

IN MEMORIAM: LATE PROF. (DR.) SHAMNAD BASHEER

*From the Desk of the Editor-in-Chief, the Vice-Chancellor of NUJS
Prof. (Dr.) NK Chakrabarti **

Late Prof. (Dr.) Shamnad Basheer has always been intrinsically linked to NUJS, and somehow deeply connected to everybody who is a part of this institution. His demise nearly one year ago now, thus, is a loss that all of us felt on a deeply personal level, although many of us did not know him personally. This was only testament to the fact that he had touched many, many lives without even having realised that he had done so. His energy was vivacious, his words always kind, and his spirit undefeatable. His work continues to inspire us today, and in remembrance of his legacy, the Editorial Board respectfully dedicates this Issue of the NUJS Law Review to him. We hope to honour the academic, scholar, and teacher that he was, but we also wish to remember him as a student who was always passionate to learn. Despite his successes and being host to vast amounts of knowledge, he never shied away from continually engaging with more and more.

Shamnad was always a keen academic and a prolific writer. He wrote not only for prestigious journals, but also, wrote extensively for his open-access blog, SpicyIP, apart from contributing to discussions on complex matters in a precise and simple manner for law students and laypersons alike. He went on to build a formidable scholarship in intellectual property law, and relatedly, coedited a book with Neil Wilkoff titled *Overlapping Intellectual Property Rights*,¹ where an in-depth understanding of IP rights across the UK, US and EU jurisdictions was presented. His writing was recognised world over, and he went on to win the Stanford Technology Review essay competition,² the International Association for the Advancement of Teaching and Training in Intellectual Property (ATRIPS) prize for his work on the Patents Act, 1970, and an essay competition hosted by CREATE on the intermingling of intellectual property and artificial intelligence.³

The essay he wrote for the ATRIPS prize is particularly notable, as he went on to write his PhD thesis at Oxford University on the same subject. The essay was written on the patentability of the anti-cancer drug Glivec, formulated by Novartis. When the patent application for the drug was rejected, it was drawn to litigation by Novartis. In his work, Shamnad, examining Section 3(d) of the Patents Act, 1970, argued that there was a need to reform how Indian legislators and adjudicators saw patentability. He adopted a 3-D lens to view the issue, accounting for the interests of not only the consumers of the drug and the multinational corporations involved in their production, but also the domestic producers of such drugs. Need to balance between innovation and public health, Shamnad argued, was paramount. Today, nearly thirteen years later after Shamnad won the honour, the ATRIPS prize is one of the most respected awards for young scholars in the arena of intellectual property law. It is only befitting that its first recipient was Shamnad, as he has shaped how both Indian and global audiences understand intellectual property regulations.

* Prof. (Dr.) NK Chakrabarti is the Vice-Chancellor of NUJS. He also serves as the Editor-in-Chief of the NUJS Law Review.

¹ NEIL WILKOF & SHAMNAD BASHEER, *OVERLAPPING INTELLECTUAL PROPERTY RIGHTS* (2000).

² Shamnad Basheer, *'Policy Style' Reasoning at the Indian Patent Office*, 3 *INTELLECTUAL PROPERTY QUARTERLY* 309-323 (2005).

³ Shamnad Basheer, *Artificial Invention: Mind the Machine!*, 13(3) *SCRIPTED* (2016).

Although his ATRIPS prize-winning essay was written long before his academic intervention in the landmark case of *Novartis v. Union of India*,⁴ the essay was presumably the starting point of his interest in the patentability of life-saving pharmaceutical drugs. His decision to intervene in the matter and provide academic assistance to the Supreme Court was rather unconventional, but absolutely necessary. His arguments in the matter were heard by the bench over two days, and received appreciation from judges, students, the media, and laypersons alike. His appearance in court was described by one of the lawyers as “logical, uncluttered, and with a delightful sprinkling of anecdotes”, which replicated his instruction in classrooms, as well.⁵ In this instance, Shamnad went on to convince the court, and also the world, that allowing patents in instances involving life-saving drugs could be detrimental and antithetical to the ethos of public order, morality, and intellectual property regulation.

Although he started his professional career as a litigator with the IP firm Anand & Anand, and went on to head their telecommunication and technology practice,⁶ Shamnad returned to teaching. It was his way of gaining insight into the minds of his students, offering them unique perspectives on various different things, and also learning from what they had to say. He was a Ministry of Human Resource Development Chair Professor of Intellectual Property Law here at NUJS, before which he taught at the George Washington University Law School in Washington DC as the Frank H. Marks Visiting Associate Professor. He also spent time at Oxford University as a Research Associate with the Oxford Intellectual Property Research Center.⁷ While he was teaching at the George Washington University, he coauthored a paper on the doctrine of equivalents in patents with Nicholas Pumfrey, Martin J. Adelman, Raj S. Dave, Peter Meier-Beck, Yukio Nagasawa, Maximilian Rospatt & Martin Sulsky.⁸ Since its publication, this paper has been downloaded nearly 10,000 times, which only goes on to show the massive contribution Shamnad’s work has had in developing intellectual property jurisprudence, and understanding the intricacies involved in the subject. Later in life, he went on to be the Honorary Research Chair of IP Law at Nirma University, and a visiting Professor of Law at the University of Pennsylvania and the National Law School of India University, Bangalore. Shamnad was awarded Best Teacher Award by Menon Institute of Legal Advocacy (MILAT) in 2017.

Shamnad’s passion for Indian legal education went well beyond the classroom, as well. He was the Founding Director and Managing Trustee of IDIA (Increasing Diversity by Increasing Access to Legal Education), a nonprofit organisation dedicated to opening up entry barriers to legal education in the country.⁹ IDIA was Shamnad’s vision, led into fruition with the support of his friends and well-wishers. He wanted to truly embody the spirit of diversity, and was of the firm belief that legal education in the country had to go beyond the urban, upper/middle-class, English-speaking elite for it to be truly successful. This was in line with

⁴ *Novartis AG v. Union of India*, (2013) 6 SCC 1.

⁵ Prashant Reddy, *A successful academic intervention before the Supreme Court in the Novartis – Glivec patent case*, November 20, 2012, available at <https://spicyip.com/2012/11/a-successful-academic-intervention.html> (Last visited on August 20, 2020).

⁶ India Business Law Journal, *Shamnad Basheer: A ‘guiding light’ fades away*, August 10, 2019, available at <https://www.vantageasia.com/shamnad-basheer-guiding-light-fades-away/> (Last visited on August 20, 2020).

⁷ SpicyIP, *Shamnad Basheer*, available at <https://spicyip.com/author/shamnad-basheer> (Last visited on August 20, 2020).

⁸ Nicholas Pumfrey, Martin J. Adelman, Shamnad Basheer, Raj S. Dave, Peter Meier-Beck, Yukio Nagasawa, Maximilian Rospatt & Martin Sulsky, *The doctrine of equivalents in various patent regimes-does anybody have it right?*, 11(1) *YALE J.L. & TECH* (2009).

⁹ IDIA, *About Us*, available at <https://www.idialaw.org/about-us/> (Last visited on August 20, 2020).

Prof. NR Madhava Menon's conceptualisation for the National Law Universities, where he imagined that 'social engineers' would be created. IDIA is now a pan-India movement led by students themselves, where awareness camps are held to initiate young children into pursuing a career in law. This is followed by recruiting promising students and assisting them in sitting for law entrance examinations. On securing admission to law schools, IDIA provides continued financial assistance, mentorship, and academic help to these scholars. What started out as a dream, allowed many young children with disabilities, financial impairments, and social hurdles to receive Shamnad's guidance. He personally mentored and even tutored some students. Today, many of these IDIA scholars have graduated from prestigious law schools and carry on Shamnad's legacy.

It has been over a year since Shamnad left us, but the work ethic he inculcated in his team at IDIA or SpicyIP, and set as an example for all others to follow, lives on. The dedication with which he pursued all the projects he initiated is unparalleled. However, what stands out the most is the limitless nature of Shamnad's dreams. He did not let himself be bound by societal expectations or barriers. Instead, he set out to revolutionise the system. He wanted to change how students studied, how judges adjudicated, how readers read academic work, and most importantly, without realising, he changed how an entire generation of young lawyers dreamt. By dedicating this Issue of the NUJS Law Review to him, we only wish for his life to act as a constant reminder for us at NUJS and our readers across the globe. A reminder to never stop learning, to live passionately, to give back to society with fervor, and to deeply value all the relationships we build along the way. We are positive that his spirit will live on in each of us, and this dedication is merely a small token of our appreciation for a man whose life was anything but small.

TO SIR, WITH LOVE

*Deepak Raju**

In the life of institutions, there sometimes comes a brief period of idealistic optimism; a window when despite the limitations and bureaucratic hurdles of the real world, people dream of accomplishing great things. Such a period began for NUJS when I was a third year law student there. Prof. MP Singh had taken over as the new Vice Chancellor, and had brought a handful of young and idealistic academics with him. For a moment, it appeared (at least to us students) that they would emerge victorious against the Old Guard who wanted to preserve status quo. From a typical Indian educational institution which spent all its energy on petty bureaucratic fights and on making lives as difficult as can be for the students (and faculty), NUJS suddenly turned around. There was talk of academic reform, there were classes worth attending even without perks of additional marks for attendance, people and the institution set their eyes on excellence, and suddenly, ensuring that the students were locked up in the hostels at 9pm was no longer the university's highest priority.

It was into that climate that Prof. Shamnad Basheer walked in. The Intellectual Property ('IP') nerds like my friend Mathews P. George immediately took to him. A lot of women on campus immediately took note of his physique. Being neither an IP-nerd nor a woman, I withheld my judgment till much later.

One day, I needed an NUJS letterhead to publish some notice for the Moot Court Society. The nearest source for that stuff, since it was late and the administrative offices were closed, was Prof. Basheer's office. So, I walked in and asked to borrow one. The response was, "naattil evideyaa?" (from which part of Kerala do you come?). What was meant to be an in-and-out visit to borrow a letterhead became a much longer chat, where he asked a number of questions about me.

One little detail I vividly remember from that first conversation is that he shared one of the lamest jokes I have ever heard in my life – "agar Rupa ki underwear pahanoge to Rupa kya pahanegi?" (*if you wear Rupa's [brand] underwear, what will Rupa wear?*). Many years later, I returned the favour, by proposing (against Rukmini Das's – NUJS alumna and my wife – advice to the contrary), that one of his IP initiatives should adopt the motto, "IP, You P, We all P, for IP". I know that is lame, but he laughed heartily. This is not to say Prof. Basheer's sense of humor was lame like mine. He had a range. He would chuckle at the lamest pun (like the time he suggested someone in the arbitration world, who was giving me a hard time, was worthy of being called an "arbitrator" because he was "arbit[rary]" and a "traitor"); but he also had the funniest long stories, like the one about a time when he was asked to hold an enquiry into a fight that broke out at a student farewell party, and got all confused by the nicknames by which the students referred to each other in their testimonies. He took a lot of pride in having convinced two nerdy students that the secret to his superior intellect was coconut toddy; when

* Deepak Raju is an NUJS alumnus of the 2011 batch. He is currently a Senior Associate at Sidley Austin LLP, Geneva, focusing on international trade disputes and arbitration. Along with his wife Rukmini Das, he also guest teaches a course on Settlement of International Disputes at NUJS.

asked if he would share some, he warned them that it came with a cost – one had to trade one’s “potency” for the toddy’s brain-enhancing powers.

During my time at NUJS, Prof. Basheer never taught me in a classroom. In fact, whenever I needed it, he even provided me excuses to skip the boring classes. However, that did not prevent him from becoming a teacher to me in the true sense.

When he launched Increasing Diversity by Increasing Access (‘IDIA’), a number of students including me were immediately drawn to the idea. As simple as the concept sounds, it was not an uncontroversial one. Among the students, there were those who felt (and said) that Prof. Basheer’s idea of going to the remote villages and encouraging students from underprivileged backgrounds would fill NUJS with “*dehati*” kids who would dilute its brand. Being someone whose hometown and accent were far from fashionable in NUJS (*dehati*, if you prefer that word), I loved the cause and volunteered.

As a volunteer for IDIA, I soon discovered that IDIA was not all about dreams and happy thoughts; there was backbreaking work to be done, and Prof. Basheer was a task-master. When the first batch of IDIA scholars appeared for the Common Law Admission Test (‘CLAT’), and many successfully cleared it, the task of working out who would make it to which law school on what quota fell on me. Of course, Prof. Basheer was not the type to patiently wait till the law schools published their own lists; he wanted to know as soon as possible; he wanted to be ready if the law schools made a mistake. The fact that I was doing this from Nedumkandam with slow and intermittent internet was no excuse he would accept. My phone rang every five minutes or so.

After I left NUJS, Prof. Basheer and I remained in regular touch. When I was working in Bombay, he came visiting. I remember him telling my friend and housemate Ramanuj Mukherjee to quit his job, and he did. Soon after I moved to Delhi, he called to say a law school was arbitrarily refusing to admit a scholar who had qualified in the CLAT, and needed help suing the law school. He put together an army of lawyers and law students, working from Delhi, Bombay, Calcutta and Gandhinagar, and the law school changed its position in less than a week. That student has now graduated. When it was time for my LL. M applications, he agreed to be one of my referees and said some very kind things in his references.

When I got married in December 2016, Prof. Basheer made the journey to my hometown, Nedumkandam, despite his failing health. That must have been a truly exhausting journey, given that getting to Nedumkandam requires 3-4 hours of travel by winding hilly roads from the nearest airport. The exhaustion, however, did not dampen his spirits. My mother-in-law remembers him fondly for referring to my father-in-law as “uncle” but not referring to her as “auntie”. My wife’s cousin, a medical student in the United States, remembers Prof. Basheer for his advice that he do part of his training in India to acquaint himself with our richer collection of diseases. Another friend remembers his metaphysical rant about how it might be possible to turn people into potato salads. The hotel staff must remember him as the person who, when Rukmini scolded them for not getting things done, came to their defence, telling her that it was Christmas eve and it was okay for the hotel staff to disappear for a drink or two.

The night of my wedding, my father-in-law caught Prof. Basheer working very late into the night. He even lectured Rukmini on how we should emulate our professor’s hardworking nature. The next morning, we found out what he was working so hard on. He was writing a

piece for the IDIA blog, where he rendered a very kind and somewhat exaggerated telling of Rukmini's and my association with IDIA, and expressing his joy at being a part of our wedding.

A few months later, he visited us in Geneva, and stayed for a few days. Again, his health condition made his trip difficult, but did not dampen his spirits. His stay here was packed with meetings with his old friends, and who-is-who of the IP world. He also got us hooked on amaranth cookies, his preferred healthy snack. The Tibetan prayer flags he brought us on that visit catch wind and do their thing whenever we leave the windows open in the Geneva summer.

A couple of months ago, as I was waiting for my bus to office, I got a call from Prof. Basheer. He started with the usual "da Deepak-e". Without any exchange of pleasantries, he dived straight into the reason for his call. He was watching the live-streaming of oral arguments in a case before the International Court of Justice ('ICJ'). He found one of the lawyers very impressive in his style. Not an expert in international law himself, he wanted me to tell him if the guy was right on the substance. I promised to get back to him. He then went on to talk about the importance of advocacy skills and what we could do to help IDIA scholars on that front. Fast forward a few months and the ICJ judgment in that case was released. I wrote an op-ed piece on the judgment, and made a mental note to send it to Prof. Basheer in partial response to his question. My piece only got the final green-light for publication as I was boarding a flight for a few days of travel, and I never got to send him that email. That is a conversation we will never get to complete.

Thankfully, however, that was not our last conversation. In July 2019, after the oral hearing in one of my World Trade Organization cases, I messaged Prof. Basheer to say that one of his friends was working with us on the case. He replied, "Terrific! You're into all the leading stuff. So proud of you". Since his departure, I have read that text a hundred times. I try to take some solace in the fact that his last words to me were "so proud of you". After his departure, I have reconnected with many of our common friends to support each other through our grief. Surprisingly, many of them, despite years without contact, were well updated on my work, thanks to the very kind (and perhaps embellished) stories he had told them about me. I have lost someone who cheered every baby-step I took, and feel the immense pressure to suddenly adult.

It is customary to say "rest in peace" when someone passes. However, I don't think Shamnad Basheer will. If there is a realm beyond ours, I am sure he is already arguing with whoever runs it (he always insisted it was a "She") as to why its rules need a comprehensive overhaul. He's probably already published a few blog posts and a book on the subject. He has probably started an initiative to make that realm better and more inclusive, and sent an army of volunteers to the remote corners of that realm with that mission. Whatever he's doing, he's not resting, nor is he letting anyone else in his proximity rest.

Looking through his old emails to me, I see one from 2016, in which he sought my help with a moot problem he was setting for his students. Since the problem involved not just his core field of IP, but also international investment law, he shared it with me and a few others to solicit our views. It opens with, "The year: 2030". His imagination then dreams up a technology for the living to talk to the departed, and a legal dispute regarding its patent protection.

Talk to you in 2030, dear Professor; dearest friend.

IN MEMORIAM: LATE PROF. (DR.) SHAMNAD BASHEER

*Rishabh Mohnot**

Dr. Shamnad Basheer is a veritable icon in the legal world. His accomplishments could fill reams of paper and still leave much to be said. Much has already been written about his life, his achievements, his social justice work, his scholarship, and his mentorship. Yet, I am certain that there is so much more about him that has not been written, anecdotes, adventures, and tokens of wisdom and counsel that remain with the many people whose lives he touched.

I joined the National University of Juridical Sciences, Kolkata ('NUJS'), in 2015. It had been three years since Prof. Basheer had left his position there as the Ministry of Human Resource Development Chair Professor of Intellectual Property Law. However, it did not take long for one to come across his name, in one way or another. Some of us heard his name at orientations and sensitizations conducted by IDIA, saw or read about him in the news or on social media, and still others heard fables from the time he had spent at NUJS.

However, my first recollection of coming across Prof. Basheer's name was in the library. As someone who had developed an interest in intellectual property rights early on in law school, this was perhaps inevitable. At a time in law school when academic reading still seemed cumbersome and difficult to me, learning intellectual property law through his writing, whether in journals or on SpicyIP, was a blessing. The relative ease with which I was able to comprehend concepts and ideas in his work was a confidence booster for a beginner trying to stay afloat in a sea of academic readings. The opinionated nature of his writing encouraged me to challenge ideas that I read about on a daily basis. Even as I continue to learn and navigate the world on intellectual property law, I often take a comforting refuge in a book Prof. Basheer co-edited, on overlapping intellectual property rights.¹⁰

My first interactions with him began when I joined SpicyIP, an open-access blog he founded, first as an intern, and then as a Student Fellow. When I had joined SpicyIP, I had not envisaged that I would be interacting with Prof. Basheer much. Those who knew him at the time would probably scoff at my innocence. On my very first writing assignment, I found that the piece had to undergo two rigorous rounds of editing from Prof. Basheer himself, replete with red lines and comments. His active involvement in the day-to-day running of the blog surprised me, and was consistent throughout my time at SpicyIP. At times, I have sent in my posts for review in the wee hours of the morning, only to receive his feedback within a matter of minutes with critical comments or a "good to go".

Amidst the din of vast email threads that form our acquaintance, his mentorship flashes through. I have been reprimanded and complimented in equal measure, and given invaluable feedback and encouragement to pursue my interests with vigour. Despite being someone whose interaction with Prof. Basheer has been solely through the medium of email, there are few things that have had a greater influence on my education at NUJS. I greatly miss his emails, characteristically undersigned with 'sb'; only he could translate routine emails into a robust online mentorship program.

* Rishabh Mohnot graduated from NUJS with a B.A LL.B (Hons.) degree in 2020.

¹⁰ NEIL WILKOFF & SHAMNAD BASHEER (EDS), *OVERLAPPING INTELLECTUAL PROPERTY RIGHTS* (Oxford University Press, 2012).

Perhaps the biggest lesson to be learnt from Prof. Basheer is not, however, directly related to the law. It is a simple mantra that he embodied in his daily life by being a man of action- by bringing improbable and difficult ideas to life, simply with his conviction and his ability to inspire people to work for an idea.

I am extremely happy that the NUJS Law Review has decided to honour his legacy by dedicating this issue to his memory. His personal contribution to the NUJS Law Review has been immense. In 2009, he co-authored a paper with two of his students, Sroyon Mukherjee and Karthy Nair,¹¹ critiquing the Naz Foundation judgment – arguing that even though it decriminalizes homosexuality, it still considers homosexuality to be against the ‘order of nature’. This paper was relied upon by D. Y. Chandrachud J. in his opinion in the Supreme Court’s landmark decision in *Navtej Johar v Union of India*.¹² Giving students the opportunity to write and learn with him was characteristically Prof. Basheer. Perhaps even more notable for the NUJS Law Review was his pivotal role in organising the Special Issue of the NUJS Law Review and Roundtable Conference analysing the Copyright (Amendment) Act, 2012.¹³

Earlier this year, the NUJS Law Review, along with the Intellectual Property and Technology Law Society at NUJS attempted to carry a Special Issue and organise a Conference on contemporary intellectual property issues in his memory. While this event remains on hold due to prevailing circumstances, I hope it will come to fruition soon.

In the fictional world of Harry Potter, when Albus Dumbledore was suspended as Headmaster of Hogwarts, he said to the minister, “You will find that I will only truly have left this school when none here are loyal to me.”¹⁴ In the year that has passed since the day we received the tragic news of his passing, it has been heartening to see his life’s work being kept alive, not only by his near and dear ones, but so many more who believed in his vision and remain inspired by his ideals. Like Albus Dumbledore, he will continue to live amongst us, as long as we remain loyal to his ideals.

¹¹ Shamnad Basheer, Sroyon Mukherjee & Karthy Nair, *Section 377 and the ‘Order of Nature’: Nurturing ‘Indeterminacy’ in the Law?*, 2 NUJS L. Rev. 433 (2009).

¹² *Navtej Johar v Union of India*, AIR 2018 SC 4321.

¹³ The Special Issue was Issue Volume 5(4) of the NUJS Law Review, see <http://nujslawreview.org/articles-archives/>. For a report on the Conference see <http://nujslawreview.org/wp-content/uploads/2016/10/IP-Conference-Report.pdf>.

¹⁴ J. K. ROWLING, *HARRY POTTER AND THE CHAMBER OF SECRETS* (Bloomsbury, 1998).