

# JOURNAL OF INDIAN LAW AND SOCIETY

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## FOREWORD

This issue of the Journal begins with the transcriptions of the Third and Fourth M.K. Nambiar Endowment Lectures. The Third lecture in the series was delivered by Professor Martha C. Nussbaum, Ernst Freund, Distinguished Service Professor of Law and Ethics, The University of Chicago (Law and Philosophy). In the lecture, she discusses her theory of disgust and the link between disgust and discriminative activities. Nussbaum criticizes the Victorian puritanism embraced by the Indian society and lauds the Delhi High Court judgment in the Naz Foundation case for its emphasis on disgust while declaring Section 377 unconstitutional. She greatly criticizes the “sloppiness” in Supreme Court’s reversal of the same. She concludes by reiterating the role of disgust in discrimination and states that the Delhi High Court was correct in drawing parallels between laws against same-sex conduct and caste-based discrimination.

The 4<sup>th</sup> M. K. Nambiar Lecture was delivered by Justice Sonam Tobgye, Retired Chief Justice of Bhutan. His lecture on *The Enduring Values of the Constitution* skillfully discusses the friendly Indo-Bhutan relations. Justice Tobgye then recounts the inspiring narrative of the drafting of the Bhutanese Constitution. He later examines various Constitutional provisions from Bhutan, drawing thematic linkages with provisions of the Indian Constitution.

Chintan Chandrachud, in *Measuring Constitutional Case Salience in the Indian Supreme Court*, argues that the strength of a judicial bench can no longer be the defining factor in the identification of salient constitutional decisions. After commenting upon the need for an exogenous measure of case

salience, he advocates the use of a test he has dubbed the ‘Times of India test’, which tests salience by tallying the total number of references to a case (whether incidental or otherwise) in all editions of the Times of India within one year from the date of the judgment. Chandrachud uses empirical research to further augment his test.

In his thought-provoking article *The Battery Rickshaw “Crisis” in New Delhi*, Simon Harding explores the conditions through which battery rickshaws operate in New Delhi. He examines the negative perceptions of the rickshaw pullers, and goes through their turbulent history that ultimately failed to provide a workable policy for formalising battery rickshaws. After identifying two major factors which significantly contribute to the crisis, namely the polycentric nature of urban policy making and the lack of data upon which to base decisions, Harding concludes that the policy making process in India is largely informal.

In *Uncertain Precedents and the Propensity to Litigate*, Nikita Kapoor analyses the veracity of the invisible hand theory proposed by Rubin, Priest, and others, specifically in the context of the Indian justice delivery system. The above hypothesis maintains that continuous litigation leads to an efficient legal system and that efficiency would increase till the courts are replaced by out-of-court settlements. After showing that the hypothesis depends on the absence of externalities like uncertainty in precedents, the paper examines impediments to the application of the hypothesis in India, including judicial bias and contradictory judgments amongst others.

Tulika Paul, in *Going That Extra Mile: Arriving at ‘Efficient’ Regulations for Doping in Sport*, deals with the emerging issue of doping regulations in sports. Using an economic frame of analysis, she argues that since the effect of doping varies from sport to sport, the regulatory bodies of each sport must determine which model of regulation is most efficient for achieving the desired objectives.

As always, we are grateful to our Editor-in-Chief Prof. Dr. Ishwara Bhat, our Faculty Advisor Prof. Saurabh Bhattacharjee, our Graduate Advisory Board and our peer reviewers. Special thanks are also due to Nandan Nawn, who patiently provided guidance and assisted us with the publication of the last two papers published in this issue. We hope our readers will find the papers in this issue to be engaging and instructive.

—The Board of Editors