CCAL's Lex Populi

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Centre for Constitutional and Administrative Law

Gujarat National Law University
Attalika Avenue, Knowledge Corridor, Koba,
Gandhinagar,- 382007, Gujarat.

DIRECTOR'S MESSAGE

Ideas, newer and bolder perspectives hold within them the power to change the trajectory of growth of a nation. Every idea needs a platform to build upon. I am delighted that the Centre for Constitutional and Administrative Law is providing such a platform, in the form of *Lex Populi*, for students to express their views on contemporary issues of Constitutional and Administrative law. I am sure that this in-house publication, which serves as a forum for the exchange of ideas, will go a long way in contributing to the promotion of scholarship in the core areas of law. I urge the student community to make use of this wonderful opportunity to voice their opinions. I wish CCAL the best success in this endeavour.

Prof. (Dr.) Bimal N. Patel
(Director)
Gujarat National Law University
Gandhinagar

MESSAGE FROM CCAL'S DIRECTOR

Lex Populi, the brain child of student members of the centre was conceived last semester with the aim of creating a culture of debate and discussion amongst the student body on matters relating to Constitutional and Administrative Law. CCAL has always conducted activities with a view of engaging students and the public at large. *Lex Populi* is a welcome addition to such an endeavour. By providing a platform for expression of opinions on issues of Constitutional and Administrative Law, I am hopeful that such an opportunity will elicit newer perspectives where ideas already exist and newer ideas where there are none in the field.

The present issue is broadly divided into five sections: Cover story on Presidential rule; a write-up on an article of the Constitution; a theme-based article; a case comment; international news and opinion section.

I am hopeful that this humble beginning in the form of inaugural issue will generate interest amongst the students and help them develop their scholarly skills. We, at *Lex Populi*, look forward to your take on constitutional and administrative issues.

Mr. Avinash Bhagi
Assistant Professor of Law

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Presidential Rule in Arunachal Pradesh: To be, or not to be

The premature action of the Central government in imposing Presidential Rule in Arunachal Pradesh even before the mandatory floor test, has given rise to a furore between the Congress-led State government and the Centre. President's rule was imposed in the State on Republic's day due to failure of constitutional machinery, by invoking Article 356 of the Constitution. A five-judge constitutional bench, before which the matter has been brought, is looking into the discretionary powers of governor and the validity of the presidential rule in the State itself. The crisis started with the disqualification of 14 rebel congress MLA's by the Speaker Nabam Rebia, which was then stayed by the Deputy Speaker T N Thongdok. Immediately after this the Governor of State, Jyoti Prasad Rajkhowa, advanced the House Session to December 21, without the aid and advice of the Chief Minister along with Council of Minister.

The imposition of President's rule in the State is riddled with political undertones, with 21 Congress MLA's dramatically opposing their own party, who were no sooner supported by BJP MLA's and the subsequent recommendation by the Governor to the Cabinet, forcing Ministers in the State to vacate their offices. Sadly, this is not the first time such an incident has occurred. It was proclaimed for the first time in the then state of Andhra Pradesh, on November 15, 1954.

The Janata Party which was in power at the Centre from 1977 to 1980 dismissed 9 State governments, all led by the Congress party, in a single year. Such an unprecedented move has never been attempted ever since!

Article 356, which empowers the President to *"assume to himself all or any of the functions of the State"* when there is a *"constitutional failure of State machinery"*, was debated in the constituent assembly. The provision was defended in view of preservation of national unity while the dissenters argued for State autonomy, citing reasons of plausible misuse of power by the Centre. It was, however, approved by the Assembly due to the communal frenzy and separatist movements that had engulfed the country during the debate. Though the provision for presidential rule was incorporated due to the then exigencies, the Constitution-framers stressed that such a power would be efficacious as *"an ultimate assurance of maintaining or restoring representative government in States responsible to the people"*

The Constituent Assembly failed to give a conclusive meaning to the words *"failure of constitutional machinery"*, around which the present controversy is centered. The lack of clarity made way for judicial interpretation of the clause in the case of State of Rajasthan v. UOI (AIR 1977 SC 1361) and S.R. Bommai v. UOI (AIR 1994 SC 1918). The two majority judgements given in the latter case concluded that presidential rule may be proclaimed in a State after the President is convinced based on a report by the respective governor or otherwise that unless such a proclamation is issued, the governance of the state cannot be carried out in accordance with the Constitution. It was emphasised that such a measure must be one of last resort. The Sarkaria Commission classified *'failure of constitutional machinery'* under four heads, namely, (a) political crisis, (b) internal subversion, (c) physical breakdown and (d) non-compliance with constitutional directions of the Union Executive. It stated that in case of political crisis, as in the present case, the Governor must explore all possibilities for installing an alternative government. In case it is not possible, and if fresh elections can be held without delay, then he should ask the outgoing Ministry to continue as caretaker government, only then must he dissolve the Assembly. Whether the above measures were given due consideration by the Governor, before sending a report to the Central Government, remains unanswered.

In the present case, though presidential rule was proclaimed based on the governor's report, the action of pre-poning the assembly session, while 14 MLA's were disqualified, without the aid and advice of the Chief Minister remains a bone of contention. Article 174(1) of the Constitution vests the Governor with discretionary power to summon House of Legislature to meet at the time and place as he thinks fit, provided six months do not intervene between two consecutive sessions. It does not expressly make it mandatory for the Governor to seek advice of the Chief Minister and his Council of Ministers. However various Supreme Court cases have ruled that a Governor cannot assume constitutional discretion unless such powers are expressly provided in the Constitution. This discretionary power must be based on a constitutional principle, the lack of which prompted the Supreme Court to ask the Counsel representing Governor Rajkhowa *"What was the constitutional principle here? Does advancing the Assembly session come under your discretionary powers?"*

Interestingly once a proclamation is issued, it cannot be revoked by either of the Houses by passing a resolution to that effect. Thus, the imposition of such a rule brings an end to the government in a State. The presidential rule, which commenced on 26th

January, will continue for a period of two months, in accordance with Clause (3) of the Article 356. The Article requires the Proclamation to be laid before each House of Parliament, and unless approved by them, it ceases to operate at the end of two months. If the Proclamation is approved by resolutions of both the Houses, it will operate for a period of six months from the date of its issue. At present, the proclamation has not yet been tabled before either House of Parliament and is pending before the Supreme Court.

As the Nation, once again, stands to discuss the grounds of proclamation of presidential rule, in the spirit of cooperative federalism, one can't help but lament over the pains and unfairness of the overarching power of the Union and acknowledge that the alternative might still be worse. Whether presidential rule in the State is to be, or not to be, is the real question!

-Chaitra S
IV Semester

PROFILE CHECK...

Name: *Justice Harilal Jekisundas Kania*

Posts held:*Chief Justice of India* ***Tenure as CJI****: 26.01.1950 – 06.11.1951*

Posts held before Independance:
Acting Editor of India Law Reports, Acting Judge of the Bombay High Court, Associate Judge of the Federal Court

Important cases adjudged: *Re: Delhi Laws Act, A.K.Gopalan vs State of Madras,, Brij Bhushan vs State of Delhi, Dr.N.B.Khare vs State of Delhi, Pannalal Jankidas vs. Mohanlal, Romesh Thappar vs State of Madras*

Justice Kania is the first Chief Justice of India. He died in office, leaving the post vacant on 6th November, 1951.

He read oath to Dr.Rajendra Prasad, initiating him to the President's office.

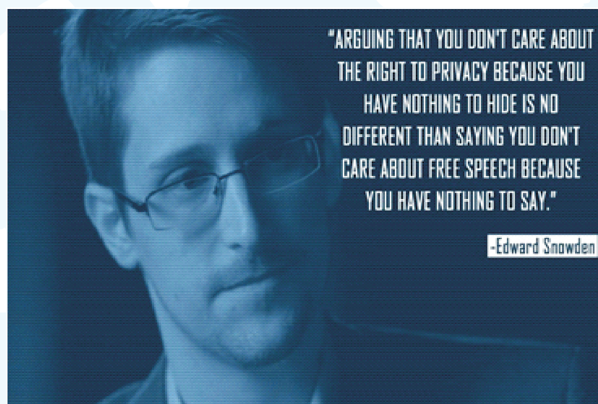
He was denied the post of Chief Justice of Bombay High Court as Sir John Beaumont (then Chief Justice) was biased against Indians. Sir John Stone, who was next in line, was promoted to the post instead.

Chief Justice Kania belonged to the traditional school of strict construction of the Constitution. He was one among the 5-judge Bench which ruled in A.K.Gopalan case that detention of a person is valid if it complied with procedure established by law. Article 21 was read strictly.

In the case of Brij Bhushan, the Bench comprising of CJ Kania held that the imposition of pre-censorship on a journal is a restriction on the liberty of the press which is an essential part of the right to freedom of speech and expression.

Right to Privacy: A Fundamental Right or Not?

The Indian Constitution does not expressly guarantee the right to privacy as a fundamental right. This right has always been debated since the constituent assembly deliberations commenced. It was mentioned by R.K. Sidhwa, whose idea was put in words when K.M. Munshi presented a draft, which explicitly guaranteed the right to privacy as a Fundamental Right to all citizens. The likes of B.R. Ambedkar and Harman Singh agreed with Munshi. But there were many members opposing the draft from the very beginning. Alladi Krishnaswami Ayyar was one such person. The members with the dissenting opinion became the majority when they claimed that the right would have serious ramifications on the Code of Criminal Procedure and the Indian Evidence Act. They further went on to say that the Right to Privacy would even affect the basic investigation process and hence, would considerably affect the administration of justice. For this reason, the idea of explicitly mentioning Right to Privacy as a Fundamental Right was dropped.



In 1963, the same view was taken by the six judge bench of the Supreme Court in Kharak Singh v. State of Uttar Pradesh. The Supreme Court made clearly stated that the Right to Privacy was not a Fundamental Right. The shift in ideologies came a decade later when Supreme Court began to extend the scope of Article 21 of the Consitituion of India. In 1975, the Supreme Court gave a ray of hope by indirectly inferring Right to Privacy as a Fundamental Right under Article 21. After subsequent evolution in R. Rajgopal case, the Supreme Court made it very clear in *PUCL v. UOI* that right to Privacy is a Fundamental Right. The Supreme Court went ahead and stated in this case that, "*We have, therefore, no hesitation in holding that right to privacy is a part of the right to "life" and "personal liberty" enshrined under Article 21 of the Constitution.*"

For the next 15 years, the Supreme Court of India recognized Right to Privacy as within the scope of Article 21. The status quo has become dubious in Justice K.S. Puttaswamy (Retd.) & Another v. Union of India & Others. The Attorney General submitted that the Kharak Singh case was a six judge bench and the subsequent cases were not of the same or higher bench strength. Hence, according to doctrine of stare decisis, the right to privacy is not a Fundamental Right.

No one is certain about where Right to Privacy stands today. The question whether Right to Privacy is a Fundamental Right or not will only be answered when a higher bench of the Supreme Court adjudicates on this matter.

-Shivdutt Trivedi
IV Semester

'The Death of Merit'
A Saga of Affirmative Action in India

'The death of merit' has been alternatively used, as a slogan for challenging the present system of reservation in India. Reservation, introduced for the upliftment of persons belonging to socially backward communities in India, it is claimed, is antithetical to the idea of merit and scholarship. Reservation, it is alleged to be nothing but a form of identity politics, which purports to project and promote one set of people over the other.'The death of merit' is an expression that has also embraced to denote and express the anguish faced by the depressed classes. The horrifying discrimination and harassment being faced, by the members of the lower castes, has led to the death of many a bright mind. The final act of these martyrs, in truly unshackling themselves from the chains of birth is indeed justified to be tagged as a death of merit.

The Caste system in India arguably 'constitutes the longest, most resilient and systematic example of social engineering ever devised by humans'. Reservation has over a period of time, turned out to be one of the major endeavours towards ridding the country of this barbaric practice. Reservations today, much like the Colonial times has been a contentious issue. The recommendation of the National Commission of Backward Classes in introducing reservation in the private sector has only deepened the fissures.

The history of reservations traces back to the mobilisation of lower castes as a response to certain measures initiated by the British Government in the areas of education, employment, and later on, in the arena of elections. Jyotirao Phule, EVR Periyar, Dr. B.R. Ambedkar and M.C Rajiah were few of the many leaders, at the forefront for the fight for affirmative rights and social justice.

One of the first recorded instances of reservations in India was that of Shahu Maharaj, the heir of Shivaji. Shahu Mahharaj was determined to include as many non-Brahmins as possible in his administration. He highlighted their poor conditions and solicited the protection of the British, who were willing to implement some affirmative action policies. The British, in 1919, reserved seven seats for the Marathas and allied castes in the Legislative Council of the Bombay Presidency. South India, during the 1900s', much like Maharashtra, was also witness to a growing fight towards social justice and reservation. One of the earliest recorded attempts at reservation, or affirmative action, was undertaken by the administration in Madras as far back as 1851. The

administration, perturbed by the dominance of a few influential families in the local government, directed the district collectors to ensure that there was fair representation of all classes of people in the government.

Some early efforts regarding reservations were also made by the Maharaja of Mysore, who was from the Wodeyar or Urs caste, a Shudra community. In fact, the first Backward Classes Commission in India was set up by the Maharaja in 1918. The Miller Commission submitted in its report, in 1921, *that persons from the Backward Classes*, which meant groups other than the Brahmins, Europeans and Anglo-Indians, *should, for the next 7 years, be granted 50% of the highest posts and 33% of the lowest grades in the administration.* These recommendations were at once accepted and implemented by the Maharaja. In the then princely states of Travancore and Cochin, the Ezhavas, Christians and Muslims obtained representation in 1936. In 1937, they got a quota of 8 seats in the State Assembly.

On a national scale, the provisions for separate electorates for minorities lead to a clash between Ambedkar and Gandhi. While Ambedkar emphasised the need for political power for the untouchables, Gandhi insisted upon only protective measures against social and religious persecution. This standoff was sought to be resolved by the then British Prime Minister Ramsey McDonald, who announced that there would be special seats which would be filled by election from special constituencies, in which only eligible votes from the depressed classes could vote. This of course, was totally unacceptable to the Mahatma. Gandhi in protest undertook a fast unto death in the Yerwada prison and even threated to commit self-immolation. Persuaded by well-meaning politicians, the Gandhi and Ambedkar finally agreed to be what came to be known as the Poona Pact. While Gandhi accepted reserved seats, Ambedkar acceded to a joint electorate.

The Poona pact resulted in some seats being reserved for Dalits. The effectiveness of this measure in providing a leadership for the Dalits though, has always been in questions. While this did result in Dalits being elected to the legislatures and parliament, it also made the Dalit candidates dependant on non-Dalits for their election, thereby depriving the Dalits the opportunity to choose their own leader. It has been argued that the result of such an arrangement has hampered the emergence of an independent Dalit leadership. It has to be noted that Ambedkar himself was defeated in his first election by a convergence of the non-Dalit vote against him.

The reservation to the Parliament and the State Legislatures has largely remained similar to the agreement reached under the Poona Pact. Reservation in education and employment though, has seen a tremendous shift, for better or for worse, depending on whom you ask.

*The term **Backward Classes** was first used in the 1870s by the Madras Administration in the framework of an affirmative action policy favouring the under-educated.*

The issue of caste and the discrimination faced by the oppressed class is something that cannot be brushed aside and has come to play a pivotal role in the polity of India. The next article in this series proposes to trace out the arguments put forth during the Constitutional Assembly Debates revolving around the issue of reservation.

-Sankeerth Vittal
X Semester

Civil Appeal No. 4157 of 2015

KERALA BAR HOTELS ASSOCIATIONS V. STATE OF KERALA

In one of its last judgments of the year 2015, the Supreme Court on 29th December, decided the validity of the latest amendment to the Kerala Abkari (Excise) Act.

The case was an appeal against the judgment given by a division bench of the High Court of Kerala on 31st March 2015. The writ petitioners challenged the 2014 amendment to the Abkari Act, 1902 that was extended to the state of Kerala in 1967. The latest amendment could easily be classified as the most stringent act till date by the state legislature to enforce prohibition. In lieu of the amendment only hotels classified as five star and above by the Ministry of Tourism would be permitted to maintain the FL-3 bar license that is required to serve alcohol in public places in the State. A hotel qualifies as a "public place" under the definition in section 15C of the Act.

The Kerala state government has amended the said Act from time to time and has reduced the bracket of eligible licensees each time. It started with the first amendment that restricted granting of licenses only to star hotels.

In its judgment, the Hon'ble Court has heavily relied on the cases of Khodey Distilleries Ltd. v. State of Karnataka, State of Kerala v. Surender Das and State of Kerala v. B. Six Hotels Resort Private Ltd., all of which deal with the issue of prohibition affecting the right of profession.

Similar to the above-mentioned cases, this case deals with the issues of Article 19(1)(g) versus Article 47 and Article 14 versus Articles 19(6) were contented. Article 47 of the Constitution of India is a directive principle of state policy, which makes it the duty of the State to strive and take effective steps towards prohibition of intoxicating drinks and drugs that are injurious to health.

In India, the fundamental rights granted under Article 19(1) of the Constitution are subject to reasonable restrictions provided in Articles 19(2) to 19(6). While it has long been established by the Supreme Court that the right to manufacture and trade in liquor is not a fundamental right, the Court also trashed, to an extent, the Respondents' argument that that there is no right to trade in liquor only because it is *res extra commercium* (a thing outside commerce as it is opposed to public policy).

"It is trite law that Article 14 allows for reasonable classification, where the classification fulfills the dual criteria of being based on a reasonable differentia which has a nexus with the object sought to be achieved". Though the Court has identified

the essentials to hold a classification 'reasonable', the judgment is silent on the differentiation between four star and five star hotels. While there could be a differentiation in requirements for a hotel to be rated as four star or five star, they are similar in most aspects.

While prohibition and hence, the subsequent reduction of alcohol consumption has been the real intent, an extraneous classification of five star hotels as a separate class has been brought in under the plea of tourism.

Though similar entities are classified as one class, giving a separate treatment to one belonging to the same class, gives rise to legal questions. This might lead to similar pleas, wherein one in an already differentiated class may claim to be different from others in the class despite their material characteristics being the same.

This judgment, though with the good intent of supporting prohibition, has raised some questions that were earlier thought to be settled but has left them unanswered.

- Sai Saranya
VI Semester

International News

a) Emergency Powers in France

After the terrorist attacks which took place in France, the French President François Hollande called on lawmakers to change France's Constitution in order to protect the country more efficiently Hollande referred to article 36 of the Constitution as outdated, and urged the Parliament to modify it, giving the government greater power without needing to resort to a state of emergency."We are at war, this new kind of war demands a constitution that can manage a state in crisis," he said.

When it was first put forward, the Council of the State didn't give a favourable response, stating that in scenarios such as the one they experienced, the government should simply have another state of emergency rather than setting it on stone in the Constitution. Many politicians, from both right and left parties, have raised concerns about what they say could be the temptation to slide towards an authoritarian government.

In the present constitution, Article 36 gives very limited powers to the State in case of emergency, which can be exercised only upto a period of 12 days that can be extended only on the consent of the parliament. Further, Article 16 gives very limited powers in case of emergencies, most of which are exceptional or military. However, others believe that the state of emergency has to be written in the constitution. Jean Philippe Derosier, an expert in constitutional law at the University of Rouen told RFI that, "I think the state of emergency, which is a state of exception, needs a constitutional basis, which it doesn't have yet, because it's just provided by a normal status, the status of 1955, putting it into the Constitution makes sense for any measure that can be taken on the basis of this state of emergency and that may go against constitutional provisions. With a constitutional basis, then there is a balance between this state of emergency, the state of exception and the other rights and freedom guaranteed by the Constitution."

A file photo showing a candle-light protest against the ISIS terror attacks that shook Paris in November.

-Prachi Panchal
IV Semester

b) A New Constitution in the Making

The Prime Minister of Sri Lanka, Ranil Wickremesinghe, recently moved a resolution in Parliament for converting the House into a Constitutional Assembly, marking the formal inauguration of the process of framing a new Constitution in place of the 1978 Constitution. As per the draft text of the resolution that has been hosted on the website of Prime Minister's Office, the proposed Assembly, comprising of all Members of Parliament, would seek the views and advice of the people on a fresh Constitution and prepare a draft.

Once the Parliament adopts the draft Constitution Bill with two-thirds majority, the Bill will be sent to Provincial Councils for opinions and eventually it will be tested through referendum for the approval of people. The Cabinet, at its meeting, decided to have a committee of 24 persons to get submissions from the people all over the country. The committee would be split into eight teams of three persons so that each team visits three districts. There would be another committee for obtaining the views of the public, using the print and electronic media.

For the very first time in history, a Constitution shall be framed with the consultation of people. The process of seeking approval from the people was absent in the old constitution. Furthermore, the new proposal was made to change the electoral process which didn't exist in the old constitution. Though the country adopted new Constitutions twice — 1972 and 1978 — many experts, including Jayampathy Wickramaratne, are of the view that the public participation was negligible on both occasions. Dr. Wickramaratne, in his talk on the occasion of India's Constitution Day, stated that the 1972 and 1978 Constitutions were "imposed" by the political formation in power.

President Maithripala Sirisena addressing Sri Lanka Parliament supporting the resolution to convene the current Parliament as a Constitutional Assembly.

c) Nepal Constitution Imbroglio

Nepal adopted its new constitution in the end of the year 2015; this adoption of new constitution had led to several protests by various groups across the country. President Ram Baran Yadav signed the document in the capital city, Kathmandu. The constitution divides the Hindu Nation into Seven Federal Provinces. The new constitution embraces the principles of republicanism, federalism, secularism, and inclusiveness.

The Interim Constitution of 2007 ended the monarchy and made Nepal a republic, but this constitution finally ended the chances of a monarchical revival. Before

the signing, clashes broke out between the security forces and a crowd of Madhesi people who had defied a curfew in the town of Birgunj, Parsa district, in southern Nepal to demonstrate their disapproval. At least 40 people have been killed amid protests by the Madhesi and Tharu ethnic groups in the south. They are concerned that changes to the borders and election rules will further marginalise them. Many members of traditionally marginalised groups fear that the constitution will still work against them as it's been rushed through by the established parties which – including the Maoists – are dominated by high-caste, predominantly male, leaders.

According to the Kathmandu Post, under the new constitution, it will be difficult for a single mother to pass her citizenship to her child. And if a Nepali woman marries a foreign man, their children cannot become Nepali unless the man first takes Nepali citizenship; On the other hand, if the father is Nepali, his children can also become Nepalis regardless of his wife's nationality. Even India has shown its concerns towards the new constitution, after all, whatever happens in the Terai will spill over into India. So the violence is a serious matter of concern.

What will be the fate of this new constitution is now a big question.

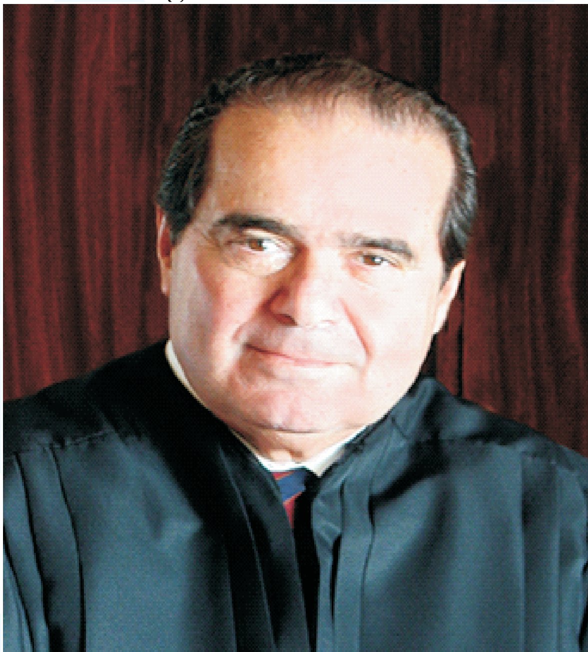
- Prachi Panchal
IV Semester

d) Justice Antonin Scalia: Demise of a legal heavyweight

Justice Antonin Scalia, a U.S. Supreme Court Justice member, was born on March 11, 1936, in Trenton, New Jersey. He was a practicing lawyer in the 1960s, and then worked in public service in the '70s with roles in President Richard Nixon's general counsel and as the Assistant Attorney General. In the '80s he became a part of President Ronald Reagan's Court of Appeals. In 1986, President Reagan nominated him as Associate Justice of the U.S. Supreme Court, serving in that capacity until his death on February 13, 2016.

Scalia began his legal career at the law offices of Jones, Day, Cockley& Reavis in Cleveland, Ohio in 1961. He was highly regarded and would likely have made partner, but like his father, he longed to teach. In 1967, he took a professorial position at the University of Virginia Law School. In 1972, Scalia entered public service when President Richard Nixon appointed him general counsel for the Office of Telecommunications Policy, where he helped formulate regulations for the cable television industry. In the immediate aftermath of the Watergate scandal in 1974, Scalia was appointed Assistant Attorney General for the Office of Legal Council. In this role, he testified before congressional committees on

behalf of the Ford administration over executive privilege. He later argued his first and only case before the U.S. Supreme Court in Alfred Dunhill of London, Inc. v. Republic of Cuba on behalf of the U.S. Government and won the case. Scalia was confirmed Associate Justice of the U.S. Supreme Court in 1986 upon the retirement of Chief Justice Warren Burger.



As a Supreme Court Justice, Scalia was considered to be one of the more prominent legal thinkers of his generation. It was also through his blunt dissents that he earned a reputation as combative and insulting. Justice Scalia adhered to the judicial philosophy of originalism, which holds that the Constitution should be interpreted in terms of what it theoretically meant to those who ratified it over two centuries ago.

On June 25, 2015, when the Supreme Court handed down a 6 to 3 majority decision in the case of King v. Burwell, upholding a key component of the 2010 Affordable Care Act, also known as Obamacare, Justice Scalia made headlines in voicing his dissent. One day after the Supreme Court ruling on the health care law on June 26, 2015, the highest court announced a landmark 5 to 4 ruling guaranteeing a right to same-sex marriage. Justice Scalia voted against the majority decision along with fellow conservatives Chief Justice John Roberts and Justices Clarence Thomas and Samuel Alito. Justice Scalia expressed his opinion that it was not the Supreme Court's role to decide same-sex marriage, and he wrote that the ruling was "at odds not only with the Constitution, but with the principles upon which our nation were built."

A self-proclaimed originalist, he is known for his conservative decisions in various cases ranging from affirmative action to LGBTQ rights. He was a forceful voice against extending the Constitutional Rights where they were not explicitly allowed to do so. The death of Justice Antonin Scalia reduces the number of conservatives in the Supreme Court, which has repercussions on the ongoing Presidential Elections.

- Prachi Panchal
IV Semester

NAIL IN THE COFFIN OF RAJYA SABHA:
Evaluating the Constitutionality of the Aadhaar Bill, 2016

The Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Bill, 2016 has been passed as a Money Bill amidst the controversy surrounding the nature of the Bill. This article aims at understanding what a money Bill is, whether the said Bill qualifies under the definition of a Money Bill, and whether Aadhaar bill should have been introduced as money bill.

Article 109 of the Constitution of India states that a Money Bill shall not originate in Rajya Sabha and Rajya Sabha does not have the power to reject the bill. It may merely recommend changes which may be accepted or rejected by Lok Sabha. The reason was that the power of purse should remain with the representatives of the people who are directly elected and not the other House.

The definition of Money Bill as given in Article 110(1) of the Constitution of India provides that any bill which deals only with the a) imposition, abolition, remission, alteration and regulation of tax; b) the regulation of the borrowing of money or the giving of any guarantee by the Government of India, or the amendment of the law with respect to any financial obligations undertaken or to be undertaken by the Government of India; c) the custody of the consolidated Fund or the Contingency Fund of India, the payment of moneys into or the withdrawal of moneys from any such Fund; d) the appropriation of moneys out of the consolidated Fund of India; e) the declaring of any expenditure to be expenditure charged on the Consolidated Fund of India or the increasing of the amount of any such expenditure; f) the receipt of money on account of the Consolidated Fund of India or the public account of India or the custody or issue of such money or the audit of the accounts of the Union or of a State; g) any matter incidental to any of the matters specified in sub clause (a) to (f). For a bill to be a money bill, it should solely deal with any of the matters enlisted in Article 110 (1) of the Constitution of India.

Deputy Leader of the Congress in the Rajya Sabha Anand Sharma, questioning the logic behind the new bill said that, it was very strange that, where there is only transfer of benefits using the Aadhaar card or the identity of the person concerned or the services of the state, one categorises that as a money bill.

While a money Bill deals with revenues, taxes, expenditure, it is important for the purpose of this article to take note of two subsections of Clause 1 to Article 110 of the

Indian Constitution i.e., subsections (c) and (g). Aadhaar Bill does not involve any new expenditure from the Consolidated Fund of India. The expenditure on subsidies, benefits and services, being charged upon the Consolidated Fund of India falls under clause (g). It provides for any matter falling incidental to sub clause (a) to (f).

The Aadhaar Bill, 2016 is different from the 2010 Bill, as the focus of the latter was to provide a Unique Identity Number, whereas the focus of this Bill is to provide for good governance, efficient and targeted delivery of subsidies, benefits and services. The 2016 Bill, though does not involve spending of money, it provides for a systematic anda fair manner of delivery of subsidies, benefits and services in a particular manner which is incidental to withdrawing of money from the Consolidated fund of India i.e. the money which is to be withdrawn is now, used in a streamlined manner and thus, falls under Article 110(1)(g).

The main object of the Bill is to provide a unique identity, however, it is to be noted that the unique identity is being provided for the targeted delivery of subsidies, benefits and services which forms the crux of the Bill. This Unique Identity Number hence, is facilitating the spending of money from Consolidated Fund of India.

This is not the first time that a bill has been introduced as a money bill despite strong oppositions. In the past there have been other instances where governments have tried to circumvent the Upper House using money bill as a weapon. The Juvenile Justice Act, 1986 and the Insolvency and Bankruptcy Code, 2015 have been introduced by previous governments as Money Bills. The only difference between these two bills and Aadhaar bill is that the latter qualifies as a money bill and the former doesn't.

It is therefore agreed that, on constitutional considerations, the Aadhaar Bill qualifies as a Money Bill. However, this Bill being one of the most paramount welfare initiatives in India demanded a discussion in the Upper House for it has clauses which strike a death blow to one of the most fundamental freedom of a citizen which is Right to privacy. Therefore, this bill should not have been introduced as a money bill and the discussion in Rajya Sabha should not have been prevented.

- Kritika Goyal and Shaalini Aggarwal
IV Semester and II Semester

Circumventing the Rajya Sabha Aadhaar as Money Bill

The introduction of the Aadhaar ((Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Bill, 2016 as Money Bill created quite a disquiet in and outside the Parliament. The Bill was introduced by Finance Minister Arun Jaitley in the Lok Sabha on March 3, 2016.

The Aadhaar Bill provides for the establishment of Unique Identification Authority of India (UIDAI) and the establishment and maintenance of the Central Identity India Repository. The object of the Bill is to provide for efficient, transparent, and targeted delivery of subsidies, benefits and services, the expenditure for which is incurred from the Consolidated Fund of India. These benefits would be provided to the individuals by assigning a unique identification number to them.

Aadhaar can be viewed as a potentially useful instrument for increasing transparency in the delivery of benefits and reducing fraud in the system. However, the introduction of the Bill in the Lok Sabha as a Money Bill raises the question as to whether this Bill will serve as a precedent for future cases of bypassing of the Rajya Sabha.

A Money bill can only be introduced in the Lok Sabha and the Upper House cannot make amendments in it. A Bill will be deemed to be a Money Bill if it contains "only" provisions as are dealt with by clauses (a) to (f) of Article 110(1). Arun Jaitley argued that the substance of the Aadhaar Bill is that whoever gets subsidies has to produce Aadhaar, so it is in accordance to Article 110. As the Bill draws money from the Consolidated Fund of India, it was seen as a sufficient reason to include the bill in the category of Money Bill.

However, there are certain loopholes in this argument. Firstly, the Bill allows even private agencies to use Aadhaar for any purpose. Clause 57 of the Bill states that *"Nothing contained in this Act shall prevent the use of Aadhaar number for establishing the identity of an individual for any purpose, whether by the State or anybody corporate or person, pursuant to any law, for the time being in force, or any contract to this effect: Provided that the use of Aadhaar number under this section shall be subject to the procedure and obligations under section 8 and Chapter VI."* This is in contradiction to the government statement made at the time of introduction of the Bill that *"the Bill confines itself only to governmental expenditure."*[5] Moreover, clause (g)

[5] Introduction of Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Bill, 2016, Uncorrected Debates Lok Sabha, March 3 2016, 12-1pm.

of Article 110(1) says that anything "incidental to" clauses (a) to (f) can be sufficient to put a Bill in the category of a Money Bill. This basically means that anything "incidental to" taxes being levied or money drawn from the Consolidated Fund of India would make a Bill a Money Bill. But as clause 57 of the Aadhaar Bill allows use of the identification number *"for any other purpose..."* it does not strictly fit into the criteria of money bill.

Article 110(3) says that in case of any conflict regarding treating a Bill as Money Bill, the decision of the Speaker of Lok Sabha shall be final and binding. Thus in the case of this Bill, the decision of the Speaker to consider the Bill as a money bill had to be accepted. The Lok Sabha passed the original Bill ignoring the amendments to the legislation in the Rajya Sabha. Had the amendments been considered, it would have in fact strengthened the stated idea behind the Bill, which is to constitute a transparent process for providing benefits and subsidies.

The implications of such an act cannot be ignored. Rajya Sabha holds a very significant place when it comes to legislative processes. Making the Rajya Sabha redundant by steps such as this may have a very negative impact on the entire lawmaking scenario. Subversion of legislative process cannot be seen as a proper solution to legislative logjam. The Aadhaar Bill thus poses a threat that there might be future uses of convoluted methods to circumvent the criticisms that the Rajya Sabha might propose.

-Samikshya Thapa
Semester IV

TEST YOUR KNOWLEDGE

1. **Who was the legal advisor of the Constituent Assembly:**
   a. Rajendra Prasad
   b. B.R Ambedkar
   c. B.N Rao
2. **Fundamental Rights Committee's head in Constituent Assembly:**
   a. B.R Ambedkar
   b. Jawaharlal Nehru
   c. M.N Rao
3. **Which article gives power to the State and Union to sue and be sued:**
   a. 298
   b. 300
   c. 300(A)
4. **Supreme Court laid down the 'basic structure doctrine' in the case**
   a. Kesavananda Bharati V State of Kerela.
   b. Golaknath V State of Punjab
   c. Minerva Mills V Union of India
5. **Finance Commission is in Article**
   a. 283
   b. 280
   c. 292
6. **Fundamental Duties are added in the Constitution through which amendment**
   a. 42
   b. 41
   c. 44
7. **Which one of the following is the time limit for a ratification of an emergency period by parliament:**
   a. 3 months
   b. 2 months
   c. 1 month
8. **The idea of constituent assembly to frame a Constitution of India was first mooted by:**
   a. M.N. Rao in 1927
   b. Muslim league in 1942
   c. All party conference in 1946
9. **Emergency provisions are adopted from :**
   a. Germany
   b. USSR
   c. UK
10. **Pardoning power of the President and Governor are given under:**
    a. 73 & 162
    b. 72 & 161
    c. 72 & 162

Answers : 1.(c) 2.(b) 3.(b) 4.(a) 5.(b) 6.(c) 7.(c) 8.(a) 9.(a) 10.(b)

CCAL's Training and Extension Activities

1) "Certificate Course on Expanding Horizons of Fundamental Rights in India" (24th – 27th September, 2015)

The Centre for Constitutional and Administrative Law, organized Certificate Course on Expanding Horizons of Fundamental Rights in India. This course was planned with an object to impart the knowledge of fundamental rights and its applicability in the current scenario. The course offered a comprehensive and basic understanding of fundamental rights in India. It covered landmark and latest judgments of Supreme Court of India and also dealt with the contemporary issues relating to fundamental rights.

The course covered with several themes like:Fundamental Rights: Conceptual and Historical Reflections, Right to Equality: Key Concepts and Emerging Issues, Fundamental Freedoms and Social Control, Right to Property and Right Against Exploitation, Religious, Cultural and Educational Rights. The lecture method, Group discussions and Case studies approach was adopted to cover the whole syllabus.

2) In Celebration of 125th Birth Anniversary of Dr. Baba Saheb Ambedkar:

CCAL's First Debate Competition, 2015 on "ડૉ. બાબા સાહેબ આંબેડકરની દ્રષ્ટીએ, શું સ્વતંત્ર ભારત, માથે મેલું ઉપાડવાની પ્રથા થી મુક્ત છે" on 01 October, 2015.

The Competition was organised to critically debate on ill practice of Manual Scavenging on the thresholds of constitutional and public laws, fitting them in the frame of vision and ideologies of Dr. Babasaheb Bhimrao Ambedkar.

The Patron in-chief for the event was Mr. C.S. Rajpal, M.D. Gujarat Safai Kamdar Vikas Nigam (GSKVN) on behalf of Ministry of Social Justice and Empowerment, Government of Gujarat. The rounds were being presided and judged by Prof. (Dr.) N.K. Pathak, former Director University School of Law and Former Director, Institute of Law Nirma University and Ms. Manjula Pradeep, Executive Director of NGO-Navsarjan Trust alongwith Mr. C.S Rajpal.

CCAL's First National Essay writing Competition, 2015, on 31st October, 2015.

The competition was organised to invite young minds to deliberate and analyse the thoughts and ideas of Dr. B.R.Ambedkar in the context of contemporaneous society and to open new avenues of thinking, reasoning and dissipation of novel ideas.

Themes for the competition:

1) Annihilation of Caste

2) From Social Injustice to Social Justice: The Ambedkarian Way.

3) Ambedkar, Reservation, Constitution: Consolidating the agenda in the 21st Century

CCAL received around 70 entries on the said topics from students and research scholars from different Universities and Institutes across India. Out of which top 3 esssays were awarded with cash prize.

One Day Seminar on "Dr. B.R.Ambedkar's Contribution towards Legal Education" (ડૉ. બાબા સાહેબ આંબેડકરનું કાનૂની શિક્ષણમાં યોગદાન) on 21st December, 2015

The Seminar was organised to enkindle the interest in the young minds for the legal education and also to enhance the knowledge of the underprivileged young generation of the state towards the process of admission in NLU's, CLAT Exam and how law as a profession will prove to be a contribution towards the nation's capacity building and personal growth.

The Patron in-chief for the event was Mr. Sanjay Nandan, Commissioner for Persons with Disabilities, Gandhinagar. The resource persons for the program were Prof. Dr. Jayprakash M. Trivedi, Professor Department of Sociology, Sardar Patel University and Dr. Nidhi Buch, Assistant Professor of Law, GNLU.

CCAL's First Constitutional Law Quiz Competition on 8th January, 2016.

The Centre for Constitutional and Administrative Law (CCAL) in collaboration with Department of Social Justice and Empowerment, Government of Gujarat (GoG), conducted its First Constitutional Law Quiz Competition. It was organized as a part of celebration of 125th Birth Anniversary of Dr. B. R. Ambedkar on **Friday, 8th January 2016** for the school students of Higher Secondary belonging to C.B.S.E. Schools of Ahmedabad-Gandhinagar Region. Chief Guest for the inauguration function of the Quiz Competition was Shri Ravi Shanakar (IAS), Collector Gandhinagar and the Chief Guest for the Valedictory Session was Shri Ashok M. Sharma (IAS), Additional Director, Sarva Shiksha Abhiyaan, Government of Gujarat. After various rigorous rounds, the team from Udgam School, Thaltej was declared winner. The awards included the price money of Rs. 24,000 appropriately distributed amongst the winners. A total of 21 teams participated which included 42 students from across 11 schools. Teachers from various schools accompanied the students.

Two- day National Seminar on Baba Saheb Ambedkar's Ideologies:

The Department of Social Justice and Empowerment had organised Two Day Seminar on "The Influence of Ideology of Dr B. R. Ambedkar on Marginal Literature" (Celebrating 125th Birth Anniversary of Dr. B.R. Ambedkar) scheduled on 30th and 31st January, 2016. The Programme was organised at GNLU Campus.

The Patron in-chief for the inauguration function of the Seminar was His Excellency the Governor of Bihar, Shri Ram Nath Kovind and the Chief Guest for the Valedictory Session was His Excellency the Governor of Gujarat, Shri O.P. Kohli. The Guest of Honour for the seminar was Shri. Ramanlal Vora, Cabinet Minister, Department of Social Justice and Empowerment, Govt of Gujarat. More than 1000 participants across Gujarat, became the part of this historical event.

3) *Judgement Analysis Series*

The Fourth session of the Judgment Analysis Series was organized on the 16th of January 2016 by the Centre for Constitutional and Administrative Law at Gujarat National Law University. The case selected for the deliberation was **Supreme Court Advocates-on-Record Association v. Union of India**, the recent landmark judgment pertaining to validity of the 99th Constitutional Amendment that proposed the establishment of the National Judicial Appointments Commission, on the grounds of independence of judiciary and separation of powers.

The experts invited to deliberate upon the case were Mr. Mihir Thakore (Senior Advocate, Gujarat High Court) and Prof. N.K. Pathak (Former Director, School of Law Gujarat University).

The 5th session of CCAL Judgment Analysis Series was conducted on 20th February. The case of Madras Bar Association vs. Union of India and Anr. which pertains to the constitutional validity of NCLT (National Company Law Tribunal) and NCLAT (National Company Law Appellate Tribunal), and the manner of their constitution and functioning, was discussed in this session of the series. Senior Advocate of the Gujarat High Court, Mr. Saurabh Soparkar discussed the case.

The sixth session of the Judgment Analysis Series was organized on the 19th of March, 2016 by the Centre for Constitutional and Administrative Law at Gujarat National Law University. The case selected for deliberation was **Shri Jogendrasinhji Vijaysinghji v. State of Gujarat and Ors,** a judgment pertaining to various issues regarding Art. 226 and also Art. 227, whether the High Court has original jurisdiction in appeals from Civil Courts, whether tribunals are to be made a party when its judgment is in question under Art. 227, and so on.

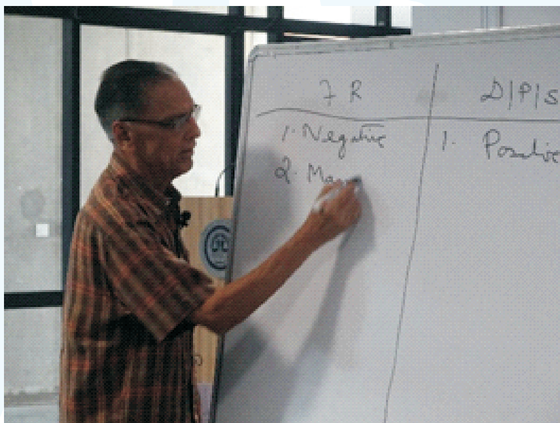
4) CCAL's Expert Lecture Series

The Important vision behind the Expert Lecture Series is to provide a forum for the discussion of the latest developments in the field of Constitutional and Administrative Law, as well as to analyse past occurrences in the contemporary context. Earlier the centre had organised several sessions the details are given below:

Session	Topic	Resource Person
First	Inter-State Water Dispute	Mr. R. Muralidharan, Sr. Partner in Krishna & Saurastri Associates, Mediator & former Professor in NLSIU, Bangalore
Second	Interface between Fundamental Rights & Personal Laws	Prof. (Dr.) Gangotri Chakorborti, North Bengal University
Third	Constitutional Remedies under Article 226 and 227	Shri Asim Pandya, Advocate, Gujarat High Court
Fourth	An overview of The German Constitution	Professor Dr. Stephan Hobe, Director, Institute of Air & Space Law, University of Cologne, Germany

Recently, fifth session was organised from 28th - 30th March, 2016, presided by **Prof. V S Mallar**. The topic for the session are as follows:

1. Fundamental Rights and Directive Principles of State Policy Emerging Trends.
2. Right of Minorities an overview under Constitution.
3. NJAC case lessons to be learned.
4. Lecture on Administrative Law.
5. Lecture on Constitutionality of Taxation.

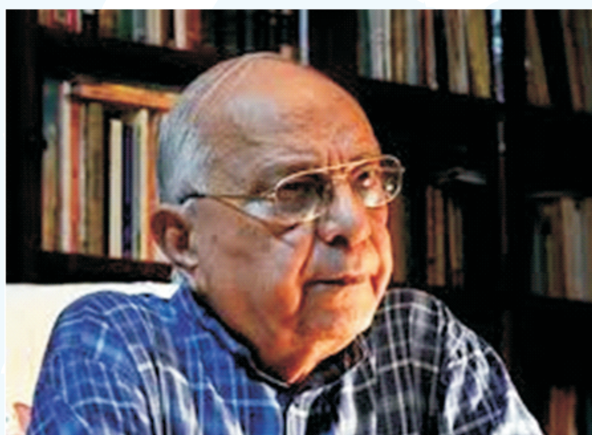


Prof. V S Mallar, Professor of Law at National Law School India University

Upcoming Events

1. "We, the People" Lecture Series

The Centre will be inaugurating its most awaited lecture series titled "We, the People". The objective of this lecture series is to provide a platform for interaction between Constitutional Law experts, drawn from various fields of practice, and students and general public. This lecture series aims to create a dialogue, by raising interest in matters related to the Constitution, amongst the public in general and students in particular.



Dr. Subhash Kashyap, an Honorary Research Professor at Centre for Policy Research, will be inaugurating the Lecture Series on **2nd April, 2016**. Sir will also be delivering a lecture on the topic **"Realising Dr.B.R Ambedkar's dream of Social Justice through the Indian Constitution"**.

SUBHASH C KASHYAP is widely acknowledged and well-known expert. He is also a Supreme Court advocate; consultant in constitutional law, political management and parliamentary affairs, Honorary Research Professor at the Centre for Policy Research, Member of the National Commission to Review the Working of Constitution and Chairman of its Drafting and Editorial Committee and is connected with several Indian and foreign institutions, universities etc.

Earlier, Dr. Kashyap served as Secretary- General of 7th, 8th and 9th Loksabha (Parliament of India), Honorary Constitutional Adviser to Government of India on PRI Laws; Director, Institute of Constitutional and Parliamentary Studies, Member, Governing Council, Indian Council of Social Science Research, Chairman/ Member of several high- level committees in constitutional, parliamentary and educational fields including the committee for Selection of the Most Outstanding Parliamentarians.

Dr. Kashyap is the recipient of many honours and awards in India and abroad, including that of Padma Bhushan Award in the field of Public Affairs. He is author of over 60 prestigious works including the Constitutional Law of India, 2 Vols; Parliamentary Procedure, 2 vols; History of Parliament, 6 Vols; etc. He has also edited over 50 volumes and contributed nearly 700 research papers and articles to India and foreign journals and national dailies. Several of his works have been translated into many languages.

THE TEAM OF LEX POPULI

Faculty:

Mr. Avinash Bhagi, Asst. Prof. of Law

Mr. Divya Tyagi, Asst. Prof. of Law

Mr. Shashi Bhushan Sharma, Research Associate

Ms. Neha Khurana, Research Associate

Student:

Chaitra S

Manasa Saka

Prachi Panchal

Roselina Roby

Sai Saranya

Samikshya Thapa

Sankeerth Vittal

Shivdutt Trivedi

Welcomes

Law University
and Administrative Law)
2016, Time : 9.30 a.m.
You

Centre for Constitutional and Administrative Law

Gujarat National Law University

Attalika Avenue, Knowledge Corridor, Koba, Gandhinagar - 382007 (Gujarat), INDIA

Website: www.gnlu.ac.in E-mail: ccal@gnlu.ac.in / contact@gnlu.ac.in

Phone No. : +91-79-23276611/23276612