BLOGS

Key Constitutional Law Developments in December for CLAT (Part 2/2)

Indrasish Majumder · 11 Apr 2022

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 December, 2021. Prospective CLAT UG and PG aspirants might find the updates useful in course of their preparation for the test.

1. No Discrimination b/w an Unmarried and a Married Daughter for Compassionate Appointment

The Supreme Court, in the case of State of Karnataka & Ors. v. C.N. Apoorva Shree &Anr, has affirmed with the Karnataka High Court's decision that a married daughter is also entitled for appointment on compassionate grounds and there can be no discrimination between an unmarried and a married daughter.

The court was hearing a Special Leave Petition filed by the State of Karnataka against a decision (W.P. 5409/2021) passed by the Karnataka High Court division bench affirming with the 2017 order of the Karnataka State Tribunal. The tribunal through its order had given directions to consider a married daughter for appointment on compassionate grounds if she is otherwise eligible.

The order was challenged before the Karnataka High Court by filing of a writ petition which was decided by a division bench in March 2021. The bench affirmed with the order, while citing the case of R. Jayamma v. Karnataka Electricity Board which held the denial of compassionate appointment only on the ground of the marital status violative of constitutional guarantees.

In the instant case, the Supreme Case while affirming with the Karnataka High Court's decision referred to the 2020 judgement in Bhuvaneshwari V. Purani v. State of Karnataka wherein exclusion of a married daughter from consideration for compassionate appointment was held to be unconstitutional.

Justice M. Nagaprasanna had observed that "when the marital status of a son does not make any difference in his entitlement to compassionate appointment, the marital status of a daughter

should make no difference as she does not cease to be a part of the family and law cannot make any assumption that married sons alone continue to be the part of the family."

Therefore, the current position of law does not discriminate between an unmarried and a married daughter for the purpose of their appointment on compassionate grounds.

Further reading-

1. State of M.P. & Others Vs. Smt. Jyoti Sharma– A judgement by the Gwalior bench of the Madhya Pradesh High Court which held that policies which deprive a married daughter from compassionate appointment are violative of equality.
2. Manjul Srivastava v. State of UP & Ors.- Another judgement by the Allahabad High Court reiterating that the marital status of a daughter alone cannot be a ground for rejecting a claim for compassionate appointment.
3. https://www.thehindu.com/news/national/karnataka/married-daughters-too-are-eligible-for-compassionate-appointment-like-married-sons-karnataka-hc/article33343481.ece– The following article published in The Hindu analyses the decision of the Karnataka High Court.

2. Delhi High Court Dismisses Suit Filed Against Syed Waseem Rizvi's Book

The Delhi High Court, dismissed the suit, titled Qamar Hasnain v. Syed Wseem Rizvi &Ors., filed against Syed Waseem Rizvis Book 'Muhammad' on the grounds that the relief of the plaintiff was on behalf of the followers of Islam which was a right in rem.

In order for the suit to be maintainable, there should be a personal legal right, a corresponding legal injury and an act which gives rise to legal or actual damage. The suit filed by Qamar Hasnain, sought for a permanent and mandatory injunction restraining Rizvi from making statements or publishing remarks, on the grounds that the book contained various demeaning statement about Islam, the Quran and Prophet Mohammed.

The Plaintiff also sought for a permanent injunction on the circulation and distribution of the book in any medium.

It was the plaintiff's contention that the hurtful and denigrating language used in the book was outside the ambit of protection guaranteed under Article 19(1)(a) which is the right to freedom of speech and expression.

Justice Sanjeev Narula, while hearing the case, observed that a representative suit for a public nuisance or other wrongful acts affecting, or likely to affect the public necessarily has to fulfil the requirement of law and it needs to be specifically averred.

The Plaintiff's main ground on furthering their contention, that the nature of violation was a right in rem was that Hasnain had approached the court in an individual capacity as his personal identity as a muslim had been violated.

To this, the court opined that since the plaintiff had not invoked Order 1 Rule 8 or Section 91 of the CPC, the suit did not fall within the purview of the aforenoted provisions especially because the reliefs are representative and not in personam.

Further readings:

1. Balancing Defamation and Free Speech Notes for the Publishing Industry: This article exhaustively speaks about the necessities of defamation and what value free speech carries within itself.
2. Why is free speech different from hate speech: The contents of this article exhaustively covers the fine line of difference which exits between free speech and hate speech and the threshold for the same.

3. Supreme Court Issues Notice in a Special Leave to Appeal by a Live-in Couple Against a Punjab and Haryana High Court Order

The Supreme Court has issued a notice seeking Centre's reply in a plea regarding live-in relationship between a married man and a divorced woman. The petition was filed against a judgement by the Punjab and Haryana High Court dismissing the petitioner's plea for protection of their life and liberty from the respondents who were against their live- in relationship.

The HC while dismissing the petition, termed such relationships "unholy alliance". Therefore, the petitioner approached the Supreme Court contending that different High Courts have decided such cases differently and it is because of the lack of a fixed law, people living in such relationships face various problems.

The petitioner relied upon various Supreme Court judgements which pointed towards the obligation of the High Courts and the Supreme Court to protect the fundamental rights of the citizens, as being the protectors of civil liberties.

Further, the petition stated that the Supreme Court had itself held that live-in relationship between a major boy and a major girl is not an offence and such couples are entitled to protection of their life and liberty. The Supreme Court has therefore, issued a notice and sought reply from the Centre within 4 weeks.

Further Reading-

1. Are live-in Relationship Legal in India?- A comprehensive article dealing with the legal aspects of live-in relationships via various judicial decisions.
2. Marriage vs live-in: Rajasthan HC order shows judiciary not on same page over couples' rights– A summary of the Rajasthan High Court's decision in a similar case upholding the "constitutional duty" over "public morality" against the backdrop of the conflicting Allahabad, Punjab and Haryana High Courts' decisions.

The next post shall discuss the key Constitutional Law Developments for the month of January, 2022.

Read the first part of the article Key Constitutional Law Developments for the month of December for CLAT here.