

## EDITORIAL NOTE

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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 16(2) of the NUJS Law Review.

Amisha Sharma & Thejalakshmi Anil in their note titled ‘Consent in False Promise to Marry: Deceptive Sex and the Legal Knot’ add to the discourse surrounding false promise to marry cases by assessing the harms inflicted by such deceptive acts and exploring whether a civil remedy could effectively centre women’s agency within this context. The note challenges the prevailing notion that ‘vitiation of consent’ should serve as the litmus test for addressing these cases, as this criterion falls short in capturing the nuanced dynamics inherent to such situations and perpetuates harmful stereotypes and outdated norms. Furthermore, the note undertakes a careful analysis of Clause 69 of the proposed Bharatiya Nyaya Sanhita Bill, 2023, and highlights the potential shortcomings associated with criminalisation, such as intrusive legal proceedings and the possibility of misuse. The authors then look at the possibility of a civil remedy, highlighting certain advantages and disadvantages. The overarching aim of the note remains the elevation of women’s subjectivity in both the perception of such conduct and the ultimate outcomes of these cases.

Yash Sinha, in his paper titled ‘Constitutional Ecdysis: How and Why the Indian Constitution May Test its Original Provisions’ discusses the theoretical underpinnings of the Basic Structure Doctrine to conclude that living-originalism is the closest approximation to justifying the existence of the doctrine. By tracing the doctrine’s trajectory, the author asserts its significant role in permitting the safe ecdysis of constitutional parts. The author relies on the works of Professor J. Balkin, and Dr. S. Krishnaswamy to locate the relative priority amongst constitutional provisions. The author relies on living-originalism to rationalise the operation of the doctrine, by proposing that the distinguishing factor when two or more provisions come into conflict be the aspirational essence carried by certain provisions. This approach ensures that even as the constitution withstands certain transformative pressures, the Indian constitutional ethos is kept afloat.

In his paper titled ‘Revisiting Consent Under POCSO: From a ‘Fixed-Age’ Rule to a ‘Competence Based’ Standard’, Prem Vinod Parwani examines the rationale behind the Protection of Children from Sexual Offences Act, 2012, and its impact on minors. In doing so, the author presents a critique of the law arguing that judicial interpretations distort the concept of a minor’s consent, adversely affecting juveniles. In response, the paper proposes a novel approach based on a minor’s competence to consent, challenging the current overinclusive and rigid ‘fixed age’ rule. The existing ‘fixed-age’ rule, as examined in this paper, restricts young adults’ autonomy, hinders their developmental needs, and creates a judicial grey area, potentially leading to miscarriages of justice. The paper concludes by emphasising the need to evolve beyond the existing fixed-age rule and the need to adopt the proposed competence standard, opening avenues for further research on its psychological and evidentiary aspects.

Bhavyakriti Singh, in her note titled ‘Exploring the Impact of the Finiteness of Melodies: Future of Copyright Infringement Claims in Musical Work’, examines the multitude of copyright claims arising from the factors that influence the composition of contemporary music. The author’s argument attempts to answer whether such claims of copyright infringement should be taken seriously, in light of a finite number of possible harmonies, and how creation of marketable music inevitably taps into the pre-existing corpus for inspiration. The article suggests a liberal perspective in adjudicating such claims, in view of the complexity of musical creation and advocates for a nuanced understanding of musical work. In view of the Indian landscape, the author argues for importing standards from design law and recognising the inherent derivative nature of musical work, where originality is based on transformative ability as opposed to an uninspired creation.

In the paper titled ‘Exigency of an Overhaul in Forest Law: How the Forest (Conservation) Amendment Act, 2023, has Transformed India’s Forest Regime’, Garima Thakur discusses the recent amendments to the forest conservation laws in India. The Forest Conservation (Amendment) Act, 2023, (‘the Amendment Act’) has introduced significant changes to the Forest Conservation Act of 1980. The Amendment Act has diluted the forest conservation law regime in India by introducing multiple exemptions and definitional loopholes to circumvent conservation obligations. This paper seeks to critically analyse the fundamental changes that have been introduced by the Amendment Act, through an assessment of the scale of the potential consequences. The paper also seeks to present the problems inherent in the mechanisms adopted for recording forest data of India, along with modifications that have the potential to improve its qualitative character. Furthermore, an argument for overhaul in the forest law regime of India has been made, in light of the observations made by the author. Certain indispensable

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attributes of an ideal forest conservation law have been elaborated upon to advance the need of a new forest conservation law.

Lastly, Prabhav Sharma & Armaan Angra in their article titled ‘Beyond the Monist-Dualist Dichotomy: The Case for a Dynamic Spectrum’ attempt to critique the prevailing understanding of the relationship between municipal and international law across jurisdictions. The authors attempt to contest the notional dichotomy of ‘monist’ and ‘dualist’ systems, instead suggesting that most states lie somewhere in between, incorporating characteristics of both extremes to an extent. The authors contend that the incumbent ambiguity is ubiquitous and irrespective of whether a state’s constitution is written or unwritten. The paper suggests that the prevailing position is better explained by placing jurisdictions on a monist-dualist spectrum relative to each other. It further notes, with specific reference to the relationship between the European Union and its member states, the role of constitutional courts in undertaking textual constitutional interpretation and limiting the degree of institutionalisation of international organisations, thereby enabling states to self-determine their position on the monist-dualist spectrum.

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,

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