

PRO BONO CLUB SCHEME

SYMBIOSIS LAW SCHOOL, NOIDA

NEWSLETTER



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AUGUST - SEPTEMBER 2022



न्याय विभाग
DEPARTMENT OF
JUSTICE



॥वसुधैव कुटुम्बकम्॥

Under the Nyaya Bandhu Programme, Department of Justice, Ministry of Law & Justice, Government of India



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PBC Activities

August - September 2022

MONTHLY MEETING

Third monthly Meeting of the Pro Bono Club Symbiosis Law School, NOIDA was conducted on 15th September 2022. The meeting was presided over by Ms. Megha Nagpal, Assistant Professor and Faculty Advisor- Pro Bono Club. The Pro Bono Club members deliberated over various ideas for the activities under the PBC Scheme. They deliberated with respect to the newsletter, and decided upon the dates for upcoming legal awareness camps. The Club endeavours to adopt the villages of Khora and Rasoolpur. All Pro Bono Associates also registered themselves on the Nyaya Bandhu Application. Members appeared enthusiastic to participate and work towards the objectives of PBC. A meeting was fixed and held on 16th September 2022 for concretization of plans for upcoming Legal Awareness camps.



LEGAL REMEDIES FOR DOMESTIC VIOLENCE

The Pro Bono Club, Symbiosis Law School, Noida established under the Nyaya Bandhu (Pro Bono Legal Services) Programme, Department of Justice, Ministry of Law & Justice, took an initiative to conduct a Legal Awareness Camp on the topic “Legal Remedies for Domestic Violence” in Khora Village, Sector 62 A, NOIDA on August 30, 2022. The Pro Bono Associates that visited the location consisted of Nandeesh Nanda, Daksh Gupta and Vaishnavi Saxena. While the logistics and the back hand work was assisted by Ananya Dhawan. The main objective was to conduct a talk and interact with female residents to spread the knowledge of legal recourse available if an incident of domestic violence occurs with any woman.



Under the Nyaya Bandhu Programme, Department of Justice, Ministry of Law & Justice, Government of India

CONSUMERS' RIGHTS AWARENESS CAMP



The Pro Bono Club, Symbiosis Law School, Noida, conducted a Legal Awareness Camp on the topic “Rights of Consumers” at Botanical Garden and Rashtriya Dalit Prena Sthl at NOIDA on September 19, 2022. The camp was organised and conducted by Kunal Gupta, Kanak Verma and Mahek Gupta. The Rashtriya Dalit Prena Sthl is a memorial of Dr. B.R. Ambedkar in NOIDA attracts many visitors of all ages, and the Botanical Garden also draws a large population due to its proximity to the metro station, making the location ideal for holding the camp. The campaign was a big success, and more people registered than during the first campaign. This was the second Legal Awareness Camp on the same issue held at several places. We aim to keep up this effort in the Pro-Bono Club with this energy and excitement.



RIGHTS OF TRANSGENDER PERSONS

The Pro Bono Club, Symbiosis Law School, Noida, conducted a Legal Awareness Camp on the topic “Rights of Transgender Person” at Khora Village, Sector-62, NOIDA on September 24, 2022. The camp aimed at interacting with people across all gender and age while making them aware of the existence of the rights of transgender persons under the Transgender Persons (Protection of Rights) Act, 2019. The camp was conducted by Sanvi Jain, Savar Wahi and Swadha Narayan. The associates were successful in taking 6 potential prospects concerning the legal issues faced by transgender person residing in Khora village.

The campaign was a success, as it was the first campaign on rights of transgender people we aim to increase the awareness on the same issue and keep up this effort in the Pro-Bono Club with this energy and enthusiasm.

Under the Nyaya Bandhu Programme, Department of Justice, Ministry of Law & Justice, Government of India



SEXUAL HARASSMENT IN THE UNORGANIZED SECTOR

The Pro Bono Club, Symbiosis Law School, Noida, conducted a Legal Awareness Camp on the topic 'Sexual Harassment in the Unorganised Sector' at Khora Village, Sector 62 A, NOIDA on September 22, and at Rasoolpur Nawada, NOIDA on September 24, 2022. The camp aimed at spreading awareness amongst the female employees in the unorganised sector about sexual harassment at the workplace and their rights under the Sexual Harassment of Women at Work Place (Prevention, Prohibition and Redressal) Act, 2013 (POSH Act).

The camp was conducted by Vaishnavi Saxena, Jay Wadhwa and Saptodwipa Sarkar. It is pertinent to mention that unorganized labour constitutes a large part in the Indian workshop including domestic help, daily wage labours and so on.



Under the *Nyaya Bandhu* Programme, Department of Justice, Ministry of Law & Justice, Government of India

During the campaign, the pro bono associates explained to the women what sexual harassment is, who the beneficiaries under the POSH Act are, their rights, what the Local Complaints Committee is, and the procedure for reporting sexual harassment faced at work.

STREET VENDORS

The Pro Bono Club, Symbiosis Law School, Noida, took an initiative to conduct a Legal Awareness Camp on the topic "Rights of Street Vendors" at Sector 62, NOIDA on 28th September 2022. The camp was conducted by Mahek Gupta, Shubhra Goyal and Rangita Chaudhary. The camp aimed at interacting with licensed street vendors in vending zones and making them aware of their rights under the PM Street Vendor's AtmaNirbhar Nidhi (PM SVANidhi) Scheme. During the campaign the Pro Bono Associates stressed over how availing loan under the scheme is very simple as there is no collateral. The associates also talked to do not have a street vending license and took their phone numbers in case they want to pursue a license. As an outcome of the campaign as many as 15 registrations were successfully completed on the PM Street Vendor's AtmaNirbhar Nidhi (PM SVANidhi) website.



SYMBIOSIS ALUMNI- REGISTRATION OF PRO BONO ADVOCATES

Symbiosis Law School, NOIDA invites our alumni to join us in our noble initiative as part of the Pro Bono Club scheme under Nyaya Bandhu Programme, Department of Justice, Ministry of Law and Justice, Government of India.

Your legal skills will help us building a bridge between the needy and the courts ensuring access to legal services for all. Please feel free to get in touch with us through PBC Faculty Advisor, Ms. Megha Nagpal, Assistant Professor, at pbcs@symlaw.edu.in or on her handheld number 9899864756. Many people cannot afford the hefty expense of expert legal services. Therefore, we hope that you can join us in becoming a strength to the vulnerable for their rightful legal service.

Right to Die and Passive Euthanasia: Supreme Court in *Aruna Shanbaug* and *Common Cause*

Nandeesh Nanda and Rangita Chowdhury

Introduction

The petitioner in the Aruna Shanbaug case was a staff nurse working in a hospital in Mumbai. On 27th November 1973, while on duty, she was attacked by a sweeper working in the same hospital. She was strangled by a dog chain around her neck and sodomised. To immobilize her during the act, he twisted the chain around her neck which led to oxygen being cut off from her brain. She was found covered in blood the next morning. Due to strangulation by the dog chain oxygen couldn't reach her brain and it was damaged. She slipped into a persistent vegetative state (PVS) and was in a coma for 42 years before she died in 2015. Pinki Virani, an activist had filed a petition in the Supreme Court to let her avail euthanasia and die peacefully with dignity.

In the other case, Common Cause, an NGO that works for common welfare of the people filed a writ petition under Article 32 to seek a clearer picture on the concept of Passive Euthanasia and question the validity of living will. This case is significant as the court has extensively deliberated upon the question of Euthanasia and physician assisted suicide and has used the aid of international jurisprudence and the tenets of our Constitution to co-relate Euthanasia with effects on governance, medical codes and societal morality.

Judgements discussed:

Aruna Ramchandra Shanbaug v. Union of India (2011) 4 SCC 454

Common Cause (A Regd. Society) Vs. Union of India and Anr. (2018) 5 SCC 1

Issues

The issues which the apex court determined in both the cases were

1. Whether right to life under Article 21 also includes within its ambit the right to die and right to die with dignity?
2. If a patient has previously expressed a wish not to be on life-sustaining treatments in case of futile medical care or PVS, should her wish be respected and if no such wish has been expressed, can her kin take the decision on her behalf?
3. Whether Passive Euthanasia and Issuance of Advance Directive is allowed in our country?

Analysis

Aruna Shanbaug judgement is considered a landmark judgement. It legally recognised passive euthanasia for the first time in India and laid down guidelines for the same.

Whether or not right to die should be included within the ambit of right to life under Article 21 of the Constitution has always been a point of contention for lawmakers. Right to die has been interpreted differently in different judicial precedents. Section 309 of the Indian Penal Code which criminalises attempt to suicide was struck down as being violative of Article 14 and 19 and

21 of the constitution and was held unconstitutional in the case of State of Maharashtra v. Maruti Sripati Dubal[1]. The Bombay High court held that right to life also includes the right to die, it is an uncommon right but not unnatural. This judgement was further reiterated in 1994 in the case of P. Rathinam v. Union of India[2] where the court held that right to live also includes right to not live. However, in a later case, Gian Kaur v. State of Punjab[3] the Supreme Court overruled the P. Rathinam's judgement and declared that right to life does not include right to die but includes right to live with dignity and right to die with dignity. The five-judge bench that heard the case in Common Cause had taken right to die in context with the privacy and autonomy of human that was enshrined in the Puttaswamy Case.[4] The bench had parted itself with the debate whether right to die is feasible in our country and upheld the judgement of Gian Kaur.[5] Common Cause is the case where passive euthanasia was actually granted for the first time.

The main focus of the bench was to understand how passive euthanasia and a dignified death were correlated. All the members of the bench carefully examined the precedents set out in the P. Rathinam[6] and Shanbaug Case[7] and concurred that right to die with dignity is a subset of right to life that was guaranteed by Article 21 of the Indian Constitution. The judges adjudicating the case went beyond the precedents available and tried to apply international jurisprudence to reach a better conclusion. The rulings of House of Lords in Airedale[8] were heavily relied in which the House of Lords considered a utilitarian viewpoint when dealing with allowance of passive euthanasia. The bench tried to enter into the shoes of the patient and understand that a patient in permanent vegetative state is being devoid of a life with dignity. It is in the best interest of the patient that the life support is withdrawn. Dipak Misra, then C.J. opined "Life sans dignity is an unacceptable defeat and life that meets dignity with death is a value to be aspired for and a moment for celebration."

Even though the court did not grant euthanasia to Aruna Shanbaug based on the report of the committee of doctors but it did lay down the due procedures to be followed when an application for passive euthanasia is filed. A bench of at least two High Court judges should be appointed by the Chief Justice of the High court. A team of reliable and reputed doctors is to be nominated by the bench after due consideration. A notice is to be served to the State and the family members of the applicant. The court would then give its final verdict after due consideration of all facts and circumstances. The same procedure should be followed all over India until the Parliament formalises any legislation on this.

The court further applied the principle of 'Parens Patriae' in Aruna Shanbaug and said that only the court can decide whether or not life support should be withdrawn based on the report of the committee of doctors. The views and opinions of family members would hold some view but they cannot alone take the decision to withdraw life support.

Common cause elaborated on this contention and answered the important question as to whether a 'living will' or an Advance Directive is feasible in the country. The bench drew parallels with Transplantation of Human Organs and Tissues Rules 2014 that allows advance directives for transplantation of organs. There is a procedure that has to be followed when such a declaration to surrender your organs is made.

The court produced general guidelines for Advance Directives and limited itself within its judicial capacity to avoid taking up the task of legislature. It is pertinent that an adult with sound mind and ability to communicate and comprehend the situation is executing a document suggesting how the treatment should be carried out in case the undersigned enters into a vegetative state. There is also independence to revoke the same and the latest advance directive will be given effect. Further there is a mention of a board that will authorise this directive and a denial to grant the same can be contested under Article 226.

Conclusion

The judges in Aruna Shanbaug and Common Cause did not agree that right to die is a fundamental right as right to live but upheld that right to die with dignity is indeed a fundamental right. Passive euthanasia was given legal recognition in the eyes of law for the first time in 2011 with the judgement in Aruna Shanbaug and again in 2018, with the judgement in Common Cause. Common Cause provided more clarity to the concept of Passive Euthanasia enshrined in the Shanbaug Case and has provided detailed guidelines for the issuance of advance directives, like recognising 'Living wills.'

Researchers' Comment

Common Cause case can be considered landmark due to two reasons – First, it reiterated that Passive Euthanasia is an option for the patients who are in a vegetative state and established guidelines as to how it is to be carried out. This decision cleared out the confusion which still remained after the Shanbaug Case. Second, it validated the issuance of advance directives and gave an in depth instruction for the same. One can easily recall that the court worked on the footsteps of its Vishaka Judgement by creating a framework for the issuance of 'living wills'. In our opinion, this is a successful judgement which will have a landmark effect on our lives. The judgement reaffirms the independence to our person and exhibits how a person can exercise a control over the disposal of their carcass while remaining in the constitutional sphere.

[1] 1987 (1) Bom CR

[2] 1994 SCC (3) 394

[3] 1996 SCC (2) 648

[4] JUSTICE K.S. PUTTASWAMY VS. UNION OF INDIA (2017) 10 SCC 1

[5] GIAN KAUR V. STATE OF PUNJAB 1996 SCC (2)

[6] P. RATHINAM V. UOI 1994 SCC (3) 394

[7] ARUNA RAMCHANDRA SHANBAUG V. UOI WRIT PETITION (CRIMINAL) NO. 115 OF 2009

[8] AIRDALE NHS TRUST V. BLAND 1993 AC 789



EWS Quota Case: Whether the 103rd Amendment upholds the Constitution's spirit, Supreme Court to Decide

Sanvi Jain

The 103rd Constitutional Amendment Act inserted Articles 15(5) and 16(6) in the Constitution that enabled the State to provide reservations to the economically weaker sections. For admission to central government and private educational institutions as well as hiring in central government positions, it creates a 10% reservation for EWS of society other than Backward Classes, Scheduled Castes, and Scheduled Tribes.

The Constitution (One Hundred and Twenty-fourth Amendment) Bill, 2019, was presented to the Lok Sabha on January 8, 2019. With 323 votes in favor and 3 votes against, the 326 members in attendance overwhelmingly supported the bill. The Bill was approved by the Rajya Sabha on January 10, 2019, with 165 votes in favor and 7 votes against, after the Lok Sabha's approval.

On January 12, 2019, President Ram Nath Kovind gave his approval to the Bill. The final day it took effect was January 14, 2019.

Article 15 was modified by the 103rd Constitutional Amendment Act to enable the government to support the advancement of economically underprivileged areas based on family income. Additionally, it modified Article 16 to make it easier to reserve up to 10% of all positions for economically underprivileged groups. This reservation brings the total reservation up to roughly 60% after adding it to the current maximum of 50% reservation for the Scheduled Castes, Scheduled Tribes, and Other Backward Classes. Regardless of caste or religion, reservations are offered.

The non-governmental organization Youth for Equality has filed a Public Interest Litigation

(PIL) opposing the Bill in the Supreme Court. The ongoing debate is whether granting reservations solely based on economic factors violated the Constitution's fundamental principles and should be declared ultra vires.

One of the major arguments being given against the EWS quota is its exclusion of socially and educationally disadvantaged section in the already existing reservation categories, thereby severely limiting benefits to the so-called "forward classes", further strengthening the claim that this quota stands in violation of basic fundamental ideals of equality and social justice enshrined in our Constitution. Petitioners have argued that with this amendment, there also lies the possibility of damage to the basic structure of our Constitutional Scheme wherein any class of population first needs to be defined and identified, before providing for privileges of that class.

Principles that are the essence of The Constitution of India include a solemn affirmation of ensuring JUSTICE - social, economic and political - in the Preamble. Since independence, Governments have been trying to come up with schemes to promote these principles within the basic premise of equality. It is being debated that the 103rd Constitutional Amendment only appears to be another effort made to combat poverty and

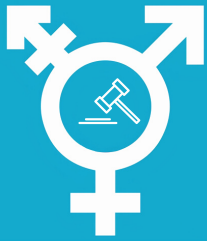
disadvantages associated with economic deprivation, something which has been tried previously also and struck down due to fundamental weakness in the plan.

Without any doubt, legislations invariably are created with the goal of ensuring fair playing fields to all classes and communities with prejudice. It is contended that the 103rd Amendment aims to make it possible for individuals who belong to economically disadvantaged class to become equal participants. By taking advantage of the demographic dividend, it ensures economic development.

Despite the 103rd Amendment Acts having many benefits; it presents a more challenging judicial review than normal. It undoubtedly aims to help the economically underprivileged parts of society, but its constitutionality needs to be investigated.

SOURCES-

- 1."Narendra Modi hails passage of quota bill in Lok Sabha". Livemint. 9 January 2019. Retrieved 10 January 2019
- 2.EWS Quota Case: 103rd Amendment Change Constitution's Identity - Lawyers Argue in Supreme Court (livelaw.in)
- 3.<https://economictimes.indiatimes.com/opinion/et-commentary/ews-in-the-spirit-of-the-constitution/articleshow/94255466.cms?from=mdr>



Can A Transsexual Woman File a Complaint Under Section 498A of The Indian Penal Code?

Swadha Narayan

The Andhra Pradesh High Court while hearing a criminal petition for the quashing of an FIR under section 498A of the Indian Penal Code, is considering whether a transsexual woman can claim of dowry harassment under Section 498A of the IPC.

According to the petition, a plain reading of Section 498A makes it obvious that a complaint with allegations under this section should be filed by a “woman”, and as a result, a complaint lodged under this provision by a transgender complainant is not legally admissible.

A Single Bench issued an eight-week stay of all proceedings in the pending criminal complaint filed with the Additional Munsif Magistrate Court after taking notice of the circumstance. In its order dated 13.09.2022 the Andhra Pradesh High Court has observed that the matter needs consideration.

If it can be established that a married woman has experienced abuse and harassment by her husband or any of her husband's relatives, Section 498A applies. A fine and a prison sentence of up to three years are the consequences. The legal definition is drafted in a way that it can only be applied to the husband and his family members, because it recognizes the gendered nature of the crime.

In this case, a transgender woman claimed that her partner's parents had harassed her by fabricating false accusations against her. They were getting ready to deliver a test-tube kid when her partner left one day to visit his folks and never returned. The husband was not reachable despite the complainant's attempts to contact him via his phone and his parents. According to the complaint, when she inquired about his whereabouts, she learned that his parents had confined him in the house and were attempting to have him deported from India in order to keep him away from the complainant. A few days later, her husband allegedly sent her a message warning her to

leave right away in case his parents tried to murder her. She also experienced insults, filthy comments, and threats by her in-laws.

In response to her complaint, the police registered an FIR under Section 498A of the Indian Penal Code, read in conjunction with Section 34 IPC, and Section 4 of the Dowry (Prohibition) Act. In her quashing petition, the petitioner claimed that the complainant believed she had been abandoned by the petitioner, and that as a result, neither the provisions of Section 498-A of the IPC nor the requirements of Sections 3 and 4 of the Dowry Prohibition Act are fulfilled. The petitioner added that the charge did not constitute a crime under Section 4 of the DPA or IPC 498A. Section 4 of the DPA is not relevant because no allegations of dowry or mistreatment have been made

Writer's comment: Transgender people are a part of our society and there is a plethora of issues faced by them. There are many progressive judgements given by Hon'ble Courts with respect to Transgender marriages in India. One such landmark judgement is Arun Kumar and Another v. Inspector General of Registration and Ors. in which Madras High Court vide its judgement dated 22.04.2019 affirmed the 'right to marry' under Article 21 of the Indian Constitution for transgender people and interpreted the term “bride” for transsexual woman. The court was of the opinion that the right for marriage of transgender persons has always been present in the statute and that the Court has not interpreted anything new or different.

Sources:

- <https://www.livelaw.in/news-updates/can-a-transgender-woman-be-a-complainant-under-section-498-a-andhra-pradesh-hc-to-examine-209132?infinite-scroll=1>
- <https://www.lawinsider.in/news/andhra-pradesh-hc-to-examine-whether-transgender-woman-can-file-a-complaint-u-s-498-a-ipc>



Supreme Court of India Redefines the Concept of Family

Ananya Dhawan

Recently, in the case of *Deepika Singh v. Central Administrative Tribunal and Ors.* [Civil Appeal No. 5308 of 2022 (Arising out of SLP (C) No. 7772 of 2021)], Supreme Court via judgment dated 16.08.2022 has ruled that “Familial relationships may take the form of domestic, unmarried partnerships or queer relationships.” The matter was in relation to maternity leave and Central Civil Services (Leave) Rules 1972.

The factual background of the case is- The Appellant’s husband has two children from his previous marriage. She had her first biological child on 4 June 2019 for which she applied for maternity leave under Rule 43 of the Central Civil Services (Leave) Rules, 1972. Her request was rejected on the that she had two surviving children and had availed child care leave earlier for the two children born from the first marriage of her spouse.

Therefore, the significant issue which falls for determination in the appeal is the interpretation of Rule 43 of the Central Civil

Services (Leave) Rules of 1972 which stipulates that a female government servant with less than two surviving children would be granted maternity leave for a period of 180 days from the date of its commencement and during the period of maternity leave, the employee is entitled to leave salary equal to the pay drawn immediately before proceeding on leave.

The court held that “The fact that the Appellant’s spouse had two biological children from his first marriage would not impinge upon the entitlement of the Appellant to avail maternity leave for her sole biological child.” A broad interpretation was given by the Court to the concept of family by observing that atypical manifestation of love and of families are as real as their traditional counterparts and therefore are equally deserving not only of protection under law but also of the benefits available under social welfare legislation.

Reliance was placed by the Court on the

provisions of Maternity Benefit Act, 1961, Section 5(1) of which confers an entitlement on a woman to the payment of maternity benefits at a stipulated rate for the period of her actual absence beginning from the period immediately preceding the day of her delivery, the actual day of her delivery and any period immediately following that day. Sub-section (3) specifies the maximum period for which any woman shall be entitled to maternity benefit. The Act has been enacted by the Parliament to provide security to women by ensuring their right to pregnancy and maternity leave and to afford them with as much flexibility as possible to live an autonomous life, both as a mother and as a worker. In addition, Article 15(3) empowers the State to enact beneficial provisions for advancing the interests of women. Right to reproduction and child rearing has also been recognized as a part Article 21. Article 42 seeks to ensure humane work conditions and provide for maternity relief.

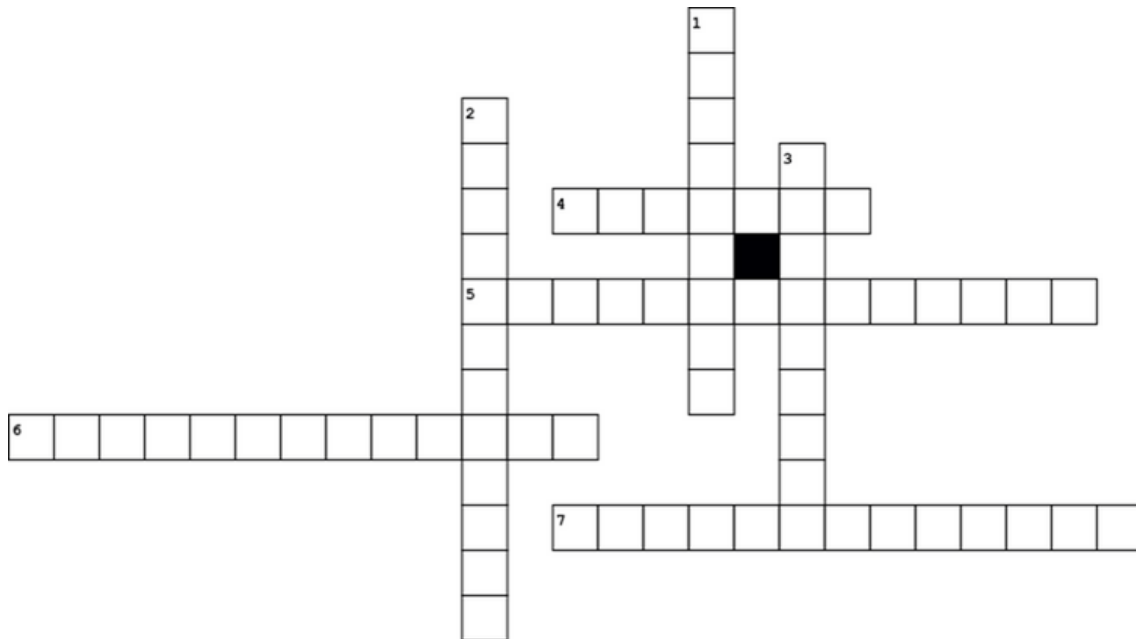
Further, the Universal Declaration of Human Rights provides that motherhood and childhood are entitled to special care and assistance under Article 25(2). Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) under Article 11(2)(b) requires states "to introduce maternity leave with pay or comparable social benefits."

A comprehensive reading of all such provisions requiring a purposive interpretation was adopted by the Supreme Court in the present matter, otherwise, the object and intent of the grant of maternity leave would simply be defeated. The grant of maternity leave Under Rules of 1972 is intended to facilitate the continuance of women in the workplace. Therefore, Appellant was entitled to the grant of maternity leave.

Source -
Deepika Singh v. Central administrative
tribunal (CIVIL APPEAL NO. 5308 OF 2022)

Fun with Words

Identify Supreme Court Judges



Across

4. He was appointed as a Special Public Prosecutor for CBI to conduct the trial in all 2G matters under the orders of the Supreme Court and was elevated as the Chief Justice of India with effect from August 27, 2022
5. She was born on September 24, 1957. She was elevated as a permanent Judge of the Calcutta High Court on February 5, 2022 and was officiated as executive Chairperson of West Bengal State Legal Services Authority for almost a year.
6. He was appointed as the Judge of the Supreme Court of India on May 13, 2016. He served as the Additional Solicitor General of India from 1998 until his appointment as a judge.
7. He served as the 35th Chief Justice of the High Court of Kerala. As the executive head of Assam State Legal Services Authority, he also implemented the Reach out & Respond Programme to facilitate access to justice for marginalized sections of Assam.

Down

1. He was Designated as Senior Advocate in March 2001. He assumed charge of the office of the Chief Justice of the High Court of Himachal Pradesh from October 5, 2018.
2. As an Additional Public Prosecutor representing the Government of Delhi and Amicus Curie, he argued criminal cases in the Delhi High Court. On appointment as the Senior Standing Counsel he had appeared and argued cases for the Income Tax Department for about seven years. In 2004, he was appointed as the Standing Counsel (Civil) for the Government of National Capital Territory of Delhi in the Delhi High Court.
3. She was appointed as the Additional Standing Counsel Civil, Government of National Capital Territory of Delhi in the Delhi High Court in December 2004 and sworn-in as the Chief Justice of High Court for the State of Telangana on 07.01.2021.

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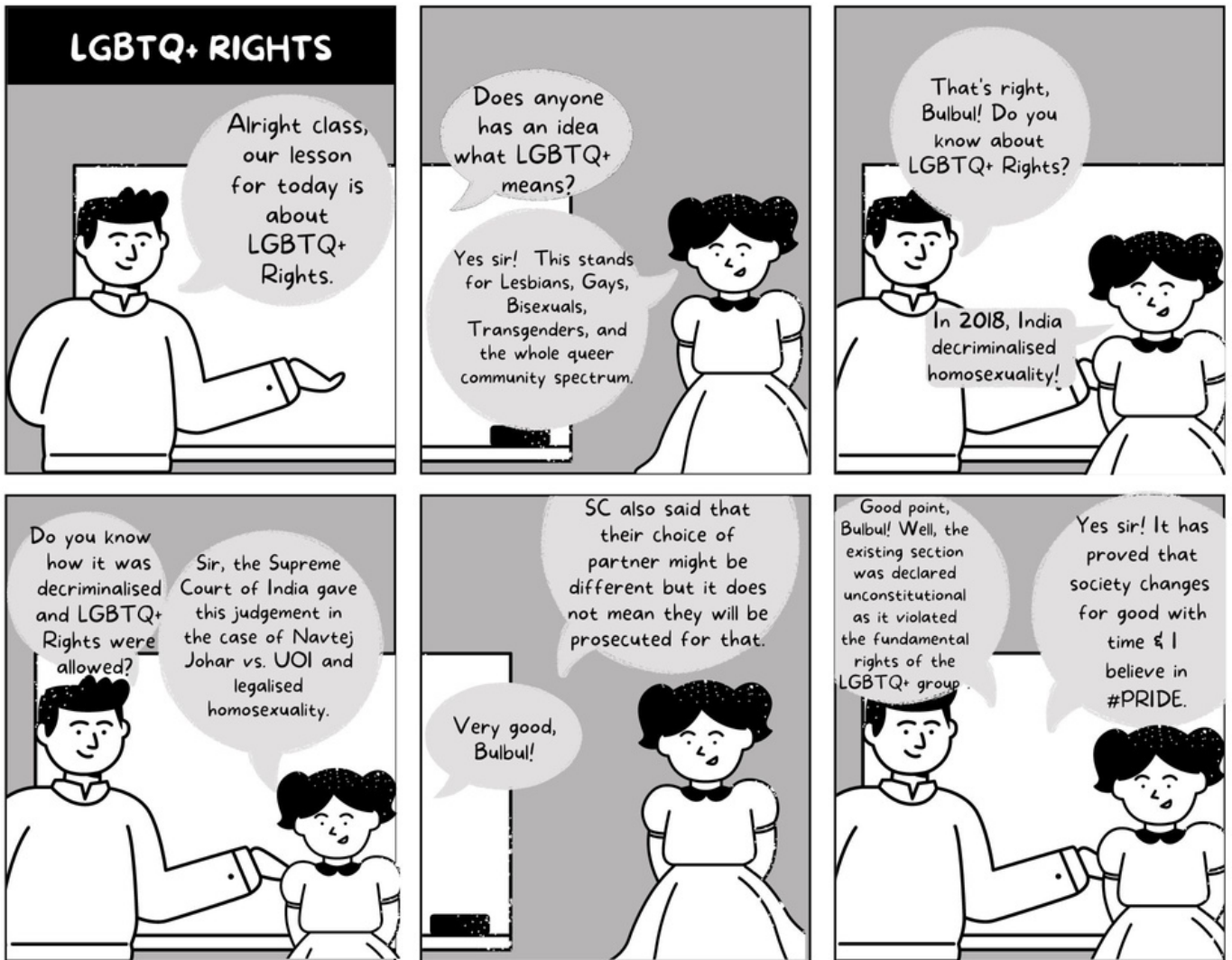
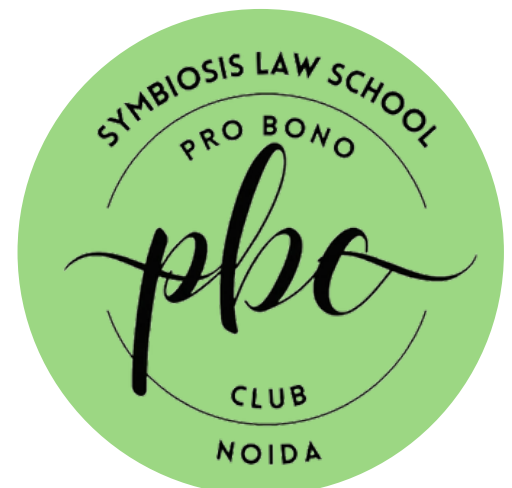
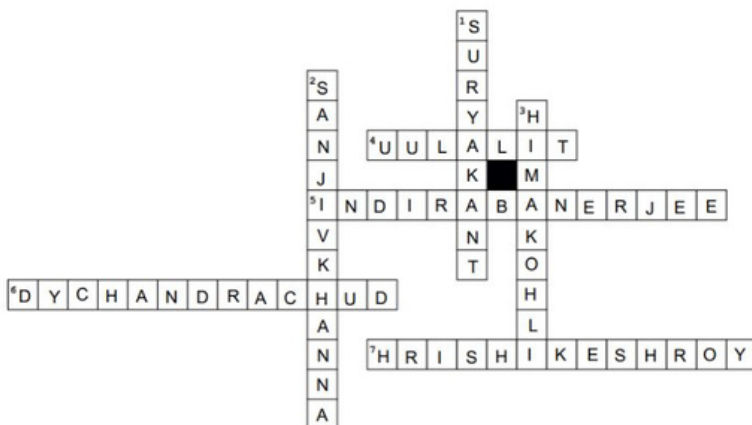


Illustration By Kunal Gupta

ANSWERS



Conceived and Conceptualized by Ms. Megha Nagpal, Assistant Professor - SLS Noida

Newsletter Designed by Naman Sharma for Pro Bono Club, SLS NOIDA