

Weekly Update for Law Optional UPSC

A mix of Conceptual, Current/Contemporary Topics

Date: 6th May - 12th May 2024

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1. Upholding Climate Justice: European Court of Human Rights

In a significant move aimed at protecting the most vulnerable amidst the climate crisis, the case of Duarte Agostinho was brought directly to the European Court of Human Rights (ECHR) against multiple European countries.

The decision to pursue this legal avenue had dual objectives: firstly, to urge the court to interpret states' obligations regarding climate change in a manner that safeguards vulnerable communities within Europe, and secondly, to highlight the interconnected nature of climate action among states and the need for collective responsibility.

The Quest for Extraterritorial Justice

Central to the case was the argument that individuals living in vulnerable regions across Europe could find themselves unprotected due to variations in states' responses to climate change. The petitioners emphasised the plight of regions with limited adaptive capacity, such as Mediterranean countries like Portugal, facing significant climate impacts.

They pointed to a critical observation from Germany's Federal Constitutional Court, highlighting the challenge of extending protection to individuals outside a state's borders.

However, the ECHR, while acknowledging the existential threat posed by climate change, emphasised a uniform obligation among contracting states to mitigate climate change.

It asserted that each state bears responsibility for its share of climate action, rejecting the notion of protection gaps by ensuring collective action to prevent adverse effects on human rights.

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Challenges in Domestic Remedies

Another crucial aspect addressed in the case was the efficacy of domestic remedies, particularly in light of previous climate litigation outcomes. The petitioners argued that even successful climate cases, like *Urgenda v The Netherlands*, resulted in insufficient emissions reductions, leaving a looming threat of catastrophic warming above 1.5°C.

“Despite recognizing the concerns raised about the adequacy of domestic remedies, the ECHR maintained that petitioners should exhaust domestic legal avenues before seeking international intervention.”

However, it sidestepped a thorough examination of the effectiveness of remedies granted by domestic courts, highlighting a potential gap in protection for those facing imminent climate risks.

The Road to Climate Justice

In its ruling, the ECHR outlined a positive obligation for states to mitigate climate change, aligned with global climate agreements and emphasising the urgency of immediate action. While the court's stance offers hope for climate justice, challenges remain in translating legal mandates into effective climate action.

Moving forward, the interpretation of the ECHR's obligation must prioritise immediate, science-based emissions reductions, acknowledging the interconnectedness of climate action and the imperative of equitable burden-sharing.

As the climate crisis intensifies, there's a pressing need for robust legal frameworks that compel states to fulfil their obligations and protect the rights of present and future generations.

In the pursuit of climate justice, the Duarte Agostinho case serves as a significant moment, emphasising the imperative of collective action and holding states accountable for their contributions to mitigating climate change.

2. Bombay High Court Upholds Secular Values

In a significant decision highlighting the principles of secularism, the Bombay High Court granted interim relief to Malabar Gold Limited in the case of **Malabar Gold Limited v. Kajal Shingala & Ors.**

The court's ruling, aimed at preserving communal harmony and upholding the values of equality and inclusivity, emphasised the need to combat defamatory social media posts that could potentially sow seeds of division in society.

Selective Posting Criticised

Justice Bharati Dangre, while delivering the court's verdict, denounced the defendant's selective portrayal of Malabar Gold Limited's Corporate Social Responsibility (CSR) initiatives.

By cherry-picking a single image and making derogatory comments about the company's scholarship program for girls from the Muslim community, the defendant failed to acknowledge the broader initiative of promoting education without discrimination based on religion or caste.

Protection of Secular Fabric

The court's decision to grant interim relief to Malabar Gold Limited reflects its commitment to safeguarding the secular fabric of the nation. Drawing inspiration from the words of Martin Luther King Jr., the court emphasised that:

"Darkness cannot drive out darkness; only light can do that. Hate cannot drive out hate; only love can do that."

By admonishing the dissemination of misleading and potentially divisive content on social media platforms, the court indicated the importance of fostering unity and respect for diversity in a pluralistic society.

Legal Proceedings

In the legal battle against defamation, Malabar Gold Limited sought damages and injunctions against defendants accused of launching a campaign to boycott the company. The defendants, including Kajal Shingala, allegedly propagated defamatory content targeting the company's philanthropic efforts, particularly its scholarship programs.

Recognition of Philanthropic Endeavours

The court highlighted the significance of recognizing and appreciating the philanthropic initiatives undertaken by Malabar Gold Limited. These initiatives, aimed at empowering young girls through education, epitomise the values of secularism by ensuring equal opportunities for all, irrespective of religious or social background.

Secularism in Action

The Bombay High Court's directive, requiring the removal of defamatory content and prohibiting the dissemination of similar divisive material in the future, exemplifies the application of secular principles in safeguarding societal harmony. By upholding the rights and dignity of all individuals, regardless of their religious affiliations, the court's decision reinforces the foundational principles of secularism embedded in India's constitutional ethos.

3. Consumer Complaint Maintainability

In a recent ruling, the Supreme Court addressed crucial aspects of consumer protection law in the case of **Shriram Chits (India) Pvt. Ltd. v. Raghachand Associates**. The judgement outlined guidelines for consumer fora in deciding technical pleas raised by service providers concerning the

maintainability of consumer complaints when goods or services are availed for commercial purposes.

The bench, comprising Justices P.S. Narasimha and Aravind Kumar, upheld the decision of the National Consumer Dispute Redressal Commission (NCDRC). It emphasised that:

“Unless a service provider proves that goods or services were availed for commercial purposes by the consumer, disputing the maintainability of the consumer complaint is not valid.”

Consumer Protection Act 1986

The Consumer Protection Act 1986 bars consumer complaints against service providers if services are availed for commercial purposes. However, an exception exists if the services are availed exclusively for the purpose of earning livelihood through self-employment.

Case Background

In the case at hand, the consumer complaint was filed by the respondent seeking the return of a subscription amount from the chit fund company when it ceased operations. The company contended that the complaint wasn't maintainable as the consumer availed services for commercial purposes.

Judicial Analysis

Justice Aravind Kumar's judgement analysed the definition of 'consumer' under Section 2(7) of the Consumer Protection Act 1986. It delineated three parts of the definition, placing the burden of proof on both complainants and service providers.

Onus of Proof

The judgement clarified that the burden of proving that goods or services were availed for commercial purposes rests with the service provider. Placing this burden on the complainant contradicts the principle of evidence law.

Testing Parameters

The court emphasised that if a service provider proves the commercial nature of services, the burden shifts to the complainant to demonstrate they were exclusively for livelihood. However, in this case, the service provider failed to prove commercial purposes, rendering the third part of the definition irrelevant.

4. Arbitral Tribunal's Authority Upheld by Supreme Court

In a significant ruling in the case of **National Highway Authority of India v. M/s Hindustan Construction Company Ltd.**, the Supreme Court emphasised the exclusive jurisdiction of Arbitral

Tribunals in interpreting contract terms. The bench, comprising Justices A. S. Oka and Pankaj Mithal, upheld the Tribunal's findings, emphasising that courts, under Section 34 of the Arbitration and Conciliation Act, 1996, do not intervene as appellate bodies.

Background

The case involved an appeal by NHAI against the Arbitral Tribunal's decision, affirmed by the Delhi High Court, directing reimbursement to the respondent for various additional expenses incurred during the Allahabad Bypass Project.

Scope of Interference

The bench clarified that judicial interference is limited under Section 37 of the Act and cited precedents highlighting that:

“Courts only intervene if the award violates public policy or involves legal errors.”

Arbitral Tribunal's Interpretation

Addressing specific issues such as reimbursement for increased royalty rates and embankment construction, the bench noted the Tribunal's majority decision in favour of the respondent. It reiterated that Arbitral Tribunals have the authority to interpret contract terms.

Court's Observations

The bench emphasised that once an Arbitral Tribunal interprets a contract based on the evidence, courts do not reassess these findings under Section 34. The majority opinion of technical experts is respected, and courts do not intervene unless public policy is infringed.

5. Measures Against Misleading Advertisements

In the case of **Indian Medical Association v. Union of India**, the Supreme Court introduced significant measures to combat misleading advertisements, ensuring consumer protection and accountability in advertising practices.

Equal Responsibility of Advertisers and Endorsers

The Court emphasised the crucial role of public figures, influencers, and celebrities in endorsing products, highlighting their responsibility in ensuring the accuracy of advertisements. Drawing from Central Consumer Protection Authority (CCPA) guidelines, the Court stressed the need for due diligence in advertisement endorsements.

Self-Declaration Requirement

To enhance transparency and accountability, the Court mandated a self-declaration from advertisers before issuing advertisements. This declaration, as per the Cable Television Network Rules, 1994, must be uploaded on the Broadcast Seva Portal under the Ministry of Information and Broadcasting.

Portal for Print Media Advertisements

In addition to the Broadcast Seva Portal, the Court directed the Ministry to create a separate portal for self-declaration of print media advertisements.

“Advertisers must file the self-declaration before publishing any advertisements in print media.”

Consumer Protection Emphasis

The Court highlighted the importance of protecting consumer rights, expressing concern over misleading health claims made by FMCGs and drug companies. It urged the vigorous utilisation of CCPA provisions to regulate misleading advertisements and safeguard consumer interests.

Streamlining Complaint Mechanisms

Recognizing the need for an efficient complaint mechanism, the Court advocated for specific procedures to facilitate consumer complaints. It emphasised the importance of resolving complaints effectively, rather than merely forwarding them to state authorities.

6. Case of the Week: DU Photocopy

In the Delhi University photocopy case, officially known as "The Chancellor, Masters & Scholars of the University of Oxford & Ors vs. Rameshwari Photocopy Services & Anr," a significant legal battle unfolded in the Indian intellectual property landscape. The case revolved around the concept of "fair dealing" as outlined in the Indian Copyright Act, 1957.

Background

The controversy began when major international publishers, including Oxford University Press, Cambridge University Press, and Taylor & Francis, sued a photocopy shop located on the Delhi University campus. The shop was accused of producing and selling course packs—compilations of photocopied academic materials—without obtaining permission from the copyright holders.

Legal Proceedings

The publishers argued that this practice infringed on their copyrights and harmed their market. In contrast, Delhi University and the photocopy shop contended that these course packs were essential for educational purposes and fell under the "fair dealing" provisions of the Copyright Act,

which allow the reproduction of copyrighted materials for teaching, research, and private study without the author's permission.

Court's Decision

In 2016, the Delhi High Court delivered a landmark ruling in favour of Delhi University and the photocopy shop. The court emphasised the importance of access to educational materials for students and held that the creation and distribution of course packs for educational purposes constituted fair dealing under Sections 52(1)(a) and 52(1)(i) of the Copyright Act.

Implications

This judgement was hailed as a victory for educational access and the principle of fair dealing. It highlighted the balance between copyright holders' rights and the public interest in accessing educational materials. The case highlighted the need for copyright law to adapt to the realities of educational needs and the digital age.

7. Repeated PYQ

Q. Public Interest Litigation has been a significant tool in protecting the environment. Discuss with the help of cases.

Public Interest Litigation (PIL) has been a transformative force in Indian jurisprudence, especially concerning environmental protection. The Indian judiciary, particularly the Supreme Court and High Courts, has adopted PIL as a means to extend legal remedies to those who are poor, ignorant, or otherwise unable to access justice due to financial or informational constraints.

Public Interest Litigation

Public Interest Litigation (PIL) in India has emerged as a powerful instrument for social change, particularly in the realm of environmental protection. Originating in the late 1970s and early 1980s, PIL allows the courts, especially the Supreme Court and High Courts, to address the rights of those who are less fortunate or have been marginalised.

This legal innovation has enabled the judicial system to act proactively in safeguarding the environment by relaxing the traditional rule of 'locus standi'. This means that any concerned citizen or organisation can approach the courts seeking remediation for a public injury or harm, especially in environmental matters.

M.C. Mehta vs. Union of India (Ganga Pollution)

One of the landmark cases in the history of environmental PILs in India is M.C. Mehta vs. Union of India (1988). Environmental lawyer M.C. Mehta filed a PIL concerning the alarming levels of pollution in the Ganges River. The Supreme Court, recognizing the river's sacred and ecological importance, issued directives to cease the discharge of industrial waste into the river.

The court ordered several municipalities and industries along the banks of the Ganges to set up waste treatment plants and adopt pollution control measures.

M.C. Mehta vs. Union of India (Taj Trapezium Case)

Another significant environmental PIL was filed by M.C. Mehta concerning the deterioration of the Taj Mahal due to air pollution from nearby industries. In this 1996 case, the Supreme Court demonstrated its proactive role by ordering industries in the Taj Trapezium Zone to switch to cleaner fuels or relocate to protect the monument.

Vellore Citizens Welfare Forum vs. Union of India

In the Vellore Citizens Welfare Forum vs. Union of India (1996), the issue of industrial pollution was again at the forefront. The citizens of Vellore, Tamil Nadu, were suffering due to the discharge of untreated effluents by leather industries into their water sources.

The Supreme Court invoked the **"Precautionary Principle"** and the **"Polluter Pays"** principle, both significant in international environmental law, and directed the polluting industries to compensate for the damage and take immediate action to control further pollution.

This case is a milestone in the application of international environmental principles by Indian courts.

Rural Litigation and Entitlement Kendra vs. State of U.P.

In this case, the Supreme Court took a bold step by prohibiting the continuation of mining operations in the Mussoorie hill range. The court deemed these activities as detrimental to the environment and ecology of the region.

Impact of PIL on Environmental Governance

PIL has undeniably transformed the environmental governance landscape in India. Through various judgments, the judiciary has not only provided remedies for existing environmental problems but has also set up frameworks for future protection. The courts have emphasised sustainable development, balancing environmental protection with the need for economic growth. They have also reinforced the importance of public participation in environmental decision-making, recognizing the collective responsibility towards maintaining ecological balance.

Challenges and Critiques

Despite the successes, PIL in environmental matters faces certain criticisms and challenges. There is a concern about the judiciary overstepping its boundaries and entering into the domains of the executive and legislative branches. Some argue that this could lead to a 'judicial overreach'. Moreover, the implementation of court orders remains a significant challenge, with many directives either partially fulfilled or ignored.