BLOGS

Key Constitutional Law Developments in April for CLAT 2023

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The following article in continuation of our series of articles on the key constitutional developments since September, 2021 discusses some of the key developments in the field of Constitutional Law in the month of April 2022. Prospective CLAT UG and PG aspirants might find the updates useful in course of their preparation for the test.

1. RTI Applies to the Enforcement Directorate

The Delhi High Court has ruled that the RTI Act applies to the Directorate of Enforcement (ED) if the information sought relates to charges of corruption and human rights breaches.

Justices Manmohan and Sudhir Kumar Jain of the Division Bench ruled that the term "human rights" cannot be interpreted narrowly or pedantically, and that failure to provide papers relevant to a person's advancements is a breach of human rights.

In the opinion of this Court, "the employees of a security establishment cannot be deprived of their fundamental and legal rights just because they work in an intelligence and security establishment. To hold so would amount to holding that those who serve in these organisations have no human rights," the judgement stated.

According to the judges, the RTI Act is a tool that allows employees and officers to vent their grievances in a systematic manner, and its purpose is to ensure access to information in order to promote transparency and accountability in the workings of all public authorities.

The Court was hearing an appeal filed by the ED, which was appealing a single-judge judgement issued on December 7, 2018. The single-judge refused to stay a Central Information Commission (CIC) decision requiring the ED to furnish records pertaining to the seniority list of lower divisional clerks (LDCs) from 1991 to the present.

The agency was also ordered to send copies of the respondent LDC's proposal for promotion to the Departmental Promotion Committee (DPC), as well as copies of meeting minutes and a copy of

the promotion/rejection order issued on the DPC's recommendations from time to time.

2. PIL Seeking Inclusion of Transgender People in Government Sector Jobs

The Maharashtra government and the Public Service Commission were ordered by the Bombay High Court on Monday to respond to a PIL seeking job reservations for members of the third gender (transgender community) in all government-controlled establishments and organisations.

NGO Sampada Grameen Mahila Sanstha and Community Based Organization Muskan Sanstha are among the petitioners, as are trans people Vinayak Kashid (29) and Arya Kashid (21). It raises concerns about the Supreme Court's directives in the historic NALSA vs UoI decision from 2014, which recognised transgender people as the "third gender" and granted them all of the Fundamental Rights guaranteed to everyone under Part III of the Indian Constitution.

The decision declared transgender people's right to job in the public sector under the Socially and Educationally Backward Classes of Citizens (SEBC) as a fundamental right under Articles 14 and 15 of the Constitution.

The petitioner organisations, on the other hand, said that finding work for transgender people in the state has been difficult. According to the plea, the State's failure to comply with Article 14 violates the Constitution because it is the State's responsibility to take affirmative action to create a level playing field for all oppressed and marginalised groups, as held by the Hon'ble Supreme Court in M. Nagaraj v. Union of India.

While there have been discussions on the matter, according to the petition, "The Maharashtra government has taken no action in the last seven years. This reveals the State's extreme neglect in reaching out to the impacted populations…"

3. Article 14 Has No Application to Dispositions under Will: Supreme Court

Case Title: Swarnlatha and Others v. Kalavathy and Others [Civil Appeal 1565 of 2022]

A division bench of Justices **Hemant Gupta** and **V Ramasubramanian** opined that the principles governing Article 14 of the Constitution of India are inapplicable to dispositions under a will and the testators are not required to make fair and equitable distribution of their properties to all of their children.

"In the matter of appreciating the genuineness of execution of a will, there is no place for the Court to see whether the distribution made by the testator was fair and equitable to all of his children. The Court does not apply Article 14 to dispositions under a will," the Court ruled.

The bench typified that in cases of execution of a will, there is no place for the Courts to see whether the distribution made by the testator was fair and equitable to all of his children.

4. Freedom to Establish an Educational Institution Can Be Regulated: Supreme Court

While upholding Regulation 6(2)(h) of the Dental Council of India (Establishment of New Dental Colleges, Opening of New or Higher Courses of Studies or Training, and Increase of Admission Capacity in Dental Colleges) Regulations, 2006, a bench comprising Justices L Nageswara Rao and B R Gavai observed as such. The Court overturned a High Court decision that had invalidated the revised Regulation 6(2). (h).

An applicant could apply under the old Regulation 6(2)(h) if he/she/it owned and operated a General Hospital with at least 100 beds. By amending this regulation, the applicant must now attach its planned Dental College to a Government/Private Medical College that has been approved/recognized by the Medical Council of India and is located within 10 kilometres of the proposed Dental College by road.

With a modification dated July 5, 2017, the distance of 10 kilometres has been raised to 30 kilometres.

The High Court struck down amended Regulation 6(2)(h) on the following grounds:

(i) It is a violation of Article 19(1)(g) of the Indian Constitution;

(ii) it is outside the scope of the Council's powers to make delegated legislation as provided under subsection (7) of Section 10A of the Dentists Act, 1948; and

(iii) it is a violation of Article 14 of the Indian Constitution, inasmuch as the Dental Colleges established prior to the impugned notification.

5. Supreme Court Upholds Constitutional Validity of FCRA Amendment Act, 2020

The Foreign Contribution (Regulation) Amendment Act, 2020 (FCRA Amendment Act), which set restrictions on the way foreign contributions are handled by organisations based in India, was

maintained by a three-judge bench comprising Justices AM Khanwilkar, Dinesh Maheshwari, and CT Ravikumar.

The Court specifically said that citizens have no right to receive foreign contributions and that allowing them is a matter of state policy. *"It is open to the State to have a regime which may completely prohibit receipt of foreign donation, as no right inheres in the citizen to receive foreign contribution (donation),"* the Court held.

Foreign donations can affect a country's policies and lead to the imposition of political ideology, according to the Court, and so should be limited.

Foreign aid can bring a foreign donor into the country and influence its politics. It has the potential to sway or enforce political beliefs. Given the magnitude of the influence of foreign contributions and the nation's constitutional morality, the presence/inflow of foreign contributions in the country should be kept to a bare minimum, if not altogether avoided.

As declared by the Bench. Furthermore, the Court stated that allowing foreign contributions, which are donations, is a matter of state policy backed by law.

The next part of this series will cover the key constitutional law developments for May, 2022.