

EDITORS' FOREWORD

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As Editors-in-Chief, it gives us immense pleasure to present Issue 3 of Volume 4 of the Comparative Constitutional Law and Administrative Law Quarterly. At the onset, we would like to thank our Editorial Board for their contribution and dedication. Their determination and unparalleled dedication to the cause of widening our discourse on comparative constitutional and administrative law. As the first printed copy of the journal, this edition will mark a stepping stone. While we hand over the reign to the next editorial board, we hope that the journal attains new dimensions in its upcoming years.

Keeping in mind the upcoming General Elections in India, this edition covers articles which discuss the drawbacks of foreign political-funding and the nature of powers of the Election Commission. The edition also ponders upon questions pertaining to realities of legal assistance in India and the unprotected zones of freedom of speech and expression.

In '*Dancing in the Dark: The Right to Effective Legal Assistance in India*', Mr. Abhinav Sekhri takes up the cause of availability and implementation of effective legal assistance in India. The author suggests that despite there being a clear basis for one to claim a right to effective legal assistance, yet there are no clear test(s) laid out to regulate the ineffectiveness therein and there is lacuna in remedies available. To drive his point home, the author discusses the '*major signposts*' concerning the right to effective legal assistance in India. In order to do so, the article compartmentalizes the developments into two phases i.e. 1950-1978 and 1978-2018. Citing the example of *Mohd. Hussain (I) v. State*, the author argues that the Supreme Court departed from its approach in the former period. The Author cautions against the "I know it when I see it" approach of the court. In light of this, the article suggests that there is a doctrinal deficit. At the same time, it ponders over the questions, whether through the Supreme Court's application of the doctrinal test in *Strickland v. Washington* the gap has been filled. The article also discusses how the *Strickland test* juxtapose the Indian jurisprudence. In a word of caution, the author highlights the difference between the system and practices in the West and the East. The author contemplates possible reforms to the system, in light of the *Strickland test*.

In '*Freedom But Not Really: The "Unprotected" Zones of Article 19(1)(a)*', Mr. Shrutanjaya Bhardwaj starts with the proposition that the freedom of speech granted under

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Article 19(1)(a) of the Constitution of India, it may only be restricted vide the mandate of Article 19(2). The author identifies certain “problematic” judgments of the Indian Supreme Court, which have held that the freedom of speech shall not be applicable in certain circumstances. As a result, in practice the freedom of speech in India unknowingly reflects the U.S. First Amendment, which highlights certain “unprotected” speech. According to the author, the aforementioned problematic judgments are inconsistent with the Indian constitutional jurisprudence and tradition. The article argues against judicial discretion with regards to restriction on free speech. The Author concludes by arguing that, what may not be included under “reasonable restrictions” vide Article 19(2) shall not be restricted.

In ‘*Exploring the Duality of the Election Commission and the Scope of Judicial Review*’, Ms. Sregurupriya Ayappan starts with the premise of the existence of multiple powers, which the Election Commission of India bears. She denotes the duality of Commission’s powers with regards to disqualification of members and dispute relating to election symbols. Even though both may be regarded as *quasi-judicial*, the distinction lies in the test of whether the Commission bears the *trappings of the court*. The finality of the order in the two scenarios is also deemed essential for the determination of nature of the Commission’s powers. The author also draws a distinction between the two functions, in terms of the discretionary powers that lie with the Commission, when adjudicating upon the two. Among other things, the article discusses whether the state’s inherent powers to decide on two matters have been transferred to the Commission or not.

With the Supreme Court of India hearing public interest litigations challenging *inter alia* the 2016 and 2018 amendments to Foreign Contributions (Regulation) Act and the upcoming General Elections, we present ‘*The Dangers of Allowing Foreign Political Contributions: A Theoretical Perspective*’, wherein Mr. Vasudev Devadasan and Ms. Asmita Singhvi argue that allowing political contributions from entirely foreign-owned companies, retrospectively is alarming. The authors discuss the importance of legitimacy that is attached to the electoral process. They also discuss the negative impact on a constitutional democracy, in case the legitimacy is lost. The article discusses the drawbacks of allowing foreign contributions in the manner prescribed by the Parliament, which shall be detrimental to the interests of the constituents. The article discusses the impact of such foreign contributions on the right of political equality and freedom of speech. The authors suggest that though it is required that we strike a balance between the afore-mentioned, yet, the weight must be tilted towards the freedom of speech. The article also considers the role of members of a political community and their

interests compared to that of the foreign contributors. By doing so, the authors establish a distinction between the two groups and argue as to why allowing the latter to dominate (via foreign political contributions) would have adverse impact on the former and the constitutional democracy as a whole.

On behalf of the Journal, we extend our sincere gratitude to our Chief Patron, Prof. (Dr.) Poonam Pradhan Saxena, Director of the Centre for Constitutional Law and Administrative Law Prof. (Dr.) IP Massey and the esteemed members of the Advisory Board. We truly cherish the association with our readers and we hope that they would continue to contribute in the form of comments and criticisms, towards this issue.