BLOGS

Key Constitutional Law Developments in January for CLAT

Indrasish Majumder · 19 Apr 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 January, 2022. Prospective CLAT UG and PG aspirants might find the updates useful in course of their preparation for the test.

1. Daughters Entitled to the Self-acquired Property of Father Dying Intestate: SC

The Supreme Court, in the case of Arunachala Gounder (Dead) Vs Ponnusamy, has held that the self-acquired property of a Hindu male dying without a will would devolve by inheritance and not by survivorship and a daughter would therefore be entitled to inherit such property and any other property obtained in the partition by the father.

The judgement has been pronounced by a two judge bench in an appeal filed against the Madras High Court order, pertaining to the inheritance of the self acquired property of Marappa Gounder who passed away in 1949 leaving behind his sole daughter Kuppayee Ammal who also died in 1967, issueless.

The major contention of the petitioner (Marappa Gounder's brother's daughter) was that subsequent to the death of Kuppayee Ammal (who inherited Marappa's property), Marappa's brother's five children (1 son and 4 daughters) were entitled to 1/5th share of the property each.

The defendant, on the other hand, submitted that the Hindu Law prevalent prior to 1956 entitled Marappa's brother's son as the sole heir who inherited and possessed the property in contention. Therefore, the major issue before the Supreme Court was whether the late Marappa's sole surviving daughter Kuppayee Ammal would inherent the self acquired property by inheritance or would it devolve by survivorship.

Referring to the Hindu customary laws and the judicial precedents, the court held that "if the property of a male Hindu dying intestate is self acquired property or obtained in the partition of a coparcenary or a family property, the same would devolve by inheritance and not by survivorship

and a daughter would be entitled to inherent such property in preference to other collaterals."

Further, the court pointed out the scheme of the Hindu Succession Act, 1956 (HSA) which aims at attaining complete equality between male and female regarding property rights. The court discussed Section 14 and Section 15 of the HSA in length and remarked that Section 14 declares the property of a female Hindu as her absolute right.

While Section 15(1) devolves the property of the female Hindu dying intestate to her own heirs, Section 15(2) carves out an exception to the rule with regard to the property acquired through inheritance either from her father or mother, or from her husband, or father-in-law.

However, this exception operates only in the case of a Hindu female dying without leaving any direct heirs. Therefore, "if a female Hindu dies intestate without leaving any issue, then the property inherited by her from her father or mother would go to the heirs of her father whereas the property inherited from her husband or father-in-law would go to the heirs of the husband."

Since the present suit of succession opened up in 1967, the provisions of HSA, 1956 were made applicable, entitling the 5 children of Marappa's brother to 1/5th share of the property each.

Further Reading:

1. Inherited Property Of A Female Hindu Dying Issueless And Intestate Goes Back To The Source: Supreme Court: This article covers an important observation made by the Supreme Court in the instant case regarding the status of inherited property of a Hindu female dying intestate and issueless.
2. Supreme Court affirms Daughter's Equal Rights to Coparcenary Property: Significant Clarifications under the Hindu Succession Regime & Potential Ramification: This Article analyses the landmark Vineet Sharma v. Rakesh Sharma judgement, wherein a three judge bench of the Supreme Court affirmed the equal rights of daughters to coparcenary property, irrespective of a coparcener father being alive or not on or before the Hindu Succession (Amendment) Act, 2005.

2. Uniform Application of the term "Cruelty" Regardless of Religious and Personal Laws

In a recent landmark decision by the Kerala High Court, it was held that the definition and application of "matrimonial cruelty" must have a uniform definition across religions and

irrespective of personal laws.

The division bench, comprising of Justices A. Muhamad Mushtaque and Justice Sophy Thomas said that regardless of whether personal laws include or exclude diverse criteria for cruelty, law cannot recognize different types of cruelty based on religion.

The court also drew inspiration from the Constitution's Article 44 (uniform Civil Code) in reaching its decision. Significantly, the court declared unequivocally that it does not agree with the premise that what constitutes cruelty in granting divorce varies depending on one's religion.

According to the court's interpretation, the cruelty must be such that it causes reasonable apprehensions in the mind of the petitioner spouse that living with the respondent will be hurtful or injurious. Furthermore, the term "harmful" or "injuries" does not have to refer to actual injury.

The decision was reached in light of the wife's appeal against a family court decision that granted her divorce based on the husband's application for divorce based on cruelty and desertion. The couple had married according to Christian customs, and they were both Christians.

Further Readings:

1. Samar ghosh v Jaya ghosh: This is a landmark decision which was relied upon in the above mentioned case, which laid down the defining contours of mental cruelty and emphasized on their uniform application.
2. Uniform Civil Code and Conflicts of Personal Laws: This article descriptively covers the conflict created between the interpretation of personal laws and how they fit within the scheme of implementing a uniform civil code.
3. Creating a 'Time and Space' for the Uniform Civil Code: The aim of the article is to cover the intent behind implementing personal laws and the space it creates in the Indian context. Furthermore, the article pushes for a steady timeline created for the implementation of personal laws in order for there being no conflict amongst the two laws.

3. Externment Must Be Used With Utmost Caution & Only in Rare Circumstances

While hearing a challenge to a Sub Divisional Magistrate's order of a two year externship (under the Maharashtra Police Act) against the appellant, the Supreme Court ruled that a person cannot be prevented from entering a place by authorities on the basis of mere suspicion.

Externment orders should be used with extreme caution, according to the Bench, which comprised of Justices Rastogi and Justice Okha. The externment orders are often the cause for violation of a person's fundamental rights to freedom and movement. In certain situations, it may even result in the denial of a person's right to livelihood, which is protected under Article 21.

The consequence of these orders is often a person's inability to live in their own house and hence, they should only be used in extreme cases. Furthermore, the bench emphasized that externment orders must ideally pass the 'test of reasonableness'.

"Such an order also prevents the person even from staying in his own house along with his family members during the period for which this order is in subsistence, in a given vase order may deprive the person of his livelihood," Justice Rastogi observed.

The matter arose from an appeal made by the appellant, wherein he was challenging the order passed of non-interference by the Bombay High Court.

Further Readings :-

1. Premchand Paniwala v. State of Delhi: A decisive case in understanding the limitations and scope of extrenment and how the statutory authority exploited and violated their powers.
2. Operation of special laws relating to externment of bad characters: This article covers in detail the provisions of the externment, the background with which it was instituted and how it often violated in the pretext of regulation. Furthemore, it also covers the consequences of such violations in-depth.
3. B. Khare v State of Punjab: It was held that "reasonableness" must be both procedural and substantive.
4. Chintanman Rao v state of Madhya Pradesh: Reasonability, it was ruled, necessitates a healthy balance of people's fundamental rights and the state's concerns. Furthermore, it was determined that the judiciary, not the legislature, is the last arbiter of the restriction's rationality. It was also determined that only a statute, not an executive order, can impose restrictions.

4. Rules Made to Exercise powers of the State Legislature are Laws Within the Meaning of Article 13

In a recent ruling, a three Judge bench of the Supreme Court has held that "rules made to exercise the powers and privileges of State Legislature constitute 'law' within the meaning of Article 13 of the Constitution."

The observation has been made in response to the contention raised by the State of Maharashtra that the rules made under Article 208 of the Constitution are not statutory rules to be binding on the house and are merely akin to society bye laws. The bench was deciding on a writ petition filed regarding the year long suspension of 12 Bharatiya Janata Party MLAs from the Maharashtra Legislative Assembly for allegedly abusing and manhandling Speaker Bhaskar Jadhav.

While quashing the suspension, the bench noted that Special Reference no. 1 of 1964 clearly states that "rules enacted by the State Legislature for the purpose of exercising power would have to be treated as law within the meaning of Article 13, as the State would be acting under Article 246 of the Constitution."

Further, the bench referred to the decision of the Constitution Bench in the case of M.S.M Sharma which clearly held that "rules framed under Article 208 of Constitution would have the effect of procedure established by law for the purpose of Article 21 of the Constitution."

Therefore, the argument of the rules not being statutory rules and binding on the house was held to be of no avail. The bench further observed that though the parliamentary law is accorded with higher efficacy than the rules made under Article 118, this does not impact the legal position that "rules framed by the Legislative Assembly under Article 208 of the Constitution are 'procedure established by law' for the purpose of Article 21 of the Constitution."

Further Readings:

1. https://www.livelaw.in/top-stories/supreme-court-article-13-rules-state-legislature-powers-privileges-190674: The following article analyses the order with specific focus on the key constitutional provisions discussed in the judgement.
2. Pandit M. S. M. Sharma vs Shri Sri Krishna Sinha And Others: The following case law explains that the rules framed under Article 208 of Constitution would have the effect of procedure established by law for the purpose of Article 21 of the Constitution.

5. Fundamental Right to Conjugal Connection Not Available for Prisoners

Prisoners do not have a fundamental right to conjugal connection under Article 21, according to the Madras High Court, but it is available for 'exceptional purposes' such as reproductive treatment.

Acting Chief Justice Munishwar Nath Bhandari, Justice Pushpa Sathyanarayana, and Justice PD Audikesavalu of a three-judge Division Bench held that denial of the convict's conjugal relationship for a specific purpose may amount to denial of the fundamental right guaranteed under Article 21 of the Constitution.

It stated that the special goal should not be interpreted as a fundamental right to have a marital relationship as a matter of course. This would distinguish between those who follow the law and those who break it in terms of the rights granted by Article 21 of the Constitution.

The bench reached this conclusion based on the two questions put before it for consideration. The first being, if the denial of conjugal rights to a convict prisoner would amount to denial of such a right to their spouse and thereby being violative of Art. 21.

The second being, if the state can be ordered to favorably consider the request of a convict prisoner for emergency leave or ordinary leave for the purpose of enabling a conjugal relationship with the spouse despite the Tamil Nadu Suspension of sentence rules, 1982 not envisaging this.

The order was issued in response to a plea made by the wife of a detainee seeking temporary leave for the offender in order to establish a conjugal connection, as the couple had not yet had a child and had been advised to seek infertility treatment. The offender was allowed two weeks of temporary liberty after his plea was accepted.

When the petitioner returned to the Court to request a six-week extension, the matter was referred to a larger Bench.

The facts of the case, according to the Bench, established an extraordinary justification for granting leave. The Rule, on the other hand, could not be applied in all cases or repeatedly.

Further Readings:

1. Experiencing human rights in protections in prisons: the case of prison monitoring in Ireland: This research article explores the impact of implementing a system of humane punishment by taking the justice system of Ireland as a model.

2. Understanding open prisons in India: This article explores the concepts of open prisons which are yet to be completely accepted and area relatively nascent concept within the Indian justice system.
3. A rights based jurisprudence demands abolition of legal provisions for ‘restitution of conjugal rights’: This article explores the concept of conjugal rights in detail and goes into the nuance of its applicability and the need for its removal.

Stay tuned for the February updates of the Key Constitutional Developments series for CLAT 2022.