

PROFESSOR-IN-CHARGE'S PAGE

It gives me immense pleasure to present the fifth issue of *National Capital Law Journal* to the Bar, Bench and the academic community in India and abroad. Our *journal* though published for the first time in the year 1996 has gained popularity among the academic community, lawyers and the judges. In fact, many Judges of the High Courts and Supreme Court of India have personally appreciated the contributions by the scholars from various parts of the country in our *journal*.

We are proud and happy that the contributors of this issue include Justice Arun Madan of the Rajasthan High Court, Shyamliha Pappu, Senior Advocate, Supreme Court of India and Amarjit Singh Chandhiok, President of the Delhi High Court Bar Association. Their valuable contributions would further strengthen the reputation of our *journal*.

I, personally, as Professor-in-Charge, am very much indebted to all the contributors for their valuable contributions in our *journal*. I also thank the Editorial Committee of the fifth issue of the *National Capital Law Journal* for doing difficult task of editing the *journal*. In spite of our best efforts, may be some mistakes might have remained in the *journal* for which I hope the readers of this *journal* will forgive us. We welcome critical comments and views from our readers to improve the *journal* in future.

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EDITORIAL

The Editorial Committee is immensely pleased to place the fifth volume of the *National Capital Law Journal* in the hands of our esteemed readers. The Committee is encouraged at the overwhelming response of the contributors and regrets that it has not been possible to include all the papers in the present issue due to space constraints. The issue is devoted to the analysis of legal problems of topical interest and covers wide range of areas, namely, custodial torture, judicial reforms, international trade, constitutional law, procedural law, environmental law and legal reasoning.

The scholarly contributions of academicians, judges, senior advocates, research scholars and students have enormously enriched the present issue of the *journal*. Prof. Subash C. Raina has conducted indepth empirical study to highlight the intricate problem of custodial torture in police stations. The paper of Prof. Raina demonstrates the combination of empirical and doctrinal approaches in the projection of the causes of custodial torture and areas of improvement. Justice Arun Madan has focussed on the growing needs of the society which call for review and updating of laws. Justice Madan's paper on "Judicial System and Reforms" examines the status of judiciary as an essential organ of the State, delays in disposal of cases, role of investigating agencies, appointment and transfer of judges, role of legal education, public interest litigation and projects the need for continuous reforms. Justice Madan emphatically reiterates that the law is imperfect and it would continue to be imperfect even if it were made by a committee of archangels. This calls for continuous reforms in the judicial system which should be tailored according to the growing needs of the mankind. The paper on "Legal Status of Precautionary Principle in Environmental Jurisprudence" crystallizes the conceptual shift from assimilative capacity principle to precautionary principle, basis of precautionary principle and operationalisation of precautionary principle. The paper projects that Protocol to the Biodiversity Convention concerning Biosafety adopted on 29 January 2000 gives expression to precautionary principle inasmuch as it provides that a decision to refuse import of goods can be taken even in the absence of full scientific certainty regarding the extent of potential adverse effects. This constitutes the application of precautionary principle which implies that measures for environmental protection cannot always wait until it is known with certainty that deleterious effects will occur. The inclusion of precautionary principle is important in the light of recent controversies in the context of the World Trade Organisation (WTO) where scientific uncertainty was not accepted as a good defence to impose environment-related import restrictions. Anupam Goyal has contributed

an interesting article wherein he has brilliantly evaluated the GATT/WTO decisions to examine extraterritorial application of GATT Article XX(g). Ravi Sharma Aryal, in his article points out that wildlife trade has been a flourishing illegal business in India and argues that Wildlife (Protection) Act of 1972 is incapable to deal with India's obligations under the Convention on International Trade of Endangered Species of Wild Fauna and Flora.

The notes and comments are of great significance and importance and are based on serious legal research. The paper entitled "Combating Corruption in India" by Justice Arun Madan is based on his presentation at the National Seminar organised by the Law Commission of India and Criminal Justice Society of India on 29 April 2000 at New Delhi. Justice Madan has critically analysed the legislative measures in India to combat corruption and highlighted inbuilt delays in criminal justice system in India as well as the futility of the requirement of prior sanction. While commenting on the malady of governance in our country, Prof. Harish Chander laments that highest functionaries of our country hide bad governance and malady of corruption in our society which has deep roots in criminalization of politics and nexus between corrupt bureaucratic functionaries. In his brief contribution, Prof. Harish Chander has suggested measures to come to grips with the complexities of issues in the area of governance. Shyamliha Pappu, Senior Advocate, has examined the role of the Constitution Review Commission and pointed out that among the eight core areas identified by the Commission for scrutiny, the Supreme Court has already pronounced on the enlargement of fundamental rights in Part III by specific incorporation of the freedom of the media, right to compulsory elementary education, right to privacy and right to information and therefore any enlargement of fundamental rights would not be necessary at this juncture. Amarjit Singh Chandhiok, Senior Advocate, has critically analysed the amendments in the Civil Procedure Code which is a product of well thought-out efforts and experimentation extending over more than half a century. He has rightly pointed out that the Code has, on the whole, worked satisfactorily and has evoked the admiration of many distinguished jurists. The real question is how far the amendments in Civil Procedure Code have removed delays in dispensing justice and to clear arrears in the courts. What has been done to the procedural system by these amendments is against the course of justice, argues Chandhiok. Pawan Chaudhary 'Manmauji', an advocate and prolific writer, has contributed a paper on "Indian Judiciary Towards 21st Century" which gives detailed account of judiciary, judicial independence, law and justice. He argues with his usual persistence that justice will become a casualty if people's will power to change the social system is not ignited. Gitanjali Nain's comment on "Religious Practices *vis-a-vis* Noise Pollution" is topical, interesting and gives critical analysis of the judgment of the Supreme Court in *Church of God (Full Gospel) in India v. K.K.R. Majestic Colony Welfare Association* wherein the Apex Court has pronounced on the issue whether use of loudspeakers, voice amplifiers, beating of drums which create

the problem of noise pollution should be allowed to continue within the enjoyment of right to freedom of speech and expression and that of religion. The contribution of Arunima Dhar, LL.B. student, gives detailed account of environmental audit and discloses the quality and standard of research undertaken by the students studying at Law Centre-II. Lastly, Jayna Kothari's paper on "Reasoning by Analogy" is interesting, scholarly and academically stimulating.

The members of the Editorial Committee of the *journal* have consistently worked hard to maintain international standard of the *journal*. The untiring services rendered by Dr. Kiran Gupta, Dr. Pinky Sharma and Mr. V.K. Ahuja in editing the *journal* are commendable and deserve appreciation. The contributors of the *journal* also deserve to be congratulated for writing scholarly papers which have been published in the *journal*. It is hoped that the *journal* will prove useful in legal research, writing and dissemination of legal awareness.

The printers of the *journal*, Shivam offset Press, deserve appreciation and thanks for publishing the *journal* qualitatively and expeditiously.

Professor Gurdip Singh
Editor