BLOGS

Key Constitutional Law Developments in December for CLAT (Part 1/2)

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

INTERNATIONAL UPDATES

1. A Barrage of Confusion Looms Biden's Vaccine Mandate

United States President Joe Biden's Executive Order 14042 (Vaccine Mandate), a policy directive that sought to "promote economy and efficiency in procurement by contracting with sources that provide adequate COVID-19 safeguards for their workforce" and covered more than 70 percent of the adult US population has been the subject of intense legal debate all over the US since its issue in late 2021.

While the US Government was initially reluctant to issue mandatory vaccine requirements for its workers, the Government had to change its stance in face of the rising spread of the Delta variant of COVID-19.

However, the mandate remained embroiled in a critical legal struggle following a challenge from 7 different US States (Georgia, Alabama, Idaho, Kansas, South Carolina, Utah and West Virginia), which finally resulted in a December 7 ruling of the U.S. District Court for the Southern District of Georgia issued a nationwide injunction for the mandate.

District Judge R. Stan Baker in his ruling held that the order exceeded the executive authority of the President under the Federal Property and Administrative Services Act,1949(Procurement Act). He stated that the order constituted an extreme economic burden on the plaintiffs, was not clearly or expressly authorized by the President.

It was argued that through the Procurement Act, to issue the vaccine mandate as provided in the Mandate, was wholly improper, since the Mandate acts as a regulation of public health, which exceeds the scope of the Procurement Act. The Courts ruled that even if the Procurement Act does provide such authority, there is no sufficient nexus between the vaccination requirement and the purpose of the Procurement Act.

Additionally, the administrative costs associated with the order were deemed too high. The plaintiffs pleaded that the Vaccine Mandate requires significant administrative costs and effort by employers, including:

(i) identifying whether their employees or subcontractors are covered by the Order;

(ii) determining whether their employees and subcontractors comply (i.e., fully vaccinated); and

(iii) processing requests for accommodations or exemptions and tracking those that are submitted and granted.

The ruling accepted that such a mandate would cause irreparable injury and loss to the plaintiffs since the administrative costs associated with it are too high.

Predictably, this is not the end of the road for Biden's vaccine mandate, as the legal challenge is all set to be challenged in the Apex Court of the Country, on counts of executive authority, and reasonability.

Further Readings:

1. Federal Court Issues Nationwide Injunction on Biden Administration's COVID-19 Vaccine Mandate for Federal Contractors:This article discusses in depth Biden's vaccine mandate, and how the legal challenge to the order built up and eventually resulted in the issuance of a nationwide injunction.
2. Yet Another Court Upholds Workplace Vaccine Mandate: What Your Organization Can Take From New York City Schools Litigation:This article discusses what local businesses and other organisations can practically understand and take home from the vaccine mandate and what different rulings on it mean for everyday citizens.
3. Biden COVID-19 vaccine rules get the first test in US Supreme Court: This article discusses how the legal challenge to Biden's vaccine rules was accelerated and eventually reached the Supreme Court quick enough to have any sort of meaningful impact for citizens.

4. The Government's Ability to Control the Pandemic Is at Stake: This opinion piece argues that the case set up at the US Supreme Court is a grave one that will have a significant impact on not only the common citizenry's everyday life but also on the Government's fight against the COVID-19.

2. US Supreme Court Receives Criticism Over Abortion Law Ruling

A recent US Supreme Court ruling has upheld the Constitutional validity of the recently enacted and controversial Texas Heartbeat Act 2021 (Texas Senate Bill 8) by a thin majority of 5-4, which prohibits an operation for abortion if there exists a foetal heartbeat.

The ruling has been criticised because it upholds a law that disables the scope of abortion by restricting abortions to the first few weeks of pregnancy when many women are unaware, they are pregnant, therefore, the prohibition virtually eliminates abortions for those women.

However, in a dissenting note, Chief Justice John Roberts, who figures here as a minority judge noted that: *"Texas has passed a law banning abortions after roughly six weeks of pregnancy. That law is contrary to this Court's decisions in Roe v. Wade and Planned Parenthood of Southeastern Pa. v. Casey. It has had the effect of denying the exercise of what we have held is a right protected under the Federal Constitution."*

Additionally, the minority bench described the law as *"an array of stratagems, designed to shield its unconstitutional law from judicial review."*

It is believed that the new ruling will effectively overturn the landmark ruling of 1973, wherein the SCOTUS in *Roe v. Wade* had ruled for the protection of a woman's liberty in their choice of having an abortion and restricted the interfering powers of the State.

The fundamental issue which emanated in the 1973 ruling was regarding the Due Process Clause (Fourteenth Amendment) of the United States Constitution guarantees a basic right to privacy to a pregnant woman who wants to decide whether or not to undergo an abortion. The ruling had located reproductive rights as an extension of basic fundamental rights as enshrined in the US Constitution.

Further Readings:

1. US Supreme Court under fire for upholding new Texas abortion law: This article examines the criticism which the recent US Supreme Court ruling has drawn from all sections of the law and society.
2. The End of Roe and More: This opinion piece argues that the latest ruling of the Supreme Court will finally end the beneficial outcome of decades which was achieved following the landmark ruling in Roe v. Wade.
3. Perspective: I'm a pro-life lawyer. But Texas' abortion law erodes the rule of law: This opinion piece argues against the Constitutionality of the Texas Law for being opposed to the basic idea of Rule of Law.
4. 30 years after the ruling, ambiguity, anxiety surrounds the abortion debate: This article, written back in 2003 demonstrates that the issue surrounding foetal rights and reproductive freedom are neither new nor clear for either the American polity or the Constitutional Courts.

NATIONAL UPDATES

3. SC Upholds the Constitutionality of the Ban on MTTS by RBI

The SC in a recent decision, upheld the ban imposed by RBI on MTTs (Merchanting Trade Transactions) since the same is not in violation of Article 19(1)(g) of the Constitution. The petitioners in the case had claimed the violation of their fundamental rights since they merely acted as an intermediary to facilitate the sale of PPE products between a supplier in China and a buyer in the USA.

The bench, comprising J. Chandrachud, held that the petitioner's right to export PPEs could be reasonably restricted to ensure the non-tradability of PPEs and their continued supply during the pandemic.

There exists a clear nexus between PPE products and the public health of the nation since the same is in huge demand during the pandemic. The test of proportionality had been satisfied by RBI as well since there exists a connection between the use of forex, MTTs and the availability of domestic stocks.

Moreover, the interests of the masses have to be preserved and cannot be aborted in the pursuit of the right to conduct the business of the few.

Further Readings:

1. KS Puttaswamy v Union of India: The Test of Proportionality as established in K S Puttaswamy v Union of India was followed in this case.
2. State Trading Corporation v. Commercial Tax Officer: The Court relied on State Trading Corporation v. Commercial Tax Officer to hold that corporations are not 'citizens' under the Constitution and hence, cannot avail the rights under Article 19(1)(a).
3. Human Rights and COVID-19: This article explores the extent and basis for curbing human rights during the COVID pandemics from a global perspective.
4. India's trade responses to COVID-19:This article explores India's trade-related responses to the pandemic to ensure a constant supply of medical essentials.
5. Legitimate state aims in placing restrictions:This article explores the Constitutional question of legitimate state aims and interests in determining the validity of restrictions.

4. Centre Appoints Panel to Look into the Repeal of AFSPA

The controversial Armed Forces Special Powers Act (AFSPA) has come under increased scrutiny after an army ambush in Nagaland's Mon district which killed six civilians. The incident has prompted the Central government to set up a panel to look into the withdrawal of the AFSPA and submit a report within 45 days of its constitution.

The AFSPA had come into force in response to the rising insurgency in the Northeast of the country to give increased powers to the military to control the disturbances. However, the Act has been criticised since it is argued that it gives wide powers to the military to act with impunity which has led to many incidents of innocent civilians being killed.

However, supporters maintain that the tenuous situation in Northeast India necessitates that the military is given some immunity in order to maintain law and order in the disturbed areas.

Further Readings:

1. Armed Forces Special Powers Act: The article gives a brief overview of the Act's provisions, extent, and scope.
2. Misuse of AFSPA: This article analyses the contentious sections of the Act.
3. National Security vs Fundamental Rights: This article talks about how the AFSPA is violative of fundamental rights according to various constitutional doctrines.

5. Vaccinated and Unvaccinated Employees Not on Equal Footing- Mandatory Covid Test for Unvaccinated Employees Reasonable

The Bombay High Court in the case of Deepak Kumar Radheshyam Khurana v. Mumbai Port Trust has upheld a circular issued by the Mumbai Port Trust which mandated the RT-PCR test of unvaccinated employees in every 10 days. The petition was filed by seven employees of the Mumbai Port trust challenging the circular on the ground that it discriminated between vaccinated and unvaccinated employees.

The court while dismissing the petition observed that since the unvaccinated people are at a higher risk of contracting and transmitting the virus, it is only reasonable to have a high degree of monitoring of Covid 19 status of such unvaccinated employees. The petitioners argued that both the vaccinated and unvaccinated people stand on the same footing as far as the transmission of the virus is concerned and should therefore be treated equally.

However, the court while rejecting the argument observed that though the decision of the employees to not get inoculated is well- respected; it does not mean that they will be entitled to the same treatment as given to the vaccinated employees.

The court took note of the medical opinion given by various international and state agencies pointing towards the effectiveness of the Covid 19 vaccination which not only gives significant protection against contracting the virus, but also reduces the risk of its transmission significantly.

Thus, the court observed that it is erroneous to put the vaccinated employees on the same footing as unvaccinated employees and tagging the classification of employees into vaccinated and unvaccinated group of people as arbitrary. The classification is reasonable and has a nexus with the object that is sought to be achieved, i.e., “preventing the transmission of the disease”.

Therefore, the requirement for the unvaccinated employees to produce RT-PCR report every 10 days is a reasonable restriction on their fundamental right to carry out their occupation or trade.

Further reading-

1. Higher degree of monitoring of unvaccinated persons reasonable: Bombay High Court– This article covers the arguments which were put forth in the instant case and the important observations made by the court.

2. https://www.livelaw.in/pdf_upload/bombay-high-court-judgment-406503.pdf– The following document is a copy of the judgement.
3. https://khaitanco.com/thought-leaderships/Covid-19-Vaccination-RT-PCR-Test-and-reasonable-precautions-Bombay-High-Court-rules-in-favour-of-higher-degree-of-checking-and-monitoring-of-unvaccinated-persons– The following article published on the website of Khaitan and Co. deliberates on the various legal facets of the judgement of the Bombay High Court.

Stay tuned for the second part of the series.