BLOGS

Key Constitutional Law Developments in September for CLAT (Part 1/2)

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Since 2015, a new era has ushered in CLAT LLM history so far as its syllabus is concerned. Subjective questions have been substituted by objective questions in 2015. Constitutional Law carries 50 marks out of total 150 marks making it one of the most important section in CLAT PG exam.

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.

1. Govt Aid is not a fundamental right: SC

On 27 September 2021, a Division Bench of the Supreme Court comprising of Justices Sanjay Kishan Kaul and MM Sundresh in ***State of Uttar Pradesh vs. Principal, Abhay Nandan Inter College*** ruled that the appanage to receive aid from Government is subject to certain terms and conditions, and in no way can be deduced to have the status of a fundamental right.

The instant case was set up to examine the Constitutional Validity of Regulation 101 of the Intermediate Education Act, 1921which was struck down by the Allahabad High Court.

The Allahabad High Court's ratio was accepted by the Apex Court in this case which reiterated that the current regulation, which affects the right to receive aid, is in violation of Article 30(1) of the Indian Constitution, which grants minority institutions fundamental rights.

The SC also determined that any decision to grant aid is a policy matter and therefore subject to a host of relevant considerations as has been previously assessed in ***T.M.A Pai Foundation v State of Karnataka*** and thus the right operates on restricted grounds.

The SC in the present case also outlined that when it comes to government aid, there is no difference between a majority and minority institutions, and either of these cannot claim precedence over another, and even then, as recipients of aid, they are obliged by the restrictions imposed, as there is neither a fundamental nor a vested right to receive aid.

Further Readings:

1. State can regulate minority institutions, says Supreme Court: Earlier in 2020, a Division Bench of the Apex Court had ruled that regulatory law, should strike a balance between guaranteeing a high standard of quality and safeguarding minorities' rights to create and run their own educational institutions.
2. Determination of Minority Status: The piece is a compendium of cases on Article 30, i.e., the right to establish and maintain educational institutions.
3. Hyper Constitutionalism- The Journey from TMA Pai to NEET case: This article traces the long list of judicial developments from the earliest of cases on cultural and educational rights and marks how some of these judgements through their majority or minority have contributed towards the modern understanding of these set of rights.
4. The object of achieving educational excellence cannot be subsided merely in the name of exercise of Right under Article 30 of the Constitution: This article discusses the recent judgement of the Apex Court in Md. Rafique v. Managing Committee, Contai Rahamania High Madrasah which expounded upon the scope of Article 30 in certain cases, and curtailed the blanket operation of the given provision.

2. Is Aadhaar Card a firm proof of age? Punjab & Haryana HC answers while granting protection to a couple after they married against the family's will

The Aadhaar Card, which is issued by the Unique Identification Development Authority of India (UIDAI), has evolved as a fairly essential document in recent years. To make use of a variety of services provided by the central and state governments, as well as financial services, one must produce an Aadhaar card.

An Aadhaar card is also often used by people as proof of their name, age, residence and other similar credentials. However, Punjab & Haryana High Court in ***Navdeep Singh v. State of Punjab*** observed that Aadhaar Card can't be considered as firm proof of age.

The Division Bench of the High Court was hearing a petition filed by a couple seeking protection of their life and liberty after they married against the wishes of their families. The Court observed that the protection was to be extended without consideration for the marriage's legality.

The HC further noted that neither of the petitioners had any evidence of age other than their Aadhaar cards. And since the Aadhaar Card is not a firm proof of age, if any of the petitioners

were subsequently determined to be under the marriageable age as defined by the Prohibition of Child Marriage Act, 2006, the order of protection would not preclude proceedings against them.

It is interesting to note that the similar question when dealt with by various high courts resulted in similar and conflicting observations. The Punjab & Haryana High Court last year ruledt hat the Aadhaar cannot be considered 'conclusive proof of age' and held that more credence is attached to the birth or matriculate certificates in this regard.

The Allahabad High Court has observed that entries in the Aadhaar Card indicating the address, date of birth etc., cannot be regarded as conclusive proofs in criminal cases. The Madras High Court opined that, since in the Aadhaar card, only year of birth is mentioned and not the date of birth, it cannot be taken as a document to prove the date of birth of the detenue.

However, the Delhi High Court believed that the Aadhaar card can be considered as proof of age for the purpose of Rule 7 of the Juvenile Justice (JJ) Rules.

Interestingly, the Aadhaar Act nowhere mentions that Aadhaar can be accepted as proof of date of birth. While the different High Courts have passed dissonant rulings with 'Aadhaar Jurisprudence' remaining mainly a grey area, it will be interesting to observe how this all eventually is going to settle and if the legislature will be coming up with a clarification or if the apex court will be settling it.

Further Readings:

1. What is the Aadhaar card and where is it mandatory?: This article exhaustively explains what an Aadhaar Card is and for what all services and government schemes it is mandatory.
2. India: The Supreme Court's Aadhaar Judgement And The Right To Privacy: This piece discusses the legality of the Aadhaar Card in light of Justice K.S. Puttaswamy judgement. The alert also discusses orders passed by the apex court concerning the mandatory linking of Aadhaar numbers and data protection principles as recognized by the apex court.
3. The Curious Case of PAN–Aadhaar Linkage: This article discusses the linking of Aadhar Card and PAN Card and examines the government's justification of the same.
4. Aadhaar Failures: A Tragedy of Errors: This article discusses several instances of practical difficulties that people across India have faced in accessing welfare schemes over the years and the problems inherent in the Aadhaar project.

5. How the government gains when private companies use Aadhaar: This article discusses at length how government gains when private entities use Aadhaar and why it is problematic.
6. Learning from Aadhaar: 10 rules for nations on how not to make a mess of their national IDs: This article discusses the challenges that Aadhaar faces and lists 10 pointers that nations should take care of to avoid the challenges that Aadhaar is facing.

3. Khori Gaon Demolitions Order of the SC

The recent demolitions and forceful evictions conducted by the Faridabad Municipal Corporation have drawn the ire of the citizenry and the United Nations. These demolitions were carried out in furtherance of the Supreme Court's recent orders to vacate all encroachments in Khori Gaon within six weeks due to repeated violations of its February 2020 order.

In 2016, the case was brought in front of the Punjab High Court that ruled that Khori Gaon is forested land and that the residents were encroachers. The same was enforced by the Supreme Court. However, the residents had challenged the Haryana Shehri Vikas Pradhikaran Rehabilitation Policy citing inadequate compensation and the arbitrary cutoff date of 2003 for availing the compensation.

However, United Nations Human Rights experts have expressed shock at the Court's actions stating that Khori Gaon is no longer forested land since the same has been destroyed long back by mining activity. Further, the evictions seek to render 1 lakh people, including 20,000 children, homeless in the middle of the monsoon at the height of the pandemic.

Further Readings:

1. Sarina Sarkar v. State of Haryana: The instant Supreme Court Order can be accessed here.
2. Punjab Land Reservation Act, 1900: The 2016 order was passed based on Section 4 and 5 of the Punjab Land Reservation Act, 1900 under which the concerned area (Aravali Hills) was notified as forest area in 1992. The Act can be accessed here.
3. M,C. Mehta v. Union Of India & Ors: The landmark ruling of MC Mehta v. Union of India was referred to over here.
4. 'An Order Against the Poor': Thousands Now Homeless After Khori Gaon Demolition: This article is a ground report which discusses and talks about the wretched plight of the residents living in Khori Gaon.

4. Kerala HC allows early administration of second vaccine dose

On 6 September 2021, a single-judge bench of the Kerala HC in ***Kitex Garments Ltd. v. State of Kerala*** ruled that when an individual is paying for the Covishield, they also have the right to choose the time of such administration.

The HC maintained that vaccination is voluntary and can be taken before the 84-day gap as prescribed by the Central Government, as the declaration to that effect, is advisory. As a result, the Court determined that there is no need for the government to intervene, especially in light of the government's own policy of allowing citizens to pay for early vaccines at private institutions.

As a result, the Court ordered the Centre to make the necessary changes to the CoWIN portal as soon as possible to allow for the scheduling of a second dose of Covishield vaccine after four weeks of the first dose for those who want to accept the second dose after four weeks as per the vaccine's initial protocol.

The Court made its decision in light of the fact that the Central Government has modified the time limit for Indian government employees with overseas obligations, people who need to travel abroad for education or work, and those competing in the Olympic Games, among others.

Earlier, in August, the HC had summoned a response from the Centre asking it to explain how the 84-day gap was determined by Government and what were the considerations of such a direction. Expectedly, the Central Government has challenged the judgement of the single bench, on grounds that such a declaration is a policy matter and should generally not be meddled with. The matter is now posed before a Division Bench of the same Court.

Further Readings:

1. Kerala High Court allows Covishield second dose before 84 days for paid jabs; directs changes to CoWIN: This article discusses the ratio of the Kerala HC in the present case.
2. Policy Initiatives and the Role of Indian Judiciary: This article discusses the scope of judicial intervention and argues that while the limits of judicial intervention in policy and executive matters have been low, the Apex Court has so far travelled the road with precaution. It also demonstrates that a blanket view of judicial exclusion may be used by the Executive to avoid accountability.
3. Judicial Review in India: This article discussed the role of the judiciary in a Parliamentary democracy in a country such as India and locates the existence of separation of power and

accountability in the Indian democratic setup.

Stay tuned for the next part of the Constitutional Law development series for the month of September, 2021.

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