

PRO BONO CLUB SCHEME

SYMBIOSIS LAW SCHOOL, NOIDA

NEWSLETTER



ISSUE #23.2

FEBRUARY 2023 - MARCH 2023



न्याय विभाग
DEPARTMENT OF
JUSTICE



॥वसुधैव कुटुम्बकम्॥

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



CONTENTS

1. Pro Bono Club Activities for February & March 2023
 - 1.1 Release of the Research Project 'Disability, Language & Protection: An Empirical Study in Delhi'.....2
 - 1.2 Survey Drive on Senior Citizens.....2
 - 1.3 National Seminar on Protection of Transgender Rights..3
2. Case Analysis on *X vs The Principal Secretary, Health and Family Welfare Department (2022)*.....4
3. Legal News - February 2023 - March 2023
 - 3.1. Blood Transfusions from LGBTQ Community Opposed by Government.....7
 - 3.2. New IT Rules focusing on Online Gaming.....8
 - 3.3. Same-Sex Marriages opposed by Govt in SC.....9
4. Fun With Words - Crossword.....11
5. Learning with Bulbul - Illustration.....12



Newsletter Team

Ms. Megha Nagpal
(Editor-in-Chief)

Editorial Team:

- 1) Naman Sharma
- 2) Kunal Gupta
- 3) Shubhra Goyal



न्याय विभाग
DEPARTMENT OF
JUSTICE



Pro Bono Club Activities **February 2023 - March 2023**



Release of the Research Project 'Disability, Language & Protection: An Empirical Study in Delhi' – 25 February 2023

On 25 February 2023, Symbiosis Law School, NOIDA organized a Masterclass on Mediation – New Dimension of Access to Justice. Hon'ble Justice Arjan Kumar Sikri, International Judge, Singapore International Commercial Court and former judge of the Supreme Court of India was the designated resource person. In his august presence, the research project "Disability, Language & Protection: An Empirical Study in Delhi" was released.

The research project was completed by a team of 30 learners of Symbiosis Law School, NOIDA under the able guidance and supervision of Ms. Megha Nagpal as 'Principal Investigator & Project Coordinator'. The Project is aimed at addressing the difficulties faced by specially-abled citizens while engaging with law enforcement authorities and the possible amendments that could be made to the procedural laws to facilitate their involvement in legal proceedings.

Survey Drive on Senior Citizens - 4th February, 2023

The Pro Bono Club took the initiative to conduct an awareness-cum-survey drive on the topic of "Maintenance Received and Legal problems faced by Senior Citizens living in Old-age Homes" at Angaan Elderly Home Sector 105, NOIDA on February 4, 2023. The students conducting the drive were Kunal Gupta, Kanak Verma (third-year learners), and Mahek Gupta (second-year learner), Members of the Pro Bono Club. The survey was conducted to know whether the senior citizens know about their right to maintenance under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007.



The students interacted with residents of the old age home and made them aware of rights of Senior Citizens. The people in the home took an interest in knowing various schemes provided by the Government of India. The PBAs also told the residents about various schemes that the Government of India runs for the welfare of senior citizens. For example, Rashtriya Vayoshri Yojana provides physical aids and assisted-living devices for older adults above sixty years of age who belong to the BPL (below the poverty line) category. It was an interactive session in which the residents also shared with the PBAs their concerns and expectations.

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

Pro Bono Club Activities February 2023 - March 2023

National Seminar on 'Transgender Persons and Protection of their Rights - 6th March, 2023



The Pro Bono Club had proposed a Seminar to be conducted on the theme of Protection of the rights of Transgender Persons. The same was accepted by the Department of Justice and the Seminar was conducted at Jaisalmer House, New Delhi on 06th March, 2023. The Department of Justice (DoJ) had launched the DISHA Scheme to merge and upscale Access to Justice programs nationwide from 2021-26. The scheme aims to provide legal literacy and awareness to marginalized communities and make justice citizen-centric. DoJ has organized 13 webinars on various socio-legal issues. The 90-minute webinar included speakers from subject-based organizations and academia, with a moderator facilitating the discussion. The target participants were implementing partner agencies and beneficiaries of DISHA, village-level entrepreneurs, para-legal volunteers, pro bono lawyers, pro bono club members, and associated law colleges/universities.

Prof. (Dr.) C.J. Rawandale spoke about Understanding the Transgender Persons (Protection of Rights) Act, 2019. Ms. Anjali Gopalan, Executive Director of Naz Foundation of India Trust, discussed Enabling Transgender Persons through a Rights-based Approach. Mr. Rex Mehta from GPR Strategies & Solutions, Raipur, talked about the social response to Transgender in India. Ms. Rudrani Chhetri, Project Director of Mitr Trust Garima Greh, shared the experiences of the community through association with Garima Greh, an organization supported by the Ministry of Social Justice & Empowerment.



The Pro Bono Club Faculty Advisor, Ms. Megha Nagpal attended the seminar virtually whereas Pro Bono Associates who attended the seminar included Kunal Gupta, Naman Sharma, Shubhra Goyal, Savar Wahi, and Mahek Gupta. The PBAs were inspired by the insightful keynotes of the speakers and came to understand the gaps in our legal system regarding the protection of the Transgender Community.

***X vs The Principal Secretary, Health and Family Welfare
Department, Govt. of NCT of Delhi & Anr.,
Civil Appeal No. 5802 of 2022 (Supreme Court, 29/09/2022).***

***An Analysis
by Vaishnavi Saxena***

FACTS

This appeal arose from a case wherein an unmarried 25 years old woman who became pregnant out of a consensual relationship approached the Delhi High Court seeking permission for termination of her pregnancy of above 20 weeks before it reached the mark of 24 weeks. She stated that her partner had refused to marry her at the last stage and that she was not ready to face the social stigma around unmarried single mothers. Moreover, she explained that she was unemployed and thus, not mentally prepared for a child.

She requested the court's approval to end her pregnancy under Section 3(2)(b) of the Medical Termination of Pregnancy Act, 1971 and Rule 3B(c) of the Medical Termination of Pregnancy Rules of 2003 (as amended in 2021) as the continuation of the pregnancy would cause grave injury to her mental health. The court denied the woman's request and held that Section 3(2)(b) of the MTP Act was inapplicable to the circumstances of the case because the appellant, an unmarried woman whose pregnancy resulted from a consensual relationship, was not covered by any of the sub-clauses of Rule 3B of the MTP Rules.

ISSUES

1. Whether an unmarried woman should be allowed to terminate her 20 weeks + old pregnancy that arose out of a consensual relationship?
2. Whether Section 3(2)(b) of the MTP Act and Rule 3B of the MTP Rules arbitrary and violative of Article 14 of the Constitution?

RULES

Section 3 (2)(b) of the MTP Act provides for termination of pregnancies in cases where the pregnancy exceeds 20 weeks but not 24 weeks, the woman is of such category as prescribed by the rules made under this Act (MTP Rules, 2003) and where at least 2 registered medical practitioners believe (formed in good faith) that:

- The continuance of the pregnancy would put the pregnant woman's life at risk or
- The continuance of the pregnancy would involve grave danger to the pregnant woman's physical or mental health
- There is a substantial risk that the child would suffer from a serious physical or mental abnormality if it is born.

Rule 3B of the MTP Rules, 2003 lays down the categories of women who are eligible to get their pregnancies terminated under Section 3(2)(b) of the MTP Act. Rule 3b(c) mentions women who face a change of marital status during their pregnancy (widowhood and divorce).

Article 14 of the Indian Constitution guarantees equality before the law and equal protection of laws to all people within the territory of India.

ANALYSIS

The court granted the appellant permission to get her pregnancy terminated and since the appellant's counsel had submitted that Section 3(2)(b) of the MTP Act and Rule 3B of the MTP Act were arbitrary as they discriminated against women based on their marital status and were violative of Article 14, the case was taken up for further consideration.

The Additional Solicitor General interpreted Rule 3B of the MTP Rules to include single or unmarried women. She argued for a purposive interpretation based on the objective of the legislation. The court discussed barriers to women seeking abortions, such as stigma, lack of awareness and infrastructure, and medical practitioners' extra-legal requirements.

A purposive interpretation was adopted by the court while reading Rule 3B. One of the main principles while interpreting a statute is to identify the legislature's intent by focusing on the meaning of the words used, figuring out the objective of the enactment, the problem it aimed to solve, and the remedy it aims to provide for it.

A plethora of cases^[1] were referred to for declaring that progressive and beneficial laws must be read in favor of the beneficiaries whenever there are two constructions possible. Referring to the case of Navtej Singh Johar^[2] and Badshah vs Urmila Badshah Godse^[3], the court emphasized the transformative nature of our constitution and how the court must bridge the gap between law and society through purposive interpretations.

The court mentioned how family units might manifest themselves in different ways and that the law must stay aware of such societal changes. It was noted that over time, through various legislations^[4] enacted by the Parliament, married and unmarried women were getting the same rights. While identifying the problem MTP Act aimed to remedy, the court observed that before its enactment, the criminalization of abortion under the IPC compelled women to seek unsafe abortions, raising maternal morbidity and mortality in the country.

The object of the MTP Act was declared to have access to safe and legal abortions. The court observed that the MTP Amendment Act 2021 extended the benefits to all women. The court gave a broad definition of mental health and referred to precedents^[5] to show that the risk of grave injury to mental health has in the past, been a valid reason for abortion post-20 weeks. It also noted how a woman getting separated from her partner is a big change in circumstances and may lead to a situation where the woman is 20 weeks pregnant. It also noted how a woman getting separated from her partner is a big change in circumstances and may lead to a situation where the woman might not be capable of raising or birthing a child.

A discussion on how the right to reproductive autonomy, the right to live a dignified life and the right to privacy as provided under the ambit of Article 21 and precedents^[6] would be violated if the unmarried women was not included by the MTP Act and rules. It was held that the right to privacy includes the right to control over vital aspects of one's body and life, the right of women to make reproductive choices is a part of personal liberty^[7] and that the right to choose for oneself is a part of the right to dignity and that if women were forced to carry out unwanted pregnancies, it would be a violation of Article 21.

[1] Union of India v. Prabhakaran Vijaya Kumar (2008) 9 SCC 527 ; Bombay Anand Bhavan Restaurant v. ESI Corpn (2009) 9 SCC 61

[2] Navtej Singh Johar v. Union of India (2018) 10 SCC 1

[3] Badshah v. Urmila Badshah Godse (2014) 1 SCC 188

[4] The Maternity Benefit Act 1961 ; Hindu Succession (Amendment) Act 2005 ; Hindu Adoptions and Maintenance Act 1956 ; Guardian and Wards Act 1890

[5] Siddhi Vishwanath Shelar v. State of Maharashtra 2020 SCC OnLine Bom 11672 ; Mamta Verma v. Union of India (2018) 14 SCC 289 ; XYZ v. State of Maharashtra 6 October 2021 in WP(L) 21977 of 2021 (Bombay High Court)

Following the court's earlier footsteps^[8], the bench gave a wider meaning to a section/rule to stop it from being rendered unconstitutional. It also discussed India's obligations under International law and the positive duties of the state towards its citizens and held that their interpretation of the MTP Act and Rules furthers the above-mentioned obligations.

CONCLUSION

Through an ad interim relief, the court allowed the appellant to get her pregnancy terminated after the due procedure. The court further went on to interpret Rule 3B of the MTP Rules, 2003 in a purposive manner and declared that the rule includes within its ambit unmarried and single women as well. It held that an unmarried woman has the same freedom to decide whether or not to have children as a married woman does according to Article 21's protections of her rights to reproductive autonomy, dignity, and privacy. Allowing married women whose pregnancies are between 20 to 24 weeks to access abortion but denying access to unmarried women during the same period would be violative of Article 14.

Thus, not including single or unmarried women within the ambit of Rule 3B of MTP rules would have rendered the provisions unconstitutional. Since MTP Act and Rules are beneficial legislations, they were interpreted broadly, keeping in mind the object of the law and Section 3(2)(b) of the MTP Act and Rule 3B of the MTP Act both were held to be valid.

RESEARCHER COMMENT

This is a landmark judgement by the Supreme Court. The court read the law in a progressive light and reinforced the reproductive rights of all women. It permitted unmarried women to access abortion till 24 weeks while also declaring that no extra-legal requirements can be imposed by the registered medical practitioners. While the court recognised it as an obstacle to abortion it did not provide any specific relief and merely requested the practitioners to not create such difficulties. The court had lengthy discussions on the effects of unwanted pregnancies, the difficulties women face, the social stigma, the rights of women over their bodies etc. These are all really important topics which need to be discussed in today's time.

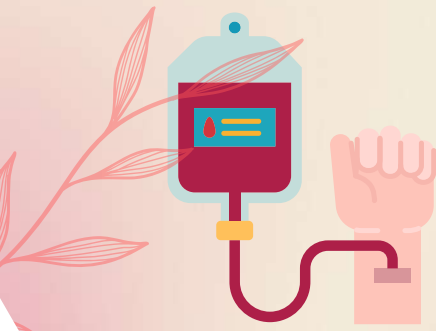
While discussing rape, the court expanded the definition and acknowledged the existence of marital rape which is not yet a crime in India. It also recognised that sexual relations occur both within and outside marriage and that a woman's consent for the same cannot be assumed by her marital status. This can later help in criminalising marital rape.

The court also declared at the beginning of its judgement that the word 'woman' here would not be restricted to cis-gender women and that it would include others like trans men and non-binary persons who may need safe pregnancy terminations. It is, therefore, a progressive and historic judgement.

[6] K S Puttaswamy v. Union of India (2017) 10 SCC 1 ; Common Cause v. Union of India (2018) 5 SCC 1

[7] Suchita Srivastava v. Chandigarh Administration (2009) 9 SCC 1

[8] Githa Hariharan v. Reserve Bank of India (1999) 2 SCC 228 ; Express Newspapers Ltd v. Union of India 1959 SCR 12, AIR 1958 SC 578



CENTRE FILES AFFIDAVIT OPPOSING BLOOD TRANSFUSIONS FROM TRANSGENDER AND GAY COMMUNITY

Ananya Dhawan

The Guidelines on Blood Donor Selection and Blood Donor Referral, 2017 were issued by the National Blood Transfusion Council (NBTC) and the National Aids Control Organization (NACO) under the charge of the Ministry of Health and Family Welfare in October 2017. Clauses 12 and 51 of these guidelines categorize transgender persons, gay men and female sex workers as being at high risk of having HIV/AIDS and bar them from donating blood.

The Petitioner Thangjam Santa Singh, a member of the Transgender community, filed a Public Interest Litigation under Article 32 of the Constitution of India assailing the afore-mentioned provisions on the grounds that the prohibition is solely based on their gender/sexual orientation and lacks reason and substance and are a result of negative stereotypical assumptions. Therefore, they are violative of Article 14 and 15 of the Indian Constitution. The Petitioner contends that all blood units collected from blood donors are tested for diseases as general practice which makes the exclusion in question is unnecessary. He also urges that a deferral period from the last date of the last risky sexual encounter could be incorporated into the guidelines instead of a blanket ban on blood donation by transgender persons, gay men, and female sex workers.

The Ministry made its submissions via affidavit. Certain studies were referred to in the same to support their assertion that the individuals prohibited from donating blood under the guidelines are in fact, at high risk for having HIV, Hepatitis B or C infections. It is argued that there is a 'residential infection window period' during which diseases are not detectable via blood testing. Due to this limitation, it was averred that amending the guidelines to include a deferral period would not be helpful. Therefore, the Ministry claims that the restriction imposed under the guidelines is based on scientific evidence. Moreover, blood transfusion being a critical facet of healthcare, must be dealt with as much caution as possible.

The Hon'ble Supreme Court's opinion is awaited as the matter is pending presently.

Sources

1. Thangjam Santa Singh @ Santa Khurai v. Union of India and Ors., WP(C) No. 275 of 2021
2. <https://www.livelaw.in/top-stories/transgender-persons-gays-sex-workers-excluded-from-blood-donation-based-on-scientific-evidence-centre-tells-supreme-court-223496>

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



NEW INFORMATION TECHNOLOGY RULES PUT EMPHASIS ON ONLINE GAMING

Chaitanya Popli

The Indian government has amended the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, to regulate online gaming in the country. The move comes amid growing concerns about the impact of online gaming on users, particularly minors, and the need for a regulatory framework to ensure responsible gaming practices.

Under the new rules, online gaming platforms will be required to disclose details such as the name, address, and contact information of the publisher, the expected duration of the game, and the skill level required to play. Additionally, the rules mandate the establishment of a grievance redressal mechanism for users, including a complaint system for users who experience any harassment or inappropriate behaviour on the platform. The rules also require online gaming platforms to put in place measures to prevent minors from participating in online gaming, such as verifying the user's age before allowing them to play. Platforms must also have mechanisms to restrict access to online games for users who have been identified as addicted or at risk of addiction.

Legal experts have welcomed the move, saying that it is a step in the right direction towards ensuring the safety and security of users. They note that the online gaming industry in India is largely unregulated, and the new rules will provide a framework for online gaming platforms to operate within. "The new rules are a welcome development as they will bring much-needed regulation to the online gaming industry in India," said Pavan Duggal, a cyber law expert. "The rules will provide a legal framework for online gaming platforms to operate within, and will help to ensure that users are protected from any potential risks associated with online gaming."

However, some legal experts have expressed concerns about the scope and implementation of the new rules. They note that online gaming platforms may find it difficult to comply with the requirements of the new rules, particularly those related to preventing minors from participating in online gaming and restricting access for users who are addicted or at risk of addiction.

"The new rules are a step in the right direction, but their implementation may pose challenges for online gaming platforms," said Akshat Jain, a lawyer specializing in technology laws. "It will be important to ensure that the rules are practical and enforceable, and that they do not unduly restrict the growth of the online gaming industry."

In conclusion, the Indian government's decision to amend the IT Rules 2021 to regulate online gaming is a significant step towards ensuring the safety and security of users. While there may be challenges in implementing the new rules, legal experts believe they will ultimately benefit the online gaming industry in India by promoting responsible gaming practices and enhancing its credibility.

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

CENTRE OPPOSES SAME SEX MARRIAGES IN SUPREME COURT

Rangita Chaudhary



The Supreme Court on March 13 2023, referred to a host of petitions dealing with the recognition of same-sex marriages in India.

It is pertinent to observe that same-sex relationships were decriminalized under Section 377 of the Indian Penal Code in the case of *Navtej Singh Johar & Ors. v. Union of India (2018)*. Since then, NGOs and support groups have been rallying to recognise marriages between homosexual people. The Centre, to quote, opposed the petitions on the ground of "legislative understanding of marriage in the Indian statutory and personal law regime", which includes only a 'biological man' and a 'biological woman'.

The Centre urged the court to shy away from interpreting the laws of marriages as they are personal laws and developed through societal customs; any judicial interpretation to such would hinder the delicate balance of personal laws in the country. It was insisted that the matter be best left to the competent legislature, i.e., the Parliament to decide. The affidavit filed also claims that from a plain perusal of the marriage laws in India it becomes evident that the legislative objective was to acknowledge marriage as a union solely between a man and a woman. The usage of terminologies such as "woman," "female," "husband," and "wife" within these provisions conclusively establish the fact that the legislature had no intention of extending the application of these laws to any other form of union apart from heterosexual marriages. These terms are unambiguous and admit only one meaning.

The Centre also observed that construing the terms "husband" and "wife" in any other manner except as referring to a biological man and woman respectively would render all statutory provisions impractical and contradict the consistent legislative approach, which reflects the cultural values and social norms of the country, as opined by the lawmakers. The union of two genders in the institution of marriage is neither accepted in any uncodified personal laws or codified laws.

In response to contentions claiming that the matter pertains to the privacy of the partners, the Centre stated that marriage, being an institution in law, carries many legal implications and responsibilities under numerous legislative enactments. Consequently, formal recognition of such human relationships cannot be viewed solely as a private affair between two consenting adults. Law minister Kiren Rijju has expressed that even though the government does not interfere in personal laws, marriage is a matter of public policy.

The Indian government's refusal to acknowledge same-sex marriage has drawn backlash from activists and individuals within the LGBTQ+ community. They argue that despite India's diverse and pluralistic society, the government's stance implies that only heterosexual couples are entitled to marriage rights. LGBTQ activist Priijith

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

PK has said that the government's opposition to same-sex marriage is perceived by some as an attempt to appease their traditional voter base. Harish Iyer, an activist for equal rights and a member of the LGBTQ+ community, stated that India is a country characterized by diversity rather than uniformity yet marriage rights are only afforded to sexual majorities and not minorities.

Now it remains to be seen what the Supreme Court will decide in the case listed on 18th April 2023.

Sources-

1. <https://indianexpress.com/article/india/centre-opposes-same-sex-marriages-supreme-court-8492314/>
2. https://www.outlookindia.com/national/not-interfering-in-personal-lives-of-citizens-but-institution-of-marriage-matter-of-policy-rijju-on-same-sex-marriage-news-269778?utm_source=related_story
3. <https://www.outlookindia.com/national/-what-culture-are-they-talking-about-lgbtq-activist-slams-centre-s-opposition-to-same-sex-marriage-news-270123>
4. <https://www.outlookindia.com/national/centre-opposes-same-sex-marriages-in-supreme-court-lgbtq-activists-say-its-stand-is-against-india-s-diverse-nature-news-269698>

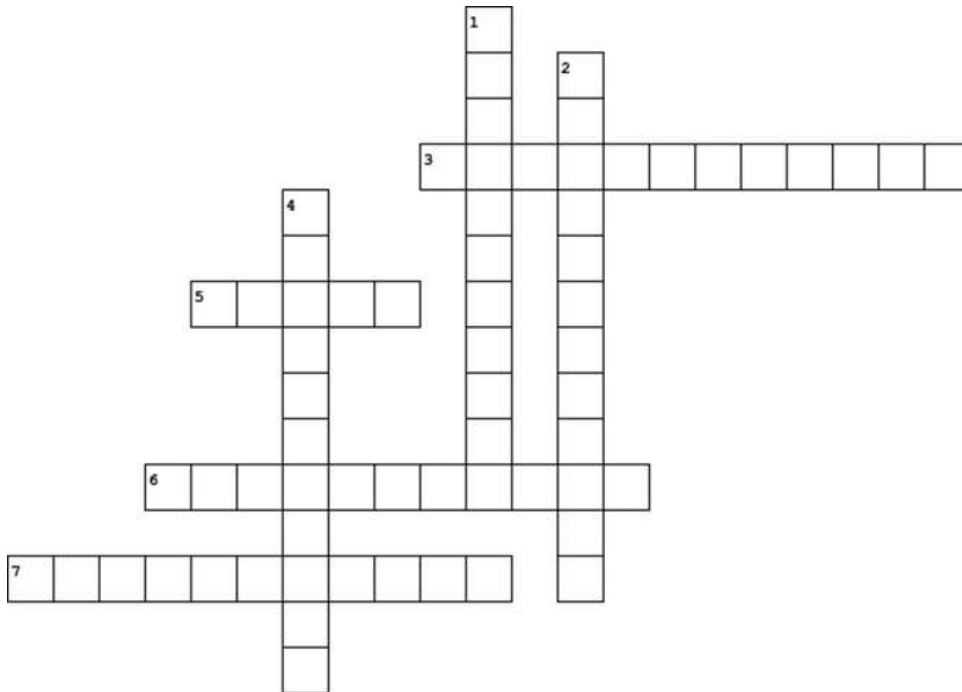
SYMBIOSIS ALUMNI REGISTRATION AS PRO BONO ADVOCATES

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 pbcs@symlaw.edu.in [REDACTED]. 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

Fun with Words



ACROSS

3. This amendment act introduced the provision of reservation for socially and educationally backward classes in educational institutions. The amendment was challenged in the case of *Indira Sawhney v. Union of India* (1992), which upheld the validity of reservation for socially and educationally backward classes in educational institutions.
5. This amendment act was passed in 1951 and added several new grounds for imposing reasonable restrictions on freedom of speech and expression, including public order, decency, and morality. The amendment was challenged in the case of *Romesh Thappar v. State of Madras* (1950), which upheld the right to freedom of speech and expression as a fundamental right.
6. The amendment act got passed in 2006 and introduced the provision of reservation for socially and educationally backward classes in institutions of higher education. The amendment was challenged in the case of *Ashoka Kumar Thakur v. Union of India* (2008), which upheld the validity of the amendment and held that the creamy layer should be excluded from the reservation.
7. It made several changes to the Constitution, including the restoration of the right to property as a legal right, subject to reasonable restrictions. This amendment was upheld in the case of *Minerva Mills Ltd. v. Union of India* (1980), which established that the basic structure doctrine applies to limitations on the amending power of Parliament.

DOWN

1. This amendment enabled the formation of a National Judicial Appointments Commission (NJAC) for the appointment of judges to the higher judiciary. The NJAC was struck down by the Supreme Court in the case of *Supreme Court Advocates-on-Record Association v. Union of India* (2015), which held that the NJAC was unconstitutional as it violated the independence of the judiciary.
2. This amendment act got passed in 1971 and made it clear that the power of Parliament to amend the Constitution is plenary and cannot be questioned on any grounds. The amendment was challenged in the case of *Kesavananda Bharati v. State of Kerala* (1973), which upheld the basic structure doctrine.
4. This amendment introduced significant changes to the Constitution, including the preamble, the fundamental duties, and the directive principles of state policy. The amendment was challenged in the landmark case of *Kesavananda Bharati v. State of Kerala* (1973), which established the doctrine of basic structure, stating that certain parts of the Constitution cannot be amended by Parliament.

Crossword made by Shubhra Goyal

Refer to the final page for Crossword Answers

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

Learning with Bulbul

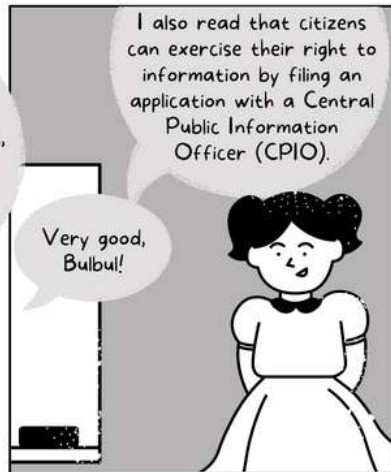
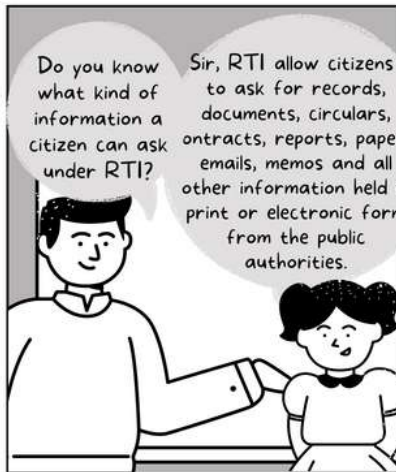
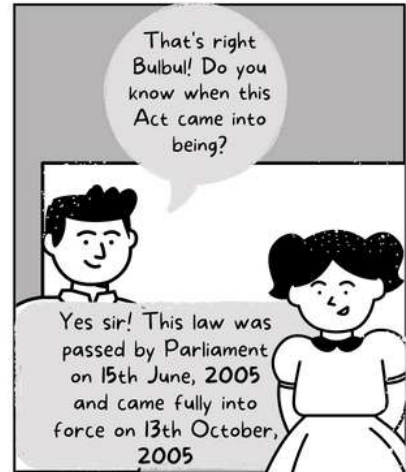


Illustration by Kunal Gupta

