

EDITORIAL NOTE

With the sustained resumption of offline functioning and are turn to operational normalcy, the NUJS Law Review had the honour of collaborating with a brilliant set of authors who, in this issue have contributed novel argumentation and detailed research across a diverse range of subjects and themes. With the tireless support and immense efforts of its associate members, the Editorial Board is proud to announce the release of Volume 15(2) of the NUJS Law Review.

Vasu Aggarwal and Pratyush Singh in their article titled “Need for Exemptions for Trade Unions under Indian Competition Law” explore the dichotomous relationship between the objective of trade unions to foster collective bargaining and the philosophy of Competition law that proscribes collective action in trade. The removal of the previously provided exemptions to trade unions under the Competition Act, 2002 gives rise to a legally uncertain position that is detrimental to trade unions. In lieu of this legal uncertainty, the authors argue for the implementation of a three-step process involving the collaboration of the Competition Commission of India and labour authorities, i.e., Registrar and labour courts to identify whether a trade union’s actions support a legitimate purpose or whether the Competition Commission of India should inspect it from an anti-competitive lens.

Rishabh Mohnot and Hrithik Merchant in their article titled “§166(3) of the Companies Act, 2013: Filling the Gaps of an Incomplete Provision” analyse certain legal discrepancies present in §166(3) of the Companies Act revolving around the ‘duty of care’. The authors argue that the ‘duty of care’ of company directors should only be owed to the company, and not all stake holders, unlike the duty of good faith under §166(2) of the 2013 Act or the duty of care under the United Kingdom’s Companies Act, 2006. They further cement their argument on the requisite standard for ‘duty of care’. The authors believe the tort law standard of an objective reasonable man is the appropriate standard of care to be exercised in the Indian landscape, despite the existence and practice of varies standards internationally.

Debayan Bhattacharya, in his article titled “Analysing the Liability of Digital Medical Platforms for Medical Negligence by Doctors”, considers the rapid re-emergence of telemedicine in India following the COVID-19 pandemic, and the attribution of tort and vicarious liability onto digital platforms in the instance

of doctor negligence. Analysing the potential perils of applying the “perception-based test” in medical jurisprudence that is conventionally applicable onto hospitals, the author argues for the formulation of a distinct, three-part test that accounts for the varying nature of digital medical platforms, while simultaneously examining the relevance of the recent Intermediary Rules in the context of tele-medicine.

Ankur Singhal, in his note titled “A High Court Rendering a Supreme Court Judgement ‘Per Incuriam’ and ‘Sub-Silentio’: A Pressing Concern in “*Haris K.M. v. Jahfar*” analyses the recent Kerala High Court ruling with regard to the filing of review petitions after the expiry of the limitation period. Specifically, the author highlights the case being an instance of a lower court over turning a Supreme Court judgement, in the context of the historical use of the ‘per-incuriam’ and ‘sub-silentio’ exceptions with reference to the doctrine of *stare decisis*.

Sohini Banerjee, Shobhit Shukla and K.S. Roshan Menon, in their article titled “The Tokenisation Framework and its Privacy Discontents: Issues and Solutions” compare the creation of a tokenization framework by the Reserve Bank of India to protect financial information, with a broader regulatory model that examines data protection law as a whole.

The authors highlight the importance of a principle-based approach in juxtaposition with a piecemeal, prescriptive regulatory framework. Giving primacy to the consumer as the central stakeholder, the article argues for a more efficient data security regime.

With the belief that we will further build on our legacy of contributing meaningful and contemporary analysis to the landscape of legal scholarship with the release of this issue, we would like to thank our readers for their continued support. We extend heartfelt gratitude to the authors who have chosen to collaborate with us, and look forward to steadily working on the next issue of the NUJS Law Review.

Truly,

Editorial Board (2022-2023),
NUJS Law Review
Volume 15 Issue 2