

## EDITORIAL NOTE

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# DECONSTRUCTING OUR ABLE-NORMATIVE INSTITUTIONAL STRUCTURES

*Chandrika Bothra & Tanishk Goyal\**

*If we truly believe that legal academia guides law and policy making, the abject failure of our institutions to provide reasonable accommodations to persons with disabilities strikes at the heart of their assurance of inclusiveness and equal citizenship in the society. A by-product of the lack of such accommodations is the creation of a chilling effect on persons with disabilities which seriously affects their ability to litigate and prevents them from attempting to contribute to legal academia. The result is the creation of a body of legal scholarship which is dominated only by the non-disabled persons. As such, when courts rely on academia while delivering their judgments, they end up overlooking the causes that could have been espoused by such persons with disabilities. This invisibilisation of the scholarship of persons with disabilities is affront not only to their constitutional guarantees of equality and non-discrimination, but individual dignity as well. At the NUJS Law Review, we acknowledge that in some way, we too, have been complicit in enabling this chilling effect. We use this note to analyse the noticeable impediments faced by persons with disabilities in India, especially in the context of accessibility to legal academia. This analysis is underpinned with the constitutive reasons for such impediments which, in turn, have created a narrative that has normalised their everyday indignation. Concurrently, we highlight the recent positive developments in the realm of disability regime in India, which has given persons with disabilities, some cautious optimism for a better tomorrow. Lastly, we also announce the incorporation of reasonable accommodations on the website of the NUJS Law Review. This initiative is nothing more than the long-overdue vindication of the rights of our readers, authors, members and professionals, who, we believe, will now be able to access the NUJS Law Review website without having to go through certain access barriers.*

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\* Members, Board of Editors, the NUJS Law Review. We would like to thank our Vice Chancellor and Editor-in-Chief, Prof. (Dr) N.K Chakraborty for his support and encouragement without which this initiative would not have been possible. We would also like to thank Mehul Jain for his able assistance in making the NUJS Law Review more accessible.

## I. INTRODUCTION

Thirteen years ago, when our founding Editor-in-Chief and Vice-Chancellor, Professor (Dr.) Mahendra Pal Singh, penned down his foreword for Volume 1(1),<sup>1</sup> he wrote that the establishment of the NUJS Law Review was the sprouting of a seed, which had been long embedded in his heart.<sup>2</sup> With the establishment of the journal, he hoped for the creation of a structure which could enable students to directly guide law and policymaking – a guidance that would be acknowledged, appreciated and be awaited for by the legal community not only in India, but also, across the globe.<sup>3</sup> Against the backdrop of this vision of our founding Editor- In-Chief, the process of putting together any new issue of the NUJS Law Review is usually preceded by moments of introspection and self-reflection by its editors and members who have undertaken this solemn responsibility of producing, developing and sustaining quality scholarship in Indian legal academia. An intrinsic part of this process, naturally, is looking back and gauging how far we have come and what difference we have been able to make through our scholarship.

Looking back at the previous thirteen issues, we find that the NUJS Law Review has produced scholarship which *inter-alia* advocates for the deconstruction of heteronormative frameworks,<sup>4</sup> the mitigation of societal biases,<sup>5</sup> the enlivening of individual agency,<sup>6</sup> and the removal of structural inequalities and access barriers for the marginalised sections of the society. While the production of such scholarship has, advanced the vision that Professor M.P Singh had for the NUJS Law Review, we would be remiss here, if we did not acknowledge the fact that the very Indian legal academia, which exhorts the society to create space for the marginalised sections of the society, itself remains a construct dominated by non-disabled persons which is largely inaccessible for persons with disabilities.<sup>7</sup>

The increased invocation of academia by courts in delivering their judgments further illustrates the need to provide reasonable accommodations, in as much as the chilling effect created due to the lack of such accommodations gives rise to a body of scholarship which is dominated only by the non-disabled persons.<sup>8</sup> Thus, when Courts rely on such scholarship, they essentially end up

<sup>1</sup> Mahendra P. Singh, *Foreword*, Vol. 1, NUJS L. REV., 1 (2008).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> Kaira Pinheiro & Tanishk Goyal, *Editorial Note: Taking Navtej Singh Johar v. Union of India to its Logical Conclusion*, Vol. 14, NUJS L. REV., 0 (2021).

<sup>5</sup> Gee Imaan Semmalar, *Re-Casting Navtej Singh v. Union of India*, Vol. 13, NUJS L. REV., 3 (2020).

<sup>6</sup> Deekshitha Ganesan & Saumya Dadoo, *Confinement at the Margins: Preliminary Notes on Transgender Prisoners in India*, Vol. 13, NUJS L. REV., 3 (2020).

<sup>7</sup> *See infra*, Part II.

<sup>8</sup> Doron Dorfman, *Disability Law and Perceptions of Fakery: The Need to Restore Public Trust in Rights*, HARVARD LAW SCHOOL PROJECT ON DISABILITY, August 29, 2018, available at <https://hpod.law.harvard.edu/news/entry/disability-law-and-perceptions-of-fakery-the-need-to-restore-public-trust-in-rights> (Last visited October 16, 2021).

overlooking the causes that could have been espoused by such persons. This invisibilisation of the scholarship of such persons is affront not only to their constitutional guarantees of equality and non-discrimination, but individual dignity as well.<sup>9</sup>

Against this backdrop, we aim to analyse the noticeable impediments faced by persons with disabilities in India, especially in the context of accessibility to legal academia. This analysis is underpinned with the constitutive reasons for such impediments which, in turn, have created a narrative that has normalised their everyday indignation. At the same time, we also highlight the recent positive developments in the realm of disability regime in India, which has given such persons some cautious optimism for a better tomorrow.

However, we cannot initiate any discussion on ensuring the accessibility of persons with disabilities to legal academia without concurrently acknowledging our failure—at an institutional level—to provide reasonable accommodations to such persons on our platforms. At the NUJS Law Review, we acknowledge that in some way, we too have been complicit in enabling this chilling effect on persons with disabilities. Having been a part of the Indian legal academia which has inadvertently been indifferent towards persons with disabilities, we owe a long-overdue apology to them.

Being cognisant of this now, it is only befitting that we introduce structural reforms on our platforms as a means to remedy these maladies of our past. As an institution which takes pride in producing and pioneering quality legal scholarship, it is our responsibility to make our platforms accessible. As such, we are proud to announce that we, at the NUJS Law Review, have made accessibility adjustments to our website.<sup>10</sup> The contents of the website including all the articles and archives are now screen-reader friendly, thus making it fully accessible to persons having visual impairments such as degrading eyesight, low vision, or tunnel vision. The website also has accommodations for persons with cognitive disabilities which will allow them to focus on the essential elements of the website easily. Moreover, the website has an option of an ADHD-friendly profile which shall significantly reduce distractions for persons with ADHD or Neurological disorders. This initiative is nothing more than the long-overdue vindication of the rights of our readers, members, authors and professionals, who, we believe, will now be able to access the NUJS Law Review online platform without having to go through certain access barriers.<sup>11</sup>

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<sup>9</sup> *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1; *National Legal Services Authority v. Union of India*, (2014) 5 SCC 438.

<sup>10</sup> See, *Accessibility Adjustments*, THE NUJS LAW REVIEW, available at <http://nujslawreview.org/> (Last visited on October 18, 2021).

<sup>11</sup> *Accessibility Statement*, THE NUJS LAW REVIEW, October 14, 2021, available at <http://nujslawreview.org/> (Last visited on October 18, 2021).

Through this initiative, we can only hope that we are able to initiate a conversation that can go on to deconstruct the able-normative structure of Indian legal academia and make it accessible to persons with disabilities in the times to come. However, this would be a tall order to achieve unless the majority of our institutions provide for such accommodations<sup>12</sup> as a means to equip persons with disabilities with the tools and resources they have rightfully deserved since time immemorial.

## II. SOMETHING OF FREEDOM IS YET TO COME

The Supreme Court of India, in the case of *Vikash Kumar v. UPSC*, held the Rights of Persons with Disabilities Act, 2016 to be a statutory manifestation of the constitutional commitments of the equality, liberty and freedoms embedded in Part III of the Constitution.<sup>13</sup> However, for persons with disabilities, despite this path breaking jurisprudence developed by the Supreme Court,<sup>14</sup> something of prejudice still remains, and something of freedom is yet to come to them.<sup>15</sup> This is especially in light of the infinite instances of horizontal discrimination that persons with disabilities face on a daily basis.<sup>16</sup> In the absence of a specific anti-discrimination law in this aspect, the existence of a fundamental right against discrimination by a private entity remains an empty shell, as private entities are can be said to have no obligation to even acknowledge the rights of persons with disabilities — let alone provide reasonable accommodations for them.<sup>17</sup>

The case is no different with legal academia or educational institutions. Legal databases which form an ineluctable part of the legal profession both for academicians and professionals alike still remain inaccessible to persons with disabilities.<sup>18</sup> The presence of access barriers such as unlabelled links, non-screen-reader-friendly pages, inaccessible PDF files, or the absence of alternative text descriptions for images on websites, blogs and forums, casts a chilling effect on their ability to produce quality scholarship and litigate.<sup>19</sup> At a fundamental level,

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<sup>12</sup> Rahul Bajaj, *Impediments to Equal Productivity, Dignity*, THE HINDU, September 16, 2020, available at <https://www.thehindu.com/opinion/op-ed/impediments-to-equal-productivity-dignity/article32614857.ece> (Last visited October 16, 2021).

<sup>13</sup> *Vikash Kumar v. UPSC*, (2021) 5 SCC 570.

<sup>14</sup> *See infra*, Part IV; *Union of India v. National Federation of the Blind*, (2013) 10 SCC 772; *Govt. of India v. Ravi Prakash Gupta*, (2010) 7 SCC 626; *Syed Bashir-ud-Din Qadri v. Nazir Ahmed Shah*, (2010) 3 SCC 603; *Suchita Srivastava v. Chandigarh Admn.*, (2009) 9 SCC 1.

<sup>15</sup> Ira Steward has used this phrase in the context of slavery. For context, *see*, Ira Steward, *Poverty*, in Vol. 173 MASSACHUSETTS BUREAU OF STATISTICS OF LABOUR, FOURTH ANNUAL REPORT OF THE BUREAU OF STATISTICS OF LABOUR, 412 (Boston, Wright & Potter State Printers, 1873).

<sup>16</sup> Bajaj, *supra* note 12 at 3.

<sup>17</sup> *Id.*

<sup>18</sup> Rahul Bajaj (@Rahul400), “*Can I request...years*”, TWITTER, August 31, 2020, available at <https://twitter.com/Rahul400/status/1300389212298960896?t=fPArdFS5OUckga9Ci9WHMw&s=19> (Last visited on October 18, 2021).

<sup>19</sup> *Id.*; Bajaj, *supra* note 12 at 3.

this failure to remove access barriers and provide for reasonable accommodations invalidates the everyday struggles of persons with disabilities and conveys a message to them that they are unwelcome in the legal profession.<sup>20</sup> This message of being unwelcome or unwanted, in turn, shapes their social reality within which they are constrained to lead their professional lives.

Within Educational Institutions, the mandate to provide reasonable accommodation is governed by Section 16 of the Rights of Persons with Disabilities Act, 2016, read with the University Grants Commission Guidelines for Persons with Disabilities Scheme in Universities XII Plan (2012-2017).<sup>21</sup> While the Act of 2016 obligates the appropriate government to ensure that all educational institutions funded or recognised by them, *inter-alia* provide for reasonable accommodations for persons with disabilities,<sup>22</sup> these provisions are merely directory in nature and impose no binding obligations on such stakeholders to make their infrastructures accessible.<sup>23</sup> This is further highlighted in light of the fact that the penalties provided for the contravention in the Act of 2016 are woefully inadequate and are not capable of creating any deterrence for institutions which choose not to provide adequate reasonable accommodations for persons with disabilities.<sup>24</sup>

Moreover, the University Grants Commission Guidelines for Persons with Disabilities Scheme in Universities XII Plan (2012-2017) have not been updated after the Act of 2016 came into effect. The guidelines, in pursuance of the repealed Act of 1995, provide for components which encourage Higher Educational Institutions to establish enabling units, reduce architectural access-barriers and augment the education services for persons with disabilities.<sup>25</sup> In order to achieve these objectives, the guidelines provide for a one-time *ad hoc* grant of rupees ten lakhs and rupees eight lakhs for the specific creation of accessible infrastructures, and the procurement of learning and assessment aiding devices for assisting persons with disabilities with education respectively.<sup>26</sup> In the absence of an enforcement mechanism, these (outdated) guidelines and grants remain a mere lip-service

<sup>20</sup> See JEREMY WALDRON, HARM IN HATE SPEECH, 1-4 (2014).

<sup>21</sup> The Rights of Persons with Disabilities Act, 2016; University Grants Commission Guidelines for Persons with Disabilities Scheme in Universities XII Plan (2012-2017), available at [https://www.ugc.ac.in/pdfnews/1604485\\_person-with-disabilities-Uni.pdf](https://www.ugc.ac.in/pdfnews/1604485_person-with-disabilities-Uni.pdf) (Last visited October 16, 2021).

<sup>22</sup> The Rights of Persons with Disabilities Act, 2016, §16.

<sup>23</sup> Rahul Bajaj, *Twenty Years on, Inclusion Remains a Distant Dream for India's Disabled*, OXFORD HUMAN RIGHTS HUB, October 29, 2015, available at <https://ohrh.law.ox.ac.uk/twenty-years-on-inclusion-remains-a-distant-dream-for-indias-disabled/> (Last visited October 16, 2021).

<sup>24</sup> The Rights of Persons with Disabilities Act, 2016, §89.

<sup>25</sup> UGC Guidelines for Persons with Disabilities Scheme in Universities XII Plan (2012-2017), Components 1-3, available at [https://www.ugc.ac.in/pdfnews/1604485\\_person-with-disabilities-Uni.pdf](https://www.ugc.ac.in/pdfnews/1604485_person-with-disabilities-Uni.pdf) (Last visited October 16, 2021).

<sup>26</sup> *Id.*, 8-9.

for the rights of persons with disabilities in such educational institutions and leave much to be desired.<sup>27</sup>

The normalisation of such ableism in our institutions, public or private is, however, not unfounded. This ableism has been embedded, developed and sustained by a variety of constitutive reasons which have been discussed forthwith.

### III. THE FAULT IN OUR MINDSETS

The constitutive reasons for the access-barriers that plague our institutions rest on a flawed assumption of the infallibility of the current ableist structures. This sense of infallibility has been validated and amplified from time to time through the policies of the State and judgements of the Supreme Court.

Globally, the earliest instance of such validation by a Constitutional Court was in 1927 when the United States Supreme Court in *Buck v. Bell* upheld the constitutional validity of a statute permitting the compulsory sterilisation of intellectually disabled persons.<sup>28</sup> Speaking through Justice Oliver Wendell Holmes, the Court remarked that “Three generations of imbeciles are enough!”<sup>29</sup> This was perhaps the darkest phase in the history of the United States Supreme Court and the fact that the judgement was delivered by America’s most eminent jurist and has not been overturned till date continues to lend validation to ableist structures, even today.<sup>30</sup>

Closer to home, the narrative against the rights of persons with disabilities is equally skewed, if not more. For instance, the State of Uttar Pradesh recently came up with the Uttar Pradesh Population (Control, Stabilization and Welfare) Bill, 2021, with the stated objective of enforcing a two-child policy in the State.<sup>31</sup> Notwithstanding the concept of a two-child policy, which itself suffers from multiple constitutional infirmities,<sup>32</sup> the provision in the Bill dealing with children born with disabilities is telling, and amply illustrative of the deeply flawed and ableist mindsets that continue to shape our policy making even today.

<sup>27</sup> Bajaj, *supra* note 23 at 4.

<sup>28</sup> *Buck v. Bell*, 1927 SCC OnLine US SC 105.

<sup>29</sup> *Id.*

<sup>30</sup> Micheal Cook, *Buck v Bell, one of the Supreme Court’s worst mistakes*, *Bioethics Research Library*, KENNEDY INSTITUTE OF ETHICS, February 28, 2016, available at <https://bioethics.georgetown.edu/2016/02/buck-v-bell-one-of-the-supreme-courts-worst-mistakes/> (last visited October 17, 2021).

<sup>31</sup> Uttar Pradesh Population (Control, Stabilization and Welfare) Bill, 2021.

<sup>32</sup> Tanishk Goyal, *Reconciling Reproductive Autonomy with the Public Interest Obligation of the State: A Look at the Prospect of a Two-Child Policy in India*, NLSIR ONLINE, June 23, 2020, available at <https://nlsir.com/reconciling-reproductive-autonomy-with-the-public-interest-obligation-of-the-state-a-look-at-the-prospect-of-a-two-child-policy-in-india/> (Last visited October 17, 2021).

§15 of the Bill provides that the two-child norm created by the Bill shall not apply in circumstances in which one or both of the children born to the couple ‘suffer from’ a disability.<sup>33</sup> In such a scenario, the law allows the couple to have three children.<sup>34</sup> This essentially means that the law refuses to even acknowledge the existence of the child who is born with disabilities. It is pertinent to note here that Uttar Pradesh is not the only State to have such a provision which refuses to recognise the legal personhood of children born with special abilities.<sup>35</sup> The States of Rajasthan<sup>36</sup> and Assam<sup>37</sup> have also come with policies which similarly create exceptions to the two-child policy for children born with disabilities, thus devaluing their sense of identity and their legal personhood.<sup>38</sup> In a similar vein, the States of Maharashtra, Telangana, Odisha and Madhya Pradesh have instituted policies which compensate non-disabled persons who marry persons with disabilities.<sup>39</sup>

To add on to this, the Court of last resort has on multiple instances validated such ableist structures and policies. This has not only let down the disability rights movement in India,<sup>40</sup> but also, eroded any hopes of inclusion and accessibility that such persons with disabilities may have had. Illustratively, in the case of *V. Surendra Mohan v. Union of India*, the Supreme Court upheld the *vires* of a legislation passed by the State of Tamil Nadu which provided for the reservation of the post of a civil judge only for persons whose percentage of blindness did not exceed 40-50%.<sup>41</sup> In coming to its conclusion, the Court found that the legislation was grounded in rationality, inasmuch as it would be reasonably expected of a judicial officer to possess a basic amount of sight and hearing, which is essential for them to discharge their functions. In doing so, the Court essentially justified the exclusion of a person with disabilities by the State on the basis of their disability without having made any efforts to equip them with the tools they deserved so as to level the playing field for them.

<sup>33</sup> Uttar Pradesh Population (Control, Stabilization and Welfare) Bill, 2021, §15.

<sup>34</sup> Rahul Bajaj & Anchal Bhatheja, *U.P. Population Control Bill Promotes Stereotypes Against Disabilities*, THE WIRE, July 27, 2021, available at <https://thewire.in/rights/up-population-control-bill-promotes-stereotypes-against-disabilities> (Last visited on October 17, 2021).

<sup>35</sup> Muralidharan, *Uttar Pradesh’s Draft Population Bill has an Ableism Problem*, INDIAN EXPRESS, July 27, 2021, available at <https://indianexpress.com/article/opinion/columns/ups-draft-population-bill-population-control-7423718/> (Last visited on October 17, 2021).

<sup>36</sup> Rajasthan Panchayati Raj Act, 1994, §19, Proviso (iv)(c).

<sup>37</sup> Government of Assam, Population and Women Empowerment Policy 15, available at [https://hfw.assam.gov.in/sites/default/files/swf\\_utility\\_folder/departments/hfw\\_lipl\\_in\\_oid\\_3/menu/document/Population%20and%20Women%20Empowerment%20Policy%20of%20Assam.pdf](https://hfw.assam.gov.in/sites/default/files/swf_utility_folder/departments/hfw_lipl_in_oid_3/menu/document/Population%20and%20Women%20Empowerment%20Policy%20of%20Assam.pdf) (Last visited on October 17, 2021).

<sup>38</sup> Muralidharan, *supra* note 35 at 6.

<sup>39</sup> Bajaj & Bhatheja, *supra* note 34 at 5.

<sup>40</sup> Nipun Malhotra, *Supreme Court has Let Down India’s Disability Rights Movement*, THE PRINT, February 7, 2019, available at <https://theprint.in/opinion/supreme-court-has-let-down-indias-disability-rights-movement/188575/> (Last visited on October 15, 2021).

<sup>41</sup> *V. Surendra Mohan v. State of T.N.*, (2019) 4 SCC 237.

As mentioned earlier, when such legislations are passed by the State Legislature or the Parliament and upheld by the Courts, it stereotypes and stigmatises persons with disabilities,<sup>42</sup> thus, conveying a message to all persons with disabilities, in the society that they are second class citizens.<sup>43</sup> This is amply illustrative of the exclusionary mindset that dominates our society and enables our ableist structures which, in turn, devalue the very identity and personhood of persons with disabilities. For instance, the schemes providing compensation to non-disabled individuals marrying specially-abled persons devalues the latter's agency to love and associate with other individuals to the extent that their aspirations of receiving marital companionship become contingent upon the intervention of the State.<sup>44</sup> These messages of being unwanted and unwelcome become constitutive of their social reality which, in turn, transcends beyond their personal lives and affects their professional lives as well.

Putting this into perspective, when a person with disabilities studying or practising law views legal academia (our websites, databases or blogs) from the prism of their social reality, the lack of reasonable accommodations therein has a compounding effect on them, which in turn chills their ability to contribute to such academia, or use it for the purpose of their research in the first place.

Notwithstanding this chequered history of the Supreme Court, recent developments in jurisprudence illustrate that the Court has altered its course by having acknowledged the imperative need to attenuate the access-barriers which hinder the equal productivity and dignity of persons with disabilities.<sup>45</sup> These developments, in turn, have given such persons some cautious optimism for a better tomorrow.

#### IV. RECENT DEVELOPMENTS: CAUTIOUS OPTIMISM FOR A BETTER TOMORROW?

Recently, in the case of *Siddaraju v. State of Karnataka*,<sup>46</sup> the Supreme Court upheld the verdict in an earlier decision of *Rajeev Kumar Gupta v. Union of India* thus allowing for reservations in promotion for persons with disabilities.<sup>47</sup> This decision, though a step forward in delineating the rights of persons

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<sup>42</sup> Bajaj & Bhatheja, *supra* note 34, at 5; Angana Chakrabarti, *How U.P.'s Proposed Population Policy Compares to Two-Child Norms in Other States*, THE PRINT, July 14, 2021, available at <https://theprint.in/india/how-ups-proposed-population-policy-compares-to-two-child-norms-in-other-states/695086/> (Last visited on October 15, 2021).

<sup>43</sup> *Id.*

<sup>44</sup> Bajaj & Bhatheja, *supra* note 34 at 5.

<sup>45</sup> *Vikash Kumar v. UPSC*, (2021) 5 SCC 370; *B.K. Pavitra v. Union of India*, (2019) 16 SCC 129.

<sup>46</sup> *Siddaraju v. State of Karnataka*, 2017 SCC OnLine SC 1940.

<sup>47</sup> *Rajeev Kumar Gupta v. Union of India*, (2016) 13 SCC 153.



with disabilities, has raised important questions regarding the rights of persons with disabilities at the workspace, and also at educational institutions.

In India, rights of persons with disabilities are governed by the Act of 2016. The Act took note of the limiting effect of the Persons With Disabilities (Equal Opportunities, Protection of Rights, and Full Participations) Act, 1995 ('1995 Act') and enlisted twenty one conditions that would be covered by the Act as 'disabilities'.<sup>48</sup> The Act has also placed persons with disabilities into three categories — *first*, persons with benchmark disability,<sup>49</sup> *second*, persons with disability,<sup>50</sup> and *third*, people with disabilities having high support needs.<sup>51</sup> Those persons having 40% of the aforementioned conditions would be classified as persons with benchmark disabilities, whereas those who have been certified under Section 58(2) of the Act would qualify as persons with disabilities having high support needs.<sup>52</sup> By defining disability as a dynamic and evolving concept unlike the 1995 Act, the Act of 2016 has directly translated into increased opportunities for a greater number of persons with disabilities.

In *Vikash Kumar v. UPSC*, while interpreting various provisions of the Act within the context of inclusive equality, Justice D.Y. Chandrachud stressed upon the need to provide reasonable accommodation to persons with disabilities.<sup>53</sup> He held that complications that arise from a departure from the *status quo*, including those arising from the interaction of an ableist environment with persons with disabilities, should be disregarded by institutions while providing reasonable accommodations. In light of this, he held that the interpretation of the Act must be done in a manner that not only prevents discrimination against persons with disabilities but also orients us towards the realisation of positive rights such as reasonable accommodations.<sup>54</sup>

The Act of 2016, thus, imposes an obligation upon the appropriate Government to ensure that persons with disabilities enjoy the right to equality, life with dignity, and respect for their own integrity equally with others. The appropriate government must also ensure that a conducive environment is provided to persons with disability in order to utilize their capacities. §3 of the Act specifies that

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<sup>48</sup> The Act recognises persons with cerebral palsy, dwarfism, muscular dystrophy, acid attack victims, hard of hearing, speech and language disability, specific learning disabilities, autism spectrum disorders, chronic neurological disorders such as multiple sclerosis and Parkinson's disease, blood disorders such as haemophilia, thalassemia, and sickle cell anaemia, and multiple other disabilities as persons with disabilities.

<sup>49</sup> Rights of Persons with Disabilities Act, 2016, §2(r).

<sup>50</sup> Rights of Persons with Disabilities Act, 2016, §2(s).

<sup>51</sup> Rights of Persons with Disabilities Act, 2016, §2(t).

<sup>52</sup> Rights of Persons with Disabilities Act, 2016, §2(t).

<sup>53</sup> *Vikash Kumar v. UPSC*, (2021) 5 SCC 370.

<sup>54</sup> *Jeeja Ghosh v. Union of India*, (2016) 7 SCC 761.

discrimination shall not be permissible on ground of disability, and if permitted, the impugned act or omission must be justified on the pretext of achieving a legitimate aim. Thus, the Act of 2016 along with its interpretation by the Supreme Court in various decisions supports the premise that the provision of reasonable accommodations should be viewed as a substantive equality facilitator. Institutions too should endeavour to transition from the medical model of disability to the social model of disability by emphatically acknowledging the position of persons with disabilities as rights bearers.

While these recent developments in jurisprudence have, in fact, given persons with disabilities the hope for a better tomorrow, their struggles will not be over unless our institutional structures unlearn their prejudices and normalise the provision of reasonable accommodations as a means of ensuring that persons with disabilities lead full and equal lives.

## V. CONCLUSION

Throughout the course of this paper, we have attempted to apprise our readers of how the social realities of persons with disabilities inadvertently end up shaping the way they lead their professional lives as well. This is even more so in case of legal academia which has largely remained inaccessible for them until now. The lack of such accommodations poses the danger of denying persons with disabilities of their narrative and threatening their very sense of identities. By having acknowledged our role in this process and subsequently having made our platform accessible, we can only hope that our initiative can serve as a point of departure for the legal community to implement reasonable accommodations across the spectrum of our institutions, thus making them accessible for persons with disabilities for the times to come.<sup>55</sup>

## IN THIS ISSUE

Continuing to function within the grip of the COVID-19 pandemic from the qualified comfort of our homes,<sup>56</sup> we have put together Volume 14(2), which is a glowing testament to the ability of our authors to contribute quality scholarship even within the interstices of such unprecedented circumstances. Much like the previous five issues, this would not have been possible without our extremely motivated team of associate members who displayed immense character, professionalism and an extraordinary sense of duty while balancing their commitments to the NUJS Law Review along with their responsibilities at their respective homes.

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<sup>55</sup> Bar and Bench (@barandbench), "*To deny narrative...-Chandrachud J.*", TWITTER, December 8, 2018, available at <https://twitter.com/barandbench/status/1071286704806526976> (Last visited on October 18, 2021).

<sup>56</sup> Ravi Shankar & Chandrika Bothra, *Editorial Note*, Vol. 13(1), NUJS L. REV. (2020).

## EDITORIAL NOTE

Keeping up with this sense of responsibility and commitment, the Editorial Board of the NUJS Law Review for the academic year 2021-22 presents to you this issue consisting of the following five highly researched and brilliantly written submissions covering a wide range of contemporary legal issues.

In their piece '*The Ministry And The Trace: Subverting End-To-End Encryption*,' Gurshabad Grover, Tanaya Rajwade and Divyank Katira, delineate the traceability requirement, its legality and constitutionality, and its implications for privacy and security concerns inherent in End-To-End Encryption. They provide an overview of the discussion of traceability by the executive, judiciary and the legislature, by tracing it back to the report of the Rajya Sabha Ad-hoc Committee from 2019. They enlist the possible ways to implement traceability requirements and also throw light on the ramifications of such implementation. They argue that introducing the requirement through executive notification exceeds the scope of permissible acts through delegated legislation, and that the rule may not stand up to constitutional scrutiny, given the decision in *Justice K. S. Puttaswamy (Retd.) and Anr. v. Union of India And Ors.*

Soumya AK, Maitreyi Misra and Anup Surendranath from Project 39A write for the NUJS Law Review on the application of the defence on insanity in their article '*Shapeshifting And Erroneous: The Many Inconsistencies in the Insanity Defence in India*'. They highlight that the absence of adequate judicial discourse in the area has culminated in a framework that struggles to be a judicially maintainable 'standard'. They argue that divergence in interpretation of legal insanity based on subjective metrics of behaviour and 'totality of circumstances' has led to the determination of legal insanity on assumptions rather than a meaningful inquiry into whether the person lacked cognitive or moral capacity at the time of the incident. They also analyse the impact of judicial uncertainty and confusion on the burden and standard of proof to be discharged by the defence. Lastly, they conclude that the existing legal framework to determine the existence and application of the defence of insanity is not judicially maintainable.

Dr. Raju Narayana Swamy and Kumari Saloni in their article '*Benefit Sharing' Regime in India Regarding the use of Biological Resources – An Alternative Model*' discuss the fair and equitable 'benefit sharing' provisions in light of the Biological Diversity Act, its Rules and Regulations, that were enacted in furtherance of the Convention on Biological Diversity ('CBD') and the Nagoya Protocol. The authors discuss the shortcomings of the current benefit sharing regime and also propose a two-pronged ad-valorem royalty model in order to further a more definite and credible regime.

Kaira Pinheiro and Dishay Chitalia from the WBNUJS, Kolkata, write on third-party funding in arbitration in India in their article '*Third-Party Funding in International Arbitration: Devising a Legal Framework for India.*' They explore the contribution of the absence of a regulatory mechanism in the apprehension associated with third party funding in arbitration in India which renders it an inaccessible method of dispute resolution. They argue in favour of third-party funding by reconciling the conflicting opinions regarding the duty and extent of mandated disclosure of such funding while proposing and justifying the establishment of a transparent mandatory disclosure mechanism. Ultimately, they set the debate in the backdrop of the new confidentiality provisions under the Arbitration and Conciliation (Amendment) Act, 2019. They discuss the viability of third-party funding in India and offer an overview of the key legislative changes required to create a secure legal framework in their conclusion.

Finally, Arindam Sarkar, Anwesha Sinha and Malika Nanduru in their note '*Contours of Corporate Social Responsibility amidst COVID-19*', write on the limitations of the Corporate Social Responsibility ('CSR') regime as revealed by the COVID-19 pandemic. While examining the current CSR framework and its limitations in the context of COVID-19, the authors also throw light on the restriction on CSR initiatives in the normal course of business and the reluctance of the Ministry of Corporate Affairs to consider such spending as CSR expenditure. In their conclusion, they propose recommendations to inspire a more impactful form of CSR that is integrated seamlessly into the organisation and the business of corporates.

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,

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