

Transcript: Session #1 - Research and Writing Series: Constitutional Law Essays

Host: Okay, so thanks for coming. Um, so the purpose of this session, like Praddosh was saying, um, so it's two things mainly. One is that the call for Seervai (Essay Competition) came out recently, and we thought that there might be some value for you, um, if I described my experience writing Seervai (Essay Competition), and um, some of the challenges that I faced, some of the mistakes that I made and things like that. And the second is writing more generally in constitutional law. Um, I've had some questions that I think some of you had, um, so I'll address those as well.

So the first part, I'll describe how writing Seervai (Essay Competition) was and why all of you should write it. And the second part, I'll talk about um, writing generally and um, I'll address your questions. So if you have anything in between, you can just... if you have any clarifications, you can just interrupt me and ask. And if you have anything else, then you can ask me in the second half of the session where I'll talk about writing generally.

Um, so I wrote Seervai (Essay Competition) when I was in my fourth semester, and that was my first time writing anything um, that was more than a college project. Um, for us, the call came sometime in Feb, in mid-Feb, and our deadline was sometime in mid-May, so I had about three months to do it. Um, so the topic that year was "Does India need a stronger fourth branch? Does India need stronger fourth branch institutions?" And I didn't know what fourth branch institutions were, um, so I started completely from scratch.

So, fourth branch institutions are basically these administrative institutions that fall outside the scope of the three classical branches. So you have the executive, the legislature, and the judiciary, and the fourth branch is the set of institutions that doesn't fit that... it's not basically... it's basically not those three institutions, it's these other institutions which um, are engaged in administration but which cannot be any of those three institutions because if those three institutions performed these functions, then there would be some conflicts of interest. For example, you have um, institutions like the Election Commission, the Comptroller and Auditor General, the Enforcement Directorate, the Lokpal, things like that.

So the reason that you can't assign these functions to, say, the executive... so say, for example, with election management: if the executive is given the function of election management, it can make election timelines and stuff to its own advantage, right? If you give it the um, function of auditing, why will the executive hold itself accountable, right? So there's problems with conflicts and convergences of interest, which is why there's a set of functions that you assign to these specialist bodies. So you have the three generalist branches—executive, legislature, judiciary—and then you have these specialist bodies, which is the fourth branch institutions, right?

So the question was: does India need stronger fourth branch institutions? So my first three weeks or so, I just spent reading everything that I could find on fourth branch institutions, and luckily there's not too much. So there's a book—there's one book—and there's a bunch of papers. Um, so I went through... I read through all of that, and I also went through literature that they referred to that um, and about each administrative institution. So I read books about the Election Commission, about the Comptroller and Auditor General, so about each individual institution I started reading books. And I did that for about three weeks.

And then I came back to the question: "Does India need stronger fourth branch institutions?" And then you break that down. So the question tells you quite a bit because one, it tells you that it wants you to limit the scope to India: "Does *India* need stronger fourth branch institutions?" And then it tells you that it asks you whether the institutions should be *stronger*. Now, what is a strong institution? So in the context of the fourth branch, I took "strong" to mean: should these institutions be independent? Should they operate autonomously? Should they resist attempts by the executive to take over their functions? Right? So that was my definition of "strong." And of course, they don't define "strong" for you, so you have to arrive at that by yourself.

And then finally, "fourth branch institutions." So how do you define the fourth branch? Is NLU Delhi a fourth branch institution? So um, there's questions like that. That part I chose not to engage with too much, so I decided that I would um, accept the definition that had been... accept the set of institutions that was generally accepted and that's what I went with. I didn't get too much into defining this.

So those are choices that you have to make. So this year, the question is about GST. You have to figure out what the question says, you have to interpret the question, and then you have to define your scope. You have to say, "I'm going to get into *these* questions and I'm *not* going to get into *this* set of questions," right?

Now, the general literature on fourth branch institutions, when it talks about strengthening fourth branch institutions, talks about how should you design these institutions. So it's about appointment processes—should you have appointment processes which cannot be influenced by outside actors, by the executive? Should you have um, guaranteed career paths, so that the executive cannot threaten to take away your careers? Should you have high salaries, so you're not tempted by corruption? Right? So things like that.

And because most of the literature is in that direction, I also started researching and I started writing in that direction. Then as I read more about each institution, I realized that the relationship between design and how these institutions actually operate is a little weak, right? So I started to realize that, for example, the Election Commission sometimes functioned arbitrarily, sometimes it did its own thing, sometimes it complied with the executive. So none of that was related to its design. It had the same design throughout, but it did these different things. Same thing with all the other institutions—with the RBI, with the um, Comptroller and Auditor

General—they all had phases where they exercised a lot of independence, they all had phases where they didn't.

And I started to look at whether design features... whether the design of the institution really influences the independence of the institution, right? And then I... so you can see that tension in my paper. So it's good that you have the version that is out on the website now, because all the mistakes I made are there on that. Um, so I started in the direction of design features and I started saying we need stronger design and that's how you um, secure strength for the fourth branch. And then suddenly I stopped and I said, "Okay, that doesn't really work because design goes only so far, after that there's some amount of arbitrariness, and what do you say about that?"

And then I realized that there's a pattern. I realized that when you have stronger political um, when you have a stronger political executive, fourth branch institutions become weaker. When you have coalition governments, when the executive is weaker, you have a stronger fourth branch institution, right? So when I... and that's true even with the judiciary. So um, a lot of these landmark judicial independence cases came in the coalition era. So um, when I realized that, I sort of changed my argument and I made it about how design features cannot guarantee independence and about how they can only do so much—they can create conditions where you can exercise independence but they cannot secure independence.

Um, so then I reached this um, so this I think was the weakest part of that paper and if I could go back I would not write it like that. Um, I talk about this thing called institutional morality there. And how I reached that is... so I started... so when we're told to write papers, the way we're told to do things is identify a gap, find a solution, right? So that is what most of your professors will tell you, that's what a bunch of your seniors would tell you. Now because I was looking for those solutions, I was like, "Okay, since design doesn't influence independence, what will influence independence?" And my conclusion was it can only be the people in the institutions. That will... so when you have strong leaders, they are able to resist the executive, they're able to exercise independence. So I said you have to develop a morality in the institution and you have to develop a culture in the institution that encourages this sort of exercise of independence. Um, that's a... not a great argument but at the time, um, that's what I could think of as a solution.

Um, now if you are writing this paper, it would make sense for you to reach out to as many people as possible. So um, I had my paper reviewed by a professor here at NLU Delhi, um, I got great comments and I got some insights on how I should... um, and I got... so we went through every argument, we went through how I should structure it, whether I should move some stuff away, whether I should remove a section, things like that.

And then I reached out to a um, famous professor called... his name is Tarunabh Khaitan and he's written a lot about um, fourth branch institutions. And he responded... I just... I didn't send him my paper because I didn't think he'd read it, so I just told him my argument in a paragraph and he responded in about 10 minutes and he told me that the argument was bad. Um, he... he said, "I

don't think it makes sense to make this argument, um, I get what you're trying to do but it doesn't work." And um, then I realized that I hadn't communicated my... my argument properly and I clarified and then he was nice about it.

Um, and then I wrote to a... I was told by someone in my family that there's this senior advocate in Karnataka who responds to emails. So um, they didn't know him, I didn't know him, I just wrote to him and he went through each word, he put commas in my paper and things like that and he sent it to me. And of course I had friends review my argument throughout and check whether it makes sense and things like that.

When you're reaching out to people, make sure that you've done a fair bit of research, otherwise they will not respond to you. Um, make sure that you've engaged with their work in the area, not just that you've engaged with work in general. Um, so yeah, that's about it with writing SIRY for those of you who are planning to do that.

For me, the timelines were basically that I started in mid-Feb, like I told you. I started only in the last week of Feb. Um, then for about three weeks I read whatever I could. By the end of March, I had um, some idea of what I wanted to say. And then I drafted through April. That's when I had... I changed my mind, things like that. And by the end of April, I had a draft ready. And then that's when I started sending it to people. Through April I sent it, I revised my... through the beginning of May I sent it and stuff, and then my deadline got extended to June so I had a lot of time to make revisions. This time I think your deadline is sometime in May... yeah. So I expect that it will get moved to sometime in June. I mean, don't count on it, but I do expect that that will happen.

Um, so then sometime in August, I received a call from NLS and they told me that I would have to do this interview with a professor at NLS. And um, I don't know if you guys know him—Professor Arun Thiruvengadam took my interview. Um, so this was an hour-and-a-half long interview where he went through every argument of my paper and asked me why I made it and why I didn't make a different argument. And he pulled out random footnotes. For example, I have this footnote where I cite a professor named Vicky Jackson and she's written about certain kinds of institutions. And he told me that he was in a conference with Vicky Jackson when she was writing this paper, and he said, "In that conference, we discussed this other argument. Why didn't you think of this argument?" So it was that detailed and... but it's a great experience if you're... writing for the first time. And they're nice about it because they know that you're... they know that you're second, first years um, writing for the first time and they account for that, so don't worry about any of that.

In general, if you're... if you're interested in writing or if you think you might be interested in writing, it makes a lot of sense to try this competition out. Um, I had never written before, like I said, um, and even... so only one of you can win because there's only one gold medal here. So um, even if you don't win, one, you get to send your piece out to other places and you can try to

get it published elsewhere. And um, even if that doesn't work out, there's a lot you learn in trying to write a 10,000-word paper. So there's just value in doing the exercise for the exercise itself and not to get anything out of it, right?

So um, I think, I mean for anyone who has the time, do try it out, write the paper. Um, there will also be other strands of arguments that you will not explore in your paper but that you can reserve for the future and you can write about that. Um, so um, with my paper I wrote a similar argument later and it got published in the NLSR online. So there I just said, when you're having these conversations about fourth branch institutions, be careful about how much you emphasize on design, right? Because I was reading a lot of articles and papers where people just say, "This thing, executive is doing it, um, it's too... it's controlled by the executive, therefore we need a fourth branch institution to take over." And because... and I say fourth branch institutions are not necessarily independent, so um, be careful how much emphasis you put on that, right? So be careful about making that claim.

Now, about writing in general: I think um, a bunch of you have sent your papers to me, I've had the chance to review them, and in general from reading your papers, I think that often we have trouble with choosing a topic. And for that, um... so you have to decide between... you have to decide on the basis of one, how long you want your... how long you want your commitment to be, how much time you're planning to put into it, things like that.

A good thing to start with would be to go to these pages... I've said this before: go to websites like Lawctopus and stuff and they have calls for competitions quite often. Look for... so for example, if you're interested in constitutional law, look for consti essay competitions and pick up the topics that they have, because they've done the work of looking at topics where you don't need to read this whole load of literature, but there's also sufficient scope to make a good argument, right? So um, it makes sense to go to those places and try to pick up a topic from there.

And it um, when you're picking... when you're picking topics and when you're making arguments, try not to pick a side before you start writing. Because quite often um, I see that you ignore good arguments because you're trying to get your version out and... so you're not advocating here, you're not arguing before a court. You're trying to engage honestly with other people's work, right? So you have to concede where there's a good argument and you have to take it into account. So you don't lose anything by saying, "Here's what I think but that's a great response," right? So try to engage with work as honestly as you can. Don't go in with an argument and try to make the best version of that argument, um, be willing to engage, be willing to concede, be willing to change your mind.

Um, with structuring your argument, like I was saying, we're often encouraged to um, do a "here's a problem, here's a solution" kind of format. And that is not what is expected of you generally when you're trying to publish. When you're trying to publish, the expectation is just

that you will take a position, not that you will find some solution that has never been found before, right? So the idea is that you engage meaningfully with a topic and you say, "I've reviewed what everybody is saying about it, and here is where I stand in the debate." That's all you need to do. You don't need to um, you don't need to come up with something new, you don't need to... so don't look for novelty in that sense, just look to take a position.

Um, and a um, sort of technical point but um, a sort of clerical point but as one thing that often happens is people don't cite sources. So anything, any fact you are stating has to be cite... cited. And especially as students, you're expected... you don't have the credibility, none of us um, has the credibility to just say something and have it be accepted, you know? Even if you're stating a fairly obvious fact, make sure you find a source and you cite it. Any fact, anything that is not coming from your own head, has to be cited.

Um, and I think um, there's often... a lot of us often think to um, plan to convert our projects into papers. Now, I have never found it um, I've never found it easy to do that because when you're doing your projects, one, you're working on your professor's expectations, you're working on their timelines, you're working on their... you're working within the rules that they impose on you, the word limit, all of that.

So um, I think it makes sense to... in the context of projects, I often pick topics that I think they will find acceptable and um, because your goal there is not just to write a good paper, your goal there is also marks and stuff like that. So when that is the case, I think um, if they like a paper that... if they like a topic that you also like, then do your research and um, read a lot about it. But still, I would say try to write after your submission, right? So submit the... submit your paper and then revise it or rewrite it and then send it for publication. Don't try to combine those two things because it becomes quite tricky in terms of timelines and word limits.

Um, yeah, that's all I have. Does anyone have any questions?

Audience Member 1: I had a feedback from *Oxford Journal of Legal Studies* last week on submission of comment on my work.

Host: Great.

Audience Member 1: What they said to me was um, it's again an constitutional law essay. You finally having straightforward, simple argument, but it seems there is a three prongs, and three prongs are looking very distinct to us and which can be a different essay all together in original sense. I want your guidance on this, stitching it together in a single prong.

Host: So they... you got comments from them saying that you should put it into three prongs?

Audience Member 1: No, I have them in three prongs.

Host: Okay.

Audience Member 1: They are telling those three prongs are reading like three distinct arguments.

Host: Right, okay.

Audience Member 1: Though they are like a sub-submission to the main argument that I'm trying to make.

Host: Okay.

Audience Member 1: I want to know the stitching it together in a bit...

Host: Okay. So do you think that your three arguments contribute towards your main argument? Are you able to see that clearly?

Audience Member 1: Yes.

Host: And when you read through it, do you see that um, it does that? Are you able to...

Audience Member 1: I got the perspective of what they are trying to say after they comment on it.

Host: Okay. So do you think it's a problem in the way you're putting it or do you think it's a problem in the idea? What do you think it is?

Audience Member 1: Um, maybe in the way I've put it up.

Host: Okay. Then it's probably a paraphrasing issue. So you should probably phrase it to sound more coherent, right? So things like use sign-posting: say, "I have referred to this before and here is how this new point continues" or how it... how it contributes to that, right? So um, it's if it's conceptually sound—so if you're able to see conceptually that everything is contributing to a common argument—then it's only a matter of putting it convincingly enough and showing that connection. So don't um, don't worry too much about using more words and saying, "Here's how these things are connected," you know? So you can add a couple of paragraphs in between and show the connection. That should work. I mean, if you're not able to do that, you can come to me later and I can help you do that.

Audience Member 2: Yes, one thing is about like this topic this time we have is decadent making of the GST and everything. So firstly, we have absolutely no, no information about GST, single market, anything. Even for the books like, you would not get in the first... like how to just initially begin when you don't have any knowledge? Secondly, um, like even for the consti projects if we want to do, how to decide the topic? This here it is given, and here also if we want

to delve into some particular argument, should we go on liking, like which we like to delve upon, or something which we think that might be stronger point to delve upon?

Host: Okay. So first on this year's SIRY topic: um, you don't necessarily get insights only from Indian law, right? So the GST type of system doesn't exist only in India. So you can look for um, federalism-based arguments from outside. Um, you can look for arguments on a common tax from elsewhere. Um, so I'm sure there are people in India who've also written about it. Um, look for what kinds of sources they have relied on, um, follow those sources. And if you're not able to make an argument directly, you can make one indirectly, right? So you can sort of brainstorm and figure out what could a challenge be? And look for literature related to that. You won't... even if you don't find a direct challenge, look for literature related to how you could phrase it, what would support this, and try to go to that. Right? So um, often you don't get that direct piece on it where you can just get into it directly. I had that with fourth branch luckily, but you will not always have it. But you can approach it indirectly. You can start with the concepts: start with what is GST, what is... what does a tax for the entire nation do? Um, what is a single tax system? Um, and um, what are the constitutional challenges that can be raised? Start with that, right? And then start from the other side with what is federalism, how is GST related to federalism at all, and is there any tension there? So start conceptually.

On your second question about choosing a consti topic: um, so how has it happened this time? Have they given you modules to...

Audience Member 2: Yeah, they've given us four or five modules.

Host: Okay. Um, so one thing that could help is look at ongoing litigation or recent judgments from the area. So if it's things like constitutionalism, it is more vague. So then you have to um...

Audience Member 2: Like, it's right to equality, right to freedom of speech, judicial review—they are very broad topics.

Host: Right, but with those things you often have um... so for example, you can just pick up something like Gautam Bhatia's blogs, right? And um, you look at relatively recent blogs, you look at what's going on in free speech, what's going on in um, equality. And either you can pick up recent judgments and analyze them, or you can just... if you're... you can just talk to Neeraj if you're not sure about what to start with and I'm sure they'll be able to help you out and they'll tell you what to start with. And that makes sense. Even if you choose your own topic or you're thinking about something, always go to your professors and discuss your project topics because they will likely have thoughts about it. They will not just say "Go ahead," right? So um, you can... it makes sense to start with something that's contemporary and then go back to concepts from that and then take that to your professor.

Audience Member 3: You told that we have while we are writing we have to took a stance and not create something new or give a solution. But if I want to write on something like corruption in a particular institution, so there I have to create something new or give a solution.

Host: Not necessarily. So if you're writing about corruption in an institution, you can just say that these are the fact... features of this institution—this institution is designed such that people are incentivized to do corruption. You can say design of this institution is allowing people to do corruption, right? So you don't have to um, say, "Okay, but here's how you stop it." You can just say this factor is allowing people to engage in corruption and that is a problem, and that will be enough because you're taking a stance.

Audience Member 3: What if I want to use...

Host: No, if you want to give a solution, obviously you can. I'm not stopping you. I'm saying it's not necessary.

Audience Member 3: What if I want to...

Host: If you want to give a solution, obviously you can.

Audience Member 4: So, when you were writing your paper for this competition, uh, mid-way through writing you realized that everything wasn't about design, it was also about the people in the institution. So, how much of that correction do you let reflect in your paper? Do you backspace it or do you let it show in your paper?

Host: Um, so obviously when you um, decide... when you change your mind like that, you don't completely shift, right? It's just sort of a realization that you hadn't considered something. So um, depending on how big that realization is, you will have to make changes. So for example, when I realized that um, so I have a part in my paper which says that um, it's not about political parties, it's about designing good institutions, right? And I say that um, irrespective of what party is in power, you... you can't say that... for example, now you can't say that current political government is taking over ECI, that's why I need a strong ECI. It's not about what is going on right now, it is about general... generally designing a good system. I had made that argument. And then when I realized later that it's not about design, I started my subsequent arguments were, "No, no, but it's not about designing good systems because even then there are problems." And both those arguments stayed in my paper. And they are a little... there is a little contradiction and if someone reads them they'll think I'm contradicting myself, right? So um, you have to do a little bit of work to make sure that... so it depends on what kind of realization you have. If it's major, then you'll have to backspace a lot and you'll have to rewrite it. But if it's relatively minor, you have to go back and change things to make sure that it still makes sense. So is there anything that I've already written that contradicts what I think now? Right? So it would just take reading your paper two or three times to figure it out.

Audience Member 4: Also the correction also helps you relate with the reader better because they would also start with the same position as you in the beginning of the paper, and then you take them somewhere else.

Host: Yes, so you have to describe what is already there. You have to tell them, "Here's the dominant literature," but here's what I realized about it. So you have to do that. But it doesn't make sense to do it in a way that you start arguing for a position and then you start arguing against it, that doesn't make sense. So you have to make sure that you're consistent.

Okay, any other questions?

Audience Member 5: It's going to sound like a really stupid question, but I'll ask it anyways. What do you do when you have to write something and you just... you really don't like what you're writing, but you have to write it? In the sense, okay, um, I'll split it into two. One is you have to write something that you don't like writing about, like let's say in a project, okay, I have to write about some weird concept, okay, I'm not a fan of this but I still have to write it. And another idea is you really like an idea, but you know at the end of the day, one, there's better ideas you can write on, and two, there's some flaw in your idea—the idea itself, not in your writing—that you cannot rectify whatsoever. So like, do you just cope with it, or you say, "Okay, I'll write something else"?

Host: Well, if there's a flaw in your idea that cannot work, then you stop writing. Um, but for projects you just... you just do it because often your projects are boring and it's just you have to finish it. But if there's... I mean, if you cannot make an argument make sense, then it's time to stop writing and it's time to figure out something else. Yeah.

Audience Member 6: So with respect to a lot of technical subjects, like for example, um, property or administrative law, um, I mean I've heard you say that it's always better to sort of try and understand um, the philosophy of everything in- in terms of where it's coming from, how it is and why it is the way it is. Um, would you recommend the same approach even for technical stuff, like technical subjects?

Host: Yes, because subjects like property and admin law have a lot of philosophy. So I mean if you're- if you want to get interested in them, then yes, that's what you should do. But if you're trying to write a project, then that's not necessarily what you should do. You should just understand what you're writing about. So if you're trying to make property interesting for yourself, it would probably help in to get- help in- help in just getting into why things are the way they are, right? So um, I can't think of any great property law courses right now, but there are some course outlines that are quite good and they start with theory of property—should it exist at the first place?—and then relating that to specific sections of the TPA, things like that. With admin again, it's a pretty boring subject um, but there is some interesting theory there. But you can't ignore the technical parts of it, and theory will not always make the technical parts

interesting. So you can make the subject as a whole a little more interesting for yourself, but you will have to do the technical parts.

Audience Member 7: Yes, um, like sometimes you want to write on a topic which is a little mainstream, like for example let's say child rights and things like that, and you make an argument, you- you develop a niche, but you still think that there the- this has a lot of literature available and arguments which you will probably make there's no originality. And that goes against I think because I've read some editorial board's marking scheme or whatever, like the scheme, it has a very big section of originality. So should you go about the topic you really like, but it is not original? How to figure that?

Host: So um, it helps to frame your... the question that you're trying to answer. Try to frame that specifically, right? So um, with child rights, for example, if you're able to find a um, not just find a niche but also find... frame a question that's not been asked before, or if you're able to engage with the existing literature and say "I have a new perspective," good, you can do that. But if you're not able to do that—and often you... it's difficult to do that because people have been writing for 20 years, what can I come and say in two months?—um, so when that happens, it's good to just frame it in a way that's not been asked before. And um, it also helps to... so when you say "I'm writing about child rights," I don't get much out of that, right? So um, if that's how the editorial board reads it, they think "This is a paper where they're going to talk about child rights." They will automatically...

Audience Member 7: No like um, for example if you write anything about child rights, or maybe topics like women empowerment or something, the more of the arguments are related to mostly one perspec- in the sense it come- the arguments are already made. Um, those arguments which you think are unique, they might be already made, and you might not have read that much literature to know that they're already made out there.

Host: That's true if you're making a theoretical argument. So if you're trying to talk about feminism in general or if you're trying to talk about child rights theory, then that is usually true. But if you're trying to say "I'm going to apply this lens to this particular new law," then that will have happened before, right? So um, it's about finding a space where you can apply existing theory well, existing arguments well. So all of that is novelty. Originality comes even if there's an- there's a news update that um, hasn't been written about before. For editorial boards, that counts as originality. So um, yeah, it- if you're trying to make a theoretical argument, it does become difficult. So if you're trying to make an argument about what feminism is, then you have to read a lot. Yes.

Okay, any other questions? All right, thank you.