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Editorial

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EDITORIAL

The year 2023 will be remembered for sharp and brutalising international conflicts—first in Ukraine, and now in Israel and Palestine. These have challenged fundamental assumptions about sovereignty and contestations over land being reasonably managed by the international order. As these conflicts test the core principles of international and humanitarian law, they deserve our urgent, renewed attention. We hope to address these concerns in future issues of the National Law School Journal.

This journal aims to draw upon the intellectual discourse in the NLSIU community and at our campus in a rigorous and sustained manner. Our faculty and researchers are deeply engaged in contemporary developments on the Criminal Law reform proposals, the Labour Codes, the Uniform Civil Code debate, the protection of personal privacy, and the Forest Conservation (Amendment) Bill, 2023. The articles in this issue engage with some of these emerging concerns. Our authors address the regulation of domestic work, working conditions of Ola and Uber drivers, recent cases on family and divorce, and finally, contestations over land and identity in the state of Himachal Pradesh.

The first article, by Manshi Asher and Vivek Negi, is a deep-dive into the internal tensions of dam construction in the Chamba region of Himachal Pradesh. It analyses how the risks of such projects are transferred to local populations and the natural environment. This article is resonant of what many social theorists of the contemporary, including Eve Tuck, the Canadian scholar of indigenous studies, have described as survival being a form of resistance.

The legal division between the public and the private presents itself to us anew in the tussle between the market and the home: particularly, the question of the domestic worker who is a labourer in the private space of the home providing the work of care. Karl Polanyi reminds us in his masterpiece, The Great Transformation, that markets are not natural; they have to be rendered ‘free’ with great effort from state and society. There is no way to ensure care for the young and the old without buying such care as work in the marketplace. We seldom examine the inroads made by market logics into the most intimate of spaces of our collective and individual lives. In this light, the current issue of NLSJ presents two explorations of the changing worlds of work through the question of care and its interaction with the market.
First, the article by Akshat Agarwal points to the crux of an important political debate: where do the faultlines of market and home lie? Can markets exist inside the home? If so, what happens to the public–private divide that is a cherished distinction in legal and political theory? What recourse within the logics of market and/or family does the nanny or domestic worker have? More importantly, can and should care be sold and bought in the marketplace?

Second, we have been having conversations about changes in labour patterns and the governance of labour in the context of the gig economy. The status of Uber drivers and workers on other aggregator platforms is a question that deserves an urgent response from Indian labour law regime. On this issue, we have published a thoughtful article by Shantanu Braj Choubey which assesses this question in thorough detail with attention to the existing labour law regime as well as the proposed labour codes.

We also present, in this issue, an incisive comment by Saptarshi Mandal on a recent Supreme Court case on the question of whether the family court or the magistrate has jurisdiction to decide maintenance matters for Muslim women after divorce. While the judgement throws up two conflicting opinions, Mandal advocates departing from judicial restraint based on a strict literal reading of the law in favour of purposive interpretation and judicial creativity. He endorses the opinions of one of the judges who adopts such an approach to confer jurisdiction upon family courts rather than magistrates for a non-discriminatory and reasonable outcome in favour of Muslim women.

In our Book Review section, Nishant Gokhale has written a careful review of Sangeeta Dasgupta’s important recent book Reordering Adivasi Worlds: Representation, Resistance, Memory (2022). Based on the Tana Bhagat movement among the Oraon adivasi community that emerged in the early twentieth century, Gokhale discusses the author’s use of a range of legal materials, and a potential ‘legal turn’ in adivasi studies. Between hero/deity figures like German Baba and Gandhi Baba worshipped in this movement, and through the life history of an advocate and anthropologist Sarat Chandra Roy, Gokhale shows a significant divergence in the reception of the adivasi figure in history and in legal studies.

In more ways than one, this new issue is a concerted meditation on the plight of populations that need to get by with whatever form of marketable work and sustenance remains available. We engage with the different
forms of vulnerabilities arising out of tech aggregators, large development projects or markets of care work.

With this new issue, we renew our responsibility towards holding conversations in and from the law about the fast-changing world that we live in, and diverse challenges in constructing ethical models that govern relationships among people, nature and technology. We acknowledge the efforts of our contributors and reviewers. And to all our readers: we hope that you enjoy reading the issue, and will continue to support and engage with us.

NLSJ Editorial Board