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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. 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



The March-April edition of the CLP covers a wide array of decisions and ongoing proceedings of the Supreme Court with respect to religious equality and caste discrimination. This edition also covers the expansion of protection of rights with respect to maternity benefits and the right to die by the apex court.

In other news, the Supreme Court while seized of a motor accidents claim, quantified the contribution of homemakers to “domestic care” at ₹30000 per month, and referred to the 2023 Handbook on Combating Gender Stereotypes of the Supreme Court which the Chief Justice has earlier found to be “too Harvard-oriented”. In an appeal against the Delhi High Court invoking the forum non conveniens doctrine to refuse a Border Security Force constable’s challenge to his dismissal, the Supreme Court held that the doctrine has limited application in proceedings under writ jurisdiction of High Courts.

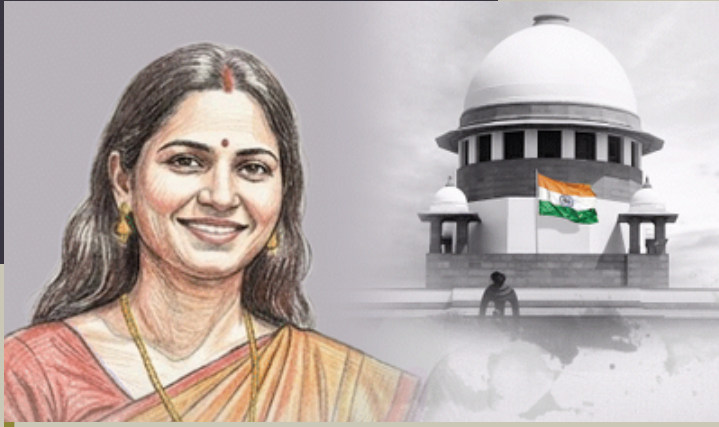
Across borders, Armenia’s constitutional amendment, a precondition for finalising its peace treaty with Azerbaijan to end Nagorno-Karabakh conflict may be stalled due to pro-reform Civil Contract Party failing to attain majority in its recently concluded parliamentary elections. Elsewhere, the ruling party in the Democratic Republic of Congo are seeking to effectuate constitutional amendments to allow President Felix Tshisekedi to come back for a third term, and have passed a bill to organise referendums in the absence of opposition parliamentarians even as the threat of Ebola outbreak as well as ongoing armed conflicts loom large.

Over the last several months, India’s data centre market has seen unprecedented growth due to rising demands for AI coupled with a government push for the same. The same has predictably been accompanied by displacement of underserved communities, such as the illegal displacement of Dalit households from Jai Bhim Nagar in Mumbai, and rising concerns over growing water scarcity and water bed depletion.

EDITOR'S CORNER



It remains to be seen whether India's ambitions to take a bite of the global AI-boom pie would be accompanied by necessary infrastructural developments to mitigate the massive resource burden placed on the areas in which these data centres are set up and whether constitutional protections would be extended to the people bearing the cost of this development.



NINE-JUDGE BENCH HEARING ON RELIGION VS GENDER EQUALITY

-Manasvi Singh

The Supreme Court's ongoing nine-judge bench hearing in the Sabarimala reference is no longer merely about the entry of women into a temple. It has evolved into a constitutional confrontation over a much larger question: Can secular judges decide on religious practices? Will constitutional morality override centuries-old faith traditions?

The roots of these issues can also be traced back to the 2018 case of Indian Young Lawyers Assn. v. State of Kerala, where the Supreme Court ruled by a 4:1 majority that prohibitions on women ages 10-50 from entering the Sabarimala Temple was unconstitutional. The current hearings are about how the "Essential Religious Practices" (ERP) doctrine is contentious. The ERP has developed through the judiciary since the 1950s which allows courts to determine if a practice deemed to be in question can be decided to be "essential" to a particular religion and therefore constitutionally protected under Articles 25 and 26. The ERP has also allowed for the expansion of judicial authority in matters of faith over the decades, with many courts having been put in a position, time and time again, to make theological judgments about what is religiously authentic.

During the hearing, Solicitor General Tushar Mehta repeatedly argued that courts should ordinarily defer to legislatures and religious communities in matters of reform and that judicial review in religious matters must remain limited. Similar views were reflected by other senior advocates who contended that the standard of scrutiny applicable to Articles 25 and 26 cannot be equated with ordinary Article 14 review.

However, if the ERP doctrine is abandoned entirely, there may be other serious constitutional consequences. By allowing purely autonomy-based doctrines,

discriminatory practices that are also considered to be religious would not be subject to constitutional scrutiny simply because they have been labelled as religious. Doing so would violate an important part of the transformative vision of the Constitution, specifically its substantive equality and dignity of the individual. Therefore, the issue facing the Court is both a doctrinal and philosophical one: does constitutional morality coexist with the collective religious autonomy of a group?

The stakes are even higher than just Sabarimala; the decision is very likely to affect future disputes concerning whether women can enter a mosque, and whether certain religious institutions will continue to engage in exclusionary practices or have constitutional limits on their authority.

The Court's decision will most certainly have a significant impact on the future of constitutional adjudication in India. The way the ERP doctrine is interpreted, changed and sometimes thrown-away will inform (to what extent) and how the Constitution views, and balances conflicting claims based upon religion and fundamental freedoms as the country continues to experience diversity and growing recognition of rights. Far beyond just a question about a temple, the Sabarimala reference speaks to the long-term relationship between constitutionalism and religion in India.



TOWARDS INCLUSIVITY: SUPREME COURT BROADENS MATERNITY RIGHTS

-Astha Samal

The Maternity Benefit Act, 1961 (“MB Act”) was enacted with the objective of protecting the dignity of motherhood and provided for maternity leave and benefits to ensure the health and security of mother and child. Under the benefits, pregnant women are entitled to a maximum of twenty-six weeks of paid maternity leave of which a maximum of eight weeks can be availed prior to the delivery of the child. Section 60(4) of the Code on Social Security (“SS Code”), previously Section 5(4) of the erstwhile MB Act, provides for the maternity benefits available to an adoptive mother being twelve weeks from the date the child is handed over to her, only for a child below the age of three months. In the case of Hamsaanandini Nanduri v Union of India, the differential benefits provided to biological and adoptive mothers was met with a constitutional challenge under Articles 14, 19(1)(g) and 21 of the Constitution.

The petitioners challenged the constitutional validity of the provision by invoking the rights of both the mother and the child. Limiting the availability of maternity leave of an adoptive mother only to situations where the adopted child is below three months of age arbitrarily infringes on the right of the adoptive mother to care for her child in a wholesome manner. The adoptive mother is deprived of spending quality time with her child and to develop the mother-child bond and support the integration of the child into the new family. On the other hand, biological mothers can, even after availing the maximum days of leave pre-delivery, obtain eighteen weeks of leave post-delivery allowing them to sufficiently care for their child up to the age of approximately four months. This creates an arbitrary distinction created between biological and adoptive

mothers and children which deprives the adoptive mother-child of the right to dignified motherhood and childhood which cannot stand the test of equality under the Constitution.

The petitioners also pointed out the fact that the procedure for adoption of children under the Juvenile Justice (Care and Protection of Children) Act, 2015 and the Adoption Regulations, 2022 are most likely to extend to a period of three months rendering the provision of benefit as per the three-month age limit futile as it would not allow for any time to actually care and rehabilitate the child into the new home.

In light of the above, Section 60(4) of the SS Code was claimed to be contrary to the right of equal treatment and dignified life of the mother and child under Article 14 and 21, as well as the woman's right to carry on her trade, occupation, and business under Article 19(1)(g). The three-month limit fails to align with the objective of maternity benefit legislation which is aimed at ensuring the welfare of mother and child during a vulnerable period as well as support and encourage women who wish to have a family to be able to manage a career along with it. Further, it is detrimental for orphaned, abandoned, or surrendered children as it deprives them from receiving the care and attention that is deserved of them and might have an adverse impact in the rate of adoption.

The Supreme Court highlighted the significance of the mother-child relationship and the crucial role played by mothers in the early development of the child in providing stability, care and consistent nurturing. The Court acknowledged the physical, emotional, and social exertion involved in the care of a young child and the need for financial stability to ensure economic security.

In its ruling, the Supreme Court held Section 60(4) of the SS Code to be discriminatory on the grounds that firstly, lack of reasonable distinction between women who adopt a child below the age of three months and those who adopt a child aged three months or above; secondly, the particular differentiation has no nexus with the object sought to be achieved; and thirdly, the classification suffers from under-inclusiveness. The Court read down the section to allow any woman who legally adopts a child to be entitled to

maternity benefit for a period of twelve weeks.

Following the maternity benefit jurisprudence in India, the Supreme Court has adopted a beneficial interpretation of welfare legislations such as the SS Code. The meaning, now assigned, to the provision will go a long way in supporting adoptive mothers in continuing employment and not having to choose between a career and a family. While the three-month limit was a carried-over arbitrary distinction from the MB Act, it is important to note that the new SS Code has omitted the benefit of additional leave available due to any illness arising out of a tubectomy operation. While the government proudly boasts the simplification of certification processes, it glosses over its omission of removing the leave available for illness arising out of tubectomy operation.



CASTE, CONVERSION AND THE CONSTITUTION

– Divija Gupta

The Division Bench of the Hon'ble Supreme Court, comprising of Justice Prashant Kumar Mishra and Justice Manmohan, considered the question of whether conversion to a non-Hindu religion result in one's exclusion from the ambit of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act of 1989 in Chintada Anand v State of Andhra Pradesh.

The Appellant, Chinthada Anand, was born into the Madiga Community, a recognized Scheduled Caste community in Andhra Pradesh. Later, he converted to Christianity and began serving as a pastor, conducting regular Sunday service and holding position in local pastors' fellowship. The case arose from assertions of having been subjected to caste-based abuse, assault and criminal intimidation, attracting provisions of the Act and Indian Penal Code. The Andhra Pradesh High Court quashed the criminal proceedings noting that the caste system was alien to Christianity.

The Supreme Court dismissed the appeal and held that upon conversion to Christianity a person cannot claim Scheduled Caste status for the purposes of the Act. The Bench considered Articles 341 and 342 read with clauses (24) and (25) of Article 366 and the Constitution (Scheduled Castes) Order, 1950. It observed that Clause 3 of the said Order and its subsequent amendments clearly stated that only those professing Hinduism, Sikhism or Buddhism were entitled to claim Scheduled Caste status, further noting that Christianity had not been brought under its purview. Thus, it ruled that irrespective of the Appellant's caste of origin, upon conversion he ceased to be regarded as a member of a Scheduled Caste. The bench relied on Punjabrao v D.P. Meshram to hold that the term profess meant 'to publicly declare or practice a religion.' The Appellant

had been undisputedly serving as a Christian Pastor for the past decade and was regularly conducting his religious services and duties. The appellant's conduct and practice over a prolonged period amounted to an open and public declaration of his Christian faith.

The Counsel for the Appellant relied upon G.O. Ms No.34L, Social Welfare Department, Government of Andhra Pradesh, which extended some concessions granted to Scheduled Caste members to Christian and Buddhist converts, to argue that the appellant was well within the ambit of the Act. However, the Court clarified that executive or administrative measures seeking to extend benefits to the SC/ST communities were confined to non-statutory concessions and couldn't expand or override Presidential Orders or Parliamentary statutory protections like the Act.

The Apex Court laid down seven postulates or principles, after having analysed the Constitutional Orders of 1950 and various precedents:

1. The claimant must belong to a notified caste or tribe and the same must be substantiated by clear and cogent evidence.
2. Clause 3 of the Constitution (Scheduled Castes) Order, 1950 is an absolute bar, and only those professing the Hindu, Sikh or Buddhist faiths can be deemed to be members of an SC community. Further, conversion to any other religion not mentioned in the said Order would result in immediate loss of the SC status.
3. There is an absolute bar on extending any statutory benefit, protection, reservation, or entitlement available to Scheduled Castes to persons excluded from such membership by the operation of Clause 3.
4. The constitutional framework doesn't permit the simultaneous practice of a religion outside the ambit of Clause 3 and membership of SC status, given that both these positions are mutually exclusive.
5. On reconversion to permitted religions, the following three thresholds must be strictly met – (i) proof of original caste identity, (ii) bona fide reconversion, unequivocal renunciation of the previous religion and observance of such customs and rituals as recognized by the caste, (iii) recognition and acceptance by the SC community and not mere self-proclamation.

6. Loss of SC status due to the operation of Clause 3 would automatically disentitle the said person from any other statutory benefits, protections or entitlements accorded to such status, including those under the Act.
7. Unlike the Constitution (Scheduled Castes) Order, 1950, the Constitution (Scheduled Tribes) Order, 1950 isn't dependent on religion-based exclusion, and thus mere conversion doesn't result in automatic loss of status, provided that the said person actively engages in the tribal customs, retains his tribal identity and community life, and is accepted by the community.

While the apex court has taken a textual approach, attention must also be paid to the harsher social realities underlying the issue. The caste system has permeated mindsets and societies across generations. Consequently, even if an individual adopts a faith which doesn't recognize caste hierarchies, the same might not result in changing societal attitudes towards them, thereby subjecting them to the same stigma and social exclusion which they previously faced. For instance, even after having converted to Islam or Christianity, those originally belonging to caste communities are still victims of deep-rooted social prejudices. The same has been affirmed by numerous studies and reports, including in the Justice Ranganath Misra Commission Report, Sachar Committee Report, the Mandal Commission Report and other studies. Furthermore, there have been active deliberations on the validity of Clause 3 of the 1950 Order as well as the extension of benefits to converts currently excluded, in light of the continuing discrimination and social exclusion experienced by such converts. Ultimately, while the judgment settles the legal position under the existing constitutional framework and judicial precedents, the broader question of whether caste should be linked to religion still remains unresolved.



THIRTEEN YEARS, ONE VERDICT: THE RIGHT TO DIE WITH DIGNITY COMES OF AGE

– Hilit Pattanaik

The Division Bench of Justices J.B Pardiwala and K.V Vishwanathan permitted the withdrawal of life-sustaining medical treatment for a patient in a Persistent Vegetative State (PVS) for 13 years for the first time in India in Harish Rana v Union of India. After a traumatic brain injury sustained in 2013, the 32-year-old Harish Rana had remained in PVS for 13 years.

In Common Cause v. Union of India (2018), the Supreme Court recognised the right to die with dignity under the framework of Article 21, and ruled that passive euthanasia can be carried out by way of “advance medical directives” only. A five-judge bench on 24 January 2023, modified the 2018 guidelines to make the process easier for terminally ill patients. In July 2024, the Delhi High Court dismissed the plea seeking passive euthanasia for Harish Rana, narrowly ruling that because Haris can breathe independently and sustain himself without external mechanical ventilation, the case did not fall under the domain of life-support withdrawal and would amount to active euthanasia. On March 11 2026, the SC overruled Delhi High Court’s verdict and clarified that CANH (Clinically Assisted Nutrition and Hydration) constitutes medical treatment, not basic care.

The SC here applied the “best interests” test, which aims to determine whether the artificial expansion of treatment to keep the patient alive serves any welfare for the patient. Both medical boards in Rana’s case confirmed that there is no benefit from continued CANH. The court also waived off the 30-day cooling period as the medical board and family were already in full agreement that recovery is impossible and considerable time had already passed in the present case, directing Harish to be transferred to palliative care department of AIIMS, Delhi, with a tailored withdrawal plan to make sure he will not experience any

pain while he dies. The court also urged the Government to enact law governing passive euthanasia and end of life care.

Critiques have raised concerns that the “best interests” standard while attractive theoretically due to its invocation of balance between paternalism and formalism, lacks well explained thresholds, which raises the concern of whether the contemporary framework properly safeguards against the substitution of subjective assessments. The tension between the “best interests” paradox (decided by family and doctors) versus patients’ autonomy and advance medical directives are all particularly relevant for patients who are not capable of expressing a prior wish.

After 8 whole years of Common Cause case, India has finally got the chance to see the right to die with dignity exit the realm of the abstract and enter real life. The call for legislative action is urgent as there are many people in our country in the same position as Harish Rana, and a statutory law can make things easier for doctors, families and patients. It must be codified to be consistent, accessible and protective of the most vulnerable. Until then every family in Harish Rana’s position must still knock on the Supreme Court’s door.



RECOGNISING MENSTRUAL HEALTH AS A FUNDAMENTAL RIGHT

– Mahi Jain

The Supreme Court's ruling in Dr. Jaya Thakur v. Government of India has explicitly brought menstrual health under the purview of the Constitution. In a very progressive ruling, the Court held that menstrual hygiene is an aspect of the fundamental right to life and dignity (Article 21) and the right to education (Article 21A).

Dr. Jaya Thakur, a social worker, petitioned under Article 32 to direct all states and Union Territories to provide free sanitary pads and separate toilets for girls in classes VI–XII. The Court agreed, noting that millions of schoolgirls miss classes or drop out entirely due to lack of menstrual support. Denial of basic facilities “directly affects girls’ health, education and privacy.” therefore impairing their equality and dignity. Further, citing international norms of substantive equality and national education law, the Court held that the State must adopt affirmative measures to remove barriers faced by menstruating students. The Court rejected the notion raised by the Government that the existing welfare schemes alone suffice; it noted that “Undoubtedly, there is no dearth of policies, schemes, programmes aimed at addressing the issue. However, what seems to be lacking is effective and consistent implementation.”

The Court has issued a continuing mandamus with detailed directions. These directions apply to all schools (government and private) across India, in urban and rural areas. Following are the most important and impactful directives:

1. Separate and functional girls’ toilets: Every school must provide functional, gender-segregated toilets with running water and hand-washing facilities.
2. Free sanitary products: Schools must provide oxo-biodegradable sanitary napkins (conforming to ASTM D-6954) free of cost to all girls in classes 6–12.
3. Menstrual Hygiene Management (MHM) corners: These corners should include spare underwear, extra uniforms, disposable bags for soiled cloths,

and other necessities to manage unexpected bleeding or leaks.

4. Safe disposal: Schools are required to provide sanitary bins and safe disposal systems for used pads.
5. Curriculum and awareness: The NCERT and state education bodies must include menstrual health related topics in school curriculum to spread awareness. All teachers, even males must be trained on menstrual hygiene so they can appropriately support students. The Court emphasized that boys and men also have a role in dismantling menstrual stigma.

To ensure that these directives are followed, the Court has also set up a strict enforcement framework, ordering annual inspections by the District Education Officer and oversight by the National and State Commissions for Protection of Child Rights. The Court has imposed a three-month deadline from the judgment date for strict implementation.

These measures transform menstrual health provisions from optional welfare schemes to mandatory constitutional framework. Sanitary products cannot be treated as a matter of charity or policy discretion, but a constitutional entitlement flowing from the right to live with dignity and bodily autonomy.

The writ petition of Dr. Jaya Thakur has proved to be a landmark ruling for gender equality and child rights in India. It aligns Indian laws with international principles recognizing menstrual health as a human rights issue. The decision also sets forth menstrual health “not as a private inconvenience but as a constitutional concern,” addressing period poverty as a systemic barrier to equality for school going girls.

Surveys show that even today many girls lack access to safe menstrual methods, and the stigma surrounding menstruation is persisting. In this background, the judgment in this case has brought about not just surface changes that the welfare policies promised to fulfill in the past but rather systemic rehaul that has the potential to ensure that menstrual health is treated with the sensitivity it deserves.

By binding all schools and authorities to provide basic hygiene facilities and respect dignity during menstruation, the Court has successfully turned the

longstanding struggle of policy recognition into an enforceable right. At last, what truly remains to be seen is how this right shall be enforced in reality.

CONTENT

Astha Samal
Divija Gupta
Hilit Pattnaik
Manasvi Singh
Mahi Jain

EDITING

Ananya Dutta

DESIGNING

Divija Gupta
Prakhar Tiwari
Prathiksha Gowda



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