

In This Issue:

- Page 1** • Guest Lecture on Gender and Sexuality
- Page 2-3** • Theme of the Month: Criminal Justice
- Page 4** • Student Achievements
• Upcoming events at DME

From the Editor's Desk

On behalf of the Management, the Editorial Board and the Student Editorial Team, it is my pleasure to welcome you to the January 2018 Edition of Law@DME. Last semester, our institution witnessed the rise of a myriad student societies, some of whose members are making waves across the country's fests and competitions. This semester, we aim to fuel innovative research in law and related disciplines through the establishment of targeted research centres.

In keeping with this new and exciting measure, we are pleased to announce that every issue of Law@DME will feature research articles, case comments, and opinion pieces. They will be penned by our very own faculty members and will pertain to their areas of interest. Our 'Theme of the Month' has consequently been expanded to highlight these articles. We also urge our students and readers to send us their contributions and feedback at law.newsletter@dme.ac.in.

Prof. (Dr) Bhavish Gupta
Director (Officiating)

Upcoming Theme of the Month (for February): Human Rights

UPCOMING EVENTS

VR Krishna Iyer Lecture by Dr Christopher Lingle	6 Feb
Cyber Cell Workshop at Yash Memorial School	6 Feb
Anugoonj Fest	8-10 Feb
Internal Examinations	20-26 Feb

Editorial Board:

Prof. (Dr) Bhavish Gupta, Ms Charvi Kumar, Ms Avantika Tiwari

Student Editorial Team:

Ahad Ahmad Khan, Chaitanya Kumar, Ashi Gupta, Uday Sharma

Stereotypes are Confronted in Guest Lecture on Gender and Sexuality

The Centre for Laws on Gender and Sexuality (CLGS) hosted a public lecture on the theme, 'Understanding Sexuality: Pleasure and Violence'. This was the first in a series of lectures on the said theme, which will unpack the dimensions of female sexuality, exploring and analysing it through various lenses. Ms Latika Vasisht, Assistant Professor, Indian Law Institute, was the distinguished speaker on 19 January 2018.

The lecture focused on the interface of gender and sex. The speaker began with a litany of the challenges we confront while discussing matters of sex and sexuality. From there, she proceeded to detail the essential aim of the lecture - understanding the basic differences between the constructs of sex, sexuality, and gender in society. She did this by highlighting the three waves of feminism through history.

The speaker started by elaborating on the first wave of feminism, where women claimed that they were discriminated against on the basis of sex and asked for equality. This wave challenged the idea of discrimination based on biological criteria. The concept of gender was unknown and largely ignored at this time.

Ms Latika Vasisht further explained that gender is a construct, an idea that was framed during the second wave of feminism. This wave differentiated between sex and gender. These feminists opined that sex cannot be reworked, as it is a biological category, but 'gendering' can change, as it is an idea of 'becoming'. She underlined the need to understand Catharine MacKinnon, a radical feminist who asserted that law is a means to control sexuality. MacKinnon opined that it was through sexuality that men subjugated women. However, the speaker critiqued her of being sex-negative, stripping women of any agency whatsoever. Ms Vasisht emphasised that this denial of female sexual agency is extremely dangerous in the Indian context, where, given our post-colonial set-up, sexuality is largely repressed. And if MacKinnon's theorisation is followed strictly, women are doomed to remain passive objects.

The distinguished speaker found solace in third wave feminism, which dismantles previous ideas completely by asserting that both gender and sex are constructs. She elucidated that it is not just gender that does not exist in the binary, but also sex. In her averment, she relied upon the celebrated Judith Butler. Butler has asserted that even sex comes into being through discourse. Ms. Latika also quoted A Fausto Sterling to explain that there are more than two sexes. She asserted that inter sex babies, when born, were operated upon to 'fix' them and force them into a neat box of male or female anatomy.

The members of the audience were fascinated by the lecture. They had many questions on the novel and fascinating subject, all of which the speaker handled with patience and dexterity. The Centre hopes to continue its work of challenging misconceptions of gender and sexuality that have sedimented over the ages.



Our Assistant Professor, Ms Karishma Sheikh, felicitates the Speaker



Ms Latika Vasisht addresses the audience

Juvenile Delinquency

Akansha Madan
Assistant Professor (Law)

The practice of child protection has undergone a significant change when seen from a historical perspective. The traditional approach of custodial care in an institution is being replaced because of a strong conviction that the Right to Family is one of the most basic rights of a child. Recognising this right of a child to a family, all intervention must try and ensure that the physical, social, emotional, and educational needs of the child are met in a secure, nurturing family environment. Socio-economic circumstances of a family often result in family stress, disintegration and child destitution. Special programmes have been evolved as a response to the needs of such families 'at risk'. These services supplement or substitute parental care and supervision, in order to promote the overall well being of vulnerable children. They also prevent neglect, abuse, and exploitation of children and provide care and shelter for disadvantaged children. Their benefits are expounded in 'Child Protection and Juvenile Justice System', authored by Nilima Mehta in 2008.

India has held deep concerns regarding the welfare of juveniles from the beginning. Therefore, provisions were made for them in the Constitution of India in the year 1950. Then, in the year 1986, the Juvenile Justice Act was passed. It underwent a change through amendment, resulting in the Juvenile Justice (Care and Protection) Act of 2000. Finally, the law was once again changed in 2007.

After the Delhi gang rape incident of 2012, it was found that one of the accused was a few months away from turning 18. Consequently, he was tried in a juvenile court. On 31 July 2013, Subramanian Swamy, a BJP politician, filed a Public Interest Litigation in the Supreme Court of India seeking that the boy be tried as an adult in a court. The Court asked the juvenile court to delay its verdict while it heard the matter. After the Supreme Court allowed the juvenile court to deliver its verdict, the boy was sentenced to three years in a reform home on 31 August 2013, as held in the Delhi Gang Rape Case [*State v. Ram and Anr*, 2013(135) DRJ119].

The victim's mother criticised the verdict and asserted that by not punishing the juvenile, the court was encouraging other teenagers to commit similar crimes. This led to another amendment, one more controversial. The new Act will allow a Juvenile Justice Board, which will include psychologists and sociologists, to decide whether a juvenile criminal in the age group of 16–18 should be tried as an adult or not, as expressed under the provisions of Juvenile Justice (Care and Protection of Children) Act, 2015.

Even though many laws have been made with regard to the juvenile, they nevertheless constitute just a black letter law. Juvenile reformation homes, or 'observation homes' in India, suffer from multiple shortfalls. On paper, these places aim to reform juveniles and rehabilitate them into society. However, their reality is rather dismal. Characterised by crumbling infrastructure, and plagued by a decrepit standard of hygiene, according to a report by the Indian Express they are far from the idyllic institutions of rehabilitation envisioned by the law.

The juvenile justice policy in India is structured around the Constitutional mandate, as well as several international covenants, such as the United Nations Convention on the Rights of the Child, 1989 (UNCRC), the UN Standard Minimum Rules for Administration of Juvenile Justice, 1985 (Beijing Rules), United Nations Guidelines on Justice in

matters involving Child Victims and Witnesses of Crime, 2005, etc. However, in spite of having such a comprehensive world order of child rights instruments, it is often felt that there is a lack of proper implementation of these laws within regional legislations. There is, thus, an inherent risk of violation of children's rights in national juvenile justice systems.

In order to ensure effective access to justice for children, national legal systems should have the capacity to accept and address complaints from, or on behalf of, children, while fully respecting, protecting, and ensuring their rights. This implies that the system should be child-sensitive, and in particular takes into account the general principles and relevant provisions of the UNCRC as well as all other relevant human rights norms and standards.

Adequate infrastructure for achieving the goal of rehabilitation of delinquent and neglected children is necessary. Community education for rehabilitation and acceptance of the rehabilitated is also a very important necessity. Above all, determined political will and people's participation are a must to cope the problem of juvenile delinquency. It is a matter of regret that our politicians do not seem very interested in the cause of children and their problems as they are not voters. It is a bitter truth that in our country, most of the welfare planning and schemes revolve around 'vote catching' and 'vote securing' so children are mostly neglected. The problem of juvenile delinquency is inversely proportional to the health and progress of the society in which they live. It must always be kept in mind by all concerned.

Human Trafficking

Karan Sharma
Assistant Professor (Law)

Human trafficking is the practice of people being tricked, lured, coerced or otherwise removed from their home or country, and then forced to work with little or no payment, or on payments that are highly exploitative. The practice is considered to be the trade or commerce of people, which has many features of slavery, and which is illegal in most countries. The victims of human trafficking are used in a variety of situations, including prostitution, forced labour (including bonded labour or debt bondage) and other forms of involuntary servitude. The sale of babies and children for adoption or other purposes is also considered to be trafficking in those children. The Palermo Protocol, a protocol to the United Nations Convention against Transnational Organised Crime, defines human trafficking as the transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

Human trafficking is the fastest-growing criminal industry in the world, with the total annual revenue for trafficking in persons estimated to be between \$5 billion and \$9 billion. Trafficking has reached epidemic proportions over the past decade, with a global annual market of about \$42.5 billion. The United Nations estimates nearly 2.5 million people from 127 different countries are being trafficked around the world. Causes of Trafficking in people have been facilitated by porous borders and advanced communication technologies; it

has become increasingly transnational in scope and highly lucrative. The opening up of Asian markets, the end of the Soviet Union and the collapse of the former Yugoslavia led to globalization which has further paved way for human trafficking and sexual exploitation.

Trafficking includes coercing a migrant into a sexual act as a condition of allowing or arranging the migration. Sexual trafficking uses physical coercion, deception and bondage incurred through forced debt. Trafficked women and children, for instance, are often promised work in the domestic or service industry, but instead are usually taken to brothels where their passports and other identification papers are confiscated. They maybe beaten or locked up and promised their freedom only after easing – through prostitution – their purchase price, as well as their travel and visa costs. The main motive of a woman (and in some cases an underage girl) to accept an offer from a trafficker is access to better financial opportunities for herself or her family. In many cases, traffickers initially offer legitimate work or the promise of an opportunity to study. The main types of work offered are in the catering and hotel industry, in bars and clubs, modelling contracts, etc. Traffickers sometimes use offers of marriage, threats, intimidation and kidnapping as means of obtaining victims. In the majority of cases, women end up in prostitution. Also some (migrating) prostitutes become victims of human trafficking. Some women know they will be working as prostitutes, but they have an inaccurate view of the circumstances and the conditions of the work in the country of destination. Trafficking victims are also exposed to different psychological problems. They suffer social alienation in the host and home countries. Stigmatisation, social exclusion and intolerance make reintegration into local communities difficult. Governments offer little assistance and social services to trafficked victims upon their return. As the victims are also pushed into drug trafficking, many of them face criminal sanctions. Trafficking of children is the recruitment, transportation, transfer, harboring, or receipt of children for the purpose of exploitation. Trafficking and commercial sexual exploitation of children can take many forms and include forcing a child into prostitution or other forms of sexual activity or child pornography. Child exploitation can also include forced labour or services, slavery or practices similar to slavery, servitude, the removal of organs, illicit international adoption, trafficking for early marriage, recruitment as child soldiers, for use in begging or as athletes (such as child camel jockeys or football players), or for recruitment for cults. The concept of trafficking is not a mere problem. In fact, it is a menace and stigma.

Plea - Bargaining

Aditi Singh
Assistant Professor (Law)

Plea-bargain is a contractual agreement between the prosecution and defendant, concerning the disposition of a criminal charge. It is essentially derived from the principal of *Nolo Contendere*, which literary means, 'I do not wish to contend'. The Apex Court has interpreted this doctrine as an 'implied confession, a quasi confession of guilt, a formal declaration that the accused will not contend, a query directed to the court to decide a plea guilty, a promise between the Government and the accused and a government agreement on the part of the accused that the charge of the accused must be considered as true for the purpose of a particular case only'. Once ignored by the courts and refused recognition by Indian

jurisprudence, plea-bargaining as we know it today is the result of modern judicial thinking.

The Law Commission of India first advocated the introduction of plea-bargaining in the 142th report, following up its recommendations on the subject in its 154th and 177th reports. Based on these recommendations, the concept of plea-bargaining in India was added by the Criminal Law (Amendment) Act, 2005. The provisions for plea-bargaining are given under chapter XXI A (Sections 265 A to L), allowing the accused this recourse in offences punishable with imprisonment of up to seven years. It is not applicable in cases where the offence is committed against a woman or child below the age of 14 years. Also, once the court passes an order in the case of plea-bargaining, no appeal shall lie to any court against the order. This has changed the face of the criminal justice system.

The court, on receiving the application, examines the accused in camera to ascertain whether the application has been filed voluntarily. The court must then issue a notice to the public prosecutor or to the complainant to work out a mutually satisfactory disposition of the case. The negotiation is left to the free will of the prosecution (including the victim) and the accused. If a statement is reached, the court can award compensation based on it to the victim and then hear the parties on the issue of punishment. The court may release the accused on probation if the law allows for it. If a minimum sentence is provided for the offence committed, the accused may be sentenced to half of such minimum punishment. If the offence committed does not fall within the scope of the above, then the accused may be sentenced to one fourth of the prescribed punishment.

In the process of plea bargain, the trial judge plays a very important role. It requires a great deal of discretion and integrity on the part of judges, who must strictly implement safeguards. Judges are obligated to examine the accused in camera to find out whether the application of 'plea-bargaining' is filed freely and voluntarily, or under any kind of coercion or fraud. In the latter situation, the application can be rejected.

The Judge has to balance the normative obligation of neutrality with the bureaucratic demand for efficiency in recording plea-bargaining encounters. First, the judge appraises the attitude and outlook of the accused while simultaneously becoming acquainted with the facts of the case. Then, he or she facilitates the bargaining process. The judge then elicits both sides' bargaining positions. Finally, he or she shows approval or disapproval and presses the bargainers to overcome obstacles. Counsels are required to inform the open court that a bargaining agreement has been reached and disclose the circumstances that led to it. However, in some exceptional circumstances, especially to preserve the interests of the public or the accused, it may be necessary to discuss some aspects of a bargaining agreement with the trial judge privately. It is thus the highest duty of the judge to remain fair and impartial during the pre-trial conferences. Also, it would be inappropriate for a judge to become actively involved in plea-bargaining.

Plea-bargaining does not solve the entire problem of delayed justice but reduces its severity. The introduction of plea-bargaining is a shortcut aimed at quickly reducing the number of under-trial prisoners. Taking into account the advantages of plea-bargaining, the recommendations of the Law Commission should clearly be hailed as the need of the hour. Plea-bargaining in India, despite its shortcomings, can go a long way in speeding up the disposition of cases. It can thus play a crucial role in attributing efficiency and credibility to the Indian criminal justice system.

Student Achievements

We, at DME, have strongly maintained that our institute is only as strong as the students who grace our halls. It is therefore a matter of pride when they go forth into the world and succeed in their endeavours. This section is dedicated to the brilliant efforts of the gems of our institute.

Meet the student members of Alankaar, our Music Society. Not only are they some of the best and sharpest students in the classroom, they also have the finest vocal abilities. Curious passers by have been enchanted by their singing, filtering through our corridors after classes and during break, for the past few months. Their strenuous efforts were rewarded when they qualified the preliminary rounds of Anugoonj 2018, the official fest of Guru Gobind Singh Indraprastha University. The prelims, which were held at Ideal Institute of Technology and Management, saw fierce participation from every institute in 'Zone II' of the National Capital Region. Nevertheless, our students persevered and qualified in two categories-Group Song (Western) and Group Song (Indian).

Speaking of all-rounders, our student Aayush Goel deserves a round of applause for his unique ability to try his hand at everything that catches his fancy, and to succeed phenomenally at most things he tries. Aayush has participated in, and won prizes at, several youth parliaments, debate competitions, model united nations, and moot courts held all over the city. Listing his individual achievements would be a gargantuan task, but the trophies and certificates he has won continue to adorn our institute's walls.

Proving that you don't need to be experienced to succeed, our first year students Hitaishee Gaur and Kartikay Mithani, brought home the first prize at, 'Manthan', the National Level Debate Competition organised by Jaipuria School of Business. Alongside the Shield and the certificate, these young students have also won a hefty cash prize of Rs 25,000. We have high hopes for their illustrious law school career.

If you, or your friends, have represented DME at any event, do write in to us and let us know, at law.newsletter@dme.ac.in.



Our Director (Officiating) and HoD (Law) gives his blessings to Aayush Goel

The members of Alankaar wow the audience at Anugoonj with their impressive performance

Hitaishi and Kartikay beam with the prizes in hand

UPCOMING EVENTS AT DME

**National Conference on
India and Changing Aspects of News
ICAN 2018**

March 9th, 10th and 11th, 2018

DME COLLEGE FEST 2018

**16TH MARCH
2018**



Delhi Metropolitan Education

**2nd NATIONAL MOOT COURT COMPETITION
2018**

6th - 8th, April 2018

