

Editorial Note

The NUJS Law Review was uniquely founded as a wholly student-run journal, with the objective of familiarising students with the opportunities and responsibilities associated with the production of cutting-edge legal scholarship. The ethos of academic excellence instituted by Professor M. P. Singh has continually guided the editorial boards' ventures into new avenues of creation and dissemination of knowledge. The Review has sought to stride forth in expanding the frontiers of how the law is envisaged to operate, and what its immense potential could be, in a rapidly evolving society grappling with complex interdisciplinary questions of power, politics, technology, and the law.

This quintessence is reflected in the variegated activities undertaken by the NUJS Law Review, in addition to publishing issues containing articles relating to themes of contemporary legal relevance. In the past month, select Editors and Members of the Review have prepared an official response paper to the Law Commission of India's '*Summary of draft working paper on Simultaneous Elections - Constitutional and Legal perspectives*', available for perusal on the Review's website. Similarly, the Review regularly releases 'Weekly Notes' across its social media platforms, which provide short legal primers on current legal themes mobilising mainstream public discourse. Thus, members have written on a variety of issues ranging from the implications of the Supreme Court's verdict on the issue of statehood of the National Capital Territory of Delhi, to the affirmation of the right of self-identification of transgender persons in a recent Kerala High Court judgment. These initiatives are but a few instances of the Review's long-term and sustained commitment to progressive legal scholarship, challenging and redefining the roles traditionally ascribed to legal academic journals.

In keeping with this tenor, we are proud to present exceptional legal analysis on various realms of law and policy, in this issue. Broadly, this issue covers areas of constitutional law, law and religion, universal basic income, corporate law, and disability jurisprudence.

In '*Judicial Review of reservation in promotion: A fading promise of equality in services guaranteed by Indian Constitution*', Arpita Sarkar argues that the Supreme Court of India's scepticism about reservation in promotion has materially influenced its jurisprudence in this arena, critically denuding the promise of equality imbricate in the Indian constitutional scheme. The author questions the trends prevalent in the Supreme Court's attitude towards reservation in promotion policies in employment schemes. The analysis undertaken leads the author to argue that the aggravated levels of judicial review on the issue, akin to invocation of the strict scrutiny principle, have resulted in turning Article 16(4-A) of the Indian Constitution into a hollow promise of equality.

April-June, 2018

EDITORIAL NOTE

Authors Niraj Kumar and Akhilendra Pratap Singh delve into the current contestations in the law and religion discourse, in their article '*Invalidating Instant Triple Talaq: Is the Top-Down Approach of Reforming Personal Laws Prudent?*'. Against the backdrop of the recent judgment delivered by the Supreme Court in *Shayara Bano v. Union of India*, where the Court pronounced a split, though bold and progressive verdict setting aside the practice of instant triple talaq or talaq-e-biddat, this paper traces the jurisprudence evolved by Indian courts vis-à-vis personal laws and the right to religious freedom. The authors then proceed to demonstrate that *firstly*, the courts in India have not adopted a consistent approach when dealing with issues connected to personal laws; and that *secondly*, the courts, by means of the doctrine of essential religious practices have, besides interfering in the domain of personal laws, attempted to fashion the religion specific personal laws as per the understanding of the respective judges. While showing that the top-down approach of personal law reform has not fared well in the Indian context, the authors suggest a different and more inclusive approach which can be adopted in the endeavour to reform personal laws in India.

In '*A Case for Universal Basic Income in India*', authors Shrikrishna Upadhyaya and Sukriti, tackle a contentious issue in contemporary discourse on public policy – the concept of universal basic income ('UBI'). After analysing the dignity-rights framework in extensive detail, they argue for the institution of a UBI system in India based on a right to basic income posited within the conception of substantive dignity, thus, formulating a robust normative framework and theoretical justification for basic income. The authors in their comprehensive study of UBI in the Indian context offer a critical examination of the practicality of UBI after closely scrutinising the idea as proposed in the Economic Survey 2016-17. The implementation of a nationwide UBI in India appears critically hinged to the fate of Aadhar, the constitutionality of which is yet to be pronounced upon by the Supreme Court of India.

Bhavya Nahar in his article titled '*Reviewing the Ambit of 'Control' Apropos to the Objective of 'Mandatory Bids': An Analysis under the Takeover Regulations*' impugns the sustainability of the current numerical threshold for mandatory bids under the Indian Takeover Regulations. The author attempts to unravel the actual justification behind having mandatory bids, comparing the interests of minority shareholders and majority shareholders. In furtherance of this, the author expounds on the considerations that SEBI should take while determining indirect control, and challenges its approach hitherto. Subsequently, the author argues why significant influence in certain instances may also amount to control as under competition law, and correlates this with corporate governance practices. Arguing for a balanced approach, the author eventually undertakes a cross-comparative study of the exceptions for mandatory bids, and argues for comparable approach in India.

EDITORIAL NOTE

Last but not the least, Prerna and Vaagisha in '*Therapeutic Jurisprudence and Disability Rights: A Case Study on the Trial of Anna Stubblefield*' write a thought-provoking article assessing the impact of the core principles of therapeutic jurisprudence on disabled participants. This article is specifically inspired by the high profile case of Anna Stubblefield that took place before the United States District Court of New Jersey. A professor was charged with sexual assault for allegedly engaging in non-consensual sexual activity with an intellectually disabled man having cerebral palsy. In light of this, the authors analyse the instances of how the institutional and attitudinal barriers in this regard prevent access of justice, and how the ableist language is used in the course of the trial, at the cost of dehumanising the victim. The authors argue for the adoption of a situational approach applying the principles of therapeutic jurisprudence that can maximise a disabled person's chances of being treated with dignity.

This issue represents the NUJS Law Review's persistent resolve to address legal issues on current developments in the country. We hope this issue serves as an excellent source for academic and practical research, and that you enjoy reading the articles. We would sincerely like to thank all the authors for their contribution to the journal, the editors and the members for reviewing, editing and finalising the articles, and the advisers for their valuable assistance in preparing this issue.

Truly,

Editorial Board (2018 – 2019)

Volume 11 Issue 2

NUJS Law Review

April-June, 2018