

EDITORIAL NOTE

“The scope of students activities should strictly be limited to academics” – a run-of-a-mill platitude that students often have to face for their engagements that go beyond the conventional confines of the classroom. This construct which purports to posit an ‘exclusive objective’ for students is inherently averse to the universally accepted and practiced pedagogy of encouraging students to personalise and contextualise their pursuit of academic scholarship by means of multifaceted engagements in being entrepreneurs, volunteers, and organisers. Evidently, editorial roles assumed by students, especially in case of legal journals have not remained untouched by criticism tracing their basis in such constructs.

Former American judge and jurist Richard Posner famously criticised American student run law reviews, asserting that the editorial roles are better suited to faculty and professionals who have the depth of knowledge and experience required to edit scholarly legal work. Judge Posner’s criticism continues to inspire critics even today who assert that students should vie for the consideration of the editorial boards, instead of being on the editorial boards. The experienced reality, however, tells a completely different tale as students run legal journals in the U.S. have historically remained at the top rungs in terms of their sphere of influence and continue to be so.

As an exclusively student run law journal modelled after the student run law journals in the U.S., we, at the NUJS Law Review, relate to the above described experience. Similar to the described case of student run law journals in the U.S., we mirror them not only in terms of the criticisms faced but also in terms of a distinct lived reality that bears testimony to the unfounded nature of such criticisms.

NUJS Law Review, as a journal exclusively edited and managed by students, continues to be one of the leading law journals of the country. We are one of the only leading law journals in the country that publishes regularly on a quarterly basis. Further, since the inception of the SCC monthly rankings of Indian law journals, we have occupied the top spot in two monthly rankings and the second spot in two other monthly rankings published so far. Till 2018, when prestigious international law journal index Washington-Lee covered Indian journals, we occupied the top spot in the student-edited category and the third spot in the overall category in India.

In the past two years alone, institutions like the Supreme Court of India, the Law Commission of India and judicial academies among others have relied on the scholarship produced and published by us. We have also left our imprint in the constitutional jurisprudence of our country, with multiple articles of the NUJS Law Review being cited in the historic judicial opinions in the Aadhaar and Navtej Singh Johar cases. We are deeply grateful to our contributors in helping us achieve such milestones. At the same time, we also attribute a significant share of the credit to the dedicated teams of students who have worked throughout the years to ensure that only the best quality and the most accurate legal scholarship passes the muster of our publication.

We, as a journal, remain committed to publishing only the finest and the best of works, we come across. In keeping up with the said assurance, we bring to you five quality articles in the present issue.

Professor Roopashi Khatri's article titled '*Role of the Judiciary in Indian Tax Policy – An Evaluation of the Efficiency of Judicial Outcomes*' critically evaluates the functioning of the Indian tax regime. She scrutinises the inconsistent manner in which Courts have dealt with cases concerning tax policy as one of the primary factors that undermine the efficacy of tax litigation. In particular, she identifies two areas of disputes in regard of which there is no settled position as such – *first*, the distinction between a 'tax' and 'fees'; and *second*, the manner in which exemption notifications are interpreted. Further, she goes on to demonstrate that the proclivity of Indian Courts to fashion unconventional solutions by disregarding precedent and indulging in judicial activism causes uncertainty in the tax litigation process, as a result of which prospective litigants are more likely to file unnecessary cases. After having outlined the inadequacies in the tax litigation process, the author argues in favour of establishing a broad set of tax principles based upon international best practices.

In '*Pre-Nuptial Agreements in India: An Analysis of Law and Society*', Amrita Ghosh and Pratyusha Kar analyse the enforceability of pre-nuptial agreements in the Indian context. Given that legal issues concerning marriage are typically governed by personal laws based upon religion, the authors scrutinise the validity of pre-nuptial agreements across multiple religions. Noting that pre-nuptial agreements are an integral component of Muslim marriages and that their validity has been upheld as far as Christian marriages are concerned, the authors demonstrate that the enforcement/non-enforcement of pre-nuptial agreements has been dependent upon subjective judicial interpretation. In light of the same, they stress upon the need to adopt a pan-Indian approach in this regard. Drawing upon the approaches adopted in various international jurisdictions, the authors conceptualise model pre-nuptial agreements and outline potential clauses that can be incorporated going forward.

Authors Naman Kamdar and Akash Srinivasan, in their article '*Solving the Bad Loan Crisis in the Unconventional Way: Is Reverse Piercing the Corporate Veil a Solution?*' evaluate whether the application of the doctrine of reverse piercing of the corporate veil can help alleviate the bad loan crisis in India. After elaborating upon the doctrine of reverse piercing of the corporate veil and tracing its origin, the authors scrutinise the manner in which this doctrine has been applied by Courts across multiple jurisdictions. Drawing upon these approaches, the authors proceed to suggest suitable recommendations for implementation in the Indian context that take into account the priority of claims matrix as well as the aspect of control.

In '*Privacy and its Protection in Informative Technological Compass in India*', Professor Sougata Talukdar elaborates upon the concept of privacy and stresses upon the need for India to enact a legislative framework protecting the right to privacy, particularly in the context of data protection. She first explores the contours of the concept of privacy and traces its historical origins. Subsequently, she proceeds to scrutinise the right to privacy, as it has been construed in the Indian context. Taking into account the unique threat to individual privacy posed by data collection agencies and developing computer technologies, the author argues that the Information Technology Act, 2000, which, *inter alia*, seeks to protect informational privacy has become obsolete and inadequate. In light of the same, she suggests

certain recommendations in an attempt to strike a balance between the right to individual privacy and the necessity for technological innovation.

Finally, Arindrajit Basu in '*Extraterritorial Algorithmic Surveillance and the Incapacitation of International Human Rights Law*' argues that extant principles of international law have failed to prevent human rights violations caused as a result of widespread extraterritorial surveillance. After having outlined the precise contours of the policy problem, the author proceeds to examine the applicable domestic legislations in the United States and the United Kingdom, which are the two nations responsible for the bulk of extraterritorial surveillance. Later, he goes on to scrutinise the manner in which extraterritorial obligations with regard to human rights, mass surveillance, and the right to privacy have been construed in the past. Finally, taking into account the difficulties inherent in the conceptualisation of an international right to privacy, he advocates the establishment of a procedural safeguards driven framework that regulates international surveillance.

We hope that you enjoy reading the articles.

Truly,

Editorial Board (2019-2020)

Volume 12 Issue 2

NUJS Law Review