

Weekly Update for Law optional UPSC

A mix of Conceptual, Current/Contemporary Topics

Date: 26th Feb - 3rd March 2024

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1. ICJ Walks Tightrope: Jus Cogens Norms and Self-Defence

In analysing the International Court of Justice's decisions on provisional measures in the South Africa v. Israel and Ukraine v. Russia cases, a significant aspect under scrutiny is how the Court addressed Israel's self-defence argument amidst South Africa's plea for halting military actions. While the Court refrained from ordering Israel to cease its operations, it did instruct Russia to suspend its military actions in the Ukraine case, albeit under different circumstances.

An often overlooked consideration in these deliberations is the potential impact of jus cogens norms on the Court's decisions. The Court has historically been cautious in addressing these peremptory norms of international law, sometimes finding ways to sidestep their applicability.

However, there have been instances where the Court has acknowledged jus cogens norms, notably categorizing genocide as a peremptory norm. Despite this, there remains debate over whether the prohibition of force qualifies as a jus cogens norm. Nevertheless, the Court has hinted at the idea that such norms should take precedence over conflicting state rights and obligations.

In the South Africa v. Israel case, the Court seemed to distance itself from Israel's claim of self-defence, likely due to the exclusive focus on the Genocide Convention in the case. Conversely, in Ukraine v Russia, the Court grappled with the clash between self-defence and the obligation to refrain from acts of aggression.

The Court's reluctance to explicitly engage with jus cogens norms notwithstanding, its decisions reflect a delicate balance between conflicting legal principles. While the Court refrained from directly addressing the right of self-defence, it did not disregard its potential relevance. The possibility of the Court further exploring this intersection in future cases remains open, contingent upon evolving events and legal developments.

2. Supreme Court Upholds Sanctity of Contractual Agreements

In **Venkataraman Krishnamurthy and Another vs. Lodha Crown Buildmart Pvt. Ltd.** the Supreme Court reiterated the principle that courts cannot alter or create new contracts between

parties but must adhere strictly to the terms agreed upon. Justices Aniruddha Bose and Sanjay Kumar emphasised that once parties commit to a written contract, its terms are binding, and the court's role is to interpret rather than rewrite them.

Background

The case stemmed from a dispute between a buyer and seller of an apartment, where the National Consumer Dispute Redressal Commission (NCDRC) deviated from the contract's terms. Despite the seller's failure to provide an 'occupation certificate' within the specified timeframe, the NCDRC denied the buyer's right to terminate the contract and seek a refund.

The central question before the Supreme Court was whether the NCDRC could reinterpret contractual terms or create new agreements based on its interpretation.

Supreme Court's Observations

The Supreme Court firmly rejected the notion, emphasising that courts must uphold the agreed terms of a contract. It cited precedent cases to reinforce this principle, highlighting that the duty of the court is to interpret the contract's language as agreed upon by the parties.

Validity of Buyer's Actions

The Supreme Court affirmed the buyer's right to terminate the contract when the 'occupation certificate' was not provided within the stipulated period. It deemed the buyer's actions justified and faulted the NCDRC for disregarding the binding clauses of the agreement.

Overstepping Jurisdiction

Furthermore, the Supreme Court criticised the NCDRC for overstepping its authority by ignoring the contractual obligations and introducing its reasoning into the decision-making process.

3. Denial of Permanent Commission for Women in Indian Coast Guard

Priyanka Tyagi v. Union of India & Ors.

In a significant development, the Supreme Court scrutinised the Union Government's stance regarding the denial of permanent commission for women officers in the Indian Coast Guard (ICG). The bench, led by Chief Justice DY Chandrachud along with Justices JB Pardiwala and Manoj Misra, heard the plea filed by a woman Short Service Appointment (SSA) Officer seeking permanent commission.

During the hearing, the Attorney General (AG) representing the Union Government argued about functional differences in the Indian Coast Guard compared to other branches of the Armed Forces. However, the Chief Justice intervened, emphasising the importance of inclusion of women officers in the Coast Guard.

The AG mentioned the formation of a board to reassess the modalities, hinting at possible structural changes. Nevertheless, the Chief Justice, advocating for women officers' rights, warned that the court might intervene if necessary changes weren't implemented.

Court's Observations

The bench expressed scepticism towards the notion of 'functional differences' and urged the Union Government to adopt a gender-neutral policy promptly. It emphasised the need for fairness in treating women officers and criticised the patriarchal approach in denying permanent commission to women in the Coast Guard.

4. Contracts Entered by Minors

In **Krishnaveni v. M.A. Shagul Hameed & Anr.**, the Supreme Court reiterated the long-standing legal principle that contracts entered into by minors are not enforceable under the law. Justices Hrishikesh Roy and Prashant Kumar Mishra upheld the decision of the High Court, which deemed a sale agreement entered by a minor to be void.

Background

The case revolved around a sale agreement executed between the appellant (a minor) and the respondents (sellers), concerning the purchase of immovable property. The appellant's mother sought direction from the trial court to compel the sellers to fulfil their contractual obligations. However, the sellers invoked Order 12 Rule 6 of the Code of Civil Procedure, citing the appellant's admission of being a minor at the time of the agreement.

The trial court initially refused to entertain the sellers' application, prompting them to appeal to the High Court. The High Court, upon revision, affirmed the void nature of the contract, considering it null and void ab initio due to the appellant's minor status.

Decision

The appellant contested the High Court's decision, arguing that contracts in favour of minors are enforceable. However, the Supreme Court reiterated that parties must be competent to contract, and contracts entered by minors are not enforceable under the law.

Citing the Contract Act of 1872, the Supreme Court emphasised the requirement of competency for a contract to be valid. It referenced the case of **Mathai Mathai vs. Joseph Mary Alias Marykutty Joseph (2015) 5 SCC 622**, which clarified the invalidity of contracts involving minors.

5. CCI Closes Competition Act Case Amidst Allegations of Plot Allotment Dispute

In the case titled **Vivek Gupta vs. New Okhla Industrial Development Authority (NOIDA)**, the informant, Vivek Gupta, alleged that NOIDA holds exclusive authority over the allocation and upkeep of land in Noida, effectively exercising a monopoly over various land-related activities such as acquisition, development, auction, allotment, leasing, and sale of land in the area. In 2019, NOIDA invited the public to participate in the auction of residential plots across several sectors in Noida. Responding to this invitation, the informant deposited Rs. 2,500/- for registration and subsequently Rs. 12,95,800/- to participate in the auction process.

After successful participation, the informant secured the allotment of a plot in Sector-122, Noida, for Rs. 1,29,58,000/-. The allotment letter was issued on 26.08.2019, and the informant claimed to have paid a total of Rs. 1,50,76,056/- as consideration for the plot. However, upon visiting the site subsequent to obtaining the lease deed and possession letter, the informant discovered encroachments by farmers and faced threats from unknown individuals.

The informant alleged that despite making multiple unsuccessful attempts to address grievances with NOIDA, seeking an alternative plot at a similar location along with damages and charges, NOIDA intentionally auctioned off the disputed property without informing him. In response to these grievances, the informant filed a representation/complaint on the Integrated Grievance Redressal System Portal of the Government of Uttar Pradesh. Subsequently, the informant approached the Allahabad High Court through a Writ Petition. Additionally, the informant filed an information

alleging contravention of provisions of Section 4 of the Competition Act, 2002 ("Competition Act") by NOIDA.

Upon review, the Competition Commission of India ("CCI") observed that the informant's grievances primarily pertained to NOIDA's failure to hand over the plot as per the lease. The Allahabad High Court, considering NOIDA's submission that the plot was unavailable due to a dispute, directed NOIDA to return the amount deposited by the informant, issuing a cheque of Rs. 1,40,98,522.

CCI further noted that the nature of the allegations seemed to indicate a dispute between the informant and NOIDA, rather than an instance of abuse of dominant position as outlined in Section 4 of the Competition Act. Consequently, CCI held it unnecessary to conduct further analysis to determine the relevant market, assess the dominant position of NOIDA, and scrutinise any potential abuse.

Based on these observations, CCI held that no prima facie case of contravention under Section 4 of the Competition Act was evident. Therefore, in accordance with Section 26(2) of the Competition Act, the matter was ordered to be closed forthwith.

6. Case of the Week

M.C. Mehta v. Union of India, AIR 1987 SC 1086

The Supreme Court of India's decision in M.C. Mehta v. Union of India, also known as the Oleum Gas Leak case, emerged from a tragic incident at Shriram Food and Fertilisers Ltd. in Delhi, where a leak of oleum gas in December 1985 caused several injuries. This incident led environmental activist M.C. Mehta to file a public interest litigation (PIL), advocating for the victims' compensation and raising concerns over the management of hazardous industries in populated areas. The case presented critical questions on the obligations of industries engaged in inherently dangerous activities and the determination of liability and compensation for resulting harms.

In its landmark judgement, the Supreme Court expanded the legal framework concerning torts, introducing the principle of absolute liability. This principle dictates that enterprises operating hazardous industries bear an unconditional obligation to compensate for any harm caused by accidents, without the exceptions inherent in the traditional strict liability doctrine. The court emphasised that such enterprises have an inescapable duty to ensure community safety and environmental protection, a duty that persists regardless of subcontracting specific operations.

The judgement also touched upon the quantum of compensation, suggesting it should reflect the enterprise's size and profitability to serve as an effective deterrent.

The M.C. Mehta v. Union of India case represents a critical turning point in Indian environmental law, introducing more stringent responsibilities for hazardous industries. It highlighted the essential balance between industrial growth, environmental preservation, and public health, establishing a benchmark for future litigation related to environmental and industrial accidents.

7. Repeated PYQ

Q:- "Laws are geared to protect the right to equitable remuneration but life is beyond the material." In the light of the above statement, dwell on the dichotomy of economic rights and moral rights under the Copyright Act, 1957 and case law on the point.

The dichotomy between economic rights and moral rights under the Copyright Act, 1957, reflects a fundamental balance in copyright law between material interests and the intrinsic, non-material interests of creators.

Economic Rights

Economic rights are fundamental aspects of copyright law, providing authors with the exclusive right to exploit their works for financial gain. These rights, detailed in Section 14 of the Copyright Act, 1957, encompass a wide range of exploitative activities, including reproduction, publication, performance, and adaptation of the work. Economic rights are assignable and licensable, allowing authors to monetize their creative outputs through various means, such as sales, licences, and distributions.

The jurisprudence surrounding economic rights has consistently underscored their importance in incentivizing creativity and ensuring that authors receive just compensation for their contributions. Courts have upheld the exclusive nature of these rights, emphasising the need for explicit authorization by the copyright holder for any exploitative acts concerning the copyrighted work.

Moral Rights

Contrasting with economic rights, moral rights recognize the personal and intrinsic connection between authors and their creations. Rooted in the dignity and integrity of the creative process, moral rights protect the non-economic interests of authors, such as their right to attribution (*droit de paternité*) and the right to object to derogatory treatments of their works (*droit au respect de l'oeuvre*). Unlike economic rights, moral rights are inalienable and persist even after the transfer of economic rights, safeguarding the author's reputation and personal relationship with their work.

Essential Elements of Moral Rights

- **Right of Attribution:** Authors possess the unequivocal right to claim authorship of their work, ensuring recognition and association with their creation.
- **Right to Integrity:** This right allows authors to protect their works from modifications that could harm their reputation or distort their original message.
- **Right of Disclosure:** Authors can decide whether and when to publish their works, maintaining control over their introduction to the public sphere.

***Amar Nath Sehgal v. Union of India (2005)*:** This landmark case highlighted the sanctity of moral rights, as the Delhi High Court acknowledged the author's right to integrity, condemning the unauthorised destruction of a work. It affirmed the enduring nature of moral rights, regardless of the transfer of economic rights.

***Mannu Bhandari v. Kala Vikas Pictures Pvt Ltd and another (1987)*:** This case highlighted the author's right to prevent unauthorised adaptations of their work, emphasising the protection of the work's original essence and the author's reputation.

Navigating the Dichotomy

The dichotomy between economic and moral rights within copyright law encapsulates the dual nature of creative works as both economic assets and personal expressions of the author's identity and intellect. The legal framework, through the Copyright Act, 1957, and the judicial interpretations thereof, strives to maintain a delicate balance between these competing interests.

The Role of International Conventions

The Berne Convention for the Protection of Literary and Artistic Works plays a crucial role in shaping the understanding and implementation of moral rights globally, mandating member states to recognize and enforce these rights. India's adherence to the Convention further solidifies its commitment to protecting the holistic interests of authors, beyond mere economic considerations.

The Philosophical Underpinning

The recognition of moral rights reflects a deeper philosophical acknowledgment of the author's enduring connection to their creation. It embodies a respect for the creative process and the individual's right to dignity, honour, and personal identity within the realm of intellectual property.

The interplay between economic and moral rights within copyright law presents a framework that upholds both the material interests and the intrinsic dignity of authors. This framework ensures equitable remuneration through economic rights while safeguarding authors' personal and reputational interests through moral rights. By acknowledging that the value of creative works surpasses mere economic utility, the law recognizes the profound significance of artistic expression.

