BLOGS

Key Constitutional Law Developments in November for CLAT

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In the November issue of this ***newly introduced series relating to key constitutional law developments***, you will be apprised of some of the key developments that take place, not only in India, but throughout the globe.

1. New York recognises “Constitutional Right to Environment”

On 2nd November 2021, New York State residents by a 2/3rd majority voted for an Amendment to the New York State Constitution, to expressly recognise a Right to the Environment.

The State Constitution’s Bill of Rights now provides for Environmental Rights under Article 1, Section 19: “Each person shall have a right to clean air and water, and a healthful environment.”

Section 19 establishes a new constitutionally protected right for “every individual”. The Bill of Rights safeguards citizens’ rights against the government. By and large, the Bill of Rights does not establish private rights for one citizen over another.

Thus, Section 19’s operation is likely to provide for constraints or requirements of affirmative government intervention. However, it would not constitute a right for your neighbour to oblige you to maintain your environment or to refrain from polluting.

While the “Green Amendment” was a popular demand which found regular insistence from the citizenry, academics, and environmental activists, the practical working and limitations of the amendment are not obvious or pronounced.

This is because, at this stage, it is not apparent as to what is the scope of a right “to clean air and water, and to a healthful environment”, and what counts as “clean” air or water, and “healthful” environment?

For more detail, guidelines that will likely be issued by New York’s environmental regulator, the Department of Environmental Conservation (NYSDEC) are awaited.

It is pertinent to note that the State of Pennsylvania had adopted similar legislation back in 1967. Under Article 1, Section 27 of the Pennsylvania Constitution, recognised the people's "right to clean air, pure water, and to the preservation of the natural, scenic, historic, and aesthetic values of the environment." Later in 1973, in the case of Payne v. Kassab, the Supreme

The Court of Pennsylvania adopted a 3-fold test to enforce and uphold the Right. It said that to determine that the Right under Section 27 is not infringed by the State, 3 questions must be asked:

1. Was there compliance with all applicable statutes and regulations relevant to the protection of the Commonwealth's public natural resources?
2. Does the record reflect a reasonable effort to reduce the environment? incursion to a minimum?
3. Does the environmental harm which will result from the challenge the decision or action so clearly outweigh the benefits to be derived therefrom that to proceed further would be an abuse of discretion?

However, the case was recently overruled in the case of ***Pa. Env't Def. Found. v. Commonwealth,*** wherein the Court held that neither the legislature nor an executive agency has the power to define a constitutional right. The constitutional right exists independent of the implementing legislation or regulation, not the other way around.

With the existing scheme of environmental jurisprudence, along with the 2017 overruling of Payne, it would be interesting to see how New York's Green Amendment plays out.

Further readings :

1. New York's Constitutional Right To The Environment:The article discusses the recent amendment and traces its demand to the New York citizenry. The article also demonstrates the passage of the bill and the overall reasons behind the introduction of such an enactment.
2. The New Environmental Rights Amendment to the New York Constitution:This article discusses the legal provisions and limitations of the Green Amendment. It compares and contrasts the provisions of the amendment to a similar law adopted by the State of Pennsylvania in 1971. It further discusses the judicial advent of U.S. environmental jurisprudence.

3. Nature as a legal person:This paper discusses the emerging international jurisprudence in the subject of environmental conservation. It demonstrates the increasing trend of advocacy which argues for a correlation of environmental rights along with human rights, and the equation of nature as a legal person. The paper analyses the development of the public trust doctrine from Roman Law and its application to various State legislations which provide for environmental protection.

1. Subnational Environmental Constitutionalism and Reform in New York State: This paper discusses legislation enacted before the 2021 Green Amendment, which sought to accord environmental conservation actions with the legal arsenal to shape the legal system accordingly.

2. Further calls by Allahabad High Court for the implementation of Uniform Civil Code in India

The Allahabad High Court recently called for the implementation of mandate of Article 44 of the Constitution of India in the case of ***Mayra Alias Vaishnvi Vilas Shirshikar And Another v State of UP & Ors***.

In the order, Justice Suneet Kumar suggested that the Hindu Family Code should be accepted as the Uniform Civil Code as the recognition of inter-faith marriage was considered to be an immediate need which would be solved through this possible legislative Intervention.

This follows the recent discussion of Delhi High Court regarding the need for a Uniform Civil Code which Justice Pratibha M Singh emphasized in ***Satprakash Meena v Alka Meena*** in July 2021. That petition was regarding applicability of Hindu Marriage laws on the Meena community which is a notified Scheduled Tribe in Rajasthan.

Justice Singh highlighted the increasing homogeneity in nature of modern Indian society and that it provides a rationale for the argument that this is the right time to come up with a Uniform Civil Code for the country.

Consistent calls have been made for the Uniform Civil Code by a significant majority in the country, however, there have been questions raised of a possible Uniform Civil Code by secular organizations and women’s rights groups.

Reasonable apprehensions regarding the Uniform Civil Code have been expressed ever since the drafting of the constitution had begun.

The legislative updates regarding the Uniform Civil Code can be observed in the Rajya Sabha recently with a number of bills set to be introduced. It may be noted that after the abrogation of Article 370 and the verdict on the Ayodhya dispute, the introduction of a Uniform Civil Code is one of the core promises that the BJP had stated in their manifesto which would indicate that they would be working towards achieving this goal.

Further Readings:

1. More Details on the basics of Uniform Civil Code and its history: This provides a fundamental clarity to a person who wishes to know the basic elements of Uniform Civil Code and its history
2. Uniform Civil Code – Implications of Supreme Court Intervention: This article discusses the need for recognition of ritualistic diversities and the possible impact of a mandate Uniform Civil Code in practicing of different traditions by people of different cultures.
3. Utility of Uniform Civil Code and Possible Problems arising out of it: This article explores the possible effects of Uniform Civil Code and how the Uniform Civil Code is not the best answer to the problems we as a society are facing now.

3. Constitutional Courts cannot interfere in the daily rituals of a temple

The Supreme Court in the case of ***Srivari Daadaa v. Tirupathi Tirumala Devasthanam*** has held that a Constitutional Court cannot interfere in the daily rituals of a temple.

The SC was hearing a Special Leave Petition filed against the order of the Andhra Pradesh High Court which dismissed the PIL filed for rectifying the method of performing rituals and seva at the famous Tirumala Tirupati temple.

While disposing of the petition, the SC observed that whether a particular ritual is performed in the right manner or not is a “disputed question of fact” which could be determined in a civil suit filed before the subordinate court.

However, if there is any dispute of the administration not being carried out properly according to the rules and regulations or any other sort of violation, the SC can interfere and the temple administration needs to respond.

Therefore, the temple administration can be asked to clarify if there is any complaint about discrimination, however, interfering in the manner in which the day-to-day rituals are performed is not feasible, the SC clarified.

The petition was disposed of with a direction to the temple administration to respond to the petitioner's grievances regarding the darshan procedure within 8 weeks and the petitioner was suggested to file a civil suit before the lower court regarding the performance of rituals at the temple.

Further readings:

1. Andhra Pradesh High Court's order dismissing the petition https://www.livelaw.in/pdf_upload/displayphp4-401569.pdf
2. An affidavit filed by the temple administration before the Supreme Court in response to the petitioner's submissions- https://www.livelaw.in/pdf_upload/affidavit-ttd-1watermark-402421.pdf

4. Registration of an inter-faith marriage cannot be refused by insisting on conversion

A single-judge bench of the Allahabad High Court has observed that a Marriage Registrar cannot withhold a marriage registration in case of an interfaith marriage on the ground that the parties have not obtained the necessary approval of conversion from the district authority.

The bench of Justice Suneet Kumar was hearing a batch of 17 petitions filed by major petitioners who had contracted interfaith marriage on conversion by free will.

While the state argued that the petitioners should approach the district authority and obtain the required approval with regard to their conversion; the petitioners on the other hand stated that prior approval is not necessary before conversion and marriage and they have a right to choose their partners and faith, interference in which would amount to infringement of their right to life and liberty.

The Court observed that the Constitution of India guarantees certain freedoms including the freedom of thought, conscience and religion which encompasses within itself, the freedom to change religion and belief. It noted that the law needs to be assessed on the basis of its impact on the fundamental rights, governed by the test of fairness and reasonableness.

The Court observed that the UP Prohibition of Unlawful Conversion of Religion Act, 2021 does not prohibit interfaith marriage per se and that the approval of the marriage registrar is merely a directory and not mandatory. Interpreting the law otherwise would not satisfy the test of reasonableness and fairness as opined within the Constitution of India.

The Court further noted that objection from any of the family members (i.e., parents and siblings) of either party to the marriage would not nullify a marriage between two adults which is otherwise valid.

Therefore, the Marriage Registrar cannot go into the validity of a marriage and thereby refuse to register a marriage merely on the basis of such a complaint.

The Marriage Registrar and the district authority under the UP Unlawful Conversion Act are not authorised by law to entertain the issue of the validity of a marriage or to prohibit an interfaith marriage.

The Court lastly observed that though the laws governing marriage and registration appear to be voluntary, may compel and coerce a party to an interfaith marriage to convert compulsorily.

Therefore, the Parliament needs to intervene and examine whether the multiple laws governing marriage and registration should be brought under the Uniform Civil Code as mandated under Article 44 of the Constitution. The petitions were therefore allowed with certain directions passed to the state, police authorities and the Marriage Registrar.

Further readings :

1.Mayra alias Vaishnvi v. State of Uttar Pradesh and Ors.: The Allahabad High Court's order can be accessed here.

2.Uniform Civil Code should not remain a mere hope in Constitution: This article highlights the importance of the Uniform Civil Code in light of the Delhi High Court order.

3. Analysing the Unlawful Religious Conversion Ordinance, 2020 through the prism of proportionality: This article analyses the Unlawful Religious Conversion Act through the lenses of proportionality.

Stay tuned for the next part of the Constitutional Law development series for the month of December, 2021.

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