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FOREWORD

The past academic year has been a watershed year for the Journal and its members. Last October, Stella James, a young graduate of NUJS, approached us with a remarkable piece based on a personal experience. The piece dealt with the reflections of a feminist, post an incident of sexual harassment involving a retired Supreme Court Judge. Having perused the insightful write-up, in keeping with the best traditions of the Blog, which has dealt with issues traditionally relegated to the margins of legal community, we readily uploaded the piece on the Blog. After a few days, the blog post caught national attention and was reported widely by national and international media. This ultimately led to the formation of a three-member Committee comprising of Judges of the Supreme Court by the Chief Justice of India to look into the matter of sexual harassment. The operative part of the report of the Committee stated that the “statement of the intern, both written and oral, prima facie discloses an act of unwelcome behaviour (unwelcome verbal/non-verbal conduct of sexual nature)”. The Apex Court however refused to pursue the matter due to jurisdictional issues.

When the matter was being widely discussed in the media, the Blog extended full support to Stella, and acted as a forum to publish her statements. Although the case itself was not pursued by the Supreme Court, it led to various institutional changes. For example, a ten member Supreme Court Gender Sensitisation and Internal Complaints Committee (GSICC) was set up by the Court. NUJS has also drafted a policy to deal with cases of sexual harassment during internships. Most of all, it is our hope that the blog-post served its initial purpose – to stir a debate and persuade society to reflect on much ignored issues such as sexual harassment at the hands of persons in positions of power and understand

the complexity of feelings of the victim. We will continue our constant efforts to maintain the highest standards with the Blog.

As part of our commitment to the law and society jurisprudence, we continue to present to you a wide array of papers examining pertinent issues in this edition of the journal. It has been our endeavour to view laws through the lens of various social sciences but also actively participate in the process of law and policy making. To this end, we have provided commentaries on oft neglected issues such as regulation of foreign funding to charitable organisations as well as dedicated legislative reviews to examine the entitlements of marginalised groups like the street vendors and HIV AIDS patients.

The increasing number of Not for Profit Organizations (NPOs) supported by foreign funds has been the cause of growing speculation regarding the efficacy of the Foreign Contribution and Regulation Act, 2010 (FCRA). In his paper titled *Balancing Transnational Charity with Democratic Order, Security, Social Harmony and Accountability: A Critical Appraisal of the Foreign Contribution (Regulation) Act, 2010*, Prof. (Dr.) P. Ishwara Bhat discusses the issue of regulation of foreign funding of NPOs. The paper tests the salient features of the FCRA, 2010, employing a principled as well as a pragmatic analysis, thus evaluating its overall efficacy in present times. In doing so, it acknowledges the importance of foreign funding in situations like natural calamities, acute shortage of resources etc., but also highlights its potential in undermining democracy, national security and social harmony by being misused for unauthorised purposes. It further highlights the changes in the regime from FCRA, 1976 to 2010 by analysing the evolution of the regulations and the judicial interpretation of the objectives of the Act.

Subsequently, we explore a major issue in the rights discourse of the impoverished in India - that of enforceable property rights for the poor. Aanchal Dalal and Yajnaseni Roy, in their paper titled *'Allocation of Property Rights and Its Implications for Urban Impoverishment'* argue for the need for right to property for rectification of ills of human impoverishment by creating a 'sense of agency and autonomy'. The paper analyses the Model Property Rights to Slum Dwellers Bill, 2011 and brings to fore the fact that the Government of India is

taking note of the importance of ensuring property rights to the impoverished masses. The paper argues for making the right to property a fundamental right to ensure that the state is compelled to take affirmative action for enforcement of the same.

In her article titled *Profiteering in the Higher Education Sector in India*, Gayatri Loomba has closely examined the deplorable state of higher education in India and puts forth nuanced arguments in favour of a for-profit model to improve private engagement in the sector. Drawing upon both the economic and social justifications for allowing privatisation, she concludes that such a model, contrary to judicial perception, would transform higher education from mere 'teaching shops' to how it has been envisaged in the constitutional scheme.

Continuing our previous attempt at reviewing Bills tabled before the Parliament as examined through the lens of law and society jurisprudence, the Monsoon issue of Volume 4 carries legislative reviews on *The Street Vendors (Protection of Livelihood and Regulation of Street Vending) Bill, 2012* and *HIV AIDS (Control and Prevention Bill), 2012*. The two bills have been reviewed by a team of undergraduate students from NUJS selected solely for the said purpose. The former titled, *'Formalising the Informal Streets: A Legislative Review of The Street Vendors (Protection of Livelihood and Regulation of Street Vending) Bill, 2012'*, is a critical reflection on the revised regulatory framework proposed for street vendors in India. Previously regulated by a series of arbitrary and ad-hoc policies set by the municipal rules governing cities, this Bill legitimises street vending by conferring certain rights and corresponding obligations on the vendors as well as the State. In light of such a commitment, the report analyses the potential of the Bill as a tool for poverty alleviation as well as its relevance in securing social security measures for street vendors. The exercise reflects that there have been significant improvements in terms of granting substantive rights for the vendors, procedural impediments like a cumbersome registration process and excessive delegation of powers to the appropriate government dilutes many of the entitlements granted. This begs the question whether it is an 'implementation gap' or does it stem from continuance of earlier models of regulation into the present Bill, which is addressed in this review.

Capturing the spirit of critique in a different vein, legislative report titled *Mainstreaming the Margins: A review of the Key Concerns in the HIV AIDS (Prevention and Control Bill)*, 2012 debates a controversial health legislation in India. The issue of preventing and treating cases of HIV AIDS has been a major challenge to not just the medical fraternity but also policy makers of many developing countries including India. The review analyses the principle of “informed consent” of an affected patient as recognised in the international context and the need for codifying these norms mandating disclosure of relevant and complete information in the domestic legislation. Having comprehensively analysed the resources required for effective implementation of the Bill, the review raises grave concerns over scarcity of potential manpower and financial resource allocation that may pose a serious threat to successful treatment, infrastructure creation and training envisaged in the Bill. Suggestions have been made keeping in the mind the above problems as well addressing concerns over high risk groups and those relating to matrimonial alliances with HIV AIDS infected persons.

In a refreshing book review by Garga Chatterjee, a postdoctoral fellow at Massachusetts Institute of Technology and Harvard University, he critiques the notions of self-hood and its representations as outlined in *Righteous Republic: The Political Foundation of Modern India* (authored by Ananya Vajpayee). Categorising the book in the genre of ‘idea of India’ books, Mr. Chatterjee evaluates the relevance of this piece in delineating the political underpinnings of the modern nation state that is India.

On a final note, Arpita Sarkar reviews an engaging book titled *From the Ruins of Empire* authored by Mr. Pankaj Mishra. A unique narrative of the Asian history of struggle against ‘western imperialism and materialism’, the book brings to fore lesser known intellectuals like Jamal-al-din-al Afghani and Liang Qichao whose works are bound to inspire the future generations. Where Asian history is often written by its Western counterparts, this book celebrates the tradition of writing one’s history by oneself. Further, it provides a fresh perspective on the much written issue of the Orient’s struggle by celebrating the

spirit to create a just and humane society by not only criticizing the West but also one's system. The review also appreciates the use of tenets of religions of the Orient rather than reliance on the western models to argue for civil rights and egalitarianism as advocated in the book. Vajpeyee's and Mishra's books have been released within a very short interval. Both the books reflect mutual acknowledgement of each other's scholarship on Asian history. That is why both the books have been reviewed simultaneously since the reading of both the books together provides a more holistic picture of South Asian history and her struggle against the West to retain her identity.

We would like to thank our Editor-in-Chief, Prof. (Dr.) P. Ishwara Bhat for his unending support for the activities of the journal both in the capacity of an Editor as well as a research scholar. A special vote of thanks to our Faculty Advisors, Mr. Saurabh Bhattacharjee, Ms. Ruchira Goswami and Ms. Lovely Dasgupta for their editorial and administrative assistance. We are also grateful to our Graduate Advisory Board and the peer reviewers whose expertise is indispensable to the journal. We hope this issue would enthuse our readers who have constantly supported us.

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