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FOREWORD

The past year has been a watershed year for gender justice. The passage of the Criminal Law (Amendment) Act, 2013 and the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 have been positively received by the public. On the other hand, the regressive verdict in *Suresh Kumar Koushal v. Naz Foundation*¹ was a huge set back, only partially redeemed by the progressive stance of the judiciary in *National Legal Services Authority v. Union of India*². While these defining and landmark statutes and judgments do have purely legal angles, we as a journal on law and society, take pride in providing the platform for analysis of such developments from an interdisciplinary perspective. The present issue includes two papers analyzing the intricacies of gender justice. As mentioned in our previous Foreword, last year, on our Blog, we published an insightful, interdisciplinary piece by a young graduate of NUJS reflecting on an incident of sexual harassment. This ultimately led to major institutional changes such as the formation of the Supreme Court Gender Sensitisation and Internal Complaints Committee (GSICC) and the drafting of the NUJS Guidelines on Protection of Students from Sexual Harassment during Internships. This incident reaffirmed the faith we have placed in interdisciplinary scholarship. With this issue, we now take another step forward in our endeavour to promote scholarly research analyzing law using the tools of social sciences.

Exploring the thematic linkages between poverty and criminal responsibility, Saurabh Bhattacharjee, in his note titled '*Should Valjean have been Punished for Stealing Bread? Of Poverty and Criminal Responsibility*', makes a threefold argument. He argues that liberal models of criminal responsibility cannot accommodate the defence of poverty, due to assumption of

¹ (2014) 1 SCC 1.

² (2014) 5 SCC 438.

pre-existence of freedom and equality of choice. He further examines the tenability of invoking necessity and duress as poverty defences within the realm of general defences in criminal law, concluding that this would not be defensible. However, he argues that an argument of poverty and deprivation are more relevant in sentencing due to the individualized process. He concludes the paper by noting that the moral justification of criminalisation of manifestations of poverty such as homelessness, street vending etc. is very weak. He suggests that a practical solution would be a minimalist use of criminal laws.

Ipshita Sengupta, in her paper entitled '*Nurturing Caring Lawyers: Rethinking Professional Ethics and Responsibility in India*', highlights the declining standards, and public trust in the legal profession. She argues that the exaggerated focus on rules, legalistic thinking and analysis has distanced lawyers from their ethical sensibilities which can be remedied by reconnecting lawyers to the moral dimensions of their profession. In particular, she proposes a solution centred around Carol Gilligan's *ethic of care* which may help lawyers to reimagine and reconstruct the legal profession.

In another thought provoking article, *A Critical Study of Free, Prior and Informed Consent in the Context of the Right to Development—Can "Consent" be Withheld?* Ipshita Chaturvedi aims to widen the ambit of the legal contours of the principle of Free, Prior and Informed Consent (FPIC) to include the Right to Development. To this end, she first discusses the understanding and implementation of this principle by the State, the United Nations, international financial institutions and multi-national corporations. In particular, she elucidates upon the striking difference in the usage of the term by the World Bank and the United Nations Declaration on the Rights of Indigenous Peoples', 2007 the former calls for free, prior and informed "consultation" instead of "consent", implying the absence of the right of withholding consent. In this context, the Right to Development and its interface with FPIC has been examined, with the author arguing that the FPIC is contained within the Right to Development. She then analyzes judicial pronouncements on withholding consent in the context of FPIC, development and the concept of "consent". Deviating from the norm of understanding FPIC from a right to self-determination perspective, she has attempted to present FPIC from a right to development standpoint.

As mentioned previously, this edition carries two papers which explore the developments in gender justice. In '*Be it Manu, Be it Macaulay: Indian Law and the 'Problem' of the Female Body*', Kanad Sinha argues that the societal rhetoric of viewing a woman's body as her husband's property is constructed and justified on the basis of a notion of (ancient) Indian culture/tradition derived from the partial and selective reading of ancient Indian literature such as the Dharmaśāstra tradition stemming from Manu, ignoring many other alternative traditions. This strand of Indian tradition matches Victorian morality. He argues that the provisions of the Indian Penal Code,

1860 regarding rape, adultery and other crimes against women survive in the 21st century as Victorian socio-legal mentality has a common meeting ground with the traditional selected Indian socio-legal mentality.

Taking the discourse on gender justice further in '*Legal Recognition of Same-Sex Relationships in India*', Nayantara Ravichandran argues that attaining legal recognition of same-sex relationships is imperative in realising the ideal of equality, and therefore, should be considered as important, if not more, than overturning the decision in Naz-2. Since marriage laws recognise only heterosexual unions, same-sex couples are deprived of all the state, financial and social benefits that may be availed by heterosexual couples. In this paper, she explores various routes of recognition, concluding that the most viable manner of attaining the same would be an amendment to the Special Marriage Act, 1954.

Dealing with another pertinent issue, Sreyan Chatterjee in his paper, '*A Comparative Analysis of the Cost-Benefit Debate Around the Proposed Congestion Pricing of Roads in Delhi*', has closely examined the economic viability of proposing 'congestion pricing' as a solution to the deplorable condition of traffic in India, drawing from the Delhi Government's proposal to introduce a congestion fee for every vehicle entering the central districts. Undertaking both a theoretical and comparative analysis, he concludes that while the introduction of such a model is desirable, its success would depend upon the presence of certain pre-conditions, ranging from optimal quantum of 'urban transport tax' and diverse paying options to transparent and dynamic dissemination of policy-based information, determined primarily by varied social and political realities of the day.

This issue of the Journal also carries three book reviews. Armin Rosencranz, who needs no introduction to those interested in environmental law and otherwise, incisively takes us through '*Churning the Earth: The Making of Global India*' which has been authored by Ashish Kothari and Aseem Srivastava. He appraises the piece through the lens of an activist-academic and finds it wanting in appreciation of the recent developments to environmental law and policy in India. Despite a commendable effort at identifying the key debates affecting the Indian polity, the book is dated in its appraisal of judicial and political currents which compound the impact of globalization in India—and this cuts the book short of being a comprehensive and up-to-date commentary on the diverse issues of the Indian democracy.

The book '*Citizenship and its Discontents: An Indian History*', authored by Niraja Gopal Jayal has been critically reviewed by Ajay Gudavarthy. He has critiqued the author's inability to rationalise the interplay existing between nationalism, neo-liberalism and the heterogeneity of identities as the prerequisites of reaching a conclusion as to the underpinnings of social citizenship and solidarity in India. He has evaluated the effect of the above ricocheting

interactions on Indian democracy and particularly the subaltern who are now caught in a complicated maze of powerlessness, heterogeneity exclusion and militancy to conclude that the moment of active citizenship coincides with the growth of competitive contractualism and the decline of political legitimacy.

Rohit De has reviewed the book '*Constitutional Nationalism and Legal Exclusion—Equality, Identity Politics and Democracy in Nepal (1990-2007)*', written by Mara Malagodi. The book is an account of the constitutional project of Nepal in the 20th century and the early 21st century. The reviewer suggests that transformative constitutionalism in Nepal is a great area of study for researchers and scholars, but progress has been slow due to factors like language barriers. He is of the opinion that the book therefore makes a significant contribution to the conversation of comparative constitutional law. He however notes that the book's focus on text and case law leaves the reader curious about the judges', lawyers' and the citizen's perception of the Constitution. Furthermore, he opines that focus on issues like social and religious exclusion subsume other crucial issues like economic, social and structural inequalities.

In the abovementioned two books under review, both Malagodi and Jajal explore the common themes of citizenship, democracy and constitutionalism. The books provide a historical narrative and an incisive account of constitutional projects in two neighbouring South Asian countries, India and Nepal. We have chosen the books with the hope that a reading of both these books will paint a more complete picture of the story of citizenship and constitutional experience in South Asia.

On a different note, we would like to gladly inform all our readers that our Journal will henceforth be printed and distributed by the Eastern Book Company (EBC) Group. Established in 1942, EBC is one of India's foremost and most reputed publishers. The EBC Group also publishes the Supreme Court Cases (SCC) series, one of most well-known and prominent law reports in India. We look forward to a very long and fruitful association with the Company. We are thankful to Mr. Sumeet Malik, Director of EBC, for his understanding and patient approach during our negotiations. Henceforth, alongside the print version, the Journal will be indexed and available in full on the SCC Online database. We will also continue hosting the Journal on our website. Needless to say, we will always be grateful to our previous printing partner, Hyam Enterprises

We also take this opportunity to thank our Editor-in-Chief, Prof. (Dr.) P. Ishwara Bhat for his continuous support and unwavering faith in all endeavors of the journal. A special thanks to our faculty advisors—Dr. Lovely Dasgupta, Ms. Ruchira Goswami and Mr. Saurabh Bhattacharjee, for their constant guidance over innumerable issues. We are perennially indebted to the members of the Graduate Advisory Board as well as the peer review board. Their expertise and guidance is invaluable to us. We must mention the regular

support and assistance we receive from several alumni and former members of the Editorial Board. We are grateful to all the members of the JILS family who helped us reach the agreement with EBC. We sincerely thank our readers for their interest in the publications of the journal and in our blog. We hope to continue to live up to your expectations.

—*The Board of Editors*