

Weekly Update for Law Optional UPSC

A mix of Conceptual, Current/Contemporary Topics

24th Nov - 30th Nov 2024

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1. Nationality of Married women under International Law

The nationality of married women has been a subject of evolving norms in international law, particularly as gender equality principles gained prominence. Historically, many legal systems subordinated a woman's nationality to that of her husband, often resulting in automatic acquisition or loss of nationality upon marriage.

Traditionally, under the doctrine of coverture, a woman's nationality often changed automatically upon marriage to align with her husband's. This practice was based on the belief that a family unit should have a single, unified nationality.

This approach often led to statelessness or dual nationality when discrepancies existed between the nationality laws of the wife's and husband's countries. Such practices were challenged as they conflicted with emerging norms of gender equality and individual rights

Key International Legal Instruments

- 1926 Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws:** This convention acknowledged the potential conflicts arising from the automatic change in nationality due to marriage. However, it did not fully resolve the issue of discrimination against women.
- 1930 Hague Convention on Nationality of Women:** This convention marked a significant step forward by establishing that a woman's nationality should not automatically change due to marriage. However, its effectiveness was limited as it left much discretion to states.
- Universal Declaration of Human Rights (1948):** Article 15 of the UDHR states that "everyone has the right to a nationality" and that "no one shall be arbitrarily deprived of their nationality." This provision supports the autonomy of married women in matters of nationality.
- Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (1979):** Article 9 of CEDAW explicitly provides that states must grant women equal rights with

men to acquire, change, or retain their nationality. It also prohibits the automatic change of nationality for women upon marriage.

5. **International Covenant on Civil and Political Rights (ICCPR) (1966):** Article 26 guarantees equality before the law and protection against discrimination on the grounds of sex, reinforcing the rights of married women in nationality matters.

2. SC Upholds Conviction under Prevention of Corruption Act

The Supreme Court in *The State of Karnataka v. Chandrasha* emphasized that under Section 20 of the Prevention of Corruption Act, 1988, a presumption of corruption can be drawn once demand and acceptance of a bribe are proven. The Court clarified that the quantum of the bribe is immaterial for drawing such a presumption. It reiterated that even trivial amounts, when accepted as gratification, can attract the presumption under this section unless rebutted by the accused.

The judgment rejected the High Court's acquittal of the respondent on the ground that no official work was pending when the bribe was demanded. The Supreme Court opined that the pending status of official duties is irrelevant if it is proven that a public servant demanded and accepted gratification for performing an act related to their duties.

The Court held that Section 20's presumption applies when there is no clear proof of a nexus between the illegal demand and the action sought. However, when such a nexus is established by direct or circumstantial evidence, the presumption becomes unnecessary, and the burden shifts to the accused to rebut the claims.

Upholding the trial court's conviction, the Supreme Court directed the respondent to complete the imposed sentence and highlighted the overarching principle that corruption, irrespective of the scale, corrodes public trust and governance integrity.

3. Socialism Reflects Welfare State Commitment, Not Rigid Economic Doctrine

The Supreme Court in its judgement (*Dr Balram Singh and Others V UOI and Another Respondents*) reaffirmed that the term "socialist" in the Preamble of the Constitution signifies the State's commitment to achieving economic and social justice through welfare-oriented governance. It clarified that the term does not mandate adherence to any rigid economic ideology, such as socialism in the classical or Marxist sense, nor does it restrict the State from adopting mixed economic policies that include private sector participation alongside public enterprises.

Context and Challenge to the 42nd Amendment:

The petitions challenged the inclusion of "socialist" and "secular" in the Preamble introduced during the Emergency via the 42nd Constitutional Amendment in 1976. Petitioners contended that the amendment was undemocratic and imposed ideologies alien to the Constitution's original framework. However, the Court dismissed these arguments, noting that the terms reflect values inherently aligned with the constitutional goals of justice, liberty, and equality. It also pointed out that these amendments were retained during the 44th Amendment under a democratically elected government, thus legitimizing them through subsequent political validation.

Interpretation of Socialism:

The bench, led by CJI Sanjiv Khanna and Justice Sanjay Kumar, stated that socialism in the Indian

context reflects a commitment to being a welfare state, ensuring equality of opportunity, and mitigating social and economic inequalities. The Court emphasized that socialism does not equate to rigid state ownership or the rejection of private enterprise. Instead, it encompasses policies fostering a mixed economy where public and private sectors coalesce to achieve inclusive growth.

Economic Justice and Private Enterprise:

The judgment stressed that socialism, as interpreted in India, does not preclude private entrepreneurship or undermine the fundamental right to trade and business under Article 19(1)(g) of the Constitution. The Court observed that the term embodies principles of economic justice, focusing on uplifting marginalized communities while enabling private participation in economic development. The balance between public welfare and private initiative is a hallmark of India's economic framework.

Earlier Judicial Precedents:

The Court referred to decisions such as *Excel Wear v. Union of India*, where it was held that socialism in the Preamble may guide courts toward favoring state ownership in some contexts but does not negate the validity of private ownership and enterprise. This acknowledgment aligns with India's constitutional framework, which allows flexibility in economic policy choices based on democratic accountability.

Delay in Challenge and Public Acceptance:

The Court took into account the significant delay in filing these petitions—44 years after the terms "socialist" and "secular" were added to the Preamble. It observed that the widespread public acceptance and understanding of these terms over the decades render the challenge questionable. The Court underscored that constitutional amendments cannot be revisited merely because of changing ideological preferences of some groups.

4. Mere breakup does not mean lack of consent

The Supreme Court in *Prashant v. NCT of Delhi*, quashed criminal proceedings against a man accused of rape under the false promise of marriage, emphasizing that consensual relationships that do not culminate in marriage cannot be criminalized solely due to a breakup.

Context of the Case:

The complainant alleged that the appellant sexually exploited her under false assurances of marriage and coerced her into maintaining the relationship through intimidation. The Delhi High Court refused to quash the FIR, citing prima facie evidence under Sections 376(2)(n) and 506 of the IPC. The appellant then approached the Supreme Court for relief.

Key Observations by the Court:

The bench, comprising Justice B.V. Nagarathna and Justice N. Kotiswar Singh, highlighted that the complainant's allegations, even if accepted at face value, failed to establish the lack of consent. It noted that the relationship was consensual and continued for a prolonged period without any clear evidence of a promise of marriage at its inception.

The Court further emphasized that mere non-materialization of a relationship into marriage does not transform it into a criminal act. It found that the complainant's continued association with the appellant contradicted claims of coercion or deceit. Additionally, it pointed out that both parties were educated adults, capable of making informed choices.

The Court criticized the High Court for not exercising its power under Section 482 CrPC to prevent the abuse of judicial processes. It held that the facts did not fulfill the essential elements of rape or criminal intimidation as defined under IPC. The FIR was deemed baseless, and the ongoing prosecution was quashed.

Weekly Focus

Case of the week: Mangalam Organics Ltd. v. Union of India

The case of *Mangalam Organics Ltd. v. Union of India* dealt with the judicial principles governing the exercise of discretionary power by administrative authorities. The Supreme Court expounded on the boundaries within which courts may intervene in such discretionary decisions, laying down important jurisprudential guidelines for administrative law in India.

Facts of the Case:

Mangalam Organics Ltd. challenged a decision taken by an administrative authority, alleging that the discretion granted under the relevant statute was exercised improperly. The grievance centered on the alleged arbitrariness and lack of objectivity in the administrative decision-making process.

Key Legal Issue:

The primary issue before the Court was whether the discretionary power exercised by the administrative authority under the statute was lawful, rational, and within the bounds of the objectives of the legislation.

Supreme Court's Observations:

The Court reiterated the principle that when a statute vests discretionary power in an administrative authority, courts generally refrain from interfering in such discretion unless specific grounds are established. The ruling outlined the following principles for judicial review of administrative discretion:

1. **Limits on Judicial Interference:**
 - Courts do not act as appellate bodies to replace the discretion exercised by the administrative authority with their own.
 - Intervention is warranted only if the decision is demonstrably arbitrary, irrational, or made in bad faith.
2. **Grounds for Intervention:**
 - The Court emphasized that discretionary power must be exercised:
 - **In good faith** and not for an oblique or extraneous purpose.
 - **On relevant considerations** aligned with the objectives of the statute.
 - Without arbitrariness or mala fide intentions.
 - With application of mind to the facts and circumstances of the case.
3. **Relevance of Norms and Objectives:**
 - The Court clarified that administrative discretion should be guided by norms and principles that are relevant to the purpose sought to be achieved by the statute.
 - Decisions made without reference to such norms may be set aside as being ultra vires.
4. **Application of Mind:**

- An administrative decision devoid of proper application of mind, resulting in irrational or capricious outcomes, is amenable to judicial review.

Decision and Rationale: The Supreme Court in this case upheld the administrative decision, finding that the discretion was exercised within the statutory framework and aligned with the purpose of the statute. The Court found no evidence of extraneous considerations, bad faith, or arbitrariness in the decision-making process..

PYQ Solution

Q. Differentiate between false imprisonment and malicious prosecution

Basis of Difference	False Imprisonment	Malicious Prosecution
Nature of Wrong	Wrongfully restraining the personal liberty of the plaintiff.	Wrongfully setting the criminal law in motion.
Agency/Officer Involved	Personal liberty may be wrongfully restrained by a private individual or a ministerial officer.	A judicial officer is set in motion. The opinion and judgment of a judicial officer are involved between the charge and imprisonment.
Prima Facie Position	Imprisonment is prima facie a tort.	Malicious prosecution is not.
Burden of Proof	The defendant has to justify the imprisonment.	The plaintiff must affirmatively prove the absence of reasonable and probable cause.
Position in Lawsuits	The defendant is in a more vulnerable position.	The defendant is in a more advantageous position when it comes to abuse of the process of the court.
Role of Malice	Malice is not an essential ingredient. It is no defence if the detention was due to a bona fide mistake without malice.	Malice is an essential ingredient in an action for malicious prosecution.