

PRO BONO CLUB SCHEME

SYMBIOSIS LAW SCHOOL, NOIDA

NEWSLETTER



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DECEMBER 2022 - JANUARY 2023



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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PRO BONO CLUB ACTIVITIES

DECEMBER 2022 - JANUARY 2023

Legal Awareness Camp on the issue of Drug Abuse in Children

A legal awareness camp on the theme of "Problem of Drug Abuse in Children" was conducted at one of the adopted villages of PBCS at Khora Colony in Sector 62, Noida on 2 December 2022. The Pro Bono Associates conducting the camp were Naman Sharma, Shambhavi Dubey and Tarjini Singh. The camp was aimed at creating awareness among the residents of the colony regarding the use of narcotics by children in their vicinity. The Narcotics and Psychotropic Substances Act, 1985 was also explained to them to emphasize the crime of supplying drugs to children. The PBAs advocated for the residents to come forward and report the happening of such activities. The PBAs also informed the residents about how vulnerable children are to drug abuse and therefore, a progressive approach towards solving the issue must be adopted. Information regarding various NGOs dealing in the rehabilitation of children addicted to drugs was also provided through pamphlets.



Legal Awareness Camp on Rights of Senior Citizens

A legal awareness camp was conducted on the theme of "Rights of Senior Citizens" at Aangan Old Age Home, Noida on 3 December 2022. The Pro Bono Associates conducting the camp were Kunal Gupta, Mahek Gupta, and Shubhra Goyal. The camp was aimed at imparting information regarding the governance aims in regard to and rights of senior citizens enshrined in the Indian Constitution such as Article 41 which directs the State to protect the economic interests of the weaker sections of society. The PBAs also discussed important government schemes like the Rashtriya Vayoshri Yojana and NALSA (National Legal Services to Senior Citizens) Scheme, 2016. During the course of the interaction, the PBAs identified certain legal concerns of the old age home members regarding property and pension. In light of this, the PBAs shall be extending assistance to them with the help of legal experts. The campaign was a success and it is the endeavour of the Pro Bono Club members to continue working with zeal and energy.



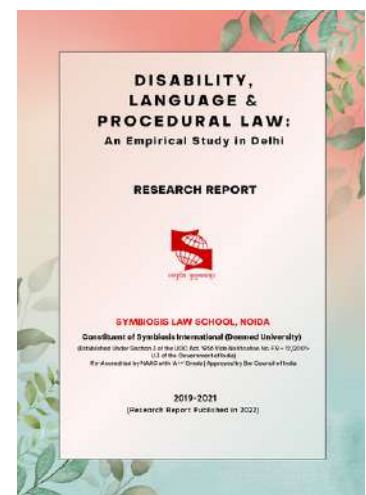
PRO BONO CLUB ACTIVITIES

DECEMBER 2022 - JANUARY 2023

Research Project Report

'Disability, Language & Procedural Law: An Empirical Study in Delhi'

Research Project on 'Disability, Language and Procedural Law: An Empirical Study in Delhi', a research initiative of Symbiosis Law School, Noida from 2019, has been completed. The Research Project Report is published in December 2022. The report has been published as part of the 'research and educational materials' under the PBCS Scheme. The report helps readers understand the state of accessibility for the disabled persons in Delhi in their endeavour to seek justice. A copy of the Research Report is available in the Library, SLS-NOIDA."



SYMBIOSIS ALUMNI REGISTRATION AS 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 the Nyaya Bandhu Programme, Department of Justice, Ministry of Law and Justice, Government of India.

Your legal skills will help us build 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 abc@symlaw.edu.in. 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.

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



The Government of India via a notification dated 08 November 2016 sent shockwaves throughout the country when it announced that it would be demonetizing the most widely used ₹500 and ₹1000 banknotes in exchange for new currency notes. It is considered one of the boldest strategies to be implemented to curtail black money, corruption and illegal financing of terrorism. The demonetization policy received a mixed bag of responses with many criticizing it for its poor implementation and flawed planning for the ensuing consequences.

Numerous petitions were filed challenging the legality of the government notification. In 2017, the Supreme Court went on to refer all such matters for hearing before its constitutional bench that went on to give its verdict after 6 long years on 02 January 2023. A five-judge bench comprising Justices S Abdul Nazeer, BR Gavai, AS Bopanna, V Ramasubramaniam and BV Nagarathna upheld the demonetization policy by 4:1 majority in its judgement in *Vivek Narayan Sharma v. Union of India*^[1].

Through this judgement, the Court primarily dealt with the following issues:

- Whether the notification is ultra vires of Section 26(2) of the RBI Act, 1934;
- Whether the notification violates Articles 14 and 19 on the basis of procedural unreasonableness;
- What is the scope of judicial review in matters concerning fiscal and economic policy of the Government.

AN ANALYSIS OF THE JUDGEMENT

The executive notification issued on the 8th of November, 2016 is at the heart of the demonetization controversy. The Central Government issued the notification by exercising its power under Section 26(2) of the RBI Act^[1]. The said section enables the cessation of any series of bank notes having any denomination as legal tender upon the recommendation of the central government. It was contended by the Petitioners that the Central Government has exceeded its powers in demonetizing all series of the concerned currency notes. The majority rejected this argument and went on to interpret Section 26(2) in a pragmatic and purposive manner by concluding that the word 'any' would mean 'all'. The Court opposed the restrictive interpretation of the said section since it would not be in furtherance of the objective of the RBI Act.

Justice BV Nagarathna was the sole voice of dissent in the present matter. In her dissenting opinion, she stated that the golden rule of construction should be adopted to interpret Section 26(2) of the RBI Act as the wording of the concerned section is unambiguous and direct. She stated that the intention with which the legislature drafted the concerned section is aptly clear and hence, no divergence must be allowed as it would result in the RBI having unbridled powers.

In continuation of her dissenting opinion, Justice BV Nagarathna also stated that the demonetization policy was wrongfully enforced through an executive notification and not through an ordinance or Act of Parliament. It is pertinent to note that demonetization has occurred twice in the past in the years 1946 and 1978, respectively.

[1] W.P. (C) 906 of 2016.

[1] S. 26. Legal tender character of notes:

(2) On recommendation of the Central Board the [Central Government] may, by notification in the Gazette of India, declare that, with effect from such date as may be specified in the notification, any series of bank notes of any denomination shall cease to be legal tender [save at such office or agency of the Bank and to such extent as may be specified in the notification].

This move was undertaken by the Central Government with the same goal of combating tax evasion and reducing the circulation of black money. On both these occasions the Central Government did so by passing an ordinance. The point being made is that during the previous instances of demonetization, the Central Government recognized the importance of taking into consideration the views of all the stakeholders involved, especially emphasizing on the Parliament's role in this process. In the present case, Justice Nagarathna held that the Central Government's Act of implementing its demonetizing policy was devoid of any independent application of mind by the RBI as it looked like the central bank was merely following the wishes of the Government. The executive notification released by the Central Government, therefore, cannot be equivalent to a 'recommendation' made by the RBI under Section 26(2) of the RBI Act.

This remark brought into question the decision-making process concerning the impugned notification. The majority judgement held that the notification did not suffer from any ill reasoning as it satisfied the four-pronged tests of proportionality as laid down by the Supreme Court in *Modern Dental College and Research Centre and Other v. State of Madhya Pradesh & Ors* [3].

The Central Government issued the Specified Bank Notes (Cessation of Liabilities) Ordinance, 2016 and subsequently replaced it with the Act of 2017 that included the provisions of the impugned executive notification. These were held to be unlawful by Justice Nagarathna but no relief was granted to the petitioners since any declaration by the Court would apply prospectively and would not affect action undertaken by the Central Government pursuant to the impugned notification.

Another issue that came up for consideration, in this case, was the scope of judicial intervention in the economic and fiscal policies of the executive. The principle of separation of powers runs through the fabric of our legal system. The Courts have repeatedly maintained, "There has to be great restraint in matters of economic policy. The Court cannot supplant the wisdom of executive with its wisdom."

While the Supreme Court did not deem it fit to delve into examining the success of demonetization, the majority in the present matter held that the impugned notification was not unreasonable as there was a close nexus between the objectives and measures of the demonetization policy. Furthermore, it was also held that sufficient time was granted to the general public to exchange their bank notes. Given the fact that six long years have passed since the impugned notification was issued, the Court was not keen on undoing the policy as that would cause further disruptions to the economy which is still reeling from the effects of the Covid'-19 pandemic.



[3] (2016) 7 SCC 353.

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No further curbs on ministers' right to free speech: Supreme Court observes

Swadha Narayan

The Supreme Court on 3rd January, 2023 ruled that no new constraints could be put on the basic right to freedom of speech and expression, stating that the existing eight "reasonable" restrictions under Article 19(2) of the Constitution are "exhaustive".

A bench of Justices S Abdul Nazeer, BR Gavai, AS Bopanna, V Ramasubramanian, and BV Nagarathna unanimously agreed that the right to free expression did not require any extra constraints. The bench stated that "the grounds outlined in Article 19(2) for restricting the right to free expression are exhaustive"^[1] — an important decision in light of concerns ranging from the proliferation of social media and its alleged misuse and violation of citizens' privacy to politicians' increasingly emotive rhetoric in times of intense polarisation.

The reference of "curbing free speech of public functionaries" to a constitution bench was prompted by the statement of Samajwadi Party leader Azam Khan who, as urban development minister in UP government, had termed the horrific 2016 gang-rape incident on Noida-Saharanpur Highway as an "opposition conspiracy" because the "elections were near, and that the desperate opposition could stoop to any level to defame the government".

The court had reserved the decision on November 15th, 2022. It had posed five questions about the situation:

1. Can a basic right under Articles 19 or 21 of the Indian Constitution be asserted against anyone other than the state or its institutions?

The bench responded that a basic right under Article 19 or 21 can be enforced against people other than the state or its instrumentalities. However, it highlighted that a mere statement made by the Minister that is contradictory with people's rights may not be sued as a constitutional tort.

2. The question was whether the state is required to do this even against a threat to a person's liberty by the acts or omissions of another citizen or private agency?

The Bench concluded that the state is required to affirmatively protect a person's rights under Article 21 whenever there is a threat to personal liberty, even by a non-state actor.

3. Considering the idea of collective responsibility, is it possible to vicariously blame the government for a minister's remarks that can be linked to state matters or for the protection of the government?

"A comment made by a minister cannot be vicariously attributed to the government by invoking the principle of collective responsibility," the majority held, even if it can be linked to state matters or for the government's protection.

4. Is it possible to sue a minister for a constitutional tort if a minister makes a statement that is at odds with a citizen's rights under Part III of the Constitution?

[1] KAUSHAL KISHOR v. THE STATE OF UTTAR PRADESH GOVT OF UP HOME SECRETARY WP(c) 113/2016

A minister's lone comment that violates a citizen's rights under Part III of the Constitution may not be considered an infringement of those rights and may not give rise to legal action as a constitutional tort. However, if an official commits an act that causes harm or loss to a person or citizen as a result of making such a declaration, it may be punishable as a constitutional tort.

The bench, on the other hand, ruled in favour of freedom of speech and expression, stating that the duty of the courts is to preserve fundamental rights, not to impose new limits that limit the prized freedoms given by the Constitution. "The court's job in the constitutional structure is to be a gatekeeper (and conscience keeper) to severely control the admission of limits into the temple of fundamental rights. The court's role is to preserve fundamental rights that are constrained by valid restrictions, not to protect restrictions and turn the rights into residual privileges."^[1]

In her dissenting opinion, Justice B.V. Nagarathna stated that the government is vicariously accountable for any statements made by a minister that can be linked to official government business or are made to defend the government. She also expressed worry about the rise in incidents of hate speech and pointed out that while Common Law remedies are available to people, Fundamental Rights under Articles 19(1)(a) and 21 may not be horizontally applicable in constitutional courts. The Judge added that it is a matter for the Parliament to deal with but showed reluctance to give rules to stop insulting or vituperative remarks by public servants.



[1] KAUSHAL KISHOR v. THE STATE OF UTTAR PRADESH GOVT OF UP HOME SECRETARY| WP(c) 113/2016

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- 2.<https://www.barandbench.com/news/litigation/additional-restrictions-cannot-be-imposed-on-freedom-of-speech-of-ministers-mps-mlas-supreme-court>
- 3.WRIT PETITION (CRIMINAL) NO. 113 OF 2016 WITH SPECIAL LEAVE PETITION @ (DIARY) NO. 34629 OF 2017 KAUSHAL KISHOR versus STATE OF UTTAR PRADESH & ORS.

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

CINEMA HALL OWNERS CAN RESTRICT OUTSIDE FOOD AND BEVERAGES : SUPREME COURT

Mahek Gupta



The Supreme Court of India, on January 3rd, 2023, ruled out that cinema owners have the right to set their terms and conditions regarding the sale of food and beverages and their fundamental right to prohibit the viewers from carrying their food and drink inside a cinema hall.

A bench of Chief Justice D.Y Chandrachud and Justice P.S. Narasimha noted that a movie theatre is the owner's private property, and the owner must be allowed to set its own rules as long as they don't conflict with the common good, safety, or welfare of the community. The court observed that such prohibition of not allowing the movie-goers from carrying their own food and beverages inside cinema halls would be termed as "not unfair, unreasonable or unconscionable" as the rights of the cinema owners are well within the ambits of Article 19(1)(g) of the Constitution which deals with "Right to practice any profession or to carry on any occupation, trade or business to all citizens subject to Art. 19 (6) which enumerates the nature of restriction that the state can impose upon the above right of the citizens."

This issue was raised in the apex court concerning the pleas challenging the direction given by the High Court of Jammu & Kashmir in August 2018 {*K.C. CINEMA (K.C. THEATRE) v. THE STATE OF JAMMU AND KASHMIR AND ORS*} SLP(C)No. 20784/2018 which directed the owners to not prohibit the viewers from carrying their food articles and water inside the theatre, to which the current bench observed that cinemas are the private property of the owners. They are free to make rules and regulations under their fundamental right under Article 19(1)(g). Under this impugned judgment of the Supreme Court, the bench noted an essential aspect concerning the Jammu and Kashmir Cinemas (Regulations) Rules, 1975, under which the trade and business of Cinema were under state regulations. Still, the bench noted that the rules did not contain any mandate which compulsorily directed the owners to allow movie viewers to carry their food.

In October 2021, the High Court of Madras, under the single judge bench of Justice SM Subramaniam, observed that the cinema owners might prohibit the viewers from carrying drinking water from outside due to security reasons but directed the cinema owners to compulsorily provide free drinking water to the viewers available all the time before, during and throughout the viewer visit. This aspect of this judgment was also observed in this bench, directing the cinema owners to provide the viewers with free, hygienic drinking water. The learned court also observed that the cinema owners must put no objection if a reasonable amount of food or beverages is being carried under the cinema to fulfill the nutritional requirement of an infant and also allow the movie viewers suffering from chronic disease according to what they have to follow specific diet due to their medical condition (depending as per the case) to carry their own food and beverages.

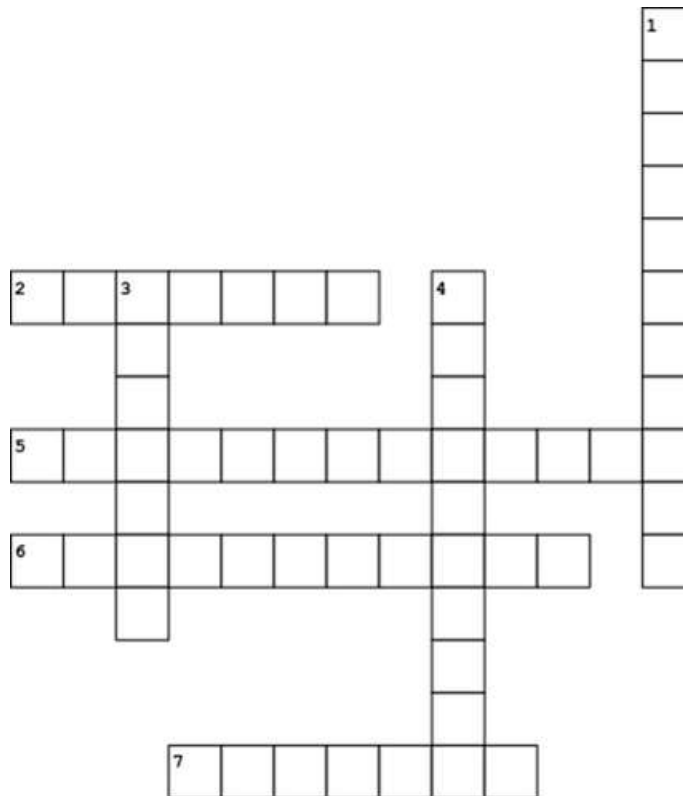
Sources -

1. <https://www.livelaw.in/top-stories/cinema-theatres-can-prohibit-outside-food-articles-but-hygienic-drinking-water-must-be-provided-free-supreme-court-217976#>
2. <https://www.thehindu.com/news/national/cinema-hall-owner-can-determine-whether-food-from-outside-be-permitted-sc/article66334303.ece>
3. <https://www.thehindu.com/news/national/tamil-nadu/theatres-must-provide-purified-drinking-water-free-of-cost-hc/article36832017.ece>
4. <https://www.barandbench.com/news/litigation/cinema-hall-must-provide-free-drinking-water-if-it-prohibits-water-from-outside-madras-high-court>

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Fun with Words

Identify these prominent Jurists



Across

2. The book "Concept of Law" emerged from a set of lectures that the author began to deliver in 1952 in which he developed a sophisticated view of Legal Positivism.

5. He is regarded as the founder of classical utilitarianism. He believed happiness simply meant pleasure and the absence of pain and could be quantified according to its intensity and duration.

6. He propounded the doctrine of social engineering, under the Sociological School of Jurisprudence. He defined law as social engineering which means a balance between the competing interests in society.

7. He was a German jurist and is regarded as the founder of the Historical School of Jurisprudence. He also expounded his hypothesis of *Volksgeist* by battling that it is the wide standards of the framework that are to be found in the soul of the individuals and which get shown in standard principles.

Down

1. He is regarded as the founder of "Scientific Positivism". He pleaded for the application of scientific methods to the science of sociology.

3. He was a Danish jurist, a legal philosopher, and a judge of the European court of human rights. He is best known as one of the leading figures in developing Scandinavian Legal Realism.

4. He is considered the creator of the school of analytical jurisprudence. He also developed command theory in his famous work "The Province of Jurisprudence Determined".

Crossword made by Shubhra Goyal
Please see final page for answers

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Learning with Bulbul

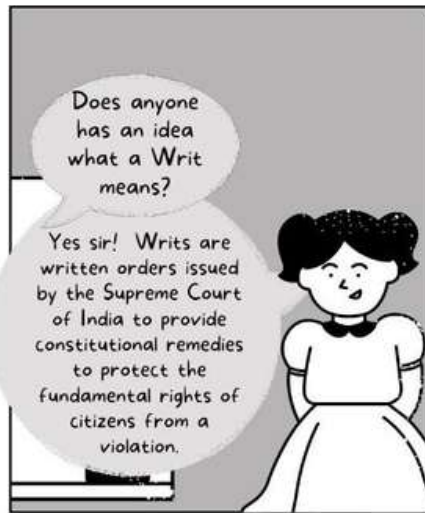


Illustration by Kunal Gupta





Pro Bono Associates Academic Year 2022-23

Aarshia Shantharam
Ananya Dhawan
Chaitanya Popli
Daksh Gupta
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Kanak Verma
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Mahek Gupta
Naman Sharma
Nandeesh Nanda
Rangita Chowdhury
Sanvi Jain
Saptodwipa Sarkar
Savar Wahi
Shambhavi Dubey
Shreya Tiwari
Shubhra Goyal
Swadha Narayan
Tarjani Singh
Vaishnavi Saxena

The Pro Bono Club, SLS Noida, with sheer commitment in their hearts promises to work with utmost dedication to serve and stand for the good.