

JOURNAL OF INDIAN LAW AND SOCIETY

Volume VII

2016

FOREWORD

Paayas Pandit

The Journal of Indian Law and Society was established with the purpose of encouraging interdisciplinary scholarship within the law and society framework. The recent few years have been characterised by increased conversation and debate on the ideas of freedom and rights. As such, we are honoured to present this issue where the theme of rights has been examined through a multitude of socially pertinent issues. The issue also contains a transcript of the Twelfth Keshab Chandra Basu Memorial Lecture delivered by Dr. Prabhat Patnaik, and a book review of Dr. Mrinal Satish's *Discretion, Discrimination and the Rule of Law*.

In a particularly edifying lecture, Dr. Prabhat Patnaik emphatically argued for the recognition of a set of fundamental economic rights in India. In doing so, he located a constitutional 'contradiction' that can be traced back to the debates of the Constituent Assembly – while the promulgation of the Constitution heralded equality in political life, inequality continued to define the social and economic life of Indians. He further addressed the tendentious relationship between democracy and neo-liberalism and how this contributes to inequality of wealth in society. Dr. Patnaik also defends his economic rights model against arguments based on the unfettered operation of the free market economy and the potential of trickle-down economics.

* Paayas Pandit is a fourth year NUJS law student and served as an editor in the JILS 2018-19 Board.

Anandhapadmanabhan Vijayakumar and Athira Palangat address a previously unexplored legal problem in *The Status of Cryopreserved Embryos in Divorce Proceedings*. While assisted reproductive technologies have become a popular method for parents to conceive, law has not evolved at a compatible pace. The authors trace the history of legislation globally, and place a significant reliance on judicial decisions from the United States and India in divorce cases. Since India lacks relevant legislation pertaining to frozen embryos, parallels are drawn with the judicial approach to child custody in divorce, status of the embryo in surrogacy laws, and personal laws. The authors also examine the viability of a contractual approach and argue that it would only be viable if coupled with greater respect for an individual's reproductive autonomy. They conclude by suggesting dispute resolution as a preferred approach in resolving such conflicts over a rights-based approach, as that would complicate the task of the judiciary.

Pritam Baruah, in his article *Human Rights Theory and Sustainable Development*, examines the nature of the relationship between human rights and the idea of sustainable development. He argues that in spite of the scholarly recognition of a link between the two concepts, the 'language of rights' has rarely been utilised to further the cause of sustainable development. The paper traces this controversial relationship to how human rights are conceptually and conventionally understood across various schools of human rights theory. He ultimately concludes that the language of rights is inherently unsuitable when arguing for sustainable development as specific freedoms deserving of protection as human rights remain unidentified.

In *Compoundability of Offences: Tracing the Shift in Priorities of the Criminal Justice System*, Chirayu Jain analyses the concept of compounding within the criminal justice framework. He traces the evolution of criminal law in British India and the colonial treatment of razeenamahs (settlement deeds), and the later post-independence approach to criminal law. The paper offers a comprehensive study of concept of compounding within the formal system while locating it within the larger context of flux within criminal law and procedure. The author concludes by noting the disconnect that exists between those who comprise the higher judiciary and the lived realities of ordinary people, leading them to prioritise efficiency over other ways of administering justice.

This issue also carries Abhinav Sekhri's review of *Discretion, Discrimination and the Rule of Law* authored by Dr. Mrinal Satish. The book fills a gap in existing analysis relating to unwarranted disparity in sentencing in the context of Indian rape law. Sekhri commends the author for identifying

a shift in the 'site' of judicial discretion from the adjudication stage to the sentencing stage. This argument is supported by a statistical analysis of decisions between 1984 and 2009 that assessed the factors considered by courts in sentencing. While he is convinced with Dr. Satish's claim of a crisis of illegality plaguing rape law, he does not agree that such a crisis extends to the entire framework of sentencing. Sekhri is also dissatisfied by the remedial suggestions put forth by the author, and finds them to be weakly fleshed out.

The Board is grateful for the continuous support of our Faculty Advisor, Mr. Vijay Kishore Tiwari, our Graduate Advisory Board, and our peer reviewers. The past two years have been a difficult phase where we have been unable to publish issues in a timely manner. As such, the release of this volume is a particularly important moment for us, as it embodies our spirit to continuously contribute to the world of socially-informed legal scholarship. This would not have been possible without the persistent efforts of all involved in the production of this volume. The Board hopes that readers will find this issue to be useful and engaging.

