BLOGS

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

Indrasish Majumder · 09 May 2022

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

NATIONAL UPDATES

The following article discusses some key national constitutional law developments in the month of February 2022.

1. Karnataka HC Rules that Blanket Ban on Online Gaming is Unconstitutional

The Karnataka High Court recently declared substantive provisions of the Karnataka Police (Amendment) Bill, 2021 (published on October 5, 2021), as *ultra vires* the Constitution, which altered the Karnataka Police Act, 1963 and seek to prohibit and criminalise the activities of offering and playing online games, by risking money or otherwise.

This judgement Court follows two extensive rulings by the Madras and Kerala High Courts (delivered on August 3, 2021, and September 27, 2021, respectively), in which identical state-led intrusions were struck down. These challenges concerned the legality of online gaming, specifically “online games of skill” such as rummy and poker.

The judgement delivered by a division bench of Chief Justice Ritu Raj Awasthi and Justice Krishna S Dixit, held Sections 2, 3, 6, 8, and 9 of the Karnataka Police (Amendment) Act, 2021, which governed online gaming operations, to be wholly ultra vires the Indian Constitution. Interestingly, the court did not strike down the whole statute but made it abundantly clear that the verdict would not preclude the legislature from enacting new anti-gambling legislation consistent with the Constitution.

Additionally, the Bench subdued the Government from interfering with the petitioners' online gaming business and related activities, while emphasising that nothing in this judgement shall be construed to preclude the passage of relevant legislation on 'Betting and gambling' in conformance with the Constitution's safeguards.

The Bench held, "In the considered view of this court, the impugned legislative action that has clamped an absolute embargo on all games of skill defies the principle of proportionality and is far excessive in nature and therefore violates Article 14 of the Constitution on the ground of manifest arbitrariness."

However, despite the fact that three High Courts have recently firmly upheld the legality of online games, particularly games of skill, the Karnataka government has maintained that it would appeal to the Supreme Court against the Karnataka High Court's judgement. It is doubtful, though, how the state can override sixty years of the Supreme Court's jurisprudence when it comes to the protection of fundamental rights of the masses.

Further Readings:

1. The freedoms under Article 19 and their restrictions: This article exhaustively discusses freedoms and their restrictions, as provided under Art. 19 of Constitution, which includes Freedom of Profession, Occupation, Trade or Business, which was one of the encroached rights of the aggrieved party.
2. Three Arguments for the Application of Proportionality in Rights Review in India: This article published in the Economic and Political Weekly discusses in detail the doctrine of proportionality which was used by the Karnataka High Court as one of the grounds to strike down the problematic provisions of the controversial amendment. It further provides three arguments as to why the proportionality principle is best suited to review fundamental rights in India.

2. Supreme Court Overturns Stay Order Passed by the Punjab & Haryana High Court Granting 75% Reservation in Private Sector

The Supreme Court overturned a Punjab and Haryana High Court ruling that had stayed a controversial State law that guarantees 75 percent reservation for local youngsters working in private sector employment earning less than 30,000 rupees per month.

The law, according to industry groups, “affects the idea of India as an economic unit.” The High Court’s February 3 stay decision was overturned by a bench of Justices L. Nageswara Rao and P.S. Narasimha on the grounds that it lacked “sufficient reasons.”

Every law passed by the legislature was deemed to be lawful, according to the Court. A court of law should issue a reasoned stay on their implementation. On February 3, the High Court did not provide sufficient reasons for stopping the Haryana law in its tracks. Without getting into the merits of the case, the Supreme Court asked the High Court to rule on the writ petition brought by businessmen before it as soon as possible, no later than four weeks from today.

The parties were told not to go to the High Court for adjournments.

Meanwhile, the State government was instructed by the Supreme Court not to take any “coercive steps” against employers in Haryana for violating the Haryana State Employment of Local Candidates Act. In court, industry groups claimed that the Act had a negative impact on 48,000 registered businesses by introducing “inspector raj.”

For violating the Act, an employer faces a fine ranging from $10,000 to $2 lakh. Companies, societies, trusts, limited liability partnership firms, partnership firms, and significant individual employers are all covered by the law.

Further readings:

1. Should there be reservations in private sector?:The contents of this article analyses the relevance and the importance of reservations in the first place and their relevance in the private sector.
2. The presumption of constitutionality:This article descriptively covers the concept pf presumption of constitutionality which enables the understanding of the basic tenets of ruling on the validity of the relevant laws.

3. Madras HC Emphasises Religious Tolerance

In a recent ruling, the Madras High Court emphasised the importance of tolerance for different religious practises.The Court was hearing a writ case filed by a Hindu man contesting the Kanyakumari District Collector’s permission to build a church, which the petitioner said was causing him disturbance owing to the use of loudspeakers at all hours of the day and night.

The Court began its decision by stating that “we the people” had determined to establish India as a Secular Republic in the Preamble to the Constitution of India. Article 15(1), which states that the state shall not discriminate against anyone based on criteria like as religion, and Article 51A(e), which states that it is the Fundamental Duty of every citizen to promote harmony and brotherhood, were also mentioned. The Fundamental Rights and Duties were sacred and binding on courts that dealt with religious matters.

Justice CV Karthikeyan, noting that the petitioner was a Hindu, said: “Tolerance is one of the core precepts that every Hindu must adhere to. Tolerance must be a part of his own community or religion, as well as every other religious practise.”

A temple was also placed in the same residential neighbourhood, according to the Court. In light of this, the Court emphasised the necessity of maintaining tolerance and the principle of “unity in difference.” The petitioner claimed he was not heard before the building permit was granted. The Court, on the other hand, noted that the Collector had considered all factors before granting permission to build the church or, more accurately, to transform an existing house into a church.

The District Collector may also persuade the person who built the church, either directly or through his subordinates, that it is prudent to exercise restraint and that the use of loudspeakers is not essential for God to hear the prayers.

“Let the prayers be conducted in a gentle manner”, the Court advised. The Court said that if the authorities succeed in impressing upon the person who built the church to practice tolerance and respect, “then sense and sensibility would prevail over pride and prejudice”.

Further readings:

1. The future of Indian Secularism: This article covers the flaws in the status quo and the sustainability of the concept of secularism which has been enshrined in the Indian constitution.
2. Secularism and the Indian Constitution: the link between the concept of secularism and the Indian constitutions is analyzed in depth in the present article.
3. The many shades of intolerance: this article discusses the multiple facets of the structured and complex form of intolerance and how it is manifested in the country.
4. India values religious freedom and tolerance but not great at integration: the current articles analyses the gaping holes present between the policy of giving all religions equal space and how the differential treatment meted out to them.

4. Discrimination on the Ground of Descent in Compassionate Appointment Impermissible: SC

In a recent Special Leave Petition, a three judge bench of the Supreme Court has observed that a policy regarding compassionate appointment cannot discriminate against a person *only on the ground of descent* by classifying children of the deceased employee as legitimate and illegitimate.

The appeal pertained to the validity of the condition imposed by a circular of the Railway Board, prohibiting the appointment of children born from second marriage of the deceased employee on compassionate grounds. The Apex Court referred to its previous judgement in the case of Union of India v. V.R. Tripathi wherein, while considering the same circular, the court held that a child of a second wife of a deceased employee cannot be denied compassionate appointment on that ground alone.

Further, while highlighting the purpose behind compassionate appointment, the court observed that the impugned circular, in effect, entitles children from first marriage alone to compassionate appointment. The court noted that once Section 16 of the Hindu Marriage Act 1955 regards children born from second marriage during the subsistence of first marriage as legitimate, then excluding such children from seeking the benefit of compassionate appointment would be violative of Article 14 of the Constitution.

Therefore, excluding the children from being considered under the policy who are deemed to be legitimate by law is impermissible. The circular creates two categories between one class of legitimate children, having no nexus with the object sought to be achieved, therefore violating Article 14 of the Constitution.

The court further noted that the circular discriminates on the ground of descent also which is expressly prohibited under Article 16(2) of the Constitution. Reference was made to the Delhi High Court decision in Union of India v. Pankaj Kumar Sharma in this regard wherein it was held that descent cannot be a ground for denying employment on compassionate grounds.

Classification of children as legitimate and illegitimate, followed by recognition of the rights of Legitimate descendants alone was, therefore, held to be violative of Article 14 and Article 16(2) of the Constitution.

Further Reading :

1. Scheme for compassionate appointment must satisfy Articles 14 and 16(2) of Constitution: SC: This article details on the observation of the SC that denying compassionate appointment to children born from the second wife of a deceased employee is violative of Articles 14 and 16(2)of the Constitution of India.
2. Shakila Begum (Siddiqui) & another Vs Northern Coal Field Ltd. & others: A recent Madras HC case declaring a policy not considering daughters/sister for employment on compassionate grounds as a clear case of gender bias against the spirit of Article 14, 15, 16 and 39 (a) of the Constitution.
3. Mamni Pradhan v. South Eastern Coal Feilds Ltd & Ors.: A Chattisgarh HC decision reiterating the exclusion of female dependents from consideration for compassionate appointment as violative of Article 14 of the Constitution.

5. Writ Petition Which is Filed Under Article 32 of the Constitution of India Seeking Quashing of an FIR/ Criminal Proceedings Cannot Be Entertained

In the recent case of Gayatri Prasad Prajapati V. State of Uttar Pradesh, the Honorable Supreme Court held that a writ petition which is filed under Article 32 of the Constitution of India seeking quashing of an FIR/ criminal proceedings cannot be entertained.

In the instant case, the Petitioner sought permission of the court to withdraw his writ petition stating that with the passage of time it has become infructuous. However, the bench comprising Justices MR Shah and Justice BV Nagarathna was of the view that such writ petitions filed under Article 32 of the Constitution of India ought not to have been filed.

This is because the Petitioners should approach the High court under Section 482 Cr.P.C. The Honourable court relied on the observations made in the case of Arnab Ranjan Goswami wherein it was observed that the Petitioner has an equally efficacious remedy available before the High court under section 482 Cr. P.C for quashing of FIR and therefore he must be relegated to the pursuit of the remedies available under Cr.P.C.

Furthermore, the court also stated that since the High Court has the power under section 482, there is no reason to bypass the procedure laid down under Cr. P.C until there are exceptional grounds to entertain the application under Article 32.

Consequently, in the instant case, the honourable Court observed," It is not expected that the relief which can be considered by the High Court under Section 482 Cr. P.C to be considered by

this court in exercise under Article 32 of the Constitution". As a result, the petition was dismissed.

Further Readings:

1. SC Rejects Arnab Goswami's Plea To Quash FIR By Maharashtra Police And Transfer Probe To CBI: The following article details on the observations made in the case of Arnab Ranjan Goswami, wherein the High Court reiterated on the remedy available to petitioners under Section 482 of Cr. P.C. for quashing of FIR.

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