

EDITORIAL NOTE

FIFTEEN YEARS OF NUJS LAW REVIEW

*Dr. M.P. Singh**

Ever since I returned from Columbia University Law School in 1974 after gaining some idea of the functioning of the *Columbia Law Review* in the background of the functioning of the *Delhi Law Review*, which was being run by quite competent senior professors a few of them had worked abroad and published in the well-established foreign law journals such as the *Columbia Law Review* or the *Yale Law Journal*. Yet we could not bring out even one issue of *Delhi Law Review* annually in time. It was always late and suffered from the lack of good papers. We tried to involve the students, but in view of the size of the Delhi Law Faculty spread into three divisions in different parts of the city with some sort of autonomous administration, it could not be possible. As Dean Faculty of Law from 1994 to 1997 I also tried to encourage the students to bring out at least at one unit of the faculty where I worked as professor as well as had Dean's office. Though some of them took the initiative, it could not work because of lack of sufficient interest among large number of students.

In spite of these failures my interest in involving the students in self-research and writing as part of their legal education did not die. Therefore, when I came to NUJS towards the end of 2006 and was approached by the students with a large bunch of papers by their professors and a few from other legal luminaries, I asked them to leave those papers with me which I checked in a day or two, I could not convince myself to publish even one of them. Therefore, I invited the same group of students to tell them the reality of those papers and tried to convince them that with some effort they could write far better papers which will be part of their education, will count in their career and will be an example for law students all over the country, particularly in National Law Universities. I could also persuade them that the *Review* must be quarterly and not yearly or half yearly. Initially they were not convinced but after several meetings and long discussions they agreed to take the plunge with the assurance of some annual financial support by the University. These academic leaders among the students took the work so

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seriously that besides organising the research and writing among the students, they themselves found a suitable press in Kolkata, quality paper, colour of the cover and all required infrastructure for the journal. That is how the first issue of the *NUJS Law Review* ('Review') appeared in 2008 and was inaugurated by the then Chief Justice of the Calcutta High Court in the midst of several dignitaries, *Review* editors, contributors of papers and good number of other students. In course of time the initiators of the *Review* also arranged with the Eastern Book Company for everything including primarily the circulation of the *Review*. I hope Shri Sumeet Malik, an alumnus of the National Law School University, Bangalore is taking due care of the publication and circulation of the *Review*.

In course of time in spite of any difficulties, the NUJS students have set an example for the law schools in the country that the law students can run a law journal based on their own research for their own advancement in their careers and also contribute to the rule of law and legal culture in the country. I am also particularly proud of the recent efforts of the Editors to make the *Review* accessible for Persons with Disabilities by introducing reasonable accommodations on its website. Being one of the first Law journals in the country to do so, I have faith that the *Review* will continue to serve as a guiding light for law and policymaking in the times to come.

I wish that from issue to issue of the *Review* its editorial team conscientiously and with determination continues to improve the quality of the *Review* by soliciting one or two papers from nationally and internationally known legal scholars, sitting or retired judges which the editorial team of the *Review* considers special contribution to law and legal culture.

I hope and wish that the dynamic editors of the *Review* continue to improve the quality of the *Review* from issue to issue. I wish them all success in their endeavours.

I. IN THIS ISSUE

As the *NUJS Law Review* enters its fifteenth year of existence, we cannot help but pause and reflect upon our journey as an institution since 2008, when the first issue of the *Review* was released. Our journal was primarily based on the model of legal journals in the west, having the aim of creating opportunities for young and creative minds to undertake legal research and expound their arguments. Since then, the *Review* has come a long way in producing quality legal scholarship, not only from students at NUJS but from scholars all around the world. At the heart of the *Review*, however, still lies the vision of its founder, Dr.

M.P Singh, who conceived the *Review* to be a medium of expression and preservation of legal research which could guide law and policymaking for the future. At this juncture, it is only befitting, that this issue of the *Review* hosts a range of contributions which have been made by a unique set of authors whose areas of work span the entire sweep of law.

Suresh Nanwani, in his article, ‘Asian Development Bank’s Equity Investments in South Asia: Case Studies in India And Bhutan’, discusses the equity investments made by the Asian Development Bank (‘ADB’) in South Asia, specifically India and Bhutan. The primary objective of this Article is to demonstrate the instrumentality of these investments. Considering the ADB’s mission is to reduce poverty through sovereign as well as non- sovereign options, the author highlights that these investments significantly helped in providing support while stimulating the private sector and promoting economic development. The article also studies three commercial banks to offer a perspective on co-financing from the International Finance Corporation. The author lastly provides suggestions for the ADB in the latter part of the article for to further improve the role of equity investment for the economies of developing nations.

Tasneem Zakir & Satrajeet Sen, in their article, ‘The Centre or State: Who Should Respond to Biological Disasters?’ explore the authority of the Central Government to respond to biological disasters such as the ongoing COVID-19 pandemic. The paper challenges such authority of the Parliament vested under the Disaster Management Act, 2005 (‘DM Act’) on the basis that it violates the principle of separation of powers under the Constitution of India, 1950 (‘the Constitution’). This conclusion is based on a holistic review of all the legislative entries in the Constitution that may confer authority upon the Parliament to legislate on the matter of biological disaster. Further, with respect to the conflicting provisions under the DM Act and the Epidemic Diseases Act, 1897 (‘ED Act’), the paper applies rules of statutory interpretation, namely *lex specialis* and *generalia specialibus non derogant*, to address the impasse. Thereafter, the authors conclude that the ED Act, which accords primacy to the State Governments, should have been applied to handle the COVID-19 pandemic – instead of the DM Act.

Vaishnavi Sharma, in her article, ‘Understanding Non-Consensual Dissemination of Intimate Images Laws in India with Focus on Intermediary Liability’ analyses the implications of non-consensual dissemination of intimate images as technology-enabled crimes that have rapidly increased in the digital age. It primarily seeks to understand whether the law can sufficiently anticipate and deal with the crime ex-ante and ex-post. To do so, it assesses the provisions of the Informational Technology Act, 2000 that can be utilised to address non-consensual dissemination of intimate image. It further goes on to deal with argument

around obscenity surrounding sexually explicit photos in the context of consensual dissemination. Lastly, it acknowledges that the spread of one's intimate images non- consensually is as important as holding the perpetrator accountable from the victim's perspective. To build a framework for the same, it looks at the most effective recourse available to victims while focusing on intermediary liability and issues with the grievance redressal mechanism.

In their article, 'Regulatory Power and the New (Im) Balance of Powers in Constitutional Liberal Democracies: Some Reflections on the Relevance of Norberto Bobbio's Thoughts From an Indian and European Perspective', Emeric Prévost & Pratyush Kumar seek to provide a conceptual tool to address the ongoing issues of democratic legitimacy and accountability of regulatory structures in Indian and European Liberal Democracies. Inspired by Norberto Bobbio's rich legal and particular theory, the article undertakes a confrontation of these structures through a comparative perspective of the two jurisdictions. It attempts to sketch out the concepts and arguments to arrive at an understanding of the conditions within these regulatory structures may be compatible with constitutional liberal democracies. To do so, it first deals with mapping out the regulatory structures that are organically compatible with the Bobbian model of a liberal and democratic state. Further, it focusses on the functions that these regulatory structures fulfil and the means of action available to the authorities to ensure these structures are effective and function in a cohesive manner. Through this analysis, the authors seek to highlight the relevance of Bobbio's work to address today's challenges in the development of regulatory structures within constitutional democratic and liberal states.

Yash Sinha, in his article 'Constitutional Dysfunctionalism' borrows Prof. J Balkin's terminology from 'Democracy and Dysfunction' to demonstrate the crumbling of the functional link between the Rajya Sabha and the Indian Judiciary. While it is intended to provide a check on the Lok Sabha's policy-making powers, the author highlights how there is a growing and dangerous trend of the two constitutional bodies abandoning these responsibilities. He analyses both the Rajya Sabha and Indian Judiciary's dysfunctionalism in this light. For the former, it argues that the structural strengths of the House have diluted to an extent where they are ineffective now. For the latter, it highlights how the risks associated with dysfunctionalism of the institution emerge from its over-expansive powers of judicial review itself. The author concludes that this dilution has led to the withering of what was originally intended to be a 'self-sustaining constitutional ecosystem.'

In their article, 'Emergency Arbitration in India: A Critical Appraisal of The Institutional Framework', Abhinav Gupta & Sriroopa Neogi analyse the domestic institutional framework for emergency arbitration which govern such

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proceedings. Along with highlighting the challenges regarding recognition and enforcement of an emergency arbitration order, the article conducts a comparative analysis of the foreign institutional rules in order to assess the shortcomings in their domestic counterparts. Subsequently, the paper proceeds to provide numerous amendments for the domestic institutional framework that can assist in formulating a robust emergency arbitration procedure in India. These suggestions include amendments to the time frame for the emergency arbitration proceedings, the delineation of the powers and duties of the emergency arbitrator, the interim nature of the emergency order, and the rights of the parties concerned.

Truly,

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