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EDITORIAL NOTE

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

Law is inherently an inter-disciplinary subject as the very object of laws is to regulate the society and the conduct of its members. Law can never be studied as a standalone discipline. Though disciplines such as history and political science have been its close companions for long, economics has proved to be best despite being the recent-most.

Economics sets law free from its shackles of ethical, societal, orthodox considerations and opens new avenues wherein law can be used as an economic tool to set the wheels of the economy in the right direction. Economics gives it a scientific, empirical and statistical perspective. Economic analyses not only enable one the understand the problem better, but also provide for efficient and socially desirable solutions to the same. Law is then used to apply those findings.

This importance of economics in law has enabled 'law and economics' to earn the status of a discipline in itself. Despite its importance, the discipline has not developed properly in India. There is a serious lack of literature on the discipline, especially indigenous. This can be attributed to the fact that the discipline has failed to reach sufficient number of academicians and students. This Journal is an attempt to spread the discipline among a wider base so as to stimulate young minds in this field and catalyse the process of development of the same in India.

It becomes all the more important to develop an indigenous school of thought in this discipline as the social and economic realities are different across countries. The terms of the bargain change as we move from one jurisdiction to another thereby rendering the findings of economic analysis of laws of a given jurisdiction useless in the others. Hence, development of literature on law and economics in India by Indian authors written specifically in context of the realities of India is essential.

The Literature of Law and Economics is enlarging throughout the globe, the main reason being that economics provides a general scientific methodology of recognizing and resolving complex phenomena in the day to day transactions. Further, it has proven itself to be a dynamic

field encompassing both theoretical and empirical frameworks. And a lot of work is needed to be done and is being done. The present issue consists of seven articles which cover different facets of law ranging from Intellectual Property Law to ADR, Constitutional Law to Corporate Law with a special insight on the developing 'Indian School of Thought' for law and economics which is in sync with the aim of the Journal.

This issue begins with Prof. Dr. Ram Singh's article titled "**The Law and Economics of Force Majeure Litigation: The case of Covid-19**", wherein the law and economics of litigation has been discussed. The article has been written in the backdrop of the disruption of economic activities and frustration of contracts owing to COVID-19 and the litigation emerging out of the same. The article studies the predicted outcomes of litigation and trial and the effect of the predicted outcomes on the likelihood and terms of out of court settlement between parties. Dr. Ram Singh has argued in the article that the litigation outcomes have become uncertain owing to Covid-19 as the parties are unsure whether the Court will consider the pandemic as amounting to a force majeure event or not. This in turn changes the bargaining power of parties in the pre-trial negotiations. Based on the detailed law and economics analysis, Dr. Ram Singh has concluded that the pandemic reduces the chances of negotiation and increases the probability of litigation owing to the worsening of financial condition of the defendant, informational asymmetry and the uncertainty of the result of litigation.

Srishti Suresh's "**The Crossroad of Patent and Competition Law in the Context of Patent Assertion Entities: A Comparative Analysis**". Patent Assertion Entities (PAEs) has a dubious condition in India as it is detrimental for innovation and restricts free competition. Though the discussion of PAEs is still in a nascent stage, the author has dissected the problems of PAEs by analysing a plethora of existing costs and the anti-competitive regime through a comparative analysis of various jurisdictions. The author has strongly advocated for the revamp of the system by strengthening the antiquated patent laws wherein the country should majorly adopt 'hierarchy of inventiveness', deconstructing the concept of novelty into its constitutive elements, and adopting an informed system for scrutinising patent applications.

In "**India's jumbled public policy jurisprudence: Stretch, Demarcate and 'Saw (Pipes)'**", Malcolm Katraj has reviewed the uncertainty in the expression 'opposed to public policy' which is witnessed in the evolving Indian jurisprudence of arbitration. This might be a hurdle in the economic growth of the country, where the world is focused towards incentivizing

cooperation through providing contractual rights and easy dispute settlement mechanisms. The author has attempted to reduce the apprehensions and the uncertainty through a 'focal point' approach where the legislature directs the parties to a better equilibrium by acknowledging the roles of multiple players in the economic game.

We then come to the fourth article of the issue by Aniruddha Pratap "**Availability Heuristics and Insights for Corruption**", wherein the author has given a unique insight on 'Behavioral Economics and Corruption'. The author has primarily argued against the traditional and restricted approach of Law and Economics which needs to be widened through Behavioral Economics that takes into account the 'Bounded Rationality' of individuals. Further, the author has used empirical data to show the fallacy present in the substantive laws and the enforcement mechanism that may deform the results of 'law and economic' models due to the effects of 'availability heuristics'.

Avni Sharma in "E**xamining the Potential Tax Implications of Transaction in Digital Intellectual Property**", has discussed the challenges present in the taxation system in the era of globalisation with a special focus on Digital Intellectual Property. Through a cross-jurisdictional analysis, the author has reflected the chaos between U.S.A and Europe which provides a specimen of the requirement of a better tax regulation regime in the digitised era. Further, the novel challenges posed by OTT platforms can be resolved through a multilayer tax system, expounded in the article. The author has strongly advocated for the separation of the digital economy from the basic tax system wherein a uniform tax arrangement is followed by all the jurisdictions.

In the sixth article of this issue, **Excessive Drug Pricing in Indian Pharmaceutical Market: Exploitative Practice or Aggressive Competition Conduct?,** Prerna Raturi has explained the economics of competition law specifically in the context of excessive pricing of pharmaceutical drugs and its relation with patent protection. The author has discussed how the position of competition law in USA and EU in respect of excessive pricing are at loggerheads wherein one is a staunch proponent of competition law enforcement against excessive pricing of drugs while the other is against it. Further, the arguments against regulation of excessive pricing viz disincentivization of investment in R&D, self-correction of market, inter-brand competition have been discussed and rebutted using the counterviews on the same. The author has opined that the CCI has proved to be a toothless tiger in this regard and has vehemently argued that excessive drug pricing is a vice in that it defeats the purpose of the research and development

of new drugs if they are kept out of the reach of those who need them owing to the high prices. Therefore, excessive pricing of drugs must be considered to be well within the ambit of competition law and excessive pricing must be controlled as an anti-competitive practice.

The next article is the **Economic Analysis of Euthanasia**, wherein Ishita Shukla and Ayush Yadav have presented a rather unique and interesting analysis of the practice of Euthanasia from a law and economics viewpoint. They have presented a cost-benefit analysis of the same and argued in favour of the practice. The authors have simply argued that if the social benefit of euthanasia exceeds the social cost, the same must be adopted. To determine the same, the authors have given a mathematical equation wherein if the possible contribution of the person to the economy if he revives is greater than the cost of medical care multiplied by the probability of death, then euthanasia should not be allowed in such cases. Another argument based on allocative efficiency has been extended by the authors which says that where the resources being allocated for the terminally ill can be better utilised, euthanasia should be resorted to. Euthanasia has been further proposed on utilitarian arguments. The authors have even pointed out the economic drawbacks of legalizing euthanasia as in the real world of imperfect information, people tend to behave irrationally. The decision of the family members of the terminally ill is generally based on emotion and seldom on economic criteria.

Vibhu Tripathi in **Credibility of Insolvency and Bankruptcy Code, 2016: Special Reference to Corporate Debtor** has carried out an economic analysis of IBC. The law has been instrumental for India, more so in light of the problem of NPA that the country is facing. The author has argued that there the provisions of IBC have been drafted without taking into consideration the inefficient outcomes. Too much powers in the hands of the Resolution Professional and treating all corporate debtors equally irrespective of the size of the concern has jeopardised the interest of the economy as a whole. The argument has been developed further by highlighting issues pertaining the resolution professional such as lack of proper knowledge, lack of experience, requirement of special skills to run a particular business which might be faced by the corporate debtor. The author has further argued that the corporate debtor being a person, enjoys the rights guaranteed by the Constitution under Article 21 which include the right the privacy. The same is infringed by section 29 of the Code. It has been further argued that the Code has been drafted as a creditor favouring law without any regard to the debtors' situation. The author has further suggested certain amendments to the code so as to set the wheels of the said law in the direction of efficient resolution of disputes.

Shivangi Gangwar in **Another Prisoner Dilemma: Voting Rights of the Incarcerated** has done an economic analysis of the policy of disenfranchisement. There has been a lot of deliberation on the 'Right to Vote' of prisoners in Hon'ble Supreme court and foreign judgments. The author argues that not allowing voting rights to the prisoners imposes tremendous social costs wherein the legitimacy of the constitutional democracy comes into question. The author has used the micro economic tools to explain incentives, uncertainty and risk aversion present in the system. The Public choice analysis was used by the author to argue that if the prisoners had equal voting rights with non-prisoners, they would be in a better position to counter the dangers posed by the prisonindustrial complex.

Finally, Advik Rijul Jha in **Subsidies to the Indian Sugar Sector: In Coherence with India's WTO Obligations?** has analysed the legality of the domestic support measures and export subsidies provided by the Indian government to producers of sugarcane and sugar vis a vis the laws of the World Trade Organization. The author has strongly advocated for the revisit and export subsidies provided by the Indian government in the light of WTO compatibility. Further along with discussing the issues in the present context, the author has attempted to give solutions which the Indian Government can undertake.

The discipline of law and economics focusses on efficiency in resolving the issues being faced by the society. An economic analysis of laws brings out the drawbacks of the law in question and enables policy makers to make the requisite changes to the law. The discipline has provided a new canvass for those interested in studying law from an economic view point and finding efficient and innovative solutions to problems. This Journal is one such platform which enables academic writers to share their ideas and research outcomes and add to the literature on this discipline.

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