

# JOURNAL OF INDIAN LAW AND SOCIETY

---

Volume XII (2)

Winter

---

## FOREWORD

Kalpana Kannabiran

Distinguished Professor, Council for Social Development, India

It gives me great pleasure to write the foreword for this very interesting and stimulating issue of *Journal of Indian Law and Society*. The issue covers much ground on areas of urgent interest to anyone with an interest in the inner workings of law and the constitution.

The opening essay in two parts by Rajshree Chandra, addresses new property regimes set in motion by innovation and intellectual property, by examining the ‘instrumentalities of technology and law [that] co-produce biotic property,’ and translate ‘inventive claims as property claims.’ She traces the historical development of proprietary thinking in relation to life forms and the emergence of biotechnology and patenting that appropriate genetic resources in the service of capitalist expansion. The stratification of life forms on scales of patentability, or graded patentability triggers a range of moral and conceptual concerns at the intersection of law, life and technology that Chandra illuminates for us, urging us in the process to view ‘the sleight of law’ as ‘a little more vested in dominant frames of property and technoscientific epistemes than is commonly assumed.’

Law may serve dominant interests in more ways than one – if sleight is one way (Justice DY Chandrachud used the evocative phrase ‘sleight of interpretation’ in the *Gujarat Mazdoor Sabha* case), obfuscation is another. The maladies of the language of the law is a subject that has been written about and agonized over, and yet it remains entrenched in professional practice and is difficult if not impossible to dislodge. Rishabh Jain and Somanshu Shukla have taken on

a difficult task admirably pointing to the mis-fit between an exclusionary legal language and communities in need of legal services and protection. What, they ask, is the relationship between systemic barriers (faced by Adivasi communities for instance), legal awareness, and languages of the law – legalese -- that do not permit of easy comprehension or access?

Especially after the 2009 judgment of the Delhi High Court in *Naz Foundation vs. NCT Delhi*, the rights of queer communities across the ‘gender galaxy’ (to use a lovely description by Chayanika Shah et. al.) have gained visibility and voice, strengthened further by *Puttaswamy vs. Union of India* and further still by *Navtej Johar vs. Union of India*. Where women’s rights are concerned, the progress has been mixed and the process of securing rights obstructed by several pushbacks. Gender rights in law and the operation of these rights on the ground are two very different things, as we know from experience. And yet, securing the rights in law is a necessary and non-negotiable first step. Torsha Sarkar, takes us through the journeys of courts in independent India in the matter of gender and sexuality, reminding us of the much that remains to be done to make freedom from gender based oppression a reality.

The abrogation of Article 370 and 35A and the shrinking of a state into two union territories has completed the cycle of dispossession and occupation in Kashmir that has had a long and tortuous history. Ipsita Chakravarty traces the history of the Kashmiri struggle for land and autonomy, and their struggles against occupation that have been eroded as never before since abrogation in 2019. The repeal of state laws, the imposition of central laws, new ‘domicile’ rules, the creation of enclaves exempt from regulation, and the reconfiguration of the valley as ‘real estate’ through the commodification of land have re-opened old wounds, replacing the rule of law with the rule by law.

The symposium on Dixon and Landau, *Abusive Constitutional Borrowing: Legal Globalization & The Subversion of Liberal Democracy*, makes very compelling reading. As someone deeply concerned about the ab(uses) of the constitution and the subversion of democracy, this symposium opens up several pathways for dialogue. I eagerly look forward to reading the book.

The volume also contains book reviews of Andrew Clapham’s *War* (2021) and Martha Minow’s *Saving the News: Why the Constitution Calls for Government Action to Preserve Freedom of Speech* (2021).

I thank the editorial committee of the *Journal of Indian Law and Society* for this invitation to share my thoughts, and for having given me the opportunity to engage with the work of committed scholars on areas of common interest.