standard education. In *Delhi Domestic Working Women's Forum v. Union of India*[40], the Court has laid the detailed guidelines for trial of rape cases.

In *D.K. Basu v. State of West Bengal*[41], the Supreme Court has laid down the detailed guidelines to be followed by the Police in all cases of arrests and detention. In *People's Union for Civil Liberties v. Union of India*[42], the Court has awarded compensation to the dependents of persons killed in fake encounter. In *Vishaka v. State of Rajasthan*[43], the Supreme Court has laid down exhaustive guidelines to prevent sexual harassment of working women in place of their work until a legislation is enacted for the purpose. It also directed that all employers, persons in charge of work place whether in the public or private sector, should take appropriate steps to prevent sexual harassment.

In *Gaurav Jain v. Union of India*[44], the Supreme Court has issued a number of directions to the Government and all social organizations to take upon appropriate measures for prevention of women in various forms of prostitution and rescue them from falling them again into the trap of red light areas and for rehabilitation of their children. The Supreme Court in *Zahira Habibulla H. Sheikh and another v. State of Gujarat*[45], reversing the Gujarat High Court judgment held that, if the State's machinery fails to protect citizen's life, liberties and property and the investigation is conducted in a manner to help the accused persons, it is appropriate that the Supreme Court should step in to prevent undue miscarriage of justice that is perpetrated upon the victims and their family members. The Court transferred this case from State of Gujarat to Maharashtra State and directed that the retrial shall be done by a Court under the jurisdiction of the Bombay High Court.

***Conclusion* :—**The study of above judicial decisions delivered by the Supreme Court of India clearly shows that how the Indian judiciary has raised to the occasion and protected the rights of citizens guaranteed under Indian Constitution. There is also considerable growth of several rights, in the field of human rights, criminal law, labour law. Law relating to protection of women and children, environmental law *etc.*, through the process of judicial activism.

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THE USE OF FORCE BY STATES AND ITS LIMITATIONS IN INTERNATIONAL LAW

By

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As with every other legal system, International law must seek to prevent its subjects from using violence to settle their differences. As emphasised by the International Court in *Nicaragua v. USA*, 1986 ICJ Rep 14, these rules encapsulate some of the most fundamental of all International obligations.

Prior to 1945, there was a web of customary and treaty law which regulated the unilateral use of force by states. In the early days of International law, the use of force by state was governed by the Just War doctrine. As developed by writers such as St. Augustine and Grotius, the Just War theory stipulated that war was illegal unless undertaken for a

40. (1995) 1 SCC 14
41. AIR 1997 SC 610 = 1997 (1) ALD (Crl.) 248 (SC)
42. AIR 1997 SC 1203
43. AIR 1997 SC 3011
44. AIR 1997 SC 3021 = 1997 (2) ALD (Crl.) 199 (SC)
45. (2004) 4 SCC 158 = 2004 AILD 316 (SC).

Just Cause. A Just Cause encompassed a variety of situations, but essentially involved a wrong received or a right illegal denied. War outside of these circumstances was illegal. By the 17th century the rise of the nation state in Europe had produced a change of direction. At first, the Just War doctrine was redefined, so that a state could be said to be acting legally if it believed it had a just cause, irrespective of whether it actually had one.

The covenant of the League of Nations introduced a limited restriction on the sovereign right to resort to war. Under the covenant, war was lawful only if the procedural safeguards laid down in Articles 10 to 16 were observed. In 1928, the covenant was supplemented by the General Treaty for the Renunciation of War, otherwise known as the Kellog-Braind Pact. This treaty which is still in force, represented the first attempt to outlaw war completely. By 1945, self defence had emerged as an exception to any prohibition whatever its scope, and customary law had begun to lay down the conditions for its lawful excercise. Likewise, such matters as reprisals, rescue of nationals and humanitarian intervention were seen as legitimate uses of force short of war.

The term force in Article 2(4) of the UN charter includes not only armed force but, for example, economic force. The 1970 Declaration on Principles of International Law recalled the duty of states to refrain from military, political, economic or any other form of coercion aimed against the political independence or territorial integrity of any state, and the International Covenants on Human Rights adopted in 1966 emphasised the right of all peoples freely to pursue their economic, social and cultural development. Article 2(4) of the UN Charter prohibits the use of force against the territorial or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations.

Since the establishment of the Charter regime there are basically three categories of compulsion open to states under international law. They are retorsion, reprisal and self defence. Retorsion is the adoption by one state of an unfriendly and harmful act, which is nevertheless lawful, as a method of retaliation against the injurious legal activities of another state. Examples include the severence of dipomatic relations and the expulsion or restrictive control of aliens. Retorsion is a legitimate method of showing displeasure in a way that hurts the other state while remaining within the bounds of legality.

Reprisals are acts which are in themselves illegal and have been adopted by one state in retalition for the commission of an earlier illegal act by another state. The best example dealing with the law of reprisals is the Naulila dispute between Portugal and Germany in 1928. This concerned a German military raid on the colony of Angola, which destroyed property, in retaliation for the mistaken killing of three Germans lawfully in the Portuguese territory.

The definition of the right of self-defence in customary international law occurs in the Caroline case. In the correspondence with the British authorities which followed the incident, the American Secretary of State laid down the essentials of self-defence. There had to exist a necessity of self-defence, instant, overwhelming, leaving no choice of means, and no moment of deliberation. Not only were such conditions necessary before self-defence became legitimate, but the action taken in pursuance of it must not be unreasonable or excessive, since the act, justified by the necesssity of self-defence must be limited by that necessity, and kept clearly within it.

In the last century, it was clearly regarded as lawful to use force to protect nationals and property situated abroad and many incidents occurred to demonstrate the acceptance of this position. In 1964, Belgium and the United States sent forces to the

Congo to rescue hostages from the hands of rebels, with the permission of the Congolese Government, while in 1975 the US used force to rescue an American cargo boat and its crew captured by Cambodia. The United States justified armed action in other states on the grounds partly of the protection of American citizens abroad. It was one of the three grounds announced for the invasion of Grenada in 1984, and one of the four grounds put forward for the intervention in Panama in December 1989.

The right of collective self-defence was accepted in general international law prior to the appearance of the United Nations Charter, but is now given express recognition in the provisions of Article 51 of the Charter. In response to the Iraqi attack on Kuwait, Security Council Resolution 661 (1990) made express reference in the preamble to the inherent right of individual or collective self-defence, in response to the armed attack by Iraq against Kuwait. In Nicaragua case the international Court indicated two conditions for the lawful exercise of collective self-defence. The first such condition is the victim state should declare its status as victim, and request assistance. The second condition is that the wrongful act accompanied of, must constitute an armed attack.

International law prohibits intervention. According to Hans Kelsen, international law does not prohibit intervention in all circumstances. According to him when one state intervenes in the affairs of another state through force, then as a reaction against this violation, international law permits intervention. International law treats civil wars as purely internal matters, with the possible exception of self-determination conflicts. There is no rule against rebellion in international law. The international law rules dealing with civil wars depend upon the categorisation by third states of the relative status of the two sides to the conflict. The use of western troops to secure a safe haven in northern Iraq after the Gulf war is in pursuance of the customary international law principle of humanitarian intervention in an extreme situation. The major concern regarding the definition of Terrorism is, whether one terms a particular group of activists as terrorists or freedom fighters depends upon one's political standpoint. The League of Nations in the 1937 Convention for the prevention and punishment of Terrorism, which in the event, and only partly because of the onset of the second world war, never entered into force. In 1973 the General Assembly adopted a Convention on the Prevention and Punishment of Crimes against internationally protected persons including Diplomatic Agents. In 1979 the General Assembly also adopted the International convention against the taking of Hostages.

The law in this area developed from the middle of the 19th century. In 1864, as a result of the pioneering work of Henry Dunant, who had been appalled by the brutality of the battle of Solferino five years earlier, the Geneva convention for the Amelioration of the condition of the wounded in armies in the field was adopted. This brief instrument was revised in 1906. In 1868 the Declaration of St. Petersburg prohibited the use of small explosive or incendiary projectiles. The laws of war were codified at the Hague conference of 1899 and 1907. In 1977, two Additional Protocols to the 1949 Conventions were adopted. These built upon and developed the earlier conventions. The Third Geneva Convention of 1949 is concerned with prisoners of war, and consists of a comprehensive code centered upon the requirement of humane treatment in all circumstances. The fourth of the Four Geneva Conventions of 1949 is concerned with the protection of civilians in time of war.

The design of the United Nations constitutes a comprehensive public order system. In spite of the weakness involved in multilateral decision-making, the assumption is that the organisation has a monopoly of the use of force, and a primary responsibility for enforcement action to deal with breaches

of the peace, threats to the peace or acts of aggression. In 1999 ten member states of NATO mounted a bombing campaign against Yugoslavia without the authorization of the Security Council. The question relating to Iraq in 2003, is not whether the use of force may be justified beyond the cases provided for in the Charter, but who makes the determination that such action is necessary. The security system based upon the primary role of the Security Council is not an abstract scheme but reflects the international consensus that individual states, or a group of states, cannot resort to force, for purposes other than self-defence, except with the express authorization of the United Nations.

SETTLEMENT OF DISPUTES UNDER REGIONAL AND INTERNATIONAL INSTITUTIONS

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Article 52(1) of chapter VIII of the UN Charter provides that nothing in the Charter precludes the existence of regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action, provided that such arrangements or agencies and their activities are consistent with the purposes and principles of the UN. Article 52(2) stipulates that members of the UN entering into such arrangements or agencies are to make every effort to settle local disputes peacefully through such regional arrangements or by such regional agencies before referring them to Security Council.

Various regional organizations have created machinery for the settlement of disputes. Article XIX of the 1963 Charter of the Organisation of the African Unity (OAU) refers to the principle of the peaceful settlement of disputes by negotiation, mediation, conciliation or arbitration and to assist in achieving this a commission of mediation, conciliation, and arbitration was established by the protocol of 21 July 1964.

Article 23 of the Charter of the Organization of American States (OAS), signed at Bogota in 1948 and as amended by the Protocol of Cartagena de India's 1985, provides that international disputes between member states must be submitted to the organization for peaceful settlement, although this is not to be interpreted as an impairment of the rights and obligations of member states under Articles 34 and 35 of the UN Charter. Since the late 1950s the Permanent Council of the OAS, a plenary body at ambassadorial level, has played an increasingly important role. One example concerned the frontier incidents that took place on the border between Costa Rica and Nicaragua in 1985. In 1923, at the Fifth International Conference of American States held at Santiago, the Treaty to avoid or prevent conflicts between the American states, known as the Gondra Treaty, was adopted, in accordance with which all controversies of whatever character not settled by diplomatic negotiation or by submission to arbitration were to be submitted for investigation and report to a commission of inquiry, consisting of five members. The Anti-War Treaty of Non-Aggression and Conciliation signed on October 10, 1933, was a combination of various earlier agreements.

At the Conference at Buenos Aires in 1936, an effort was made to bring together the existing treaties of pacific settlement and to assist their fulfillment by correlating them