BLOGS

Key Constitutional Law Developments in October for CLAT (Part 2/2)

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As a student of law, you never stop learning. And as a law aspirant, it is extremely important to stay on top of ALL the important legal developments that are taking place. This is especially true in the case of Constitutional Law as it forms the foundation of the legal framework of a country.

In this newly introduced series, you will be apprised of all the key constitutional law developments that take place, not only in India, but throughout the globe.

The following post is in continuation of the monthly Constitutional Law series for the month of October, 2021.

4. Article 21 includes the Right to Breastfeed for Lactating Mothers

The Karnataka High Court in *Husna Banu vs State of Karnataka* declared that lactating mothers have an inalienable right to breastfeed their infants and so does a child have a concurrent right to be breastfed.

Referring to International Conventions and precedents, the Court stated that such right exists under the umbrella of Article 21 as a Fundamental Right.

In the present case, the infant was snatched from the hospital right after birth and perchance had arrived under the care of their foster mother. The foster mother had cared for the child for many months till the genetic mother was able to track down her child by filing a Habeas Corpus writ.

The Court emphasized the importance of prioritizing the 'best interests of the child'. In this light, the claim of a stranger must yield to the claims of a genetic parent by referring to *Tejaswini Gaud vs Shekhar Jagdish Prasad Tewari*.

The primacy of claims of the genetic parent is established from the perspective of the child who has a right under International law to be familiarized with their family and lineage and be brought up by their family.

The principle of distributive justice cannot be applied here to give custody of the child to the foster parent. However, the Court whilst granting custody to the genetic mother also allowed the foster mother to visit as she pleased.

5. Live-in Relationships are a Part of Life Entitled to be Protected Under Article 21 of the Constitution

In the case of *Shayara Khatun v. State of U.P*, two majors of different faiths were living together in a live-in relationship for more than two years. It was contended that the father of the woman was interfering in their life.

On approaching the police, the petitioners contended that no help was extended thereby undermining their right to life and liberty.

The Allahabad High Court while observing the importance of Article 21 held that live-in relationships have become a part of life and are required to be viewed from the lens of personal autonomy arising out of the right to life enshrined under Article 21, rather than the notions of social morality.

Therefore, in cases where the petitioners approach the police with a threat to their life and liberty, the police authorities are obligated to perform their duties specified under law and protect the rights of the petitioners.

FURTHER READINGS –

1. Indra Sharma v. V.K.V. Sharma– Supreme Court judgement defining live-in relationships.

2. Nobody is entitled to interfere in the lives of two inter- faith majors living together– Another Allahabad HC judgment upholding the right of majors to choose their partners and live freely without allowing others to interfere in their lives.

3. HC overturns “Conversion only for marriage” judgement Yogi had cited to justify “Love Jihad” law– Allahabad HC judgement upholding the right to life and liberty of mature adults to overturn the decision rendering conversion only for marriage unacceptable, cited to justify the “Love Jihad” law in U.P.

Stay tuned for the next part in the ‘Key Constitutional Law Developments’ series for the month of November.