

PRO BONO CLUB SCHEME

SYMBIOSIS LAW SCHOOL, NOIDA

NEWSLETTER



EDITION #22.3
OCTOBER- NOVEMBER 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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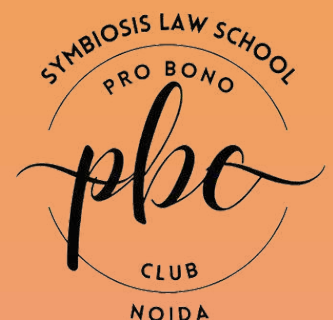


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PRO BONO CLUB ACTIVITIES

OCTOBER - NOVEMBER 2022

Monthly Meeting of Pro Bono Club

This Monthly Meeting of the Pro Bono Club Symbiosis Law School, NOIDA was conducted on November 4, 2022, via MS Teams. The meeting was presided over by Ms. Megha Nagpal, Head & Faculty Advisor- Pro Bono Club. All members of the club were present for the meeting. The Pro Bono Club Members took stock of the activities conducted so far, and discussed strategies to get more cases and people to help. The Pro Bono Club is moving forward in a structured manner. Selection for Newsletter Team, Administrative Assistance, and Alumni Connect was done after face-to-face interaction with the faculty advisor on November 8, 2022.

Legal Remedies for Domestic Violence (Legal Awareness Camp): October 7, 2022

A Legal Awareness Camp was conducted on the topic "Legal Remedies for Domestic Violence" at Rasoolpur Nawada village, Sector- 62, NOIDA, on October 7, 2022. The main objective was to interact with female village residents to spread the knowledge of legal recourse available if domestic violence occurs with any woman. The Pro Bono Associates conducting the camp were Nandeesh Nanda, Daksh Gupta and Ananya Dhawan.



An interactive session was conducted where the procedure of approaching the protection officer under the Act and filing an Application to the Magistrate was discussed. The Pro Bono Club is committed to working with momentum and enthusiasm in all its activities.

Legal Remedies for Acid Attack Survivors: October 18, 2022

A Legal Awareness Camp was conducted on the topic "Legal Remedies for Acid Attack Survivors" at PGI Institute and Dr. Bhim Rao Ambedkar Hospital, Sector 30, NOIDA, on 18 October 2022. The Pro Bono Associates conducting the camp were Shreya Tewari, Chaitanya Popli, and Aarshia B.S. The PBAs interacted with the medical staff of the hospital and also the general public present to spread awareness about the legal recourse available to acid attack survivors and the various schemes and measures enforced to facilitate them in receiving adequate compensation.



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Legal Awareness Camp on Rights of Transgender Person: October 25, 2022

A Legal Awareness Camp was conducted on the topic "Rights of Transgender Person" at Garima Greh, Khagaul, Patna, on October 25, 2022. The Pro Bono Associate conducting the camp was Swadha Narayan. The camp aimed at understanding and acknowledging the challenges confronted by transgender individuals in daily life while also making students aware of their rights under the Transgender Persons (Protection of Rights) Act, 2019.



The campaign was a success, and because it was the second campaign on transgender rights, we hope to raise awareness on the same subject and continue this effort in the Pro-Bono Club with the same zeal and excitement.

Legal Awareness Camp on Rights of Transgender Person: November 21, 2022

A Legal Awareness Camp was conducted on the topic "Rights of Transgender Person" at Garima Greh, Delhi, on November 21, 2022. The Pro Bono Associates conducting the camp were Swadha Narayan, Savar Wahi, and Sanvi Jain. The PBAs informed the attendees of the Rights of Transgender Persons under the 2019 Act, discussed the injustices encountered by them, and also shared reflections on why transgender individuals should be treated equally in society through their pamphlet.



The residents of the garima greh showed a keen interest and freely spoke with the students about their concerns. Throughout the campaign, it became evident that transgender individuals do require legal support and how society, especially their families, must accept them for who they are, for them to realise their rights guaranteed under law.



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Constitution Day Celebrations along with DOJ's 12th National Webinar on "Constitutional Rights and Fundamental Duties" – November 25, 2022

The student members of Pro-Bono Club SLS NOIDA along with the Faculty in-charge Ms. Nagpal collected in the Student Activity Room of the law school for Preamble reading followed by participation in the 12th National Webinar on "Constitutional Rights and Fundamental Duties" organized by the Department of Justice, Ministry of Law and Justice, Government of India under the Designing Innovative Solutions and Holistic Access to Justice (DISHA) Scheme of which the Nyaya Bandhu Programme is a part.

The webinar was a wonderful experience which gave its viewers the opportunity to dive deep into constitutional questions and understand a citizen's relationship with this living document with emphasis on fundamental duties.



Prevention of Child Labour (Legal Awareness Programme) – November 26, 2022

Keeping in view of the sensitive nature of this topic, a legal awareness programme was conducted by Naman Sharma, Tarjani Singh, and Shambhavi Dubey on 'Prevention of Child Labour' at one of the adopted villages of PBCS at Khora Colony in Sector 62, Noida on 26th November 2022. The camp was organized to generate awareness among people of all ages to refrain from employing children under the age of 14 as well as reporting any such illegal employment of children to the law enforcement authorities.



PREVENTION OF SEXUAL HARASSMENT AT WORKPLACE: AN OVERVIEW OF THE ACT OF 2013

by Saptodwipa Sarkar



Background of POSH Act

Sexual Harassment at workplace is presently covered under the special legislation named The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. Previously, sexual harassment at workplace was not considered as a separate offence and the person facing such harassment had to lodge an FIR under Section 354 of the IPC 1860 which is about "use of Assault or Criminal Force to women with intent to outrage her modesty" and Section 509 that punishes people for using a "word, gesture or act intended to insult the modesty of a woman". During the 1990s, an employee of the Rajasthan Government named Bhanwari Devi was brutally raped by the local landlords and the available legal remedies could not serve justice to her. After this heinous instance, a women's rights group known as *Vishaka* filed a PIL in this matter before the Hon'ble Supreme Court of India. This case drew the attention of the Supreme court towards the issue of sexual harassment at workplace and regarding the absence of legislation regarding the same. In the judgment of *Vishaka and Ors. Vs. State of Rajasthan*, the famous Vishaka guidelines were stipulated by the court. These guidelines were later on incorporated in the aforementioned legislation in a more systematic manner.

SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013:

This Act was enacted in the year 2013 and it is India's first law dealing specifically with the sexual harassment at workplace. The Act which is commonly known as POSH Act, superseded the Vishaka guidelines and was drafted keeping in consideration the same.

This Act aims to provide a safe and secured work environment to women of any age or employment status. Both the organized and unorganized sectors come under the purview of this Act. Hence, women working at unorganized sectors (such as in the capacity of maids, daily wage earners, shop dealers etc.) can also claim remedy under POSH Act. The statute applies to all government bodies, private and public sector organizations, non-governmental organizations, organizations carrying out commercial, vocational, educational, entertainment, industrial, financial activities, hospitals and so on.

It is noteworthy in this context that the definition of an 'employee' under the POSH Act is much wider than that of Vishaka guidelines. It includes regular, temporary, ad hoc employees, individuals engaged in daily wage basis, directly or through an agent, with or without the knowledge of primary employer and irrespective of whether the terms of employment are express or implied. The Act widened the meaning of workplace through the concept of 'extended workplace'. Therefore, workplace includes any place visited by the employee arising out of or during the course of employment, including transportation facilities if provided by the employer for the purpose of commuting to and from the place of employment.

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The Act provides for the establishment of Internal Complaints Committee (ICC) at each and every office or branches of the organization that has 10 or more employees, in order to provide a forum for filing complaints to facilitate fast redressal of the grievances pertaining to sexual harassment. ICC would be beneficial in case of organized sectors. However, the Act also provides for the establishment of Local Complaints Committee (LCC) at district level by the Government in order to investigate and redress complaints of sexual harassment of the unorganized sector or from those establishments where the ICC has not been constituted for the reason being, it having less than 10 employees. The POSH Act also provides for compensation to the aggrieved woman based on mental trauma and suffering, loss in career options, medical expenses (either physical or psychological), income and status of the respondent etc. Such payment can be executed in the form of lump sum or instalments depending upon the circumstances

GRIEVANCE REDRESSAL MECHANISM IN ABSENCE OF ICC UNDER THE POSH ACT:

Since a large number of women in India work in the unorganized sector which does not have the facility of ICC within, it is pertinent to mention the mechanism through which such aggrieved women can report sexual harassment without directly having to lodge an FIR. As mentioned above, each district has a local complaints committee to manage the complaints. One should file the complaint in writing to the LCC within 3 months from the date of incident. Upon the request of the aggrieved woman, LCC can help in conciliation of the matter before initiating the inquiry. In case the respondent does not follow terms and conditions of initial conciliation; same process of inquiry (as mentioned below) can take place. However, no such conciliation can be forced on the aggrieved woman and in case no such conciliation is requested by the aggrieved woman, the complaint must be carried forward by LCC by initiating an inquiry. Power of LCC stands equivalent to Civil Court in terms conducting the inquiry which includes issuance of summons, enforcing attendance etc. Thereupon, if deemed fit, LCC shall forward the complaint after due inquiry to the police station for registration of FIR under section 509 or such other provisions under IPC within seven days and if LCC keeps the case under its own jurisdiction; upon the completion of inquiry, report must be submitted to the District Officer (as notified by government under Section 5 of the POSH Act²) to take action for the sexual harassment. Finally, on being convicted, respondent will be bound to pay monetary compensation under POSH Act.

1 (1997) 6 SCC 241.

2. Section 5. Notification of District Officer—The appropriate Government may notify a District Magistrate or Additional District Magistrate or the Collector or Deputy Collector as a District Officer for every District to exercise powers or discharge functions under this Act.

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 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.

Legal News



Suo Moto action to be taken by police against cases of Hate Speech

By Daksh Gupta

The Supreme court, on October 21, directed the police departments of New Delhi, Uttar Pradesh and Uttarakhand to take *Suo moto* action against acts attracting certain specific provisions relating to "hate speech".

The direction came as an order in the case titled, *Shaheen Abdullah v Union of India & Ors.*, Writ Petition (Civil) Number 940/2022. The plea by Mr. Shaheen Abdullah sought directions from the court concerning "growing menace of targeting and terrorizing the Muslim community in India."

The court has expressed strong concerns regarding the prevailing religious differences threatening the very idea of secularism envisaged in the constitution. The court emphasized upon fraternity and carrying out of the direction in an invariable manner irrespective of the religious affiliations of the offender.

The bench Consisting justices KM Joseph and Hrishikesh Roy directed the concerned governments to deal with subsequent cases of hate speech in the manner directed. The court warned that any hesitation to act as per these directions would be viewed as contemptuous.

DIRECTIONS GIVEN BY THE SUPREME COURT -

The court has directed the concerned authorities of Delhi, UP and Uttarakhand to:

1. File a report of actions taken with respect to cases falling under this subject matter.
2. Take *suo-moto* action against any act which might be an offence under Section 153A, 153B, 295A, 505 of IPC.
3. Perform the above actions in a secular manner

This means that the police department should not wait for complaints to be made for such an offence being committed to take action. Cases should be *suo-motu* registered and the offenders should be proceeded against in accordance with law.

One of the important aspects of the directions is the contemptuous liability which would be attracted in case of hesitation in taking *suo-moto* action which creates an accountability over the department to take expedient actions.

PENALTY FOR HATE SPEECH IN THE I.P.C.

Section 153A of the Indian Penal Code, criminalises acts promoting enmity between different groups on ground of religion, race, place of birth, residence, language, etc. Acts can be words, either spoken or written or signs or visible representations. The offence is a cognizable offence and thus a police officer can arrest without a warrant in such a case. The punishment prescribed in the section is either fine or imprisonment which may extend to 3 years or both.

Sections 504 and 505 criminalise insults or statement intended to breach public, provoke hatred or create enmity.

Section 295 and 295A criminalise acts intended to insult religion of any class of persons.

Section 196 of the Criminal Procedure Code makes it compulsory to obtain sanction of the state or central government before a court takes cognizance for offences under Section 153A, 295A or sub-section (1) of Section 505. However, no such sanction is required for the police to take action under Section 153A.

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EWS Quota upheld by the Supreme Court

by Saanvi Jain and Naman Sharma



The Supreme Court on November 7th, 2022 upheld Economically Weaker Section (EWS) reservation as constitutionally valid by a vote of 3:2. Justice S. Ravindra Bhat, speaking for himself and Chief Justice U.U. Lalit, wrote a dissent. Justices Dinesh Maheshwari, Ms. Trivedi, and J.B. Pardiwala each wrote a separate concurring opinion for the majority. Reservation is "an mechanism for adding any section so deprived, as well as for integrating socially and educationally backward stratum to the mainstream of society," according to the majority judgement, which was written by one of the five judges on the Constitution Bench. The dissenting justices held that while the "economic conditions" per se were acceptable in relation to accessibility to public goods, this was not the case for Article 16, whose goal is emancipation through community representation.

EWS Quota explained

Introduced by the 103rd Constitutional Amendment Act of 2019, This reservation policy seeks to implement a 10% reservation in employment and education for those in the society who are at a disadvantage due to their economically weaker position. Thus, the State can make further reservations in educational institutions and jobs for EWS beyond the reservation currently in place, provided it is restricted to 10%.

Why was the reservation challenged?

Three grounds were contended as challenges to the EWS quota -

- 1) This type of reservation is founded on economic criteria. This violates the 'basic structure' of the Constitution.
- 2) The exclusion of Scheduled Castes, Scheduled Tribes and the non-creamy layer of Other Backward Classes (that is, the members of the OBCs who are economically disadvantaged) from the EWS quota is discriminatory.
- 3) A further increase in reservation by 10% is beyond the 50% reservation limit set by previous judgements of the Apex Court.

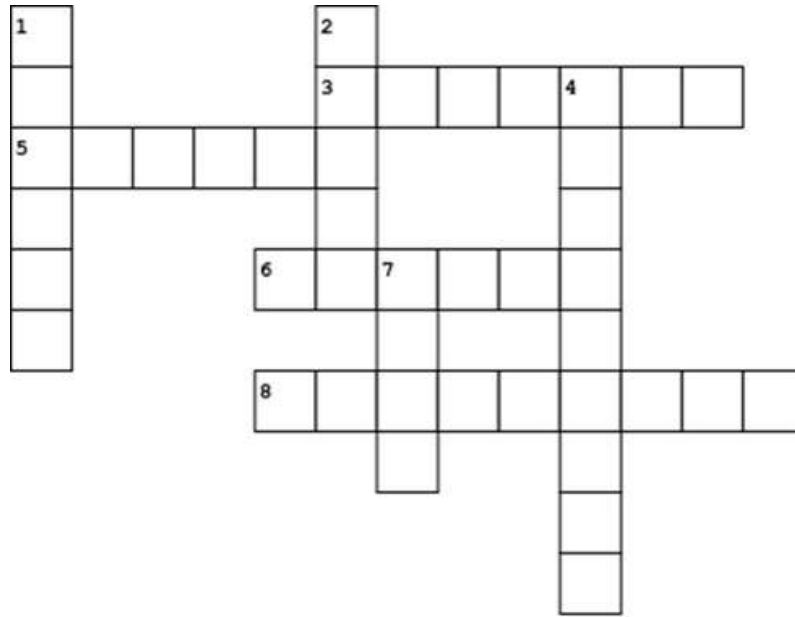
Key findings of the Supreme Court

The court held the contention of the constitutional scheme providing reservation only for SEBCs/OBCs/SCs/STs given the language of Articles 15(4), 15(5) and 16(4) of the Constitution as flawed. Such a presumption is neither true nor consistent with our system of government. This line of reasoning falls short of the essential constitutional goals, which include promoting fraternity among all people and providing "Justice, social, economic and political" for "all" citizens. The reservation aims to benefit those economically disadvantaged class of people who have till now not got the benefit of affirmative action (particularly of reservation), which was granted to the SEBCs/OBCs/SCs/STs.

Beneficiaries of compensatory discrimination that is, discrimination in favour of these beneficiaries to compensate for past or continuing injustice, under Articles 15(4), 15(5) and 16(4), cannot protest that they have been excluded from compensatory discrimination for another class. If the new class does not exclude classes for whom affirmative action is already in place, it would be a case of unjustified discrimination.

In prior judgements, the Supreme Court had held 50% reservation as the permissible limits of affirmative action, keeping in mind the potential harm that preferential treatment could cause the general merit candidates. However, this has to be read in the context of the reservation arising from Articles 15(4), 15(5) and 16(4) or other areas of affirmative action. It cannot be expanded to reservation provided for an entirely different class, i.e., the economically weaker sections.

Fun with words



Crossword designed by Shubhra Goyal

Across

3. This is a courtroom drama where a man is accused of sexual harassment by his former lover and he has to prove his innocence in order to restore his dignity.
5. This film gives an account of a certain Human Rights Lawyer in Mumbai, an ordinary citizen with an extraordinary commitment to justice. This courtroom drama envisages the stories of the individuals who are being imprisoned without being guilty or even having any primary proof of wrongdoing.
6. After witnessing a rape in her own household, the protagonist fights for justice for the deceased victim. However, she faces a bunch of challenges until she meets a disgraced lawyer who decides to fight the case and bring the culprits to justice.
8. This is a Bollywood film starring Akshay Kumar. It portrays a reflection of the Indian Judicial System. The main premise of this movie is that getting justice is challenging but not impossible. Martin Luther King's adage that "injustice everywhere is a menace to justice everywhere" is also acknowledged in this movie.

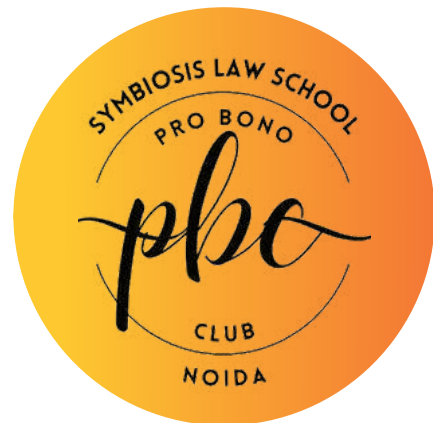
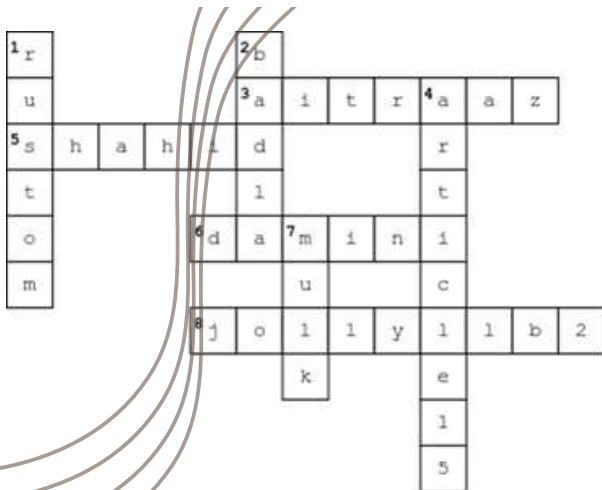
Down

1. This film is based on the famous case of K.M. Nanavati Vs UOI and narrates the story of a naval officer whose wife is having an extra-marital affair with a businessman. Soon, he surrenders after murdering the lover but as the case unfolds, it reveals his hidden intention.
2. This movie depicts a dynamic young entrepreneur who finds herself locked in a hotel room with the corpse of her dead lover. She hires a prestigious lawyer to defend her and they work together to figure out what actually happened.
4. This is a recent Bollywood investigative drama, in which an upright police officer sets out on a crusade against violent caste-based crimes and discrimination.
7. This movie is based on a real story, and the movie depicts the struggle faced by a Muslim family to retrieve their privilege back when one of their family members gets caught in terrorism.

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Illustration By: Kunal Gupta



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

Newsletter Designed by Newsletter Team for Pro Bono Club, SLS NOIDA

Pro Bono Associates

Academic Year 2022-23

1. Aarshia Shantharam
2. Ananya Dhawan
3. Chaitanya Popli
4. Daksh Gupta
5. Jay Wadhwa
6. Kanak Verma
7. Kunal Gupta
8. Mahek Gupta
9. Naman Sharma
10. Nandeesh Nanda
11. Rangita Chowdhury
12. Sanvi Jain
13. Saptodwipa Sarkar
14. Savar Wahi
15. Shambhavi Dubey
16. Shreya Tiwari
17. Shubhra Goyal
18. Swadha Narayan
19. Tarjani Singh
20. 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