

Weekly Update for Law optional UPSC

A mix of Conceptual, Current/Contemporary Topics

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1. Supreme Court of India's Interpretation of International Law in Assessing Officer Circle vs M/s Nestle SA

In a pivotal decision that has significant repercussions for the application of international law in India, the Supreme Court's verdict in Assessing Officer Circle (International Taxation) New Delhi vs M/s Nestle SA has raised critical questions, especially in light of the Vienna Convention on the Law of Treaties (VCLT) and other international law provisions. This case specifically dealt with the applicability of Most Favoured Nation (MFN) clauses in India's tax treaties and the necessity of government notification for their enforcement.

Overview of the Judgment:

- Executive Powers and International Obligations:** The case examines the extent of the Union executive's powers under Article 73 of the Constitution. While the executive can assume international obligations without parliamentary approval, conflicts with existing laws necessitate domestic legislative processes for such obligations to become enforceable by courts.
- Dualism in Constitutional Framework:** Embodying the concept of dualism, Article 253 acknowledges international law and municipal (domestic) law as distinct entities. This means that international agreements don't automatically become part of domestic law.
- Parliamentary Powers and Delegation:** Under Article 246 and Entry 14 of the Seventh Schedule, Parliament possesses the authority to enter into and implement treaties. This power is often delegated to the executive, as seen in the case of tax treaties under Section 90 of the Income Tax Act.
- Mandate of Section 90 of the IT Act:** This section requires that for international tax agreements to be effective domestically, the central government must issue a notification.

This legal requirement ensures that any change or agreement related to tax law aligns with the constitutional and statutory framework.

5. **Implications of the MFN Clauses Without Notification:** Applying MFN clauses without proper notification could lead to uncertainty and inconsistency in the tax system. This lack of notification goes against the mandate of Section 90 of the IT Act and disrupts the established tax structure.
6. **Judicial Caution and Separation of Powers:** The judgment emphasizes the importance of courts being cautious in judicially incorporating international treaty provisions into domestic law. This approach respects the doctrine of separation of powers and ensures adherence to constitutional and statutory requirements.
7. **Implications for Future International Treaties:** This decision could impact how future international treaties, especially those related to tax and investment, are interpreted and enforced in India. It may also affect India's standing in the international community concerning its treaty obligations.

2. Surrogate Advertising under consumer law in India

What is Surrogate Advertising?

Surrogate advertising is a unique advertising strategy predominantly used in the tobacco and liquor sectors in India, where direct promotions of these products are banned. Companies cleverly navigate these restrictions by advertising different products under the same brand name, indirectly promoting their primary (often banned) product. This method not only evades legal constraints but also embeds the primary product in the consumer's mind. For instance, Kingfisher promotes bottled water and soda, while Royal Challenge advertises golf accessories and mineral water, subtly alluding to their primary liquor products.

Legal Framework Governing Surrogate Advertisements in India:

1. **COTPA (2003):** The Cigarettes and Other Tobacco Products Act plays a pivotal role in regulating tobacco advertisements.
2. **CTNA (1995):** The Cable Television Networks Act oversees advertisements on cable networks, including surrogate ads.
3. **ASCI:** The Advertising Standards Council of India provides guidelines for honest and non-misleading advertisements.
4. **FCTC:** The Framework Convention on Tobacco Control is an international treaty that influences domestic laws concerning tobacco advertising.

Challenges and the Need for Stringent Measures:

While the existing legislative framework partially addresses surrogate advertising, there is a growing need for more robust measures. Current laws are often circumvented, rendering regulations less effective. The following measures could be more impactful:

- **Amendment of the Trademarks Act:** To explicitly ban surrogate advertising.
- **Empowering ASCI:** Providing ASCI with greater authority to enforce laws against misleading advertisements.

- **National Coordination Mechanism:** For better implementation of both national and international regulations.
- **Consumer Awareness Programs:** Educating consumers about the nuances of surrogate advertisements.
- **Regulating Advertising Agencies:** Ensuring agencies are aware of the products they are promoting and holding them accountable for surrogate advertising.

This topic's relevance spans various aspects of law, including intellectual property rights (trademark law), consumer rights, and regulatory law.

3. Right to access the internet and the digital divide

The Right to Internet Access:

The Supreme Court's judgment in **Anuradha Bhasin v. Union of India** is pivotal in recognizing internet access as a part of the right to information and freedom of speech and expression under Article 19 of the Constitution. The court's stance against internet shutdowns reflects a growing acknowledgment of the internet's role in contemporary society.

Digital India: A Dual Narrative:

India's digital landscape presents a study in contrasts. On one hand, there's rapid adaptation by a significant population section, an impressive feat considering India's size and diversity. On the other, this shift has exacerbated vulnerabilities for those with limited or no internet access, revealing a stark digital divide.

Statistics and Realities:

- India has over 900 million internet users, yet internet penetration is below 50%.
- Gender disparities are significant, with only 31% of women owning a mobile phone compared to 61% of men.
- The rural-urban divide in internet usage is evident, with only 31% of rural India online compared to 67% of the urban population.
- The COVID-19 pandemic magnified this divide, affecting education, health, and financial services access.

The Impact of Internet Shutdowns:

Frequent internet shutdowns in India, often justified by authorities as necessary for maintaining law and order, have significant repercussions on people's lives and livelihoods. They disrupt essential services and government amenities that have become increasingly digitized, like MNREGA.

Aadhar and Digital Vulnerabilities:

The Aadhar project, while ambitious, raises concerns about privacy, data security, and the potential for exclusion. Large-scale database leaks and the risks associated with the digitization of financial transactions, including UPI and fintech applications, add layers of complexity to this issue.

International law is replete with provisions that extend protection to human rights affected by technology and the digital world. For instance the Universal Declaration of Human Rights, asserts the right to privacy as applicable to both physical and digital realms, emphasises freedom of expression and the right to information. Similarly, the International Covenant on Civil and Political Rights (ICCPR) affirms the right to privacy including protection against unlawful or arbitrary interference with privacy and the right to seek, receive and impart information.

4. Role of Governor in State

A crucial Supreme Court judgment delivered on November 10, 2023 (The State of Punjab v. Principal Secretary to the Governor of Punjab and Another), which has profound implications for the understanding of the constitutional relationship between State Governors and Legislative Assemblies in India.

Key Takeaways:

1. **Governor's Power in Question:** The Supreme Court has explicitly clarified the boundaries of a Governor's power concerning legislative bills. In this landmark ruling, the Court held that a Governor cannot withhold assent to bills by doubting the validity of the legislative session in which they were passed.
2. **Specific Context:** This judgment came against the backdrop of the Punjab Governor, Banwarilal Purohit, withholding assent on four bills, citing doubts about the validity of the Punjab Vidhan Sabha session of June 2023.
3. **Court's Observation:** The Court, led by Chief Justice DY Chandrachud, stated that any attempt to cast doubt on the session of the legislature is fraught with peril to democracy. It reinforced that the real power in a parliamentary democracy rests with the elected representatives of the people, not the titular head (Governor).
4. **Governor's Role:** The Court emphasized that a Governor, as an appointee of the President, cannot veto the legislature by merely withholding assent to a bill but must return the bill to the Assembly for reconsideration.
5. **Legal Implications:** This ruling is a pivotal interpretation of Articles 200 and 174 of the Constitution, differentiating the roles and powers of the Governor and the legislative assembly.
6. **Broader Context:** The judgment is part of a series of petitions involving similar conflicts in Kerala and Tamil Nadu, indicating a growing constitutional discourse on gubernatorial powers in India.

5. Majority v Minority in a Democracy

A thought-provoking lecture was delivered by Chief Justice DY Chandrachud, which sheds light on the fundamental principles of democracy and the crucial role of dissent within it. This lecture, held on December 2, 2023, at the Justice Keshav Chandra Dhulia Memorial Lecture, is particularly

relevant for those of you pursuing a career in law, as it touches upon the core values that underpin the legal system and democratic governance.

Key Highlights of the Lecture:

1. **Democracy Beyond Majority Rule:** Chief Justice Chandrachud emphasized that while a majority rule is a characteristic of democracy, the true essence lies in ensuring that minorities (numerical or social) have a voice. This perspective challenges the simplistic view of democracy as merely the rule of the majority.
2. **Importance of Deliberation:** The CJI pointed out that democracy is more than a reflection of majoritarian preferences; it requires engagement with all stakeholders. This engagement, even if not immediately fruitful, contributes to the historical narrative and future discourse.
3. **The Role of Dissent:** The Chief Justice underscored the vitality of dissent in a democracy, stating that it is as crucial as deliberation. He argued that dissent, even when unpopular, is essential for a healthy democracy, as it can lead to significant social changes.
4. **Democracy and Institutions:** A robust democracy is sustained not just by the will of the people but also by strong institutions and procedural guarantees that prevent bias and ensure fairness in decision-making.
5. **The Power of Dissent in Social Change:** Highlighting historical movements like the abolition of slavery and the annihilation of caste, the CJI showed how dissent has been a driving force in societal restructuring and progress.
6. **Encouragement for Critical Thinking:** Chief Justice Chandrachud stressed the need for a society that encourages its citizens to question authority and engage in nonconformist discourse, as this is vital for progress and the creation of dissenting opinions.

6. Case of the Week

In a pivotal judgment, the Supreme Court of India delivered a landmark decision in the case of **Cherubin Gregory v. State of Bihar** (MANU/SC/0080/1963 : AIR 1964 SC 205), which has since played a crucial role in shaping the understanding of negligence, particularly in cases involving trespassers. This newsletter aims to dissect this significant case, providing legal professionals with an in-depth analysis of its implications.

Background of the Case

The incident leading to this case occurred near the house of the accused, Cherubin Gregory. Due to the collapse of a wall, the neighboring residents, including the deceased, began using the latrine on Gregory's property. Despite warnings, these trespasses continued. In a response that proved to be fatally excessive, Gregory installed a naked live electric wire without any warning signs. The tragic consequence of this act was the electrocution and subsequent death of a trespasser.

The Legal Issue

At the heart of the case was the question: Was Gregory guilty of a rash and negligent act under Section 304A of the Indian Penal Code (IPC)?

Arguments and Court's Observation

Gregory's defense argued that the deceased was a trespasser and that no duty of care was owed to him. However, the Supreme Court decisively rejected this contention. The Court emphasized that while a trespasser assumes certain risks, property owners do not have the right to willfully cause harm, either directly or indirectly. The installation of a live electric wire, especially without any warning, was deemed not just a failure to prevent harm but an active creation of a dangerous situation.

Key Legal Takeaways

1. **Duty of Care Even to Trespassers:** The judgment clarified that while trespassers are not owed the same duty of care as invitees, property owners cannot act with reckless disregard for their safety.
2. **Distinction Between Passive and Active Measures:** The Court differentiated between passive negligence and active creation of a hazardous situation. Gregory's act was an active intervention that created a new danger, rather than a mere omission or passive negligence.
3. **Intention and Recklessness:** The Court's decision underscored the significance of intention and recklessness in determining liability. Gregory's act was interpreted as a willful and reckless endangerment of life, transcending mere negligence.
4. **Legal Precedent for Property Owners' Liability:** This case set a crucial precedent, holding property owners liable for actions that could foreseeably cause serious harm to trespassers, irrespective of the latter's unauthorized presence.

Conclusion

The Cherubin Gregory case stands as a testament to the evolving nature of tort law in India, particularly concerning the duty of care owed to trespassers. It signifies the balance the law strikes between property rights and personal safety, underlining the principle that property protection does not warrant causing deliberate harm. This case continues to be a guiding precedent in cases involving injury or harm to trespassers, reminding property owners of their limited rights when dealing with unauthorized entrants.

7. Repeated PYQ

Q:- Although registration of firm is not compulsory, firms are usually registered - Discuss the above statement with reference to disadvantages of non registration of a firm under the law of partnership.

The statement that registration of a firm is not compulsory but firms are usually registered highlights a significant aspect of partnership law in many jurisdictions. While the law does not mandate the registration of a partnership firm, there are several disadvantages associated with not registering. Let's discuss these disadvantages with reference to the law of partnership:

Legal Suit by Partners: In many legal systems, an unregistered firm or its partners cannot bring a lawsuit in a court of law to enforce a right arising from a contract. This limitation can be a significant disadvantage in case of disputes with third parties.

Legal Suit Against Third Parties: Similarly, if a firm is unregistered, it may not be able to sue third parties for contractual rights. For example, if a supplier fails to deliver goods or a client refuses to pay for services rendered, the firm might not have legal recourse.

Claim Set-offs: While an unregistered firm cannot initiate legal proceedings, it can be sued by others. In such cases, the firm or its partners cannot claim a set-off (i.e., an assertion of a counterclaim for debt or damages) in a lawsuit.

Partnership Rights: In some jurisdictions, an unregistered firm's partners may not have the ability to enforce their rights under the partnership agreement against each other or the firm. This lack of enforceability can lead to complications in the internal management and resolution of disputes within the firm.

Creditworthiness and Reputation: Registration of a firm often adds to its credibility and legitimacy in the eyes of potential clients, suppliers, and investors. An unregistered firm might be perceived as less stable or less serious about its business, impacting its reputation and ability to attract business and investment.

Government Contracts and Benefits: Unregistered firms may be ineligible for certain government contracts and benefits that are available to registered entities. Registration can also be a prerequisite for various licences and permits.

Legal Recognition and Ease of Doing Business: Registered firms are often more easily recognized as legal entities, which can facilitate various business transactions, including opening bank accounts, entering into contracts, and seeking loans.

In conclusion, while the law may not mandate the registration of partnership firms, doing so can provide significant legal and practical advantages. Registration enhances the firm's ability to enforce and defend legal rights, increases its credibility, and facilitates smoother business operations. The disadvantages of not registering, particularly in terms of legal enforceability and business efficacy, make registration a wise choice for most partnership firms.

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