Second Law and Social Sciences Research Network (LASSnet) Conference

Foundation for Liberal and Management Education (FLAME), Pune, India

Siting Law

December 27th - 30th, 2010

www.lassnet.org

Second Law & Social Sciences Research Network

SCHEDULE 04

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SCHEDULE

Day 01	December 27, 2010
11.30 am - 2.30 pm	Registration
3.00 - 3.30 pm Performing Arts Studio	**Welcome Address** **Lawrence Liang** on behalf of LASS*net* Steering Committee **Indira Parikh,** President, FLAME
3.30 - 4.30 pm Performing Arts Studio	**Inaugural Keynote** Varieties of Variance: Fractures & Fissures in the Great Pyramid **~ Marc Galanter** **Chair: Niraja Gopal Jayal**
4.30 - 5.00 pm Plaza	Tea
5.00 - 7.30 pm Performing Arts Studio	**Plenary 1** Law, Violence & Exception **Chair: Milind Wakankar** **Speakers:** The Ayodhya Dispute: Legal Documents & the Status Quo **~ Deepak Mehta** Violence & Humanity: A (Global) Genealogy **~ Anupama Rao** Beyond Exception? Aversive Thinking within Constitutionalism in South Asia **~ Naveeda Khan** The Unmaking of Rights in the Making of SEZs: Some Notes on Mundra **~ Shalini Randeria**
8.00 pm FLAME Dining hall	Dinner

1.1

9.00 - 10.45 AM
CHANAKYA 1

LAW & ITS PUBLICS: S.P. SATHE MEMORIAL PANEL

Chair: Amita Dhanda
Panelists:
Law in the Public's Interest? ~ **Deepa Das Acevedo**

Disability Rights & the Failure of Public Interest Litigation ~ **Jayna Kothari**

Terror / Tranquility: Romesh Thapar & its Precedents Speak on the Subject of 'Public Safety' ~ **Kalyani Ramnath**

1.2

9.00 - 10.45 AM
CHANAKYA 2

MAPPING LAW AS CULTURE

Chair: Shalini Randeria
Panelists:
Law & Religion ~ **Werner Gephart**

Law & Globalization ~ **Youssef Dennaoui**

Entwinement & Conflict of Legal Cultures ~ **Raja Sakrani**

Cultural Forms of Law ~ **Daniel Witte**

1.3

9.00 - 10.45 AM
TAGORE 1

CONTEMPORARY AGRARIAN RADICALISM & SPEAKING SUBJECTS OF INDIAN DEMOCRACY

Chair: Sangay Mishra
Panelists:
Unmaking or Remaking Leviathan? Rulers, Civilizers & Rebels in Contemporary Jharkhand ~ **Uday Chandra**

'Learning' to Lead: Forced Displacement, Relocation & the Subaltern Leadership ~ **Vikramaditya Thakur**

Of Dreamworlds & Catastrophe: The Case of Leftover Politics in Contemporary West Bengal ~ **Atreyee Majumder**

Panel Coordinator: Atreyee Majumdar

1.4
9.00 - 10.45 AM
TAGORE 2

RESTITUTION OF CONJUGAL RIGHTS IN INDIAN MATRIMONIAL LAW: WHAT IS ITS HISTORY, HOW IS IT USED, HOW DOES IT IMPACT WOMEN'S RIGHTS & HOW IS IT VIEWED FROM THE BENCH?

Chair: Veena Gowda
Panelists:

Conjugal Restitution Doctrine & the Notion of Marriage as a Contract ~ **Faisal Chaudhry**

Making Whole (Again): Restitution & Reconciliation in the Kolkata Family Courts ~ **Srimati Basu**

Notions of 'Retrievable' & 'Irretrievable Marriages' in the Context of Women's Rights ~ **Flavia Agnes**

'To Restore the Comforts and Bliss of Married Life': Judicial Reasoning in Some Recent Restitution Cases ~ **Sylvia Vatuk**

Panel Coordinator: Sylvia Vatuk

1.5
9.00 - 10.45 AM
TAGORE 3

RETHINKING THE STATE, DEVELOPMENT & THE NATIONAL QUESTION IN SRI LANKA

Chair: Aditya Nigam
Panelists:

Uthuru Wasanthaya & Negenahira Navodaya: Development as a Hegemonic Discourse ~**Sumith Leelarathne**

Development Discourse & the Decades of Decolonization ~ **Ahilan Kadirgamar**

Emergency, Legality & the Postcolonial State: Reading Counterinsurgency through its Archives ~ **Thushara Hewage**

Panel Coordinator: Thushara Hewage

1.6
9.00 - 10.45 AM
TAGORE 4

RIGHTS DISCOURSES

Chair: Vrinda Grover
Panelists:

Human Rights as a Conceptual & Remedial Framework: An Enquiry ~ **Anu Varghese**

In The Mean Time: Schooling, Childhoods & the State ~ **Sarada Balagopalan**

Beyond Human Rights: Understanding *Ethic of Responsibility* ~ **Ipshita Sengupta**

From Promise to Progress: Citizens, Courts & the Right to Health in India ~ **Namita Wahi & Sharanjeet Parmar**

10.45 - 11.15 AM TEA

SESSION 02

2.1

11.15 AM - 1.00 PM
CHANAKYA 1

AFFECTIVE LEADERSHIP: BALAGOPAL & THE REIMAGINING OF JUDICIAL ACTIVISM, HUMAN RIGHTS & THE STATE

Chair: Manoranjan Mohanty
Discussant: Arvind Narrain
Panelists:

Human Rights Movements in India: State, Civil Society & Beyond ~ **Ajay Gudavarthy**

Critiquing the Critique: Balagopal & the Reframing of the Idea of Human Rights in India ~ **Sitharamam Kakarala**

The Procedural is Political: Public Interest Litigation & its Discontents ~ **Anuj Bhuwania**

Paradoxical State Killings: Encounters & the Death Penalty ~ **Jinee Lokaneeta**

Panel Coordinator: Jinee Lokaneeta

2.2

11.15 AM - 1.00 PM
TAGORE 1

LAW, LABOUR & NEOLIBERALISM

Chair: Ashwini Sukthankar
Panelists:

Securing Economic Enclaves in Neo-liberal India ~ **Rupal Oza**

Disorganised Labour & the City ~ **Maitreyi Krishnan**

Forced Labour & the Limits of Imagination ~ **William F. Stafford Jr.**

Bandh: A Lame Ineffective Movement ~ **Aakrati Gupta**

2.3
11.15 AM - 1.00 PM
TAGORE 2

THE NATION-STATE IN LAW

Chair: Jayati Srivastava
Panelists:

Home & Homeland: The Politics of Narrating the Exodus of 1995 ~ **Mahendran Thiruvarangan**

Between Two Nations: Arunachal Pradesh & the Politics of Nationality in India's North East ~ **Chunnu Prasad**

The Living Dead: 'Official' Martyr Status, Citizenship & the Afghan State ~ **Anila Daulatzai**

Lessons from Post Bonn Western Rule of Law Intervention in Afghanistan ~ **Jasteena Dhillon**

2.4
11.15 AM - 1.00 PM
TAGORE 3

SOCIAL VALUES, LAW & WOMEN'S RIGHTS IN BANGLADESH

Chair: Dina Mahnaz Siddiqi
Panelists:

The Role of the Media in Realizing Women's Rights in Bangladesh ~ **Arafat Hosen Khan**

Women's Socio-Economic Rights & the Enforcement of the Law ~ **Kazi Ataul-Al-Osman**

Social Values & Justice for Rape Victims in Bangladesh ~ **Amanda Sen**

Panel Coordinator: Amanda Sen

2.5
11.15 AM - 1.00 PM
TAGORE 4

LAW & COLONIALISM

Chair: Aparna Balachandran
Panelists:

The Colonial State & the Regulation of Sexuality ~ **Aqseer Sodhi**

Rousseau's Empire of Love ~ **Alecia Simmonds**

Navigating the Public/Private Divide through the 19th Century Legal Archive ~ **Prashant Iyengar**

1.00 - 2.00 PM
FLAME
DINING HALL

LUNCH

3.1

2.00 - 3.45 PM
CHANAKYA 1

FEAR, SECRETS & LIES: THE UNCANNY WORLD OF LAW AFTER MEDIA

Chair: Ravi Vasudevan
Panelists:

The Secret & the Transparent after Media Modernity ~ **Ravi Sundaram**

Framing Conspiracy: Terrorism, the City & Cinema ~ **Ranjani Mazumdar**

The Erotics of Law & Scandal ~ **Lawrence Liang**

Panel Coordinator: Lawrence Liang

3.2

2.00 - 3.45 PM
TAGORE 1

SPACES OF DISPLACEMENT & FUTURES IN LAW

Chair: Eesvan Krishnan
Panelists:

Securing the City: The Kompannya Veediya Evictions ~ **Nicola Perera**

Claiming the Landscape: Assertions for Land & Livelihood in South West Madhya Pradesh ~ **Nandini Nayak**

Capitalism, Land Acquisition & the Impossibility of Compensation ~ **Swagato Sarkar**

3.3

2.00 - 3.45 PM
TAGORE 2

ENFRAMING TECHNOLOGY: CONSTRUCTIONS OF PUBLIC(S), LAW & ETHICS

Chair: Sanil V.
Panelists:

GMOs & Re-articulations of the Scientific as the Legitimate Public in Europe ~ **Naveen Thayyil**

"Slumbering Sentinels" in Knowledge Society: Human Rights & the Framing of the Ethical Publics in the Debates on 'Harnessing Technologies for Development' ~ **Sitharamam Kakarala**

Framing the "Public": Nanotechnology & Development in Indian Print Media ~ **Koen Beumer**

Panel Coordinator: Esha Shah

3.4

2.00 - 3.45 PM
TAGORE 3

LAW & THE POLITICS OF RELIGION

Chair: Milind Wakankar
Panelists:

Mitra-Varuna: A Bipolar Concept of Sovereignty ~ **Bhrigupati Singh**

Reinforcing Religiosity: The Peculiar Case of Indian Equality Jurisprudence ~ **Mathew John**

Bracketing Culture & the Dissatisfactions of Secular Policy ~ **Chandan Gowda**

Legal Discourses around Social Practices: An Enquiry into the Cattle Slaughter Bill ~ **Serene Kasim & Elizabeth Thomas**

3.5

2.00 - 3.45 PM
Tagore 4

Legal Continuities & Legal Change: Historical & Theoretical Perspectives

Chair: Bhavani Raman
Panelists:

"A Constitution for the Butcher, the Baker & the Candlestick Maker": The Everyday Life of Constitutional Law in the Indian Republic (1950-1962) ~ **Rohit De**

The Persistence of Coverture in Post-Colonial India ~ **Rebecca Grapevine**

Understanding Colonial Continuity Within the Paradigm of State-Society Relationship: The Gandhi-Nehru Debate on the Constitution ~ **Sandipto Dasgupta**

Institutional Continuity & Continuity of Personnel: The Case of the Indian Civil Service ~ **Arudra Burra**

Panel Coordinator: Rebecca Grapevine

3.6

2.00 - 3.45 PM
Chanakya 2

Resolving Disputes & Dispensing Justice beyond the Courts

Chair: Shalini Randeria
Panelists:

The Mid-Twentieth Century Litigation Implosion in India ~ **Marc Galanter & Niketa Kulkarni**

Panchayats & Panchayat Justice Under British Administration in Western India ~ **James Jaffe**

Do Too Many Fora Spoil the Debate? Two Accounts of the India - U.S. Nuclear Deal ~ **Surabhi Ranganathan**

Panel Coordinator: James Jaffe

3.45 - 4.00 PM Tea

4.00 - 6.00 PM PERFORMING ARTS STUDIO	**PLENARY 2** Rule of Law: Insurgent Reason & Public Reason **Chair: Upendra Baxi** **Speakers:** Rule of Law: The Question at the Grassroots **~ Kanak Mani Dixit** Rechtsstaat (Constitutional State) as Flaw & Export Item of German Legal Culture **~ Werner Gephart** Rule of Law versus Rule by Law **~ G. Haragopal**
6.00 - 6.30PM PLAZA	TEA
6.30 - 7.30PM PERFORMING ARTS STUDIO	**BOOK RELEASE** Family Law Volume I: Family Laws & Constitutional Claims *from Oxford University Press* **~ Flavia Agnes** **Discussants: Upendra Baxi|Marc Galanter|Srimati Basu**
8.00 PM FLAME DINING HALL	DINNER

4.1

9.00- 10.45 AM

CHANAKYA 1

NEELAN TIRUCHELVAM & THE IMAGINATION OF SOUTHASIAN CONSTITUTIONALISM

Chair: Veena Das
Panelists:

Constitutionalism in the Time of Demagougery: Speaking Truth to Populism **~ Kanak Mani Dixit**

Constitutions as the Conscience of Nation-States **~ Ramaswamy Sudarshan**

Constitutional Durability: The Role of the Basic Structure Doctrine in Bangladesh, India, Pakistan & Sri Lanka **~ Sudhir Krishnaswamy**

4.2

9.00- 10.45 AM

CHANAKYA 2

WHO'S AADHAAR IS IT ANYWAY? REFLECTIONS ON THE UID DEBATE

Chair: Ravi Sundaram
Panelists:

The Unique ID project in India: A Skeptical Note **~ R. Ramakumar**

A Unique Identity Bill **~ Usha Ramanathan**

The Unique Identity Number Project: Should Non-Citizen Residents be Concerned? **~ Sahana Basavapatna**

The UID Project & Social Welfare Schemes **~ Reetika Khera**

Panel Coordinator: Subasri Krishnan & Reetika Khera

4.3

9.00- 10.45 AM

TAGORE 1

POLITICS OF THE JUDICIARY

Chair: Vasudha Dhagamwar
Panelists:

Subsumption of Critique? Understanding Interpretative Processes of Judicial Decision Making **~ Bhargavi Raman & Badrinarayanan Seetharaman**

Summing up the Supreme Court: Statistics & the face of the Court **~ Nicholas Robinson**

Judge-Speak: An Analysis of the Judicial Discourse on Citizens, Rights & Demands of the New Economy **~ Chitra Balakrishnan & Usha Rao**

4.4

9.00 - 10.45 AM
TAGORE 2

LAW & SOCIAL EXCLUSION

Chair: Chandan Gowda
Panelists:

Modernity, Law & the Violence on Dalits
~ Parthasarathi Muthukkaruppan

Feminist Politics/Sexuality Politics & the Law
~ Ratna Appnender

Re-visiting Gender Justice & the Family
~ Madhu Mehra & Gayatri Sharma

4.5

9.00 - 10.45 AM
TAGORE 3

EROTICISM & VIOLENCE – CONTINUITIES & SOME DIFFICULT QUESTIONS

Chair: Nivedita Menon
Panelists:

Domestic Violence & Sexuality
~ Rituparna Borah

Telling Sad Stories: Narratives of Sexual Violence & the Wounded Sexual Subject **~ Paul Boyce**

A State of Arousal: Eroticism & Violence in the Making of Homophobia **~ Akshay Khanna**

The Absent Piece of Skin: Gendered, Racialised & Territorial Inscriptions of Sexual Violence During the Bangladesh War **~ Nayanika Mookherjee**

Power, Pain & Pleasure: Some Reflections on Bondage, Domination, Sado-Masochism
~ Jaya Sharma & Kaushik Gupta

Panel Coordinator: Akshay Khanna

4.6

9.00 - 10.45 AM
TAGORE 4

PICTURING LAW

Chair: Rajan Krishnan
Panelists:

Conflicting Ideologies of Society, its Laws & the Cinema **~ Chakravarti Patil**

Cityscapes of Islamic Media: Re-thinking Counterpublics through Practices of Shi’a Reformism **~ Shireen Mirza**

Indecent Proposals, Vulgar Judgements: Satellite Television and Obscenity Debates in Contemporary India **~ Siddharth Narrain**

10.45 - 11.00 AM TEA

5.1

11.00 - 1.00 PM
CHANAKYA 1

Doing Legal Philosophy in India: Reflections on the Legacy of Chhatrapati Singh

Chair: Mohini Mullick
Panelists:

Chhatrapati Singh & the Idea of a Legal Theory
~ Upendra Baxi

Critique & the Possibility of a Science of Law
~ Sanil V.

Chhatrapati's Unfinished Project on Dharma & Obligation to be Just **~ Navjyoti Singh**

Revisiting 'Law from Anarchy to Utopia'
~ Rajeev Bhargava

Panel Coordinator: Arudra Burra & Mathew John

5.2

11.00 - 1.00 PM
CHANAKYA 2

Employment, Discrimination & the Law

Chair: Gayatri Singh
Panelists:

Limited Right to Work: A Study of Women Involved Labour Cases in Various Courts of India
~ Roopa K.L.

Income Tax & Women's Labour
~ Maithreyi Mulupuru

Recognition of Unconscious Bias as Actionable Signals Change in Enforcement of Discrimination Statutes in the USA **~ Paul Merry**

Fundamental Issues in Antidiscrimination Law & the Equal Opportunities Commission Bill
~ Tarunabh Khaitan

5.3

11.00 - 1.00 PM
TAGORE 2

Adivasis in the Interstices of Law in Jharkhand

Chair: Agathe Mora
Panelists:

Difference & Drunkenness: Adivasi, Alcohol & the Law in Jharkhand **~ Roger Begrich**

Tribal Religion & the Law in Jharkhand
~ Ratnaker Bhengra

From the Law of the Landscape to the Landscape of Law: Burial Stones & the Possibilities of Living in Adivasi Modernity **~ Kaushik Ghosh**

Panel Coordinator - Roger Begrich

5.4
11.00 - 1.00 PM
TAGORE 3

NARRATIVES OF LAW

Chair: Maya Dodd
Panelists:

Legal Manoeuvres & the Literary Endeavour
~ Sivamohan Sumathy

'Roadside Romeos' to Lalit Kala Awardees: Denunciations in the Name of the Obscene
~ Sarim Naved

Mediating/Constituting Sexualities: An Analysis of Media Culture & Legal Discourse
~ Carmel Christy

5.5
11.00 - 1.00 PM
TAGORE 4

LAW & LIFE IN CONTEMPORARY GUJARAT

Chair: Farah Naqvi
Panelists:

Fog of Facts: Democracy & Accountability in Gujarat **~ Mona Mehta**

Match Made in Law: Organ Transplants, the State & Social 'Integration' in Gujarat
~ Farhana Ibrahim

Interrogating Judicial Discourses: The Struggle to Define the "Anti-National" **~ Prita Jha & Surabhi Chopra**

5.6
11.00 - 1.00 PM
TAGORE 1

THE PAPER TRAIL: DOCUMENTARY FORMS & PRACTICES

Chair: Radhika Singha
Panelists:

Forgery, Perjury & Attestation in Early Colonial Madras ~ **Bhavani Raman**

In the Image of the Document: The Ration Card & the ID Documents Regime in India
~ Taringini Sriraman

The Many Lives of Stamp Paper: The Telgi Stamp Paper Scam **~ Shrimoyee Nandini Ghosh**

Panel Coordinator: Taringini Sriraman & Shrimoyee Nandini Ghosh

1.00 - 2.00 PM
FLAME
DINING HALL

LUNCH

6.1

2.00 - 3.45 PM
CHANAKYA 1

BOOK DISCUSSION – SUBALTERNITY & RELIGION: THE PREHISTORY OF DALIT EMPOWERMENT IN SOUTH ASIA BY MILIND WAKANKAR

Chair: Anupama Rao
Discussants: Pratap Bhanu Mehta|Deepak Mehta|Bhrigupati Singh

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6.2

2.00 - 3.45 PM
CHANAKYA 2

AUTHORISING CULTURE: THE CHALLENGES OF (& TO) PROPERTY

Chair: Prashant Iyengar

Panelists:

Made in India: Commerce, Heritage & Other Properties of Culture in 19th Century British India
~ Kriti Kapila

"It's Gurus All the Way Back": The Inalienable Nature of Yogic Knowledge Transference
~ Allison Fish

Investments of Hope & Fear: Reading the Global Trade Negotiations in Geographical Indications
~ Dwijen Rangnekar

Panel Coordinator: Dwijen Rangnekar

6.3

2.00 - 3.45 PM
TAGORE 1

INTERNATIONAL LAW & GLOBAL JUSTICE

Chair: Amit Prakash
Panelists:

Imperial Agendas, Global Solidarities & Socio-legal Scholarship on the "Third World": Methodological Reflections **~ Radha D'Souza**

Implications of the "Global Europe" Strategy for South Asia: A Political Economy Perspective
~ Jagjit Plahe

Justice Indicatorology: A New Theatre for Justice? **~ Abdul Paliwala**

6.4

2.00 - 3.45 PM
TAGORE 2

COURTING THE CITY: LAW & THE (UN)MAKING OF MILLENNIAL DELHI

Chair: Dalia Wahdan
Panelists:

Campaigning Against its Eviction: Local Trade in New 'World-Class' Delhi **~ Diya Mehra**

Yeh Court Is Sheher Par Raj Karti Thi: 'Public Interest Litigation' in Delhi **~ Anuj Bhuwania**

Delhi's Yamuna **~ Awadhendra Sharan**

Residual Publics & Improper Citizens: Reflections on Urban Planning in the Juridical City **~ Gautam Bhan**

Panel Coordinator: Gautam Bhan

6.5

2.00 - 3.45 PM
TAGORE 3

THEATRES OF JUSTICE

Chair: Vibodh Parthasarathi
Panelists:

Media Induced Notion of Justice Delivery System in India: Tracing the Effect of "Trial by Media" on Public Opinion & Judicial Outcome **~ Deva Prasad**

Mass Media & (Global) Theatre of Climate Justice: A Critical Appreciation of International Jurisprudence **~ Debasis Poddar**

All the World's a Stage: Media & Kasab in the Playground of Justice **~ Jhuma Sen**

Social Media Activism & the Rhetoric of Rights **~ Sonal Makhija**

6.6

2.00 - 3.45 PM
TAGORE 4

FRAMING CONSTITUTIONALISM

Chair: Rajeev Bhargava
Panelists:

Transformative Constitutionalism in Nepal **~ Smriti Upadhyay**

The Multifarious Constitution: Searching for an Analytic of Activism **~ Jaivir Singh**

New Global Economic Constitutionalism: International Trade & Gender **~ Durgambini Patel**

3.45 - 4.00 PM TEA

6.7

2.00 - 3.45 PM
PERFORMING ARTS STUDIO

WATER LAW & WATER POLICY: RELATIONSHIP IN THE CONTEXT OF WATER LAW REFORMS

Chair: Sailen Routray
Panelists:

The Interconnectedness of Law & Policy in the Water Sector ~ **K.J. Joy and Suhas Paranjape**

Exploiting the Conundrum around Water Law & Water Policy: Case of Water Distribution Reforms in Maharashtra ~ **Sachin Warghade, Subodh Wagle, Mandar Sathe & Aditya Khebudkar**

Realisation of the Human Right to Water: Contributions & Limitations of Water Policy ~ **Philippe Cullet**

Panel Coordinator: Philippe Cullet

4.00 - 6.00 PM
PERFORMING ARTS STUDIO

PLENARY 3

Broken Attachments:
Envy, Hatred & Vengeance in Law

Chair: Veena Das
Speakers:

Law & Love in a Time of Envy
~ **Jonathan Goldberg-Hiller**

Death, Dishonour & the Law *(Or, Kanoon ke panje se kaise nikal paoge?)* ~ **Nivedita Menon**

Wild Justice: The Stubborn Memory of Rage in Grief ~ **Lawrence Liang**

6.00 - 6.30 PM
PLAZA

TEA

6.30-7.30 PM
PERFORMING ARTS STUDIO

BOOK RELEASE

Law Like Love: Queer Perspectives on Law *from Yoda Press*

Editors: Arvind Narrain, Alok Gupta, Akshay Khanna, Mayur Suresh, Ponni Arasu & Siddharth Narrain

Chair: Gautam Bhan
Discussants: Nivedita Menon|Shrimoyee Nandini Ghosh|Rahul Rao

7.30 - 9.00 PM
FLAME DINING HALL

DINNER

9.00 - 10.00 PM
CHANAKYA 1

LASSNET BUSINESS MEETING

7.1

8.30 - 10.15 AM
CHANAKYA 1

RELIGION & CONSTITUTIONALISM IN INDIA

Chair: Arvind Narrain
Panelists:

Judging History: Evidencing the Past in the Ayodhya Judgement ~ **Rohit De**

Deciphering the Ayodhya Judgment
~ **Sudhir Krishnaswamy**

Religion & the Courts: The Secular Management of Gods' Affairs in Some Kerala Cases
~ **Gilles Tarabout**

Privileging Communal Identities & Marginalising the "Other": Constitutionalism in India & Cow Slaughter ~ **Abhik Majumdar**

7.2

8.30 - 10.15 AM
CHANAKYA 2

SPEAKING EVIDENCE, MAKING SECRETS

Chair: Jinee Lokaneeta
Panelists:

Organising Terror: Banning of the Students Islamic Movement of India ~ **Mayur Suresh**

"Not Even a Faint Legal Idea about What Transpired": Political Agency, Violence & the Criminal Courts ~ **Ruchi Chaturvedi**

Pyar Kiya to Darna Kya: Notes on Law, Love & Violence ~ **Pratiksha Baxi**

Panel Coordinator: Pratiksha Baxi

7.3

8.30 - 10.15 AM
TAGORE 1

IN-SIGHTS: AESTHETICS & LAW

Chair: Ashish Rajadhyaksha
Panelists:

Pornography & Law: Embarrassments & Hidden Pleasures ~ **Namita Malhotra**

The Cleavage on the Queer Body
~ **Akshay Khanna**

Post- Conventional Moral Consciousness & the Legal- Semiotics of Assaultive Intimacy
~ **Arnab Chatterjee**

Panel Coordinators: Akshay Khanna & Namita Malhotra

7.4

8.30 - 10.15 AM
TAGORE 2

GENDER/GOVERNMENTALITY/ VIOLENCE

Chair: Tejaswini Niranjana
Panelists:

Rank, Reputation & Risk in Global Governance: The Politics of the US State Department's *Trafficking in Persons Report in India*
~ Vibhuti Ramachandran

Consenting to Coercion? Narrating Sexual and Other Entanglements **~ Dina Mahnaz Siddiqi**

Scandal, Law and Governmentality: Sexual Harassment in Public Spaces of Kerala
~ Rebecca John

7.5

8.30 - 10.15 AM
TAGORE 3

SIGHT ME IF YOU CAN: THE LAW IN THE EVERYDAY

Chair: Saumya Uma
Panelists:

The Everyday & the Exception
~ Priya Thangarajah

The Everyday, Justice & the Indian Constitution
~ Vivek Shivakumar

Locating "Exception" in Constitutional Discourse: The Case of Jammu & Kashmir, India
~ Anusha Hariharan

Panel Coordinator: Anusha Hariharan

7.6

8.30 - 10.15 AM
TAGORE 4

LAND & THE CONSTITUTION

Chair: Usha Ramanathan
Panelists:

The Indian Constitution & the Changing Dimensions of Property Rights **~ R. Rajesh Babu**

The Paradoxical Debate on Constitutional Property in India **~ Namita Wahi**

Private Speculations & the Public Interest: N.C. Kelkar's Land Acquisition Bill **~ Eesvan Krishnan**

10.15 - 10.30 AM TEA

8.1

10.30 AM - 12.15 PM
CHANAKYA 1

On Impunity: Ram Narayan Kumar & Rhonda Copelon Memorial Panel

Chair: Uma Chakravarti
Panelists:

Impunity & Sexual Violence in Kashmir
~ Anuradha Bhasin

Impunity for Sexual Violence in Conflict Situations: A Search for Elements of Justice
~ Farah Naqvi

Sexual Violence Against Women in the Punjab
~ Navsharan Singh

Challenges in Ensuring Accountability for Mass Crimes **~ Warisha Farasat**

8.2

10.30 AM - 12.15 PM
CHANAKYA 2

Law, Resistance & Change

Chair: Mihir Desai
Panelists:

Tale of Two 'Progressive Laws': State, People's Movement & Resistance
~ Kamal Nayan Choubey

Suspect Communities & Excepted Persons: Criminalising Speech & Association through the Power to Ban Associations **~ Jawahar Raja**

Mobilizing Support for 'Terror-Suspects': The Case of Civil Liberties Monitoring Committee, Hyderabad **~ Suneetha Achyuta**

8.3

10.30 AM - 12.15 PM
TAGORE 1

Affective Life of Law & Justice

Chair: Jonathan Goldberg-Hiller
Panelists:

For Love or Money? Income Tax & the Making of 'Modern' Hindu Family Law **~ Eleanor Newbigin**

Spinning Affect: Neoliberalism & the Science of Cricket **~ Sivakumar Arumugam**

Forced Friendship and Violent Embraces in British-Tahitian First Contact **~ Alecia Simmonds**

Law, Death & the Sovereignty of Self
~ Sruti Chaganti

8.4

10.30 AM - 12.15 PM
TAGORE 3

INTELLECTUAL PROPERTY RIGHTS IN SOUTH ASIA

Chair: Dwijen Rangnekar
Panelists:

Naming the Unnamed: Folk Music & Intellectual Property Rights in India ~ **Ruchira Goswami**

Who Owns the Chilli? Discourses of Traditional Biodiversity Based Knowledge Systems Across National "Borders" in the Eastern Himalayas **~ Joy Dasgupta, Anungla Aier, Laxmi Gurung Tika & Raquibul Amin**

Farmers' Rights under Plant Variety Protection (PVP) Legislation: Issues & Concerns **~ Sophy Joseph**

Copyright & Accessibility in India ~ **Rahul Cherian|Apoorvaa Paranjpe|Krithika Dutta Narayana| Joyojeet Pal**

8.5

10.30 AM - 12.15 PM
TAGORE 4

COURT-ING LAW: ETHNOGRAPHIES OF COURT PRACTICE

Chair: Sally Engle Merry
Panelists:

Interrogating Practices of Criminal Law: Notes from a Murder Trial ~ **Vasudha Nagaraj**

Niptara Courts: Critique of Official Discourse on Access to Justice ~ **Anu Sharma**

Vernacular Justice: Adjudicating Corruption in Rural Rajasthan ~ **Gaia von Hatzfeldt**

Suicide Notes as Legal Evidence: An Ethnography of Criminal Proceedings in Domestic Violence Cases ~ **Daniela Berti**

8.6

10.30 AM - 12.15 PM
PERFORMING ARTS STUDIO

AFTER THE NAZ JUDGMENT: EXAMINING LEGAL CONTROVERSIES & DEBATES IN THE WAKE OF SECTION 377

Chair: Alok Gupta
Panelists:

The Anti-Discrimination Principle **~ Tarunabh Khaitan**

	Gender Neutral Rape Laws: Are They the Way Forward? **~ Arvind Narrain** Do Children Have a Right to Consent? **~ Ashwini Sukthankar** New Asian Values: Emerging Jurisprudence on Sexual Orientation & Gender Identity in Asia **~ Siddharth Narrain** Panel Coordinator: Ashwini Sukthankar
12.15 - 1.00 pm FLAME Dining Hall	Lunch
1.00 - 2.00 pm Performing Arts Studio	CLOSING KEYNOTE **Chair: Pratap Bhanu Mehta** Indicators as a Technology of Global Governance **~ Sally Engle Merry**
2.00 - 2.30 pm Performing Arts Studio	VOTE OF THANKS

www.lassnet.org

INTRODUCTION

The Law and Social Sciences Research Network (LASS*net*) began by noting that law is conventionally taught and practised, in South Asia (as also elsewhere) by treating it as an autonomous and self-sufficient phenomenon. The law also tends to be narrowly conceived as what judges, legislators, or the police 'do' ignoring the diffuse structures of power and governance, and practices of regulation, normalisation, and biopolitics that penetrate bodies and condition behaviour. The notion that law is autonomous (legal formalism or legal positivism) has been subjected to sustained challenge over many decades by scholars who draw on social science methodologies, as well as by the law and literature movement, and by activists who constantly challenge the positivist image of law. Broadly conceived, these scholars seek to explain law as a social, anthropological, historical, and economic artefact, which should be understood and studied as such. This implies also that we trace the genealogies of categories, which inform law, and the images, and imaginings of law in contemporary social science theory. All this suggests that the law is not confined to state law or the appellate judiciary. Not only is state law inherently plural; it also interacts with plural regimes of customariness. We wished to understand how forms of state and non-state law mutually constitute each other and how they relate to different structures of power and techniques of violence.

The Centre for the Study of Law and Governance (CSLG), Jawaharlal Nehru University, Delhi, initiated the establishment of LASS*net* in order to bring together scholars, lawyers, activists and doctoral researchers engaged in research and teaching of issues of law in different social sciences in contemporary South Asian contexts in December 2007. We began this conversation with 14 scholars, and we have grown to a membership of 370 scholars from all over the world today from South Asia, Europe, America, Australia, Africa, Argentina, Palestine, Brazil and New Zealand. We believed that the critical work that has emerged from different institutional locations and theoretical frameworks, had yet to find a common forum which could act as a medium for exchange of ideas, work, materials, pedagogies and aspirations for the way law, regulation and society as objects of research as well as sites of praxis have been envisaged variously. The attempt of this network has been to create a forum for academics, researchers, and lawyers where they can enter into productive conversation with each other, as well as to enhance these conversations such that they can play a pioneering role in shaping the future course of law and social sciences scholarship in India.

Thus, the network acts both as a physical space (through its conference, workshops, publications, petitions etc.) and also as a virtual community (through the web, its blog and the 'network'). The LASS*net* Inaugural Conference was held in January 2009, and since then the network has emerged as a crucial site for an interdisciplinary interrogation of the theory and practice of law.

To join the network, please write to **lassnet@gmail.com**

LASS*net* Conference 2010 Siting Law

The second edition of the conference, titled 'SITING LAW' from December 27-30, 2010, hosted at the Foundation for Liberal and Management Education (FLAME), Pune, hopes to venture further afield in these interdisciplinary excavations.

By focusing on the multiple sites of law we seek to open out ways of thinking about the social life of law and legality and its relation to questions of violence and injustice in South Asia. We recognize that the project of modern law emerged through the universalizing of a particular form of rationality and established itself in a large part of the world through the violent history of colonialism. The project of law and the project of modernity often became synonymous, and legal scholarship also tended to reproduce this relationship. We are therefore interested in enquiries that critique monolithic forms of legal rationality. If the project of critiquing is to have any relevance, it is in its ability to conjure possibilities and alternatives that have remained unimagined. Thus another way of thinking about the relationship between law and the social sciences would be through the metaphor of 'sighting law', which invites us to look at a range of social practices which have either been marginalized as custom or dismissed as affect and hence deemed irrelevant to legal theory.

To be attentive to the multiple sites of law is also to be attentive to the role played by the social sciences - particularly anthropology and history - in opening out the way we think of law as a cultural and not merely as a legal process. LASS*net* seeks to extend the ways in which the law can be 'cited' in other disciplines, and we hope that the sub themes of this edition of the conference allow us to collectively explore the diversity of forms that may exist, both within the formal legal structure as well as outside it.

The routes which social scientists and legal scholars took to the sites of law, and the methodologies that they developed, have traditionally been accounted for in terms of their differences. We wish to see this difference as being precisely the common ground on which we stand, and as the basis on which we can cite scholarship about legal experience differently.

Conference Sub-themes

While the Steering Committee made its selection from as wide a basis as possible, we welcomed presentations that addressed the following themes, which we see as especially interesting to consider in the contemporary South Asian context. The sub-themes are illustrative of the goals of the conference and are not exhaustive.

01. Law's Publics: Counter legalities and Counter Publics

The law often claims to have an unmediated access to the public, for instance in Public Interest Litigation or in the determination of what counts as legitimate public purpose. Struggles for the recognition of socio-economic rights and dignity have often been premised on the claimants being recognized as legitimate public actors. What role is played by the law in the constitution of a public, and what role is played by the notion of a public in thinking about the legitimacy of the law? Conversely, what role is played by the law in the constitution of the hybrid realm of public-private entities, which facilitate the flows of a globalised capital? Is the valorised language of illegality the only means of expressing resistance to law, or can political struggles, marked by their inability to be properly constituted in the sphere of liberal legality, resurface as counter publics who nevertheless stake a claim to legitimacy? In a time of ever more inventive forms of neo-liberal violence, how can counter-publics avoid capture by a legal apparatus intent on re-territorialising the terrain of the political?

02. Law like Love: Law and Affect

The 'affective turn' in the social sciences is beginning to speak to legal debates. How do we begin to undertake a genealogy of the affective life of law in which reason and unreason intermingle? To explore the affective life of law is to understand the 'body of law' not merely as an archive of legal judgments, but to engage seriously with ideas of corporeality in law, and to acknowledge that the power of law emanates as much from its affective force as its symbolic power. How does the law deal with this messy world of affect and emotion, and what are the ways through which interdisciplinary scholarship can redress the historic disavowal of affect in legal scholarship?

03. The Careers of Constitutionalism in South Asia

Constitutions as a genre have deep roots within the histories of European universalism. The emergence and experience of postcolonial transformative constitutions, marked by a different relation to questions of justice, time and memory, have significantly altered this universal narrative. How do we account for the various histories of this transformative, and even insurgent constitutionalism? At the same time there seems to be a tension between the constitution as a text of governance and text of rights. How do we critically uncover other histories and sites through which we can understand the careers of constitutionalism in South Asia? Finally, how does contemporary constitutional theory respond to the challenges posed by the emergence of the new global economic constitutionalism?

04. Theatres of Justice

Living as we do in an age saturated by hyper-science and hyper-media, we have a plurality of places in which legal norms are produced. The blurring of the lines between media, science and culture makes it imperative for us to explore the new and emerging sites of legal meaning. There is sometimes even a blurring of these spaces, as evidenced in various reality TV shows that mimic the structure of the courts. How for instance do ideas of expertise move from the laboratory to the court and back? How do images of legality produced in a studio serve as the basis of a new legal imagination? How are we to understand these multiple scenes of the law, in which the formal judicial process appears as one of the many competing actors in the theatres of justice?

INAUGURAL KEYNOTE

Varieties of Variance:
Fractures and Fissures in the Great Pyramid

~ MARC GALANTER
John & Rylla Bosshard Professor Emeritus of Law and South Asian Studies, University of Wisconsin-Madison; Centennial Professor, Department of Law, London School of Economics and Political Science, UK

Chair: Niraja Gopal Jayal
Professor, Center for the Study of Law and Governance,Jawaharlal Nehru University, Delhi, India

Most legal professionals and many citizens, it seems, carry an implicit picture of the legal world that echoes the unity and hierarchy of the conceptions of John Austin and H.L.A. Hart - that is, something like the "great pyramid of legal order" postulated in the mid-20th century by Henry Hart and Albert Sacks in a famously unpublished set of teaching materials entitled "The Legal Process." Several generations of research supply a mass of evidence that legal life displays many sorts of variance that are not represented in the image of an orderly purposive pyramid. Some of these fissures are normative such as federalism, legal pluralism, and khadi justice. Others sorts of variance, such as dualism, tokenism, and non-enforcement, do not enjoy normative commendation. "Informalism", alternatives, and "non-state justice" occupy a contested area, both once commended as welcome flexibility and suspect as second-class justice or worse. I propose to examine some of the varieties of variance found in the contemporary Indian legal process and to discuss their implications for effective regulation and access to justice.

Plenary I

Law, Violence and Exception

Chair: Milind Wakankar

Fellow, Centre for the Study of Culture and Society, Bangalore, India

The Ayodhya Dispute:
Legal Documents and the Status Quo

Deepak Mehta, Associate Professor, Department of Sociology, University of Delhi, India

This paper analyses the Babri Masjid-Ramjanmabhumi controversy by focusing on the legal and administrative literature through which the 'Ayodhya dispute' (by which the controversy is named) acquires a life in law. Specifically I wish to argue that the law in relation to the dispute is concerned more with the restoration of the status quo, and less with issues related to justice, restitution and rehabilitation. Through the status quo the Ayodhya dispute enters into the official public domain in such a way that it affects the legal case material and colours the legal vocabulary. Since its initial elaboration in 1885, the status quo has highlighted a residue of temporal change, in the absence of which the dispute cannot be recognized. The status quo becomes a title of legitimation open to occupation from all sides so much so that specific legal and administrative strategies would no longer be possible without it. The questions that this paper asks are both empirical and normative: From what does the status quo emerge and which choices does it bring into being? What are the limits within which change is possible? Normatively, to what extent is the status quo privileged and how can change from the status quo be legitimized? In dealing with these questions I will argue that the status quo addresses not only transformations in the long history of the Ayodhya dispute, but also constitutes its temporality.

Violence and Humanity: A (Global) Genealogy

Anupama Rao, Associate Professor, South Asian History, Barnard College, Columbia University, New York, USA and Fellow, Centre for Advanced Study in the Behavioural Sciences, Stanford University, California, USA

My paper addresses the refiguration of 'politics,' and of the political subject in the aftermath of the critique of violence. (I use the latter term as shorthand for forms of thought associated with thinkers like Agamben, Arendt, Benjamin, and Schmitt that challenge the organizing conceits of political liberalism, albeit in different ways.) In particular, my paper will focus on the productive tension between (sovereign) 'exception' and (political) 'universality' - rooted in the specificity of Dalit lifeworlds' to rethink the theoretical-historical concept of 'the human.' My interest will be to challenge the putatively universal reach of concepts deriving from European experiences not so much by provincializing them, as by de-provincializing competing narratives of historical violence and of political subject-formation in order to explore alternate imaginations of the human, and of human sociality.

Beyond Exception? Aversive Thinking within Constitutionalism in South Asia

Naveeda Khan, Assistant Professor, Department of Anthropology, Johns Hopkins University, Baltimore, USA

Constitutional historians have long protested that Giorgio Agamben's understanding of the "state of exception" as the primary mode of modern government is oblivious to actual developments within constitutional theory. In other words, Agamben is more concerned with an ethico-political stance towards our present than with the longstanding discussion and experimentation within constitutional theory on how to ensure that the temporary resort to emergency powers does not become permanent. If one were to retain Agamben's ethical posture of concern for our present vulnerability to exception with its accompanying void of rights and distinctions, yet also attend to developments within constitutionalism, one can do no better than to consider two recent efforts to scale back the encroachment of military government and martial law upon constitutions, notably in Pakistan and Bangladesh. In 2009, the Supreme Court of Pakistan declared Musharaff's 2007 proclamation of emergency rule illegal on grounds that it constituted an attempt at a coup. This declaration came over the course of a robust lawyers movement aimed at re-instating civilian authority over the military. In 2010 the Supreme Court of Bangladesh upheld a High Court decision to nullify all amendments made to the constitution under various military governments, effectively reversing it to its 1972 version.

It is noteworthy that both of these are efforts at reverting to a previous state, whether imagined or desired. In the Pakistan case this is the Archimedean point at which military was under civilian authority and in the Bangladesh case it is the point at which socialism and secularism held greatest promise. I take such reverting not as wishful thinking producing a turn away from the present or an erasure of history but as an attempt to return to a previous aspiration to a collective self. The American philosopher Stanley Cavell calls such gestures within writing "aversive thinking". To inquire further into the potentialities of aversive thinking for each case, I read the texts of these two Supreme Court judgments within their moments with the following in mind: How are these returns effected? What founding concepts and tensions are re-found? How is this re-founding moment peopled by others, if indeed they are? In other words, how do these exercises in aversive thinking find a foothold within the present darkly described by Agamben? And, do they open us to "careers of constitutionalism" beyond exception?

The Unmaking of Rights in the Making of SEZs: Some Notes on Mundra

Shalini Randeria, Professor of Social and Cultural Anthropology, University of Zurich, Switzerland and Fellow, Lichtenberg-Kolleg, University of Goettingen, Germany

Plenary 2

Rule of Law:

Insurgent Reason and Public Reason

Chair: Upendra Baxi
Emeritus Professor, University of Warwick, UK,
& Emeritus Professor, University of Delhi, India

Rule of Law: The Question at the Grassroots

Kanak Mani Dixit, Editor, Himal Magazine, Kathmandu, Nepal

How do you take the various elements that build towards rule of law, including enforcement, accountability, independent media and civil society oversight, to the level of district and village? The goal of course is to provide governance and legal recourse at the grassroots, but capital- and metropolis-based observers are not always sufficiently empathetic. In all countries, and especially the larger ones where the 'national' is more layers removed from the 'local', the expectation that the quality of democracy extends beyond the capital, the provincial capitals and large metropolis, to the rural hamlets is belied by the reality. The quality and penetration of journalism and civil society activism at the grassroots of Southasia is not able to support rule of law, nor democracy and accountability. What are the challenges to the growth of civil society activism and independent journalism so that they help all the people rather than a few. How do you ensure that the middle class and the rich also go to jail.

Rechtsstaat (Constitutional State) as Flaw and Export Item of German Legal Culture

Werner Gephart, Director, "Law as Culture" Käte Hamburger Centre for Advanced Study Bonn, Germany

How did idea and practice of the Rechtsstaat emerge in the 19th century? And how did the break-up of the Rechtsstaat in National Socialist society come about? How, finally, was the Rechtsstaat a leitmotiv in the reorganization of German society after the catastrophe? Rechtsstaat is not only understood as an ensemble of legal norms, but also as a mythological reference point of a legal community undergoing change.

Rule of Law vs. Rule by Law

G. Haragopal, Professor, Centre for Human Rights, University of Hyderabad, India

Rule of Law is, in a larger view, an objective normative and, in a way, ethical standard reflecting the stage of civilizational progress. It is, of course, a product of industrial revolution which is in turn a result of blossoming of human reason, advancement of the relation of human beings with nature and an attempt to universalize the normative reference point in dealing and negotiating the adversarial relation which are intrinsic to the

capitalistic mode of production. The critiques of Rule of Law, particularly that of Marx, maintains that equality before the law, the essence of Rule of Law, is a juridical illusion as equality before the law neither ensures nor is preceded by real equality in social relations. Notwithstanding the Marxist criticism, it has to be acknowledged that law represents certainly one step forward from feudal social relation which are hierarchical arbitrary and totally unequal. This is not only the reality but can be rationalized and justified on all possible grounds. Since the origin of relations is traced to the divine, who is believed to be the creator, there was neither scope nor possibility to question the relations without somewhere either questioning the omnipotent power or redefining the relation of the human with the divine.

The midway of interpreting the Rule of Law is to look at it as `historic compromise` between the owners of means of production and the members of working class who are the natural owners of productive labour. The struggles between capital and labour led to something like "live and let live" understanding. In a way, Rule of Law is as much an achievement of the labouring class as that of concession from capitalist class. Therefore, leaving the entire space for the capitalist class to appropriate amounts to ignoring the struggles of the laboring class.

The origin of Rule of Law or modern constitutional governance owes a lot to European civilization which conceded the Rule of Law to its people and colonized a huge part of the world for ruthless exploitation. The subjects in the colonies and their freedom movements saw their own future in the European mirror and demanded the rights that their counterparts enjoyed as citizens of the Nation State. In a way, the aspiration for Rule of Law was built into the freedom movement itself.

India is one country which heavily borrowed from western juridical traditions, while drafting its constitution. The Indian Constitution in retrospect appears as a radical document with freedom and justice as its main foundations. The crisis arises from the fact that the anti-colonial freedom movement was not simultaneously anti-feudal. Therefore, the freedom movement remained incomplete and the task of emancipation unaccomplished. Constitutional governance is superimposed on an economy and society not objectively conducive for such a form of governance. This lead to a rupture in the Rule of Law which has come to be increasingly replaced by "Rule by Law", which is contingent and arbitrary.

There are several repressive laws starting with Armed Forces Special Powers Act to TADA, POTA and several such state legislations, which are negation of individual liberty and societal freedoms. Most of the repressive laws were enacted with a promise that they were temporary measures and would be repealed once their purpose is served. It is true that some of these laws either lapsed or were repealed, but the draconian provisions of the law got incorporated into Unlawful Activities (Prevention) Act involving changes in the criminal justice system. It is paradoxical while civil rights and democratic movements have been demanding further refinement of the standards of Human Rights Laws, the rulers are gradually abandoning or lowering the existing standards under one pretext or the other. The spirit of Rule of Law is being increasingly undermined by Rule by Law, which is the reversal of democratic progress of Indian society.

Plenary 3

Broken Attachments:

Envy, Hatred and Vengeance in Law

Chair: Veena Das

Professor, Department of Anthropology,
Johns Hopkins University, Baltimore, USA

Law and Love in a Time of Envy

Jonathan Goldberg Hiller, Associate Professor, Department of Political Science, University of Hawaii, Mánoa, USA

Chaucer voiced for many the sentiment that envy was the greatest sin, and love its prime antidote, able to restore the order that envy undermined. This paper reexamines this longstanding relationship of love and envy in the context of the long American legal mobilization around the issue of equal rights to marriage. I see envy as a useful handle to understand the contribution of emotional and affective life to revealing “gaps” within which sociolegal studies and rights politics strive for justice. Envy not only contributes to a desire for leveling social inequalities, but also fortifies other inequalities, particularly around the issue of love and its legal recognition. Envy additionally serves as a motivator for opposition to the “excess” demands of rights seekers in the countermobilization against gay rights. It also undergirds countermobilization in a frequently overlooked temporal dimension that this paper strives to bring to light: envy for an age in which love is understood to be valued and experienced, an age threatened by legal changes recognizing love in different forms. I develop the significance of a temporal understanding of envy in several sites of inquiry.

Using literatures of psychoanalysis (including psychoanalytic novels), I explore the ways that generational relationships within families are capable of becoming sites for envy, and therefore available grammars for broader political struggles over love. In order to understand the political form of these struggles, I suggest, we must be intellectually sensitive to the ways in which emotions are simultaneously fleeting and enduring, capable of transforming themselves in new ways over time, therefore forcing new generations to reconcile with the forms of the next. The neo-Hegelian philosophy of Catherine Malabou helps construct a perspective on love that can be considered “plastic,” and I show how her ideas of plasticity help us to understand the dynamism of love and some of the ways that law modulates these forms in distinctive ways within modern life. I look to colonial encounters with law to illustrate early modern experiences with law and love, echoes from which continue to be heard in contemporary sites of encounter.

In a final section of the paper, I apply these frameworks to the political struggle over Proposition 8 in California that would terminate rights to marriage for same-sex couples in order to examine the ways that struggles for gay rights have provoked powerful temporal dynamics around which envy can cohere, and I illustrate several cultural sites where this may be in play. Emotional politics such as these lie in tension with many aspects of legal doctrine, and I use this tension to raise ethical and strategic questions about the significance of temporality in legal mobilization, and the future of love in a time of envy.

Death, Dishonour and the Law
(Or, Kanoon ke panje se kaise nikloge?)

Nivedita Menon, Reader, Department of Political Science, University of Delhi, India

Clearly bounded familial spaces are clawed out from dense thickets of human and non-human inter-relationships by different orders of regulation including the Law - defining, purifying, rendering, clarifying; producing, through their practices, the very flesh-and-blood of the family. The replication of the family requires laws of endogamy as well as exogamy in marriage to be strictly maintained: not the Other but not the Self, either- neither outside the caste nor inside the gotra.

'Honour' killings stand at the interface of Law with other forms of social regulation of the legitimate family form. Which order of regulation is more just? And can the family form escape regulation?

Wild Justice: The Stubborn Claims of Rage in Grief

Lawrence Liang, Legal Researcher, Alternative Law Forum, Bangalore, India and Visiting Scholar, Department of Anthropology, Columbia University, New York, USA

The emergence of the modern legal system is often predicated on the replacement of revenge with a system of justice. But can vengeance and justice be so easily set apart? Why have cultural representations been obsessed with the theme of vengeance? In this paper I seek to examine the relationship between revenge, time and memory. Revenge often manifests itself as a stubborn memory that refuses to be subsumed by the time of law. Do certain kinds of memories sustain vengeance while others diminish it? What are the political and ethical challenges that passions of a 'rage in grief' pose to our understandings of law and justice?

CONCLUDING KEYNOTE

Indicators as a Technology of Global Governance

~ SALLY ENGLE MERRY
Professor, Department of Anthropology, New York University, USA

Chair: Pratap Bhanu Mehta
President, Center for Policy Research (CPR), Delhi, India

Achieving compliance with human rights laws is a persisting challenge for the human rights system. This problem is embedded in the theoretical question of how international law functions in practice given its limited enforcement powers. My previous work on the way women's human rights are appropriated and used by women's NGOs in several Asia/Pacific countries shows that these ideas are vernacularized, or reinterpreted in local terms that are often broader and less specific than the conventions where they are stated. In this talk, I examine how indicators based on systems of ranking or numerical scores are entering into the field of human rights compliance and how this approach to measuring compliance is at odds with the vernacularization process.

MEMORIAL PANELS

1.1 Law and its Publics:

S. P. Sathe Memorial Panel

Chair: Amita Dhanda
Professor, & Head, Centre for Disability Studies,
NALSAR University of Law, Hyderabad, India

Law in the Public's Interest?

Deepa Das Acevedo, Doctoral Scholar, Department of Anthropology, University of Chicago, USA

Although the short history of Public Interest Litigation (PIL) in India has been replete with questions about efficacy and scope, a lack of information and jurisprudential theory has meant that decisive critiques of PILs have remained rare. This paper offers such a critique via an examination of how PILs transform the relationship between the law and both citizens and the state. PIL claimants are not required to specify a personal harm; rather they identify perceived harms to society which may or may not affect them directly. Although the ability to do so seemingly empowers the public, in fact it broadens the scope of the law to an extent that is detrimental to citizen's interests. There are at least two reasons why PILs weaken citizens vis a vis the state. First, PILs extend the scope of the law so that non-legal methods of critique or resistance become increasingly obsolete. Second, PILs concentrate power in limited and non-elected officials (judges and lawyers) by redirecting disputes over governance to those who are not intended to govern. This paper will use case studies as well as recent social science scholarship to argue that despite the Supreme Court's reputation as a vanguard of liberal democracy in India, the augmentation of judicial powers that is an inevitable effect of public interest litigation is anything but liberal or democratic.

Disability Rights and the Failure of Public Interest Litigation

Jayna Kothari, Advocate, Karnataka High Court and Researcher, Centre for Law and Policy Research, Bangalore, India

Public Interest Litigation (PIL) began to be recognized in the High Courts and Supreme Court since the late seventies and early eighties and provided for various unorthodox remedies, such as continuing mandamus orders by the courts, and the courts supervisory powers on enforcing interim orders. These remedies and enforcement measures were improved to some extent during the nineties. In the last decade however, the life of public interest petitions in the courts have taken a new avatar, with fewer instances of the courts supervisory orders to ensure enforcement.

In the case of disability rights, these concerns assume greater importance. The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 2005 ("PWD Act") mainly addressed the rights to equal opportunities in employment and education to persons with disabilities. Along with the rights to equality and non-discrimination, the PWD Act also provides for several socio-economic rights such as provision of reasonable accommodation in

education and employment, access to transport and the roads and provision of aids and appliances.

While in individual instances of discrimination faced by persons with disabilities, the courts have been very progressive in enforcing the PWD Act, the experience of disability rights groups in public interest petitions has been very different. PILs filed by disability rights groups concerning implementation of the PWD Act with respect to access to transport and public buildings, access to employment by proper identification of jobs with reasonable accommodation and equal access to education for children with disabilities have not been very successful. In these petitions, the courts have failed to use the inventive remedies such as supervisory powers and continuing mandamus orders, to ensure effective implementation.

My paper analyses some of these cases in depth, and argues that there are several reasons for the failure of PILs in the field of disability rights. Disability rights such as provision of reasonable accommodation and access often make budgetary demands and call for state action. The issue of resources coupled with the larger issue that disability rights are still not taken seriously by the courts may be a reason for the failure of PIL for disability rights. My paper would look into these issues and attempt to suggest the way forward.

Terror / Tranquillity: Romesh Thapar and its Precedents Speak on the Subject of Public Safety

Kalyani Ramnath, Visiting Faculty, National Law School of India University, Bangalore, India

This paper aims to explore the origins of a language of rights in the context of a newly inaugurated Constitution in India. Case law in the first years of the Constitution, exhibit a preoccupation with 'public safety' and 'maintenance of public order' at the same time that they talk of the freedom of speech and movement that the newly made citizens of the republic are to enjoy. Several terms enter the constitutional schema here – "public order", "public safety" and "public tranquility"- and are placed in a definite hierarchy as judges attempt to resolve challenges on grounds of violations of Fundamental Rights. This paper is an attempt to provide a context to this method of scaling violence that is employed by the court.

A lively discussion on what level of violence undermines the security of the state is evident in Romesh Thapar, a case filed by a newspaper involving a challenge to the Madras Maintenance of Public Order Act, 1949 on grounds of violation of Article 19 (i) (a) and decided by the Supreme Court in May 1950. The precedents that it refers to are an interesting illumination of legal-social developments in late colonial and early independent India including the Government of India Act, 1935, the institution of the Federal Court, the Public Safety Acts in the context of Partition and consequent communal riots in 1947- 1949 and finally, the coming into force of the Constitution and attempts to evolve, within a judicial decision, "citizen" from subject and separate "criminal" from cause lawyers. In what ways did the transition from colonial to popular government affect the understanding of rights in the judicial imagination, given that a majority of precedents in Romesh Thapar were pre-constitutional? Do legal precedents speak louder than the call to right historical wrongs? In what ways, to parody Foucault, might society be defended from the dangers of public disorder?

2.1 Affective Leadership:
Balagopal and the Reimagining of Judicial Activism, Human Rights, and the State

Panel Coordinator: Jinee Lokaneeta

Chair: Manoranjan Mohanty
Retired Professor, Department of Political Science, University of Delhi, India

Discussant: Arvind Narrain
Advocate and Legal Researcher, Alternative Law Forum (ALF), Bangalore, India

This panel is dedicated to a critical engagement with the writings of K. Balagopal, a foremost theoretician, human rights activist and people's lawyer, whose death in October 2009 was a stunning blow to left and progressive communities in India and elsewhere. In addition to his formative influence on both Andhra Pradesh Civil Liberties Committee (APCLC) and Human Rights Forum (HRF), Balagopal was well known for his incisive analysis, prolific writing, and, in particular, his provocative and direct style of engagement posing uncomfortable questions for theoreticians and practitioners alike. In that spirit, each of the Panelists will present on a theme that has been greatly impacted by Balagopal's work. While constantly challenging state repression, Balagopal was careful to analyse the changing nature of state power and law's violence. Similarly, despite being at the forefront of protests against state brutality, Balagopal raised questions of morality and ethics for radical left political movements, and questions of autonomy for the human rights movements. Balagopal questioned a consequentialist approach to procedural norms in the context of criminal trials that also poses challenges for current debates on Public Interest Litigation. In all, this panel represents a continued conversation with Balagopal and some of the themes that emerged under his affective leadership.

Human Rights Movements in India:
State, Civil Society and Beyond

Ajay Gudavarthy, Assistant Professor, Centre for Political Studies, Jawaharlal Nehru University, Delhi, India

This paper is an attempt to trace the various phases of the human rights movement (HRM) and the assumptions underlying each of them in terms of the inter-relationships between the state, civil society and democracy. The 1970s witnessed the first phase of the HRM- the ' civil liberties phase' -'working within the framework of state-civil society complementarity. HRM along with emphasising the autonomy of institutions also struggled to recover a 'rights based civil society', where all citizens could have access to fundamental rights. The 1980s were marked by a shift to the second phase - the 'democratic rights phase' - with a new state versus civil society framework. During this phase, the HRM made efforts to construct civil society as a pure 'realm of freedom' that stood squarely outside the state and consisted of various militant and radical social movements. Towards the end of the 1990s, the third phase – the 'human

rights phase' -reconstituted itself on a new civil society versus political society framework. The new political society stressed the importance of locating and condemning human rights violations at the civil societal level, including those committed by radical social movements. Finally, the contemporary moment is ironically striving to move beyond the political by basing itself on an abstract moral dimension.

Critiquing the Critique: Balagopal and the Re-framing of the Idea of Human Rights in India

Sitharamam Kakarala, Senior Fellow, Centre for the Study of Culture and Society, Bangalore, India

This paper will address certain concerns about conceptualising the idea of rights in the making of human rights movement in India and the role of Balagopal in re framing the terms of the debate that lead to a paradigm shift in human rights praxis, especially, though not exclusively, in Andhra Pradesh.

The Procedural is Political: Public Interest Litigation and its Discontents

Anuj Bhuwania, Doctoral Candidate, Department of Anthropology, Columbia University, New York, USA

K. Balagopal's critical interventions in the civil liberties movement in India have led to vigorous debates on the political status of procedural norms in criminal trials, in particular questioning the tendency to view these norms in a 'consequentialist' manner. However, court procedure more generally (as opposed to that of criminal trials of serious offences alone) continues to be commonly understood in instrumental terms and seen as being of limited political importance. Even the Indian Supreme Court has adopted the rhetoric of viewing legal procedure itself as an impediment to justice: constitutional provisions like the Supreme Court's power to do 'complete justice' under Article 142 have been interpreted in ways that enable the Court to go beyond statutory law and overcome all procedural norms, most notoriously in the Bhopal judgment of 1991. Clichéd rants against "procedural technicalities" using phrases like "Procedure is a handmaiden of justice and not its mistress" are repeated ad nauseam in appellate court judgments and courtroom speech. This impatience with procedure, I will argue, has taken particularly extreme forms in the context of Public Interest Litigation (PIL). The remarkable extent of malleability of procedure under PIL and the widespread celebration of the procedural departures introduced by PIL reveal the kind of political disrepute that legal procedural norms enjoy in contemporary India. In this paper, I will take the example of PIL to argue against such lack of political concern for court procedure. The politics of courts, I will argue, is also located in its material forms and closer attention to these procedural norms is key to any political understanding of law.

Paradoxical State Killings: Encounters and the Death Penalty

Jinee Lokaneeta, Assistant Professor, Department of Political Science, Drew University, New Jersey, USA

In this paper, using Balagopal's seminal piece on death penalty and systematic work on encounter killings as a framework, I explore the paradoxical nature of state killing in India.

The paradox is represented by the fact that on one hand the number of encounter deaths (denied by the state) remains extremely high while on the other hand, death penalty (authorized by the state) has declined in recent years. The recent killing of Azad, a leader of the Maoists who was allegedly picked up by the Andhra police and shot dead, alongside the ongoing CBI enquiry into the encounter of Sohrabuddin (implicating high officials of the Narendra Modi government) is a stark reminder of how encounter deaths are a large part of the reality of the functioning of the Indian state. Apart from a long history of encounter deaths in the context of radical left movements in Andhra Pradesh, the Indian state has often used encounter deaths in situations such as challenging the Mafia in Mumbai, and the targeting of minorities in many different states of India. In contrast, another form of legalized state killing namely death penalty has declined over the years thereby becoming rare both jurisprudentially (authorized in the rarest of rare cases) and in practice (number of executions). The paradox, I suggest, has significant implications for debates on the nature of state violence in India.

4.1 Neelan Tiruchelvam and the Imagination of Southasian Constitutionalism

Panel Coordinators: Arvind Narrain and Siddharth Narrain

Chair: Veena Das

Professor, Department of Anthropology, Johns Hopkins University, Baltimore, USA

Ten years have passed since the tragic assassination of Dr. Neelan Tiruchelvam by a LTTE suicide bomber in July of 1999. Dr. Tiruchelvam exemplified the best traditions of activist scholarship combining a political career as a member of parliament along with deep engagements with fields such as ethnic studies and constitutional law. Thus Dr. Tiruchelvam's engagement with Constitutionalism was forged in the crucible of the struggle for a Sri Lanka which was committed to an ethic which respected plural identities and plural ways of living.

Dr. Tiruchelvam's life memoir of finding the right constitutional architecture which would reflect the nobler aspirations of a society and working to get warring ethnic groups to accept such a framework was tragically the very cause of his assassination.

This particular struggle for a just Constitutional order remains of deep salience in South Asian society. As a way of remembering and taking forward Dr Tiruchlevam's vision, this panel is dedicated to his luminous memory.

In this panel we engage closely with the promise, tragedy and lived history of Constitutionalisms in South Asia. Nepal in some ways exemplifies the perilous promise of a Constitutional future, Sri Lanka sadly shows the continuing tragedy of a state which refuses to accept a pluriverse sanctioned by the Constitution and India exemplifies the lived history of a certain form of Constitutionalism.

Exploring these three contexts of constitutionalism in South Asia will be the best tribute we can pay to an eminent South Asian thinker who ceaselessly strove to build a better world through his exemplary life of thought in action.

Constitutionalism in the Time of Demagougery:
Speaking Truth to Populism

Kanak Mani Dixit, Editor, Himal Magazine, Kathmandu, Nepal

Politicians fear to speak out on most critically important issues unless they are backed up by the intelligentsia and media. This applies as much to the issue of religious extremism as it does to geopolitics, nationalism or constitutionalism. The tendency is for opinion makers to take the short-cut of attacking politicians and political parties when they have themselves been negligent of creating the foundations for rigorous debate. Only exceptional democrat-politicians can fight back populism that is whipped up by the demagogue, and most will require the public intellectual to be there first taking a stand. It is important for members of civil society and media who would easily condemn the politicians to introspect on their own acts or omissions. It is not enough to hold potentially perilous opinion on controversial subjects, such opinion must be broadcast in public. I will speak on the basis of the Nepal experience of the last decade-and-half.

Constitutions as the Conscience of Nation-States

Ramaswamy Sudarshan, Policy Advisor - Legal Reform and Justice, UNDP, Bangkok, Thailand

This paper is in the form of speculation about what Neelan Tiruchelvam would have said in the present circumstances about constitutionalism.

Neelan cared about equality, inclusiveness, multiculturalism, and protection of rights of minorities and indigenous peoples. He agonized about constitutionalism that remains a colonial legacy, legitimizing strategies of divide and rule by blocking pathways to popular participation in decision-making. Neelan paid the price of his life for his steadfast adherence to principles and deeply held convictions.

Neelan would have reminded us that constitutionalism is something we all do, which ordinary people shape all the time through their collective activity. India's Supreme Court judges have rewritten India's constitution in significant respects, attempting to reflect what they understood as the preferences of people, expressed in the general elections, which first rejected Indira Gandhi for having declared a "state of emergency", and subsequently the election that reinstated a Congress government led by Indira Gandhi. However, those who care about the quality of democracy cannot leave it to judges and constitutional lawyers to mould the constitution on the basis of their readings about people's preferences. There

remains the danger that the constitution and law cannot guarantee the functioning of a healthy democracy.

The process of limiting the scope of political authority and public participation in decision-making has been exacerbated in recent times by the "democracy promotion" efforts of the United States and other Western donors. Their influence over constitution-making processes has led to the constitutional entrenchment of what John Keane calls 'monitory democracy'. Democratic decision-making is privileged only at certain moments in the career of constitutionalism, and regarded with suspicion, and in need of expertise, and technocratic correctives, at other times. The new constitutionalism downplays the role of experts, and privileges the preferences of people only at the time of framing a constitution. It also appears to enhance the role of experts, and downplays the authority of democratically elected governments, with constitutional bodies empowered to place an increasing range of limitations on the powers of elected governments to make decisions that matter to the people that elected them. And in day-to-day decision-making, the dominance of so-called experts and the characterization of issues as too complex for ordinary people to understand, emasculates the idea that people are sovereign. How are we to go beyond constitutionalism, which remains a statist, and state- dominated enterprise, to reach out to civil society?

Constitutional Durability: The Role of the Basic Structure Doctrine in Bangladesh, India, Pakistan and Sri Lanka

Sudhir Krishnaswamy, Professor, National University of Juridical Sciences (NUJS), Kolkata, India

South Asian nations have had some difficulty in maintaining their Independence constitutions. Drafted in the euphoria of decolonization these constitutions have been challenged by communal politics, revolutions of the political right and left and military coups. The Constitution of India, 1950 has been the only Constitution to survive these varied onslaughts without a break in application albeit with almost 100 constitutional amendments. Bangladesh and Pakistan have endured several phases of constitutional suspension or repeal. The resolution of the ethnic conflict in Sri Lanka rests on a comprehensive revision of the Constitution.

In all these jurisdictions, the courts have engaged with some version of a 'basic structure doctrine'. The Indian Supreme Court has developed the doctrine into a novel and extensive device of constitutional judicial review. The Pakistani and Bangladeshi Supreme Court have modestly embraced the doctrine in recent years to warn future coup plotters. The Sri Lanka courts have rejected the arguments that the doctrine applies to their constitution.

In this paper, I will critically examine the use of the doctrine in the South Asian context. I will argue that the theoretical concerns with the separation of powers and the sovereignty of legislatures need to be reworked in order to appreciate the case for constitutional maintenance in these jurisdictions. Arguably South Asian constitutional experience provides us with reasons to consider constitutional hybridity as an essential element of doing constitutional theory in a comparative context.

5.1 Doing Legal Philosophy in India:
Reflections on the Legacy of Chhatrapati Singh

Panel Coordinators: Arudra Burra and Mathew John

Chair: Mohini Mullick
Retired Professor, Deptartment of Humanities, Indian Institute of Technology, Kanpur, India

Legal philosophy has been a neglected aspect of Indian legal scholarship. With notable exceptions, very few Indian scholars have explored how philosophy illuminates legal questions and helps resolve legal problems. In this context the exceptional scholarship of Chhatrapati Singh assumes considerable significance. Chhatrapati Singh studied philosophy at St. Stephens College (Delhi) and at the University of Ottawa (Canada) where he obtained his doctoral degree. Returning to India in 1982, he joined the Indian Law Institute (ILI) where he worked for nine years. During this time he published his first book, Law from Anarchy to Utopia, a path breaking philosophical exposition on the nature of legal rules and their role in sustaining a just order. During his years at the ILI, his interests steadily moved towards issues in environmental law and in 1991 he became the founding Director of the Centre for Environmental Law (World Wide Fund for Nature, India). Exploring conceptual issues in environmental activism, his notable publications in the field include Common Property and Common Poverty: India Forests, Forest Dwellers and the Law (1986), Water Rights and Principles of Water Resource Management (1991) and India's Forest Policy and Forest Laws (2000). By the time of his death in 1998, Professor Singh had left behind a large body of scholarship which included numerous co-edited volumes and articles on topics ranging from the ontology of law, Wittgenstein's theory of language, a general theory of numbers and papers on Indian legal and moral philosophy, a topic that captured his interests from his earliest to his last work. Taking Chhatrapati Singh's work as a starting point, the Panelists examine various ways in which philosophy can contribute to the understanding of the law, not only in its more abstract aspects, but in its various contemporary manifestations.

Chhatrapati Singh and the Idea of a Legal Theory

Upendra Baxi, Professor Emeritus, University of Warwick, UK and Professor Emeritus, University of Delhi, India

Chhatrapati Singh ("CS") was India's finest legal philosopher and continues to be the only post-Independence Indian legal philosopher. And yet, he is the least read not just in the Indian law schools but also departments of politics or philosophy; better known for his work on common property resources and rights, water law and jurisprudence, environmental law generally, and legal education and research. This essay is a reflection on the conception of law and social justice set forth in his germinal text, Law from Anarchy to Utopia (LAU).

According to CS, while a theory of law should be presented as a "metaphysical" rather than a "political" ideal, the distinctive province of legal philosophy is constituted by concerns about peace and justice; the idea of law itself does not

make much sense outside these concerns. When law is distinguished from the social practices occurring under its name, it can be fruitfully reimagined as seeking to maximize the conditions under which each individual or group of individuals can realize themselves and attain their moral ends.The philosophy of law should be seen as an emancipatory enterprise, one that must take precedence over all other social philosophies.

LAU presents a sophisticated picture of the law articulated in this way, as a substantive alternative to legal positivism, which draws imaginatively upon Kant, Leibniz, and a subtle reconstruction of the idea of a dharmasastra. In presenting, critiquing, and extending CS's contribution to the idea of a legal theory, I hope to convince political and legal theorists to take a fresh look at an important and neglected contribution to legal scholarship.

Critique and the Possibility of a Science of Law

Sanil V., Professor, Department of Humanities and Social Sciences, Indian Institute of Technology, Delhi, India

Chhatrapati Singh sets for himself two objectives: to provide modern law with a secure foundation, to prepare the ground for a new reception of Indian tradition in philosophy of law. His book Law from Anarchy to Utopia is an attempt to combine both these tasks in a productive manner. Securing the foundation of modern law demands a re-examination of the relation of modern western philosophy to its own tradition. He realized that a post-Kantian project to ground the idea of law has to take necessary recourse to the pre-Kantian metaphysics of Leibniz. However, this is not a regression to pre-critical naiveté. Chhatrapati returns to Leibniz not because of the embarrassing persistence of metaphysics within critical philosophy. For him modernity is not an abrupt break with the tradition of metaphysics. Instead it is a break with the metaphysical idea of tradition. Modernity while freeing thought from the blind authority of tradition allows us to have a free relationship with the traditions of thought. Chhatrapati's return to tradition - both the pre-critical metaphysics of the West and Indian philosophy - is made possible by this free relationship which is constitutive of modern thought. However, Chhatrapati was too much of a post-Kantian to accept the availability of Indian philosophy as a set of doctrines or texts.

In this presentation I shall briefly examine Chhatrapati's approach to dharma sastras. He rejects the claim that these texts are codification of customary laws. Nor do these sastras speak to us through works of sociologists, lawyers or philosophers. These sastras seem to be making a claim on constituting an independent science of law. We moderns need to pose a critical question to such sciences - what are the conditions under which a body of knowledge can claim to be an independent science? To pose this question, Chhatrapati thinks, we need to establish an ideological continuity with these sciences. However, he knows that the modern idea of law does not allow us to look for continuity with a science of law. In the modern academy legal science does not even figure in the list of social sciences. Chhatrapati holds positivism responsible for the absence of a modern legal science.

Chhatrapati tries two routes to establish "ideological continuity" with classical Indian legal philosophy. One of them involves a careful sliding behind the critical mode of thought as it happens in his post Kantian retrieval of Leibniz. I see this move as one of overcoming the critical moment without regressing into pre-critical naiveté. The second route is through a critique of positivism. I think the former route offers more possibilities than the later. Critique and positivism are strange bedfellows. Despite their enmity they both are made possible by the same conditions which define modern thought. Following Michel Foucault I would call this condition human finitude. Under this condition, thought in its very nature is called upon to encounter its limits and recognise these limits as the ground of its freedom. Such thought of finitude is so immediately practical - crisis ridden and also anxious- in nature that it cannot propose a theory of practice or ethics. Communitarian critique of modern thought misses this in-eliminable and debilitating practical orientation of modern thought. To think the possibility of a science of conduct we need to overcome this critical and practical orientation of modern thought and its ontology of human finitude. I think such a move is necessary to engage with the question of emancipatory violence in modern society. Chhatrapati's thought contains the intimations of such a project.

Chhatrapati's unfinished project on Dharma and Obligation to be Just

Navjyoti Singh, Professor, and Head, Centre for Exact Humanities, International Institute of Information Technology, Hyderabad, India

For Chhatrapati if notions like Justice, Law and Norms stand in need of conceptual and foundational clarification, so do notions like Dharma, Karma and Artha, His quest was grounded not merely for the sake of upholding Indian sensibilities but for the sake of the universal understanding of "practical reason" and propensity of life. Chhatrapati saw vital moves in Leibniz and Kant which could "reform and cleanse" modern discourse on the foundations of law and justice. Such a "clearing", which he painstakingly undertook, was not only inspired by but would eventually make way for the possibility of a full-blown 'true dharmasastra'. What would be the shape of such a 'true dharmasastra'?

Following Kant he argued that basic legal propositions are "<normatively synthetic> / <a priori> / <de re necessary> propositions." This helps steer clear of the pitfalls of legal positivism and natural law theories in understanding juristic normative system. According to Chhatrapati, substantive properties of such a system are best elaborated by turning to Indian notions and their analytics. It is the substantive aspect of de re, a priori and synthetic, which calls for the appropriation of the notion of dharma. In the paper, I shall conceptually develop the notion of dharma, such that Chhatrapati's equation "idea of law is idea of dharma" stands illuminated. Through analysis of dharma, substantive properties of juristic normative system and its formal features can be seen to be grounding well the theory natural to law.

For the sake of brevity and precision I look at the difficult conception of dharma from the Vaisesika standpoint. Ontologically dharma/adharma are "non-experienced" a priori qualities of self. Interestingly, unlike other qualities of self, dharma/adharma are not characterizing properties of self, but are surrogate (aupadhika) in their nature. That is, though harbored in self they are characterizing properties of other entities including other selves. The dis-tended and dis-positional nature of dharma/

adharma makes them fundamentally synthetic. Self, like "windowless monad" of Leibniz, endlessly reflects all other selves endowed with ascripted dharmas including its own ascripted dharma-s reflected in reflections of other selves. What bestows firmness to such distended dharma (Latin firmus is cognate with dharma in proto-IE etymology)? In the labyrinth of the reflections of reflections ad infinitum what are the constitutive conditions such that de re necessity underlies dharma?

I propose causal argument to understand de re firmness of dharma. Dharma is implicated in actions of embodied self and it is through pondering on the causal bearings of action that firmness of dharma can be understood. Causal closure of material action (a stance that if you are looking for a causal explanation of material phenomena you need never go outside the material realm) is punctured by the occurrence of perceptual experience of "active sensate matter" different from matter in-itself. Similarly, a plausible stance of the causal closure of "material plus experiential" actions is punctured by "purposive action" as purposiveness lies outside perceptual experience. Even a stance of the causal closure of "material plus experiential plus purposive" action is punctured by occurrence of conflicts of each others deeds. Human deeds can have conflicting and injurious consequences. The project of de re causal grounding of human actions hopelessly comes to the end at the altar of ever-sprouting disputes.

At this point I propose formal closure of causality with the help of two meta principles - (1) Trans-jural principle: All disputes are resolvable in principle, though given a dispute one may not be able to formulate resolution, and (2) Trans-parency principle: There is no action that in principle is not knowable or readable, though given an action one may not be able to know all its constituents. These are merely formal and meta principles as they supply no algorithm for dispute resolution. Rather, these two meta-theorems are formally provable as constitutive conditions for justice to be possible. If there is a dispute which in principle cannot ever be resolvable, since its contents overlap with other disputes, no dispute will ever be conclusively resolvable. Quest for justice would be thus unjustified. If there is an action which in principle cannot be ever known, the conflict issuing out of it would be terminally unresolvable as its constituent content can never be known, thus no dispute will ever be resolvable. It is these two formal principles that are the constitutive conditions for the causal closure of human action. They are the constitutive conditions for the de re force operative as dharma or as obligation to be just.

I give another auxiliary argument to support my claim that it is formal closure of human causality that brings into force de re obligation called dharma-s. This is an argument of summation. When I move my finger to type, billion physical molecules move, however I am able to summarize billion physical actions into a simple verbal entity "move" and nominal entity "my finger". Such linguistic entities greatly summarize indefinitely dense physical actions. Again scores of verbal and nominal actions, in fact indefinite number of them, are involved in our summarization of a single purposive deed. A single simple deed is indeed a neat summary of innumerable physical, experiential/linguistic actions. When deeds injure, how do we summarize?

Much of the time we are busy reading each others deeds, mulling over their consequences, and brooding over suturing our own future deeds. Supervening formal principles precipitate summary causative entities known as dharma-s to contemplate cacophony of deeds. These are distended and dispositional entities but nonetheless firm and concrete with de re force. To begin with self is empty

of concrete dharma-s, instead has only potential dharma as a priori. It is through actions, under supervening forms of justice, that concrete dharma-s come to occupy active and narrative space in human affairs. Such dharma-s are synthetic; being surrogate they are public (independent of self) and always open to scrutiny. Synthetic, a priori and de re dharma/adharma abduct practical reason in day to day life. Supervening formal principles bestows jural omniscience to each embodied self or individual for nobody can force down what is just or unjust to jurally autonomous individual with independent access to the formal principles.

Having clarified substantive aspect of law, I shall turn to normative and systemic aspect of law in the last section of the paper, where I outline three-tier normative system of law akin to what Chhatrapati imagined as “true dharmasastra”.

Revisiting ‘Law from Anarchy to Utopia’

Rajeev Bhargava, Director and Senior Fellow, Centre for the Study of Developing Societies (CSDS), Delhi, India

Chhatrapati Singh’s Law from Anarchy to Utopia is a systematic and sustained reflection on the nature of law and rules in the limited body of Indian philosophic writing on law. In his book Singh claims that a “(p)hilosophy of law must take priority over all social philosophies because it discusses the conditions of peace and justice which are necessary for economic, political, religious, scientific and cultural growth, including the growth of all other social philosophies.” Singh calls this a metaphysical approach to law that attempts to outline the fundamental reasons that ground conceptions of law and rules. He outlines his metaphysical conception of law by critiquing legal positivism, the dominant western conception of law through concepts that are fundamental to the Indian dharmasastra tradition of legal thought. In so doing, he claims to offers a metaphysics of law that supplements important western philosophers like Kant and Leibniz yet critiquing them from the perspective of the dharmasastra tradition. As the complete title of Singh’s book suggests, this approach to law seeks to find a way in which to outline the epistemological and ontological foundations of law. Through a close reading of Singh’s landmark book this paper interrogates the ontology of by law raising the question ‘Can there be an ontological foundation of law?’

8.1 On Impunity:

Ram Narayan Kumar and Rhonda Copelon Memorial Panel

Chair: Uma Chakravarti

Historian, Democratic Rights Activist, and Women’s Rights Activist, Delhi, India

Impunity and Sexual Violence in Kashmir

Anuradha Bhasin, Peace Activist and Executive Editor, Kashmir Times, Jammu

The double rape and murder case of Shopian (May 29-30, 2009) is not a case in isolation. It is a leaf out of history of human rights abuse and absolute impunity that men in uniform enjoy. Security forces including the state police have been accused in thousands of cases for torture, humiliation, encounters, disappearances, molestations, sexual assaults and other forms of harassment. Jammu and Kashmir has a long list of

rape victims, none of whom has received justice. The graph of rapes in Kashmir compared to other rights abuses is very low, but it is so because most of these are not reported. The victims do not come forward in most of the cases because of the social stigma. Besides, most of the 'rapes' occur in remote areas which have little access to media or human rights groups.

There is a complete denial mode of the same in official circles and according to Jammu and Kashmir police, statistics show only ten cases of rape. A UN publication however puts the number of rapes by security forces at 882 in 1992 alone. A Human Rights Watch report in 1994, stating that there was high incidence of rapes in Kashmir, documents the use of rape as a means of targeting women whom the security forces accuse of being militant sympathisers. The report also gives a detailed account of how in raping them, the forces attempt to punish and humiliate an entire community.

The Kunanposhpora rape controversy in 1991 is one of the most infamous cases in Kashmir, not only in terms of the numbers of women gang raped, but also in terms of the stigma attached to the entire village. On the night of February 22-23, 1991, over 30 women and children were gang-raped by soldiers of the 5th Rajputana rifles. The experiences of Konanposhpora's women have been repeated over and over. Women are molested routinely by the para-military forces during searches. The only investigation panel in this case by the Press Council of India, a one man show by journalist B.G. Verghese, gave a clean chit to the accused troopers and accused the women of fabricating the story. When the incident happened, the village men complained to the officials but no action was taken. According to the Asia Watch Report, officials claimed that no formal complaint was lodged. A local magistrate was called for investigation but authorities in Delhi vehemently denied the incident without even verifying with local officials. A police investigation never commenced. Then, three months after the incident, an Army official requested the Press Council of India to probe the allegations only after the forces were pressurised by media criticism. The one man Commission, that spent only a few hours in the village, found the charges "baseless" based on gaps in statements and medical examination of 32 women that was conducted three weeks later. The then Divisional Commissioner Wajahat Habibullah questioned the manner in which allegations had been dismissed even before the investigations had been carried: "While the veracity of the complaint is highly doubtful, it still needs to be determined why such a complaint was made at all…" he pointed out while calling for a thorough inquiry in the incident which never happened.

In May 1990, Mubina Gani, a bride being taken along with her bridegroom and baratis after the marriage was solemnised, was raped in south Kashmir by BSF. Her aunt accompanying the marriage party was raped too. One man was killed and several wounded. A government inquiry held the BSF men guilty but the latter were never prosecuted. However, a BSF Staff court of inquiry that held the men guilty "suspended seven men". Normally, a person convicted for rape could get upto ten years in prison if the normal Indian legal procedures are followed.

In November 2004, when a mother-daughter duo were allegedly raped by an army Major in Handwara-BadarPayein, the case ended in simply an internal army enquiry which held the Major "guilty of misconduct". While these words were misleading, the post mortem reports in the case were never really made public. The government inquiries are either not made public or never followed up with the security forces. The courts of inquiry by the security agencies, even if they hold their own men guilty, never punish them adequately. The maximum punishment given is suspension, or simply the remark of "severe displeasure" gets recorded.

Shopian rapes and murders fit into this tapestry of brutality by security forces and use of sexual violence, while enjoying full impunity through extra-draconian laws or absolute official and political patronage. A year after the Shopian case was hushed up through investigations by police and CBI, the four cops indicted of tampering evidence have not just been let off, they have also been reinstated on the basis of the CBI's clean chit to them. It was the J&K high court that had intervened in the case and ordered the arrest of the four cops following their indictment by the Jan Commission of Inquiry. The court had observed that either the cops know who has committed the crime or they have committed it themselves. After the case was handed over to the CBI, the cops were bailed out without even a proper investigation. CBI's lengthy volumes of the report after a fresh post mortem of exhumed bodies, three months after the two victims died, has ruled out rape or murder and insisted that the two women drowned. However, the report fails to give any evidence. Many of those who campaigned for justice have been maligned and charge sheeted by the CBI.

The last two decades in Kashmir and other militarised areas of J&K are marked by not just brutalities by security forces but also the unlimited protection these personnel get. Despite massive allegations, with serious evidence pointing out to the same in many of the cases against the security forces, very few cases were ever investigated. In a negligible number of cases, prosecution takes place. In none of them justice has been delivered. In some cases where government has ordered inquiries mostly under judicial magistrates, or where security forces order their own court of inquiries, the findings and punishments are not made public, leaving victims to believe that such abuse is committed with impunity. The security forces are just not held accountable, and in many instances cases are not even registered against them. Even when cases are registered, the legal sanction required, as per provisions of laws like Armed Forces Special Powers Act, is never accorded. In the case of police, the laws are easily abused to give them that extra protection. In the last 20 years, it is only in a very miniscule number of cases that such sanction was accorded. However, till date no culprits in uniform have been convicted or punished. The culprits get full protection overtly or covertly and all-out efforts are made to hide facts, and even tamper with evidence.

Impunity for Sexual Violence in Conflict Situations:
A Search for Elements of Justice

Farah Naqvi, Writer and Activist, Delhi, India

Sexual violence is endemic to mass conflict situations worldwide. In India we've witnessed it in 1947 across the lines of partition, in 1984 in Delhi, in Nandigram, in Chattisgarh, in Gujarat 2002, and more.Near absolute impunity has been its defining feature. In the last 8 years in India, since Gujarat, the issue has been forced out of its silence and fore-grounded enough to generate a collective search for elements of justice, by many feminists and activists. Rhonda Copelon though not from India, joined our journey at a crucial juncture; and linked ours with hers, in a search for shared understanding and for mechanisms through which we in India might begin to challenge impunity for gender-based violence, including sexual violence. This will remain a work-in-progress for a long time to come. It is

perforce a journey with no immediate destination, nor can it afford closure. And as with all honest journeys, this one gives rise to more questions than answers; more dilemmas than solutions. Some of them are perhaps worth sharing. How does one begin to address issues of impunity (State failure to pin criminal responsibility, provide justice, reparations and guarantees of non-repetition) when immunities to complicit State actors are enshrined in law? How does one begin to address impunity that has widespread social and political sanction? How does one "make meaning" of sexual violence in situations of mass conflict? Is it even important to "make meaning" of it? Does a feminist focus on sexual violence, privilege "sexual violence" over other brutal forms of mass violence in which sexual violence is embedded? Does this inadvertently perpetuate the patriarchal discourse that constructs sexual violence (particularly in community-based conflicts) as a crime worse than all others. In mass violence situations, only a handful of cases enter the criminal justice system. Only a small proportion of them achieve the desired legal outcome - to what extent do these "symbolic" cases make a dent in the overall structures of impunity? Can one celebrate legal justice in a few cases, without privileging "legal justice" as the sole or dominant mechanism of closure for all victims (including the thousands who never enter the criminal justice system)? Can "transitional justice" mechanisms work in a purportedly "stable democracy" like India? These are some of the troubling questions this presentation will raise.

Sexual Violence against Women in the Punjab

Navsharan Singh, Senior Programme Specialist, International Development Research Centre, Delhi

Building on the collective silence in response to the large scale sexual violence against Punjabi women of Sikh, Muslim and Hindu religious communities that accompanied the blood-drenched Partition of 1947, this paper looks at sexual violence in contemporary Punjab. In contemporary Punjab, while Dalit women are often the victim of such crimes, the "punishment" of rape is also common for the "crime" of exercising free will or transgressing the familial code of "honour". The paper argues that silence as the collective response for violence against women during Partition contributed to creating a lasting culture of impunity for sexual violence. The state did not recognise these crimes at Partition, had no framework of addressing it and consequently it failed to provide justice. The civil society also failed to seek accountability from the state.The result is that today impunity is not limited to legal inaction. The exemption from accountability for the perpetrators extends in family and community practices. The community exempts the perpetrators of social accountability for illegal acts; such men are keenly offered brides, and often hailed as heroes for punishing the "crime" of free will and protecting the "honour" of the family and community. The lesson for women's movement is to lay bare the layers of protection which the family and community enjoy while the state makes itself absent, allowing them to perpetrate violence on their members.

Challenges in Ensuring Accountability for Mass Crimes

Warisha Farasat, Advocate, Delhi, India

It is evident that impunity remains an urgent issue in South Asia. Impunity is usually defined as the failure to bring perpetrators of human rights violations to justice. However, this is a restrictive interpretation of the term. It conveys not only the lack of legal remedies available to individual victims but also the failure of democratic institutions to respond to egregious crimes. While India is perceived as a rising power, an economic success story, it is also marked by several intractable conflicts and intense political violence within its borders. The conflict in Kashmir and the Northeast has left a generation scarred by violence, and created deep social and political divisions. Similarly, the intensification of counter insurgency operations in the Naxal affected areas, and granting of unbridled powers to the security forces (paramilitary and state police) has resulted in severe human rights violations, including rape and other forms of sexual violence.

The government justifies the action of the security forces on the premise that these violations are isolated incidents. However, on a closer scrutiny of the pattern of human rights violations in these regions it becomes evident that these are not merely isolated incidents but rather systemic in nature. A victim's right to an effective remedy obligates India to take necessary investigative, judicial and reparatory steps to redress violations and address the victims right to knowledge, justice and reparations. The updated UN Principles on combating impunity elaborate this right as the Right to truth, justice and reparation. This paper addresses the challenges in ensuring accountability for mass crimes, particularly in cases of sexual violence, which are often the most difficult to document and prosecute. What are the relevant national and international frameworks that would provide guidance? Can India learn from comparative experiences? And, finally, what are some concrete measures that would ensure a sense of justice?

The abstracts of all papers to be presented at the conference are available at **www.lassnet.org**

BOOK RELEASES

December 28, 6.30 pm - 7.30 pm

Family Law Volume I: Family Laws & Constitutional Claims *from Oxford University Press* ~ **Flavia Agnes**

Discussants: Upendra Baxi|Marc Galanter| Srimati Basu

December 29, 6.30pm - 7.30 pm

Law Like Love: Queer Perspectives on Law *from Yoda Press*

Editors: Arvind Narrain, Alok Gupta, Akshay Khanna, Mayur Suresh, Ponni Arasu and Siddharth Narrain

Chair: Gautam Bhan

Discussants: Nivedita Menon, Shrimoyee Nandini Ghosh, Rahul Rao

PARTICIPANTS

Aakrati Gupta
aakratigupta1@gmail.com

Abdul Paliwala
A.Paliwala@warwick.ac.uk

Abhik Majumdar
abhik.maj@gmail.com

Aditya Khebudkar
ak.prayas@gmail.com

Aditya Nigam
anigam98@yahoo.co.uk

Agathe Mora
agathe.mora@gmail.com

Ahilan Kadirgamar
ahilan.kadirgamar@gmail.com

Ajay Gudavarthy
gajay99@rediffmail.com

Akshay Khanna
xaefis@gmail.com

Alecia Simmonds
aleciasimmonds@gmail.com

Allison Fish
afish@uci.edu

Alok Gupta
galok2005@gmail.com

Amanda Sen
sen.amanda@yahoo.com

Amit Prakash
amitp.ap@gmail.com

Amita Dhanda
amitadhanda@gmail.com

Anila Daulatzai
anila@jhu.edu

Anu Sharma
anuharitharit@gmail.com

Anu Varghese
anuvarghese00@gmail.com

Anuj Bhuwania
anujbhuwania@gmail.com

Anungla Aier
anunglaaier@gmail.com

Anupama Rao
arao@barnard.edu

Anuradha Bhasin
anusaba@gmail.com

Anusha Hariharan
anju.hari@gmail.com

Aparna Balachandran
aparna_balachandran@yahoo.com

Apoorvaa Paranjpe
apoorvaaparanjpe@gmail.com

Aqseer Sodhi
sodhiaqseer@gmail.com

Arafat Hosen Khan
nls1081@hotmail.com

Arnab Chatterjee
notarnab@rediffmail.com

Arudra Burra
arudra.burra@gmail.com

Arvind Narrain
arvind@altlawforum.org

Ashish Rajadhyaksha
ashish@cscs.res.in

Ashwini Sukthankar
ashwini@post.harvard.edu

Atreyee Majumder
atreyee.majumder@yale.edu

Awadhendra Sharan
sharan@sarai.net

Badrinarayanan Seetharaman
badrinarayanan.ess@gmail.com

Bhargavi Raman
bhargavi.raman@gmail.com

Bhavani Raman
bhavani@princeton.edu

Bhrigupati Singh
bsingh@wcfia.harvard.edu

Carmel Christy
christy.carmel@gmail.com

Chakravarti Patil
chakravarti.patil@gmail.com

Chandan Gowda
chandangowda@gmail.com

Chitra Balakrishnan
chitrabal@gmail.com

Chunnu Prasad
chunnuprasad@gmail.com

Dalia Wahdan
dalia.wahdan@flame.edu.in

Daniel Witte
witte@uni-bonn.de

Daniela Berti
dberti@vjf.cnrs.fr

Debasis Poddar
debasis.calcutta@gmail.com

Deepa Das Acevedo
ndd@uchicago.edu

Deepak Mehta
deepak.em@gmail.com

Deva Prasad
devaprasadm@gmail.com

Dina Mahnaz Siddiqi
dmsiddiqi@yahoo.com

Diya Mehra
diyamehra@gmail.com

Durgambini Patel
durgambini@gmail.com

Dwijen Rangnekar
dwijenr@gmail.com

Eesvan Krishnan
eesvan.krishnan@merton.ox.ac.uk

Eleanor Newbigin
en2@soas.ac.uk

Elizabeth Thomas
elizabeth@cscs.res.in

Faisal Chaudhry
fchaudhr@fas.harvard.edu

Farah Naqvi
farah310@gmail.com

Farhana Ibrahim
ibrahim.farhana@gmail.com

Flavia Agnes
flaviaagnes@gmail.com

G.Haragopal
profharagopal@gmail.com

Gaia von Hatzfeldt
gaia108@gmail.com

Gautam Bhan
gautam.bhan@gmail.com

Gayatri Sharma
pldindia@gmail.com

Gayatri Singh
gayatrisingh@yahoo.co.in

Gilles Tarabout
gtarabout@free.fr

Ipshita Sengupta
isg006@gmail.com

Jagjit Plahe
Jagjit.Plahe@buseco.monash.edu.au

Jaivir Singh
jaivirs@gmail.com

James Jaffe
jaffej@uww.edu

Jasteena Dhillon
jasteenadhillon@yahoo.com

Jawahar Raja
jawahar.raja2@gmail.com

Jaya Sharma
jayajulie@gmail.com

Jayati Srivastava
jayatis@gmail.com

Jayna Kothari
jayna.kothari@gmail.com

Jhuma Sen
jhumasen@berkeley.edu

Jinee Lokaneeta
jlokanee@drew.edu

Jonathan Goldberg-Hiller
hiller@hawaii.edu

Joy Dasgupta
tipaimukh@gmail.com

Joyojeet Pal
joyojeet@gmail.com

K.J. Joy
joykjjoy@gmail.com

Kalyani Ramath
kal.ramnath@gmail.com

Kamal Nayan Choubey
kamalnayanchoubey@gmail.com

Kanak Mani Dixit
kanakd@himalmag.com

Kaushik Ghosh
sosobonga@gmail.com

Kaushik Gupta
gupta.kaushik@gmail.com

Kazi Ataul-Al Osman
kazi_osman@hotmail.co.uk

Koen Beumer
k.beumer@maastrichtuniversity.nl

Krithika Dutta
krithika.dn@gmail.com

Kriti Kapila
kk356@cam.ac.uk

Lawrence Liang
lawrence@altlawforum.org

Laxmi Gurung Tika
laxmitgurung@gmail.com

Madhu Mehra
madhu05.m@gmail.com

Mahendran Thiruvarangan
mahevarangan@yahoo.com

Maithreyi Mulupuru
maithreyim@gmail.com

Maitreyi Krishnan
maitreyi@altlawforum.org

Mandar Sathe
mvs.prayas@gmail.com

Manoranjan Mohanty
drmohantys@gmail.com

Marc Galanter
msgalant@wisc.edu

Mathew John
matheujohn@gmail.com

Maya Dodd
mayadodd@gmail.com

Mayur Suresh
mayur.suresh@gmail.com

Mihir Desai
desmihir@gmail.com

Milind Wakankar
milind@cscs.res.in

Mohini Mullick
mohini.mullick@gmail.com

Mona Mehta
mgmehta@uchicago.edu

Namita Malhotra
namita@altlawforum.org

Namita Wahi
namita.wahi@gmail.com

Nandini Nayak
nn1@soas.ac.uk

Naveeda Khan
nkhan5@jhu.edu

Naveen Thayyil
tk.naveen@gmail.com

Navjyoti Singh
navjyoti@iiit.ac.in

Navsharan Singh
nsingh@idrc.org.in

Nayanika Mookherjee
n.mookherjee@lancaster.ac.uk

Nicholas Robinson
nickrobinson5@gmail.com

Nicola Perera
nicola.perera@gmail.com

Nicole Aylwin
naylwin@yorku.ca

Niketa Kulkarni
niketa.kulkarni@gmail.com

Niraja Gopal Jayal
niraja.jayal@gmail.com

Nishant Shah
itsnishant@gmail.com

Nivedita Menon
niveditamenon2001@yahoo.co.uk

Parthasarathi Muthukkaruppan
sharathisharathi@gmail.com

Paul Boyce
ecyobluap@gmail.com

Paul Merry
paul.merry@fairworkplace.net

Philippe Cullet
pcullet@soas.ac.uk

Ponni Arasu
mailponni@gmail.com

Prashant Iyengar
prashantiyengar@gmail.com

Pratap Bhanu Mehta
pratapbmehta@yahoo.co.in

Pratibha Menon
pratsmenon@gmail.com

Pratiksha Baxi
pratiksha.baxi@googlemail.com

Prita Jha
pritarjha@gmail.com

Priya Thangarajah
ipriyat@gmail.com

R.Rajesh Babu
rajeshbabu@iimcal.ac.in

R.Ramakumar
rr@tiss.edu

Radha D’Souza
R.Dsouza1@westminster.ac.uk

Radhika Singha
singha.radhika@gmail.com

Rahul Cherian
rahul.cherian@inclusiveplanet.com

Rahul Rao
rr18@soas.ac.uk

Raja Sakrani
rsakrani@uni-bonn.de

Rajan Krishnan
rajankurai@gmail.com

Rajeev Bhargava
rbhargav4@gmail.com

Ramaswamy Sudarshan
ramaswamy.sudarshan@undp.org

Ranjani Mazumdar
ranjani.mazumdar@gmail.com

Raquibul Amin
raquibul_amin@yahoo.com

Rashmi Singh
darkbloodstone@gmail.com

Ratna Appnender
ratnappnender@gmail.com

Ratnaker Bhengra
johargi@rediffmail.com

Ravi Sundaram
ravis@sarai.net

Ravi Vasudevan
raviv@sarai.net

Rebecca Grapevine
rrgrapevine@comcast.net

Rebecca John
johnrebecca@gmail.com

Reetika Khera
reetika.khera@gmail.com

Rituparna Borah
rituparna.borah@gmail.com

Roger Begrich
begrich@jhu.edu

Rohit De
rohitde@princeton.edu

Roopa K. L.
rajuroopa@gmail.com

Ruchi Chaturvedi
rchaturv@hunter.cuny.edu

Ruchira Goswami
ruchira.goswami@gmail.com

Rupal Oza
roza@hunter.cuny.edu

Sachin Warghade
sachinwarghade@gmail.com

Sahana Basavapatna
sahana.basavapatna@gmail.com

Sailen Routray
sailenroutray@gmail.com

Sally Engle Merry
sally.merry@nyu.edu

Sandipto Dasgupta
Sandipto.Dasgupta@gmail.com

Sangay Mishra
skm@usc.edu

Sanil V.
sanil@hss.iitd.ernet.in

Sarada Balagopalan
saradab@csds.in

Sarim Naved
sarim.naved@gmail.com

Serene Kasim
serenekasim@gmail.com

Shalini Randeria
randeria.shalini@gmail.com

Sharanjeet Parmar
sharanjeetparmar@gmail.com

Shireen Mirza
shireen.mirza@gmail.com

Shrimoyee Nandini Ghosh
shrimoyee@gmail.com

Siddharth Narrain
sid@altlawforum.org

Sitharamam Kakarala
ramsk@cscs.res.in

Sivakumar Arumugam
sva2003@columbia.edu

Sivamohan Sumathy
ssumathy@sltnet.lk

Smriti Upadhyay
smriti.n.upadhyay@gmail.com

Sonal Makhija
sonal.makhija@gmail.com

Sophy Joseph
sophyjosef@gmail.com

Srimati Basu
srimati.basu@uky.edu

Sruti Chaganti
sruti@cscs.res.in

Subasri Krishnan
subasrik@gmail.com

Subodh Wagle
subodhwagle@gmail.com

Sudhir Krishnaswamy
krishnaswamysudhir@gmail.com

Suhas Paranjape
suhas.paranjape@gmail.com

Sumith Leelaratne
sumith_leelarathne@yahoo.com

Suneetha Achyuta
suneethaasrv@gmail.com

Surabhi Chopra
surabhi.chopra@gmail.com

Surabhi Ranganathan
surabhi.ranganathan@gmail.com

Swagato Sarkar
swagato.sarkar@gmail.com

Sylvia Vatuk
vatuk@uic.edu

Tarangini Sriraman
tarangini.sriraman@gmail.com

Tarunabh Khaitan
tarunabh@gmail.com

Tejaswini Niranjana
teju@cscs.res.in

Thushara Hewage
tnh2001@columbia.edu

Uday Chandra
uday.chandra@yale.ed

Uma Chakravarti
umafam@gmail.com

Upendra Baxi
BaxiUpendra@aol.com

Usha Ramanathan
uramanathan@ielrc.org

Usha Rao
ugreentara@gmail.com

Vasudha Dhagamwar
vasudhagam2007@airtelmail.in

Vasudha Nagaraj
vasudhanagaraj13@gmail.com

Veena Das
veena.das@gmail.com

Veena Gowda
gowdaveena@gmail.com

Vibhuti Ramachandran
vibhuti.ramachandra@gmail.com

Vibodh Parthasarthi
vibodhp@yahoo.com

Vikramaditya Thakur
v.thakur@yale.edu

Vivek Shivakumar
shivakumar.vivek@gmail.com

Vrinda Grover
vrindagrover@gmail.com

Warisha Farasat
faramusa@hotmail.com

Werner Gephart
w.gephart@uni-bonn.de

William F. Stafford Jr.
wstafford.jr@gmail.com

Youssef Dennaoui
dennaoui@uni-bonn.de

STEERING COMMITTEE FOR LASSnet 2010

Lawrence Liang (lawrence@altlawforum.org), Legal Researcher, Alternative Law Forum (ALF), Bangalore, India & Visiting Scholar, Department of Anthropology, Columbia University, New York, USA

Siddharth Narrain (siddharth.narrain@gmail.com), Legal Researcher, Alternative Law Forum (ALF), Bangalore, India

Sitharamam Kakarala (ram@cscs.res.in), Senior Fellow, Centre for the Study of Culture and Society (CSCS), Bangalore, India

Sruti Chaganti (sruti@cscs.res.in), Associate Fellow, Centre for the Study of Culture and Society (CSCS), Bangalore, India

Maya Dodd (mayadodd@gmail.com), Assistant Professor, and Director, Centre for South Asia, Foundation for Liberal and Management Education (FLAME), Pune, India

Pratiksha Baxi [LASSnet anchor] (Pratiksha.Baxi@googlemail.com), Assistant Professor, Centre for the Study of Law and Governance (CSLG), Jawaharlal Nehru University (JNU), Delhi, India

Shrimoyee Nandini Ghosh (shrimoyee@gmail.com), Doctoral Candidate, Centre for the Study of Law and Governance (CSLG), Jawaharlal Nehru University (JNU), Delhi, India

Stewart Motha (S.Motha@kent.ac.uk), Senior Lecturer, Kent Law School, UK

Arudra Burra (arudraburra@yahoo.co.in), Post-Doctoral Fellow, University of California at Los Angeles (UCLA), USA

Anuj Bhuwania (anujbhuwania@gmail.com), Doctoral Candidate, Columbia University, New York, USA

Brenna Bhandar (brenna.bhandar@gmail.com), Lecturer, Kent Law School, UK

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FLAME (www.flame.edu.in) was born of a desire to enhance formal education with a progressive methodology and pedagogic innovation. Its system of liberal education emerged as a strong reaction against the rigidity, aridity and empty formalism of a syllabus-bound educational system. The innovative curricular structure of Flame's School of Liberal Education emerged after substantial discussions with distinguished intellectuals, scholars, philosophers and educationists. This structure is specifically designed to surmount the educational crisis in India's contemporary scenario that insists on evaluating learning through quantitative capsules. FLAME's liberal education model seeks to push away from the dominant logic of early specialization and rote learning to instead encouraging a breadth of exposure through experiential learning and inter-disciplinarity. FLAME is India's first truly liberal arts college.

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ALF (www.altlawforum.org) was established in 2000 with the belief that a socially relevant law practice has to be politically engaged. The Forum believes that law is an important site for the negotiation of issues of marginalization and disempowerment faced by people on the basis of caste, class, religion, gender, sexuality, disability or any other status. The emphasis was on evolving a practice that would challenge the traditional lawyer-client relationship, which is itself embedded in a highly hierarchical and unequal exchange, and working towards democratizing the lawyer-client relationship to make law more accessible to lay people. ALF's activities include the provision of legal assistance (both in litigation and for representation), advocacy, training and alternative dispute resolution. ALF as a space integrates alternative lawyering with critical research, advocacy, dispute resolution, pedagogic interventions and more generally maintaining sustained legal interventions in various social issues.

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LASSnet is anchored at CSLG (www.jnu.ac.in/cslg), Jawaharlal Nehru University since its inception in 2007. The idea of the network derived strength and inspiration from the interdisciplinary approach adopted towards framing research and teaching on the complex relationship between law and governance. The program's interdisciplinary focus is distinctive from mainstream social science approaches to governance or law in its attempt to explore how practices of law and governance are embedded in political, economic, social and historical processes; how practices of governance are dispersed over various sites ranging from the government, bureaucracy, judiciary, community to the family; the socio-legal processes that deter or provide access to justice; and notions of governmentality, sovereignty and rights in specific politico-jural regimes. The ongoing research by the faculty and research students, a working paper series published by CSLG, an active seminar program and annual lectures by distinguished guests mark the other activities of the Centre. CSLG offers an MPhil/PhD program as well as a direct PhD program.

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Credits

Editing: Siddharth Narrain, Sruti Chaganti, Pratiksha Baxi, Raghavendra Tenkayala, Aditi Ramesh and Manish

Web Design: Arudra Burra

Design: Nithya Reddy & Smriti Chanchani

Printing Support: Print Express, Bengaluru

Deva Prasad
Devika Bordia
Dina Mahnaz Siddiqi
Diya Mehra
Durgambini Patel
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Yasmeen Arif
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Alecia Simmonds
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Apoorva Paranjpe
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Amita Dhanda
Anila Daulatzai
Aqseer Sodhi
Arafat Hosen Khan
Arnab Chatterjee
Arudra Burra
Arvind Narrain
Ashish Rajadhyaksha
Ashwini Sukndran
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Amar T. Khoday
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Aqseer Sodhi
Arafat Hosen Khan
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