various international treaties dealing with this subject. India is not a signatory to the Nuclear Non-Proliferation Treaty (NPT); however, it is party to various international conventions, namely, (a) the Convention on the Physical Protection of Nuclear Material,1979 (b) the Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency,1986 (c)the Convention on Nuclear Safety (d) the Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management, 1997 and (e) the Convention on Early Notification of a Nuclear Accident 1986. India has also entered into various Bilateral Civil Nuclear Co-operations. India has entered into a cooperation agreement with France for the construction of ERR Power Plants (10,000 MWe) at Jethapur site in Maharashtra, which also comprises cooperation in the areas of research, safety and security, waste management, education *etc.*, followed by various other commercial contracts as well. India and Canada have finalized the terms for their nuclear deal paving the way for Canadian firms to export Uranium to India in the year 2010. India has also signed a civil nuclear deal with Mongolia for supply of uranium to India.[22]

India-U.S. issued an inter U.S. Joint Statement at Washington on 18.07.05 which has located the final broad policy so as to actually facilitate and also outline the broad contours of a legally binding agreement. Nuclear 2007, an agreement for co-operation between India and U.S. concerning peaceful uses of nuclear energy (2007 Co-operation Agreement), laid down certain binding obligations between the two countries. Though, India is not a party to any of the Liability Conventions, specifically, IAEA Vienna Convention on Civil Liability for Nuclear Damage, India has enacted the Civil Liability for Nuclear Damage Act, 2010 (Nuclear Liability Act) which aims to provide civil liability for nuclear damage and prompt compensation to the victims of a nuclear accident through no- fault liability to the operators.[23] The appeals are accordingly disposed of without any order.

Isaac Isanga Musumba v. State of Maharashtra[24]

The word 'person' in article 21 of the Constitution of India is wide enough to cover not only citizens of this country but also foreigners who come to this country. The state has an obligation to protect the liberty of such foreigners who come to this country and ensure that their liberty is not deprived except in accordance with the procedure established by law.

In the instant case, the complainants lodged an FIR alleging that the accused persons had shown copies of international warrants issued against the complainants by the Ugandan Court and letters written by Uganda Ministry of Justice and Constitutional Affairs and the accused had threatened to extort 20 million dollars. In the complaint, there was no mention whatsoever that pursuant to the demands

22 *Id*. at 655-656.

23 *Ibid*.

24 (2013) 6 SCC 620

made by the accused; any amount was delivered to the accused by the complainants. As held, an FIR for the offence under section 384 IPC could not have been registered by the police. In this case, the Mumbai police acted on the FIR of the complainants which was found to be baseless.

Child Rights

Salil Bali v. Union of India[25]

In this case the Supreme Court considered eight petitions jointly regarding the juvenile justice laws in India. Request was made under this petitions to lower the juvenile age from 18 to 16 under the Juvenile Justice Act, 2000 (JJ Act) and amendment of JJ Act, 2000 to try juveniles who have committed rape and murder to be tried and punished under the laws applicable to adults.

The court observed that the JJ Act, 2007 and the Juvenile Justice (Care and Protection of Children) Rules, 2007 are based on sound principles contained in the provisions of the Indian Constitution and the various declarations and conventions adopted by the international community. In this connection, the court referred to the Beijing Rules, Riyadh Guidelines and Havana Rules[26] provide that a separate criminal justice system should apply to children in conflict with the law which allow for their reintegration into society.

Article 1 of the CRC, to which India is a party, provided the basis of 18 years as the upper age limit for children under the JJ Act, 2000. For these reasons the court stated that, in the absence of proper data, it was unwilling to deviate from the provisions of the JJ Act, 2000 and its rules, which represent the collective wisdom of Parliament.

Extradition

Abu Salem Abdul Qayyum Ansari v.Central Bureau of Investigation[27]

These appeals, at the instance of the appellant – Abu Salem Abdul Qayyum Ansari, were filed under section 19 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (in short 'the TADA') challenging the final judgment and order of 8 November 2011 passed by the Designated Court under TADA for the Bombay *Bomb Blast Case*. The appellant was detained by the Portuguese Police at Lisbon on the strength of the said Red Corner Notice. Subsequently, the Government of India requested the Portuguese government to extradite Abu Salem in 9 criminal cases which were pending in India.

The request was made relying upon the International Convention for the Suppression of Terrorist Bombings to which India and Portugal both are signatories. The Government of India assured the Portugese government that the appellant

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25 (2013)7 SCC 705.

26 *Available at* : www.un.org. (last visited on Aug. 28, 2014).

27 2013(10) SCALE 31.

would neither be conferred the death penalty nor be subjected to imprisonment for a term beyond 25 years. The appellant was finally handed over to government in 2005 and produced before the designated court. The additional charges were framed under section 5 of the TADA, which appellant contended were in violation of the extradition order. A writ petition was filed invoking article 32 challenging the said order. It was contended by the appellant that authorities failed to file the orders passed by the Portugal Courts and wilfully and deliberately violated the solemn sovereign assurance.

In the given case, the only ground on which the respondent/CBI sought modification was to harmonize the situation created by the divergent views with regard to the violation of the Principle of Speciality. It was further submitted that in the interest of comity of courts, the united fight at international level against the global terrorism, the Government of India was taking further efforts through diplomatic channels. Thus, the respondent was of the view that the additional charges framed against the appellant, which were held valid by this court in the order dated 10.09.10, may come as an impediment for furthering the diplomatic talks.[28]

The court allowed the present modification petition under the existing peculiar circumstance however, made it clear that by allowing the modification petition filed by the respondent, it should not be misunderstood that this court had reviewed the judgment in the light of the verdict of the Constitutional Court of Portugal. Both India and Portugal are two sovereign States with efficient and independent judicial systems. As a consequence, in unequivocal terms, the verdict by the Constitutional Court of Portugal is not binding on this court but only has persuasive value.

Live-in- relationships

Indra Sarma v. V.K.K Sarma[29]

Appellant and respondent were working together in a private company. The respondent was a married person having two children and the appellant, aged 33 years, was unmarried. In year 1992, appellant left the job and started living with the respondent in a shared household. This relationship was opposed by the appellant's family members and also the wife of the respondent. Appellant maintained the stand that the respondent started a business in her name and that they were earning from that business. After some time, the respondent shifted the business to his residence and continued the business with the help of his son, thereby depriving her right of working and earning. Respondent's family constantly opposed their live-in relationship and ultimately forced him to leave the company of the appellant and it was alleged that he left the company of the appellant without maintaining her.

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28 *Id*. at 40.

29 2013 (14) SCALE 448.

Magistrate took the view that the plea of domestic violence had been established; due to the non-maintenance of the appellant and passed the order dated 21.07.09 directing the respondent to pay an amount of Rs.18, 000/- per month towards maintenance from the date of the petition.

Respondent, aggrieved by the said order of the Magistrate, filed an appeal before the sessions court under section 29 of the Domestic Violations Act, 2005 (DV Act, 2005). The appellate court also concluded that the appellant has no source of income and that the respondent is legally obliged to maintain her and confirmed the order passed by the learned Magistrate.[30]

The respondent took up the matter in appeal before the high court. It was contended before the high court that the appellant was aware of the fact that the respondent was a married person having two children, yet she developed a relationship, in spite of the opposition raised by the wife of the respondent and also by the appellant's parents. Reliance was also placed on the judgment of this court in *D. Velusamy* v. *D. Patchaiammal*[31] and submitted that the tests laid down in Velusamy case had not been satisfied. The high court held that the relationship between the parties would not fall within the ambit of relationship in the nature of marriage and the tests laid down in Velusamy case have not been satisfied. Consequently, the high court allowed the appeal and set aside the order passed by the courts below. Aggrieved by the same, this appeal has been preferred.

The court observed that domestic violence is undoubtedly a human rights issue, which was not properly taken care of in this country even though the Vienna Accord 1994 and the Beijing Declaration and Platform for Action (1995) had acknowledged that domestic violence is undoubtedly a human rights issue. The UN Committee on the Convention on Elimination of All Forms of Discrimination Against Women in its General Recommendations had also exhorted the member countries to take steps to protect women against violence of any kind, especially that occurring within the family, a phenomenon widely prevalent in India. Presently, when a woman is subjected to cruelty by husband or his relatives, it is an offence punishable under section 498A IPC. The civil law, it was noticed, did not address this phenomenon in its entirety. Consequently, the Parliament, to provide more effective protection of rights of women guaranteed under the Constitution under articles 14, 15 and 21, who are victims of violence of any kind occurring in the family, enacted the (DV Act, 2005).[32]Article 23 of the International Covenant on Civil and Political Rights, 1966 (ICCPR) provides that:[33]

i. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

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30 *Id*. at 457.

31 (2010) 10 SCC 469.

32 *Supra* note 29 at 459.

33 *Id*. at 464.

ii. The right of men and women of marriageable age to marry and to found a family shall be recognized.

iii. No marriage shall be entered into without the free and full consent of the intending spouses.

iv. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

Article 16 of the Universal Declaration of Human Rights, 1948 provides that:[34]

1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at it dissolution.

2. Marriage shall be entered into only with the free and full consent of the intending spouses.

3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

The court decided not to interfere with the judgment of the high court and the appeal is accordingly dismissed.[35]

Suresh Kumar Koushal v. Naz Foundation[36]

These appeals are directed against order of 02.07.09 by which the division bench of the Delhi High Court allowed the writ petition filed by NAZ foundation respondent and held that the section 377 IPC, insofar it criminalises consensual sexual acts of adults in private, is violative of articles 21, 14 and 15 of the Constitution.

Fundamental rights must be interpreted in an expansive and purposive manner so as to enhance the dignity of the individual and worth of the human person. The Constitution is a living document and it should remain flexible to meet newly emerging problems and challenges. The rights under articles 14, 19 and 21 must be read together. The right to equality under article 14 and the right to dignity and privacy under article 21 are interlinked and must be fulfilled for other rights to be truly effectuated. International law can be used to expand and give effect to fundamental rights guaranteed under our Constitution. This includes UDHR, ICCPR

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34 *Ibid.*

35 *Ibid*. at

36 2013 (15) SCALE 55.

and ICESCR which have been ratified by India. In particular the ICCPR and ICESCR have been domesticated through enactment of section 2 of the Protection of Human Rights Act 1993.

The underlying purpose against sex discrimination is to prevent differential treatment for the reasons of non conformity with normal or natural sexual or gender roles. Sex relations are intricately tied to gender stereotypes. Accordingly discrimination on the ground of sex necessarily includes discrimination on the basis of sexual orientation. Like gender discrimination, discrimination on the basis of sexual orientation is directed against an immutable and core characteristic of human personality. Even international law recognises sexual orientation as being included in the ground sex. The determination of impact of legislation must be taken in a contextual manner taking into account the content, purpose, characteristics and circumstances of the law.

The court held that section 377 IPC does not suffer from the vice of unconstitutionality and the declaration made by the division bench of the high court is legally unsustainable.[37]

The court also made it clear that that it has merely pronounced on the correctness of the view taken by the Delhi High Court on the constitutionality of section 377 IPC and found that the said section does not suffer from any constitutional infirmity. Notwithstanding this verdict, the competent legislature shall be free to consider the desirability and propriety of deleting section 377 IPC from the statute book or amend the same.[38]

III CONCLUSION

A closer analysis of above mentioned judgments reveals that the Judges have intelligently used the application of international treaties and made it quite clear that they look more whether the international treaties are consistent with Constitutional provisions.

The judges are not duty-bound to adopt those conceptions and meanings as they have to only interpret the Constitution in terms of what Constitution makers wanted. In fact, they may clothe the concepts with new conceptions and the words with new meanings to make them serve life. Thus the power to interpret includes the power of law making. The Supreme Court has made remarkable advances in application of international law, especially in the field of human rights, environment and gender rights. The main emphasis has been on making basic civil and political rights meaningful for the large masses of people who are living a life of poverty and destitution and to whom these basic human rights have so far no meaning or significance because of constant and continuous deprivation and exploitation.

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37 *Id.* at 117.

38 *Ibid.*