

RGNUL STUDENT RESEARCH REVIEW (RSRR)



CALL FOR PAPERS

ON:

***“METAMORPHOSIS: FROM AN EXTENSIVE TO AN
EVOLUTIONARY CONSTITUTION”***

FOR

VOLUME 5, ISSUE 1 OF THE RSRR JOURNAL

CALL FOR PAPERS

The RSRR Journal invites papers for Volume 5 Issue 1 from academicians, practitioners, legal luminaries and students on the topic “**Metamorphosis: From An Extensive To An Evolutionary Constitution**”. A proposal on the said topic has been prepared by the Editorial Board of RSRR as follows:

Sir Ivor Jennings once remarked about the Indian Constitution that it is “too long, too rigid, too prolix”.¹ While this might have been an honest perception of many Constitutional law scholars in 1951 (at the time when Sir Jennings made his cynical statement), the journey of the Indian Constitution has been characterized by dynamism. From propounding the basic structure doctrine to reading the Right to Privacy as implicit in Part III, the Supreme Court has been at the forefront of this journey, at times adding to or modifying the ideas originally conceived by the Constituent Assembly. And at the heart of this evolution lies the theory of ‘*Transformative Constitutionalism*’. The charm of the idea of Transformative Constitutionalism lies in the fact that it cannot be fettered by a common definition. But what the application of Transformative Constitutionalism entails can be far from disputed, though its extent may be subject to some debate.

The concept of *Transformative Constitutionalism* materializes at two levels. On one level, Transformative Constitutionalism facilitates the idea that the Grundnorm of the land itself is an evolving document. And this transformation is brought about either by an enactment amending the Constitution according to the needs and exigencies of the milieu, or by a new interpretation given to the letter of the Constitution by the courts in order to bring it in conformity with its spirit. On another level, this transformative document becomes a catalyst of societal change. It induces a change in the social and political institutions of a country towards a democratic, participatory and egalitarian direction.²

In this process of evolution, the silences in our Constitution play an equal, if not greater, role than the words and phrases explicitly mentioned. The objective of this process of constant evolution and transformation is the effective realisation of the rights and guarantees enshrined in the Constitution as well as to fulfil the basic expectations of those within its jurisdiction. This transformative process was evident in the Apex Court’s reading of a right to privacy in Part III. However, the jury is still out on the question of the extent of the free exercise of this right, especially in light of the Aadhaar judgment and the larger issue of data protection and privacy. These doctrinal aspects have played a pervasive role in our Constitutional interpretation. But the origin of some, if not all, of these doctrines and principles is elsewhere. Hence, a proper dissection of these doctrines should necessarily be based on an international perspective.

While these ideas might seem philosophical and abstract to some, their application, particularly by the Supreme Court, has thrown up some interesting issues for analysis and consideration. And it is this realm of philosophy, society, Constitution and transformation that the current Issue seeks to venture into. In this respect, Volume 5 Issue 1 is prospective in nature; it seeks to foster debate

¹ Fali S. Nariman, *The Silences in our Constitutional Law*, (2006) 2 SCC (JOUR) 15.

² Karl E. Klare, *Legal Culture and Transformative Constitutionalism*, 14 S. AFR. J. ON HUM. RTS.146, 150 (1998).

on what should be the Apex Court's reaction to the various socio-legal challenges that the Indian society faces, especially after taking into account the recent string of landmark judgments pronounced by the Court. Should it persevere on the transformative path, or should it stick to the letter of the law? Should the Supreme Court, in the process of transformation, draw a line between judicial activism and adventurism, or should it be the harbinger of change in spite the costs?

The debate surrounding Constitutional Morality is in the vanguard of these issues. The idea of Constitutional Morality has been subject to different interpretations and often to the vagaries of socio-political environment. This is rightly so because the idea implies adherence to the core principles and conceptual essence of the Constitution. While some of these core principles cannot be altered, the conceptual essence can definitely be interpreted and re-interpreted differently in different periods. This has been done several times in the past, with the *Navtej Singh Johar*, *K.S. Puttaswamy* and *Sabrimala* judgments being a few of the recent examples of the phenomenon. Constitutional Morality, being the 'guiding spirit' to achieve transformation within the society, therefore, becomes relevant for considering controversies as wide in scope, and as far reaching in consequences, as issues relating to manual scavenging, hate speech, surrogacy, same-sex marriage and same-sex adoption.

In studying issues surrounding the idea of Constitutional Morality, a natural question that crops up is the difference between Constitutional Morality, on the one hand, and religious and social morality on the other. What if an act, ratified by the society or the religious tenets of a community, is antithetical to the moral concepts innate in our Constitution? Will the act override the foundational principles of the Constitution, or will it perish at the hands of the supreme law of the land? An endeavour to answer these questions would undoubtedly delve into an enquiry as to whether the act itself is essential to the precepts of the religion. The aforementioned essential religious practices test has been shrouded in mystery and controversy, due to the absence of a uniform standard or rule, which leaves the application of the test largely on the whims and caprices of the individual judges hearing the case. This enquiry holds greater relevance after the Supreme Court's verdicts in *Triple Talaq* and *Sabrimala* cases, more so because a review of the *Sabrimala* judgment has been admitted by the Court. A common thread that runs through both these judgments is the conflict between certain religious practices and the Constitution's attempt to preserve rights of female.

Another instance of this friction between religion and protection of women's rights, the practice of *Nikah Halala*, is something that the Supreme Court refused to look into in the *Triple Talaq* verdict. This brings to the fore the struggle of women worldwide against various instances of patriarchy and male dominance. A case in point would be the fight against the exception of marital rape, not just under the Indian Penal Code but under various penal laws of nations around the globe, and the difficulties in implementation of the law if such an exception is removed from the statute books. Naturally, non-redressal of these issues would be antithetical to very idea of gender justice, something which is engrained in our Constitutional fabric. But surely this salutary concept of gender justice cannot be limited to two sexes, certainly not anymore. For far too long the 'T' in the LGBT+ has been subject to ostracization and stigmatization. An end to this practice was sought to be brought about by the *NALSA* judgment of the Supreme Court. But the plight of this community is far from over. Ghettoization of the transgender community begs the question as to

whether Article 17 of the Indian constitution can come to their rescue in light of the *Sabrimala* verdict.

A perusal of these ideas will certainly be food for thought for our prospective contributors, while at the same time giving them an understanding of the essence of the theme of Transformative Constitutionalism. The object behind the theme is to invite scholarly, original and unpublished written works from persons across the legal profession – students, academicians and practitioners. The manuscript should be prospective in approach by dealing with the future solutions, whether legislative, judicial, or otherwise, to contemporary problems.

RSRR invites manuscripts **only on any one of the following issues or a combination thereof:-**

Interplay of Doctrines

Third Party Doctrine & The Expectation of Privacy

The Living Tree Doctrine & the Constitutional Silences

Doctrine of Non-Retrogression & Progressive Realization of rights

How essential is the Essential Religious Practices Test in the current scenario?

Analysing Religion through the Legal Perspective

Religion & Privacy

Patriarchy & Personal Laws in India

Notions of Constitutional Morality through the Phases

Ambedkar's Constitutional Morality: The strength of Anti-caste resistance and the Abolition of Untouchability for the Social Inclusion of Manual Scavengers

Constitutional Morality, as opposed to the Cultural and Religious Morality

Governance without Constitutional Morality: Aadhaar & Beyond

Constitutional Morality and Surrogacy

Freedom of Speech and Constitutional Morality

Need for favourable Judicial Values for maintaining Constitutional Morality

Gender Justice

Should Marital Rape be an exception to Section 375 of the IPC, in light of the changing Constitutional morality regarding women rights?

The interplay of Religion and Feminism.

Changing paradigms of Transgender Rights, and the need to address the gaps in laws relating to transgender community.

Gender Justice & Constitutional Morality; At Odds?

SUBMISSION GUIDELINES

Submission Categories

The RSRR invites papers under the following categories:

- Articles (5,000 to 10,000 words)
- Short Notes (3,000 to 8,000 words)
- Case Comments (3,000 to 5,000 words)
- Normative Law Articles (3,000 to 5,000 words)

Articles: A comprehensive and thorough analysis of issues related to the theme of the Journal. The word limit for articles is between 5,000 to 10,000 words.

Short Notes: These should contain brief, terse and pointed arguments revolving around a specific, current issue or an issue of importance which may have not received due research. The word limit for short notes is between 3,000 to 8,000 words.

Case Comments: An academic writing that analyses or is a critique of a recent case. The word limit for commentaries is between 3,000 to 5,000 words.

Normative Law Articles: The Law Review will explore the opinion of students relating to the specific legislations involved in the theme of the Journal. It seeks to bring out a student's view on how a particular Legislation or Legislative Provision should have been drafted to bring out clarity into the law. The article must first state briefly the Legislation/Legislative provision and then suggest what changes can be adopted in it. Should you have reason to believe that the particular legislation requires some amendments, you are welcome to DRAFT and/or AMEND the provisions or you can re-draft the entire law if so, be the requirement. Arguments must be logical and can take into account aspects such as Sociological, Political, and Economic implications of the law. Word Limit shall not exceed 5,000 words.

Instructions for Authors

All submissions must be in Garamond, font size 12, Spacing 1.5.

All footnotes should be in Garamond 10, single-spaced and should conform to the Standard Indian Legal Citation. (Get your free copy from <http://www.silcmanual.org/> or mail at rslr@rgnul.ac.in).

Margins: Left 1.5 Inch and Right 1 Inch, Top 1 Inch and Bottom 1 Inch.

All the word limits are exclusive of footnotes.

Co-authorship is allowed up to 2 authors.

All submissions must be accompanied with an abstract of not more than 10% of the word limit subject to a maximum of 200-250 words.

The paper should be accompanied with a covering letter specifying the author's name, designation, institute, contact number and e-mail for future reference.

All entries should be submitted in .doc or .docx format only.

The papers must be e-mailed at **submissionsrslr@rgnul.ac.in**, with the subject **“Submission for Volume 5 Issue 1 – Type of Submission (Article/Short Note/Case Comment/Normative Law Articles)”**.

The author(s) bear sole responsibility for the accuracy of facts, opinions or views stated in the submitted paper. In case of any gross plagiarism found in the contents of submitted paper, the Manuscript shall be subject to rejection.

Submission Deadline

The Last Date for submissions is 10th February, 2019 by 11:59 P.M. (Indian Standard Time).

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ABOUT RGNUL STUDENT RESEARCH REVIEW (RSRR)

The RGNUL Student Research Review (RSRR) Journal is a bi-annual, student run, blind peer reviewed journal based at Rajiv Gandhi National University of Law, Punjab. It is the flagship journal managed by the students of the University. It has been founded with the objective of facilitating arguments in black and white. Legal Research skills form the core of the learning process in any dimension of law.

The RSRR Journal aims to publish comprehensive treatments of subjects (“articles”), written by law students as well as shorter pieces, commonly called “notes” and “comments”.

Normative law articles form a major component of the RSRR Journal. Legislative Bill Drafting is one of the novel and the primary areas which it aims to cover. Ambiguous provisions in the law are a cause of concern amongst the legal community. The RSRR Journal aims to seek the opinion of student researchers and provides the option to DRAFT and/or AMEND the existing law.

The RSRR is proud to share that its Journal is presently published by Eastern Book Company (EBC), a very reputed publishing house in India.

Further the RSRR has also come out with “RSRR Blog Series” which publishes blogs on specific and different contemporary issues of law.

Our Works

RSRR Journal has come out with various Volumes on different themes as follows:

- Volume 1 Issue 1: “Intellectual Property Rights”
- Volume 1 Issue 2: “Competition Laws”
- Volume 2 Issue 1: “Public International Law”
- Volume 2 Issue 2: “Taxation Laws: Contemporary Issues”
- Volume 3 Issue 1: “Contemporary Issues in Alternate Dispute Redressal Mechanisms”

The following Issues of the RSRR Journal are in the process of publication and would be published shortly by EBC:

- Volume 3 Issue 2: “Constitutionalism: Revisiting the Grundnorm”
- Volume 4 Issue 1: “Into The Rabbit Hole Of Blockchain- Legal Issue Surrounding Internet 2.0 Revolution”

RSRR has also come out with a special edition on “Law and Technology”.

RSRR Blog Series has come out with various Issues on different themes as follows:

- Issue 1: “International Law and Espionage”
- Issue 2: “Right to Privacy: Addressing the Concerns”

- Issue 3: “Goods and Services Tax (GST)”

-Issue 4: “Data Protection Laws: A Cross Jurisdictional Analysis”.

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ABOUT RGNUL

Rajiv Gandhi National University of Law (RGNUL), Punjab, was established by the State Legislature of Punjab by passing the Rajiv Gandhi National University of Law, Punjab Act, 2006 (Punjab Act No. 12 of 2006). The Act incorporated a University of Law of national stature in Punjab, thereby fulfilling the need for a Centre of Excellence in legal education in the modern era of globalization and liberalization. RGNUL started functioning from its Headquarters-Mohindra Kothi, The Mall, Patiala w.e.f. 26 May 2006. The University acquired approval of the Bar Council of India (BCI) in July 2006. The University also got registered with the University Grants Commission (UGC), New Delhi under Section 2(f) of the University Grants Commission Act, 1956 and has been declared fit to obtain grant from the (UGC) under Section 12-B of the UGC Act, 1956.

The University has also set up Centre for Advanced Study in Criminal Law (CASCL); Centre for Consumer Protection Law and Advocacy (CCPLA); Centre for Advanced Study in International Humanitarian Law (CASH); School of Agricultural Law and Economics (SALE); RGNUL Institute for Competitive Examination (RICE); Bureau of Information for Study Abroad (BISA) and Directorate of Distance Education (DODE). The objective of these Centres is to undertake advanced study and research in the emerging areas of the respective fields, independently or in collaboration with professional institutions at the national or international levels; to bring about publications and produce study material in the respective fields of knowledge; organize seminars, workshops and conferences on contemporary and significant issues. Besides, there is an IGNOU School of Law functioning from Mohindra Kothi, the Mall, Patiala. The University has set up a Legal Aid Clinic under the aegis of Punjab Legal Services Authority. The University has also set up the Internal Quality Assurance Cell (IQAC) as per UGC guidelines.

RGNUL is also a member of a number of professional organizations of national and international stature like the Asian Law Institute (ASLI), Singapore; Commonwealth Legal Education Association (CLEA); Forum of South Asian Clinical Law Teachers (FSACLT), Goa; Indian Economic Association (IEA); Indian Institute of Comparative Law (IICL), Jaipur; Indian Institute of Public Administration (IIPA), New Delhi; Indian Law Institute (ILI), New Delhi; Indian Political Science Association (IPSA); Indian Society of Criminology (ISC), Madras; Indian Society of International Law (ISIL), New Delhi; Institute of Constitutional and Parliamentary Studies (ICPS), New Delhi; International Association of Law Schools (IALS), and International Law Students Association (ILSA), United States of America, Legal Information Institute of India (LII of India), Shastri Indo-Canadian Institute (SICI).



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