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FOREWORD

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The *Journal of Indian Law and Society* (JILS) is one of the two prominent law journals of the West Bengal National University of Juridical Sciences, Kolkata (NUJS). The other one which has been appearing since 2008 in four issues, annually, is *NUJS Law Review*. Until 2007, when I joined NUJS in December as its Vice-Chancellor, the students used to bring out a small issue of a journal annually consisting of a few writings from the students and a few others either by faculty members, or other legal luminaries not necessarily connected with the University. Considering the journal as an important aspect of legal education, I encouraged the students interested in running the journal, to engage in research and writing as well as to take the full responsibility of researching, writing, editing, and publishing the journal quarterly, with initial meager financial support from the University. After entertaining and expressing initial doubts in their ability to bring out four issues of the journal annually without any support from any faculty member or anyone else, they decided to go ahead with that task which acquired special recognition not only within the University but also in other law schools and legal circles. As more and more students started getting attracted towards this activity, all of whom could not be accommodated in one journal, they decided to start more of such legal journals of which *JILS* acquired the maximum prominence even without any financial or any other kind of support from the University. All credit goes to those enterprising students who

initially thought of it and gave it a practical shape to be successively improved by their successors year after year. Most of those students who initiated and worked for it are doing very well, either as legal professionals or as academics, and setting an example for their successors who year after year are bringing out the journal and trying to improve its contents and quality successively. They all deserve to be congratulated and encouraged in their task which is one of the most important segments of legal education. Accordingly, I congratulate all the former and current members of the Editorial Board of *JILS* and also thank the current members for giving me the honor of writing this Foreword.

I will now give a short summary of the papers present in this Volume.

Anshul Dalmia and Stuti S. Kokkalera in their paper titled *Re-Examining India's Juvenile Justice Framework: A Call to Recognize A Juvenile's Mitigated Culpability and Potential for Reform* attempt to have a relook on the Juvenile Justice (Care and Protection of Children) Act, 2015 in a comparative perspective of its counterpart in the United States. Analysing further the crime control models, the authors argue that such provisions would pose hindrances for juveniles to have a fresh start in society. They have also tried to provide an alternative scientific model of the treatment of juveniles.

In her note: *Does an Increase in the Legal Age of Marriage for Women Guarantee Equality for Women in India?*, Jagriti Gangopadhyay examines the emerging policy debate on increasing the legal age for marriage of women from 18 to 21 years. Engaging extensively with literature on existing gender disparities and highlighting the various ways in which the social realities interact with the current law on the age of marriage for women she concludes that the proposed policy change does not alone subvert the social processes and beliefs which engender, and contribute to, gender disparities, she interrogates the benefit of the potential policy.

On *Disability and Care*, Jonathan Herring examines the tension on the concept of care among the supporters of disability rights and the supporters of care takers argue for a more nuanced understanding of 'care' to overcome the tension. His emphasis is on the importance of caring relationships rather than separating the two parties as care takers and cared for. In the light of discussing the disability critique of care, the author also explores the two contrasting models of disability: the individual and the social models of which the former relates a person's body or mind which distinguishes him/her from a normal person, while the latter are the bodies that are rendered disabled due to lack of societal provision. The paper deals with an important issue, which is very much timely in our context to be taken into account.

In her paper *Preventive Detention Laws in India*, Neha Singhal provides us with an overview of the background, usage, and implementation of preventive detention (PD) laws in India. Disputing the popular perception that these laws are used against political dissent, and on examination of both Central as well as State laws, the author identifies numerous issues for reform in view of their misuse by law enforcement authorities. The author has portrayed these laws as a far more serious intrusion in personal liberty than is usually perceived. As a solution of this malady, the author suggests deletion of sub-clauses (3) to (7) of Article 22 that protect PD laws in our country.

The author of article titled, *Financial Data Protection in Indian Regulatory Policy: From 'Secrecy' and 'Confidentiality' to 'Privacy'*, points towards the need for the creation of clear legal standards that reduce the obfuscations in legal regulatory language and argues that financial privacy should be a variant of a general right to privacy, available to consumers of all financial products and services and traces the development and evolution of the right of Financial Privacy in banks and explores some of the financial legal policies of India in detail, to analyse the harms that arise from using these words synonymously, and thereby reduce the import of 'privacy' in financial transactions.

In their article titled *Justice Delayed: A District-Wise Empirical Study on Indian Judiciary*, Varsha Aithala, Rathan Sudheer, and Nandana Sengupta examine the correlation between socio-economic development and case pendency in lower courts of India, at the district level. For the purpose of the study, they make use of four primary variables regarding the proportion of pending cases. The examination of these variables comprises a consideration of judicial factors such as the requisite number of judges and district courts; economic factors such as per capita GDP and household asset ownership; and social factors such as age, education, and literacy levels. The authors find a strong negative association between judicial pendency and economic indicators, potentially due to higher degrees of awareness and agency as well as improved public policy in economically stronger districts. They also see significant association between pendency levels of criminal cases and socio-demographic factors, noting, for instance, negative relations with the education levels as well as the proportion of working population in a district. In pursuance of it, the authors provide concluding recommendations regarding data collection in order to better understand the causal link between socio-economic factors and litigation and pendency rates in India.

In their article *Information Transparency Requirements in Indian Contract Law and Their Application in E-Commerce – Results from An Empirical Survey*, Ognyan Seizov, and Alexander J. Wulf analyze the effectiveness of information notices in India. India, like countries across the world, relies on information

disclosure obligations for consumer protection. But such requirements do not find any legal basis in a single law such as the Consumer Protection Act but in sector-specific regulations. A review of judicial decisions evidences that the courts commonly invalidate consumer consent in the event of insufficient information. Noting the absence of such law the author turns to empirical surveys and analyses their operation. The empirical study illustrates the scant attention paid to standard transparency provisions, while those with more straightforward language fair better. Studies in India demonstrate the average engagement and understanding of the Indian consumer with respect to information disclosure policies. The paper further deals with data analysis and tendencies noted in it concerning the Indian consumers in detail, which need to be read from the paper.

Evidently, the papers as summarised above cover different and diverse aspects of modern legal discourse which supply relevant information on social, economic, and political issues facing our society. They are, therefore, quite in line with the title and objective of JILS. Without any specific reflections on this particular issue of JILS, my general observations are that from the point we started with, we must move forward and in terms of height, we have to go higher and higher. Therefore, every issue of JILS must be superior to the previous one. If this is not happening, we are not progressing in our goal of moving forward. We are either static or going backward. I am not sure whether this issue of JILS is in any way superior to the issues which I read quite a few years back and especially in the beginning. From that point of view, the editorial board should take responsibility on its shoulders to produce papers superior to those in its preceding issue or issues. We must continue forward and not become static. To remember Sir Henry Maine's conclusion reached nearly two centuries back – that beyond a particular stage, progressive society moves from status to contract while static societies remain stuck up at that stage. At that point in time, he counted India among the static societies. If we contest and falsify Sir Henry Maine's conclusion, we must project constant improvement in the quality of JILS. I am sure its dynamic and committed members of the editorial board will ensure that the quality of each successive issue is superior to its predecessor. I wish them all success in their endeavour.