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EDITORIAL NOTE

- *Dr Ranita Nagar*
(Editor-in-Chief)

It gives us immense pleasure to present the inaugural issue of the GNLU Journal of Law and Economics, a publication that we hope will provide its readers with high-quality empirical research inputs on law and economics.

We, at the Centre for Law and Economics, Gujarat National Law University, are immensely proud and optimistic about the idea of a Journal, dedicated to developing and fostering academic literature on the vast and ever dynamic field of Law & Economics.

The GNLU Journal of Law & Economics (GJLE) is a bi-annual review published digitally by Gujarat National Law University (GNLU). The journal is online and open access and edited by students, with the aim to foster the open-access culture in academia and also to encourage research, writing and discourse in the field of law and economics. The journal is an official publication of the GNLU Centre for Law & Economics.

The academic community has contributed enormously to the study of law and economics in India. It has stimulated the development of a literature on this subject which is impressive by any standards and is slowly coming at the forefront of policy and judicial thinking. Its magnitude and detail can be best assessed by looking at some of the answers the discipline provides, to problems in policy-making and legal frameworks. Charged with the objective of providing a novel insight into how economic rationales could help in the formulation of effective policy frameworks to deal with socio-legal problems, the interdisciplinary subject of law and economics has helped lawyers and policy-makers to better understand legal rules.

The promise and relevance of the subject in the Indian legal scenario motivated us at GNLU to develop a forum for discussion and debate in the field of law & economics, and to undertake academic research and study to suggest improvements in various laws, bills and government policies. It was boosted by the budding ambition of our University to explore various avenues of multi-disciplinary empirical studies in law and provide comprehensive, credible and innovative points of discourse. In 2010, The Centre for Law & Economics (CLE) was established with the aim of familiarizing all stakeholders with the role that Law & Economics plays in improving the efficiency of laws. Apart from offering the subject of 'Introduction to

Law and Economics' as part of its regular curriculum wherein students are introduced to the analysis of Tort Law, Contract Law, Property Law, Intellectual Property Rights using tools of microeconomics, various research activities, conferences, workshops, competitions, seminars and capacity building sessions are organized by the Centre to provide a common intellectual ground for law & economics.

The Centre values rigorous work in the discipline and aims to promote awareness of and research in the field. It carries out courses and conferences for scholars, practitioners and students apart from publications on the economic analysis of contemporary legal issues. It aims to produce quality prescriptions for legislators, regulators and government departments and provide clear explanations and guidance to businesses and ordinary citizen alike. Some of the research activities being undertaken by the Centre presently include issues relating to the regulatory framework overlooking the depollution of River Ganga, causes of delay in the adjudication of cheque-bounce cases and the implications of the recognized Right to Privacy on the Aadhaar Project.

With the objective of fostering greater research into economic analysis of laws in India, the Centre has published books and compilations on the economic analysis of various facets of the law, ranging from an introduction of the basic models of economic analysis of law to the specialized areas of the constitutional law, commercial laws, torts, personal laws, crime and environmental laws. Over time, the scope of the publications has been concentrated to provide for profound academic literature. Notably, the book "Law & Economics: Breaking New Grounds" was aimed to educate and spread awareness on the interdisciplinary subject of Law & Economics among technocrats, scientists, social engineers, professionals and policymakers, which will build-up a rational society. I'm happy to note that this book was the outcome of the First International Conference on Law & Economics, 2015, held at GNLU. Currently, students of the Centre are working on a compilation of articles on assessing judicial reforms for the Indian courts, through the lens of economics and empiricism.

The activities and research tasks of the Centre are now focused towards developing a comprehensive "Indian school of thought for law and economics". The need for such thought arises due to special and unique considerations of Indian law-making and law enforcement. The existing literature arising from American, German and other schools of thought have to be reworked, rethought and redeveloped for the multitudinous considerations existing in our

country. To provide for solutions fit for the time, age and place, such innovation and flexibility is the need of the hour. These pursuits are encouraged by the motivations received from the Indian legal and regulatory institutions for the usage of economic tools in law-making. The Hon'ble Supreme Court has recognized the need for economic analysis when they're interpreting the law. In the recent Right to Privacy judgement, Justice D.Y. Chandrachud cited the works of Richard Posner on Privacy, causing a great appreciation of law and economics literature. Institutions of policymaking and review like the NITI Aayog have set up a 'Behavioural Lab" to use tools of behavioural economics when dealing with policies. Furthermore, the Law Commission has been already using empirical tools to recommend legal developments. The Government has been encouraging of these developments and has made available of data accessible. Websites like mygov.in and ecourts.gov.in have helped the academic community to access data in a manner like never before.

Such developments arise from the need to provide scientific and efficient solutions to present day solutions. Recent developments in aspects like the Aadhaar Project, data protection, cybercrime protection, corporate insolvency, etc have emphasised the need for scientific interventions. Present issues require usage of multi-disciplinary approaches to provide relevant answers.

The Contributions

The Inaugural Issue of the Journal comprises of nine articles, which have been collected across several countries. The articles present literature on various facets of law, ranging from Criminal law to Labour Law and Environmental Law to Corporate Law, with a special focus on developing Indian Jurisprudence. This is in sync with the aim of the Journal to present and foster writings on varied facets of law and economic analyses on a single platform, with the eventual objective to impact Indian policy-making and developing an 'Indian School of Thought' for law and economics.

Our edition beings with Nathanael Kos'Isaka's "**Fiscal Capacity and Stabilization Function within the Eurozone: A Matter of Uncertainty"**. The future of the Eurozone is one of the most contemporary issues of today's globalized world. Many argue that the economic instability within the Euro area can be linked to the absence of a Centralized Stabilization Mechanism. To solve this problem, many are proposing the introduction of a "Eurozone budget". In this Article, Kos'Isaka argues that the proposed solution can be characterized by

the uncertainty about the reality of the economic problem and the need to put in place a euroarea budget, on the one hand, and uncertainty about the legal and institutional aspects of the solution, on the other hand.

In "**The purpose of the corporation and corporate social responsibility**", Gabriel Eduardo Messina & Lisandro A. Hadad review the growing social responsibilities of the corporate sector. Breaking away from the study of Corporate Social Responsibility from the point of view of the administrative theory or corporate management, the authors make a point for Corporations to contribute to social welfare as a significant role of corporate law in modern day. In order to enhance the debate, they study the social role given to companies and the possible conflict that can be revealed between shareholders and stakeholders, in terms of incentives and profits. Further, the authors argue that the search for shareholder wealth maximization constitutes the best option for companies organized around a corporate structure, to contribute to the progress of social welfare.

"The United States is Out, India is in: Some Costs and Benefits on The United States' Withdrawal from the Paris Agreement on Climate Change" is a ground-breaking work from Prof. Carolina Arlota wherein she reviews the most significant setback to the global concentrated movement against climate change: U.S.' withdrawal from the Paris Agreement, which will come into effect in 2020. Studying the controversial decision from a law and economic perspective, Prof. Arlota focuses on the advantages and disadvantages for the United States and argues that the withdrawal is not aligned with cost-benefit analysis grounded on the normative use of economics. The case is supported by the factoring of moral principles, such as precautionary principle and intra-and-inter-generational equity. As a lesson from the episode, Prof. Arlota also economically reviews a few challenges to international governance and bargaining between states: such as the incentives of involved parties to free-ride, the absence of a mechanism to engage in top-down bargaining and difficulties to bargain in the face of cognitive uncertainty about the feasibility of achieving policy outcomes, such as lowering carbon emissions. The author contrasts the United States example with paradigmatic Indian case, as India recently moved from being a reluctant signatory to an active member of the Accord.

"Towards Precise Norms for Land Acquisition in Developing Countries" is an essay by the renowned Prof. (Dr.) Hans-Bernd Schäfer in which he offers a fresh perspective on the

debate between precise legal rules versus broad and information-intensive legal standards for land acquisition. Delving into the law relating to land acquisition, with a special focus on developing countries, he links the presence of clear and precise rules to the economic and political development of countries. In his characteristic style of argumentation with empirical studies, he analyses the new-age meaning and relevance of the concept of 'Eminent Domain' and argues in favour of clear and precise rules regulating eminent domain power, to prevent misuse and abuse by Governments in the name of development.

We then come to the next essay of the issue: Prof.Jaivir Singh's **"Frustrating or Perhaps Supportive of Economic Activity? A Law and Economics Take on Labour Law in India**", which presents a fresh foundational base for labour law reforms in present day India. Much of the debate surrounding labour reform, along with attempts to simplify and consolidate labour laws, has been concerned with viewing laws as an impediment to efficiency. Prof. Singh argues that this monochromatic understanding is antithetic to the law and economics literature (particularly, the Coasian framework) which explain how laws can combat inefficiencies, depending on the presence of transaction costs. Drawing from the Incomplete Contracts literature pioneered by Grossman, Hart, and Moore in the 90s, Prof. Singh highlights a set of transaction costs which are sought to be lowered by existing Labour laws in India. He argues that such an analysis highlights the role of labour laws in correcting certain market failures and thereby, enhancing efficient productive activity rather than stifling efficiency.

The Economic Approach to Crime and Punishment developed by Gary Becker in the late 70s now serves as an unassailable core for law and economics of Criminal studies. The trade-off between probability and severity of punishment views detection probability and fines as perfect substitutes, with the underlying assumption being that Courts are willing to exercise judicial power to enforce maximum fines. In his essay "**Optimal Magnitude and Probability of Fines when Courts Dislike Punishment"** Nuno Garoupare considers the high fine-low probability result by Becker. He establishes that in presence of courts who dislike punishment, the optimal policy involves lower sanctions and develops an economic model to factor the discrepancy in the assumption. This model is complemented with policy implications and corrections.

The concluding essay of the Issue delves into the foundational aspects of law and economics. In "**Interdisciplinarity in law: Its necessity and challenges**", Prof. Regis Lenneau delves into the 'scientific' model of law and how that has been remodelled and developed by the plethora of interdisciplinary approaches, one of which is the approach of using economic approaches in

the study of law. Prof. Lenneau's inquisitive approach draws from the historical beginning of law and interdisciplinary studies and leads to present day significance of using interdisciplinary approaches, rather than viewing legal studies as a monochromatic science. The challenges surrounding the widespread usage of interdisciplinary approaches are also studied to chart the growing complexity in the field.

The final write-up in the inaugural issue is a book review of *John F. Pfaff's Locked In: The True Causes of Mass Incarceration and How to Achieve Real Reform* and *Patrick Sharkey's Uneasy Peace: The Great Crime Decline, the Renewal of City Life, and the Next War on Violence.* Writing in his inimitable style, Prof. Thomas Ulen reviews the remarkable decline in the crime rate in the United States since the 90s and the many lessons that Criminal Justice policy-makers can deduce from its economic study. Connecting the "great crime decline" with the high imprisonment rates in the U.S., Prof. Ulen reviews Prof. Pfaff's account of why there has been such heavy use of incarceration as a crime-deterring strategy in the United States. He then turns to a discussion of Prof. Sharkey's account of the important relationship between the level of crime and societal well-being. The points noted in the analysis have massive significance appeal to those who are curious why crime rates fluctuate, what are its effect on societal well-being, and what tools the United States used to combat crime increases and whether those tools are effective.

Acknowledgement

It is for the first time in the country that a concentrated effort is being undertaken to develop and propagate academic inquisition into the field of law and economics. This endeavour of ours has been supported by many enthusiasts, without whom this Issue would not have seen the light of day.

Firstly, I express my sincere regards to Prof. (Dr.) Bimal N. Patel, Director, Gujarat National Law University for his constant support and encouragement in bringing out this Journal. Great thanks are also due to Dr. Hiteshkumar Thakkar, Assistant Professor of Economics and Mr. A. Marisport, Assistant Professor of Law for their continued support. The Board of Advisors of the Journal have been a constant source of encouragement and inspiration; our collective gratitude is due to them also. Finally, my special thanks to the faculty and of course the student editorial board of the Journal for bringing out such a thought provoking and intellectually challenging issue.

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