

Weekly Update for Law optional UPSC

A mix of Conceptual, Current/Contemporary Topics

Date: 15th - 21st Jan 2024

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1. Indonesia to Address ICJ on Israel's Occupation of Palestine

Indonesian Foreign Minister, Retno Marsudi, is set to address the International Court of Justice (ICJ) on February 19, discussing Israel's occupation of Palestine. This comes in response to a request from the UN General Assembly seeking legal advice on Israel's actions in Palestinian territories, including East Jerusalem.

UN General Assembly's Request:

- On January 17, 2023, the UN General Assembly sought legal advice from the ICJ regarding Israel's activities in Palestinian territories.
- The request includes examining Israel's actions, such as land acquisition, construction in the West Bank, and changes to Jerusalem's status.

Indonesia's Stance:

- Indonesia supports the UN General Assembly's efforts to seek an advisory opinion from the ICJ, emphasising the importance of upholding international law.
- Foreign Minister Retno asserts that the Palestinian people's right to self-determination must be respected despite Israel's occupation lasting over 70 years.
- Retno argues that Israel's actions violate international law, including the takeover of Palestinian land and altering Jerusalem's status.
- She emphasises the need for accountability and cessation of these actions, urging the global community to reject them as legal.

South Africa's ICJ Case:

- South Africa has also taken Israel to the ICJ, accusing it of genocide and requesting the court to halt Israeli military actions in Gaza immediately.
- South African President Cyril Ramaphosa emphasises the need for broader humanitarian access to provide essential aid and services to everyone in Gaza.

2. DNA Index for Unidentified Dead Bodies

Background:

- On January 16, the Supreme Court issued notice in a Writ Petition (KISHAN CHAND JAIN vs. UNION OF INDIA) seeking directions to the Union Government to establish a DNA Index for identifying dead bodies.
- The bench, consisting of Chief Justice of India DY Chandrachud, Justices JB Pardiwala, and Manoj Misra, was informed that annually, 40,000 dead bodies remain unidentified and unclaimed.

Previous Developments:

- The petitioner's counsel highlighted that the Union Government, in response to a court order on May 1, 2018, had given a statement about legislation for a DNA Index. A bill was introduced in the Lok Sabha but lapsed after being passed.
- The bill was later reintroduced, referred to the committee, and ultimately withdrawn on July 24, 2023, despite previous assurances of creating a law.

Court's Response:

- Chief Justice DY Chandrachud questioned the feasibility of directing Parliament to make a law, to which the petitioner's counsel clarified that the plea sought the Union to establish a DNA Index rather than direct legislation.
- The petitioner's request was for the Union to utilise technology for locating missing individuals.

Notice and Future Proceedings:

- Despite the legal intricacies, the bench agreed to issue notice on the petition, making it returnable after six weeks.
- This development signifies the court's willingness to address the issue of unidentified dead bodies and the potential role of a DNA Index in resolving such cases.

3. Supreme Court Expresses Anguish Over Delay in Habeas Corpus Case

Background:

- On January 17, the Supreme Court expressed anguish over the delayed proceedings in a habeas corpus case involving the detention of a 25-year-old woman by her parents.
- The Karnataka High Court, where the case originated, had been criticised for its callous approach, having adjourned the matter 14 times and postponed it until 2025.

Case Details:

- The case arose from a habeas corpus petition filed by 'K,' who claimed that his partner 'M' had been forcibly taken by her parents and illegally detained in Bengaluru.
- M, who had been studying in Dubai, revealed in a statement recorded by the High Court that she was taken from Dubai on the pretext of her grandfather's ill-health and forced into an arranged marriage.
- The High Court, despite issuing notice and holding a Chamber hearing, exhibited a lack of sensitivity by repeatedly adjourning the matter, with the next tentative listing date set for April 10, 2025.

Supreme Court's Response:

- The Supreme Court, on January 3, 2024, issued notice and called for the presence of detenu-M, expediting the process due to the habeas corpus nature of the case.
- The Bench conducted independent Chambers interactions with M, her parents, and K's parents, recognizing the urgency of the matter.
- M expressed a desire to return to Dubai and pursue her career, citing illegal detention preventing her from attending job interviews and house arrest due to the possession of her documents by her parents.

- The Supreme Court held that the detenu, being a mature and qualified woman, cannot be compelled against her wishes, and her continued detention was declared illegal.
- M's parents were directed to release her immediately and hand over her documents, including the passport, within 48 hours.

4. Consumer Dispute Against Air India Limited

Retired High Court Judge, Justice Rajesh Chandra, filed a complaint under Section 47(1)(a)(ii) of the Consumer Protection Act, 2019, against Air India Limited. The complaint sought compensation of Rs. 1,95,00,000.00, including Rs. 1,69,002.00 for mental and physical damages, Rs. 50,000.00 as suit expenses, and a refund for a malfunctioning business class ticket.

Justice Chandra, a senior citizen with health issues, upgraded to a business class ticket for a San Francisco to Delhi flight. On September 22, 2023, his allotted seat malfunctioned, and Air India allegedly failed to provide an alternative, resulting in a distressing journey.

Findings of the Commission:

After hearing arguments and examining evidence, the State Consumer Disputes Redressal Commission ruled in favour of Justice Rajesh Chandra. The Commission noted the complainant's discomfort due to the malfunctioning seat and Air India's failure to provide an alternative despite available seats, causing distress to a senior citizen. The Commission ordered Air India Limited to pay a total compensation of Rs. 1,89,002.00 within 45 days.

5. Delhi CM's Residence Environmental Violation

The National Green Tribunal (NGT) imposed a cost of Rs. 10,000 on Delhi's Public Welfare Department (PWD) and the Delhi government for their failure to file a response regarding alleged environmental violations at Delhi Chief Minister Arvind Kejriwal's official residence. Additionally, a cost of Rs. 15,000 was imposed on the Forest Department for submitting an "incomplete report."

Background:

An application alleged environmental norm violations at 6 Flag Staff Road, the official residence of Delhi CM, including unauthorised constructions and cutting down more than 20 trees. The constructions required approval from the Delhi Urban Art Commission (DUAC), which was declined in November 2020.

Proceedings:

- In October, the PWD sought two weeks to submit relevant documents, but none were provided.
- The NGT granted a further two weeks, along with a cost of Rs. 10,000 each on PWD and Delhi government.
- The NGT noted non-compliance with its previous order and the failure of the joint Committee, formed in May 2023, to submit a report in July.
- Despite repeated directions, the Committee failed to submit a report by October, leading to a fresh directive.

Committee and Violation Allegations:

- NGT constituted a joint Committee in May 2023, including Delhi Chief Secretary, Principal Secretary (Environment & Forest), a DUAC nominee, and District Magistrate, North.
- The Committee was tasked with ascertaining the factual position regarding environmental norm violations at the CM's residence.
- Allegations included permanent and semi-permanent constructions without DUAC approval and the cutting of over 20 trees.

NGT's Response:

The NGT expressed dissatisfaction with the lack of a report from the Committee and directed it to file the required report promptly. The imposition of costs on PWD, the Delhi government, and the Forest Department serves as a penalty for their failure to comply with the NGT's directives.

6. Case of the Week:**Ayodhya Verdict**

The Ayodhya Verdict (**M Siddiq (D) Thr Lrs v. Mahant Suresh Das & Ors**) holds immense significance as it resolves a longstanding and contentious dispute that has shaped India's socio-political landscape for decades. The court's meticulous observations aim to balance the interests of both communities, emphasising the principles of justice, equality, and the rule of law.

Key Observations:

- **Central Government Scheme:** The court directed the Central Government to formulate a scheme within three months for the construction of the temple. A Board of Trustees will be established to oversee the temple's construction and manage related matters.
- **Alternate Plot for Mosque:** Simultaneously, a suitable 5-acre plot was directed to be allotted to the Sunni Central Waqf Board for the construction of a mosque. The allocation will be made either by the Central Government or the State Government, with consultations between them.
- **Legality of Three-Way Bifurcation:** The court deemed the three-way bifurcation proposed by the High Court as legally unsustainable, emphasising that dividing the land would not serve the interests of either party or ensure lasting peace.
- **Recognition of Possession:** The court acknowledged the unimpeded possession of the outer courtyard by Hindus, while the inner courtyard remained contested. The Muslims were found to be wrongfully ousted on the night of December 22/23, 1949, leading to the desecration of the mosque.
- **Article 142 Invocation:** Article 142 of the Constitution was invoked to direct the inclusion of Nirmohi Akhara in the Trust or body overseeing the temple construction, ensuring appropriate representation.
- **Recognition of Legal Personality:** While 'Asthan Shri Ram Janam Bhumi' was not recognized as a juristic person, the legal personality of the deity Bhagwan Sri Ram Virajman was acknowledged.

7. Repeated PYQ

Q. Dwell on the concept of emergency arbitration in providing expeditious relief in India.

Emergency arbitration involves the appointment of an "emergency arbitrator" to issue immediate relief before the formation of the Arbitral Tribunal. This ensures the prevention of procedural delays and protects the subject matter of arbitration, aligning with the expectation of a quicker dispute resolution mechanism chosen by parties opting for arbitration.

This concept is similar to ad-interim injunctions in civil law, emphasising the preservation of the status quo until the dispute is heard on its merits.

Development and Adoption:

The International Centre for Dispute Resolution (ICDR) introduced the concept of emergency arbitration in 2006, followed by the adoption of similar provisions by the International Chamber of Commerce (ICC) in 2012. Various other institutions, such as SIAC, NAI, SCC, and ACIA, have also incorporated emergency arbitration into their rules. These institutions strive to ensure prompt and professional action in implementing emergency arbitration procedures.

Advantages of Emergency Arbitration:

Emergency arbitration aims to provide urgent pro tem or conservatory measures, eliminating the need for parties to approach courts in different jurisdictions for instant relief. It ensures uniformity in orders and expedites the resolution process, offering an immediate temporary solution.

Challenges to Emergency Arbitration:

Recognition and enforceability pose significant challenges to emergency arbitration, with different countries having varying levels of acceptance. The interim nature of emergency arbitration orders and the lack of certainty regarding consequences for non-compliance are additional challenges. In India, the Arbitration and Conciliation Act of 1996 is silent on emergency arbitration, creating uncertainty about its recognition and enforceability.

Legal Status in India:

While the Arbitration and Conciliation Act of 1996 is silent on emergency arbitration, the Supreme Court of India, in the case of Amazon.com NV Investment Holdings LLC v. Future Retail Ltd., recognized the interim award of an emergency arbitrator under the Arbitration Rules of the Singapore International Arbitration Centre. The court interpreted the Act to allow contracting parties to incorporate institutional rules, including those related to emergency arbitrators, into their arbitration agreements.

Therefore, the concept of emergency arbitration addresses the need for urgent relief before the constitution of an Arbitral Tribunal. While challenges exist, such as varying recognition across jurisdictions and the interim nature of the relief, the legal landscape is evolving. The recent interpretation by the Supreme Court of India provides a basis for recognizing and enforcing the orders of emergency arbitrators

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