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FOREWORD

This issue begins with a Special Editorial Note titled *Uniform Civil Code, Legal Pluralism and the Constitution of India*, where Professor M.P. Singh examines the Uniform Civil Code (UCC) in light of legal pluralism and Constitutional law in India. He argues that similar to the Supreme Court's prioritisation of some Fundamental Rights, the Directive Principles of State Policy may also be stratified. Thus, Article 44 (Uniform Civil Code) need not be attended to on a priority basis. He then concretizes his arguments with evidence from court judgments, constituent assembly debates and social science literature. He opines that he can wait until a consensus is reached, in the light of our fundamental duty to respect religious diversity.

Marc Galanter, in his paper *From Bhopal to Saha: The Elusive Promise of Effective Legal Remedy* (presented at the 2nd M. K. Nambyar Memorial Lecture here at NUJS), argues that there is a need for a 'second coming' of tort law. By taking us through the legal narratives of the Bhopal gas disaster, the Upahaar fire tragedy and Saha medical negligence case, Galanter highlights the injustice of tort law in India and the inadequacy of the judicial response. He finds that the Bhopal case and the Upahaar case, both cases of *mass* injury, did not lead to any exemplary response from the Indian judiciary, whereas an exceptional compensation was award in the Saha case, which was in the nature of a one-on-one litigation. He makes a case for selective reform in the nature of procedural practice, since the present trend of low rate of filing claims, long delays and meagre awards upset the preventive goal of tort litigation.

In this issue, we also carry two obituaries. Two inspirational and influential personalities in our constitutional world, Justice Krishna Iyer and Granville

Austin, passed away last year. In his piece, *A Rare Judge*, P. P. Rao, Senior Advocate of the Supreme Court, reflects on Justice Krishna Iyer's contributions to the various facets of law and his judicial philosophy. His style of justice, his innovations, sympathies and judicial behaviour are the subject-matter of discussion. Describing him as an "institution", Rao opines that his adjudication was based on his "insatiable hunger for socio-economic justice". In *Granville Austin: A Tribute*, Upendra Baxi examines the academic work of the late Austin, an eminent and frequently cited constitutional historian. Beginning by describing his work as "well-known" but not "well-studied", Baxi revisits Austin's two books on constitutional history, arguing that the historian's opinion of the constitutional development and working was a view from the 'top', and that there is a pressing need to appreciate subaltern perspectives on Indian constitutionalism.

In *Assessing the National Green Tribunal after Four Years*, Armin Rosencranz and Geetanjoy Sahu examine the National Green Tribunal (NGT), its structure, jurisprudence and adjudicatory patterns. In addition, the implementation of its orders and the implications are also analysed. The authors conclude that the NGT has redefined environmental litigation in India and has largely been a progressive adjudicatory authority, with speedy disposal of cases and effective implementation of orders.

In commemoration of the thirtieth anniversary of the Bhopal Gas Tragedy, Shruti Rajagopalan in *Bhopal Gas Tragedy: Paternalism and Filicide* analyses the failure of the Indian state in providing due compensation to the victims of the heinous disaster of December 1984 in light of the Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985. She critically examines the Act from an economic point of view and argues that by replacing the adversarial system, the Act has inserted in its place an inquisitorial state bureaucracy which has seriously hampered recovery and claims and has led to delayed compensation for the victims.

Aniruddha Dutta, an activist-scholar from the University of Iowa has contributed a piece entitled *Contradictory Tendencies: The Supreme Court's NALSA Judgment on Transgender Recognition and Rights*. Dutta analyses the landmark NALSA judgment from an interpretational and definitional point of view, highlighting the various contradictions and contestations running through the judgment.

In *Resurrecting the Other of 'Modern' Law: Investigating Niyamgiri Judgement & Legal Epistemology*, Amit Bindal explores the thematic linkages between the law and the mythic tradition by an analysis of the Niyamgiri case.

While the article appraises the Court's approach to tribal rights and justice, it also cautions of the limits of the modern liberal framework that is the basis of adjudication in this case. He argues the importance of maintaining a distinction between the modern and the mythic in light of development and protection of tribal rights and tradition.

In her case comment on *Aveek Sarkar v. State of West Bengal*, Latika Vashist examines the shift from the 'Hicklin Test' to the 'community standards test' in the determination of obscenity under law. In her analysis of the context-driven approach of the court, she argues that when the Law comes in contact with aesthetics, erotica or feminism, which she describes as the 'Other' of Law, the pure reason of Law is corrupted by emotion, as in the present case.

This issue features three book reviews. Kalpana Kannabiran reviews *Pursuing Elusive Justice: Mass Crimes in India and Relevance of International Standards*, edited by Vahida Nainar and Saumya Uma. The book focuses on the struggles of human rights and civil liberties in light of major episodes of state violence and mass crimes in the post-colonial era. She values the book for examining accounts of impunity which highlight the pervasiveness of the problem and appreciates arguments presented by authors with respect to the definition of "persecution" as defined by the Rome Statute. She assesses the volume as a cluster of essays which highlight the need for law reform in gender-based crimes in episodes of mass crimes and violence. The second review is by Jackie Dugard of S.K. Das' book titled *India's Rights Revolution: Has it worked for the poor?* The book examines rights in India in light of four major legislations, i.e., the Right to Information Act, the National Rural Employment Guarantee Act, the Forest Rights Act and the Right to Education Act. She appreciates the book for being highly informative as well as providing an in-depth examination of the socio-economic data associated with the implementation of the aforementioned laws. However, she points out that the critique failed to analyse the efficacy of alternative modes and frameworks as well as focus on groups which require recognition of their rights to overcome their struggles. A third book review by Tasneem Deo examines Abhinav Chandrachud's *The Informal Constitution: Unwritten Criteria* in light of the renewed interest in judicial appointments to India's constitutional courts post the passing of the corresponding constitutional amendment and the operationalizing statute. While appraising the author for successfully identifying the trends in judicial appointments, she highlights the absence of sufficient theoretical explanation for the informal norms and the possibility of alternate explanations of the trends identified.

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—*The Board of Editors*