

Weekly Update for Law optional UPSC

A mix of Conceptual, Current/Contemporary Topics

Date: 8th Jan - 14th Jan 2024

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1. Israel's Defence Against Genocide Allegations at the ICJ

The ongoing legal proceedings at the International Court of Justice (ICJ) regarding the genocide allegations against Israel by South Africa, in the context of the Israel-Gaza conflict, raise complex issues surrounding international law, self-defense, and the interpretation of the Genocide Convention.

Israel's Position: Self-Defence and Legitimate Response

Denial of Genocidal Intent

Israel vehemently denies the allegations of genocide, emphasizing that its actions are in response to attacks by Hamas, Palestinian Islamic Jihad, and other terrorist organizations. Professor Malcolm Shaw, representing Israel, asserted that there is no genocidal intent in Israel's response and that it remains legitimate and necessary.

Legitimacy Under International Law

The key argument put forth by Israel is that its actions are consistent with international law, specifically international humanitarian law. The country contends that it is acting in self-defence against terrorist organisations, citing the October 7, 2023, attack by Hamas as a justification for its military operations in Gaza.

Prima Facie Jurisdiction and Distorted Facts

Professor Shaw argued that South Africa failed to demonstrate prima facie jurisdiction of the ICJ and criticised the presented case as portraying a 'profoundly distorted factual and legal picture.' He highlighted the relevance of international humanitarian law as the appropriate legal framework for the situation.

2. Supreme Court's Refusal to Stay Election Commissioners' Act

The recent decision of the Supreme Court to hear Congress leader Jaya Thakur's plea challenging the constitutionality of Sections 7 and 8 of the Chief Election Commissioner and Other Election Commissioners (Appointment, Conditions of Service, and Term of Office) Act, 2023, while refusing an immediate stay, presents a significant legal development.

Violation of Doctrine of Separation of Powers

Senior Advocate Vikas Singh, representing Jaya Thakur, argued that the Act violates the doctrine of separation of powers, a foundational principle of the Constitution. The removal of the Chief Justice of India from the committee appointing the Chief Election Commissioner allegedly disrupts the balance of powers.

Doctrine as a Basic Structure

Singh asserted that the separation of powers constitutes a basic structure of the Constitution. This argument aligns with the jurisprudential understanding that certain features of the Constitution, including the separation of powers, are immutable and form the bedrock of its framework.

Refusal of Immediate Stay

The Supreme Court, through a bench of Justices Sanjiv Khanna and Dipankar Datta, declined to issue an immediate stay on the legislation. This decision indicates a cautious approach by the Court, refraining from hastily intervening in legislative matters.

Notice Issued for Future Hearing

While refusing a stay, the Court issued notice for a future hearing, scheduled for April 2024. This provides an opportunity for a comprehensive examination of the constitutional validity of the election commissioners' act.

3. High Court's Moral Dilemma: Same-Sex Habeas Corpus Clash

The recent response of Justice Pankaj Jain of the Punjab and Haryana High Court to a habeas corpus petition involving a woman in a same-sex relationship has sparked legal and ethical debates.

Judge's Remark on Morality and Constitutionality

Justice Pankaj Jain's statement that he doesn't believe morality and constitutionality are different raises questions about the judicial perspective on issues related to personal morality and constitutional rights. This remark indicates a potential clash between personal beliefs and the legal framework.

Constitutional Principles

The Indian Constitution guarantees the right to equality and personal liberty under Article 21. The intersection of morality and constitutionality often becomes a contentious issue, and judges are tasked with striking a balance between individual rights and societal norms.

Unlawful Detention and Alleged Police Harassment

The woman filing the petition alleges that her same-sex partner has been unlawfully detained by her family, who opposes their relationship. Furthermore, she claims that a police officer slapped her when she sought protection. These issues raise concerns about individual freedoms, the right to choose a partner, and the duty of law enforcement in protecting citizens.

Supreme Court's Stance

The Supreme Court of India, while refraining from granting legal recognition to same-sex marriages, has directed the state to address the discrimination faced by queer couples and ensure protection for their right to cohabitation. This broader legal context adds complexity to cases involving same-sex relationships.

Punjab & Haryana High Court's Previous Rulings

The Punjab & Haryana High Court had previously granted protection to a lesbian couple, asserting that Article 21 of the Constitution does not cease to apply when people of the same gender decide

to live together. This establishes a precedent for recognizing the rights of individuals in same-sex relationships.

4. Supreme Court Rebukes NGT

The recent expression of dissatisfaction by the Supreme Court regarding the National Green Tribunal's (NGT) dismissal of an application related to the filling up of a water body brings attention to the court's expectations from environmental tribunals.

Summary Dismissal without Inquiry

The Supreme Court expressed dissatisfaction with the NGT's approach, noting that the tribunal summarily dismissed the application without conducting any inquiry. The application alleged the filling up of a water body based on provided photographs, but the NGT's findings were solely based on the absence of water in the images.

Stricter Application of CPC Not Appropriate

The court emphasised that the NGT, when dealing with citizens' environmental grievances, is not supposed to strictly apply the rigours of the Code of Civil Procedure, 1908 (CPC). This highlights a more accessible and expedited approach in environmental matters compared to the procedural strictness of regular civil courts.

The Supreme Court clarified that when a citizen approaches the NGT with a grievance related to environmental concerns, a different approach is expected. The court noted that the NGT is not meant to apply the strict yardsticks of the CPC in the same manner as a regular civil court.

5. PepsiCo's Potato Variety Registration

The Delhi High Court recently set aside a single judge's order that upheld the revocation of PepsiCo India's registration for a potato variety used in Lay's chips. The decision came after the Protection of Plant Varieties and Farmers Rights Authority had revoked PepsiCo's registration for the plant variety FL 2027. The case involved cross-appeals filed by PepsiCo and Kavitha Kurungati, a farmers' rights activist.

The division bench, comprising Justice Yashwant Varma and Justice Dharmesh Sharma, set aside the single judge's order and the Authority's decision to revoke PepsiCo's registration. The court directed the restoration of PepsiCo's renewal application on the Registrar's file for further consideration.

Findings on Incorrect Information

The court observed that the grant of registration was based on incorrect information provided by PepsiCo regarding the date of the first sale and the potato variety's category. The incorrect categorization as "new" instead of "extant" raised concerns.

Lack of Grounds for Interference

While allowing PepsiCo's appeal, the court rejected Kurungati's cross-appeal. It disagreed with the single judge's view on certain aspects, including the date of first sale and PepsiCo's eligibility for registration. The court stated that no ground for interference with the revocation order was established.

6. Case of the Week

Anoop Baranwal v Union of India

In the landmark **case of Anoop Baranwal v Union of India**, Anoop Baranwal filed a Public Interest Litigation (PIL) in January 2015 challenging the constitutionality of the current system for appointing members of the Election Commission of India (ECI). The PIL asserts that the existing mechanism, where the Executive holds the power to make appointments, has compromised the independence of the ECI over time.

Anoop Baranwal's plea contends that the Executive's control over appointments violates Article 324(2) of the Constitution. According to Article 324, while the President appoints the Chief Election Commissioner and Election Commissioners, this is subject to Parliamentary law. However, in the absence of a relevant law enacted by Parliament, the President has been making appointments based on the recommendations of the Prime Minister.

The Union has defended the current appointment mechanism, emphasising the 'honest record' of past Chief Commissioners. It argues that the matter is within the executive domain and urges the Court not to intervene. The crux of the Union's position is that the existing system has functioned effectively, ensuring the impartiality and credibility of the ECI.

On October 23, 2018, a bench comprising Chief Justice Ranjan Gogoi and SK Kaul referred the matter to a five-judge Constitution Bench, recognizing its constitutional significance. Subsequently, on January 6, 2020, the Court consolidated a similar petition by Ashwini Kumar Upadhyay with the Anoop Baranwal case.

After extensive arguments in November 2022, the Constitution Bench took a groundbreaking step to ensure the independence of Election Commission appointments. The Bench instituted a committee consisting of the Prime Minister, the Leader of the Opposition in Parliament, and the Chief Justice of India. This committee is entrusted with the responsibility of making recommendations and advising the President on Election Commission appointments until Parliament enacts a specific law on the subject.

7. Repeated PYQ

Q. "Standard form contract exists in complete disregard to the established principles of freedom of contract and equality of bargaining power of the parties" Elucidate.

Standard form contracts, commonly referred to as 'take it or leave it' contracts, have become prevalent in various spheres of commercial transactions. This type of contractual arrangement involves one party unilaterally formulating all the terms and conditions, leaving the other party with limited or no room for negotiation. The rise in global business activities has led to an increased reliance on such contracts, with examples ranging from insurance agreements to consumer contracts for goods and services.

Nature of Standard Form Contracts

A standard form contract inherently lacks the element of negotiation. It is a legally binding agreement where one party, typically the stronger one, wields the power to draft the terms in its favour. This unequal distribution of bargaining power fundamentally affects the right to negotiate, as the party with less power is compelled to either accept the terms without modification or forgo the contract entirely.

Despite being standard, courts consistently uphold the validity of standard form contracts unless there is evidence of fraud, misrepresentation, mistake, or coercion. Negligence on the part of the

party signing the contract, such as failing to read the clauses, does not provide a remedy unless there is a valid reason for setting aside the contract.

In the context of employment agreements, courts have shown reluctance to enforce standard form contracts that disproportionately favour employers. The case of *Superintendence Company of India (P) Ltd v. Sh. Krishan Murgai* exemplifies the judiciary's stance on the need for careful scrutiny of employment agreements, acknowledging the inherent disadvantage faced by employees.

Safeguards against Exploitation

Recognizing the potential for exploitation in standard form contracts, legal mechanisms have evolved to protect the interests of the weaker parties.

Due Notification: Obligation to Inform

Parties drafting standard form contracts have a duty to duly notify the other party of the terms and conditions. Failure to provide clear notification may render certain clauses unenforceable. The case of *Henderson V. Stevenson* highlights the importance of informing the offeree of exemption clauses.

Notification Timing: Before or During Contract Formation

Notification should occur before or during the contract formation, emphasising the principle that acceptance of the clauses must be informed. The case of *Olley v. Marlborough Court Ltd.* underscores this requirement, where the claimant's lack of knowledge regarding a hotel's liability exemption clause was crucial in deciding in her favour.

Fundamental Breach

The doctrine of fundamental breach is invoked when there is a significant failure in fulfilling contractual obligations. This principle limits the enforceability of unfair exemption clauses, as exemplified in *Food Corporation of India Vs. Laxmi Cattle Feed Industries*.

Tortious Liability

Exemption clauses in contracts may absolve parties of contractual liabilities but not tortious liabilities. The case of *White v. John Warrick and Company Ltd.* demonstrates that even if a contract exempts liability, tort law may still hold parties accountable for negligence.

Public Policy Considerations

Terms deemed unreasonable, violating public policy or the purpose of the law, are unenforceable. The case of *Lilly White vs R. Munuswami* emphasises the court's role in declaring certain clauses unreasonable and against public policy.

Liability towards Third Parties

Standard form contracts should not shield parties from liability towards third parties. The case of *Haseldine v C.A. Daw & Son Ltd.* establishes that exemption clauses do not absolve parties from responsibility if a third party suffers harm due to the contract.

Protection for the Weaker Party

Exemption clauses must be clear, and any ambiguity is resolved in favour of the weaker party. *Hollier v. Rambler Motors (AMC) and Lee (John) & Sons (Grantham) Ltd v Railway Executive* are examples where clarity of clauses played a crucial role in legal decisions.