

SYMPOSIUM: PERSPECTIVES ON FUNDAMENTAL RIGHTS IN SOUTH ASIA

GUEST EDITOR'S PREFACE

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This symposium issue of the *Drexel Law Review* marks the anticipated launch of a new section on Law and South Asian Studies of the Association of American Law Schools, including several contributions that were initially presented during a session of the proposed section at the AALS Annual Meeting for 2010. The proposed AALS section comes at a moment of heightened interest in the region among lawyers, policymakers, and the public at large in the United States, and is part of a rapidly growing constellation of scholarly initiatives on law in South Asia that have emerged internationally in recent years.¹

Marc Galanter introduces the symposium by presenting an overview of legal institutions and the legal profession in India, based on his tremendous experience as a close observer and distinguished scholar of law in India. Galanter argues that the establishment and consolidation of India's constitutional and legal order since independence, though imperfect, has been an "epic legal accomplishment[,]," especially given the challenges presented by limited material resources and tremendous plu-

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1. Since 2007, for example, the South Asian Legal Studies Working Group at the University of Wisconsin-Madison has hosted an annual preconference workshop on South Asian legal studies at the start of the university's broader Annual Conference on South Asia. Univ. of Wisconsin-Madison, *Annual Conference on South Asia*, <http://southasiaconference.wisc.edu>. In 2009, the Centre for the Study of Law and Governance at Jawaharlal Nehru University in Delhi initiated the Law and Social Sciences Research Network (LASSnet), which "bring[s] together scholars, lawyers and doctoral researchers engaged in research and teaching of issues of law in different social sciences in contemporary South Asian contexts." Law and Social Sciences Research Network, *The Idea of LASSnet*, <http://lassnet.blogspot.com>. And in recent years, an active collaborative research network on South Asia has also developed within the Law and Society Association. Law and Society Association, *Collaborative Research Networks*, <http://www.lawandsociety.org/CRN/crn5.htm>.

ralism and diversity. Although these developments in India and similarly notable legal developments in other parts of South Asia have tended to receive limited attention in the United States, Galanter argues that the “growing legal connections” between the United States and South Asia have made knowledge of the region increasingly important for many U.S.-based lawyers and legal scholars.²

Shylashri Shankar considers the value of considering comparative constitutional experiences by examining the use of comparative precedents by courts in India, Sri Lanka, and South Africa in cases involving the right to religious freedom. She argues that such use of comparative constitutional jurisprudence serves a useful and legitimate purpose by helping judges to clarify and better understand the normative commitments of their own domestic constitutional regimes.³ Directly engaging recent debates in the United States, Shankar suggests that the experiences of judges in these three countries might usefully inform the question of whether judges in the United States should cite comparative constitutional jurisprudence.

Two contributions focus on aspects of the constitution-drafting process currently underway as part of the ongoing peace process in Nepal. Elisabeth Wickeri discusses the place of economic, social, and cultural rights in Nepal’s post-conflict constitution. She argues that while accountability for past abuses and enforcement of civil and political rights are crucial to Nepal’s transition, protections for economic and social rights are equally important and must be strengthened for Nepal’s post-conflict constitution-drafting process to succeed.⁴ Payal Shah analyzes the decision by the Supreme Court of Nepal recognizing that Nepal’s high incidence of uterine prolapse constitutes a fundamental rights violation under both Nepal’s Interim Constitution and international human rights law. She discusses the role that international human rights monitoring bodies can play in helping to achieve implementation of the Supreme Court’s decision, as well as the reciprocal role of such domestic

2. Marc Galanter, *Foreword: World of Our Cousins*, 2 DREXEL L. REV. 365 (2010).

3. Shylashri Shankar, *The Substance of the Constitution: Engaging with Foreign Judgments in India, Sri Lanka, and South Africa*, 2 DREXEL L. REV. 373 (2010).

4. Elisabeth Wickeri, *No Justice, No Peace: Conflict, Socio-economic Rights, and the New Constitution in Nepal*, 2 DREXEL L. REV. 427 (2010).

jurisprudence in shaping the international understanding of uterine prolapse as a fundamental rights concern.⁵

Sehla Ashai explores the sometimes neglected legal relationship between the Jammu & Kashmir Constitution and the Indian Constitution through the controversy surrounding the Jammu & Kashmir Permanent Residents Disqualification Bill of 2004, which would have revoked state subject status from women who married non-state subjects, thereby depriving them of preferential treatment in government hiring and the right to acquire land.⁶ Though she criticizes the bill as violating the rights of women, Ashai also questions legal strategies that would have relied upon the Indian Constitution to vindicate gender equality, arguing that the broader context of the relationship between Jammu & Kashmir and the Indian state has instilled a sense of "distrust for protection" under the Indian Constitution among many Jammu & Kashmir residents that has undermined the Indian Constitution's "moral authority."⁷ Ashai considers whether the Jammu & Kashmir Constitution's own equality guarantees might instead offer a more promising and legitimate basis to challenge the gender inequalities caused by such laws within the state.

Finally, Arpan Banerjee critically examines the laws and institutions governing censorship of Indian films, tracing their origins to laws and institutions established during the British colonial era. Banerjee argues that the existing censorship regime is at odds with independent India's constitutional commitment to freedom of expression as a fundamental right and should be liberalized, not only to limit state interference with artistic and expressive freedom, but also to facilitate the ability of Indian filmmakers to make films that will appeal to global audiences.⁸

"India," Vijay Prashad has noted, first "came to America by mistake."⁹ Today, individuals from the United States, including lawyers, policymakers, security officials, and scholars, are going

5. Payal Shah, *Uterine Prolapse and Maternal Morbidity in Nepal: A Human Rights Imperative*, 2 DREXEL L. REV. 491 (2010).

6. Sehla Ashai, *The Jammu and Kashmir State Subjects Controversy of 2004*, 2 DREXEL L. REV. 537 (2010).

7. *Id.* at 552-53.

8. Arpan Banerjee, *Political Censorship and Indian Cinematographic Laws: A Functionalist-Liberal Analysis*, 2 DREXEL L. REV. 557 (2010).

9. VIJAY PRASHAD, *THE KARMA OF BROWN FOLK* 1 (2000) (discussing Columbus's encounter with North America).

to countries throughout South Asia rather more intentionally and in large numbers, but genuine learning and insight will remain the product of mistakes and accidental “discoveries” without concerted efforts at meaningful political, cultural, and social dialogue by both individuals and institutions. With the establishment of the proposed AALS Law and South Asian Studies section, we can look forward to another forum for such engagement with the region taking its place among those that have emerged in recent years.