

Weekly Update for Law optional UPSC

A mix of Conceptual, Current/Contemporary Topics

Date: 1st - 6th Aug 2023

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1. Accusation Made in Good Faith

In **Kishore Balkrishna Nand vs State of Maharashtra**, the Supreme Court has shed light on the nuances of defamation in relation to accusations made in good faith. Justice J B Pardiwala and Justice Manoj Misra opined that making a bona fide accusation against any individual to an authority having legal jurisdiction over that individual does not amount to defamation.

Case Facts and Procedural History

Kishore Balkrishna Nand reported to the Sub Divisional Magistrate (SDM) that an individual had illegally encroached land to establish a shop. Consequently, this individual accused Kishore of defamation. The Magistrate, upon taking cognizance, issued summons to Kishore, only to later recall them. This recall order was subsequently overturned by the Sessions Court, a decision that the High Court upheld.

Contentions Before the Apex Court

During the hearing in the Apex Court, the primary contention of the appellant-accused was that the purported defamatory statements were confined to a written complaint to the SDM, a public authority, and therefore, did not satisfy the criteria laid out in Section 499 of the IPC.

Court's Analysis and Reference to IPC

Diving deep into the legal provisions, the court referenced Section 499 IPC and its exceptions. The bench underscored that, as per Exception 8 of Section 499, a bona fide accusation against any person to a competent authority does not qualify as defamation. The court opined, "...by perusing the allegations made in the complaint, we are satisfied that no case for defamation has been made out."

In light of the analysis, the Supreme Court permitted the appeal and quashed the defamation complaint, reaffirming that legitimate grievances addressed to lawful authorities in good faith do not amount to defamation.

2.The "Modi-Thieves" Controversy

Rahul Gandhi v. Purnesh Ishwarbhai Modi & Anr

Factual Background

The apex court recently stayed the conviction of Rahul Gandhi, a leader from the Congress Party, in a defamation case. The case was centred around his remark questioning why all thieves bear the surname 'Modi'. This remark had significant ramifications, leading to his disqualification as a Member of Parliament.

Legal Underpinning: Section 499 IPC & the Representation of Peoples Act

Section 499 of the Indian Penal Code (IPC) deals with defamation. An offense under this section can attract a maximum sentence of two years or a fine or both. The provision aims to protect the reputation of individuals against false statements. The Representation of the Peoples Act, through Section 8(3), disqualifies a person from parliamentary participation if they receive a sentence of two or more years, unless the conviction is stayed.

Sentencing Discrepancies and the Principle of Proportionality

The judiciary has often reiterated the principle of proportionality in sentencing, emphasizing that punishment should match the gravity of the offense. The court raised eyebrows when the trial judge awarded Rahul Gandhi the maximum two-year sentence for the offense, triggering the disqualification clause of the Representation of Peoples Act. The apex court observed that there was no apparent reasoning provided for the maximum sentence, particularly given that the offense was non-cognizable, bailable, and compoundable.

The Debate on the Nature of the Offense

Senior Advocate Singhvi, representing Gandhi, highlighted the rarity of awarding the maximum sentence in cases of criminal defamation, especially when the crime isn't heinous in nature. The judgment has wider ramifications: it silences a political voice and disenfranchises the electorate that voted him into power.

3.Sudden and Grave Provocation

The legal principle of 'sudden and grave provocation' has a long-standing history in the realm of criminal jurisprudence. The central idea is that a person who commits a crime in a moment of sudden and intense provocation may not be deemed as morally blameworthy as one who commits the same crime with premeditation.

Section 300 IPC and its Exceptions

Section 300 of the Indian Penal Code (IPC) stipulates the conditions under which a culpable homicide amounts to murder. Exception 1 to Section 300 IPC carves out an exception when the act causing death is done under grave and sudden provocation. If the provocation is of such a nature that it deprives the person of the power of self-control and causes him to commit the offence, the killing would be classified under culpable homicide not amounting to murder, as opposed to murder.

The rationale behind this is twofold:

1. Recognizing the human frailty and the inability of a person to control impulses under certain provocative situations.
2. To draw a distinction between a premeditated act of murder and one committed impulsively under provocation.

Case of Nirmala Devi

In the case of Nirmala Devi vs. State of Himachal Pradesh, the Supreme Court applied the doctrine of 'sudden and grave provocation'. The issue in contention was the refusal of the deceased husband to provide Rs. 500/- to the daughter, which led to an altercation and the subsequent act of violence by the accused, Nirmala Devi.

Several elements factored into the Court's decision:

1. **Weapon Used:** The weapon used was a stick, commonly found in households and not classified as a 'deadly weapon'. The nature of the weapon, in this case, indicated a lack of premeditation.
2. **Testimony of PW-1 (Priyanka):** The daughter's testimony shed light on the immediate cause of the altercation. It was her demand for Rs. 500/- that triggered the incident.
3. **History of Domestic Disputes:** The Court also considered the history of disputes between the deceased and the accused. This contextualized the incident within a broader pattern of domestic discord, making it plausible that the act was committed in a fit of rage, rather than being premeditated.

By taking into account the underlying circumstances, the Court modified the conviction of murder to that of culpable homicide not amounting to murder.

4. Acronym 'I.N.D.I.A': Constitutional?

Factual Background

The Public Interest Litigation (PIL) filed in the Delhi High Court by Girish Bharadwaj revolves around the use of the acronym 'I.N.D.I.A.' (Indian National Developmental Inclusive Alliance) by a newly formed alliance of 26 opposition political parties. Bharadwaj claims that the use of this acronym, so closely resembling the name of the country, serves to provide undue advantages to these parties in the upcoming general elections of 2024.

Legal Issues Involved

1. **Violation of the Emblems and Names (Prevention of Improper Use) Act, 1950:** At the core of the petition is the argument that the acronym 'I.N.D.I.A', being an essential part of the national emblem, shouldn't be used for any professional, commercial, or political purpose. This would violate the provisions of the aforementioned Act.
2. **Potential to Distort Electoral Outcomes:** The PIL suggests that using such a strategically significant name could unduly influence the electoral process, potentially inciting political violence.
3. **Inaction by the Election Commission of India:** The petitioner contends that despite bringing the issue to the notice of the Election Commission on July 19, there was no action taken to prevent the use of the acronym.

Potential Legal Implications

If the Court finds merit in the petitioner's arguments, the implications would be multifold:

1. **Guidelines on Use of National Symbols:** There could be a clearer set of guidelines on what constitutes misuse of national symbols and names, ensuring a fair playing field in the political arena.
2. **Precedent for Future Alliances:** Any verdict in favour of the petitioner would set a precedent, limiting future political alliances or parties from using names or symbols that resonate strongly with nationalistic sentiments.
3. **Role of the Election Commission:** The Election Commission's responsibilities might be underlined, emphasizing its proactive role in overseeing and ensuring the fairness of electoral campaigns.

5. Preventing Nuclear Use: Russia and Ukraine

State Responsibility in International Law

In the international realm, states are dual entities – they create laws and are also subject to them. Typically, states adhere to international obligations when these align with their strategic interests. For nuclear weapons, the balance lies between states' defensive concerns and the imperatives of international humanitarian considerations.

Individual Dispositions towards Law

For some autocratic regimes, individual leaders play a decisive role. The beliefs and worldviews of leaders can influence a state's adherence to international norms. Leaders with a cosmopolitan identity and liberal internationalist beliefs are more likely to defer to international law. Putin's disposition towards international law remains unclear, but it is evident that the current dynamics between Russia and Ukraine make the situation precarious.

Role of Reciprocity in Compliance

Historically, states are more compliant with laws when their actions can lead to reciprocal behavior. For instance, the principle of reciprocity in the treatment of prisoners of war has been a cornerstone of international humanitarian law. Applying this logic to nuclear weapons, deterrence, especially when both parties have robust retaliatory capabilities, promotes compliance with international norms. Therefore, a commitment from nuclear-armed nations not to engage in first-use could further enhance global security.

International Humanitarian Law (IHL) and Nuclear Weapons

The relationship between IHL and the use of nuclear weapons is contentious. While some types of nuclear use, such as targeting civilian populations, clearly violate IHL, other uses, particularly those involving low-yield weapons, occupy a gray area. The permissibility of nuclear use often depends on specific circumstances and interpretations of open-ended legal principles.

The Nuclear Ban Treaty

The Treaty on the Prohibition of Nuclear Weapons, also known as the Nuclear Ban Treaty, explicitly bans the use of nuclear weapons. However, none of the nuclear-armed states have ratified the treaty, rendering the international law on nuclear use weak. The unwillingness of these states to accede to the treaty challenges the legitimacy and authority of the law.

The situation between Russia and Ukraine underscores the critical role of international law in deterring the use of nuclear weapons. While the existing framework is far from perfect, a combination of legal reforms and normative shifts can potentially strengthen the international community's stance against nuclear warfare.

6. Case of the Week: Bharat Aluminium Case

Bharat Aluminium Co. v. Kaiser Aluminium Technical Service, Inc. (2012)

One of the most prominent cases in the realm of Indian arbitration law is Bharat Aluminium Co. v. Kaiser Aluminium Technical Service, Inc., also referred to as the BALCO judgment. This landmark case brought about a paradigm shift in the way India approached international commercial arbitrations by setting out the applicability of Indian courts' intervention concerning foreign-seated arbitrations.

Legal Issues:

1. Do Indian courts have the jurisdiction to grant interim relief in an arbitration seated outside India?
2. What is the supervisory role of Indian courts over foreign-seated arbitrations?

Judgment:

The Supreme Court of India, in its decision, made the following observations:

1. **Part I of the Arbitration and Conciliation Act, 1996, is not applicable to international commercial arbitrations held outside India.** The court categorically stated that Indian courts

would not have any supervisory jurisdiction over foreign-seated arbitrations, and consequently, Part I of the Act, which provides for court intervention, would not apply.

2. **Indian courts cannot grant interim relief in cases of foreign-seated arbitrations.** The Court opined that granting such a relief would be contrary to the intention of the legislature, which wanted to minimize judicial intervention in the arbitration process.
3. **Parties can, however, opt for Part I of the Act to be applicable.** The parties to an international commercial arbitration agreement can expressly or impliedly agree for the applicability of Part I, thereby giving Indian courts the jurisdiction to intervene.
4. **The judgment would apply prospectively.** This meant that arbitration agreements executed before the date of the judgment would still be governed by the old regime, where Part I was applicable to international commercial arbitrations even if the seat was outside India.

Significance:

The BALCO judgment is monumental for several reasons:

1. **Clarity on Jurisdiction:** The decision clarified the jurisdictional aspect and the limits of court intervention, ensuring that foreign-seated arbitrations are not hindered by unnecessary legal challenges in India.
2. **Boost to India as an Arbitration-friendly Jurisdiction:** By limiting the interference of Indian courts in foreign-seated arbitrations, India positioned itself as an arbitration-friendly jurisdiction. This had positive implications for foreign investors and companies doing business in India.
3. **Harmonization with International Standards:** The judgment aligned India's arbitration law more closely with the UNCITRAL Model Law on International Commercial Arbitration, making India's approach more consistent with international standards.

7. Repeated Previous Year Question Answer

Right to Education is the base for the Fundamental Rights and Human Rights." Discuss the efforts made by the Government with regard to Right to Education of the children.

The right to education is not just a fundamental right but also a human right that forms the bedrock for the exercise of all other rights. It contributes to fostering democracy and promoting economic growth, social mobility, and societal justice. It empowers individuals, enhances their quality of life, and encourages social inclusion.

Right to Education

The original Constitution of India, 1950 did not explicitly recognize the right to education as a fundamental right. Initially, it was included in the Directive Principles of State Policy under Article 45, which stated that "the State shall endeavor to provide, within a period of ten years from the commencement of this

Constitution, for free and compulsory education for all children until they complete the age of fourteen years.

86th Constitutional Amendment, 2002

The 86th Constitutional Amendment Act in 2002 was a watershed moment in the educational landscape of India. It introduced Article 21A, making the right to free and compulsory education a fundamental right for all children aged 6-14 years.

Right to Education Act, 2009

The Right to Education (RTE) Act, 2009, was the legislative enactment meant to operationalize the right enshrined in Article 21A. The Act made education a fundamental right of every child between the ages of 6 and 14 and specified minimum norms in elementary schools. It required all private schools (except the minority institutions) to reserve 25% of seats for the poor and other categories of children (to be reimbursed by the state as part of the public-private partnership plan).

These initiatives reveal the sustained effort to realize the goal of universal education and reinforce the importance of education as a tool for societal transformation. Through these, India has made considerable strides in ensuring that the right to education is not merely a fundamental right in the Constitution but a lived reality for the millions of children in India.

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