

Weekly Update for Law optional UPSC

A mix of Conceptual, Current/Contemporary Topics

Date: 7th - 13th August 2023

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1. International law and South China Sea Dispute

India's Reiteration of International Law Adherence

In response to the recent conflict between the Philippines and China in the South China Sea, India has once again emphasized its stand on adherence to international law, specifically the United Nations Convention on the Law of the Sea (UNCLOS), and the peaceful resolution of disputes. The remarks were made by External Affairs Ministry spokesperson Arindam Bagchi, affirming India's commitment to a rules-based order in the South China Sea.

Recent Confrontation and the Philippines' Accusations

The latest incident in the South China Sea has led to increased tensions in the region. The Philippine Coast Guard (PCG) accused the Chinese Coast Guard of firing water cannons at its vessels, an action described as "unlawful." This event underscores the ongoing disputes over sovereignty and rights in the South China Sea. The actions by the Chinese Coast Guard could be seen as a violation of international principles, such as the principle of non-aggression as laid down in the Charter of the United Nations.

New Delhi's Emphasis on Peaceful Settlements

India's spokesperson, Bagchi, accentuated the need for peaceful settlements of disputes, urging the concerned parties to ensure that similar incidents do not recur. India's call aligns with international legal principles, including those enshrined in UNCLOS, that promote peaceful settlements, cooperation, and negotiations between states.

China's Sweeping Claims and Growing Global Concerns

China's extensive claims of sovereignty over the entire South China Sea have caused escalating tensions with several countries in the region, including Vietnam, the Philippines, and Brunei. These claims are contentious, particularly because the South China Sea is a significant source of hydrocarbons. China's assertions, if accepted, could lead to serious implications for the freedom of navigation and overflight, contrary to the principles set out in UNCLOS.

Upholding International Law and Rules-Based Order

The South China Sea dispute is a complex issue involving multiple parties and conflicting interests. India's consistent stance on adhering to international law, including UNCLOS, and pursuing peaceful resolutions is both commendable and essential. As a responsible member of the international community, India's voice adds to the global call for a rules-based order and respect for sovereignty and rights in the South China Sea. The peaceful resolution of this dispute would affirm the principles of international law and set a precedent for resolving similar international disputes. In line with jurisprudential views such as those expressed by eminent jurist Rosalyn Higgins, peaceful coexistence and respect for international law are foundational to global security and stability.

2. Extra Charging is Deficiency in Service

Background and Facts of the Case

In the case of **Sri Ajay Velpula vs. Ola Cabs**, the Complainant, Mr. Ajay Velpula, raised an issue regarding a fare discrepancy with Ola Cabs. After having to disembark the cab mid-journey, the Complainant was charged for 273 kilometers instead of the actual 173 kilometers traveled. Despite acknowledging the mistake, Ola Cabs offered a refund less than what the Complainant claimed, leading him to file a consumer complaint.

Complaint and Relief Sought

The Complainant sought a refund of Rs. 1,730/- and additional compensation for inconvenience and mental distress amounting to Rs. 2,00,000/-, along with Rs. 20,000/- to cover complaint-related expenses.

Observations and Findings of the Commission

The District Consumer Disputes Redressal Commission, Hyderabad – III, chaired by Sri M. Ram Gopal Reddy and members Smt. D. Sridevi and Smt. J. Shyamala, critically observed the behavior of Ola Cabs in handling the Complainant's grievance. The Commission noted:

1. **Deficiency in Service and Unfair Trade Practices:** The Commission held Ola Cabs liable for the deficiency in service and unfair trade practices under the Consumer Protection Act, 2019 (Section 2(1) and 2(47)).

2. **Needless Prolongation of the Case:** Ola Cabs was found to have needlessly prolonged the case, falsely claiming that the Complainant was uncooperative. The Commission found this contention to be without merit, as all the required information was present in the bills issued by Ola Cabs.
3. **Refund and Compensation Order:** The Commission ordered Ola Cabs to refund the acknowledged amount of Rs. 912/-, along with 12% interest from the travel date, and additionally provide Rs. 2,000/- as compensation and Rs. 1,000/- to cover legal cost.

3. Chinese Manjha Violates Environmental Law

The matter before the Delhi High Court in **ISHWAR SINGH DAHIYA v. STATE OF NCT DELHI AND ORS** pertains to the illegal sale and usage of Chinese manjha, a type of sharp kite-flying thread, in Delhi, particularly during the Independence Day period.

Petitions Filed and Issues Raised

The petitions were filed by the relatives of those who lost family members due to injuries caused by the banned material. The petitioners sought compensation from the Delhi Government and demanded strict compliance with advisories and directions against the sale of Chinese manjha.

Directions of the Court

Justice Prathiba M Singh passed a series of significant directives:

1. **Continued Restraining of Sale:** The Court directed the Delhi Police to continue taking measures to restrain the sale of Chinese manjha during the kite-flying season, which coincides with Independence Day.
2. **Review of Police Action:** The Court considered the status report filed by the Delhi Police outlining their actions to prevent the sale of Chinese manjha and noted that various awareness programs and interactions with e-commerce websites have been undertaken.
3. **Filing of Fresh Status Report:** The Delhi Police were directed to file a fresh status report before the next hearing date on October 05.
4. **Compensation to Victims:** The Court referred the matter of compensation to the Delhi Legal Services Authority (DLSA) to determine whether victims of Chinese manjha injury are entitled to any compensation under its scheme.

Legal Framework and Precedent

The National Green Tribunal (NGT) had earlier imposed a ban on the sale of synthetic Chinese manjha due to its non-biodegradable nature and the serious injuries it can cause. The current High Court order

reinforces the previous NGT ban and further emphasizes the police's role in ensuring compliance with the prohibition.

Impact and Implications

The Delhi High Court's order is significant in multiple ways:

1. **Public Safety and Environmental Concerns:** The order reflects the judiciary's concern for both public safety and the environment. Chinese manjha, made of non-biodegradable synthetic materials, poses risks not only to humans but also to birds and the environment.
2. **Strict Compliance:** By demanding a fresh status report from the Delhi Police and interacting with e-commerce platforms, the Court has signified its intent to enforce the ban rigorously.
3. **Compensation Mechanism:** By involving the Delhi Legal Services Authority, the Court has taken a humane approach to addressing the grievances of victims and their families.

4. Google's Liability for Trademark Infringement

Facts of the Case

In the case of **GOOGLE LLC v. DRS LOGISTICS (P) LTD. & ORS.**, the Delhi High Court ruled on whether Google is liable for trademark infringement in connection with the use of trademarks as keywords in its Ads Programme. The High Court determined that Google is not entitled to the safe harbour protection under Section 79 of the Information Technology Act, 2000, regarding the liability of infringement of trademarks in its Ads Programme.

Legal Background

Section 79 of the Information Technology Act provides a safe harbour provision that shields intermediaries from liability for the data transmitted by third parties. However, this exemption is not absolute and does not extend to cases where the intermediary is involved in the infringement.

Google's Policy and Business Practices

The Court noted that Google amended its policy after 2004 to permit the use of trademarks as keywords to increase revenue. The bench stated that Google was not merely a passive service provider, and its Ads Programme actively suggests keywords to achieve higher clicks.

Single Judge Order and Division Bench Decision

The suit originated from DRS Logistics, seeking to restrain Google from using its registered trademark. The single judge directed Google to investigate any complaint regarding the use of the trademark and held that Google could not absolve itself of liability. The division bench affirmed the single judge's

conclusion that Google's use of the trademarks as keywords amounted to use in advertising under the Trademarks Act.

Analysis of the Judgment

1. **Google's Liability:** The Court concluded that Google is not a "passive intermediary" and actively encourages and suggests the use of trademarks. Therefore, it cannot claim an exemption under Section 79(1) of the IT Act for its Ads Programme.
2. **Effect on Trademark:** The Court stated that if the Ads displayed are found to be detrimental to the distinctive character or reputation of the registered trademark, an action for infringement of the trademark would lie.

The Delhi High Court's ruling in **GOOGLE LLC v. DRS LOGISTICS (P) LTD. & ORS.** has significant implications for the future of online advertising and trademark protection. It underscores the need for tech companies to be vigilant about the content they promote and to actively monitor and regulate their advertising practices.

5. Right to Protest and Its Impact on Public Employment

In the case of **Arunkanth v Tamil Nadu Uniformed Services Recruitment Board and others**, the Madras High Court emphasized the importance of the right to protest, a fundamental right in a democratic society. The court directed the authorities to issue an appointment order for a Grade-II Police Constable position, earlier rejected due to the applicant's participation in protests against the NEET examination during his college days.

Facts and Background

The petitioner, Arunkanth, applied for the post of Grade-II Constable and passed both the written and physical examinations. However, the Superintendent of Police rejected his candidature, citing his involvement in a criminal case (later dropped) concerning his participation in a protest against the NEET examination.

Legal Arguments Presented

- **Petitioner's Arguments:** Arunkanth contended that the case was quashed by the High Court, and since the crime was quashed, the order rejecting his candidature should also be set aside.
- **Respondent's Arguments:** The Additional Advocate General referred to the Supreme Court decision in **Sathish Chandra Yadav Vs. Union of India and others**, arguing that even with truthful declarations of a concluded criminal case, the employer has the right to consider the antecedents.

Judgment

1. **Recognition of the Right to Protest:** The Court acknowledged that the petitioner was exercising his fundamental right to protest. Justice L Victoria Gowri stated that the petitioner's involvement in this particular crime has no criminal implications, and it will not affect the nature of the job he applied for.
2. **Application of Legal Provisions:** The court observed that under Rules 14(b) or 13 of the Tamil Nadu Police Subordinate Services Rules, an acquittal under benefit of doubt or hostility might be considered involvement in a criminal case. However, the crime against Arunkanth was quashed, lacking any criminal implications.
3. **Quashing the Order of Rejection:** The Court quashed the rejection order and directed the authorities to issue an appointment order to the petitioner, further sending him for training.

The Madras High Court's ruling in **Arunkanth v Tamil Nadu Uniformed Services Recruitment Board and others** marks a significant step towards safeguarding the fundamental right to peaceful protest in India. It delineates the boundary between legitimate democratic expressions and criminal activities.

Weekly Focus

6. Case of the Week: Gujarat Bottling Co. v. Coca Cola

Background and Facts

Coca Cola Company had entered into a franchise agreement with Gujarat Bottling Co. (GBC) for the manufacture and sale of its products. The agreement contained a clause restricting GBC from using the concentrate provided by Coca Cola to manufacture products of any competing brands. Subsequently, GBC sought to enter into an agreement with Pepsi Foods Limited. Coca Cola sued GBC to enforce the restrictive covenant.

Issues before the Court

The primary issue before the Supreme Court of India was whether the restrictive covenant between the parties violated Section 27 of the Indian Contract Act, which renders agreements in restraint of trade void.

Judgment

Interpretation of Section 27

The Court made a detailed analysis of Section 27 of the Indian Contract Act and the exceptions to it. Section 27 posits that any agreement restraining an individual from exercising a lawful profession, trade, or business is void. However, the Court recognized that not all restrictive covenants would fall under this provision.

Distinction Between Restrictions During and Post-Contract

The Supreme Court drew a critical distinction between restraints imposed during the continuance of the contract and those imposed after its termination. The Court held that restrictions imposed during the subsistence of the contract may not always violate Section 27, as they may be necessary to maintain the smooth functioning of the contractual relationship.

7. Repeated PYQ Solution

Protagonist of the 'an eye for an eye' philosophy 'demand for the death'. The humanists on the other hand press for the other extreme viz, death in no case. Discuss.

The principle of "an eye for an eye" originates from ancient legal systems, most notably the Hammurabi's Code. In legal terms, it represents the doctrine of proportionality or *lex talionis*, where the punishment should be proportionate to the crime committed.

In the context of demanding the death penalty, this philosophy is interpreted as supporting capital punishment for heinous crimes such as murder. The justification lies in the belief that justice can only be served if the offender experiences the same suffering as the victim.

R v Dudley and Stephens (1884)

In this English case, the principle of retribution played a significant role. The defendants were charged with murder after killing and eating a cabin boy while stranded at sea. Though the death penalty was commuted, the case illustrated the importance of maintaining legal principles, even in dire circumstances.

Humanist Perspective

Humanists and certain legal scholars argue against the death penalty from a perspective of respect for human dignity and the inherent value of life. They press for the abolition of capital punishment, highlighting concerns such as the potential for wrongful execution and the inability to rehabilitate the convicted person.

Furman v. Georgia (1972)

The U.S. Supreme Court, in this landmark decision, temporarily halted the death penalty by calling into question its arbitrary application. The judgment echoed humanist concerns, emphasizing the need for justice to be fair and consistent.

The dichotomy between the 'an eye for an eye' philosophy and the humanist demand for abolition of the death penalty continues to shape legal discourse and policy. The path forward may lie in adopting a nuanced approach that recognizes the gravity of heinous crimes while also embracing a commitment to human rights and restorative justice. The reconciliation of these contrasting views requires careful examination of the underlying principles of justice, morality, and the rule of law.