



National Law University Odisha



CONSTITUTIONAL LAW SOCIETY

# THE CONSTITUTIONAL POST



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# PREFACE

The Constitutional Law Society is delighted to present the November-December Issue of the Constitutional Post. CLS is pleased to put across their efforts in making this issue of the Constitutional Law Post relevant, contemporary and engaging.

The idea of the Constitutional Post is to familiarize students and academicians with the fundamentals of law while exposing them to contemporary developments. We have received many positive words about this initiative, and we are very thankful for the support that we have got ever since its inception.

We look forward to receiving any feedback from you.

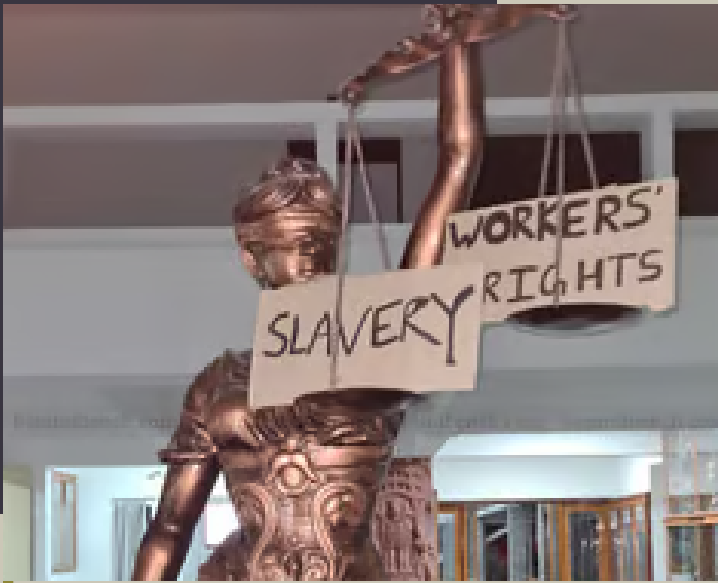




# ACKNOWLEDGEMENT & DISCLAIMER

The Constitutional Law Society (CLS) is indebted to National Law University Odisha (NLUO) for giving us the platform to think freely and indulge in these activities. Without the support of Prof. Ved Kumari (Vice-Chancellor of NLUO) and Prof. Rangin Pallav Tripathy (Registrar of NLUO), the creation of 'The Constitutional Post' would not have been possible. Ms. Rishika Khare (Assistant Professor of Law at NLUO and Faculty Advisor of CLS-NLUO) has been involved with the development of this idea right from its concept development stage and her contribution has been immensely helpful for making this compendium. We also extend our gratitude to the eminent jurists, writers, and journalists who have contributed to the readings that are referred to in these write-ups for being vocal about their thoughts through their writings, which have helped us to further our goal for the dissemination of Constitutional Law knowledge to the masses among students, budding lawyers, and young legal professionals.

The resources used and referred to in this article have been compiled from a host of different sources. The editors of this issue do not intend in any way to claim the rights to these sources. All of these rights exclusively belong to the host websites, pages and other online resources. The Constitutional Law Society expressly maintains that these sources have been used strictly for educational and non-commercial purposes. It is also to state that the Constitutional Law Society does not wish to endorse any opinion on these matters, and these updates are just a means to facilitate information and relevant articles to members of the legal fraternity so that they are familiarised with the contemporary developments in Constitutional Law.



## SUPREME COURT WARNS AGAINST EXPLOITATION OF TEMPORARY EMPLOYEES

In the realm of private employment, the relationship between the employer and employee is governed by the rules of contract. When the State becomes takes on the role of an employer, the relationship also becomes subject to constitutional principles and therefore must abide by principles of fairness and justice. While daily wage and temporary employees often face exploitation in the private sector, the Supreme Court noted similar conditions in contractual employment by the State and raised concerns over the same.

### *The State as the Employer*

In light of the economic situation in the country, the State is not prevented from engaging workers on a temporary basis. Article 309 of the Constitution of India provides for the State to regulate the recruitment and conditions of service with regard to appointments in services and posts in connection with the affairs of the Union or of any State, making the relationship between the employee and the public employer distinct from that of an ordinary contract under private employment.

### *The Law in Uma Devi*

Secretary, State of Karnataka v. Uma Devi is the landmark case which lays down the law on appointment of contractual employees by the government.



The central question in this case was whether temporary employees engaged by the government on a contractual basis are entitled to be made permanent employees on the ground that they have served in the position for several years. The Court held that employees in irregular appointments, who were engaged in duly sanctioned posts and had served continuously for more than ten years, should be considered for regularization as a one-time measure. It ruled that only an irregular appointment, with procedural defects, and not an illegal one made in clear violation of the constitutional scheme, and the statutory rules made in that behalf, can be treated as permanent or can be directed to be treated as permanent.

### *Jaggo v. Union Of India*

In a recent case before the Supreme Court, the appellants being long-serving employees of the Central Water Commission ('CWC'), engaged against work of a perennial nature, made claims for fair consideration for regularization, as their appointments were not illegal or clandestine. Their claims were rejected by the Central Administrative Tribunal and an appeal was filed before the Apex Court.

The Supreme Court observed that the appellants had been performing essential duties that were indispensable to the day-to-day functioning of the offices of CWC. These tasks were performed daily and continuously over extensive periods, ranging from over a decade to nearly two decades. The Court came to the conclusion that the nature of the work performed was perennial and fundamental to the functioning of the offices and the recurring nature of the same necessitates their classification as regular posts, irrespective of how their initial engagements were labelled. Relying on Vinod Kumar Vs. Union of India, the Court held that procedural formalities cannot be used to deny regularization of service to an employee whose appointment was termed "temporary" but has performed the same duties as performed by the regular employee over a considerable period in the capacity of the regular employee.

## *Conclusion*

The pervasive misuse of temporary employment contracts, as exemplified in this case, reflects a broader systemic issue that adversely affects workers' rights and job security. In the private sector, the rise of the gig economy has led to an increase in precarious employment arrangements, often characterized by lack of benefits, job security, and fair treatment. Such practices have been criticized for exploiting workers and undermining labour standards. Government institutions, entrusted with upholding the principles of fairness and justice, bear an even greater responsibility to avoid such exploitative employment practices. When public sector entities engage in misuse of temporary contracts, it not only mirrors the detrimental trends observed in the gig economy but also sets a concerning precedent that can erode public trust in governmental operations.

Engaging workers on a temporary basis for extended periods, especially when their roles are integral to the organization's functioning, not only contravenes international labour standards but also exposes the organization to legal challenges and undermines employee morale. By ensuring fair employment practices, government institutions can reduce the burden of unnecessary litigation, promote job security, and uphold the principles of justice and fairness that they are meant to embody.





# THE ALIGARH MUSLIM UNIVERSITY VERDICT: A PIVOTAL MOMENT IN MINORITY JURISPRUDENCE OF THE INDIAN CONSTITUTION

## *Historical Context: AMU's Evolution and Minority Question*

The Muhammadan Anglo-Oriental College, established in 1877, evolved into Aligarh Muslim University (AMU) through the *Aligarh Muslim University Act of 1920*. Over time, significant amendments reshaped AMU's administration and its minority status:

- 1951 and 1965 Amendments: These diluted AMU's minority character by restructuring its administration.
- 1972 and 1981 Amendments: These restored AMU's minority identity by affirming its establishment by the Muslim community.

## *The Azeez Basha Verdict*

In *Azeez Basha v. Union of India* (1968), the Supreme Court ruled that legislation, not the Muslim community, established AMU. This judgment deprived the university of its minority status under Article 30(1) of the Constitution, which protects minorities' rights to establish and manage educational institutions. This decision became the foundation for ongoing debates about AMU's minority status.

## *Challenges and Legal Developments*

- The 1981 amendment to the AMU Act redefined its establishment by the Muslim community to counter the Azeez Basha ruling.
- In 2006, the Allahabad High Court invalidated a 50% reservation for Muslims in AMU's PG medical courses. The court reiterated that AMU's minority status could not be reinstated without a constitutional amendment.
- The case reached the Supreme Court but remained unresolved after the Union Government withdrew its appeal in 2019.

## *Key Legal Questions*

1. What qualifies as a "minority institution" under Article 30(1)?
2. Does statutory incorporation affect an institution's minority status?
3. Can pre-Constitution institutions claim Article 30 protections?

## *Supreme Court's Interpretation*

- **Minority Institution Definition:** The Court clarified that legislation incorporating an institution does not nullify its minority status if minorities originally established it.
- **Pre-Constitution Institutions:** Protections under Article 30 extend to institutions founded before 1950. The Court dismissed the notion that pre-Constitution origins disqualify such institutions from minority rights.
- **Criteria for Minority Character:** The Court outlined key factors for assessing minority status, including the community's founding intent, the institution's service to minorities, and evidence of minority involvement in its creation and functioning.

## *Key Observations*

- **Administrative Structure:** The Court ruled that minority interests, not exclusive minority control, determine administrative legitimacy.



- Article 30 vs. Article 29(2): The Court harmonised these provisions, affirming that admitting non-minorities does not dilute an institution's minority character.
- Establishment vs. Incorporation: The Court distinguished founding efforts by minorities from legal recognition through legislation.

### *Implications for AMU and Minority Institutions*

The judgment confirmed that minority institutions retain their character even if established pre-Constitution or incorporated by statute. However, institutions must provide robust evidence to substantiate their minority status.

### *The Debate Over "National Importance"*

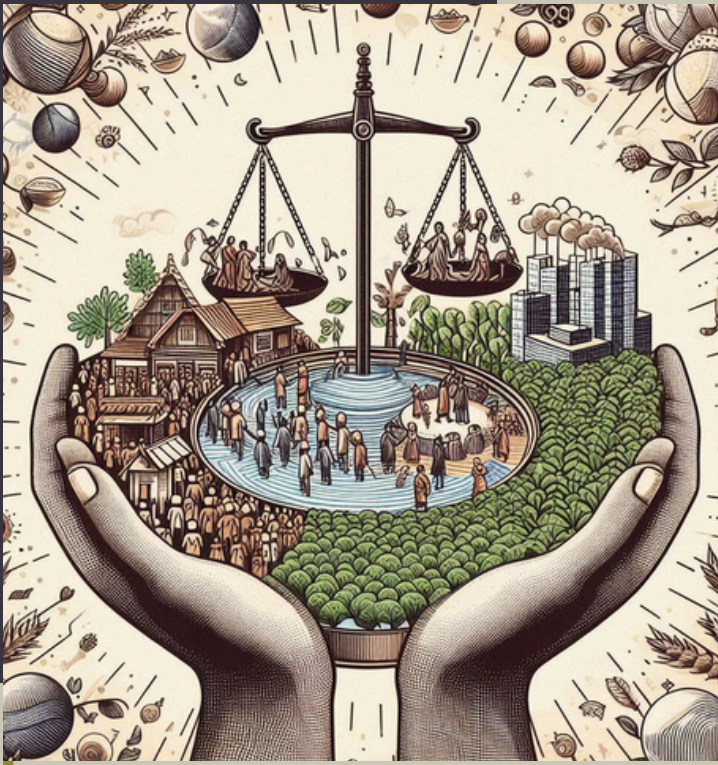
The Court clarified that AMU's designation as an institution of national importance under Entry 63 of the Union List does not undermine its minority character. Such designations focus on administrative considerations and not the institution's founding identity.

### *Dissent and Concerns*

The judgment raised questions about smaller benches referring cases to larger ones, as outlined in Central Board of Dawoodi Bohra Community v. State of Maharashtra. While the majority upheld these referrals as a Chief Justice's prerogative, dissenting judges warned against potential misuse.

### *Conclusion*

The AMU judgment highlights the challenges of balancing statutory amendments, constitutional safeguards, and historical intent. It provides a comprehensive framework for determining minority status while leaving critical questions open for future deliberation. AMU's minority character remains a vital element of its cultural and legal identity, fueling ongoing discussions in legal and political spheres.



## PRIVATE PROPERTY: A MATERIAL RESOURCE OF THE COMMUNITY?

The 9-Judges Constitution Bench of the Supreme Court in Property Owners Assn. v. State of Maharashtra, has upheld the validity of Article 31C of the Constitution and held that “all private property” does not fall within the ambit of “material resources of the community” under Article 39(b) of the Constitution, while also recognising that the word “distribution” used in the article must be given a wide interpretation.

The majority, speaking through the then Chief Justice of India, D Y Chandrachud, overruled the so called “Krishna Iyer Doctrine” which evolved from Justice Krishna Iyer’s minority opinion in State of Karnataka v. Ranganatha Reddy which was later relied on in Sanjeev Coke Mfg. Co. v. Bharat Coking Coal Ltd. The court also noted the principles that ought to be followed while considering the persuasive value of a minority judgement. It makes a distinction between concurring opinions which are not discussed by the other judges on a bench and hence, can have binding value due to the necessary implication of assent by them and the situation where the majority expressly disagrees with observations of the minority, as in the case of Ranganathan Reddy and hence, must be understood to disagree with the observations. Hence, in Sanjeev Coke, the 5-judge bench’s reliance on an opinion expressly disagreed by a majority of the 7-judge bench in Ranganatha Reddy, as it could have neither binding nor persuasive value.



While looking at Article 31C, the Court noted the nuances in identifying the legislature's intention during amendments, whether it is to merely substitute an existing provision with an amended version or to repeal the existing provision, even knowing that the substituted provision may not withstand. The court examined Section 4 of the 42nd Constitutional Amendment and found that the substitution in this case as the repeal and enactment is composite in nature and the text of the statute does not reveal an independent intention to repeal. It is clear from a perusal of the amendment that it was aimed at significantly increasing the scope of immunity as under Article 31C and hence the text of the amendment itself makes it clear that there was no independent intention to repeal it.

With respect to Article 39(b) the judgement notes that the bench in Sanjeev Coke and Justice Iyer in Ranganatha Reddy erred in not recognising the difference between holding that private property may form part of "material resources of community" and holding that all private property would fall within that description. Justice Iyer includes even privately owned cars in his illustration while the bench in Sanjeev Coke observes that "all things capable of producing wealth of the community" would be included in the phrase. The Court notes that an interpretation of a provision cannot ignore any of its words and render them superfluous. Any private property could qualify as a resource; however, it is neither material nor of the community. Hence, only the private property which is both a material resource and of the community may be owned and/or controlled by the state so as to enjoy its distribution to the subservience of common good.



## SECTION 498A IPC: OVERVIEW, CHALLENGES, AND CONTROVERSIES

The recent death of Mr. Atul Subhash, a Bengaluru based techie has sparked discussions on the misuse of the penal provisions that are available to a wife to protect her from cruelty from the husband. The fact that the vague wording and draconian provisions of Section 498A is misused is not mere conjecture. It has its basis in Supreme Court judgements and Committee Reports. As recently as in August 2024, the Bombay High Court has observed that this section is misused to terrorise even grandparents.

The draconian nature of the section is derived from the wording of the section coupled with a police force prone to use custodial violence as a way of “interrogation” and a sloppy judiciary which inevitable ruins the life of the accused before a judgement is derived. The section includes, “*whoever being the husband or the relative of the husband...*” Therefore, it casts a wide net for the wife to include anyone she chooses which often includes aged parents, distant relatives, or even relatives who do not even live in the country.

The Supreme Court in the case of *Arnesh Kumar v. State of Bihar* noted the misuse of this section and set up some safeguards to prevent its misuse. It directed that an arrest cannot be made in a routine manner without doing any investigation. It also provided the following guidelines:

1. State governments to instruct the police not to automatically arrest but to satisfy themselves of its necessity.



1. The police shall be furnished with a check list which shall be filled up to prove the necessity of an arrest.
2. The Magistrate shall peruse the reasons furnished by the police and then authorise detention.
3. Notice of appearance as per Section 41 CrPC shall be served on the accused within 2 weeks of the date of institution of the case which may be extended by the Superintendent of police by recording reasons in writing.
4. Departmental action shall be taken against the police for failure to comply with these directions.

It must be noted that an arrest is a violation of a person's right to life and personal liberty guaranteed by Article 21 of the Constitution. It also has severe impacts on a person's societal reputation and life. In extreme cases, it can even lead to suicides like that of Atul Subhash's case. Hence, the law enforcers must take a balanced approach to ensure that both the rights of the woman are protected, and the man is not unfairly put through the rigors of the criminal justice system.



## PLACES OF WORSHIP ACT: ITS OVERVIEW AND EVOLUTION

The Places of Worship (Special Provisions) Act, 1991, is a landmark legislation of India. It has been enacted to preserve the religious character of places of worship as they existed on August 15, 1947. Passed on September 18, 1991, this Act is a legislative measure aimed at preventing the conversion of any place of worship into any other religious denomination other than that existing at the date of commencement. Its primary objective is to maintain the status quo of all religious sites and promote communal harmony in a diverse country like India, where religious sentiments often run deep.

One of the major provisions of the Act is section 3 which prohibits the change of a place of worship. Section 4 freezes the religious character of all places of worship as they stood on August 15, 1947. All legal proceedings regarding the religious character of such places are also barred under the Act. Additionally, the Act excludes the issue of Ram Janmabhoomi-Babri Masjid, as that case was pending in court. Precisely, the Act has also attracted widespread accolades for its contributions towards secularism, yet controversy has not been far behind.

The Act has also faced intense judicial scrutiny from time to time. In 1994, Dr. M. Ismail Faruqui v. Union of India (1994), the Supreme Court upheld the constitutionality of the Places of Worship Act, 1991, asserting its alignment with secularism. However, it declared Section 4(3), which prohibits judicial interference, unconstitutional for restricting judicial review, ensuring access to justice while preserving the Act's core objectives.

The Supreme Court of India is currently hearing Ashwini Kumar Upadhyay v. Union of India, a case challenging the constitutional validity of Sections 2, 3, and 4 of the Places of Worship (Special Provisions) Act, 1991. These provisions aim to preserve the religious character of places of worship as it stood on August 15, 1947, and prohibit legal proceedings to alter it. In December 2024, the Court issued an interim order staying the registration of new suits seeking surveys or questioning the status of places of worship until the next hearing in February 2025. This decision aims to prevent a surge of litigation that could disturb communal harmony and reopen historical disputes. The Court's intervention underscores its effort to balance redressing past grievances with maintaining social peace, reflecting its critical role in upholding constitutional values while fostering societal stability.

The Places of Worship Act is crucial for maintaining the secular ethos of India. By preventing the conversion of religious sites and preserving their status as of 1947, it seeks to prevent communal tensions and promote societal harmony. However, the ongoing legal challenges and debates surrounding the Act highlight the complexities of addressing historical grievances while ensuring that the principles of equality and secularism are upheld. The judiciary's future decisions will be instrumental in determining the Act's continued relevance and its impact on India's socio-religious landscape. As the nation awaits clarity on these issues, the Act remains a focal point of discussions on secularism, communal harmony, and historical justice.





## INHERITANCE RIGHTS OF TRIBAL WOMEN

The Supreme Court of India has upheld the rights of tribal women in a December 2024 ruling. The issue accrued when the Chhattisgarh High Court granted property rights to three tribal women from the 'Sawara Tribe', a notified scheduled tribe under Article 342 of the Constitution. They had been fighting for inheritance rights with their cousins, over their late father's property, since 1955.

The Hindu Succession Act (HSA) of 1956 was a significant legislative step toward codifying inheritance laws among Hindus, granting women rights to inherit property. However, Section 2(2) of the Act explicitly excludes members of Scheduled Tribes from its purview, stating that its provisions do not apply to them unless the Central Government directs otherwise through a notification in the Official Gazette. However, the act has been made applicable to tribal women on the basis of "justice, equity, fairness, justness and good conscience". The view was taken in a dissenting opinion of Madhu Kishwar & Ors. v. State of Bihar (1998) by Justice Madhu Kishwar, Ramaswamy.

In this case, the Supreme Court acknowledged the discriminatory nature of these customary laws but refrained from declaring them unconstitutional, citing the potential for widespread implications across various personal laws.

The 2 judge bench of Justice CT Ravikumar and Justice Sanjay Karol looked into the extension of rights through survivorship under the Hindu Succession Act. The Act granted coparcenary rights to Hindu males by birth. The 2005 amendment ensured gender equality, giving daughters the same rights as sons in coparcenary property. It also abolished women's limited estate, making them absolute owners with full rights over their property.

The SC upheld the decision of the Chhattisgarh High Court. It went a step further by making an indication to the Parliament to extend the application of the HSA to tribal people (Scheduled Tribes), in its judgement. This was first mentioned by the Supreme Court in *Kamla Neti v. LAO*.

This judgement held that in the absence of positive law, courts should turn to equity, which should play a primary role as a source of law. While the SC took a progressive stand in extending the rights of tribal women, this further highlights the need of specific law of inheritance for tribal women since it is true that including them under the purview of the HSA would open a plethora of personal law issues. It is important to recognise that while there exists a layer of discrimination between male and female successors, another layer of discrimination is added with the difference made between tribal and non-tribal children.



## CONSTITUTION -ALITY OF TDS UNDER ARTICLE 23

A Public Interest Litigation (PIL) has been filed in the Supreme Court challenging the Tax Deducted at Source (TDS) system under the Income Tax Act. The plea contends that such a system is arbitrary, irrational, and violative of fundamental rights under Articles 14, 19, and 21 of the Constitution. It argues that TDS imposes heavy administrative and financial burdens on the taxpayers, grossly hampers the economically weaker sections of the society, and without adequate compensation transfers sovereign responsibilities to private citizens. It also raises the issue that the system harms the people whose income is less than the threshold for taxability, and it claims that mandating the duties of tax collection amounts to forced labour under Article 23. The PIL seeks judicial review to declare the TDS regime unconstitutional and suggests a re-examination by the NITI Aayog and the Law Commission.

While the PIL strongly denounces the TDS structure in general, a closer look into its reasoning against Article 23 is warranted for further clarification. Article 23(1) of the Constitution explicitly forbids “traffic in human beings and beggar and other similar forms of forced labour.” This does not permit an individual to force another to engage in labour or service against that person's will without just compensation. The only exception, as provided under Article 23(2), is for compulsory service imposed for public purposes, provided such imposition does not discriminate on grounds of religion, race, caste, or class. The petitioner claims that the TDS system places an undue and uncompensated burden on private entities and individuals to perform sovereign functions of tax collection.



Such a claim resonates with the understanding of Article 23 given by the Apex Court in the case of People's Union for Democratic Rights v. Union of India, where the Court observed that forced labour is not just limited to physical coercion but also bring in the compulsion arising from legal provisions that threaten penalties or imprisonment for non-compliance under its ambit. The Court further held in the case of Steel Authority of India Ltd. v. State of Orissa, that statutory provisions imposing undue financial or administrative burdens must have clear legal basis. This reinforces the argument against the excess obligations of the TDS regime.

Under the existing framework, TDS assesseees are required to deduct tax at source, deposit it with the government, issue TDS certificates, and comply with a host of procedural requirements. Upon failing to abide by these obligations, severe penalties including interest, fines, and even prosecution are subjected to the assessee. The petitioner argues that the joint effect of this legal obligation with the absence of compensation for the substantial administrative and financial burdens incurred by TDS assesses can constitute a form of forced labour prohibited under Article 23.

As stated earlier, Article 23(2) provides for compulsory service for public purposes. However, it can be argued that the TDS framework does not fall within a legitimate public purpose. At the end of the day, sovereign function of tax collection, lies with the state and its appointed officers, not private individuals or entities as given under the seventh schedule and Article 265 of the Indian Constitution.

In delegating this responsibility to TDS assesseees without any compensation, the government has done away with its financial and administrative burdens onto citizens, leading to the violation of the constitutional safeguard against exploitation.

The PIL, if entertained, will encourage the judiciary to review the TDS framework from the prism of constitutional principles, particularly the right against exploitation.

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