



National Law University Odisha



CONSTITUTIONAL LAW SOCIETY

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PREFACE

The Constitutional Law Society is delighted to present the September-October 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. Further, it also sets out the events conducted so far this semester as part of CLS' effort in increasing awareness and discourse around constitutional law. 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 evolution 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.

EDITOR'S CORNER



This January-February edition of the CLP covers certain important decisions and ongoing proceedings of the Supreme Court with respect to election law; one where the question of whether elections can be suspended due to other prevailing emergency circumstances is discussed while another deals with the challenge to the process of Special Intensive Revision by the Election Commission. The constitutional challenge to Section 20(2) of the BNSS as well as the UGC Equity Regulations, 2026 have also been discussed herein.

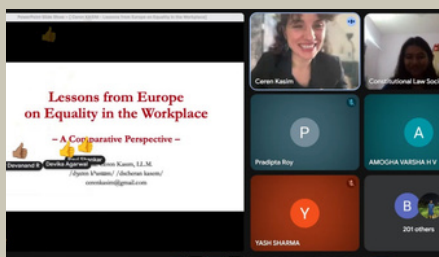
In other news, the Supreme Court has also expanded the scope of reproductive autonomy to include adoption within the protective sphere of Article 21. The Apex Court has also directed the appointment of a 90% locomotor-disabled advocate as Assistant District Attorney, holding that there is no upper ceiling which excludes those with higher degrees of disability who are capable of executing the requirements of posts with reasonable accommodation.

Across borders, Kazakhstan has adopted a new Constitution, which has been criticised by some for eroding human rights standards maintained by the previous version. Argentina's new environmental law for glacier protection marks a significant step towards decentralisation, as it does towards environmental protections.

The Transgender Persons (Protection of Rights) Amendment Bill, 2026 introduced by Union Minister of Social Justice and Environment Virendra Kumar and passed by the Parliament takes away the right to self-identification of gender among other changes. The growing trend of trans rights antagonism behoves the question, are pushbacks to trans rights a sign of growing authoritarianism?

THIS SEMESTER SO FAR

7TH CLS DOUBLE CREDIT COURSE ON “LAW, POWER AND PRIVILEGE IN INDIAN CONSTITUTIONALISM AND BEYOND” FROM 1ST TO 22ND FEBRUARY



CLS organised a credit course on the theme “Law, Power and Privilege in Indian Constitutionalism and Beyond”. Conducted in virtual mode, it spanned across 30 hours, examining the layered operations of caste, gender, sexuality, religion, disability, and reproductive inequality in modern India. Discrimination persists despite constitutional guarantees, thereby affecting several institutions, schools, workplaces, hospitals, families, public offices, and private markets. The theme of this course becomes especially relevant in such a diverse democracy, where

discrimination operates not only as an individual wrong but as a systemic phenomenon embedded in institutions, relationships, and cultural norms.

Lectures drew from landmark judgments, global jurisprudence, social-movement histories, and contemporary scholarship to understand how discrimination is produced, justified, contested, and regulated. By grounding legal analysis in lived experiences and current events, the course highlighted the realities that shape access to dignity and equality today, from caste bias in elite institutions to medical discrimination, queer exclusion from family law regimes, reproductive autonomy questions, and the challenges of ensuring inclusive governance.

The lectures were enriched by the insights of a rich and eminent panel of academicians. Dr. Gnana Sanga Mithra S, Associate Professor and Associate Dean (Research - Interdisciplinary) at Vinayaka Mission’s Law School, Chennai

is a trained sociologist whose academic and policy-oriented research spans gender and transgender studies, migration,

public health, climate change, and inclusive governance. Dr Asang Wankhede, DPhil, MPhil in Law (University of Oxford), LL.M (SOAS, Distinction) is a grassroots organiser and a lawyer specialising in anti-discrimination law.

Dr. Ceren Kasım, post-doctoral researcher at Stiftung Universität Hildesheim, has practised law as a representative of the Turkish Social Security Institution and focuses her research on anti-discrimination and social law. Jwalika Balaji, Research Fellow at the Vidhi Centre for Legal Policy, She is published in the areas of family law, anti-discrimination law, and human rights in international journals as well as print media.



CONSTITUTIONAL CHALLENGE TO JUDICIAL APPOINTMENTS TO THE DIRECTORATE OF PROSECUTION

– Avni Shrivastava

A petition has been filed before the Supreme Court of India challenging the constitutionality of Sections 20(2)(a) and 20(2)(b) of the Bharatiya Nagarik Suraksha Sanhita, 2023 which allow judicial officers to be appointed as Director of Prosecution, Deputy Director of Prosecution or Assistant Director of Prosecution. The petition has been filed by Advocate Subeesh P.S. It contends that the impugned provision allows serving as well as retired judicial officers, including Sessions Judges and Magistrates, to be appointed as Heads of prosecution functioning under the administrative control of the State Home Department.

Statutory Framework under Section 20

Section 20(1)(a) states that a Directorate of Prosecution shall be established in the State consisting of a Director of Prosecution and as many Deputy Directors of Prosecution as may be required. Similarly section 20(1)(b) provides for the establishment of Directorate of prosecution at district level. Section 20(2) lays down the eligibility to be appointed as a director of prosecution. Under section 20(2)(a), an advocate who has been practicing for not less than 15 years or an ex-sessions judge is eligible. Under section 20(2)(b), anyone who has been a practicing advocate for not less than seven years or has been a Magistrate of the first class is eligible to be appointed as an assistant director.

Doctrine of Separation of Power

The petition argues that such a structure as contemplated under section 20 is violative of the Doctrine of Separation of power as envisioned under the Constitution of India.

The contention is that permitting judicial officers to head prosecution is violative of article 50 and Article 235. The doctrine states that there should be a demarcation between the authorities and power of the judiciary, executive and legislature. It is in place to ensure that there is system of checks and balances and to prevent misuse of powers.

Article 50 under the Directive Principles of the State Policy mandates that the state should take steps to ensure separate functioning of the judiciary and the executive. Complementarily, Article 235 vests control with the High Court, over district courts and courts subordinate thereto, including matters of posting, promotion etc. The same has been envisaged in the Constitution to make certain that the judiciary remains independent and to minimise executive interference.

Court's Observations

The Bench, while dismissing the plea, stated that the same was a misconceived challenge on the premise that it violates any constitutional provision. An objection was also raised against the phrase 'is or has been a sessions judge' under section 20, on the ground that it allows a person serving as a sessions judge to be the head of prosecution. In response, the bench stated the section is only prescribing eligibility and that the only requirement is at the same time a person cannot be a judge and head of prosecution.

Conclusion

The judgement fails to provide a detailed reasoning and, in the absence of the same, is open to criticism for not fully addressing the constitutional concerns. If Article 50 is reverse-engineered, it can be noted that its underlying objective is not merely to insulate the judiciary from executive interference. It is to maintain institutional boundaries. By the same logic, the prosecution should not be infused with officers from judicial stream, as in a way it blurs the demarcation. The petition also invoked Articles 14 and 21 contending that such appointments may undermine the perception and reality of a fair trial. A legal framework therefore should be designed in a way that it eliminates all possibilities of conflict during trial.



PROTECTING PRIVILEGE V. PROMOTING INCLUSION: UGC EQUITY REGULATIONS, 2026

-- Astha Samal

In January of this year, the University Grants Commission ('UGC') notified the UGC (Promotion of Equity in Higher Education Institutions) Regulations, 2026 ('Equity Regulations') with the objective of 'eradicating discrimination... and to promote full equity and inclusion amongst stakeholders in higher education institutions'. These Equity Regulations replace the earlier UGC Equity Regulations, 2012 and introduce certain much needed modifications to align with the National Education Policy 2020 ('NEP') as well as the changing requirements for a policy for equity and inclusion.

The Equity Regulations focus on the elimination of discrimination on the basis of 'religion, race, gender, place of birth, caste, or disability' and lay special emphasis on groups such as scheduled castes ('SC'), scheduled tribes ('ST'), socially and educationally backward classes ('SEBC'), economically weaker sections ('EWS'), and persons with disabilities ('PwD'). While aimed at developing a safer and more inclusive environment within higher educational institutions ('HEI'), the Equity Regulations have sparked outrage in the public and drawn judicial scrutiny.

The primary goal of the new regulations is to create a safe and discrimination free environment for stakeholders, including students, faculty, staff, management, etc. The regulations attempt to dismantle systemic barriers that preclude an individual from enjoying their constitutional entitlements of equality and dignity. Some key features of the Equity Regulations include Equal Opportunity Centres ('EOC') as the body responsible for addressing issues regarding discrimination, 24x7 Equity Helpline, specified timelines for grievance redressal, monitoring mechanism, penalties for non-compliance, among others.

The Equity Regulations face criticism on primarily two counts: firstly, no mandate for representation of individuals from the unreserved category, and the lack of penalty for malicious complaints and false accusations. Those in opposition of the Equity Regulations regard these two to hint towards a 'presumption of guilt' against students of the general or unreserved category, and in turn, being 'discriminatory' towards them. The Equity Regulations were also quick to be challenged in a petition before the Supreme Court where one of the petitioners claim that 'general or upper castes' are excluded from being protected against the 'discrimination suffered by them'.

On a careful reading of Regulation 5(7) of the Equity Regulations, 2026, it can be observed that a mandate has been created for necessary representation by individuals belonging to the OBC, PwD, SC, ST and women categories. However, no part of Regulation 5 on EOCs excludes individuals belonging to unreserved or general categories from being a member or the Chairperson of the EOC. The act of differentiating between unreserved categories of persons and specific categories of persons, such as the aforementioned, in guaranteeing a voice in the EOC is to fulfil the objective of promoting full equity and inclusion, as stated in the Objectives Clause of the Regulations. In light of this, the same fulfils the nexus test and cannot be considered discriminatory under Article 14 of the Indian Constitution.

The lack of a penalty for malicious complaints may be placed as an important concern and gap in the regulations and it would be one of many. The critics of the Equity Regulations may be found on a spectrum. While some believe it to be over-protecting vulnerable groups to the extent of being discriminatory towards unreserved categories, others criticize it for not going far enough to tackle the issue of systemic discrimination in the country. A set of critics claim that the Regulations focus on removing the 'perception' of discrimination rather than address the causes of discrimination in a manner that removes the root of the problem. They argue for more democratic representation in spaces of power and devolution of powers from centre to state in 'keeping with the federal principles of the Constitution'. Taking a more holistic approach, they also advocate for adopting academic curricula that promotes an inclusive and sensitive approach to societal problems rather than reinforcing social prejudices.

At present, the Supreme Court, while hearing a challenge petition, ordered a stay on the newly released Equity Regulations, 2026. The court was concerned with the non-mention of ragging despite it being one of the most prevalent forms of reinforcing discrimination in practice. Additionally, the Court questioned the need to separately define “caste-based discrimination” when caste as a basis of discrimination is already included within the definition of “discrimination.”

While the public now waits for yet another long-drawn battle of arguments before the Supreme Court until a decision may be made regarding the Equity Regulations, the outrage and uproar caused by a policy aimed at inclusion becomes a cause of concern for the state of the society. Within the social realities of India, specialized laws have always existed to protect vulnerable groups. The question that we must then ponder on is what exactly are the factors causing such vehement opposition.



SUPREME COURT IN HIMACHAL PANCHAYAT POLLS CONFLICT: DISASTER LAW V. ELECTION TIMELINES

– Manasvi Singh

There has been a major constitutional dispute in Himachal Pradesh about the postponement of panchayat and urban local body elections due to the invocation of disaster-management authority. The dispute raises a crucial issue: does executive action taken under the Disaster Management Act, 2005 supersede the constitutional requirement to hold local elections in a timely manner?

The Supreme Court's involvement in the matter reflects the tensions between emergency governance and continuity of democratic government. The backdrop to the issue is the severe monsoon-related disasters that impacted Himachal Pradesh, causing extensive destruction to infrastructure, including roads and the operations of civic administrations.

In response to the extraordinary circumstances, the State relied on powers granted under the Disaster Management Act, 2005 to take appropriate steps to ensure the security and effectiveness of conducting elections. The disaster's relief, reconstruction, and delimitation-related administrative work required a high priority before elections can be conducted according to the constitution.

On the other hand, the State Election Commission (SEC) and petitioners argued that elections to the Panchayati Raj Institutions are constitutionally required. Article 243-E of the Constitution of India states that every five years, election shall be conducted to the local bodies; thus, there is no jurisdiction for prohibiting democracy from continuing indefinitely. Hence, one of the primary concerns raised was that actions taken by the Executive pursuant to disaster-related orders will be used as an illegitimate means to delay the conduct of elections beyond the time permitted under the Constitution.

The Himachal Pradesh High Court stated that although disaster may necessitate short-term adjustments, it does not overcome a governmental obligation to conduct elections within a reasonable time. In this regard, the High Court ruled that elections should be completed no later than 30 April 2026, stating that democratic decentralization is part of the constitutional basic governing framework.

The state challenged this decision to the Supreme Court by means of a Special Leave Petition (“SLP”) maintaining that the High Court erred in failing to recognize the practical realities of post-disaster governance. The state also argued that conducting elections in a situation where there are incomplete repairs and disrupted access would impair the ability of the voters to participate and create fairness in the election process.

The Supreme Court, while acknowledging that the disaster conditions were serious, would not permit an unending delay in conducting elections. In an interim Order, the Supreme Court changed the deadline established by the High Court from 30 April to 31 May 2026. Simultaneously, the Supreme Court ordered the state to complete all necessary preparation (including delimitation and restoration) within the timeframe established by the Act as amended.

This approach is the Court’s endeavour to weigh the competing constitutional goals of both the State’s responsibility to protect its citizens from harm resulting from disasters and the State’s obligation to provide citizens with periodic elections and related means for democratic accountability in the face of disasters. The Supreme Court’s decision could potentially establish a precedent for determining how much disaster management powers may be used to lawfully interfere with the electoral process. The manner in which the Supreme Court has dealt with this issue suggests a compromise position. The law of disasters provides for limited delay of elections, but not indefinitely, and the Constitution requires a functioning democracy during such delays.



ELECTORAL INTEGRITY OR VOTER EXCLUSION: CONSTITUTIONAL CHALLENGES TO SPECIAL INTENSIVE REVISION

– Ravi Shankar

In a first in Indian legal history, Mamata Banerjee, the Chief Minister of West Bengal, appeared personally before the Supreme Court of India to oppose the Special Intensive Revision (SIR) of the electoral rolls initiated by the Election Commission of India. She described the exercise as a “tool of harassment” that threatens the rights of voters and asked the Court to reconsider or stay the process that is currently underway. The hearing has reached a culmination point in which the Supreme Court has reserved its judgment as of 29 January 2026, stressing the seriousness of the constitutional issues at stake.

The Supreme Court has, however, again made it clear that it will not permit any blockade in the SIR process but requested the ECI to be careful and tactful in the process and avoid sidelining real voters.

Background

The SIR Controversy has its origins in the month of June 2025, when Bihar was on the verge of its Legislative Assembly Elections. It was during this crucial period that the Election Commission of India initiated a Special Intensive Revision of the electoral rolls in the state of Bihar.

Unlike other revisions, this particular revision demanded strict validation, but more importantly, it did not consider the most commonly possessed identity cards such as Aadhaar cards, Voter ID cards, and Ration cards as valid documents.

In the socio-economic context of Bihar, which has experienced migration, employment in the unorganized sector, and lack of documentation, the lack of these most widely held identity documents raised the risk of mass disenfranchisement. Therefore, the SIR exercise was not merely viewed as an administrative exercise but also as an exclusionary exercise that could potentially deprive people of the basic democratic right to vote.

Challenges to SIR

1. Threat of Exclusion of Voters

The most serious objection to SIR is that it has the potential to exclude actual voters. The documentation requirement, be it in terms of residence or identity cards, might actually be discriminatory to the weaker members of the society, the migrant labourers, and the rural populace who lack the documentation.

2. Lack of Notice and Procedural Transparency

There have been reports of a lack of awareness and notice to the affected voters. This is an issue because voters might not even be aware that their names are removed off the rolls.

3. Timing and Electoral Neutrality

The fact that this major revision is being done so close to the elections casts doubt on its neutrality. It would interfere with the outcome of the election and therefore, breach the principle of free and fair elections which is a component of the basic structure of the Constitution.

4. Burden of Proof on Citizens

The process can give the citizen the onus of proving their eligibility thereby turning the presumption of inclusion against them. This can also pose constitutional concerns in Article 14 of the Constitution, namely, its arbitrariness and discriminatory effect.

5.Limited Remedies and Grievance Redressal

Although avenues to challenge the denial of the right can be found, they tend to be time constrained and complex. To a majority of the citizens especially to those who live in the rural parts of the country, it might be impossible to obtain redress.

Conclusion

SIR exercise is a classical constitutional dilemma: social insurance of electoral integrity and enhancing universal and equal participation. Even though the purpose of the ECI to keep proper voting lists is justifiable, the process should not result in massive disenfranchisement.

A legitimate and constitutional way will be an open and transparent process with enough guarantees and leans towards inclusion. Democracy is, after all, not that the electoral rolls are clean, but the participatory aspect of it, whereby all eligible citizens are given a fair opportunity to vote.

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