



National Law University Odisha



CONSTITUTIONAL LAW SOCIETY

THE CONSTITUTIONAL POST

SEPTEMBER
OCTOBER 2025

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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 September-October edition of the CLP covers some significant decisions of the Supreme Court with respect to environment jurisprudence in India; interestingly one taking a forward-thinking expansive view by including artificial waterbodies under the ambit of environment protectionism while another seemingly taking a few steps back from earlier pronouncements by rolling back blanket bans on crackers in India. The importance of procedural safeguards, in both judicial decision-making and arrest procedures is discussed within. The dissonance between the upholding of constitutional ideals in theory and the absence of safety for those who need them the most is discussed in light of an unfortunate incident of workplace harassment in Rohtak, and in the discussion surrounding *Jane Kaushik v. Union of India*.

In other news, the acquittals of accused in two different high profile cases have reignited discourse in India around lax prosecutions and brought the criminal system back under public scrutiny. Even as the Labour Codes have been brought into force across the country after 4 years of their enactment by the Parliament, the lack of requisite arrangements for transition such as the institution of tribunals, add to the furore around them.

Across borders, the Islamic Republic of Pakistan has witnessed 3 resignations of judges of constitutional courts after the promulgation of the 27th Amendment to the Pakistani Constitution, despite widespread dissent. The government of the Kingdom of Sweden, in the meanwhile, is proposing changes to the constitution that would strip criminal gang leaders of citizenship.

With the recent remarks made by Justices Nagarathna, Datta and Masih about the importance of not tossing out judgments after their authors retire, the editor leaves all readers with this question. Is forum shopping violative of constitutional morality and can there be an effective deterrent against it, for the bar and bench?

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CLS ONLINE PANEL DISCUSSION ON “SYNCHRONIZING DEMOCRACY THROUGH ONE NATION ONE ELECTION: REFORM FOR EFFICIENCY OR ENGINEERED CONSENSUS?” ON 12TH SEPTEMBER



CLS hosted a panel discussion on the theme “Synchronizing Democracy Through One Nation One Election: Reform for Efficiency or Engineered Consensus?”, organised against the backdrop of the proposed One Nation, One Election (ONOE) initiative, introduced through the 129th Constitutional Amendment Bill, 2024. This reform seeks to conduct simultaneous elections to the Lok Sabha and State Legislative Assemblies. The session began with a brief introduction of the esteemed panellists who were Ms Yamini Aiyar (Senior Visiting Fellow at Brown University), Dr Asha Sarangi (Professor of Political Sciences at Jawaharlal Nehru University, New Delhi), and Mr Yashwant Deshmukh (Founder-Director at CVoter and Senior Journalist).

Ms. Aiyar provided a sophisticated critique of the ONOE plan, placing it within current politics and the broader rise of “one nation-isms” concept in Indian policy. She questioned the government’s efficiency claims,

highlighting how simultaneous elections, at the same time, would disadvantage regional parties. Lastly, she implored that efficiency cannot be confused for the “holy grail” of democracy.

Subsequently, Dr Sarangi critiques the very premise of ONOE, situating it within broader “oneness” projects that impose uniformity (such as one nation, one tax, or one language) on India’s diversity. For her, democracy in India has thrived precisely because it accommodates multiplicity, not singularity. She concluded by defining the new scheme in terms of poor federalism, weakening representation and being advantageous to the more powerful national parties, at the cost of smaller regional parties.

Finally, Mr Deshmukh observed that despite valid critiques of ONOE, public opinion suggests otherwise, with surveys, including India Today-CVoter’s Mood of the Nation tracker, show that nearly two-thirds of respondents’ support ONOE, exceeding the BJP’s national vote share. This, he argued, reflects widespread fatigue with constant elections, divisive campaigns, and the 24/7 political noise. At the same time, he cautioned that staggered state elections function as an important safety valve, enabling voters to register mid-term dissatisfaction with the central government.

As a way forward, Mr. Deshmukh proposed “One Nation, Two Elections,” with state elections held together and the Lok Sabha election conducted separately midway, balancing efficiency with accountability. He emphasised that democracy must go beyond a five-year voting ritual to enable continuous participation, and the panellists collectively encouraged critical

yet constructive engagement with India’s electoral system without succumbing to pessimism.

CLS ONLINE GUEST LECTURE ON “AN OVERVIEW OF THE CONSTITUTIONAL ISSUES SPANNING THE DELIMITATION EXERCISE IN INDIA” ON 23RD SEPTEMBER

CLS successfully organised an online Guest Lecture on the theme “An Overview of the Constitutional Issues Spanning the Delimitation Exercise in India”. The lecture was conducted by Ms. Mayuri Gupta, and Mr. Anshul Dalmia.

The session began with Ms. Gupta emphasizing the importance of delimitation and outlining the two principles that govern the exercise - (a) one person, one vote and one value, signifying how every vote should carry equal value; and (b) federalism and balancing state interests. By comparing statistics of Bihar and Tamil Nadu, it was revealed that Bihar’s population is 123 million, which saw a threefold increase in its population when compared to figures of 1971, while Tamil Nadu stands at only 76 million, despite both having a population of 42 and 41 million people, respectively, in 1971. This highlights that vote value across states is unequal, revealing deep disparities at both central and state levels. It also suggests that larger constituencies place greater burdens on representatives, making it harder for them to effectively address public demands. The lecture continued with Mr. Dalmia, who discussed concerns about delimitation, its practical challenges, and potential implications,

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including penalties for southern states' population control, tensions between voting and political equality, and effects on the federal structure. He then elaborated on the impact that the new delimitation exercises or the decision of extending the freeze might have on various groups like women and the SC and ST communities. Furthermore, he discusses the concept of "Gerrymandering" in Indian elections and examined the Delimitation Commission's composition, functioning, shortcomings, and lack of procedural transparency. As a way forward, Ms. Gupta and Mr. Dalmia proposed reforms for a fairer and more transparent delimitation process. They suggested reconfiguring the Rajya Sabha to offset changes in the Lok Sabha, using active voter rolls instead of total population, and adopting multi-dimensional criteria such as gender, caste, and geography alongside population. They also advocated a codified legal framework to enhance transparency and shield the Commission from partisan influence, concluding that delimitation is vital to deepen democracy by ensuring the value of each vote.

CLS SAMVIDHAN DIWAS PANEL DISCUSSION ON "CONSTITUTIONAL MORALITY VS. MAJORITARIAN MORALITY: WHO DEFINES INDIA'S VALUES?" ON 26TH NOVEMBER

CLS successfully organised an online panel discussion on the theme "Constitutional Morality vs Majoritarian Morality: Who Defines India's Values?" as part of the observance of Samvidhan Diwas.



The discussion brought together Mr. Sudhish Pai, Senior Advocate; Prof. (Dr.) N. Vasanthi, Registrar at NALSAR University of Law; Prof. (Dr.) Khagesh Gautam, Professor (Law) at Jindal Global Law School; and Mr. Jaideep Singh Lalli, a Trinity-IGS Scholar currently pursuing his PhD at the University of Cambridge. The Constitutional vs. Majoritarian Morality debate sheds light on the tussle between values like justice and fraternity.

The first speaker Prof. Vasanthi stated that even though contemporary, the theme of the discussion had historical constitutional origins. Constitutional morality is not constant develops through interpretation, especially in matters concerning fundamental rights. Taking reference from Ambedkar's understanding of constitutional morality, she remarked that it is significant in creating civil society.

Mr. Pai continued the discussion and presented the idea that constitutional morality and majoritarian morality are not necessarily mutually exclusive concepts and that one needs to strive to identify points of intersection. While the Constitution is considered sacred, it as a living document capable of responding to new challenges. Remembering A. V. Dicey, he opined that constitutional morality has not only written but

unwritten rules also that could not be applied to support judicial overreach. Prof. Gautam then led the discussion to Dr. Ambedkar's vision of constitutional morality. He presented the idea that Dr. Ambedkar's original use of the term "constitutional morality," meant fidelity to the Constitution. It represented hope that the citizens and future Parliaments would uphold the Constitution with a sense of loyalty. He addressed judicial review and explained that fraternity functions at two levels - protecting individual dignity and fostering national unity. He concluded by noting that the exercise of rights is a meaningful act which, as Ambedkar cautioned, depends on both internal and external security.

Mr. Lalli concluded by reflecting on the diverse perspectives presented, distinguishing between constitutional and majoritarian morality, which may occasionally overlap but often diverge. He raised concerns about whether popular morality can override constitutional morality, noting that doctrines like the basic structure principle offer only partial answers. He summarized five main points, namely – that no single system of values can possibly be positioned in complete representation of the values of India; that democracy acknowledges all citizens as importance; that morality of the majority must be inclusive; He emphasized that a just and fair constitution, along with democratic values, is vital, concluding that neither constitutional nor majoritarian morality is absolute; true achievement lies in treating all citizens as equal.



PROVING MENSTRUATION? CONSTITUTIONAL REFLECTIONS ON GENDER, PRIVACY, AND WORKPLACE DIGNITY

In Haryana, three women sanitation workers employed at Maharshi Dayanand University ('MDU'), Rohtak complained alleging two male supervisors of forcing them to take photos of their sanitary pads to prove that they were menstruating. The incident unfolded on 26th October when the workers were assigned to clean the university's sports complex. The supervisors demanded that they work faster and the workers expressed their inability to do so due to period pain. The supervisors proceeded to demand proof of their menstruation by submitting photos of the private parts of the sanitation workers, threatening them with abuse and dismissal on refusal to click pictures.

While action has been taken by both the Haryana Police in registering an FIR and by the university in suspending the supervisors as well as initiating an internal probe, this incident compels us to reflect on the whether the constitutional protections of privacy, dignity and equality that we emphasise on, in effect, extend to those who are the least protected among us?

Finding its origins in the Vishaka v. State of Rajasthan case, the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 ('POSH Act') aims at protecting women from sexual harassment in the workplace. Although the POSH Act exists to create safer working environments for women, it would seem that the legislation has proved inadequate in actually preventing harassment of women in workplaces and protecting the privacy and dignity of women as more and more incidents surface. While in Rohtak it was sanitation workers, several incidents

have occurred wherein students have been forced to strip and be checked for menstruation in Muzaffarnagar, Kutch, and Thane. The existence of a complaint and investigation mechanism in the form of Internal Complaints Committee, statutorily mandated by the POSH Act, does serve to address such problems when they occur but the larger question which looms above us – why do these incidents keep occurring?

The repeated occurrence of such incidents not only displays a lack of societal awareness and sensitisation regarding menstruation, but highlights failure at an institutional level in upholding the promise of gender equality. While inducting employees or employers to a new institution, workplace safety in the form of protection from harassment is severely neglected.

Sensitisation and awareness should remain not only limited to programmes conducted in academic circles or those mandated by the government but should be a routine occurrence whenever engaging new employers or employees in a workplace. As envisioned in the POSH Act, the protection of the law extends not only to regular employees but covers all kinds of employees from regular to daily-wage workers, trainees, apprentices, etc. Therefore, the responsibilities, duties, and rights under the POSH Act should be reiterated at every level and every kind of employment that exists in an institution, in order to achieve the intended effect of the law and embody the spirit of the right to life under Article 21.

With a Supreme Court Bar Association petition filed before the Supreme Court praying for both central and state level detailed enquiry into the Rohtak incident, and issuance of nationwide guidelines for protection of women's rights in the workplace, it is high time that sexual harassment policies enter discussions at all levels of employment.



WHEN COURTS DEFY THEIR OWN LAW: SUPREME COURT RESTORES JUDICIAL DISCIPLINE IN ROHAN VIJAY NAHAR

The functioning of a constitutional democracy rests not only on the laws it creates, but on the institutions that interpret and enforce those laws. For the system to work, the institutions must also be bound by rules that govern them. This is the crux of the Supreme Court's ruling in Rohan Vijay Nahar & Ors. v. State of Maharashtra & Ors. Prima facie the case looks like it is just about the forest land. However, the judgements form a boarder part of reinforcement towards the constitutional duty of courts to apply binding law.

The appellant's land was marked as private forest. This classification was based solely on administrative entries made decades ago. The State contended that the notices under Section 35(3) of the Indian Forest Act, 1927, were issued in the 1960s nevertheless these notices were not served personally to the landowners as required by the statue.

The Supreme Court explained that vesting under the Maharashtra Private Forests (Acquisition) Act, 1975 requires more than just a notice to be issued. There has to be personal service upon the landowner, a final notification, and other actions following the issuance of the notice which indicate State possession has been taken. All three elements were absent.

The High Court had treated "show-cause" notices published in the Gazette decades ago as sufficient and assumed that vesting had taken place. The Supreme Court ruled this was a fundamental legal error. The High Court had overlooked Godrej & Boyce Manufacturing Co. Ltd. v. State of Maharashtra, a binding authority, that specified expressly the very procedural safeguards that were absent in this case.

The judgment gains constitutional significance because the Supreme Court expressly invoked Articles 141 and 144. Article 141 makes all Supreme Court decisions binding on every court in India. Article 144 requires authorities to act in aid of the Supreme Court's decisions. The bench stated that these duties are mandatory and cannot be treated as optional.

The Court also reflected on institutional behaviour. A reversal on appeal is not a personal attack on a judge. It is a normal and healthy part of a constitutional judiciary where each tier performs a defined role. Judicial discipline ensures coherence in the legal system and prevents the law from depending on the identity of an individual judge.

The Supreme Court:

- set aside the High Court judgment,
- quashed all mutation entries that classified the lands as “private forests”, and
- restored ownership to the appellants.

However, the State was allowed to restart the land classification process, as long as it met the statutory safeguards, and after proper notice and the opportunity for a hearing was given to the landowners. The judgment protects landowners in the state of Maharashtra from arbitrary classification and reinforces due process as the norm constitutional standard.

The judgment is a reminder that the rule of law collapses when the courts themselves do not follow from binding precedents. The Supreme Court simply stated that where hierarchical judicial order is ignored, correction is not only justified, it is required in an ordered society. Precedent is a constitutional duty.



FROM NATURAL TO MAN-MADE: RE- SHAPING ENVIRONMENTAL CONSTITUTIONALISM THROUGH THE PUBLIC-TRUST DOCTRINE

The public trust doctrine in India is an environmental principle, based on the premise that natural resources like rivers, lakes, forests, beaches, and ecological commons are held by the State in trust for public use. In other words, the State does not "own" such resources but manages them only as a trustee. Any action that allows these resources to be degraded, privatized, or used for exclusive commercial gain is improper. The State bears a responsibility to safeguard them and ensure that they remain accessible to all. The doctrine draws its constitutional basis from Articles 21, 48A, and 51A(g).

In the case Swacch Association, Nagpur v. State of Maharashtra, passed on October 7, 2025, the petitioner contested extensive beautification and recreational installations at Futala Lake in Nagpur such as a musical fountain, floating stage, artificial banyan tree, and a multi-storeyed parking plaza. It claimed that Futala Lake was a "wetland" within the meaning of the Wetlands (Conservation and Management) Rules, 2017, and that the constructions violated Rule 4, which prohibits permanent structures in wetlands. The petitioner also invoked the public trust doctrine on grounds of ecological damage and commercial exploitation of a sensitive waterbody.

The Court found that Futala Lake is not a natural lake at all but a man-made reservoir. The court took notice of the definition of “wetland” under Rule 2(1)(g) Wetlands Rules, 2017 which excludes waterbodies that were built for the purposes of irrigation, drinking water, aquaculture, or salt production. The court held that, since the lake was built by a ruler for irrigational needs, it is a man-made lake and it falls squarely within this exclusion. It concluded that the High Court was correct in its observation that no permanent construction harmed the lake, ecological safeguards had been followed and the project promoted public good without degrading the environment. Hence, the appeal was dismissed.

The Supreme Court categorically stated that the public trust doctrine also applies to water bodies that are man-made or artificially created, and all those man-made or artificial bodies created from natural sources intended to contribute to the environment and ecology. This extension is necessary to uphold the right to a healthy environment and ecological balance, enshrined under Article 21 of the Constitution. The court placed reliance on M.C. Mehta v. Union of India and highlighted the restrictions placed on governmental authority by public trust doctrine:

1. The property held in trust must not only serve a public purpose but must also stay accessible or use by the general public.
2. Such property cannot be sold, even if an equivalent amount of money is offered.
3. The property must be protected and used strictly for the purposes for which it was intended.

The Court’s decision to extend the public trust doctrine to artificial waterbodies is a significant step. By bringing artificial ecological bodies under the ambit of PTD, the apex court has set a precedent for future environmental governance.



REVISITING THE RIGHTS OF TRANSGENDER PERSONS AND THE PROMISE OF EQUALITY WITH JANE KAUSHIK V UOI

Rights do not translate into reality unless their enforcement is implemented actively. Such is the reality of transgender persons who have been provided with the golden equality card by the constitution, time and again reiterated by the judiciary and yet, in reality- these very rights fall as obsolete.

This case revolves around Jane Kaushik, a transgender woman and a qualified teacher who was hired by a school in Uttar Pradesh, only to face relentless harassment and was forced to resign when her gender identity became known to one of her students. Later, she was offered a job at another school in Gujarat but when she submitted her identity documents, the offer was suddenly withdrawn. Following such discrimination, she approached various organizations for help including the National Council for Transgender Persons. However, there was no respite for her due to the ignorant attitude of the authorities.

While taking note of the facts of the case, the Supreme Court stated, “Unfortunately, it appears that the 2019 Act and the 2020 Rules respectively have been brutishly reduced to dead letters.”

This judgment really opens the conversation about what equality really looks like for transgender persons, not on paper, but in reality every single day. The Apex court’s decision in recognizing the rights of a transgender person to self-identify in *NALSA v Union of India*, 2014 still remains celebrated in the history of trans vision of equality.

Further solidifying this stance was the enactment of Transgender Persons (Protection of Rights) Act, 2019 and the 2020 Rules that promise a scenery of a future with all the possible discriminatory practices legally abolished. But 11 years later, how well does the promise stand on two legs? One held up by statutory recognition and another by judicial protection.

The ground reality is that for most transgender persons in India, the gap between promise and reality remains vast. Even after Jane Kaushik's victory, enforcement still lags behind. Only a few States (West Bengal, Tamil Nadu and Delhi) have even framed implementing rules – the rest remain largely silent, and only eleven States have set up the mandatory protection cells. Nationwide, bureaucrats showed a “grossly apathetic attitude” to enforcement.

At the same time, official policy often frames trans inclusion in narrow, ‘respectable’ terms. The Act itself envisions an ideal trans citizen as one who can be “trained, integrated, and employed within existing economic structures,” thereby rendering informal survival work invisible. As critics note, this lens “effectively limits the horizon of rights” by valuing transgender people only for fitting roles deemed legitimate by the State. These failures translate into continued obstacles in accessing education, work or healthcare for many, with little effective state support.

The stigma of conforming to the “normative standards of society combined with the crude and ignorant approach of the concerned authorities, makes this issue a wider societal concern. “This vision of citizenship is deeply classed. It presumes that the primary aspiration for all trans persons is entry into the ‘respectability’ model, rather than the right to exercise autonomy within their diverse socio-economic contexts.”

For policymakers and the general public alike, Jane Kaushik's case is indeed “a call to conscience”. It forces us to re-evaluate the recognition provided on paper and make sure it is transformed into reality for every transgender person.



THE CONSTITUTIONAL LIMITS OF ARREST: INTERPRETING ARTICLE 22 IN THE AGE OF POLICE IMPUNITY

In the complex machinery of India's criminal justice system, a persistent structural tension exists: the gap between the strong constitutional rights granted to citizens on paper and the often-grim reality of their weak enforcement on the ground. In recent months, however, Indian courts have issued a series of decisions, reaffirming that the constitutional protections under Article 22. At a time when public discourse is again filled with concerns over police impunity, custodial torture, and routine non-compliance with arrest procedures, these judicial pronouncements carry a renewed and profound urgency.

The most significant development came on November 6, 2025, when the Supreme Court delivered a landmark judgment that fundamentally alters the arrest procedure for every citizen. In the case of Mihir Rajesh Shah v. State of Maharashtra, a bench led by Chief Justice B.R. Gavai held that arresting officers must furnish the grounds of arrest in writing to the arrestee, in a language that they understand.

The Court clarified that failure to do so renders both the arrest and any subsequent remand illegal, effectively strengthening the core of Article 22(1), the right to be informed as soon as may be of the grounds for arrest. This ruling marks a critical shift. Previously, the mandate for written grounds was often enforced only in special statutes, such as counter-terrorism or financial crime laws (like the PMLA). This created a dangerous ambiguity, suggesting that for ordinary offences under the Indian Penal Code (now the Bharatiya Nyaya Sanhita), a mere oral mention was sufficient.

The Supreme Court has now demolished that distinction. It has unequivocally declared this safeguard to be a universal constitutional mandate, applying equally to every single offence. By insisting on a written, reviewable document, the Court has transformed Article 22(1) from a procedural formality into a mandatory, non-negotiable constitutional check. It compels the police to internalize constitutional limits in their everyday practices, creating a paper trail that can be challenged before a magistrate.

This landmark judgment does not exist in a vacuum. It is the culmination of growing judicial impatience with the misuse of state power. Earlier this year, the Supreme Court issued stringent guidelines to the Directors General of Police (DGPs) across all states and Union Territories, warning that any misuse of arrest powers by their officers will have serious consequences.

In that directive, the Court reiterated a fundamental principle often forgotten: that even criminals deserve protection under the law. The bench stressed that police must strictly adhere to prescribed norms when effecting any arrest, signalling a zero-tolerance approach to procedural violations and high-handedness. These judicial interventions are a direct response to a backdrop of serious, systemic failures in accountability. Two recent cases, in particular, highlight the impunity that has prompted this judicial crackdown.

- In Madhya Pradesh, the Supreme Court repeatedly criticized the Central Bureau of Investigation (CBI) for its shocking delay in arresting two police officers implicated in the custodial death of 25-year-old Deva Pardhi. The Court noted with dismay that a prior order from May 2025, which mandated the officers arrest within a month, was only complied with after a contempt petition was filed. The Court also criticized the state government for its delayed suspension of the officers, pointing to a lax and protective departmental culture.
- In Chhattisgarh, the state High Court recently ordered ₹5 lakh in compensation to be paid to the family of Durgendra Kumar Katholiya. Mr. Katholiya died just three hours after being remanded to police custody. The Court found visible injuries and glaring procedural lapses, concluding in its order that this was a clear case of custodial violence.

These are not isolated incidents; they are symptoms of a system where constitutional safeguards are often seen as aspirational ideals rather than as rigid operational commands. Article 22 was conceived by the Constitution's framers precisely as a defence against the arbitrary detention and arrest powers wielded by the colonial state. The Supreme Court's recent rulings, particularly the insistence on written grounds of arrest, have finally given this article real teeth.

Yet, judicial directives alone cannot suffice. The recurring pattern of delayed departmental action, as seen in the Madhya Pradesh case, proves that institutional inertia and a culture of impunity are deeply entrenched. Meaningfully limiting police power requires more than court orders, it demands systemic change.

The path forward must include a non-negotiable trinity of reforms: transparent, digitized arrest records accessible to legal counsel; the formation of truly independent police accountability bodies that can conduct swift, impartial investigations into custodial abuses; and, most importantly, a pervasive culture of constitutional compliance drilled into police forces from the training academy to the local station. Only then can the constitutional limits on arrest truly check state power, ensuring that the rights guaranteed by Article 22 are a lived reality for every citizen, not just an ideal compromised by institutional inertia.



RIGHT TO BREATHE VS RIGHT TO CELEBRATE: SC ALLOWS CONTROLLED USE OF GREEN CRACKERS IN NCR — M.C. MEHTA V. UNION OF INDIA (2025)

In October 2025, the Supreme Court of India passed an important decision in M.C. Mehta v. Union of India that created a judicial balance between two seemingly contradictory constitutional rights: the right to a clean environment, and the right to celebrate. In an apparent change from its earlier blanket bans, the Court allowed the limited use of “green firecrackers” during Diwali celebrations in the National Capital Region, on the condition that there would strict regulatory guidelines for enforcement.

While the judgment is based on environmental reasoning, it also acknowledges the social, cultural, and economic ramifications of celebrations where firecrackers are used. Delhi and its surroundings have recorded very high spikes in air pollution over several years during festivals. Earlier complete bans, despite their positive intent, remained ineffective due to large-scale non-compliance and massive illegal trafficking and smuggling of traditional firecrackers. The Court held that what was necessary was a “balanced approach”, being mindful of freedom to get clean air under Article 21 but also being sensitive to cultural significance of Diwali festivals and livelihood of small-scale industrial workers.

Regulatory Framework and Implementation

According to the new rules, only green crackers - whose composition has been altered to emit 30 percent less particulate pollutants—are permitted. These have to be certified by Petroleum and Explosives Safety Organisation (PESO) and cleared by Council of Scientific and Industrial Research – National Environmental Engineering

Research Institute (CSIR - NEERI). To prevent illicit sales, they are to be sold through only licensed vendors at specified locations, while internet sales by e-commerce sites continue to remain banned. The Court also reiterated that crackers joined in series, commonly known as “laris”, and crackers containing barium salts, that release toxic vapors, continue to remain legally banned.

The Central Pollution Control Board and State Pollution Control Boards in the NCR have been limited to monitor the quality of ambient air and water, before and after Diwali, to create accountability and scientific monitoring. Their reporting to court will eventually determine whether provisional disapprovals will be in place for future holidays. The Court said this would be a temporary exemption that was subject to the environmental data that would be produced post- Diwali.

Judicial Shift Toward Sustainable Co-existence and Balanced Constitutional Interpretation

The Court’s reasoning indicates a shift in Indian environmental law from a paradigm of prohibition to something a bit more flexible and regulatory, balancing competing environmental and societal interests, but through an innovative statutory framework. The decision represents a rather radical shift in our sensibility of managing environmental issues, from prohibitions to thinking about sustainability as co-existence. The Court even stated at one point that economic sustainability and environmental sustainability can be compatible and not mutually exclusive, given a properly constructed legal framework.

In *M.C. Mehta v. Union of India (2025)*, the Court found a viable solution to the challenge of balancing the right to celebration with environmental responsibilities and, through a narrowly drawn waiver of time, allowed the celebration to continue, albeit in a shorter-delimited time period. The ruling in this case in the Supreme Court also suggested that the balancing ‘exercise’ of one right with another - a right to celebrate and a right to health - is a respectable way of developing a balanced test that responds to changing environmental circumstances in India. The Court had found a way for these two rights to coexist through an example of judicial caution and balance within a judgment, but it had also potentially set out some frameworks for judicial method of application of constitutional rights amidst changing social norms for interpretation of constitutional rights.

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