

EDITORIAL NOTE

**A COURT BEYOND THE JURISDICTION OF TRUTH:
REFLECTIONS IN LIGHT OF THE PRASHANT
BHUSHAN CONTEMPT CASE**

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I. INTRODUCTION

On August 14, 2020 Supreme Court (‘Court’) found senior advocate Prashant Bhushan (‘Bhushan’) guilty of the offence of contempt of court with respect to two of his tweets, dated June 27, 2020 and June 29, 2020.¹ A series of tumultuous events culminated in an anti-climactic fine of one rupee which was imposed by the judgment delivered on August 31, 2020, subject to a simple imprisonment of three months and debarment from practice for a period of three years in case of failure to deposit within fifteen days.² Having created a great stir in India’s legal fraternity, the case raises an important question of the role played by lawyers (as against any ordinary citizen) in upholding the authority of the judiciary, the objective attributed to contempt powers of the Court.

It has been expressed that the judgment convicting Bhushan failed to address the facts alleged in Bhushan’s reply in support of the truth of his tweets.³ The Court ordered that he may submit an unconditional apology if he so desires, to be taken into consideration for sentencing.⁴ Bhushan declined to do so, submitting that an insincere apology would amount to contempt of his conscience, and taking cue from Gandhi’s speech before his trial for sedition in 1922, expressed that he would be open to any penalty the Court wished to inflict upon him. In its judgment delivered on August 31, 2020 the Court revisited his defence of truth, finding that his tweets were neither *bona fide* nor in public interest, such that they failed to fulfil this

* Members: Board of Editors, NUJS Law Review

¹ Apporva Mandhani, *Supreme Court finds Prashant Bhushan guilty of contempt for his tweets on CJI Bobde, others*, THE PRINT, August 14, 2020, available at <https://theprint.in/judiciary/supreme-court-finds-prashant-bhushan-guilty-of-contempt-for-his-tweets-on-cji-bobde-others/481493/> (Last visited on September 4, 2020).

² *In Re: Prashant Bhushan*, Suo Motu Contempt Petition (CrI.) No.1 of 2020 (‘*In Re: Bhushan*’).

³ Gautam Bhatia, *Contempt of Court and freedom of Speech: An analysis of the Prashant Bhushan judgment*, INDIAN CONSTITUTIONAL LAW AND PHILOSOPHY, available at <https://indconlawphil.wordpress.com/2020/08/14/contempt-of-court-and-freedom-of-speech-an-analysis-of-the-prashant-bhushan-judgment/> (Last visited on September 1, 2020).

⁴ Order dated 20.08.2020,

twin test required for invoking the defence.⁵ The Court claimed to exhibit ‘magnanimity’ by imposing a nominal fee of Rs. 1.⁶

Right from the manner in which *suo motu* jurisdiction was taken⁷ to the courtroom theatrics during sentencing, the case has had many highlights and may go down as one of the most important (though not necessarily celebrated) cases in the history of Indian contempt jurisprudence. However, amidst all, an issue that conspicuously stands out from a legal point of view is the refusal of the Supreme Court to engage with the defence of justification by truth. In this Note, we trace the origins of the jurisprudential reluctance in Indian contempt law to allow intent-based defences and examine how justification by truth, a defence which takes into the account the intent of the contemnor, has fared in Indian contempt actions. In observing that courts are usually disposed against allowing the truth defence, we also offer a suggestion to ameliorate this conundrum, albeit effective only to a limited extent.

II. CONTEMPT AND INTENT

The object of contempt powers is to protect the Rule of Law by securing public confidence.⁸ It was an extraordinary power of the Courts meant to be exercised sparingly, not to vindicate any personal attacks on its judges, but to ensure that their authority would not be undermined such that they would be unable to maintain the Rule of Law.⁹ The law of contempt in India derives from England, and is similarly sought to secure the public confidence by means of retaining a ‘haze of glory’ — this suggested that Courts were to be seen as impartial and judicious at all costs, even if they were not so.¹⁰

Without entering into a debate on the dubious ethics of this approach, we strive to consider whether it holds any efficacy today with respect to the manner in which the law on contempt has evolved. Thus, we must first consider the circumstances under which these laws were created, and the framework envisaged by them for securing the Rule of Law. The provision defining criminal contempt reads:

“§2(c): “criminal contempt” means the publication (whether by words, spoken or written, or by signs, or by visible representation, or otherwise) of any matter or the doing of any other act whatsoever which—
 (i) scandalises or tends to scandalise, or lowers or tends to lower the authority of, any court; or
 (ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or
 (iii) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner.”¹¹

The criticism it prompts almost instantly from any reader is its evident ambiguity; there is no indication as to what may amount to scandalising, prejudicing, or

⁵ *In Re: Bhushan*.

⁶ *Id.*, ¶93

⁷ See Arvind Datar, *A seriously flawed judgment*, BAR AND BENCH, August 18, 2020, available at <https://www.barandbench.com/columns/a-seriously-flawed-judgment> (Last visited on September 1, 2020).

⁸ *In Re: Ajay Kumar Pandey*, MANU/SC/1137/1998, ¶18.

⁹ *Id.*

¹⁰ See Gautam Bhatia, *Free Speech and Contempt of Court – 1: Overview*, THE CENTRE FOR INTERNET & SOCIETY, ¶9, available at <https://cis-india.org/internet-governance/blog/free-speech-and-contempt-of-court-2013-i-overview> (Last visited on September 5, 2020).

¹¹ Contempt of Courts Act, 1971, §2(c).

interference, and moreover, what may *tend* to do so. However, this ambiguity was intentionally retained, on a consideration of the Court deriving its powers of contempt constitutionally.¹² In this light, the Sanyal Commission Report sought simply to create a provision in the broadest possible terms encompassing the circumstances under which it has been invoked by the Courts, on the notion that some guide to the citizen, however vague, would still be better than none at all.¹³ The Report expressed a reluctance to risk imposing too narrow a limit on contempt as a reasonable restriction on free speech under Article 19(2), which may fetter the Courts from exercising their power to protect against new forms of contempt which may arise.¹⁴

In this view of contempt, the Court is entrusted with the power to do what it must to safeguard the free and fair administration of justice. In that respect, the intention of the contemnor would be irrelevant; they may even have acted in good faith.¹⁵ Accordingly, to prevent this enormous power from being abused by the Courts, broad safeguards were framed – these include, a protection against fair and accurate reporting of judicial proceedings,¹⁶ fair criticism of decided cases,¹⁷ and a procedural safeguard in the form of appeal.¹⁸ Further, contempt would not be punishable unless it substantially interferes (or tends substantially to interfere) with the course of justice.¹⁹ The boundary at which the restriction on free speech imposed by contempt would cross over into unreasonableness was demarcated with respect to specific knowledge of contemptuous nature of the material being published.²⁰ Accordingly, convicting the publisher of contemptuous speech would be reasonable; but convicting alleged contemnors, such as editors of journals or heads or organisations who did not have specific knowledge of the impugned publication would be unreasonable. In this vein, innocent publication and distribution of matter is a defence under §3 of the Act, and the burden is on the alleged contemnor to establish the absence of knowledge.²¹ It was also found necessary to codify that the legislation sought to neither expand the scope of contempt nor limit any available defences under §§ 8 and 9 of the Act respectively.

Thus, we find that criminal contempt law was premised on intent being irrelevant to conviction, as the Courts were to be empowered to do what they must in curbing *any* speech which would, in their view, hinder their capacity to maintain the Rule of Law. Safeguards were accordingly created with a view to limiting the scope for abuse of this highly discretionary power. This framework therefore, rested on the proposition that Courts alone are the exclusive guardians of public interest towards upholding the Rule of Law; those found guilty would have the opportunity to purge themselves through a *bona fide* apology, which would serve as factor in sentencing²². Beyond the establishment of knowledge, no further venture was to be made into the realm of intent, on the consideration that the lay person was

¹² The Supreme Court and the High Court as Courts of Record possess the power to punish in contempt of themselves under Articles 129 and 215 respectively of the Indian Constitution to punish in contempt of themselves.

¹³ H.N. SANYAL COMMITTEE, *Report of the Committee on Contempt of Courts*, 24 (February 28, 1963) ('SANYAL COMMITTEE').

¹⁴ *Id.*, 20.

¹⁵ *Id.*, 31.

¹⁶ Contempt of Courts Act, 1971, §4.

¹⁷ Contempt of Courts Act, 1971, §5.

¹⁸ Contempt of Courts Act, 1971, §19.

¹⁹ Contempt of Courts Act, 1971, §13(a)

²⁰ SANYAL COMMITTEE, *supra* note 13, at 35-37.

²¹ Contempt of Courts Act, 1971, §3.

²² Contempt of Courts Act, 1971, §12, Proviso.

not expected to know with a certainty what may (or may not) amount to contempt, the ambit of which was to be determined by the Courts.

However, due to the murky history of case law on contempt, and possibly for keeping up with more progressive developments of contempt law in foreign jurisdictions though they do not fit aptly into this frame, the Courts continued to venture into the question of whether or not the impugned speech made was *bona fide*, for the purpose of determining conviction.²³ We find that in particular, the introduction of the defence of truth in 2006 has created a dichotomy in the operation of this frame, warranting an urgent revisiting of its efficacy in securing the public confidence, and thereby, the Rule of Law.

III. JUDICIAL DISPOSITION AGAINST TRUTH AS DEFENCE

The defence of truth for speech which is made *bona fide* and in public interest may be taken for the determination of sentencing, under §13(b) of the Act, since the Contempt of Courts (Amendment Act) 2006.²⁴ The creation of this safeguard from punishment for those who speak truthfully in the public interest implied that securing the administration of justice was no longer the exclusive domain of the Courts; others, like Bhushan, may also comment in this regard for the public interest.

However, the trend so far has been that Indian courts rarely, if ever, allow the defence of truth.²⁵ While it is possible to attribute the same to the quality of proof required to establish the defence, we would be doing a disservice to this analysis by not considering the fact that there is also a sense of reluctance in judiciary in entertaining the defence of truth, regardless of the quality of the proof adduced. The reluctance can be best explained by the fact that Indian contempt jurisprudence stands on a foundation which views even the attempt of establishing the veracity of a contemptuous comment as an act of contempt itself.²⁶ While there have been legislative²⁷ and judicial²⁸ endeavours of recognising truth as a valid defence in contempt proceedings, the Indian courts till date skirt around the obligation to consider it either by conveniently ignoring the pleading of the defence, or by outrightly refusing to consider the defence even if it purports to take cognizance of it.²⁹

Consider for example the *Court on its Own Motion v. M.K. Tayal*, ('Mid-Day Newspaper Case').³⁰ In this case the Delhi High Court, took *suo moto* cognizance of a report and a cartoon published in the newspaper alleging impropriety on the account of the former Chief Justice of India, Y.K. Sabharwal, who allegedly presided over a matter in which his sons had direct pecuniary interest. The defendants argued the defence of justification of truth and

²³ The Arundhati Roy case is an instance which demonstrates the inherent ambiguities in attempting to determine intent, which may allow courts to arrive at a conclusion of male fide speech in order to assert their authority even at the risk of eroding the public confidence. See *In Re: Arundhati Roy*, AIR 2002 SC 1375; See also Mriganka Shekhar Dutta & Amba Uttara Kak, *Contempt of Court: Finding the Limit*, 2 NUJS L. Rev. 55 (2009), Part IV.A.

²⁴ Contempt of Courts Act, 1971, §13(b) (“(b) the court may permit, in any proceeding for contempt of court, justification by truth as a valid defence if it is satisfied that it is in public interest and the request for invoking the said defence is bona fide”).

²⁵ *But see* Dr. Subramanian Swamy v. Arun Shourie, (2014) 12 SCC 344. This case is the only notable example where court upheld the defence of truth against an action for remarks against a sitting Judge of the Supreme Court in his role in an investigation committee appointed by the government. See also MADHAVI GORADIA DIVAN, FACETS OF MEDIA LAW, 93-125 (2nd ed., 2013).

²⁶ *Advocate-General vs. Seshagiri Rao*, AIR 1966 AP 167; *Kadir M.G. vs. K.N. Jaitley*, AIR 1945 All 67.

²⁷ The Contempt of Courts (Amendment) Act, 2006.

²⁸ *Dr. Subramanian Swamy v. Arun Shourie*, (2014) 12 SCC 344.

²⁹ See generally MADHAVI GORADIA DIVAN, FACETS OF MEDIA LAW, 93-125 (2nd ed., 2013)

³⁰ *Court on its Own Motion v. M.K. Tayal*, 2007 (98) DRJ 41.

even offered to provide ample proof to substantiate the claims made in the impugned report. However, the Delhi High Court carefully avoided allowing a discussion on the defence and went on to hold the defendants guilty of contemning the authority of the Court. Bearing stark similarity to the Mid-Day Newspaper case, Prashant Bhushan's case is a contemporary testimony to this age-old attitude as the Supreme Court refused to examine the truth of the impugned tweets, despite Bhushan having specifically pleaded the defence. The justification was refused on grounds that his averments supporting the defence of truth were based on 'political considerations'³¹ and the consideration of the same will be an 'aggravation of contempt'.³²

The Court thus found itself enabled to easily dismiss the defence of truth, in light of its wide discretion granted under a framework of contempt which had not envisaged intent (here, in the form of the public interest requirement for establishing the truth defence) being addressed by Courts. The creation of this safeguard from punishment for those who speak truthfully in the public interest implied that securing the administration of justice was no longer the exclusive domain of the Courts; a domain which Courts have been evidently unwilling to relinquish, and have been empowered to retain under the extant framework. In an information world which has already rendered it difficult to maintain a 'a haze of glory', the unwillingness of the Court to acknowledge truth may even stand to erode the public confidence and adversely impact its ability to uphold the Rule of Law,³³ contrary to the objective for which contempt powers had been Constitutionally conferred upon it. One way to restore the accomplishment of this objective may be through allowing the defence to be taken in a determination of conviction, rather than sentencing.

IV. THE DICHOTOMY OF THE TRUTH DEFENCE

Given that the truth defence rests on a prong of public interest, there is a need to revisit contempt law in order to align the discourse towards the active perspective of public participation in upholding the authority of the Courts, rather than the passive approach of the Court suppressing comments which threaten to undermine this authority. The defence needs to be addressed in a manner which allows for true and *bona fide* comments about irregularity in the functioning of the judiciary to be viewed not as contemptuous, but as a service to the public and the judiciary itself by providing an external vigil to uphold the highest standards of propriety and accountability in the justice delivery system. One manner of adopting this position might be to allow the defence of truth to be taken at the stage of conviction, rather than sentencing.

As it stands, the defence does not allow for the Court to adopt such a position without undermining its authority. The 2006 Amendment Act places the justification of truth under §13 which provides for certain circumstances in which the courts may not punish the convicted contemnors.³⁴ So, the defence of truth can only be pleaded at the time of the sentencing, *after* the courts have already pronounced the defendant guilty of bringing disrepute to the judicial institution.³⁵ The provision, thus, leaves the Court stuck between a rock and a hard place. If it refuses to address truth, a suspicion of the aspersions cast lingers in the eyes of

³¹ *In Re: Bhushan*, ¶32.

³² *In Re: Bhushan*, ¶27.

³³ Dutta & Kak, *supra* note 23, at 60-63.

³⁴ Contempt of Courts Act, 1971, §13(b), *inserted vide* The Contempt of Courts (Amendment) Act, 2006.

³⁵ *See V. Vennkatesan, Truth as Defence is Central to Prashant Bhushan Sentencing, Supreme Court Can't Sidestep It*, THE WIRE, August 21, 2020, available at <https://thewire.in/law/truth-as-defence-is-central-to-prashant-bhushan-sentencing-supreme-court-cant-sidestep-it> (Last visited on September 4, 2020).

the public. If the Court acknowledges truth, it will effectively admit that the court is worthy of disrepute for which it has convicted the contemnor. Both ways, the result is erosion of the confidence of the people in administration of justice.

Interestingly, the National Commission to Review the Working of the Constitution ('NCRWC'), which started the legislative dialogue about allowing justification by truth as defence, had suggested amendment to the Article 19(2) and not the Contempt Act.³⁶ However, the Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice ('Contempt Standing Committee') in its twelfth report on Contempt of Courts (Amendment) Bill, 2004 decided to amend the Contempt Act itself citing it to be just as effective a method and less cumbersome than making a constitutional amendment.³⁷ It is in the contemplations of this committee where the idea of insertion of the justification of truth in §13 first arose.³⁸ It is interesting to note that the Committee itself made an observation that justification by truth should be considered the same as other defences like fair and accurate reporting, fair criticism etc. provided in sections 3 to 7. Consequently, it recommended that §8 of the Contempt Act, which deals with the effect of the Act on other unlisted defences, may be suitably amended to allow justification of truth so as to not hold a person guilty of contempt despite the defence being applicable.³⁹ Similar sentiments were also reflected by a group of eminent witnesses appearing before the committee. Although the focus of this group was the ignominy a guilty verdict can cause for a person even if they are not punished, the basis of the reasoning was same that *bona fide* truth should not be seen as contempt of court.⁴⁰

One way to address the said dichotomy is by placing truth as a defence at the stage of conviction, rather than sentencing, by removing it from §13 and suitably amending §8, which allows for encompassing other defences, as was mentioned in the Standing Committee report.⁴¹ In terms of design, there seems to be little justification for not grouping the defence of truth with other defences to contempt like fair criticism, innocent publication etc. all of which operate at the stage of conviction. Even the Standing Committee discussed the justification by truth in the same breath as the other defences mentioned in sections 3 to 7.⁴² The original intent of §13 was to deal with cases where the factum of having caused contempt was already established, but the effect of the contempt so caused was too trivial for the court to punish it.⁴³ Placing justification of truth under §13, hence, holds no discernible logic as the intent behind introducing the defence was to keep truthful comments/remarks outside the purview of contempt. Moreover, the effect of comments/remarks of the likes Bhushan made, if true, can also have far reaching consequences which again goes against the design of §13 which originally only allowed excusing trivialities. Thus, as long as the issues with the current contempt law are being discussed, thought must be given to the placement of the truth defence under §13 as the current placement not only presents a grave moral conundrum for the Courts but also stands to create a chilling effect on civic minded people who may otherwise be more active in holding the judicial institution accountable for its actions.

³⁶ M.N. VENKATACHALIAH COMMITTEE, *Report of the National Commission To Review The Working of the Constitution*, ¶7.4.2 (March 31, 2002).

³⁷ PARLIAMENTARY STANDING COMMITTEE ON PERSONNEL, PUBLIC GRIEVANCES, LAW AND JUSTICE, *Twelfth Report on Contempt of Courts (Amendment) Bill, 2004*, ¶11 (August 23, 2005) ('Standing Committee Report').

³⁸ *Id.*

³⁹ *Id.*, ¶18. Although, it appears the suggestion was not accepted in the final draft of the Amendment Act of 2006.

⁴⁰ *Id.*, ¶20.

⁴¹ *Id.*, ¶18.

⁴² *Id.*, ¶18.

⁴³ Contempt of Courts Act, 1971, §13 (Unamended Act as it stood prior to March 17, 2006).

V. CONCLUSION

Thus, we find that the judicial disposition against the truth defence may be addressed by way of a suitable amendment to allow the Courts to take cognisance of truth at the stage of conviction itself, so as to decrease the likelihood of adjudging *bona fide* truthful remarks/comments as contemptuous. In the matter of Prashan Bhushan, the Court accused Bhushan of failing to protect the ‘majesty of the law’ instead of paying deference to remarks of a lawyer, who in courts own words is a respectable member of the bar and has consistently exhibited a dedication to the public interest.⁴⁴ The Bar, which arguably plays a role in the administration of justice⁴⁵, or is at least perceived to, should have the opportunity to act in the public interest in this regard and the defence of truth allows the bar to fulfil this role without fear of the embargo of contempt.

Nonetheless, contempt laws were not intended to be a grievance redressal mechanism, and may be unsuited to meet the evolving needs of transparency and accountability in retaining public confidence in the administration of justice. Though alternative methods of securing accountability might be a viable option, perhaps it is time that the higher judiciary takes cognisance of the dissatisfaction surrounding the anachronism of the Indian contempt jurisprudence and initiates a process of deliberation and dispositional change in the way it has utilised its constitutional power of contempt. The defence of truth was introduced “to bring the law in conformity with constitutional liberty and the public interest in disclosure of truth” on the consideration that it was not in the public interest to “push matters under the rug and prevent the light of truth from illuminating the corridors of judicial power”.⁴⁶ However, the conduct of the Court clearly runs contrary to this objective as the Court has invoked its wide-ranging contempt powers time and again to muzzle voices highlighting the impropriety in prevailing judicial functions. The Indian judiciary must reflect on whether this scrupulous endeavour to avoid accountability is itself causing the very mischief that it seeks to avoid: the erosion of public confidence in the authority of the judicial institution. Surely, the Rule of Law cannot be valued at one rupee?

⁴⁴ *In Re: Bhushan*, ¶70

(“When convicting Bhushan for instance, even while acknowledging his years of working in the public interest, accused him of failing to protect the ‘majesty of the law’, instead of giving due regard to the statements of a respectable member of the Bar.⁴⁴ the alleged contemnor No.1 has been practicing for last 30 years in the Supreme Court and the Delhi High Court and has consistently taken up many issues of public interest concerning the health of our democracy and its institutions and in particular the functioning of our judiciary and especially its accountability. The alleged contemnor being part of the institution of administration of justice, instead of protecting the majesty of law has indulged into an act, which tends to bring disrepute to the institution of administration of justice. The alleged contemnor No.1 is expected to act as a responsible officer of this Court”).

⁴⁵ *See Bar Council of Maharashtra v. M.V. Dabholkar* MANU/SC/0670/1975 : (1976) 2 SCC 291, ¶15 (“Be it remembered that the central function of the legal profession is to promote the administration of justice. If the practice of law is thus a public utility of great implications and a monopoly is statutorily granted by the nation, it obligates the lawyer to observe scrupulously those norms which make him worthy of the confidence of the community in him as a vehicle of justice-social justice”).

IN THIS ISSUE

Keeping up with our commitment of advancing quality scholarship the Editorial Board of the NUJS Law Review presents to you this issue consisting of highly researched and brilliantly written submissions by legal scholars, professionals and students, covering a wide range of contemporary legal issues. The submissions in the issue are as follows:

In Memoriam: Prof. (Dr.) Shamnad Basheer by the Vice-Chancellor, National University of Juridical Sciences, Kolkata, Rishabh Mohnot, and Deepak Raju. In this Memorial Note, NUJS Faculty and Students remember late Intellectual Property Law professor's contribution as a teacher, scholar, legal professional and activist.

Article: Preventive Detention, Habeas Corpus and Delay at the Apex Court: An Empirical Study by Shrutanjaya Bhardwaj (Practising Advocate in Delhi; LL.M., University of Michigan Law School (2019); B.A. LL.B. (H.), National Law University, Delhi (2017)). In this paper, he presents an empirical analysis of the delay in adjudication of *habeas corpus* petitions in preventive detention cases at the Supreme Court of India. Studying all reported habeas corpus judgments of the Supreme Court in the twenty-year period from 2000 to 2019, he argues delays render the writ meaningless in several cases.

Article: Reconceptualising Parenthood: A Model Regulatory Framework for Assisted Reproduction in India by Aastha Malhotra and Arshia Roy (4th and 3rd year students of law at the West Bengal National University of Juridical Sciences, Kolkata.) They analyse three assisted reproductive techniques - surrogacy, in-vitro fertilisation, and genetic manipulation, and their implications for public health rights, gender justice, sexual rights, disability rights, child rights, and bioethics. Through this analysis, they argue that a binding legal framework that can protect interests and rights of medical professionals, infertile individuals or couples, children born as a result of assisted reproduction, donors and surrogates, is required. From a study of the existing regulatory framework, the authors suggest a model uniform legislation to regulate the three techniques.

Article: Unjust Citizenship: The Law That Isn't by Professor Dipika Jain and Kavya Kartik (Professor Jain is Professor of Law, Vice Dean (Research) and Founding Executive Director, Centre for Health Law, Ethics and Technology, Jindal Global Law School. Kavya Kartik is Assistant Director, Centre for Health Law, Ethics and Technology, Jindal Global Law School.) They argue that the State is able to inflict violence on transgender persons by implementing regulatory frameworks that are paternalistic, cis-heteronormative and detrimental to transgender persons' basic identity. This takes the form of the Transgender Persons (Protection of Rights) Act, 2019 and Draft Rules, which violate fundamental rights of transgender persons, and medicalise trans identities on the pretext of biological determinism. The second part of the article juxtaposes this against the arbitrary citizen structures created by the State through the Citizenship Amendment Act, 2019 — National Register of Indian Citizens nexus. The authors conclude by arguing that the compounded effect of these frameworks results in nothing but performative citizenship.

Article: Not a Numbers Game: A Constitutional Argument to increase coverage under The National Food Security Act, 2013 by Asmita Singh (Advocate-on-Record, Supreme Court of India; LL.M., Columbia Law School (2014), B.A. LL.B (H), National Law Institute University, Bhopal (2010)) and Gautam Narayan (Advocate-on-Record, Supreme Court of India; LL.B., University of Delhi (2001); Economics (H) University of Delhi, (1997)). They undertake a Constitutional scrutiny of §9 of the National Food Security Act, 2013. They argue, inter-alia, that artificial exclusions created by the reliance of §. 9 of the Act on Census data has

served to exacerbate the heartrending human tragedies that have been wrecked on the most marginalized persons. Against this backdrop, they use the COVID-19 Pandemic as a case study to propose some structural reforms to the NFSA. They conclude by emphasizing on how relief measures for protection against hunger and starvation during circumstances as dire as the pandemic have become conditional on ration cards.

Note: Decoding the Tribunal's Power to Grant Waiver under §244 of The Companies Act, 2013 by Ananya Verma, Kamakshi Puri, & Mehr Sidhu (All authors have received B.A LL.B degrees from Jindal Global Law School this year). They examine the circumstances under which the National Company Law Tribunal may grant a waiver of the locus requirement under §244 of the Companies Act, 2013, in an application for relief against oppression and mismanagement. The authors explore the factors warranting the grant of such a waiver, with a particular emphasis on *Cyrus Investments v. Tata Sons* (2017) to argue that the legislature should consider a qualitative threshold based on a case-to-case assessment of claims in place of the existing quantitative one.

We hope the readers enjoy reading these submissions and welcome any feedback that our readers may have for us. We would also like to thank all the contributors to the issue for their excellent contributions, and hope that they will continue their association with the NUJS Law Review!

Truly,

Editorial Board (2020-2021)

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