

**Contact**

The Journal Committee,  
Tamil Nadu National Law University (TNNLU),  
Dindigul Main Road, Navalurkuttapattu,  
Tiruchirappalli – 620 027, Tamil Nadu, India.

E-mail: [tnnslawreview@gmail.com](mailto:tnnslawreview@gmail.com)

Website: [www.tnnlu.ac.in](http://www.tnnlu.ac.in)

**Copyright: © Journal Committee, TNNLU 2018**

All rights reserved. The Journal Committee, TNNLU shall be the sole copyright owner of all the published contents in TNNLU-LR. Apart from fair dealing for the purposes of research, private study or criticism, no part of this publication may be copied, adapted, abridged, translated, reproduced or stored in any retrieval system, computer system, photographic or other system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without the prior written permission of the Journal Committee, TNNLU.

**Mode of Citation: TNNLU-LR 1 (2018)**

The contents of this issue may be distributed and reproduced, in whole or in part, non-profit institutions for educational and research purposes, provided that such use is appropriately acknowledged.

**Disclaimer**

The views and opinions expressed in TNNLU-LR are those of the authors and the same does not necessarily reflect the views of the Tamil Nadu National Law University or its Journal Committee. The Editors, Reviewers, Publishers and Printers do not own any responsibility for the views and opinions expressed by the authors or for errors or mistakes, if any, and for copyright violations of any kind and the authors shall be solely responsible for the same.

# TNNLU

## Tamil Nadu National Law University Law Review TNNLU – LR

Volume 1, Issue 1 (2018)

Patron

Prof. (Dr.) Kamala Sankaran,  
Vice Chancellor, TNNLU

Chief Editor

Mr. S. Mohammed Azaad,  
Assistant Professor of Law & Faculty in Charge, Journal Committee,  
TNNLU

Journal Committee, TNNLU – Student Editors

Ms. Visalaakshi Annamalai,  
Ms. R. Sathya Parvathy, Ms. Jane  
Pauline P and Ms. Apoorva  
Vinjamur

Mr. Pradyumna L Narasimha,  
Ms. Gouri Balagopal,  
Ms. Nedunuri Srisai Venkata  
Janaki and Ms. Nandhinee E

**CONTENTS**

<b>Editorial</b>			iv
<b>Articles</b>		<b>Author(s)</b>	<b>Page</b>
Scene to Scene Copying and its Infringement	Copyright	Arunmogan K.M.C & Eniya N	01
Environmental Sustainability and its Clash with Capitalism		Surjeeth Rahulji M	19
Election Manifesto: Legal Reality or Illusion		Prof. Krishan Mahajan & Dr. Yogesh Pratap Singh	30
Kantian Debate on Abortion		Maithry Kini K	42
Hindu Code Bill and its Ramifications on UCC		Vasundhara Kanoria	53
Deep into the Dark Web: The Primrose Path of Bitcoins		Sathiabama S	61
Order, Order, Order: Postponement of Publication Orders and Judicial Ordering of Balance between Freedom of Press and Administration of Justice		Prof. (Dr.) A. David Ambrose	73
Recognizing the Legal & Constitutional Provisions Vis-A-Vis Disability and Education: A Study on the Lacunas and Reformatons		Divyanshu Chaudhary	82
Long Stretching Impressions of the Benami Transactions (Prohibition) Amendment Act, 2016		Jithin George Jackson K	97
<b>Case Comment</b>		<b>Author</b>	<b>Page</b>
Director of Income Tax (IT) – I vs. A.P. Moller Maersk A.S. CDJ 2017 SC 189		Maalvinder Singh	110

## **EDITORIAL**

It is indeed a matter of immense joy for us in bringing out the 1<sup>st</sup> Edition of the *TNNLU – Law Review (LR)* which is the flagship journal of the *Tamil Nadu National Law University (TNNLU), Tiruchirappalli*. *TNNLU – LR* is a faculty-cum-student run, double blind, peer-reviewed journal providing incisive legal insight on issues that are at the forefront of contemporary legal discourse. The journal's mission is to support, foster and publish high-quality research in various areas of legal and allied interdisciplinary studies.

For the first issue, we invited scholarly submissions with no strict rigid thematic constraints. We received a large number of excellent submissions in different disciplines of law and policy, and it was a difficult task to shortlist them for the rather limited number of slots available for final publication. At the outset, we thank all the authors/contributors for their patience and interest in submitting an article to *TNNLU – LR*. We also tender our apology for the delay in reviewing some of the submissions.

All the submissions underwent a rigorous two stage editorial process. The final selection of articles was based on the comments received from our peer reviewers which intends to help the authors to hone and strengthen their respective articles in tone and substance. The authors have also incorporated the feedback of the reviewers in their final draft. Accordingly, the present issue consists of the following ten varied contributions which are largely within the scope of legal studies and allied interdisciplinary studies.

In the opening article of this issue, which is co-authored by Mr. Arunmogan and Ms. Eniya, Advocates from the Madras High Court, the authors discuss at length about copyright in movies in the context of scene-to-scene copying. The authors first differentiate between a scene and a movie for the purpose of copyright protection, before going on to analyse the efficiency and enforceability of copyright protection of a particular scene in movies. The authors explore whether a scene can be protected as a series of photographs and proceed to identify the loopholes by which copying of scenes is carried on widely in India. They compare the original and inspired versions of famous scenes from a list of movies and discuss various tests formulated by the judiciary to check the legitimacy of the same. The article ends by highlighting the lack of protection for movie scenes and recommendations for relevant amendments in the existing copyright law.

Mr. Surjeeth Rahulji from Azim Premji University, Bengaluru reviews the concept of growth and sustainable development in context of capitalism in the modern world. He suggests that instead of defining growth as a quantitative value measured in terms of increase in material consumption, it needs to be redefined to mean qualitative betterment as well as community sharing. As a mechanism of achieving that goal, the author proposes to move away from the capitalist society we live in today and adopt measures that will ensure sustainable development in its true sense.

In this co-authored submission, Prof. Krishan Mahajan (Additional Registrar) and Dr. Yogesh Pratap Singh (Deputy Registrar) from the Supreme Court of India highlight the false promises made by political parties through their election manifestos and analyse how this affects people from low socio-economic backgrounds. The main contention of the article is those manifestos that declare social justice schemes and economic reforms in reality have achieved nothing. They are merely election gimmicks, as the parties try to politicise social justice and economic reform schemes for obtaining an undue advantage over their rival parties. The article supports strengthening of major institutions in charge of elections like the Election Commission of India and lending legal validity to manifestos to make political parties more accountable. It also traces the ineffectiveness of constitutional provisions and asks the Supreme Court to take a more active role in holding major political parties accountable for their false promises in manifestos which deceives the voting public.

Ms. Maithry Kini from School of Law, Christ (Deemed to be University), Bengaluru, focuses upon the conflicts between autonomy, moral and categorical imperatives that exists within the Kantian System, vis-à-vis law of abortion and the conflict with regard to right to life of the foetus and the right of the mother to take autonomous decision from a moral perspective. In order to give clarity to the debate, the author delves in depth into various Kantian principles relating to autonomy, dignity and honour and concludes that Kantian Theory neither detests nor supports the practice of abortion. For her, hence, the question relating to morality of abortion remains a puzzle, for which finding an appropriate solution is tricky and difficult. She argues that a more practical solution to the problem will be to strike a balance between morality and autonomy by providing certain liberties to women to exercise their autonomy subject to reasonable restrictions.

Ms. Vasundhara Kanoria from Institute of Law, Nirma University, Ahmedabad scrutinises the ramifications of Hindu Code Bill of the 1950s in terms of its effect of delegitimising various cultures within the Hindu religion. According to her, this codification of Hindu religious laws and the problems that arose with it can act as a very good indicator of what will be in store, if the

Uniform Civil Code is brought forth. The author starts with a thorough analysis of the historical context of the Bill to point out the lapses in the codification of Hindu laws. She then evaluates the Bill from a feminist perspective, wherein it becomes clear that there were several liberal customary practices which were decimated by the introduction of the Bill. She argues that the codification has resulted in the erosion of various cultural practices that existed within different sects of Hindus. She concludes by suggesting abolition of those religious practices which are against constitutional principles, rather than taking the step towards codification which can have adverse consequences in a diverse country like India.

Ms. Sathiabama from TNNLU, Tiruchirappalli analyses in her article the growing trend of using Bitcoins for committing cyber-crimes in the dark web under the convenient garb of secrecy and anonymity. The author highlights the lack of comprehensive jurisprudence in the area of regulation of crypto-currencies, and explains the difficulty in tracing the wrongdoers in absence of the same. She compares and contrasts the current position of law in India on this topic with the United States criminal justice system, especially with regard to the inapplicability of the rules of evidence, and then proceeds to offer solutions including administrative and judicial amendments.

Prof. (Dr.) A. David Ambrose from the Madras University writes about Postponement of Publication Orders (PPO) and whether they have been successful in correcting the conflict between freedom of press and administration of Justice. Trial by media has long been held to be violative of rule of law and democratic principles and antithetical to effective administration of justice. The article talks about how publication of material that affects administration of justice is a criminal offence and punishable. Further, the article explains how the Supreme Court has tried to strike a balance by ordering postponement of publication of material until the case is concluded, instead of imposing prior restraint on media reporting. It also discusses about PPOs within the confines of Article 19(2) of the Indian Constitution as reasonable restrictions on freedom of press, lending it constitutional validity. The author concludes that the Supreme Court has been sufficiently successful in achieving this balance, but must be mindful of challenges like determining the time duration for which such orders shall operate and only giving such orders when the risk is substantial and immediate.

Mr. Divyanshu Chaudhary from National Law University (NLU), Delhi examines the right to education in India in relation to persons with disabilities by highlighting the need for education for all and in particular to the disabled. The author traces the history of legislations for the education of the disabled and discusses the current policies and laws in force along with their efficiency including the *National Policy on Education, 1986, Project for Integrated Education for the Disabled,*

1987, *Rehabilitation Council of India Act, 1992, Persons With Disabilities Act, 1995*, etc. amongst others. He also identifies new challenges faced by the disabled, especially in the context of modern education and ways to overcome them. The article wraps up with a comparative analysis of international instruments on the subject and suggestions to address the existing lacunas.

Mr. Jithin Jackson from National Law University and Judicial Academy (NLUJA), Assam analyses the *Benami Transactions (Prohibition) Amendment Act, 2016* and its efficiency at fixing the loopholes in the earlier Act. Primarily, the author studies the *Benami Transactions (Prohibitions) Act, 1988* in juxtaposition with the 2016 Amendment Act. Thereafter, he evaluates the 2016 Act along with other allied laws like the *Real Estate (Regulation & Development) Act, 2016, Transfer of Property Act, 1882*, Land Reforms laws etc. The author discusses the principles of existence and traceability in the benami laws. The author also critically analyses the need for a law against benami transactions. The changes in the Amendment Act along with their long stretching impacts are well highlighted in this article.

The last article of this issue is a Case Comment by Mr. Maalvinder Singh from Amity Law School, Noida, who analyses the 2017 Supreme Court judgment in *Director of Income Tax (IT)- I v. A.P. Moller Maersk A.S.* The author notes that this judgment is critical in determining the scope of Fees for Technical Services (FTS), as defined in the *Income Tax Act, 1961* and several Indian Double Taxation Avoidance Agreements (DTAA). By critically comparing the various case law jurisprudence formulated by the Supreme Court, High Courts and other lower Courts on this subject matter, the author explains how by introducing the concept of ‘dual test’ in this case, the Supreme Court has conclusively settled all the conflicting judicial opinions. He further opines that this judgement would act as a safeguard against arbitrariness and unnecessary harassment of the international entities by the Indian tax authorities.

It is pertinent to note that these submissions have been selected from nearly 160 articles received by us in multifarious themes and disciplines of law. We understand that the selected articles may not amount to an exhaustive analysis on a specific subject. However, we sincerely hope that this publication will act as a catalyst for further research and deliberations on the various themes covered in the present issue.

On behalf of the Journal Committee, we would like to express our heartfelt thanks to our beloved Vice-Chancellor, Prof. (Dr.) Kamala Sankaran for her continued guidance and constant support in preparing this publication. We would forever be grateful to her for giving us this wonderful research opportunity. We would like to thank Mr. V. Arun Roy, IAS, our former

Registrar and Vice-Chancellor-in charge who conceived the initial idea for this journal by constituting the Journal Committee of TNNLU. We would also like to thank all our expert reviewers for spending their invaluable time in reading and reviewing the submissions as well as suggesting valuable comments and suggestions to improve the quality of the articles. Thanks are also due to the members of the Centre for Research and Writing (CRW), TNNLU for proofreading this journal. I would like to personally acknowledge and thank all the student editors from the Journal Committee for their invaluable contribution and active participation in bringing out the final product. Last but not least, we would also like to thank all our readers and sincerely look forward for your continued patronage.

**Mr. S. Mohammed Azaad,**  
Assistant Professor of Law, TNNLU &  
Chief Editor, TNNLU-LR