

IILS QUEST

Vol. I, No.I

(April, 2014)

A Quarterly Journal of Articles authored by IILS Students

Published in the IILS Website



Indian Institute of legal Studies

Affiliated to the University of North Bengal & Recognized by Bar Council of India

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Message from the Chairman

I am delighted to know that the first Volume of the Journal “IILS Quest” is ready for publication. The initiative taken by the students is commendable as it is their exclusive journal. The journal will provide ample opportunity to the students of IILS to articulate their ideas and concepts as creative writings on contemporary issues of concern to the general public.

The journal will be available on-line in the website of IILS (www.iilsindia.com) as e-journal accessible to anyone having curiosity and a discerning mind. In addition to the e-version, print version or hard copies will be available in the IILS Library.

I hope the students will find this forum useful and helpful in grooming the innovative minds and significantly shape up the competencies of articulation which ultimately help them in pursuit of quality legal education.

I express warm greetings to the authors of the current Volume which will be acknowledged as a milestone in our mission of providing legal education with benchmarks of quality and excellence.

I also deeply appreciate the efforts of Dr.T.K.Chatterjee, Director, IILS and Editor of IILS Quest to bring out the first Volume so professionally in a short time span.



Editorial Note

It is indeed a great pleasure to announce publication of the First Volume (Vol. I, No.I) of the Journal ILS Quest. The Journal contains Articles authored by students of the Indian Institute of Legal Studies presently on the rolls of Semester VIII (5 yrs. B.A. LL.B. course) and Semester VI (3 yrs. LL.B. course) in the session 2013-14.

Let it be noted that the present publication is different from 'IILS Law Review' which is the Journal of the Indian Institute of Legal Studies containing Research Papers and Learned Articles contributed by reputed scholars and experts engaged or attached to legal education and legal disciplines in various capacities.

The IILS Quest is intended to be a platform where the students of each Semester get unrestricted opportunity to transform ideas and concepts, which they conceive on contemporary issues, into learned Articles . In this process, they acquire the training to browse the print and electronic media for secondary data and write Research Papers. This grooming provides a unique channel to showcase and share their creative talents with the peers and other stake holders. What is more, the IILS Quest being an on-line Journal, makes it truly global and available to anyone, anywhere, any time.

As may be seen from the Content, some of the contemporary and burning socio-cultural issues have found place in the current Volume. These issues must have agitated the young and impressionable minds of the Authors, the outcome being the Articles composed by them independently. I hope this aspect will be appreciated by the readers.

I congratulate the concerned students for their confidence and academic temperament and I look forward to a great future for the IILS Quest.

Dr.T.K.Chatterjee
Director,
Indian Institute of Legal Studies.

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HUMAN RIGHTS : THE BIRTHRIGHT OF ALL BEINGS

SOURAV AGARWAL, Semester VI, 3 Yrs.LL.B.

“All should live together in harmony, supporting one another, like the spokes of the wheel” – ***Atharva Veda***

INTRODUCTION

“There are things we never want to let go. But keep in mind that letting go isn't the end of the world, it's the beginning of a new life!” – *His Holiness Sri Sri Ravi Shankar.*

Change is reality, life is a series of natural changes, one should not resist such changes, or else it will only bring sorrow. We must let reality be reality and let the things flow in whichever manner they like. Law as such is very dynamic in nature. With the development and human foot stepping in 21st Century, law should cater the present exigencies and uncertain probabilities to ensure a healthy balance.

Bharat i.e. India traditionally places all human beings at the highest pedestal with the firm belief that each of them is capable of attaining Godhood in the life time. “***Vasudhaiva-Kutumbakam***” i.e. “the entire universe is a family” is not an old Vedic concept, but a philosophy the India lives with and cherish.

It is a basic principle of jurisprudence that every right has a correlative duty and every duty has a correlative right.

Human rights are rooted in ancient thought and in the philosophical concepts of 'natural law' and 'natural rights'. By virtue of their being human possess certain basic and inalienable rights and those are commonly known as human rights. Since these rights belong to them because of their very existence, they become operative with their birth. Human rights, being the birth right, are therefore, inherent in all the individuals irrespective of their caste, creed, religion, sex and nationality. These rights are necessary as they create an environment in which people can develop their full potential and lead productive as well as creative lives in accordance with their needs and provide suitable conditions for moral uplift of the people.

HISTORICAL BACKGROUND & DEVELOPMENT OF HUMAN RIGHTS

Human rights being essential for all-round development of the personality of the individuals in the society be necessarily protected and be made available to all the individuals. These rights must be preserved, cherished and defended if peace and prosperity are to be achieved. Apart from policy making and enactment of laws it is more important to create awareness among the people and to take necessary steps to provide for the proper implementation of laws.

In the long march of mankind from the cave to the computer a central role has always been played by the idea of law- the idea that order is necessary and chaos inimical to a just and stable existence. Every society, whether it is large or small, powerful or weak, has created for itself a framework of principles within which to develop.

Law is that element which binds the members of the community together in their adherence to recognized values and standards. It is both permissive in allowing individuals to establish their own legal relations with rights and duties, as in the creation of contracts, and punishes those who infringe its regulations. Our legal fraternity is based on the principle of law if there is no remedy or method to enforce a right, then that right does not exist in law.¹

It is difficult to define law, but it is easy to define about law. Sources of law are an important facet to law as it helps in giving a definition to law. These sources are the tools, methods and techniques that are availed by the legal system in order to carry out its social goals and objectives, i.e. to provide Justice to the people. In general terms, law is applying of a sound mind, a minimum amount of reasoning, to come to a sound conclusion.

An individual who breaks a law that conscience tells him he is unjust, and who willingly accepts the penalty of imprisonment in order to arouse conscience of the community over its injustice, is in reality expressing the highest respect for the law.

In 539 B.C., the armies of Cyrus the Great, the first king of ancient Persia, conquered the city of Babylon. But it was his next actions that marked a major advance for Man. He freed the slaves, declared that all people had the right to choose their own religion, and established racial equality. These and other decrees were recorded on a baked-clay cylinder in the Akkadian language with cuneiform script. From Babylon, the idea of human rights spread quickly to India, Greece and eventually Rome. There the concept of “natural law” arose, in observation of the fact that people tended to follow certain unwritten laws in the course of life, and Roman law was based on rational ideas derived from

¹ *Ubi jus ibi remedium*- Where there is a law there is a remedy.

the nature of things.² This ancient record has now been recognized as the world's first charter of human rights. It is translated into all six official languages of the United Nations and its provisions parallel the **First Four Articles** of the **Universal Declaration of Human Rights, 1948**.³

The doctrines of Human rights are mostly traced in Indian ethos since Vedic age. The 'Vedas', the 'Upanishads', and the 'Arthasastras' bear the concepts of equal rights of men and women, sympathetic consideration for women and children, impartial treatment of human beings in the society. Kautilya's Arthasastra which is a celebrated political treatise asserts that "In the happiness of the subjects' lies the happiness of the King and what is beneficial to the subjects is his own benefit."⁴ He not only affirmed and elaborated the civil and legal rights first formulated by "Manu," but also added a number of economic rights. He categorically ordained that the King should also provide the orphan, the aged, the infirm, the afflicted and the helpless with maintenance, he shall provide subsistence to the helpless, the expectant mothers and the children they give birth to.⁵

In the modern world, the first ever written Human right document, the 'Magna Carta' framed in 1215 A.D. was followed by the Petition of rights in 1627 A.D.

² United for Human Rights, also available at <http://www.humanrights.com/what-are-human-rights/brief-history/cyrus-cylinder.html>.

³ *Article 1* - All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood; *Article 2* - Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty. *Article 3* - Everyone has the right to life, liberty and security of person. *Article 4* - No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

⁴ S.N. Dhyani, *Fundamentals of Jurisprudence: The Indian Approach*, Central Law Agency, Allahabad, 1992 at 141.

⁵ S. Subramanian, *Human Rights: International Challenges*, Manas Publications, New Delhi, Vol. I, 1997 at 57.

and the bill of rights in 1688. The independence of U.S.A. was declared and the Bill of Rights was adopted in 1776 wherein the Rights to life, liberty and pursuit were considered to be of vital importance. The declaration on Rights of Human Rights influenced the constitution framing of many Countries over the World. The League of Nations adopted the resolution on Human Rights and Duties in the year 1929. In India the first formal document on Human Rights came into existence in 1928 with the report by Jawaharlal Nehru and in the international level, the first documentary expression of Human Rights was found in the Charter of United Nations adopted after the Second World War at San Francisco on 25th June, 1945. ⁶

The 17th -19th Centuries contributed and strengthened the civil and political rights, which assured civil and political liberties, while the twentieth century contributed to the development and strengthening of economic, social and cultural rights and the rights of minorities as well. The Civil and Political Human Rights are collectively known as '**Liberty Oriented Human Rights**' because they provide, protect and guarantee individual liberty to an individual against the State and its agencies. Liberty rights also referred to as *Blue Rights are the **First Generation Human Rights***. The Economic, Social and Cultural rights aim at promotion of the economic and social security through economic and social uplift of the weaker sections of the society. These rights are essential for dignity of person as well as for the full and free development of human personality in all possible directions. The economic, social and cultural rights, including the rights of the minorities are collectively known as the "**Security Oriented Human Rights**" because these rights collectively provide and guarantee the essential security in the life of an individual. In the absence of

⁶ Justice Palok Basu, *Law Relating to Protection of Human Rights*, Modern Law Publication, New Delhi, 2nd ed., 2009 at 9.

these rights, the very existence of human beings would be in danger. These are also known as the “**Second Generation Human Rights**”. They are also referred to as *Red Rights* or also as *Positive Rights*. These rights along with the Civil and Political Rights were declared by the Universal Declaration of Human Rights and later were recognized by (1) the Covenant on Civil and Political Rights and (2) the Covenant on Economic, Social and Cultural Rights in December 1966 and India ratified these Covenants on 10th July, 1979 by making necessary amendments in Indian laws.

INDIAN CONSTITUTION AND HUMAN RIGHTS

After the Second World War, the Laws relating to the human rights in the League of Nations were transformed into a resolution of 1948 for international co-operation in promoting human rights. It contains the first generation rights like Civil and Political Rights and second generation rights like Social, Economic and Cultural rights of the people. A unique feature of the Indian constitution is that its framing just began after the adoption of Universal Declaration of Human Rights and concluded in 1950.

The Constitution of India which came into force on **26th January 1950** with **395 Articles and 8 Schedules** is one of the most elaborate fundamental laws ever adopted. The Preamble to the Constitution declares India to be a Sovereign, Socialist, Secular and Democratic Republic. The term 'democratic' denotes that the Government gets its authority from the will of the people. It gives a feeling that they all are equal irrespective of the race, religion, language, sex and culture. The Preamble to the Constitution pledges justice, social, economic and political, liberty of thought, expression, belief, faith and worship, equality of status and of opportunity and fraternity assuring the dignity of the individual and the unity and integrity of the nation to all its citizens.

India is a signatory to the Universal Declaration of Human Rights. A number of fundamental rights guaranteed to the individuals in *Part III of the Indian Constitution* are similar to the provisions of the Universal Declaration of Human Rights. Thus we can see that the framers of the Indian Constitution got very much influenced by the Declaration and included almost all the important provisions of the Human rights in *Part III and Part IV of the Indian Constitution* to protect the human rights of the citizens.

In *Keshavananda Bharati v. State of Kerala*⁷, the Supreme Court observed, "The Universal Declaration of Human Rights may not be a legally binding instrument but¹: it shows how India understood the nature of human rights at the time the Constitution was adopted."

Constitutional interpretation in India has been strongly influenced by the Declaration. In the judgment given in the *Chairman, Railway Board and others v. Mrs. Chandrima Das*⁸, the Supreme Court observed that the Declaration has the international recognition as the Moral Code of Conduct having been adopted by the General Assembly of the United Nations. The applicability of the Universal Declaration of Human Rights and principles thereof may have to be read, if need be, into the domestic jurisprudence. In a number of cases the Declaration has been referred to in the decisions of the Supreme Court and State High Courts.

Human Rights are a generic term and it embraces civil rights, civil liberties and social, economic and cultural rights. These are the rights which no one can be deprived without a grave affront to justice. The Constitution of India recognizes many fundamental freedoms contained in the International

⁷ A.I.R. 1973 SC 1461.

⁸ A.I.R. 2000 SC 988.

Covenant on Civil and Political Rights, including the right to life, equality, and freedom of expression, and the right to seek judicial redress for violation of these rights. Economic, social and cultural rights are not given automatic judicial protection, but are contained in the Constitution's *Directive Principles of State Policy (DPSPs)* in *Part IV*.

Judicially non-enforceable rights in Part IV of the Constitution are chiefly those of economic and social character. However, Article 37 of the Constitution of India makes it clear that their judicial non-enforceability does not weaken the duty of the State to apply them in making laws, since they are nevertheless fundamental in the governance of the Country. Additionally, the innovative jurisprudence of the Supreme Court has now read into Article 21 (the right to life and personal liberty) many of these principles and made them enforceable. It is through the power of judicial review that the Supreme Court has been capable of expanding the scope of economic, social and cultural rights from *DPSPs* to rights enforceable before the Courts.⁹

Part III of the Indian Constitution exhaustively enumerates the fundamental right. Therefore, the Parliament cannot incorporate any additional fundamental Right. Any expansion of such rights must rest on judicial interpretation.

“Human rights” means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by Courts in India.¹⁰

⁹ Justice Sujatha V. Manohar, *Judiciary and Human Rights*, Indian Journal of International Law, Vol. 36, Nc1.2, 1996 at 39-54.

¹⁰ Protection of Human Rights, 1993, (No. 10 of 1994), Section 2(d).

The essence of the right is that law has to be enforced **as it is** and not as the enforcer feels it should be. The reason is that administration consists of the three arms of legislation, execution and adjudication, execution therefore has to be in line with the purpose and intent of legislation.

The Honorable Supreme court in ***Menaka Gandhi's Case***¹¹ observed: "It will be legitimate for the courts to refer to the provisions of the universal Declaration of human rights in Construing the intent and scope of *Part III* of the Constitution of India." In this landmark case the honorable Supreme Court deduced un-enumerated Fundamental rights like "right to live with human dignity".

India being a signatory member of the Universal Declaration of Human Rights (UDHR), International Covenants on Economic Social and Cultural Rights (ICESCR) and International Covenant on Civil and Political Rights (ICCPR) is under an obligation for proper implementation of such International Instruments in national sphere under ***Articles–51(c) and 253 of our Constitution.***¹²

A person must have access to justice if his right in any manner, whether to carry on business or threat to his liberty, is infringed. Access to justice is a human right.¹³

The basic rights of a human being includes: ***Education, Health, Clean Environment, Adequate Shelter, Economic, Social, and Cultural.*** These rights

¹¹ A.I.R.1978 SC 597.

¹² *Article 51(c)* - foster respect for international law and treaty obligations in the dealings of organised peoples with one another; *Article 253* - Legislation for giving effect to international agreements: Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body.

¹³ *Tashi Delek Gaming Solutions Ltd. v. State of Karnataka*, A.I.R. 2006 SC 661.

are fundamental and inalienable for preserving the dignity of the individual. It throws a light on the **Preamble** to our Constitution where "Fraternity assuring the dignity of the individual and the unity and integrity of the nation" has been stressed.

CONCLUSION

The Indian Constitution is a document rich in human rights jurisprudence. This is an elaborate charter on human rights ever framed by any State in the world. *Part III* of the Indian Constitution may be characterized as the 'Magna Carta' of India. The Judiciary in India plays a significant role in protecting human rights. The Indian Courts have now become the courts of the poor and the struggling masses and left open their portals to the poor, the ignorant, the illiterates, the downtrodden, the have-nots, the handicapped and the half-hungry, half-naked countrymen.

The situation of persistent human rights violations across the country presents manifold challenges. A number of progressive legal and policy initiatives have been taken by Government of India. The lack of implementation, however, of these measures due to bureaucratic inertia, lack of adequate allocation of resources, contradiction between economic policies, 'development priorities' and national and international human rights commitments, continue to act as obstacles to the realization of human rights for India's most vulnerable. References show ancient Indian people were fully aware of these and wanted happiness for all and there should be no exploitation. Today there is a clamor and concern for human rights. 'The conflict between different approaches to the liberty of man and mind or between different views of human dignity and right of the individual is continuous. The deciding line goes within us, within our own people, and also with other nations. The ultimate fight is one between

the human and the sub-human. We are on dangerous ground if we believe that any individual, any nation, or any ideology has a monopoly on rightness, liberty, and human dignity.¹⁴

Thus, by the passage of time in due course the basic human needs are now being interpreted by the judiciary as developing human rights which is gaining prime importance and are very basic for human existence and development. It is very evidently clear that collective interest can be achieved only if the interest of individuals is safeguarded. In the present era of developing human rights such collective interest can positively be achieved through proper education, literacy growth and general awareness of our constitutional rights and fundamental freedom.

¹⁴ Four Public Papers of the Secretaries-General Dag Hammarskjöld, 1958-60, at 90



A CURSE OF BEING AN ORT

Pooja Sinha, Semester VIII.

‘She’ is born, born to a family where ‘she’ is loved and cared. ‘She’ is said to be the future of her family or maybe the future of our nation. Sensitive yet fearless, delicate but strong. Being a ‘girl’ in this male dominated society, a fact which cannot be ignored, is the only drawback which curtails her independence, her freedom to move freely late at night, going abroad ‘ALONE’ for her studies, to work late night, travel and many more. Her mother remarks “*daughter!! Return home before the lights is put on by the evening*”. And the only word ‘she’ can reply is “*ok, mother*”

There ‘she’ goes, instilled in her the inspirations of her father as to how strong she is, as to how much better ‘she’ is than her brother. She remembers her father’s words “*daughter you have never let me down, you are my eldest son remember that*”. Having such strong feelings, her mother’s care and her father’s motivations she walks and struggles through every phases of her life. The ‘*Phases of her life*’, is a statement which is impossible for her to understand and also to every individual born in this creation to really understand. A ‘phase’ comes where she is brutally raped and beaten up. Raped till her last breath could be heard, Raped till her body cries for forgiveness, raped till her scream becomes her cry, and finally raped till she lies dead on the ground and thrown away like garbage on the road. It can now be said that the struggle to every

'phase of her life' has come to an end. Her mother's care her father's motivations have been shattered....

There she lies cold dead against the ground, against the mother earth, against her mother's care, against her father's motivation, rather against the whole world.

What a waste! A daughter, a sister, a would be wife and a mother, Innocence, Dreams have been forcefully taken away by those whose life itself is beyond repair. Life taken away by those who would be offended if the same happened to their daughter or sister, by those whose hunger would not be satisfied even if thousands fell a prey to their actions, by those who have no space for humanity. Sad but it is the real picture of one side of our democracy. *I don't pity her*, she died, having no regrets that, if she survived, she would have to face the other side of the democracy which is a warm welcome of ignorance, hatred, a "new phase" of struggle towards love and acceptance, *Would her life remain the same as it used to be ? Would she be loved again? Most of all respected for being what she is now? Would she be ever getting married? Would she ever fit in among those who were the only people who could be trusted? Would she ever fit in those words that her father used to tell her that 'she had never let him down? NO!! This is the harsh reality of our society.* It has been rightly marked by *Herbert Spencer* that 'we must reform society before we can reform ourselves'.

Again I don't pity her nor blame those selfless retards; instead I blame the Society, a decent society which is supposed to generate a feeling of community which offsets loneliness. A society which is said to be the supreme of all, a society which is the only authority to decide what is good and bad, a society which regulates the love and care of a father toward the love for his daughter who has been raped, a society which prevents a mother to accept her daughter again as according to the society she is now said to be 'ORT'. A society which

is so capable of deteriorating the remaining life of the victim, that it is better for her or any woman to die.

It has been rightly marked by *Ralph Waldo Emerson* that “society is inside of man and man is inside society’ and unless the society doesn’t change, its attitude towards such victims and such crime are deemed to be in existence. If one is a rape victim, justice is almost impossible to be found. Societal attitude towards woman and their clothes are another very sad and depressing aspect. One should know that the length of a fabric on a woman’s body is not the measure of her character.

Laws are rules and regulations governing people and their relationship among themselves, even the law makers are aware of the fact that the laws will not be fruitful unless the society as a whole stands up for it, follow it and most importantly accept it. In India, we observe many laws enacted specially for woman’s like *the Immoral Traffic (prevention) Act 1956, the Dowry Prohibition Act, 1961, the Indecent Representation of Woman (Prohibition) Act 1986, Protection of Women from Domestic Violence Act, 2005, the Sexual Harassment of Woman at Workplace (prevention, prohibition and redressal) Act, 2013.*

These laws will have no proper sanction unless backed up by the society, the main role to make such laws more effective are in the hand of the society, unless and until the attitude of the society remains the same, nothing can be done, and nothing can be achieved, society needs to change its perspective regarding the consequences of rape, it should fight for the victim and her family than to isolate them on this ground, I believe the first and the proper step to eradicate such offence if not wholly, is to build up a positive attitude towards the rape victims, they should be loved and cared more, we might finally arrest the culprits, or sentence him to death, but the haunting thoughts and nightmare is bound to continue to such victims, which are much more, beyond any curse on this planet.

As stated by JESSICA VALENTI “Now, should we treat woman as independent agents, responsible for themselves? Of course. But being responsible has nothing to do with being raped. Women don’t get raped because they were drinking or took drugs. Women do not get raped because they weren’t careful enough. Women get raped because someone raped them.”





CAN WOMEN WORK IN PEACE : A THOUGHT TO PONDER UPON

Sharda Shah, Semester VIII.

Though sexual harassment *“has been a fact of life since humans first inhabited the earth”*, it has recently been acknowledged to be serious and a real problem for various working women in a large number of occupation, employment, job, trades and business, and economic sector. The relationship between the sexes in many countries around the world includes a considerable amount of violence against women. The problem of sexual harassment relates to the roles which are attributed to men and women in social and economic life, which, in turn, directly or indirectly, affects women’s positions in the labor market sexual harassment by co-workers, became an issue for female professionals. Physical, mental, verbal and non-verbal sexual harassment at the workplace affects women's performance as the experience is humiliating and unsafe.

Sexual harassment is unwelcome sexual behaviour, which could be expected to make a person feel offended, humiliated or intimidated. It can be physical, verbal or written. Workplace harassment is rife – and it is affecting men as well

as women, according to a shocking new report by the Everyday Sexism Project. It's time to stop blaming the victims and start taking the issue seriously².



Sexual harassment is against the law. Some types of sexual harassment may also be offences under criminal law and should be reported to the police, including indecent exposure, stalking, sexual assault and obscene or threatening communications, such as phone calls, letters, emails, text messages and postings on social networking sites. Sexual harassment can involve employees, managers, contractors, agents, clients, customers and others connected with or attending a workplace. It can happen at work, at work-related events or between colleagues outside the work environment. A workplace covers any place that a person attends for the purpose of carrying out their work or trade. They do not need to be an employer or employee of the workplace.

Paradoxically, however, women-at least some women- have been worshipped as goddesses. And of course, many women have successfully conquered all biases. But bias against women still remains prevalent even in these supposedly progressive and modern times.

In addition to harassment in the workplace, women are also prime candidates as victims of violence. Few women walk the streets at night without genuine fear for their safety. There is growing evidence that crimes against women are rising the world over. Sexual assault is the single most under-reported crime in most societies. Virtually all sexual assaults are against women.

Workplace sexual harassment is one of the most difficult and insidious issues to tackle, because victims are so often in a position of vulnerability, afraid of damaging their careers. There is a need to ensure that women are allowed to work without facing any sexual harassment at work place. *“The aim should be to ensure that work is done to prohibit and prevent sexual harassment and that when it is reported it is dealt with in a professional, swift and balanced manner,”*. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, is a legislative Act which seeks to protect women from sexual harassment at their place of work. It was passed by the Lok Sabha on September 3, 2012, and cleared by the Rajya Sabha on February 26, 2013. The Bill got the assent of the President on April 23 this year. The Act will ensure that women are protected against sexual harassment at all the work places, be it in public or private. This will contribute to realization of their right to gender equality, life and liberty and equality in working conditions everywhere. The sense of security at the workplace will improve women's participation in work, resulting in their economic empowerment and inclusive growth.



CAN OUR POLITICAL SYSTEM CHANGE : *ITS TIME TO WAKE UP*

Deepsikha Gupta, Semester VIII

India is a democratic state, and democracy means for the people, by the people and of the people. But the question is whether India really follows democratic system. The political candidates standing in elections strive for power, money; welfare of the people is their last motive.

The present system of politics is such that when a person comes across the term politics, he equates it with corruption. Thus, “corruption” is another term for “politics.” Person standing for election endeavours to collect votes in their favour either through dissecting people on the basis of religion, caste, creed, sect or moulding and manipulating common masses and guaranteeing them future benefits, they even use muscle power and various other undesirable means. And we know more than half of the populations of India are illiterate, unaware of their rights and they are easy targets and victims. No candidate standing for election are considered fit in the eye of the so called conscientious and rational people, which also led to the emergence of NOTA. The political system is so corrupted that even if a few handful of people attempt to make changes they suffer a lot of hardships and are tormented and tortured severely by the party in power and are ultimately exploited by our reverend politicians.

These are the few categories of people who suffered and lost their lives in making an attempt to develop for the future prospects of our country—

1.}Venkatesh—He exposed encroachments on government property in Bangalore.

Initially his death in 2009 was considered an accident but the post-mortem confirmed murder.

2.}Stayendra Dubey— Who exposed corruption within a national highway authority of India

was shot in cold blood in 2003.

3.}Shehla Masood —The environmentalist and R.T.I activist was shot dead outside her house in

august while leaving for a rally.

4.}Amit Jethwa —Short dead near high court in Ahmedabad after he had filed a PIL against

Illegal mining.

5.}Kiran Bedi —Former I.P.S officer voluntarily retired, due to prevalent system of“*politics*

which is synonymous with corruption”

Arvind Kejriwal former chief minister of Delhi has also resigned from his post, whereas the people even though they are ineligible and unqualified, strive for power and position. The question is what was the cause for his resign? It certainly proves that he is neither striving for power, position, money, etc. but he aims at the welfare of the people. His actions and moves are always uncertain to common masses. He is expected to complete the work which Ashok Khemka was forced to leave mid-way under the pressure from the congress. Ashok Khemka(I.A.S officer)was investigating the dubious land deals

of Sonia Gandhi's son-in-law. Lokpal Bill (ANTI-CORRUPTION BILL) has been passed. It has not yet been implemented; it needs the assent of the president. Its implementation has not yet been done; this shows that there are so many lacunas in our political system.

Therefore, it can be said that there is a great need to change the political system. There should be a prescribed qualification of the people appearing as candidates for election and certain conditions after fulfilment of which the person should stand as a candidate. They should be imparted training before executing and governing the country. There is also a need to create and spread awareness among the masses to choose the suitable candidate. Thus, the overall development of the country will automatically develop if the political system of our country improves.



IMPORTANCE OF MOOT COURT

Megna Pradhan, Semester VIII.

The better way to learn the law than to read, interpret, comprehend, understand, research, frame arguments and write, Mooting delivers a holistic approach to learning the law.

Mooting is actually a conversation between the law student and the judge or a learned counsel in an artificial courtroom, this in turn helps budding lawyers to build their level of confidence. It trains the students on how to find the relevant laws, develops abstract thinking and facilitates in understanding the latest legal updates.

A moot court is an extracurricular activity at many law schools. While at law school, the closest experience that one can get to appearing in a court is mooting. The students are given a hypothetical case in their hands and they research, frame issues and arguments, prepare briefs (popularly called as memorials) and appear before judges to argue the case. Though it takes a lot of effort and hard work to follow the moot court effectively, the experience, the exposure and the memories it gives a law student is unrivalled when compared to any other activities in law school.

After being aware of the scope and its importance still now there are many law institutions who do not take it as an integral part but in other countries moot

court are the key activities in a law institution. Though a moot is not the exact representation of the litigation process or legal practice; but it will definitely give insight into the legal profession and an upper hand when the students finally step in for practice. Therefore, it is really important for the students who are thinking of the career at the bar to recognize the importance of moots.



IS ADULTERY A PENAL CODE OR A RIGHT OF WOMEN ?

Satrugan Gupta, Semester VIII.

India is a developing country with a second largest population all over the world.

Stefanzweig wrote_ *“Adultery is in most cases a theft in the dark, at such moments almost every women betrays her husband’s inner most secret; becomes a Delilah who discloses to a stranger, discloses to her loves, the mysteries of her husband’s strength or weakness. What seem to me treason is not that women give themselves, but that a woman is prone, when she does not so, to justify herself by uncovering her husband’s nakedness, exposing to the inquisitive and scornful gaze of a stranger”*.

The word adultery signifies a very short and simple meaning, but has a very strong social impact on the society. The ingredients of adultery are unfaithfulness, traitor, betrayal, dishonesty, not loyal, lie, conceiving facts, etc. Life is not a one night stand; every-one needs a companion to move along the path of life therefore, every-one chose their sole-mate so that they can overcome the obstacles and over-whelming situation. This binds a man and a woman into a strong bond of love. Which consists of trust, faith, loyalty, etc

The question arises, what breaks this bond?

ADULTERY

What is adultery? Adultery simply means cheating the companion and seducing the other opposite sex than her companion for their own physical satisfaction.

Dissatisfaction leads to adultery. Which scatter couples and give a painful remark and feelings of hatred.

In Indian penal code, Adultery has been defined under the section 497 “Whoever has sexual intercourse with a person who is and whom he know or has reason to believe to be the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, guilty of the offence of adultery and shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both. In such case the wife shall not be punishable as an abettor.”

The Indian law follows the above definition of adultery and imposes the same to all the citizens of India, no-matter which ever cast, creed, color they belong to. After analyzing the present scenario of India, there are multiple cases dealing with adultery which are pending before courts of law. The provision in the penal code is codified to bring awareness amongst the citizens, despite of this, large section of people often fall in the shades of adultery.

The definition which prevails all over the nation itself has a loop-hole and is ambiguous in nature and is a big threat to the society, where equality is tampered and injustice and inequality establishes. According to this section a husband who commits adultery with another woman is guilty for adultery and if the woman is the seducer she wouldn't be treated as an abettor. Adultery happens with a mutual consent of both the parties if no so then it would be termed s rape. According to the provision of IPC, the punishment is not equal but in various cases the court has given justification for its defects, stating India as a male dominating society and it sees women as a victim and never a seducer but in the present era of the rapid globalization and westernization it would not be justified to see women always as a victim. More often in current India's scenario women turned to be the seducer but they easily ex-cape due to the defects in this law. As it's the principle of our law "let 100 guilty ex-cape but not a single innocent be punished." What about the right of those men who might be the victim, not the seducer? And more-over what about the right of the wife of the accused if he is married? The provision of 497 doesn't tend to restrict adultery but indirectly encourage wife to get into adultery because of the loop-holes. Is adultery a penal code or a right of women?



JUSTICE

Tutun Das, Semester VIII.

What is justice? Do we actually know the meaning of justice? Justice is a very wide concept which is being interpreted from the ancient period, generation after generation.

Law is an agency to govern human conduct. Therefore law has to keep pace with changing times so that it serves its objective the best. Justice is done by applying the law in its true spirit. Both Justice and Law are correlated to each other. If there were no laws then Justice would have been impossible.

Is justice an idea, forever beyond our grasp, or something that may actually decision and enhances our lives?

Justice is a concept of moral rightness based on ethics, rationality, law, natural law, religious, equality and fairness. Justice is an inborn right of all the human beings with out any discrimination on the basis of caste, colour, race, sex, creed, religion etc.

Earlier the king had the sovereign authority to provide justice to the people. He was the one to make law, execute law and to interpret law. But the situation

changed with the raising population and rapid globalization and urbanization. So law did not remain static and rigid it kept on changing with the changing situation and circumstances and with the changing society with the changing law the idea of justice also kept on changing.

In the modern time the work of interpreting law has gone in the hand of judiciary. Twentieth century has shown, in the most brutal manner, how powerful the philosophies of racial, rational and religious discriminations are. The idea of justice govern the majority of the world's states, while in the relations between nations equality has barely begun to compete with the ideologies of nationalism, racialism, and power politics.

According to Aristotle *“Injustice arises when equals are treated unequally, and also when unequal's are treated equally”*.

Gandhi applied his thought to issues of social justice and to the appeals to justice that inhabit group politics. Gandhi's concept of justice based in staple of Eastern religious thought, was based in one staple of the western understanding of justice – entitlement. The entitlement that held Gandhi's attention, however bore little resemblance to the acquisitive, table-banging form that permeates western jurisprudence. Gandhi's theory was applied to governmental injustice, works outside, against government institutions.²

According to Amartya Sen the idea of justice is complex idea though it is important to understand that justice has much to do with everyone being treated fairly. He also said that justice has to be deeply concerned with systematic assessment of how to reduce injustice in the world.³

The shores of justice are ever widening. We must take into account its wider connection; for even though justice has a certain priority, being the most important virtue of institutions, it is still true that, other things equal, one

conception of justice is preferable to another when its broader consequences are more desirable.





MOTHER AND TEACHER

SARDA SHA, Semester VIII.

Most beautiful word- The most beautiful word on the lips of mankind is the word “MOTHER” and “TEACHER”. It is the word full of hope and love, a sweet and kind word coming from the depth of the heart. The mother is every thing – she is our consolation in sorrow – our hope in misery and our strength in weakness. She is the source of the love, mercy, sympathy and forgiveness. He who loses his mother loses a pure soul who blesses and guards him constantly. Teacher is the image of the word mother.

Every thing in nature bespeaks the mother. The sun is a mother, and the moon is a teacher of earth. The sun gives us light and heart and during the night the moon gives us light and wondering sky. The trees and the flowers become mother of their great fruits and seeds. And the mother, and teacher prototype of all existence, is the eternal spirit, full of beauty and love. Without mother and teacher, life cannot be successful. The first we say on the earth is “Maa” means mother. We worship that “GOD” those spelling is form our teacher, so teacher taken a position of “GOD” on the Earth. Lastly without mother and teacher life in the world is not possible.





HUMAN TRAFFICKING

Sanjay Mangar, Semester VIII.

Jean Jacques Rousseau, Swiss philosopher once said, “Slaves lose everything in their chains, even the desire of escaping from them”. Slavery takes away the most basic of human rights. Slavery takes away the hope of betterment; it beats the human soul in a submission of all physical choice. It allows one human to exercise limitless control over another. Most people believe that slavery is an ugly spot in history, no longer prevalent in modern culture. Those people are in dire need of awareness.

It appears in almost every culture, in the form of human trafficking. What exactly “human trafficking” is? Commonly referred to as “modern day slavery” it is the illegal trade of human beings for forced labour or for exploitation.

Exploitation refers to using them for prostitution or other form of sexual exploitation, forced labour or services, slavery or the removal of organs.

Woman and young children living in poverty are the ones who usually fall in the trap of the trafficker.

Poverty is the leading cause in human trafficking. It has been documented that poverty leads to a lack of education leading to no employment and that leading sex trafficking. So, fighting poverty may be a solution to end of sex trafficking.

It is acknowledged that woman and girls who are trafficked to commercial sex are the ones who are most likely are infected with HIV AIDS. Closer home, many girls are in big red light district, such as Sonagachi in Kolkata are

trafficked from rural villages and becomes a victim of HIV AIDS because of their lack of knowledge about disease.

There is a faint glimmer of hope for the victim's of India through as brothels are being raided. An organization called "Apne aap" is dedicated to ending the trafficking of females. They run youth centers to educate children, and prevent it from happening to them.

Human trafficking is a serious crime not many people are informed about. It is a high time for government to provide information on human trafficking because no nation is immune for this crime.



DOWRY DEATH: A SOCIAL EVIL

Dechen Doma Tamang, Semester VIII.

Dowry system is as old as man is. The dowry system is a social evil prevailing from the ancient times. It is prevalent in all parts of India. In India many of the traditional custom like sati, child marriage, female infanticide, have been given up but the custom of dowry has not only continued but flourished over the years. In due course, dowry became an integral part of the marriage institution and is a necessarily evil. Dowry system is so much deeply ingrained in our

social structure of our country, that it had become a shameful practice of our society. In spite of many commitments for its abolition the practice remains in reality.

In modern times, however dowry is a contemptible social evil. It reduces the sacred institution of marriage to a business transaction. We can also say that the principle of dowry system is also a social evil since it perpetuates the myth of male superiority, as long as there is gender discrimination, the evil practice of dowry system will prevail in the society. So there should be a work for creating gender equality, women should reach the decision making level and executive mechanism, more importantly youths, must be committed to uproot the evil practice

Hardly, there is a day when one does not read of dowry deaths in the national daily newspaper. Besides bringing less than expected dowry are ill-treated by their in-laws and other relatives. Many of them cannot bear it any more and commit suicide. Those who do not have enough courage to do so, are burnt alive by their husband and the in-laws.

Dowry death is considered as one of the many categories of violence against women along with rape, bride burning, eve teasing and acid throwing. It is wide spread in India and among other countries. It is one of the menaces that society is facing till now. Most dowry death occurs when the young women, unable to bear the torture commits suicide. Most of this suicides are by hanging, poisoning or by fire. Death by burning of Indian women has been more frequently attributed to dowry conflicts. Though the law has been made for the betterment of the women, like dowry prohibition act of 1961 which prohibits the request payment or acceptance of a dowry as consideration of marriage and dowry is defined as a gift demanded or given as a pre condition for a marriage., but still the law has certain loopholes and needs to be made

even more stricter. Despite the amendments made to the dowry act in 1983, good results are still to be achieved.

The problem of dowry has always been persistent in India and is also rising at a rapid rate and so are the offences related to dowry demand, like the section 304-B of the Indian penal code, 1806 has been inserted by the dowry prohibition amendment act, 1986 with a view of combating increase menace of dowry death, and 498-A of Indian penal code, these laws were mainly enacted to make it easier for the wife to seek redress from harassment by their in-laws.

We see that in Indian scenario, there are legislation like the dowry prohibition act, 1986, Indian penal code, 1960 and legislation like the protection of women from domestic violence act are in place but still the problem of dowry demand still persists, this is because of lack of awareness and the mindset of the people, which keep this system alive till today. The first thing is to change the mindset of the people in the society, secondly, the women should be well aware of their legal rights, this can be achieved by setting up awareness programs or initiative in different sections of the society. Women should be literate enough to claim their legal rights conferred by the law.

To fight this menace of dowry, is to impart stringent punishment to the people convicted of such crimes as amended in the dowry prohibition act, 1961 where those convicted people who gives or takes dowry, shall be punished for a term which shall not be less than 5years and with not less than 15 thousand rupees the amount of value of such dowry which ever is more. Speedy trial system also helps in favors of the victim to seek justice and acts as a deterrent effect.



AN INDEPENDENT INDIA?

Sushmita Biswakarma, Semester VIII.

We belong to an independent nation celebrating 67th year of our independence. The general meaning of independence is “freedom”. An independent nation is one which is free to manage its own affairs. What I believe is not the freedom of a state as a whole but the freedom of individuality. The freedom to do everything, and the freedom to exist in this world and above all the freedom to live. Although *Right to Life* is protected under *Article 21 of the Constitution of India*. But this question always exist as to - do we enjoy the right which is enshrined under Article 21 of the Constitution?? No!! we hardly enjoy the rights which are provided by the law. Various laws have been enacted by the legislature but hardly some laws are implemented in day to day life. Article 23 of the constitution prohibits the trafficking of human being and force labour and any contravention of this shall be an offence punishable in accordance with law. No doubt, that there are execution of countless laws and rights for the people but there is failure during the implementation and this is the worst part our country is facing right now.

A child goes to his school, wearing a smile on his face and waving bye to his mother but no one can assure his return back home safely, a time comes when his simple bye gets converted into a painful goodbye. - no one knows that!! Because this is the reality of our society. Now days this is what’s going on in

the society. Shameful to say but a trade is done in human, which is known as human trafficking. Most commonly it is done for the purpose of sexual slavery, force labour or commercial sexual exploitation. Human trafficking is one of the serious crimes against the person because it violates the victim's right to movement and right to life. Mostly the victims of such crime are children and woman.

In order to combat the growing issue of trafficking in person, members of the international community came together and concluded a new protocol to the transnational crime commission that banned trafficking resulting in the Palermo Protocol. To provide for the implementation of the protocol the following acts were created:

The trafficking victim's protection act of 2000 is the first comprehensive federal law to address trafficking in person. The trafficking victim's protection act was reauthorized through the trafficking victim protection reauthorization act (TVPR) of 2003, 2005, 2008 and 2013.

The object behind this act is to ensure just and effective punishment to the traffickers, and to protect the victim.

All the effort taken for the enactment of such would be worthless if it is not backed by the enforcement, My object behind writing this article is just not making the readers aware of it but requesting them to take some initiative against the trafficking of human. All the laws and rights are made for the people and it is us who individually needs to take actions, because the change can only begin individually and it should start with one of us. Let us take some action if we address the trafficking and not stay silent as *we are*, and let us fight for the people who have become a victim of such inhuman activity and finally fight for our self, "because united we stand and divided we fall".



'WHO AM I'

AND WHAT IS MY IDENTITY ?

Karishma Goyal, Semester VIII.

Surrogacy in India is booming at a fast pace. India has been widely named as a baby factory which is providing childless couples an opportunity to get their babies delivered through rented wombs.

*How much does a surrogate mother **earn**?*

Surveys made all throughout give shocking details stating that a contract between a surrogate mother and a couple is signed in the trimester when the pregnancy is confirmed. The social medical centre related to this practice look after the rented wombs. The lady renting her womb, bearing the baby is paid only 1% or 2% of the total amount charged by the medical centre from the couple, after the delivery is made. BUT in case the couple is unwilling to get the child delivered after knowing the gender, they get the baby aborted without the consent of the surrogate. And she is paid only half of the amount that she was suppose to get.

*What if the child is born **abnormal**?*

Surveys again led to an unexpected result which stated that in instances of a surrogate mother giving birth to an abnormal child, the couple seems to sue the lady stating that “she has broken the contract”.

What wrong has she done renting her womb to an infertile couple willing to have their own child, wanting to practice parenthood like others generally do? Even after taking precaution the rented womb gives birth to an abnormal child. Why is that rented womb questioned or sued. She had no intention to harm the baby, if she had why would she even take the pain of bearing the baby in her for 9 months? Is a question that should be asked to such couples blaming the surrogate mother in case of unexpected results but not so **unobvious** ones.

SURROGACY

In the glimpse of breaking dawn
A baby is born;
Crying loud to tell his mother
That he is her child not of any other;
Unaware of the fact
This innocent is born;
Born from a womb
That his actual mother couldn't groom;
Born to a lady
Who is aggrieved and needy;
In need of money she sells her womb;
For a price so small
She sells it all;
To earn her living she bears the pain;
Nine months ago she was not a lady so insane;
She gave a thought and bore him in her
Carried him for nine months and deliver him with a tear;
No one looked no one cared
Neither her family nor her heir;
She did it for them without a glare;
The world's so selfish it is so cruel,
They use her for their benefit like an engine uses fuel;
Let's praise her for what she did
And not discard her just for it;

Yes, she is a surrogate mother
Born to deliver without a single utter;
A child is born to her whom she will never see;
Let's share her pain and not leave her to live in vain;
A child is born to a lady not so INSANE.....



LET'S NOT JUST TALK ABOUT WOMEN : LET'S TALK ABOUT EQUALITY

Deepsikhya Gupta, Semester VIII.

The origin and development of this male dominated system from the very initial stage has been so strong and deep that it has left its scar and impact till present, which makes almost impossible to bridge the gap between the men and the women. The males are the advantageous section in the society. They are given the first priority over females.

Although the scenario in the present day has changed to a vast extent, but there is a need to achieve much in this respect. What to say about rural areas? Even now in urban areas, people abort girl child, they go for sex determination. The girls are given priority only after boys. In rural areas, female infanticide, foeticide is still prevalent. After attaining the age of puberty, the girls are barred from going to schools and colleges. They are given in early marriage due to insecurity and lack of infrastructure facilities and sanitary systems. These girls,

who could be the future of the country, are subjected to many atrocities. They are not allowed to come out of their house late night.

“Should the women be restrained from moving out of the house for working, participating, enjoying their freedom unlike the men’s in the society?”

Should the women be constrained in such a way that they remain deprived of all those things, where, the male section of the society is getting the wholesome chance of freedom and development?

The common contention of the general public in India is that women are made not for exposure, but to remain in restrictions. Again a question arises, are not women human beings!! Is it that they don’t have any right!! Why are they considered berserk and obscene when they express their desire of freedom and enjoyment?

Recent discovery has proved that men and women have the same capacity, they are identical in functioning, it is due to the social-patterns prevalent in the society from ancient-times, they (women’s) are accustomed to the things which the male-dominated society imposed on them, that is, they remain restricted to those things which are provided by the society. The only difference between males and females is that men have more muscle power, which they have been using from very early to dominate women. The women are barred from freedom due to insecurity and crimes prevailing against women. *“The question is again whether females should be barred and enclosed in the four corners of walls due to the fear of prevalent crimes?”*

If it is so then this is something even more worse than capital punishment. This will exactly be a situation of *“stopping a child from playing again, just because he falls down by playing”*, that is, restricting a women to extend their scope, explore and discover things. In developed countries like U.K, U.S.A, women

and men are treated equally; women have even more opportunities, preferences, which in turn helps in the development of their country.

Both men and women should realize the need of their interdependence on one another in the existence for smooth functioning of the family, society and the country.

Things do not end here; women's are lagging behind in different corners of the world, from getting any opportunities due to crime against women. We should know that it is also due to population growth at an increasing rate that the crimes against women are increasing. This person who adds to the population of our country go unnurtured, lack financial and moral support, education and awareness. Thus, there is a great need to propagate and enforce population control, family planning, youth training and other awareness programmes for a better future. Measures should be taken to bridge the gap between men and women; there is a need for revolution which uplifts the conditions of women. Thus, it can be concluded that there is not just one factor but combination of many factors which shatters the development of female section in our society, which needs to be properly appraised, in order to develop a country as a whole.



LEGAL AID

Anusha Shai, Semester VIII

Legal aid is the provision of assistance to people otherwise unable to afford legal representation and access to the court system. legal aid provides access to justice by ensuring quality before the law, right to council and the right to a fair trial. We can say a number of delivery models for legal aid have emerged including duty lawyers, communities legal clinics and the payment of lawyers to deal with cases for individual who are entitled to legal's aid.

This legal aid plays an important role in ensuring respect for economic, social and cultural rights. This works for the welfare of the people, especially to those illiterate people who are unaware of those legal remedies available. Legal helps the poor and needy people who cannot afford to pay the solicitor; it helps you for legal advice, family mediation and representation in court and some tribunals. Legal aid implies giving free legal services to the needy ones who cannot conduct service of lawyer for a case of legal proceedings.

Like articles 39-A of the constitution of India provides that states shall secure that the operation of legal system promotes justice on a basis of equal opportunity and shall in particular provides free legal aid by suitable legislation or scheme or in any other way .there is assaying that one need not be a litigant to seek aid by means of legal aid, legal aid is available to any body in the road.

Legal aid to the poor and weak is necessary to the assistance of the orderly society until and unless poor illiterate man is not legally assisted, he is denied to seek equality injustice. He judiciary has also taken active interest in providing legal aid to the needy in the recent past. Many legal aid camps or programs are been initiated for the the needy one who cannot pursue to the court, even law colleges institutions should

initiate a legal aid programs to help the poor peoples, not only that it should be made as part of a curriculum activity. We can say that we are much privileged that our college IILS has recently organized a legal aid problem were many of our colleagues participated and made it a succesful one.

Many governments have made an initiative to setup a legal aid to the poor to help them and facilitate them with the necessary information needed. There are many people who are not enough literate to seek justice for themselves especially in rural areas where they lack of legal knowledge and can get easily cheated by the smart ones, these legal aid can help them a lot by getting cheated from the people. Through this legal aid, poor and weak people can get equal opportunity in seeking justice for themselves which protects their rights as the constitution of India in article 14 says “right to equality” for every citizen. Their rights are safeguarded through these aid where they can make their life in better way to live.



LAWYERS DO IT WITH APPEAL

Sumanta Gurung, Semester VIII.

*Let's do it with appeal
With reference and review too;
Let not make innocent suffer
By delaying justice;*

*Changes should come
Law should change;
It should not be denied
Let's do it with execution;
Audi alterum partum
By lifting the veil;
Let's not wind up
Rather lets all stand up ;
Wake up lets wake up and let's do it with appeal.*

End of Vol.I, No. I.