

JOURNAL OF INDIAN LAW AND SOCIETY

Volume XI(1)

2020

FOREWORD

JILS Editorial Board 2019-20¹

This issue marks the culmination of the yearlong efforts of the JILS Board 2019-20 to clear the backlogs for the Journal. In this Academic year, we published four issues – Volume 8 (2017), Volume 9 (2018), Volume 10 (2019), and Volume 11(1) (2020 Monsoon). Further, Volume 11(1) marks the first bi-annual issue of the Journal in the space of four volumes. Considering that there are no further backlogs, the Journal is reverting to a bi-annual publication for all subsequent issues. Thus, in a strange mix of pride and humility, we tell you, the reader unequivocally that the Journal of Indian Law and Society ('JILS') is firmly back on its feet again. What makes this moment all the sweeter for us is that we can state with cent percent confidence that each piece in each of the four volumes live up to the high standards that JILS is now renowned for. Every Article, Note, Essay, and Legislative Brief published in these volumes went through a rigorous double-blind peer review process in addition to multiple rounds of review and edits by the Editorial board. Any report or lecture while not peer reviewed was either the result of research carried out in association with JILS or delivered by eminent scholars/practitioners.

In addition to the pressure of taking the reins of a journal that has published the likes of Martha Nussbaum, Marc Galanter, and Prabhat Patnaik, JILS provides the added challenge of being an interdisciplinary journal. We feel that it is worthwhile to share with you, the reader, one aspect we noted about

¹ Alex Koshy, Anamika Kundu, Rohit Sharma, Sarath Ninan Mathew and Sudev Singh.

interdisciplinarity and a resulting change that we have made to our publishing policy. Initially, the board had understood interdisciplinarity in conjunction with the standard of law and society; ergo, we only considered pieces that dealt with social issues. This meant that we were constrained to leave aside most papers on corporate law, international law etcetera. Owing to extensive engagement with various scholars, we have realised that interdisciplinarity need not have a strict fixation to the law and society framework. Any piece of literature that analyses law using the help of an allied science or social science is an interdisciplinary piece. Thus, a piece that we are actively pursuing for Volume 11(2) looks at corporate takeovers through various economic models of general optimality. We hope that this clarification of our scope helps JILS pursue a wider array of papers and provide a more enriching experience to our readership.

Now, without further ado, we introduce the pieces that make up Volume 11(1) of JILS. Sarath Ninan Mathew, the Chief Editor of the Journal, in the Editorial Note writes about how the Ayodhya dispute is a case not to be viewed through the lens of Article 25 of the Indian Constitution. There is an attempt to study the case through civil laws, especially that of adverse possession. The history of the dispute is traced from the 1600s in order to analyse why property should be settled using secular civil laws and not the constitutional rights surrounding religion. The Note concludes by asserting adverse possession for both Hindus and Muslims resulting in valid titles over the outer and inner courtyards respectively.

JILS has on various occasions opened up research-assistantships in variety of topics with prominent academicians to our NUJS students. In this line, our third year law student Oishika Roy was a research assistant and a second author to Prof. Rimple Mehta who is Lecturer, at School of Social Sciences, Western Sydney University for her paper, *Deportation of Bangladeshi Prisoners from India: Issues and Challenges*. In this paper the authors argue that India has accorded utmost priority to territorial sovereignty particularly after the disastrous events of 26/11. Bangladeshis comprise the highest number of foreign national prisoners in India today and in this regard, the shared history between India and Bangladesh has been discussed in context of large 'illegal' migration from Bangladesh to India over the years. This article draws on Prof. Mehta's experience of working as a student social worker in a prison for female under trials in Mumbai in 2008-09, as a doctoral researcher in two prisons in Kolkata in 2010-11, and engagement with various stakeholders on the issue over the last decade to highlight the ways in which individual lives are impacted when specific procedures are not followed for repatriating an individual back to their country of origin. In addition, through the analysis of about 18 judgments between 2014-19, from the States of West Bengal, Tripura, Maharashtra and Karnataka, this paper seeks to showcase the

ways in which deportation orders are given by the judiciary and the ways in which it may be violative of the human rights of the deportees.

In *Commercial Court in India: Three Puzzles for the Legal System Reform*, authors Varsha Mahadeva and Prof. Sudhir Krishnaswamy analyses the performance of Commercial courts set up under the Commercial Courts Act 2015 ('the Act'). The authors delve deep into the framework of the Act and deftly breaks down the Act in terms of model, jurisdiction, infrastructure and even court procedures among others. To assess the efficacy of the Commercial Courts Act, the authors have adopted a mixed methods model which uses both quantitative data from the Delhi High Court and qualitative data from the City Civil Court of Bangalore. From this, the authors pose answers as to whether the Act have been effective in its purpose and thus, offers valuable insight into the policy determinations of the Act.

In *Complete Justice? Silences and Erasures in the Ayodhya Judgment*, Prof. Amit Bindal of the Jindal Global Law School writes a scathing critique of the Supreme Court decision in the Ayodhya judgment. After tracing out an elaborate historical analysis of the Ayodhya fact matrix, the author criticizes the differential evidentiary thresholds used by the court when viewing evidence submitted by the Hindus and the Muslims. The author analyses in detail the tone and the language used in the judgments to see whether or not there might have been any pre-existing biases in operation. The author also explores factors the Honourable Supreme Court could have/should have commented on - especially the state sponsored violence that plagued the Ayodhya dispute for decades.

Malavika Parthasarathy, an independent researcher and Prof. Rupal Oza of the Department of Women and Gender Studies, Hunter College have analysed rape cases in the Indian States of Punjab and Haryana through a gendered lens in their paper *Compromise in Rape Cases in Punjab and Haryana: Gendered Narratives Animating Judicial Decision-Making*. The authors highlight that although there cannot be a 'compromise' reached in such cases, 'settlements' are frequent. They go on to study High Court cases of Punjab and Haryana between 2009-2018 which have either allowed or dismissed petitions under Section 482 of the Code of Criminal Procedure to note the trend of 'settlements' in rape cases. Through the various orders, they emphasise on the fact that the use of Section 482 is to maintain the existing hetero-patriarchy.

In *An Examination of the Effect of Informal Justice upon Women*, Prof. Tanvee Nandan of the Jindal Global Law School explores the complex relationship between informal justice systems and women's welfare. The author recognises that this issue does not contain black and white answers; as such, the

author explains why women often have no other option but to resort to informal justice systems and at the same time points out the shortcomings in these systems as they exist in society today. The author also highlights various policy prescriptions for solving these shortcomings and improving informal justice systems for women.

In The Draft Model Guidelines on Implementation of IPR Policy for Academic Institutions, Prof Prabhat Kumar Saha and Shivam Kaushik writes about the National Intellectual property Rights Policy and what it means for the future of Intellectual Property Rights in India. The author masterfully lays down the structural framework and the substance of the Policy and also argues about the implications of the Policy in terms of monetary incentives, transfer of technology, double taxation among others. Additionally, the author also reviews the drafting history of the Draft Guidelines which traces its inception back to 2008. From the analysis of these factors, the author arrives at a conclusion about the virtue of the Draft Policy Guidelines.

As is tradition at the WBNUJS, this volume also publishes the XIIIth Durga Das Basu Endowment Lecture. This year, it was delivered by Senior Advocate Shyam Divan, on *Constitution, Liberty and Privacy*. Mr. Divan draws upon the governing charters of India from the colonial Swaraj Bill of 1895 to the Constitution of India with its jurisprudence, and argues that what we today consider privacy, has always been construed as liberty, playing out in a different space in the 21st Century. Mr Divan goes on to critically analyse the judgments of the Supreme Court of India in Puttaswamy and Aadhar, and situates them in the Privacy jurisprudence as developed in other post-colonial states, such as Jamaica and Kenya. He argues for a stronger Privacy right, protecting citizens against both the state and Big Tech Corporations.

As always, we are grateful to our Honourable Vice Chancellor, Professor N.K. Chakrabarti the Editor-in-Chief of the Journal, our Faculty Advisor, Professor Vijay Kishore Tiwari, our Graduate Advisory Board members, our peer reviewers and last but not the least to you – our valued readers. We hope you enjoy reading the issue.