

Editorial

The Journal and Publication Society, School of Law, Christ University, takes pride in placing on record the 8th issue of the Christ University Law Journal. This issue of the journal comprises of articles, case comment and book review. The academic writings are being authored by legal practitioners, academicians and students.

Articles

The article, *Determining the Bench size for constitutional adjudication*, authored by Assistant Professor B. Muthu Kumar, studies the impact of small and large benches in the adjudication of constitutional matters. The author uses landmark cases like Kesavananda Bharati and the NJAC case, to analyze the problems associated with a smaller bench overruling the decision of a larger bench. The paper seeks to answer the question of whether the minimum required strength of a Bench for constitutional adjudication in the Supreme Court needs to be mandatorily followed for proper adjudication and organic development of Constitutional jurisprudence.

The Article titled *Corporate Guarantee: Computation of Guarantee Fees at Arm's Length Price* authored by Vinti Agarwal, describes the meaning of guarantee in the context of transfer pricing. It highlights and analyses provisions of the Foreign Exchange Management Act 1999, and the Income tax act, 1961 relating to the transfer pricing issues and how guarantees fit into such provisions. The paper highlights various judicial tests and methods vide which Indian Tax Courts have attempted to determine arm's length price in matters relating to transfer pricing, where associate enterprises are involved. It concludes by summarising decisions of the same, whilst indicating the overall judicial outlook towards the issue.

In the article, *Doctrine of Desuetude – Addressing the Constitutional Minefield*, the authors Yash Tripathi and Ruplai Singh have thrown light upon the numerous redundant and obsolete laws in the statute books of our country that are burdensome on the citizens. The authors highlight the various steps taken by the Judiciary and the Legislature for removal of these laws and in particular advocate

the 'Doctrine of desuetude' in order to exclude the plethora of laws that due to their perplexity, discourage citizens from approaching the legal machinery. The article concludes by suggesting that only with the harmonious functioning of all the organs of the country can this objective be achieved.

The article titled, *Practice and Belief of Santhara: The Right to die*, authored by Niharika Choudhary and Divyansh Singh, examines the ritual of 'Santhara' practiced by the followers of Jainism in the light of the 'essential practice doctrine' established through various case laws. The authors assert that 'Santhara' is not a suicide and discerns from the view of Rajasthan High Court. The authors analyse various Supreme Court judgments, which hold that the right to life includes the right to a dignified life, in order to prove that the process of 'Santhara' comes within the ambit of right to die with dignity. The paper tries to determine the limits of the court in deciding whether a religious practice affects individual rights, hampers societal progress and causes inequality.

In her article titled *Reconciling the Pro-choice Argument with the Anti-life Rhetoric: Issues in the Indian Context*, author Saloni Dukle has provided a fresh perspective to the age old debate surrounding the morality and legality of abortion. She presents the pro-choice position, that is, the inherent human right of a woman to exercise autonomy over her person, and does not necessarily see it as denying the unborn child the right to life, as long as she exercises the right to abort before the foetus gains 'viability'. She concludes by recommending that in the light of the recent advances in science and technology, the MTP Act needs to be suitably amended to reflect the 'foetus viability' standard as opposed to the non-scientific "legalization up till twenty weeks" standard.

The article, *Protection of Video Games under Copyright Law: A Comparative Study*, by Gibran Naushad and Anuj Bahukhandi, analyses the judicial precedents delivered in India and the United States of America with regard to the copyright protection given to video games in the two jurisdictions. It contemplates the lack of specific legislation and judicial precedents in India, and attempts to understand the extension of principles laid down in landmark judgements with respect to other comparable forms of expression to disputes with respect to video games. The paper also delves into

the tests applied and standards used with respect to books and cinematograph films vis-à-vis their application to video games. It concludes by emphasising on the need for the legal framework to keep pace with the ever evolving issues of technology and IP of videogames and the need to provide adequate protection to incentivize innovation.

In the case comment on *Devidas Ramachandra Tuljapurkar v. State of Maharashtra*, Shardha Rajam focuses on the issue of obscenity in the Indian scenario, by substantiating through various renowned judgments which have been pronounced over a span of time. The author discusses the ambit of obscenity in the realm of keeping national leaders invulnerable and concludes by stating that any aspect of art which degrades the social standing of such personalities should be discouraged.

The Journal and Publication Society expresses its gratitude to all the scholars and reviewers who have contributed to this issue of the journal and solicit their continued patronage and co-operation. We are grateful to the Christ University Management, the Centre for Publications, the library personnel and the National Printing Press for extending their support towards our humble mission of making effective contribution to legal research.

Editorial Board

