

# PRO BONO CLUB SCHEME

SYMBIOSIS LAW SCHOOL, NOIDA

## NEWSLETTER



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## Pro Bono Club Activities April - May 2023

### Pro Bono Club Monthly Meeting - 04 May 2023

On 4th May 2023, the Pro Bono Club held a meeting from 2:30 to 4 PM, led by Ms. Megha Nagpal, the Head and Faculty Advisor of the club, with all members in attendance. The group decided to hold an upcoming camp on the topic of Fundamental Rights for a selected government school, preferably a Kendriya Vidyalaya in Noida. The Pro Bono Associates, including Shambhavi Dubey, Swadha Narayan, Nandeesh Nanda, and Savar Wahj, will be conducting the camp.

The meeting also included suggestions from the Pro Bono Associates, including tapping into alumni relations for every PBA and eliminating restrictions on alumni connections. They also proposed collaborating with NGOs, such as MARG NGO, to provide legal aid. Furthermore, they suggested tapping into alumni relations to expand the reach of the Pro Bono Club and increase its impact. They also proposed collaborating with NGOs to assist in legal aid, demonstrating their commitment to pro bono work and making a positive impact in their community.

Finally, the selection process for the next contingent of Pro Bono Associates was discussed. Overall, the Pro Bono Associates' enthusiasm and dedication towards the cause of the Pro Bono Club were evident in their suggestions and willingness to put in the necessary effort to achieve their goals.



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## 50 Years of the Keshavnanda Bharati Judgement

*Kunal Gupta & Naman Sharma*

**O**n Monday, the landmark judgment of Kesavananda Bharati, which established the "basic structure" doctrine defining the boundaries of Parliament's authority to modify the Constitution, marks its 50th anniversary. On April 24, 1973, a 13-judge bench of the Supreme Court of India, led by Chief Justice Sikri, delivered a verdict in the case of Keshavnanda Bharati, a spiritual leader of the Edneer Mutt in Kerala. The case challenged the constitutional validity of the 24th, 25th, 26th, and 29th amendments to the Indian Constitution, which were introduced by the government led by Prime Minister Indira Gandhi.

The central issue before the court was whether Parliament had the power to amend the basic structure of the Constitution, and if so, to what extent. The petitioner argued that the amendments, which included provisions that curtailed the powers of the judiciary and expanded the powers of the government, violated the basic structure of the Constitution, which was inviolable.

In a historic verdict, the court held that while Parliament had the power to amend the Constitution, that power was limited by the basic structure of the Constitution, which included the principles of democracy, secularism, federalism, and the rule of law. The court also held that the power of judicial review was an essential feature of the Constitution, and that the judiciary had the duty to uphold the Constitution and protect the rights of the citizens.

A scrutiny of the application of the doctrine of basic structure over the past half-century by the highest court of India reveals a significant pattern. Although the court has used the basic structure doctrine sparingly, it has mainly struck down amendments that curtail judicial powers. Since the landmark Kesavananda Bharati judgment in 1973, the Constitution has been amended over 60 times. In the last five decades, the Supreme Court has tested constitutional amendments against the doctrine of basic structure in at least 16 cases. Of these, nine cases have seen the court upholding the constitutional amendments that were challenged on the grounds of violating the basic structure doctrine.

Six of these cases relate to reservations, including quotas for Other Backward Classes (OBC) and Economically Weaker Section (EWS), as well as reservations in promotions. On the other hand, the court has struck down a constitutional amendment entirely only once - The Constitution (Ninety-ninth Amendment) Act, 2014.

The Act established the National Judicial Appointments Commission (NJAC), a body responsible for the appointment and transfer of judges, replacing the Collegium system. The amendment was struck down by a five-judge Constitution Bench in 2015 on the grounds that it threatened "judicial independence," a basic feature of the Constitution.

The court has partially struck down a constitutional amendment in six instances since 1973, including the Kesavananda ruling itself. In all these cases, the provision that was struck down related to the denial of judicial review. Only one of these six rulings involves an amendment that was not made during the Indira Gandhi era - the Kihoto Hollohan case, which dealt with the Tenth Schedule. The Supreme Court upheld The Constitution (Fifty-second Amendment) Act, which introduced the Tenth Schedule, also known as the "anti-defection law," in the Constitution. The only portion of the amendment that was struck down was the one that stated that the decisions of the Speaker relating to disqualification could not be judicially reviewed.

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In 2021, a three-judge Bench of the court struck down a portion of The Constitution (Ninety-seventh Amendment) Act, 2011, but on procedural grounds and not basic structure grounds. The amendment changed the legal regime for cooperative societies, and the court ruled that cooperative societies within a state, as opposed to inter-state, would fall under the State List, which means that a constitutional amendment relating to it must be ratified by half the states as prescribed in the Constitution.

The Keshavananda Bharati judgement has had far-reaching implications for Indian democracy and the rule of law. It has acted as a bulwark against authoritarian tendencies and the erosion of civil liberties, and has helped to strengthen the independence of the judiciary. The judgement has also been invoked in numerous cases to strike down unconstitutional laws and government actions.

As India marks the 50th anniversary of this historic judgement, it is important to reflect on its significance and the enduring legacy of the principles enshrined in it. The Keshavananda Bharati judgement remains a shining example of the power of the Indian Constitution to protect the rights and liberties of its citizens, and to ensure that the rule of law prevails over arbitrary exercise of power.



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# Visually Impaired Lawyer Creates History in India's Supreme Court

*Daksh Gupta*



N Visakamurthy, a 48-year-old lawyer from Chennai, has made history by becoming the first visually impaired Advocate on Record (AoR) in the Supreme Court of India. He cleared the AoR examination in his first attempt with the help of a scribe, Semmozhi, a class 12 student. The results of the AoR exam for the year 2022 were published on April 18, 2023.

An AoR is a lawyer who is entitled to file petitions and pleadings before the Supreme Court. The AoR examination is conducted by the Supreme Court every year and consists of four papers: practice and procedure, drafting, advocacy skills and professional ethics. The exam is considered to be one of the toughest and most prestigious in the legal profession.

Visakamurthy lost his vision when he was in class 10 due to retinal detachment. He did not let his disability deter him from pursuing his passion for law. He completed his LLB from Dr Ambedkar Government Law College in Chennai and his LLM from Annamalai University. He also cleared the Civil Services Examination conducted by the Union Public Service Commission (UPSC) in 2018 and was appointed as an additional government advocate in the central agency section of the Supreme Court. However, he was not permitted to join the service due to his visual impairment and was reassigned to the post of an assistant legal advisor at Shastri Bhawan.

Visakamurthy had also filed a writ petition<sup>[1]</sup> before the Supreme Court last year praying that appropriate guidelines be framed for persons with visual impairments to write the AoR examination. A bench of Justices Sanjay Kishan Kaul and Abhay Oka had disposed of the petition with a direction to the Supreme Court to examine the prayer and communicate a decision as early as possible so that he could appear for the examination. The petition sought the following reliefs in order to make the examination inclusive:

- (a) Scribe qualification – Mr. Visakamurthy argued that law students should be allowed to act as scribes, as being aware of some legal concepts and jargons, they'd be in a better position to assist someone taking the AoR exam.
- (b) Extra time
- (c) Separate Room
- (d) Papers of visually challenged persons to be sent for evaluation separately
- (e) Alternative method of examination – Oral

Despite the Supreme Court passing favourable directions based on the above plea, Visakamurthy faced the following challenges:  
•The rule that the scribe should not have a law degree or any legal knowledge made it difficult for him to explain the format and content of some papers, especially drafting and leading cases.

•The open-book examination became a closed-book examination for him, as his scribe could not identify the relevant portions in the books without any familiarity with the subject.

•He was granted only an additional hour to attempt the same papers as other candidates, which was not enough considering his disability. The Supreme Court rejected his request for special correction.

Visakamurthy's achievement is commendable and historic, but it also highlights the problems with the legal system in India with respect to advocates with visual impairment. There is a need for more awareness and sensitivity among the authorities and the judiciary to ensure that lawyers with visual impairment are given equal opportunities and facilities to pursue their career and serve justice.

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# Advocates' Protection Act, 2023 & its Implementation

*Jay Wadhwa*



**T**he legal profession is a vital component of the judicial system, and lawyers play a critical role in ensuring that all individuals have access to justice. However, the safety and security of lawyers is frequently jeopardised, particularly when they represent clients in sensitive matters. With the passage of the Delhi lawyers (Protection) Bill, 2023, the Bar Council of Delhi (BCD) has taken an important step towards securing the protection of lawyers. The bill includes measures to safeguard advocates from violence, as well as compensation and police protection in the event of a threat.

The Advocates Protection Act was passed in 2001 with the intention of protecting advocates against acts of intimidation and assault. The act's goal is to safeguard the safety and security of the country's lawyers and advocates, allowing them to carry out their duties without fear. In circumstances of threats, illegal arrests, and malicious prosecution, the statute outlines mechanisms for compensation and police protection.

The Delhi attorneys (Protection) Bill, 2023, outlines acts of violence, offenders, and punishment, and proposes compensation and police protection for advocates who are threatened. The proposed measure also calls for the establishment of permanent grievance redressal panels at the district and high court levels. The head of the judiciary, the President/Secretary of the relevant Bar Association, and a nominee of the Delhi Bar Council will serve on these committees. These committees will act as soon as an incident occurs on the court grounds and will make every effort to address it.

The proposed bill also safeguards advocates from 'illegal arrest' and 'malicious prosecution.' A special committee of the BCD headed by advocate KC Mittal developed the bill, which included the President and Secretary of the Delhi Bar Association, Dr. NC Sharma, Chairman, Coordination Committee, and Raman Sharma, Secretary General, Coordination Committee.

Rajasthan is the first state in the country to implement legislation to protect lawyers' safety. The Rajasthan assembly enacted the Advocates Protection Bill, which became the Advocate Protection Act 2023 on March 22, 2023. After being tabled, the bill was passed by voice vote. The passing of the bill is a crucial step towards safeguarding the protection and security of the state's lawyers.

In conclusion, the Advocates Protection Act is an important step towards preserving the rights of lawyers and advocates in India. The passing of the bill in Rajasthan, as well as the proposed bill in Delhi, are both positive steps towards ensuring the protection and security of attorneys in the country. It is now critical that other jurisdictions take identical steps to protect the interests of lawyers and advocates while also ensuring the proper operation of the justice system.

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## Section 25 CPC ensures inter-state transfer of suits under Articles 214 and 231 - Supreme Court

*Shambhavi Dubey*

The Supreme Court of India has recently stated that Section 25 of the Civil Procedure Code (CPC) ensures the inter-state transfer of suits under Articles 214 and 231. This verdict came as a relief to litigants seeking the transfer of their cases to another state due to various reasons such as convenience or jurisdiction issues.

The bench consisting of Justice D. Y. Chandrachud and Justice M. R. Shah gave the ruling while hearing a case related to the transfer of a case from Jharkhand to Maharashtra. The petitioner had sought the transfer of the case due to the fact that the majority of the witnesses and documentary evidence were located in Maharashtra.

The Supreme Court, in its judgment, cited Section 25 of the CPC and stated that it provides a mechanism for the inter-state transfer of suits. The court also emphasized that this provision must be used judiciously, keeping in mind the interests of both parties.

The bench further added that the convenience of witnesses and the availability of evidence are crucial factors in deciding whether to transfer a case from one state to another. The court stated that the transfer of a case should be allowed only when the interest of justice demands it, and not simply to facilitate the convenience of the parties. This decision by the Supreme Court has been welcomed by the legal fraternity as it clarifies the provisions of the CPC and provides clarity on the procedure for inter-state transfer of suits. It is expected to have a significant impact on litigants seeking to transfer their cases from one state to another for convenience or jurisdictional reasons.

Overall, the judgement is a significant development in the legal landscape of India, and it reinforces the principle of access to justice for all litigants, irrespective of their location.

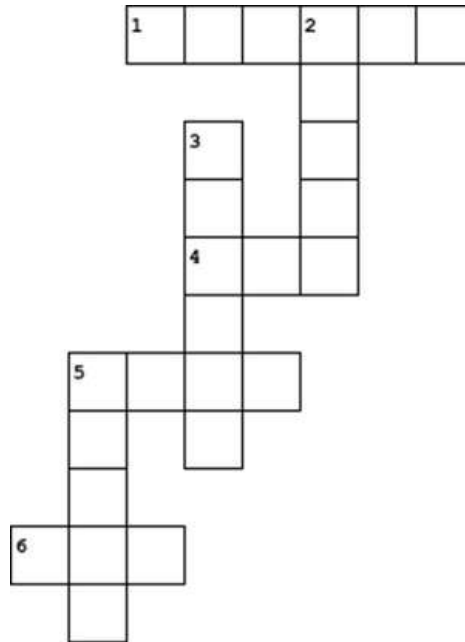
The Supreme Court's ruling has also brought attention to the importance of legal provisions and mechanisms that facilitate the transfer of cases between different states. The transfer of cases has become increasingly relevant in today's globalized world, where people frequently move across state boundaries for work, education, or other reasons.

The Section 25 of the CPC is a crucial provision that ensures access to justice for litigants who may face difficulties in pursuing their cases in their home state. The provision allows the transfer of cases to a more convenient location, where witnesses and evidence may be located, or where the jurisdiction of the court may be more appropriate. However, it is important to note that the transfer of cases should not be misused by parties seeking to delay or avoid the legal process. The Supreme Court has emphasized that the transfer of cases must be done judiciously, keeping in mind the interest of justice, and that it should not be granted if it would cause undue delay or hardship to any party.

Moreover, the Supreme Court's verdict is likely to have a significant impact on the legal system and its ability to deliver justice. It will make it easier for litigants to seek the transfer of their cases to a more convenient location and ensure that justice is delivered without undue delay or hardship.

The judgement also reinforces the principle of federalism and the importance of states working together to ensure that justice is delivered efficiently and effectively across India. The provision of inter-state transfer of suits is an important mechanism that helps to achieve this objective and enables litigants to access justice wherever they may be located.

## Fun with Words



### ACROSS

- This legislature was enacted in the year 2015 to replace its earlier Act of 2000. It provides a comprehensive legal framework for the protection, treatment, and rehabilitation of children in conflict with the law as well as children in need of care and protection. It recognizes that children are in a vulnerable position and need to be treated with care and compassion.
- This legislation was enacted in 1972 with the aim of protecting wild animals and plants and regulating the hunting and poaching of wildlife. The act provides for the protection of endangered and vulnerable species of animals and plants and establishes penalties for violations.
- This legislation was enacted in the year 2013 to prevent sexual harassment against women in the workplace. Under this act, every organization is required to constitute an Internal Complaint Committee to inquire into complaints of sexual harassment. It is applicable to all workplaces, including government and private organizations, as well as the unorganized sector.
- It was enacted in 1987 to provide free legal aid and services to the marginalized and weaker sections of society, including women, children, and the disabled, who cannot afford to hire a lawyer. The act established legal services authorities at the national, state, and district levels to provide legal aid and services to those in need.

### DOWN

- It is an Indian legislation that was passed in the year 2005 to protect women from domestic violence and abuse. This act defines domestic violence as any act, omission, or commission that harms or injures a woman physically, mentally, or emotionally within the confines of the home. This includes any form of physical, sexual, verbal, emotional, or economic abuse, as well as harassment, stalking, or the deprivation of resources and livelihood.
- This legislation was enacted in 2007 to ensure the maintenance and welfare of parents and senior citizens in the country. The act aims to protect the rights of senior citizens and to provide them with financial and emotional support.
- It is an Act that was passed by the Indian Parliament in the year 2012 to provide legal protection to children from sexual offenses. The Act defines various sexual offenses against children and provides stringent punishment for the same.

Crossword made by Shubhra Goyal  
Refer to the final page for Crossword Answers

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## Learning with Bulbul

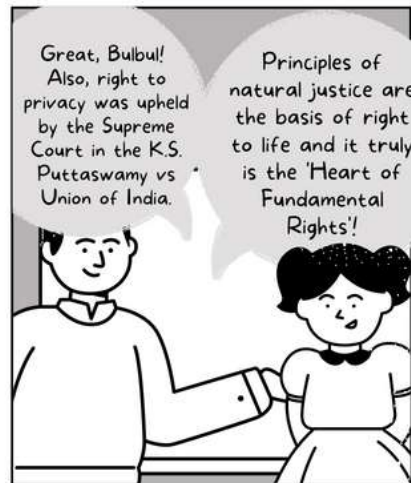
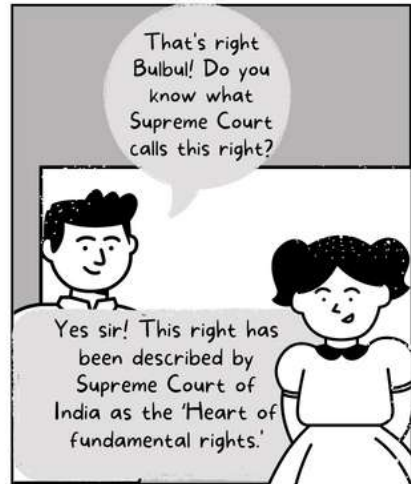
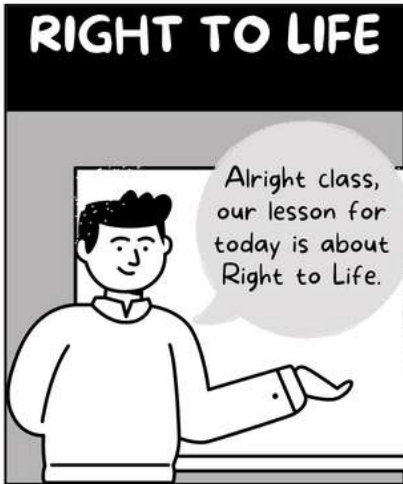


Illustration by Kunal Gupta

