National Law University Odisha

CONSTITUTIONAL LAW SOCIETY

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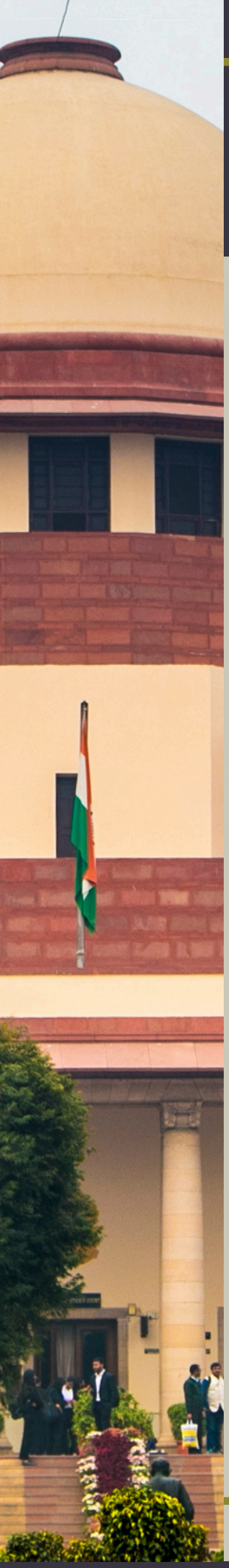
PREFACE

The Constitutional Law Society is delighted to present the March-April 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.

WAQF (AMENDMENT) ACT, 2025 AND ITS CONSTITUTIONALITY

Introduction

The Supreme Court is currently hearing a major constitutional challenge to the Waqf (Amendment) Act, 2025. This case will shape how the Indian government can regulate religious endowments, especially those under Islamic law. Several opposition leaders and civil society groups have filed petitions against the Union government, which has defended the law through Solicitor General Tushar Mehta. The matter has reached a division bench of Justice B.R. Gavai and Justice Augustine George Masih, with the court already issuing important interim orders.

The Criticism

Islamic law defines waqf as property permanently dedicated to religious or charitable purposes. In India, the Waqf Act, 1995 governed these properties through state Waqf Boards. These boards have managed thousands of mosques, graveyards, schools, and community assets across the country. The 2025 amendment, however, has fundamentally altered that structure. Parliament passed the law on April 4, 2025, and renamed it the Unified Waqf Management, Empowerment, Efficiency, and Development Act.

The government claimed the amendments would promote transparency and ensure better administration. But critics argue that the law undermines the autonomy of Muslim communities in managing their own religious affairs.

The amendment removed the legal recognition of the doctrine of "waqf by user," which had previously allowed communities to declare property as waqf if they had used it continuously for religious purposes, even without documentary evidence. Now, no person or group can claim land as waqf simply based on long-standing religious use. This change has alarmed many community leaders, who say that it threatens historic mosques and graveyards that lack formal records.

The law also imposes a new requirement that a person must have practiced Islam for at least five years before creating a waqf. Critics argue that this violates the fundamental right to freely profess and propagate religion, as it bars recent converts from making religious donations. They claim the law indirectly discourages religious conversion by penalizing new members of the faith.

One of the most controversial provisions requires every Waqf Board to appoint at least two non-Muslim members. The amendment also removes the requirement that the Chief Executive Officer of a Waqf Board must be a Muslim. Petitioners argue that this violates Article 26 of the Constitution, which guarantees religious denominations the right to manage their own affairs in matters of religion. They say the government cannot impose non-Muslim administrators on Islamic institutions.

The amendment further shifts decision-making power from judicial Waqf tribunals to government officials. In case of a land dispute, an executive officer now decides whether the land belongs to the government or is waqf property. The law mandates registration of all waqf properties on a centralised digital portal within six months. Failure to comply may strip properties of their waqf status.

Another major change removes the protection waqf properties earlier enjoyed from adverse possession. Earlier, no individual could claim ownership of waqf land just by occupying it for several years.

Now, under the Limitation Act, someone who has lived on such land for over twelve years can claim legal ownership, potentially weakening the Waqf Boards' ability to recover encroached land.

Conclusion

More than sixty-five petitions have challenged the constitutionality of the Act, including those filed by AIMIM leader Asaduddin Owaisi, Jamiat Ulama-e-Hind, Anjuman-E-Islam, and other organisations. Senior Advocate Zafeer Ahmad B.F. is leading the charge in court against the Union government. The Supreme Court has ordered that no waqf properties be de-notified and no new board members be appointed until further hearings take place. The case raises crucial questions about religious freedom, minority rights, and the extent of state control over religious institutions in a secular democracy.

CASTE AND THE CONSTITUTION: SUPREME COURT STANDS AGAINST HONOUR BASED VIOLENCE

Introduction

In April, the Supreme Court revisited the decision of the Madras High Court in the Kannagi-Murugesan honour killing case. The appeal before the Supreme Court was made by the nine convicts and two policemen that the Madras High Court had convicted in the murder of Kannagi, belonging to the dominant Vanniyar community, and Murugesan, a member of the Dalit community. The young couple had belonged to different castes and fearing the reaction of their families, had gotten married in secret while continuing to live with their respective families. One day, Kannagi disappeared from her house and her family wrongfully detained, undressed, tied and tortured Murugesan to reveal her whereabouts. Kannagi's family found her and murdered both of them by administering poison for 'bringing shame' to the Vanniyar caste.

What are Honour Killings?

The concept of 'honour' has historically been associated with traditional society's cherished ideals – female virginity and chastity, patriarchal family structure, caste identities, etc.

All those who have stepped outside the bounds of society's expectations from them have often faced social stigma and have been claimed to have destroyed the 'honour' and 'reputation' of the family and community. The Kannagi-Murugesan murder case is a classic example of the society punishing those who defy their rules – exercising one's autonomy and choosing one's own partner and daring to marry someone outside one's own caste.

The harrowing tale of this young couple from Tamil Nadu, unfortunately, is one of many such instances reported across the country. Yet again in Tamil Nadu, a man invited his sister and her husband for a feast and ended the night by murdering them, upset by his sister's choice to marry a Dalit man. A woman was murdered by her parents and left in a suitcase on the Yamuna Expressway in Delhi for marrying a man outside her caste. In another instance, a Dalit man was attacked and murdered for marrying an 'upper-caste' Muslim woman in Hyderabad.

Lacunae in the Framework

While the Court has recognised and condemned caste-based violence in the form of honour-killings, the Indian legal system has a long way to go to achieve effective protections against honour-killings. A study conducted on caste-based honour killings analysed data from seven states in India focusing on 24 cases that took place between 2012 and 2021. Across contexts, inter-caste relationships or marriages have been met with familial violence, reflecting the pervasive influence of caste-based hierarchies and deep-rooted social biases.

The latest data available from the National Crime Records Bureau (NCRB) reports the number of honour killings to be 25 each in 2019 and 2020, and 33 in 2021. However, the actual figures could be much higher than the reported and publicly available records. The reasons behind this are twofold: from a societal observation, honour-based killings have the approval of the society. The perpetrators of these crimes feel little remorse or guilt and rather believe that they have carried out justice for the harm to their 'honour'. Therefore, several cases go unreported and are hushed down by the members of the community.

From a legal perspective, honour crimes lack their own legally recognised definition and are covered under a number of other crimes such as assault, murder, atrocities against SC/ST community, etc., making it harder to report and keep track of the real number.

Protection From Honour Based Violence

Despite growing judicial acknowledgment of honour-based violence, the absence of a distinct legal category for honour killings in Indian criminal law undermines the constitutional commitment to individual autonomy and equality. Honour killings, primarily targeting inter-caste and interfaith couples, represent a form of collective violence that punishes the exercise of personal liberty, particularly in matters of marriage. The Supreme Court in Shakti Vahini v. Union of India recognised the role of khap panchayats and familial institutions in perpetrating such crimes, calling for preventive and remedial mechanisms. However, in the absence of a separate statute, such killings continue to be prosecuted under general provisions such as murder and criminal conspiracy which fail to account for the structural and identity-based dimensions of these offences.

The constitutionally guaranteed basic human rights to enjoy life with dignity and equality and the protections against discrimination are hollowed out when the legal system does not adequately recognise or address caste-based and gendered violence. More significantly, honour killings represent a grave infringement of Article 21—the right to life and personal liberty—which the Supreme Court has interpreted to include the right to dignity and decisional autonomy. The continued prevalence of honour killings, and the state's failure to legislate specifically against them, reflects an implicit societal and institutional tolerance of caste-based moral policing.

The failure to recognise honour killings as a distinct offence denies victims and survivors the visibility and justice owed to them. The cultural rationalisation of honour-based violence places the burden of community honour on women's bodies, reinforcing patriarchal and caste hierarchies under the guise of familial concern.

Therefore, enacting a dedicated law that explicitly defines and penalises honour killings is not merely a criminal law reform—it is essential to uphold the constitutional vision of an egalitarian and rights-respecting republic.

Conclusion

The persistence of honour-based violence, particularly in cases of inter-caste and interfaith relationships, exposes the fault lines between constitutional ideals and social realities in India. While the judiciary has taken a firm stance against such crimes, legislative inertia continues to weaken the constitutional guarantees of equality, dignity, and personal liberty. A separate and comprehensive law criminalising honour killings is not just a legal necessity—it is a constitutional imperative. Only through such targeted legal reform can the State affirm its commitment to dismantling caste hierarchies and protecting individual freedoms in a democratic society.

GOVERNOR'S ROLE IN INDIAN FEDERALISM

Introduction

The Indian Constitution confers upon the nation a quasi-federal structure, where powers are divided between the Centre and the States, but with a strong central bias. Within this framework, the Governor occupies a unique constitutional position as the link between the Union and the States. While the Governor is constitutionally mandated to function as the nominal head of a State, acting on the advice of the elected government, real-world practices have often seen this office embroiled in political controversies. The recent Supreme Court ruling in State of Tamil Nadu vs. Governor of Tamil Nadu has reignited the topic of the role and conduct of Governors, especially in light of their discretionary powers and political pressures.

Why is it in the News?

In the case of State of Tamil Nadu vs. Governor of Tamil Nadu, the Supreme Court addressed the contentious issue of delayed assent to State bills by the Governor. The Tamil Nadu Governor had withheld assent to 10 Bills passed by the State Legislature, leading to a re-passage of the same Bills.

However, instead of accepting or returning them with comments, the Governor referred them to the President. The Court ruled this action "erroneous in law," reinforcing that Governors must act in a time-bound manner under Article 200 and adhere to the advice of the Council of Ministers. The judgment is significant in curbing the increasing trend of Governors acting as political agents rather than constitutional functionaries. Relying upon Article 142, it held that assent to all ten re-passed Bills was accorded, and legislative purpose was kept above the executive tardiness.

Supreme Court's Verdict on State Bills

The Supreme Court's verdict unequivocally clarified the constitutional limits of a Governor's powers in dealing with State legislation. It stated that there is no scope for an "absolute veto" or "pocket veto" under Article 200. A Governor cannot indefinitely delay or sit on a bill. If a Bill is re-enacted by the State legislature after being withheld or returned, the Governor is constitutionally bound to give acceptance, unless the Bill is substantially different.

Governors must act on Bills within specific timelines:

- One month - to either grant or withhold assent.
- Three months - if the Governor intends to refer it to the President.
- One month - for re-enacted Bills to be assented to after reconsideration.

Governors are not political arbiters but constitutional heads who must act on the aid and advice of the Council of Ministers. This decision not only settles the specific dispute in Tamil Nadu but also sets a precedent for similar standoffs in other states like Kerala, West Bengal, and Punjab. The Governor's role in Indian federalism is intended to be that of a constitutional guardian and neutral umpire. However, political pressures and lack of accountability have often distorted this role, transforming Governors into partisan agents of the Centre. The Supreme Court's recent verdict is a strong step toward reinforcing the constitutional boundaries of the office. Real reform, however, will require systemic changes—ensuring transparent appointments, limiting discretionary powers, and instituting robust accountability mechanisms.

Persistent Issues in the Functioning of Governors

Despite the clear constitutional framework, the office of the Governor has often become a flashpoint for Centre-State tensions due to the following reasons:

1. Impartiality Concerns

Governors are frequently viewed as politically biased, acting in the interest of the ruling party at the Centre. The 2016 Arunachal Pradesh crisis, where the Governor's interference led to the dismissal of the elected government, was a stark example of constitutional overreach, later reversed by the Supreme Court.

2. Misuse of Article 356

Governors have recommended the imposition of President's Rule without allowing floor tests, as seen in Uttarakhand in 2016. This undermines democratic processes and State autonomy.

3. Administrative Overreach

Governors have increasingly interfered in day-to-day governance and appointments. In Delhi in 2023, the Supreme Court intervened when the Lieutenant Governor challenged the elected government's control over bureaucratic services. In West Bengal in 2023, unilateral appointments of Vice-Chancellors by the Governor, acting as Chancellor, sparked legal and political confrontations.

4. Lack of Accountability

Governors enjoy immunity and hold office at the pleasure of the President. They cannot be impeached or removed by the State Legislature, leading to zero accountability despite vast powers. The B.P. Singhal case clarified that while Governors can be removed, it cannot be arbitrary, but still lacked mechanisms for genuine oversight.

Effect of the Judgement

This ruling is important not just for its result but also for its broader systemic

significance.

The Court's position essentially excludes the practice of pocket veto in the Indian system, a power never explicitly vested in the Governor but frequently utilized in practice. Under the Constitution, the Governor can give assent, withhold assent, or reserve a Bill to the President (Article 200). It does not, however, vest authority for indefinite inaction. Although the pocket veto is not referred to in constitutional language, it interferes with the legislative process and skews the balance in favour of executive obstructionism. The Court's identification of this skewing reinforces that constitutional imprecision cannot be utilized to prevent democratic functioning.

Secondly, while the provision permits an absolute veto wherein the assent is withheld without the Bill being re-presented, the provision implies that such discretion is not absolute. Where the legislature has re-enacted the Bill, the Governor's personal sanction has to yield to constitutional canons and the primacy of the elected legislature. The judgment thus imposes an interpretation of Article 200 that is consonant with constitutional commitments and not unilateral executive diktats.

President's Reference

As the court invoked Article 142 to grant "deemed assent", it has raised a lot of controversy. Consequently, President Droupadi Murmu has filed a Presidential Reference under Article 143. The reference asks whether the judiciary can impose timelines or conditions binding on the President and Governors—public figures with immunity under Article 361. It also asks whether Article 142 can override important constitutional provisions and whether complex cases can be heard by a two-judge bench rather than a Constitution Bench required under Article 145(3).

The Reference does pose some important questions regarding the separation of powers. If the judiciary is determining time limits in such cases where the Constitution is unclear, is that legislative action by the judiciary?

Or is it a constitutional necessity to enforce effective functioning of democratic institutions? These are questions that go beyond this specific case and go right to the core of India's constitutional democracy.

Conclusion and Proposed Alternative Measures for Reform

It becomes imperative to note that judicial intervention cannot be avoided if constitutional officials fail to perform. In a parliamentary democracy, elected legislatures are the representatives of the will of the people. A Governor appointed by the Centre cannot put state law-making in cold storage. The Court's message is clear: constitutional offices are depositories of trust, not instruments of obstruction.

The sanctity of constitutional rule is at stake. The Reference offers the opportunity for the Court to establish clearly the boundaries of judicial innovation and executive discretion. In doing so, it can clarify whether constitutional uncertainties must be preserved or whether they can be resolved in an effort to prevent the subversion of democratic processes.

To truly balance constitutional duties and political pressures, the following steps are essential:

1. Establish an Impeachment Mechanism

Creating a State-level impeachment process would enhance accountability. This aligns with the Punchhi Commission's recommendations and would deter arbitrary or partisan actions.

2. Amend Article 163

This provision grants Governors discretionary powers, which have been a source of misuse. An amendment could define and narrow the scope of these powers, allowing discretion only in limited constitutional crises.

3. Set up Judicial Oversight

A judicial commission to periodically assess the conduct of Governors could ensure

transparency, prevent overreach, and reinforce constitutional values.

4. Define Clear Timelines and Procedures
Statutorily mandated timelines for assenting to Bills, along the lines of the recent SC ruling, should be codified to avoid legislative paralysis.

5. Limit Interference in Education and Administration
Governors' roles as Chancellors should be minimized, allowing State governments greater control over appointments in State universities and administrative machinery.

POLITICAL PARTIES UNDER RTI ACT

Introduction

In its *June 3, 2013 order*, the Central Information Commission had determined that political parties meet the requirements outlined in the Right to Information Act, 2005 for an organisation to be designated as public authorities, making them subject to the RTI. While the Supreme Court has not affirmed the same yet, the following piece makes 5 arguments for including political parties under the purview of the RTI Act.

Why Political Parties ought to be considered as Public Authorities

Firstly, the government "substantially finances" political parties. The Central Government and State Governments indirectly fund political parties in a number of ways, including by providing free airtime on government TV stations during elections, buildings, plots, and lodging in desirable areas. In addition to being given these facilities at minimum costs, the state frequently pays for their upkeep, modernisation, repair, and other improvements. Furthermore, according to S.2(h)(d)(ii) of the RTI Act, the distribution of homes, real estate, tax exemptions, and property on a subsidised rate constitute "indirect financing."

It is unreasonable to have an inflexible formula of what the "substantial funding" should be; which could perhaps exclude indirect financing as explained above. Furthermore, political parties consistently carry out initiatives aimed at promoting the general welfare, which strengthens their "public" nature. A political party that does not uphold democratic values in its internal operations cannot be expected to do so in the nation's government, according to the Law Commission of India's 170th Report on "Reform of the Electoral Laws," published in May 1999. It cannot function as a democracy on the exterior and as a dictatorship on the inside. Further, it is concerning that many public organisations explicitly encourage the concept of withholding information, keeping their inner workings hidden from the general public.

Secondly, Sections 8 and 9 which highlight the exceptions to this clause do not make any provision for Political Parties. Section 8 of the RTI Act outlines exemptions from disclosure, meaning certain information is not required to be disclosed. Section 9 deals with grounds for rejecting requests for information, allowing a Public Information Officer to refuse if providing access would infringe copyright. However, nowhere in these provisions are political parties mentioned.

Thirdly, the legislative intent behind the enactment of the Right to Information Act, 2005, as discerned from the Lok Sabha Debates dated 10 May 2005 (14th Lok Sabha, Session 4), clearly establishes that the primary purpose of the legislation was to ensure transparency in the functioning of the Indian leadership and public authorities.

This intent is reinforced by statements such as that of Shri Milind Deora (Mumbai South), who observed that:

"This Bill is also a manifestation of the transparent nature of India's current leadership and to enact such a bold and audacious piece of legislation, the Government of the day must be confident in its integrity and must be committed to public service."

Such a declaration by a sitting Member of Parliament highlights the central

objective of the Bill—to build a governance framework where information is no longer held in secrecy but is made accessible to the public, reflecting confidence in public accountability.

Fourthly, the reference to the earlier Freedom of Information Act, 2002 (passed in LS 13), shows a legislative continuity and evolving intent towards enhancing transparency. The debates at Page 183 also reflect bipartisan support for dismantling the culture of opacity that had surrounded public administration.
Therefore, from a legal standpoint, the purposive interpretation of the RTI Act must be grounded in this clearly expressed legislative intent: to empower citizens, enhance accountability, and most crucially, to make the workings of India's leadership transparent and subject to democratic scrutiny.

Lastly, according to the Supreme Court's ruling in Ashok Shankarrao Chavan v. Madhavrao Kinhalkar, it is mandatory for contesting candidates to maintain their accounts and lodge them with the District Election Officer (DEO). This is done to make sure that candidates don't take it as a formality and file a return of election expenses without providing accurate information, because once a true copy of the candidate's account is lodged with the DEO, "any person"—that is, any Indian citizen—can access the account lodged with the DEO and obtain an authenticated copy of the statement.

Conclusion

Bringing political parties under the ambit of the RTI Act is both a logical extension of the law's intent and a democratic necessity. Given their substantial indirect funding by the state, their critical role in shaping public policy, and the absence of any statutory exemption under Sections 8 or 9, political parties must be held accountable through transparency. The legislative history and judicial reasoning further support this move as essential for fostering a culture of openness and trust in Indian democracy.

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