

Weekly Update for Law Optional UPSC

A mix of Conceptual, Current/Contemporary Topics

Date: 29th July- 4th August, 2024

| | |
|--|---|
| Immunity of State Officials..... | 1 |
| Court Allows Sub-Division of Scheduled Castes..... | 2 |
| X Corp. Not Subject to Writ Jurisdiction..... | 3 |
| 'Intent to Marry'..... | 4 |
| Public Charitable Trusts as Consumers..... | 5 |
| Weekly Focus | |
| Case of the Week: Entores Ltd. v. Miles Far East Corp..... | 6 |
| Repeated PYQ..... | 6 |

Immunity of State Officials

The International Law Commission (ILC) made significant progress in its project on the immunity of State officials from foreign criminal jurisdiction. During its second reading, the Commission provisionally adopted draft articles 1, 3, 4, and 5. The ILC plans to address the contentious issue of functional immunity exceptions for international crimes, such as genocide, crimes against humanity, war crimes, apartheid, torture, and enforced disappearance, in 2025.

Clarifying Functional Immunity

Functional immunity protects State officials from being prosecuted for actions performed in their official capacity. However, there is an ongoing debate about whether this immunity should extend to international crimes. Draft article 7 of the ILC's project seeks to address this issue by proposing exceptions to functional immunity for severe international crimes. This proposal has been controversial and has generated diverse opinions among international legal scholars and practitioners.

Recent Developments in German Law

Recent legislative changes in Germany highlight this debate. The German federal parliament passed the 'Act on the Further Development of International Criminal Law' on June 6, 2024, which became effective on August 3, 2024. This law includes a provision that excludes functional immunity for crimes under the Code of Crimes against International Law (CCAIL). This change was introduced to codify the case law of the Federal Court of Justice (FCJ), which had ruled that functional immunity does not apply to international crimes, even when committed by State officials.

However, this legislative move has raised several questions. While the law cites FCJ decisions, it does not explicitly state that these changes are mandated by or reflect customary international law. This omission has led to discussions about the clarity and completeness of the German legislative approach.

Evaluating Customary International Law

The FCJ's case law, which the German legislation seeks to codify, has been criticised for its methodological shortcomings. These include an over-reliance on decisions from a limited number of jurisdictions, insufficient consideration of contrary State practice, and a lack of comprehensive

analysis of the broader international legal landscape. These issues highlight the complexities involved in identifying and codifying customary international law.

The Role of Higher Courts

A potential decision by the Federal Constitutional Court (FCC) could address these deficiencies by providing a more rigorous analysis of customary international law regarding functional immunity exceptions. The FCC has the authority to clarify serious doubts about the existence or scope of customary international law, which the FCJ has not fully addressed in its rulings. A thorough FCC decision could enhance the legitimacy and weight of German practice in the development of international legal norms.

Implications for International Law

The ILC's ongoing work and recent developments in German law highlight the evolving nature of international legal norms regarding the immunity of State officials. These changes reflect a growing consensus that serious international crimes should not be shielded by functional immunity. However, the path to achieving this consensus involves complex legal interpretations and rigorous analysis of State practice and *opinio juris*.

Court Allows Sub-Division of Scheduled Castes

In the landmark case of **State Of Punjab And Ors. v Davinder Singh**, the Supreme Court of India, by a 6:1 majority, has permitted the sub-classification of Scheduled Castes (SCs) to provide reservations to the weakest members within this category. The judgement, delivered by a bench of seven judges led by Chief Justice Dr. D.Y. Chandrachud, marks a significant step in the ongoing efforts to achieve substantive equality in India.

Sub-Classification for Substantive Equality

Chief Justice Chandrachud, writing for the majority, addressed four critical issues. The first was whether subclassification within SCs is permissible. The Court affirmed this, emphasising that such subclassification is justified if it is based on a rational principle that aligns with the purpose of promoting equality. This approach aims to ensure that the benefits of reservation policies reach those most in need within the SC community, thus achieving substantive equality rather than mere formal equality.

Heterogeneity Within Scheduled Castes

The second issue examined whether SCs constitute a homogenous group. The Court concluded that they do not. Empirical evidence indicates significant disparities within the SC category, necessitating targeted interventions. This non-homogeneity justifies the need for further classification to address intra-category inequalities.

Article 341 and the Scope of Subclassification

The third issue considered the interpretation of Article 341 of the Indian Constitution, which lists SCs. The Court ruled that Article 341 does not create an unmodifiable homogenous class. Instead, it serves to identify SCs for affirmative action purposes. This identification does not preclude further subclassification based on quantifiable data.

Limits and Conditions for Subclassification

The fourth issue dealt with the limits of subclassification. The Court stipulated that any subclassification must be based on demonstrable data regarding levels of backwardness and representation. Furthermore, any model of subclassification must not exclude certain SCs from the benefits entirely, thereby ensuring that the policy remains inclusive and equitable.

Dissenting Opinion

Justice Bela Trivedi dissented from the majority opinion, although her detailed reasoning was not extensively covered in the available summary. Her dissent highlights the ongoing debate within the judiciary regarding the best methods to achieve social justice.

X Corp. Not Subject to Writ Jurisdiction

The Delhi High Court in **SANCHIT GUPTA v. UNION OF INDIA AND ANR.** determined that X Corp, formerly known as Twitter, does not perform public functions and is not amenable to writ jurisdiction under Article 226 of the Indian Constitution. Justice Sanjeev Narula clarified that the social media platform operates as a private entity under private law, without carrying out any governmental duties or obligations.

Nature of X Corp's Operations

Justice Narula emphasised that X Corp's core function is to provide a platform for communication and social interaction, a service fundamentally distinct from governmental functions. The Court asserted, "The function or service of providing a platform for communication or social interaction cannot be called a function similar to that of a governmental function or integral to state functions. Thus, it cannot be said that X Corp performs a public function or discharges a public duty."

Case Background

The ruling came in response to a plea by Sanchit Gupta, a professional with degrees in Technology and Law, whose account on X Corp was suspended. Gupta argued that the suspension breached principles of natural justice, equity, and fairness, as he received no prior show cause notice, intimation, or warning before his account's monetization was paused.

Gupta contended that X Corp should be considered amenable to writ jurisdiction because it facilitates public discourse, a function he argued to be public in nature. However, the Court dismissed this argument, stating that while X Corp plays a significant role in information dissemination and influencing public opinion, it operates privately without any governmental delegation or statutory obligations to perform public duties.

Court's Observations

Justice Narula further elaborated that X Corp operates as a voluntary, user-driven platform, distinguishing it from entities mandated to provide essential public utilities or those functioning under a legal compulsion. He noted, "While 'X' plays a critical role in information dissemination and influencing public opinion, its core function is to provide a platform for expression—a service that has 'public discourse' as consequence, yet is private in operation. There is no directive, statutory or otherwise, from the government that delegates traditional state functions to 'X'."

Jurisdictional Limits

The Court concluded that despite X Corp's significant role in public discourse, it does not perform a public function in the strict legal sense intended under Article 226. Consequently, X Corp is not subject to writ jurisdiction. Instead, the Court suggested that Gupta's grievance should be addressed through civil litigation for breach of contract, stating, "If the Petitioner believes that his rights under the policy of X Corp have been violated, pursuing this claim through civil litigation is advised, as the remedy for breach of contract lies therein. Thus, the writ petition challenging such actions on constitutional grounds is not maintainable."

'Intent to Marry'

In *Pramod Purabiya v. State of Maharashtra*, the Bombay High Court ruled that providing a rented house for a woman does not establish a man's intent to marry her but rather indicates his intent to keep her readily available for his pleasure. The decision, delivered by a division bench comprising Justices Ajay Gadkari and Dr. Neela Gokhale, dismissed the argument that arranging accommodation for the complainant demonstrated an intention to marry.

Context and Background

The case involves a petitioner from Sewri, Mumbai, who sought to quash a First Information Report (FIR) filed against him on charges of rape under the promise of marriage. The victim, a resident of Palghar and a divorcee with a minor son, had formed a close relationship with the petitioner, who had assured her of support and a future marriage.

The Petitioner's Defence

The petitioner argued that his actions, including renting homes for the victim, were indicative of his genuine intention to marry her. He claimed that he reconsidered marriage only after learning about her son from a previous marriage. Advocate Sana Khan, representing the petitioner, contended that this was a case of breach of promise rather than a false promise to marry.

Court's Observations

The court rejected the petitioner's defence, emphasising that renting premises for the victim did not demonstrate an intention to marry but rather suggested a desire to keep her easily accessible for his own convenience. The bench noted, "The mere fact of renting various premises for the victim to reside is not an indication of an intent to marry. In fact, it displays the intent of the Petitioner to keep the victim in a place where she would be easily available for his pleasure at any time of his convenience."

Nature of the Relationship

According to the prosecution, the petitioner had established a sexual relationship with the victim under the guise of a future marriage. This relationship began in March 2016 and continued intermittently, with the petitioner living with the victim for a few days each week in the rented house. Despite his assurances, when the victim pressed for marriage, the petitioner allegedly assaulted her, leading her to leave the rented accommodation.

Misconception of Fact

The court emphasised that the victim's consent to the sexual relationship was based on the false promise of marriage, which vitiated her consent under a misconception of fact. The bench

observed, "Even the act of the Petitioner in abusing and assaulting the victim when he learnt that, she conceived from him indicate lack of intent right from the beginning. The consent of the victim to the sexual relationship, even if presumed to be given, is vitiated by the 'misconception of the fact' which was that the victim believed that the Petitioner would marry her."

Distinguishing Between Promise and Breach

The judges clarified that this was not a simple case of a breach of promise to marry but involved deceit from the outset. They stated, "This was not a case where there was an intention to marry and then the couple enjoyed an intimate relationship but it later did not fructify in a marital tie. The present case was also not a case of mere breach of promise to marry."

Public Charitable Trusts as Consumers

The National Consumer Disputes Redressal Commission (NCDRC), led by Dr. Sadhna Shanker, recently ruled in Anchrom Lab Supplies & Anr Vs. Aryavaidyasala that a public charitable trust is not recognized as a "person" under the Consumer Protection Act, 2019, and thus cannot file a consumer complaint.

Brief Facts of the Case

The complainant, Aryavaidyasala, a public charitable trust dedicated to producing quality Ayurvedic medicine, purchased two pieces of equipment from Anchrom Lab Supplies for Rs. 56 lakhs. Despite multiple installation attempts by technical experts from the manufacturer, the equipment failed to function properly and was incompatible with the existing High-Performance Thin Layer Chromatography (HPTLC) setup. Alleging that the equipment was defective, Aryavaidyasala filed a complaint before the State Commission of Kerala.

The State Commission partly allowed the complaint, directing the manufacturer to refund Rs. 56 lakhs with 12% annual interest and costs of Rs. 10,000. Dissatisfied with this order, the manufacturer appealed to the National Commission.

Contentions of the Opposite Party

The dealer and manufacturer contended that Aryavaidyasala, as a public charitable trust, does not qualify as a "person" under Section 2(1)(m) of the Consumer Protection Act, thereby disqualifying it from being a "consumer" as defined by the Act. They argued that the complaint was non-maintainable on these grounds. Additionally, they claimed that the State Commission lacked the pecuniary jurisdiction to adjudicate the complaint. Furthermore, they pointed out that the warranty period had expired, and since the equipment installation occurred beyond the warranty period, the complainant had no legal right to claim damages or compensation.

Observations by the National Commission

The National Commission emphasised that a public charitable trust does not meet the definition of a "person" under Section 2(1)(m) of the Consumer Protection Act, citing the Supreme Court judgement in **Pratibha Pratisthan and Ors. vs. Manager, Canara Bank and Ors. (2017) 3 SCC 712**. The Commission concluded that the State Commission's order was issued without proper jurisdiction, rendering it legally unsustainable.

Case of the Week: Entores Ltd. v. Miles Far East Corp.

Entores Ltd. (Plaintiff), a London-based company, and Miles Far East Corporation (Defendant), based in Amsterdam, were involved in a contractual dispute. The central issue revolved around a contract for the sale of goods. Entores sent an offer via telex from London to the defendants in Amsterdam. The defendants accepted the offer by sending a return telex to Entores in London. However, the defendants later repudiated the contract, leading Entores to sue for breach of contract. A key legal issue arose regarding the exact point of contract formation, specifically whether the acceptance was effective when received by the offeror (Entores) or when sent by the offeree (Miles Far East).

Issues

1. When is acceptance of an offer communicated in the context of instantaneous communication methods (such as telex)?
2. Where is the contract deemed to be formed when parties are in different jurisdictions?

Judgment

The Court of Appeal, led by Denning LJ, held that in cases involving instantaneous communication methods such as telex, the contract is only formed when the acceptance is received by the offeror. Therefore, the acceptance in this case was only effective when it was received by Entores in London. Consequently, the contract was formed in London, and English law was applicable.

Principles

1. Instantaneous Communication Rule: Acceptance is only effective when it is received by the offeror in the case of instantaneous forms of communication such as telex. This deviates from the postal rule where acceptance is considered effective when sent.
2. Jurisdiction and Governing Law: The place of contract formation, determined by where acceptance is received, dictates the applicable jurisdiction and governing law for the contract.

Repeated PYQ

Q. Define and distinguish between 'Constituent power', 'Amending power' and 'Legislative power'. Give illustrations.

Ans. The Indian Constitution outlines various types of powers exercised by different organs of the state. Among these, constituent power, amending power, and legislative power are crucial for understanding the framework and functioning of the government. While these powers are interconnected, they serve distinct purposes and are governed by different constitutional provisions and principles.

Constituent Power

Constituent power refers to the authority to frame or reframe a constitution. It is the supreme power to establish or alter the fundamental legal framework of a state. This power is typically exercised by a constituent assembly or a similar body vested with the authority to draft and adopt a new constitution or to make significant changes to an existing one.

The most notable exercise of constituent power in India was by the Constituent Assembly, which was established to draft the Constitution of India. The Constituent Assembly deliberated and adopted the Constitution, which came into effect on January 26, 1950.

Characteristics:

1. **Supreme Authority:** Constituent power is the highest form of legal authority in a state, overriding all other forms of governmental power.
2. **Creation of Fundamental Law:** It involves the creation or substantial modification of the basic legal and institutional structure of the state.
3. **Original and Inherent Power:** Constituent power is original, inherent, and not derived from any other authority.

Amending Power

Amending power refers to the authority to make changes to an existing constitution. This power allows for the modification, addition, or repeal of constitutional provisions to address evolving needs and circumstances. In India, this power is vested in the Parliament under Article 368 of the Constitution.

An example of the exercise of amending power is the 42nd Amendment Act, 1976, which brought significant changes to the Indian Constitution, including the addition of the words "Socialist" and "Secular" to the Preamble.

Characteristics:

1. **Derived Authority:** Amending power is derived from the constitution itself and is exercised according to the procedures laid down in the constitution.
2. **Limited Scope:** It is limited to modifying existing constitutional provisions and does not extend to creating an entirely new constitution.
3. **Procedural Requirements:** The process for amending the constitution often involves specific procedural requirements, such as special majorities or ratification by state legislatures.

Legislative Power

Legislative power refers to the authority to enact, amend, and repeal laws within the framework of the constitution. This power is exercised by the legislative bodies, such as the Parliament at the central level and the state legislatures at the state level.

The enactment of the Goods and Services Tax (GST) Act by the Indian Parliament is an example of the exercise of legislative power. This law reformed the indirect tax system in India.

Characteristics:

1. **Ordinary Law-making:** Legislative power pertains to the creation of ordinary laws, as opposed to constitutional amendments or fundamental legal frameworks.
2. **Defined Jurisdiction:** The extent of legislative power is defined by the constitution, which delineates the subjects on which the central and state legislatures can legislate (e.g., Union List, State List, and Concurrent List under the Seventh Schedule).
3. **Regular Exercise:** Legislative power is regularly exercised by legislative bodies to address various policy issues and societal needs.

Constituent power involves the creation or fundamental alteration of the constitution, amending power allows for modifications to the existing constitutional framework, and legislative power pertains to the enactment of ordinary laws within the boundaries set by the constitution. Together, these powers ensure that the legal system remains dynamic and responsive to the needs of society while maintaining constitutional integrity and stability.

