ACADEMY PROCEEDINGS

25th August, 2020 Tuesday

Prof. Ranita Nagar-
Stealth Steps: Financial Sector Development and Regulation, 2019

- FRDI Bill 2017 which was introduced but withdrawn later.
- The financial issues faced by certain firms led to the revival of a resolution corporation,
- shed light on recent history of financial regulation essentially the debate revolving around it that is recapitalization v. privatization.
- IBC- objectives and process- value maximization of firm and assets, availability of cheap credit, balancing interest of all shareholders. Takes the contract back to ex-ante position
- Discussed how the Indian banks deal with NPA's including the Mehul Choksi default. Figures showing majority of the defaults by corporate even though they constitute minority share in GDP.
- Discussed the procedures involved in Insolvency and liquidation proceedings of financial service providers and application procedure to adjudicatory authority.
- Powers of Resolution Authority: FSDR- Pro corporate and disadvantageous for small depositors
- Difference between Financial Service Provider and corporate firms- basic difference and how does the extension of resolution proceedings to FSP need a deliberate discussion as the FSPs direct capital from savers to entrepreneur and if failure occur it will create a bank run and reduce the aggregate capital for productive users which is not the case of failure of any real sector company.
- How IBC process for FSPs is a mismatch for the debate over Value maximization v. Financial stability and it goes against the basic objectives of IBC by increasing cost of credit consequently affecting entrepreneurship. Thus, the cost of extending IBC to FSPs will be more than the benefits.
- Suggestion:

A- Recapitalization should be preferred over privatization. Government should bail out
B- Preemptive monitoring by RBI and no political interference.
C- Respect the social objective of commercial banks as agency of reducing income stability and financial stability rather than profit
D- Ensure structural so that credit bubbles do not accompany asset price bubbles. (Ruchir Sharma, asset price bubble in every 10 years)
E- Delink banking activities from investment activities, before the Narsimha of 1988
F- India need not be a playground for earning returns for foreign investments at the cost of the viability of Indian economy.

Prof. Ram Singh-

COVID-19 and Contractual Disputes-

Contracts are the bedrock of an economy and facilitate transactions like trade, consumption, production. It improves easy of doing business. Though two reasons for bad rank of India on ease of doing business are - Contract enforcement and land acquisition.

People enter into contracts to secure supply of goods and services.

Do the parties to an agreement benefit from it?

Does the agreement, if executed, result in pareto superior outcome? (welfare of both parties should be improved one party may value object more than the value of it and vice versa)

Is there a need to provide legal protection to agreements, i.e. to make them legally enforceable?

- Elementary game theory through an illustrative example involving corporation and appropriation between buyer and seller in case of legal protection (that is contract law) and no legal protection and how equilibrium changes in both scenarios and how can legal protection for transactions be socially efficient as the buyer and seller will move from one point to another and both will gain and the society will have a net gain too.
- COVID 19 and contractual disputes
  Made fulfillment of obligation impossible and very costly.
  Cost of production increases to fulfill COVID 19 safety measures
  Many misused the opportunity to come out of their obligations inviting counter claims by various parties. Implication of force majeure which had been excessively used by various contractors past few months to avoid contracts as most commercial contracts have FM clause, parties prefer to terminate or avoid the contract. It helps the parties to spread the risk.
  Is Covid-19 a force majeure (FM)?
  FM clause is vague in many contracts. Not per se FM. But lockdown is FM.
  Government notification created ambiguity by declaring COVID as FM between contracts having FM clauses and contracts without FM clauses.
  Because in some cases the performance was delayed and not rendered impossible like electricity distribution was not impossible but electricity suppliers denied electricity from electricity generators because the demand had come down and cited COVID as FM but in such cases FM is not accepted as a reason, similarly in cases of construction the performance was merely delayed and not rendered impossible.
  2 implications:
  1- FM makes contract impossible for one side of the contract at least. Generally, for the promisor. FM is ex-ante to the event.
  2 - Frustration a contract, when the purpose of the contract is defeated. Frustration is ex-post to the event, it can be used only if your contract does not have a force majeure clause.

Economic Analysis:

Litigation can lead to public good and reduce contractual disputes and reduce the scope of exploitation.

COVID and lockdown should be treated as FM only if performance becomes impossible

Implication:

1 court should us e logic in deciding the implications

2 court can allow FM for hospitality, air transport, event management, catering

3 construction activity delayed

4 not allow for DISCOMSs, rental contracts.

While adjudicating compensation claims, Court should interpret contract narrowly

1. Allow claims of compensation only if the contract mentions events like epidemic, and lockdown

2. if the contract is silent

3. courts should be narrow in approach as it reduces legal uncertainty and reduces scope of allocating risks to the one party and exploit

The issue of equity of burden or distress caused by pandemic should be addressed through public policy

Court at times change or modify the terms of the contract. Courts must refrain from modifying terms of contracts and apply a narrow principle.

3 views on recent ongoing litigation

1 -Whether employee to receive wages during lockdown

Employers argument, Contracts talk about work for pay and hence no pay for lockdown.

Hence, employees should be allowed a direct income benefit, and fiscal measures from government.

2 -Moratorium only to allow delayed payment and not a waiver of interest.

3- Insurance claim for compensation for loss of business income during lockdown

1 side has deep pocket than the other, courts tempt to rule in favor of shallow pocket to pursue larger interest but in his opinion this is not correct as in such situation all parties are affected simultaneously, if court allows concession in one then it will have to allow in all in such cases the banks and insurance company will suffer, if such case exist then in future the insurance company will increase interest rate which will ultimately affect

Inaugural session

Prof. (Dr.) S. Shanthakumar, Director, Guajart National Law University-

The inaugural ceremony of GNLU Academy on Law and Economics (GALE) commenced with the inaugural address by Prof. (Dr.) S. Shanthakumar, where he formally welcomed the distinguished dignitaries and the plenary speaker of the session Prof Thomas Ulen. In his address, he mentioned how law and economics interact in related fields and how they are interconnected from a long time. He briefed about how private law assist individuals and groups willing to enter into agreements in a free market, on the other hand how public law seeks to correct outcomes of a free market system by means of economic and social regulations, and while economists are expected to be informed about the legal environment in which the economic activities must be conducted lawyers are expected to be aware of the economic effects of the current legal regime. In this context conducting a program virtually on law and economics to help stakeholders understand law and economics which measures together two of society's fundamental social constructs into one subject, allows a multi-faceted study of significant problems which exist in each subject. In conclusion of his address, he expressed his desire to be a part of many such programs in future, to be able to make this subject the most sought after subjects in law schools in India and motivated everyone to actively participate in the event to get benefited.

Prof Dr. Mamata Biswal

Professor Mamata Biswal in her inaugural address spoke about the importance and origin of Law and Economics in USA and subsequently in India through her study after going through different research and the today's law in practice, according to her the economic characters are very responsible to determine the different rights while interpreting law and also mentioned certain areas of law where law and economic theories can be applied and have been applied, as according to many authors the application of law and economics is not just limited to antitrust law but there are so many emerging areas of law where it is very relevant and is been applied to decide many cases by various judges in different courts. According to her programs like this highlight the significant growth of this area in GNLU and in India. At the end of her address she mentioned about the significance of GALE and its aims about bringing together a core group of researchers from all over India and world.

Prof Ram Singh

Professor Ram Singh in his inaugural lecture spoke about how law and economics is a discipline not in itself but how it affects across our economy and social order in general. Today's situation in the aftermath of COVID -19 and lockdowns, there are issues we are currently debating on like,

whether employers should pay wages for the lockdown period, borrowers expecting banks to not only delay the payment of loans but also waive the interest for the period of 6 months, whether insurers should compensate insures for the loss in their business etc. these issues are not merely legal or economic but they become both social and political issues and therefore an inquiry in a discipline like law and economics can educate our law makers to deal with them in many different ways. In this process, GNLU has taken a great initiate to educate many students, academicians and other stakeholders to understand the significance of the multi-dimensional area of law and economics and its increased importance during the current pandemic.

Prof PMK Prasad-

Professor. PMK Prasad in his address as a part of Indian Association of Law and Economics spoke about the intention to carry out interdisciplinary academic work to formulate and promote legitimate market, and network transactions in India and encouraged the efforts for introduction of a journal in this area as well. He suggested that "as we know there are so many rules and regulation in India but there is problem of implementation, so if an efficient criteria is applied to legal rules the academicians with the help of professional, an evidence based research work can be carried out to formulate the most efficient rules and regulation". Professor Prasad in his concluding remarks urged the like-minded people working in this area to come forward and contribute towards the subject and highly appreciated the efforts of GNLU Centre of Law and Economics for promoting law and economics in India through this platform.

Dr. Hitesh Kumar Thakkar-

Professor. Dr. Hitesh Kumar Thakkar highlighted how GNLU Centre of Law and Economics has worked tremendously in promoting the area of law and Economics in India. He mentioned the various ongoing projects being conducted by GNLU in this particular area like the projects on NPA, IBC etc. He thanked all the invited guests and participants for gracing the occasion by their solemn presence.

Professor Dr. Ranita Nagar-

Professor Dr. Ranita Nagar in her inaugural address welcomed the esteemed panelist, participants and introduced the plenary speaker for the inaugural session Prof Thomas Ulen. Professor talked about how the current pandemic has highlighted the importance of interplay of law and economics as a discipline. And how it has brought changes to many policies being framed by policy makers and for its impact on future policy decision as well considering the current pandemic situation. In her concluding remarks, Professor briefed about the importance of the topic to be discussed by Prof. Ulen, our esteemed resource persons and wished for the success of the event and inspired the participants for an academically rewarding experience. She

also thanked Prof. (Dr.) S. Shanthakumar for providing all kind of facilities to conduct such events by the centre.

The inaugural address was followed by the plenary session by **Prof Thomas Ulen** on the topic "**The COVID situation as a case study in Law and Economics**"

Professor Thomas Ulen-

Prof Dr. Thomas Ulen began his plenary session by giving a brief background of the pandemic situation in US and India. He introduced us to the law and economics aspect of the current pandemic, and the multitude of economic and legal issues raised in every economy. He then talked about the economics costs involved.

Policy responses excited mainly in 2 aspects in the area of public health and economic policies designed to address the problem the pandemic creates. He then went on to discuss the economic issues raised by the pandemic, and how different economies are responding to such issues respectively. Firstly, he talked about the economic policy response in US where in March, masks were considered not helpful in preventing the spread virus but over the months the situation has changed and increased the importance of its use to stop its spread.

Other Economic costs of the pandemic, US centric

- Unemployment in US- 40m adults (almost one-third of the labor force of 150m) filed for unemployment benefits in the period between March and July.
- Highest levels of unemployment since the Great Depression of 1929-1933. Most people unemployed are in hospitality industry
- GDP 9.5% in 2nd quarter in 2020 and if that continues will lead to a 32.9 % in GDP. The drop erased growth rate for 3 years.
- UK GDP likely to drop 11.5 % this year. These drops in GDP are the largest 3 months collapse since record keeping began in 1948 just after world drop. Other economies like Europe also dropped with one exception that is China with only a 2.6% drop in period December- Februaury but 3.2 % increase thereafter.
  President Trump in his statement mentioned that Policy responses for public health policy and Economic policy are related and but separable.
- However, according to an economist like Austun Goolsbee's "first rule of virus economics", best way to fix the economy is to control the virus.
- In the U.S. there are three levels of government that should coordinate their policy responses during a public health emergency:
- For Indian aspect he mentioned, Raghuram Rajan's, talk on "Emerging Markets and the Coronavirus," for Bendheim Center for Finance at Princeton University, on July 24, 2020

Two development in law and economics in the US to deal with the issues raised by the pandemic

- Congress and the Federal Reserve behaved marvelously:
- Congress passed four major bills, including the CARES Act.
- Paycheck Protection Program.
- Moratorium on evictions and foreclosures from real property and interest on student loan payments. (Till Aug. 1; not yet renewed.)
- Total value of relief measures is $3 trillion, which is about one-seventh of GDP.
- Federal Reserve preserved liquidity of banks and engaged in $700m of "quantitative easing."

A law and eco analysis of legal issues raised by the pandemic

- **Emergency powers-** state governors have used their 'emergency powers' to achieve public health measures.
- Trump declared a "national emergency" on March 13. Centers for Disease Control and Prevention (CDC) guidelines were first published and then disavowed by the president.
- Serious policy responses were left to the states and localities. Simply urging people to social distance and wear masks might not work.

Can governments compel business to close, churches to shut, ban groups of more than 10 from gathering? yes but for how long? limited time? 30 days?

- Certain difficulties faced by the policy makers-
- Limited testing to know for someone has the disease
- Asymptomatic transmission- accounts for between one-third and one-half of all cases.
- Contact tracing esp. if testing is infrequent.
- He mentioned the method adopted by University of Illinois to control spread of among 55,000 students by creating an app for all faculty and students, 2 times testing every week and contact tracing.
- Behavioral considerations might work as Infection of others is an "externality" Behavioral law and economics- people a make predictable, systematic mistakes and Law-making should take account of such considerations.
- Safe harbor provision- business will not will be liable if they comply with best public health guidelines, giving them an incentive to comply with the guideline. This applies to the customers as well.

26th August, 2020

Mr. Avinash Ganu

Mr. Avinash Ganu delivered his lecture on the topic "Law and Economics" he emphasized on the importance of domain knowledge of competition and market economy for all law and economics students. Professor explained how markets enable transactions which in economic sense equates to maximization of value as they produce surplus for both consumer and seller. Howver, perfect competition in market to maximize value for both in an equal sense is a fictional notion as in a real market condition one will gain more than the other, he used graphic representation to explain this elementary economics. He explained the importance of efficient competition for firms to remain in the market and how this efficient competition also ultimately leads to consumer benefit which is one of the the aims of competition law, through interplay of law and economics.

Dr. Udaykumara Ramakrishna B.N.

Dr. Udaykumara Ramakrishna B.N. delivered his lecture on the topic "Trade Remedies under World Trade Regime". Professor introduced the topic by mentioning the trade remedies present under Genral agreement under Tariffs and Trade (GATT) , which includes, Anti-dumping, countervailing measures and safeguard measures. In his lecture he explained the scope of anti-dumping measures presnt under Anti-dumping Agreement (ADA) and the remedies available to affected party alleging dumping by another party. Though, GATT condemns dumping but it does not prohibits it per se, howeve, it gives assistance while investigating into dumping practices being adopted by various countries, e.g how a fair price of the product is determined, how to determine if a sale is in the ordinary course of trade etc. He then went on to discuss the various countervailing measures as mentioned under Subsidy Countervailing measures agreement (SCM), their scope and legality. At the end of his lecture Professor discussed the last trade remedy under WTO regime i.e. safeguard measures which can be used by one country to protect its domestic interest though it involves a tradeoff where the affected part has to compensate the exporting country to control its export surge which is not a prohibited act per se.

Prof. Mamata Biswal

Prof. Mamata Biswal delivered her lecture on the topic "Economic Analysis of Insolvency and Bankruptcy Code" where she explained the transition from the Sick Industrial Companies Act,1985 (SICA) to the Companies Act 2013, how the transition period lead to a problem of overlapping of provisions which ultimately created jurisdiction issues for cases bring filed under both SICA and Companies Act, 2003 respectively as even though SICA was replead it could not be officially notified as a consequence of the judgment in R Gandhi v. Madras Bar Association (2010). Finally, this ambiguity was cleared with the amendment brought to the Companies Act in 2013 and in June 2016, with the introduction of Indian Bankruptcy Code changes were brought in the Companies Act,2013 under which pending SICA cases were also transferred to NCLT.

Professor quoter figures to mention the massive changes in recovery rate of the cases and their resolution time before and after IBC reflecting a significant difference. At the end of her lecture Professor mentioned the various recent legislative developments in IBC and winding up process which were a result of judicial developments in areas like cross border insolvency proceedings, home buyers as financial creditors, applicability of Limitation Act in IBC proceedings etc.

Dr. Divya Tyagi

Professor Dr. Divya Tygai delivered his lecture on the topic titled "Security Laws and Economics" where he talked about the relevance of market forces like demand and supply which aid in determination of fair prices in the security market and which generally are not altered with so that economic realities are really appreciated in their true sense. Professor explained how securities is an inclusive term in itself, and any instrument which the court consider to be marketable and transferable, judges tend to consider that instrument as a security this approach signals to the broad understanding of the particular term. Professor also explained the role of SEBI and other stock exchanges as regulators, facilitator and intermediators of the security market and how they have the most significant role in maintaining transparency, accountability and anonymity of the security market. He concluded his lecture by calling security market as the barometer of economy as it is an indication of what happens to the academy, and helps to ultimately sense the mood of the economy.

Prof. Tom Ginsburg- ***Plenary speaker***

Prof. Tom Ginsburg the plenary speaker of the second session of the GNLU Academy of Law and Economics, delivered his address on the topic "Economics of Constitutions". Professor introduced his topic by stating that lawyers normatively evaluate how laws come out of the constitution, but economists take a rather different approach, for instance, an economic critique of the constitution by Charles Beard, institutions/people making the constitution are benefitting from process and take the opportunity to maximize their self-interest is being maximized.

To explain this further he mentioned the famous James Buchanan's theory which starts with methodological individualism where he says that constitution was rules about rules, rules and the structures determine the outcome not people's individual preferences**.** However according to him over the years the reason for collective/majority decision was considered to minimize externalities which can be imposed by individuals. However, in reality collective decision making have costs too, as higher the threshold to approve the decision, the more difficult it is, as deliberation is difficult and time- consuming, which will eventually create a hold–out problem, that is if my approval is needed to make the decision I have the ability to hold out, the decision does not favor me personally, which will ultimately lead to no real and efficient decisions being made.

Professor mentioned that the stakes of majority rule is too high, therefore we need different rules for efficient decision making.

Subsequently, Professor talked about the debate revolving around adaptive change v. dynamic change, which becomes more significant during the current pandemic as individuals cannot anticipate all eventualities. Then how to design an amendment rule to deal with such eventualities. Professor mentioned certain points to be considered while drafting an amendment rule which includes, variability over time by topic, level of information at the time of drafting, pattern of revelation over time, trust in downstream decider, degree to which it is core interest and finally whether it should be in the form of rules (clear statement) or standards (relatively loose).

Professor explained this position by real examples of a few countries to examine the typology of modes of constitutional change, like Article 368 of the Indian Constitution, which deals with amendment and makes amendment relatively easier and makes it a flexible constitution, however this allows rent seeking problem and gives opportunity to certain interest groups to use this position for promoting self- interest. On the other hand, if he gave an example of US constitution which is not flexible at all and outdated. Similarly, Japanese constitution is very rigid, and it does not have an activist court, while Mexico and Norway are legislative centered.

Professor then proceeded to discuss the old problems of emergency rule but how they are relevant in the COVID situation. He explained emergence of emergency rule based on three principles laid down by the roman dictatorship while imposing emergency in times of invasion, first was necessity, second temporal limit (temporary) and the last was separating the invoker from the actor (effective) . The principles were introduced to keep in check autocracy, as rightly mentioned by Carl Schmitt, who thought whoever can declare emergency and enjoys all powers thereafter was considered to be the sovereign.

Professor highlighted the risk of emergency powers by recent examples where the Prime Minister of Hungary asked the legislature to pass a by law to give him power to declare emergency and have unlimited powers.

Other autocratic responses Hong Kong arrests, fake news prosecution, selective jail release of prisoners. Professor mentioned the risk of backslide in countries where executive tried to concentrate powers, countries having presence of polarization, history of instability, recession, poverty and many other factors.

On, the other hand, Professor concluded his lecture by giving examples of legislature oversight effeiciently responding during the current pandemic situation like the UK coronavirus act, and the Taiwanese legislature response to the pandemic.

27th August, 2020

Ms. Rumani Sheth

Rumani Sheth delivered her lecture on "*Considerations of evolving legal practice- A post COVID 19 understanding through Economic Analyses tools*". In the beginning she discussed commercial climate of the world before COVID in economies along with the trends in world GDP and trade between 2008 to 2018 which showed a direct relationship where both have increased. However, developing economies and their contribution to world trade is not so much in 2008 & 2009 although there was a steady recovery after that period and then growth at a steady pace but still developed economies have not performed as well as developing economies with countries like India and China registering a steady growth in exports. Furthermore, she discussed the evolving trend in legal service, where legal profession has been increasingly recognized as a service although it involves major efficiency problems like politics of legal reforms- inadequate incentives and procedures, the costs and time problem, stages in civil litigation that contribute to delays (perceived by both judges and lawyers throughout the civil trial) right from the institution change to the final judgment and many more. She suggested solutions like incentive-oriented reforms that increase accountability, competition, and choice and most importantly integration of informal system with the formal system of justice delivery and a few recent measures for coping with COVID-19, and adjusting to social distancing realities like virtual hearing for instance, Hong Kong has introduced an ODR platform called electronic business-related arbitration and mediation system (eBRAM) to provide ODR service to individuals and business, specially MSMEs**.**

Mr. Satya Ranjan Mishra-

Mr. Satya Ranjan Mishra delivered his lecture on "*Economic Analysis of International Corporate Taxation Laws*". Professor began his lecture by firstly introducing the "Residency" problem which existed for a very long time under the Indian taxation system and was solved very recently, i.e. the problem of deciding Residency, the position in (2016- 2017) where the POEM(Place of effective management and control) test was introduced, was driven by substance over form, which was later replaced by the active business outside or inside India approach which was considered a more economics based approach. Next, he discussed the factors which affect the choice of jurisdictions and forum by the companies, like low tax jurisdiction, a jurisdiction which provides a forum that provides cost efficiency and choosing a Court which are very friendly to assessee. Another choice to be made by companies is with regards to the location of investment in which they consider the inefficiency from a divergence between the social and private returns. As the firm is the decision maker, it is unsurprising that it maximizes the private

rather than social returns. Professor also discussed the problems faced by high- tax rate imposing countries problems like income shifting, in which affiliates situated in high tax country birrow from affiliates in high tax country, so that they can get reduction of interest in high tax country. As result of income shifting from high tax country to low-tax country, a consensus estimate shows that if there is 10% difference in tax rates between two countries it would increase the shifting of 8 % income of high tax country to low tax country, which leads to private gain and not social ggain as it affects country's overall growth.

Advocate Avinash Ganu

Advocate Avinash Ganu delivered his lecture on "*Competition Law and Economics*". In his lecture he mainly focused on evolution of US Antitrust law which was introduced by the legislature to provide solution for a long prevailing trust problem, this was done by introduction of Sherman Act, 1890 and then Clayton Act, 1914. US adopted "Crime Tort' model, which prescribed anticompetitive 'concerted & unilateral conduct' though the laws provided a "broad structure" or "standards" most of it developed through judicial interpretation providing a broad scope to prosecuting agencies under the US laws unlike in India we have a single prosecutor that is Competition Commission of India (CCI),

In his lecture he discussed the various schools of thought that have impacted US laws, like Harvard school and Chicago school, where Harvard school focuses on SCP model which argues relation between- structure, conduct & performances (SCP) and reason that high concentration and high entry barriers effect the conduct of the firm. However, Chicago school was based on Neoclassical economics and price theory, different from Harvard school and skeptical of SCP model, the single goal of Chicago school was economic efficiency. According to him, Post Chicago school deviated and improved Chicago school but did not completely ignore Harvard school. In the end, he gave examples of judicial interpretation by discussing various cases where the courts have recognized various types of exclusionary abuses and the various doctrines being developed by the courts in this process, like the essential facility doctrine, refusal to deal etc.

Dr. Mahesh Chaudhary-

Professor Dr. Mahesh Chaudhary delivered his lecture on "*Economic Analysis of Item Rate Contracts*". Professor introduced the lecture by explaining the meaning of terms Percentage rate contract and item rate contract and how they work respectively in civil contracts. Professor then discussed the shortfalls associated with item rate contract in cases of unbalanced bidding, where one bidder places high price for one item and low for others, he tries to charge higher prices for processes which will we be competed in the starting of the project which will eventually lead to lead bidder taking more than 50% of the payment for less than 30% of the work done. This is called front end loading and bidder may be able to reap a windfall. This may also cause premature run away of bidder as he knows he will still be making handsome profit leaving the

work unfinished leading to cost and time overrun. Professor then explained percentage rate contracts where the bidders quote x% above or below the estimated % project cost and among the qualified bidders, the one who quotes the lowest % is awarded the work, and how these contracts are considered to be safer than item rate contracts. In his final remarks, Professor mentioned that one needs to look into economic efficiency of the contract and wherever possible use percentage rate contract in place of item rate contract and be aware of unbalanced biding to avoid time and cost overun.

Prof. Nuno Garoupa-

Prof. Nuno Garoupa delivered his plenary lecture on "*Criminal Law and Economics: from Becker to Behavioral Law and Economics"*in which he intoduced Crime and Economics as an empirically driven field unlike other theoretical fields like contract law, civil law, etc.

He expressed the dissatisfaction prevalent among many people other than economists to call criminals as irrational people and then devise a rational framework to internalize the costs imposed by them, how can there be a rational model for irrational people? While, on the other hand economists assign a very different meaning to the term 'rational' having a very different and limited understanding unlike the other people outside this field.

Professor tried to explain the above position by providing an economic analysis of criminal law and how individual behavior which is a microeconomics approach, considers factors like economic rationality and how individual behavior depends on certainty of sanctions versus severity of sanctions. Normative approach was another factor discussed which includes welfare economic approach looking for efficient solutions, however many people do have concerns in using this criterion while dealing with laws. Professor then discussed the vast literature starting from the classical theory given by Hobbes (1588-1869), Rosseau (1712-1778), Locke (1632-1704), Cesare Beccaria (1738-1794) Jeremy Bentham (1748-1832), the modern Rational theory and lastly the economic theory given by Becker in 1986**.** The basis of economic theory is that individuals compare illegal gains and other gains (psychological, biological) with costs like expected punishment, social costs: stigma, other costs (psychological), as the decision to offend is rational outcome of comparing costs and benefits.

According to various economists as expressed by Professor, the basic objective of law enforcement is deterrence. However, some people outside economics are upset about this and think the objectives of law enforcement are different like rehabilitation and deterrence cannot occur in reality. However, economists believe crime is a negative externality, that needs to be internalized. Professor also believes that Coasian solution will not be smart way as we can't have potential criminals' negotiation with potential victims. So, what should be the policy approach, should we have strict sanctions in place instead of probability? Should we go for less probability with high sanction or vice versa, however we generally see people will resist inflating sanctions. Is there a Market for offence? for e.g. Pigouvian taxation approach which essentially means you have to pay a price to commit an offence.

Professor explained Becker's model on this particular debate of which policy should be adopted, as Becker suggests fines are the only policy approach to deal with economic costs being imposed by criminals on the society, fines according to him are basically costless transfer for resources, while punishment involves costs. So, according to Becker we should live in a society on very high fines (entire wealth) and less probability of other sanctions being imposed (close to zero).

However, Criminal lawyers have a completely different approach as for them what really matters is the individual harm and not social harm occurring from a law violation.

According to them in Becker's model, we are not externalizing the harm caused to victim on the other hand we are internalizing the social damage, which essentially means in real sense that offenders can believe that they you can commit a crime but have to compensate for it, which will not lead to actual deterrence.

Another critique on Becker' s model mentioned by Professor was that Becker did not consider the issue of corruption, the rent seeking opportunities to bribe the judges, and law enforcers in case of only monetary sanctions. Marginal deterrence was another critique given by Stigler's where he states that if a person has to give up his entire wealth for a single crime he might as well commit more crimes in that case, Becker therefore did not consider different levels of wealth.

In this regard, Professor discussed how individuals are averse to risk and however, deterrence with nonmonetary sanctions is socially costly to impose and creates disutility but is essential for creating of deterrence in the society.

Finally, he discussed the case of criminal liability in corporations, firms and contracts as nexus of contracts, principal and agent liability. Is it better to allocate liability on principal 'employer? He gave instance where if you put liability on employee, in a cooperative crime, employee will reallocate this cost on employer by demanding an increase in the wages. But, if this situation arises in a monopoly situation, the employee cannot actually reallocate his liability on the employer.

He concluded his lecture by posing a controversial and highly debatable question, that is Is there any Economic evidence of deterrence? Criminology says no and according to them economists are wasting time supporting their stance by citing the behavioral challenges like, individuals handle uncertainty in nonobvious way, they do not understand their implication, and do not do computation. According to them some people are criminals because they are not socialized enough, and there is something wrong in their socialization and process of their cognitive understanding and is not depended on fine and punishment.

However, according to economist they have certain evidence as people are risk averse, and probability is more effective than severity of punishment. In reality, people do react to incentives, we should consider the marginal impact and behavioral challenges both and not completely throw away the deterrence model.

28th August, 2020

Prof. PM Prasad-

Prof. PM Prasad delivered his lecture on "*Scientific and Economic aspects of zoning policy violations*". In his lecture sir introduced a study undertaken by him and some of his students concerning the issue of 'Contamination of ground water in residential areas' in which was inspired by the landmark case of zoning violations by industries in Delhi, that. is *MC. Mehta v. UOI*, 1987

Professor is pursuing the study to establish the groundwater contamination by heavy metals, to understand the water use pattern of the households and the present condition of ground level water so as to suggest a design to economists to promote sustainable development. His study focuses on the status of zoning violations in major cities like Hyderabad, Chennai and Benagaluru and the expenditure model by household in the cities, their present water supply mechanism, current land use regulations in these cities and their violations that is a part of scientific analysis of the study undertaken. The economic aspect of the study focuses on socio-economic and water-use patterns of households- data by estimating the household expenditure on water, and identifying determinants affecting the expenditure on water, different levels of income groups and their expenditure and basis their occupation (self-income, laborers, etc). Regression analysis of the study shows that income groups, households' occupational status, no. of family members impacts variables on water resources management. Higher income spends more than lower income group. Economically weaker, lower income and upper middle-income households they incur 12%, 5%, 3% of average income respectively. Based on the study three suggestions given by Professor were, first, mandatory information disclosure by industries to make then sensitive towards the quality of ground water, second was Smart city for Make in India which means hazardous industries should be aware that if they negate the negative externality of contaminating ground water they will get positive incentives, like an increased deduction on their expenses. etc. and lastly metro water supply to households of zoning violations areas.

Mr. Lalit Panda

Mr. Lalit Panda delivered his lecture on "*Economic Analysis of Constitutional Law*"

He commenced his lecture by explaining how economics is a neutral concept and is not exactly a western concept, but in fact is of equal importance in each economy, he then used this basis to explain how Constitution of all the countries is a result of an economic analysis of collective choice and is in fact a result of rational behavior. Collective choice is considered rational and different from individual choice, as it includes both external and internal costs, and anything short of uniformity can be called as efficient while collective decision making. He then went on to discuss Professor Amartya Sen's solution to his own Liberal paradox which suggests that the

pareto principle should defer to liberal rights in certain situations where they conflict as pareto is followed at constitutional stage due to veil of "uncertainty" conditions rights specifically secured in the constitution tend to be of a general/universal nature. Rights ensures that politics is sensitive to the intensity of preference and not just the number of votes. In his final remarks, Sir discussed how the principle of Separation of powers is also an economic based idea, the people who drafted Separation of Powers in the constitution had a vested interest, that it reduces the transaction costs in decision making by limiting the areas where the three organs that is, legislature, judiciary and executive work. SOP is therefore considered an efficient solution as it leads to further classification and increases allocative efficiency.

Mr. Utkarsh Leo-

Mr. Utkarsh Leo delivered his lecture on "Law and Technology". He introduced his topic by explaining the basics of blockchain functioning, in which each person using the platform has a transaction copy but no one using the platform has a master copy, how efficient it is in comparison to other available options of online monetary transactions as it is less time taking and reduces the transactions costs, for e.g. a Bitcoin has an average processing time of 10 minutes. Bitcoin uses it blockchain to take its transaction forward, it is completely decentralized. Trust is a substitute of information and bitcoin has dealt with trust issues. Blockchain is a trustless trust as cited by many experts in the field. Sir explained how difficult it is to hamper the hash string of each input and output strings to manipulate the transaction making it a trustable mode of transactions. Consensus algorithm also known as mining to make sure all the participants don't turn malicious and hash pointers make the blockchain tamper-proof. However, certain problems faced by cryptocurrency are double spending problems and the probability of the public key used for transactions on blockchain platform getting hacked. In his last remarks, sir mentioned how the future of cryptocurrency in India finally saw a silver lining when in March 2020 the Supreme Court ruled in favor of the Internet and Mobile Association of India, arguing on behalf of cryptocurrency exchanges.

Dr. Richa Sharma

Dr. Richa Sharma delivered lecture on the topic "*Economic Analysis of Indian Legal History". Professor* mentioned how Economic analysis of various events/issues in the past, possible, because of the interrelation between three disciplines law, economics and history, where the role of history is to serve as evidence, role of Economics is to identify the process of change in historical evidence and provide contempory tools by using the evidence finally, Law denotes that region where we want to have development for future, the subject matter of study. Professor explained the various classifications of economics of legal history, firstly law as an independent variable which includes effect of law and real change in human behavior, examples include glorious revolution, legal origin and 19th century women's rights legislation, secondly, law as a

dependent variable which deals with why law changes over time, the reason is when they are made they are considered as the most efficient solution while later on scholars adopt a more realistic model of judicial and legislative behavior that take into account interest groups, institutions and transaction costs, one example of law as dependent variable responding to social change is the introduction of Right to Education as fundamental rights. Studies in the first two genres analyze as either cause or effect, in contrast, to bidirectional histories view, where law and society interact in dynamic ways over time. Laws change society, but change in society in turn lends to pressure to change the law, which starts the cycle over again. Therefore, professor emphasized economic analysis with bidirectional contempory history becomes important. In her concluding remarks, professor mentioned how law and economics has developed an impressive body of theories relating to litigation and structure of contracts. These theories often shed light on legal behavior in former times, including contracts between slave ship owners and captains, and the suit and settlement decisions of medieval private prosecutors which require a more focused study of Interest groups and law making in history. This area an provide more evident reasoning to have or change the law-making process to change the outcomes of law.

Professor Hans Bernd Schafer-

Professor Hans Bernd Schafer delivered the plenary lecture on 28th August 2020 on "*The debate on legal rules and legal standards*". Professor started the lecture by posing a simple yet highly debatable question to the audience, that is, whether is it better to have rules or standards in a legal system? According to him rules are very precise legal norms, it's like a speed limit in a residential area, allows mechanical decisions of servants and judges, do not require much information to adjudicate, imply a high level of legal certainty, but they can be sticky and out of date. On the other hand, standards are imprecise, open ended, flexible to administer, decisions are known only ex post, standard is a reasonable behavior and requires subtle reasoning.
However, Professor mentioned the critique of the rules and standards dichotomy, as expressed by some economists that rules as well are not algorithms, they are subject to interpretation and not precise. Rules and standards are not in total opposition to each other, many standards develop on rules over time by mostly judicial interpretation.

Professor then discussed the economic aspects related to rules and standards, so if you compare rules and standards, they economize on different standards of legal systems. The cost of rule specification is high and rule adjudicating is low while the cost of standards specifications is lower and adjudication cost is higher is higher. However, the Total cost of having a rule is lower than total cost of having a standard. Therefore, a system based on rules is better for low income country.
Some other considerations while understanding the distinction mentioned by professor are that, risk averse people prefer more certainty while, less risk averse people will trade off certainty if they gain flexibility and prefer standards over rules.

Rules are superior than standards in case the quota of well-trained civil servants and judges is low in a country, that is, if a country has less human capital it's better to focus expertise should be concentrated for rule making rather than rule adjudication. Professor cited an instance when the Russian corporate law was drafted in 1994, the Russian judges did not know much about corporate law as they got most of their training in soviet period, so drafters wanted the law to be very precise and crystal clear.

Similarly, the introduction of "*business judgment rule*" in United States was to make sure that one manager in the company should be elected with super majority then it is clear that he has the trust of minority shareholders. Therefore, for countries where corruption is a big problem it is better have rules because it is then easier for an outside observer to see if follows the rule. Also, if state moves from rules to standards it results in delegation of parliamentary power from them to judiciary, which means state power is limited and corruption can be controlled better.

In his concluding remarks Professor said if a legal system is rule based, an agency exercising power is controlled and limited and the citizens are more informed and empowered. On the other hand, in a legal system based on standards, agency has more discretionary powers and citizen is less informed. Therefore, rules should govern administrative law in each country to curb power of government, have less corruption. which will eventually lead to better economic development of a country.

29th August, 2020

Mr. Avinash Ganu-

Mr. Avinash Ganu delivered his lecture on "*Competition Law and Economics*". In his third consecutive lecture on the topic, Professor focused on evolution of EU Competition Law, which started with European Community treaty including Article 81 & 82, The Treaty on functioning of the EU, 2009 replaced EC treaty with the present Article 101 & 102. Article 101 of TFEU talks about anticompetitive coordinated conduct to distort competition and Article 102 mentions abuse by dominant undertaking in dominant position hindering, product, market and technological development. Professor explained how 'efficiency' is a defense considered under Article 101, If your product is increasing efficiency, that is if it is improving production, distribution, consumer benefit, technological or economic progress. He presented a comparison of US competition law which has main features like monopoly principle, Harvard and Chicago school, cases before jury trial, etc. and EU competition law which has main features like dominant position principle, Harvard, Chicago, ordoliberal school, cases before commission, etc. Professor then explained the hierarchy of competition law cases where, ECJ is the supreme court of EU, appeals are transferred from general court to ECJ and national courts in each member state can make reference to ECJ. In his final remarks he discussed the various tests introduced by EU courts to establish "Dominance: including SSNIP(small but significant non transitory increase in price) test, hypothetical monopolist, ability to act independently- no longer a price

taker but a price maker, quantitative levels where 75%- super dominance, 50-75%- large share, presumption and 35%-50 %- to compare with nearest rival, barrier to entry, collective dominance. He mentioned how these principles and tests are even applied by Competition Commission of India to deal with Anticompetitive practices.

Ms. Sayali Ganu-

Ms. Sayali Ganu delivered her lecture on "*Emerging issues under Competition Law Regime*". This lecture was delivered in the backdrop of Advocate Avinash Ganu's lecture on "Competition Law and Economics". She commenced her lecture by discussing the goals & scope of competition law & Policy which include, promotion of free market, consumer welfare, regulation of anti-competitive behavior of firms, merger control. etc. Professor later on discussed the unique economic features of the digital economy like strong network effects, economies of scale & scope, price discrimination enabled by technology, near zero marginal costs, low distribution cots, new conglomerate structures, data based competition and advantages, concentration tendencies and the advantages of Data as input in these network effects like, economies of scale, economies of scope that is use of same date to provide different products to users which also helps in customization. However, network effects can be positive and negative both as data asymmetry firms have more data than consumers and may be used by the firms for their personal gains. In her final remarks she discussed the present issues with the digital market which includes, defining relevant market in case of digital market, assessment of abuse(whether it's just, efficient and leads to improvement or use of data for creating entry barrier for future competitors) and finally the most important concern of reviewing a merger in case of digital economy.

Mr. Param Pandya

Mr. Param Pandya delivered his lecture on "*Economic Analysis of Corporate Governance*". Sir commenced his lecture by discussing the long prevailing 'agency problem' in cases of corporate governance where shareholders as (principals) invest monies but lack the expertise to manage the company and this leads to delegation of authority to managers (agents) separating ownership and management. One of the main characteristics of agency problem is 'information asymmetry' between principal and agents. How to monitor manager's performance thus becomes a difficult task. Sir explained how mitigating one type of agency cost may enhance others that include (minority shareholders v. majority shareholders) (shareholders v. mangers) and (shareholder v. other stakeholders). How to solve these problems? Sir gave example of two strategies first, monitoring strategies and second bonding strategies which may be combined or overlap to deal with the agency problem. Monitoring strategy may include "agent constraints" that is, dividend restrictions, rules requiring action to be taken following serious loss of capital. On the other hand bonding strategy may include "incentive alignment" that is, high powered incentive' to act opportunistically, interests of both owners and managers should be aligned, sharing of returns

between controlling and minority etc. on more solution to the agency problem was to monitor decision rights of managers in which day-day managerial decision should not require shareholder approval to award flexibility however but major organizational decisions must require shareholder assent.

Prof. Anurag Agarwal-

Professor Anurag Agarwal delivered his lecture "*Law & Economics: Arbitration as chosen method of International Business Dispute Resolution*". He started his lecture by giving recent and famous examples of arbitration going on presently in India and the world, one e.g. was related to the battle to acquire stake in Mumbai airport in which arbitration is already in process and another example was an international arbitration related to tobacco packaging. Professor then discussed the famous triangle which has different and sometimes conflicting interest- including, 'businessperson' who's priority is to make profit, 'economist' who wants having an efficiency in a system with minimum transaction costs and optimum use of available resources but without a profit motive while a 'lawyer' has to protect interest of their client but before that he is an officer of court and has to ensure the wheels of justice keep moving. Professor discussed the features of arbitration contracts like, voluntary in nature, the parties have choice, parties can freely refuse to comply even after the award is decided, institutional and ad-hoc arbitration, experts as arbitrators for special cases, less timely, cost effective, confidentiality etc. Why do parties choose arbitration first, when parties want to continue relationship or when it is viable for the parties to pursue arbitration for any one or more features mentioned above. Cases when parties do not choose arbitration, when the stated advantages do not work in their favor and when one of the parties does not want an amicable solution. Finally, Professor discussed the economic analysis of arbitration as a method to settle disputes, firstly, deterrence will succeed only if the expected punishment exceeds the expected gain, when parties go for arbitration if they can anticipate that the award will be of value then the real benefit to one party can be huge than the other party, arbitration and the award can be helpful only when there is real deterrence, like negative publicity in the market etc. Sometimes, rationality of one business manager may not converge with the other business manager as the transaction costs in both cases may be different, in those cases the losing party will not go for a efficiency and will want the matter to be delayed, ultimately increasing transaction costs. So, how can the contracts be mutually governed so that both that parties benefit? Economics can help in this, there should be a tradeoff between the parties as both parties will want two different things, therefore if society wants the parties to do chose a particular situation, there should be incentives given to the parties for it to curb the opportunism as by regulating contracts you can make a party take risks efficiently which is better than inefficient risk taking.

30th August, 2020

Rohan Lavkumar

Rohan Lavkumar delivered his lecture on the topic "*Cost Analysis of Litigation*".

Litigation in India is a lengthy but cheap process and usually stands in advantage of respondents/defendants. As respondents and defendants are able to delay the justice delivery process without occurring very less or zero costs, this is called as "litigation fatigue"**.**

How do you decide to pursue a case? Sir mentioned a few specific provisions which should be kept in while deciding which cases to pursue, like Section 35 of Civil Procedure Code that governs imposition of costs, subject to such conditions and limitations as may be prescribed, Section 35 A that further deals with compensatory costs in respect of false or vexatious claims or defenses and Section 35 B- costs for causing delay.

Keeping these provisions in mind, lawyers tend to do a cost-analysis and consider if the reward they get is more than costs they have to pay, so the costs they have to bear under the provisions is actually not a penalty and tend to violate the above provisions to increase individual efficiency.

What is the solution for this moral hazard problem- in 2015 an amendment was made to CPC, which included a special provision under Section 35 CPC which stated that certain commercial causes will be governed under Commercial Courts Act, 2015 and this will have an overriding effect on the general provision of Section 35 CPC. Under the new act, court has discretion to impose costs and can even impose additional costs (to deter delay, non-compliance) by recovering advocates fee as costs. Another example is of Andhra Pradesh Advocates Fee Rules, 2010 where for suits, 10% upto Rs 10,000 then 7%, 5% and 3% to above Rs. 30,000.

Courts should discourage and disincentivize, people from filing vexatious PIL by imposing costs. No costs also encourage respondents to delay cases and file for unrelated claims.

Current problem- In India, we do get 100% justice and are not whole as before the damage, fo.eg. If I cannot recover my advocates fees, even if I recover 100% of claim value even then I lose out on my advocate's fees. If I have to be indemnified for the complete damage which occurred to me then I need to be compensated for 100% advocates fees and claim value. Only then it will amount to complete justice in actual terms.

Kundhavi Sureshkumar

Kundhavi Sureshkumar delivered her lecture on "Capital Markets"

What is a corporation? The evolution of theories before the great depression, after great depression, neo-classical theory, 'Coase's' theory of firm, contractarianism defined corporation in different ways. She discussed the various features of a company like perpetual succession, separate legal entity, common seal, limited liability etc. The main process involved in functioning a company is the process of "corporate governance" which has three main actors (Shareholders, directors, managers). The biggest problem associated with this process id the "Agency problems" and the agency costs associated with it, certain solutions for this problem includes performance for pay clauses in contracts, fiduciary model of executive remuneration- in which game theory can be applied to the duty of loyalty based on prisoners dilemma, that is how

punishment is important to effectively deter violations. Corporate governance leads to efficacy. Corporate governance should be based on mutually beneficial contracts for all stakeholders and there should be strict mechanism for contract enforcement for reallocation of risks associated with agency problems.

Dr. Girish R.

Dr. Girish R. delivered his lecture on '*Fiscal Federalism'*
What is federalism? Traditional approach towards identifying the federal character of the constitution includes first understanding various features like, dual polity, distribution of powers, supremacy of constitution, written constitution and rigidity.
Professor then discussed various articles of the Indian Constitution like Article 264 to 293 which explain financial relationship between Union and State, Article 280 provides for finance commission. These provisions reflect that India has a quasi-federal structure where center-state financial relationship relates to the distribution of powers in resource mobilization and also in sharing of expenditure responsibilities. India has a scheme of distribution of financial powers in which the power to make laws and power to levy taxes are dealt separately, Article 265 provides that tax shall be levied or collected only under the authority of law, It should be based on the legislative competence under the lists in 7th schedule, the law should not be one prohibited under Art 285 and 289, be within the competence of the legislature, must be for a public purpose, the law should not be void under Article 13 and finally, the law should not violate other constitutional limitations.
The issues with the type of fiscal federalism in India is that, major taxes with union, states have minor taxes, and center also has residuary powers this creates an imbalance and the financial bodies like financial commission are dominated by union players.

Dr. A Marisport-

Dr. A Marisport delivered his lecture on "*Economics of Crime*"
Professor introduced his lecture by posing a question before us that in spite of change in penalties, why incidents of rape not decreased after 2018 amendment specially? Is severity of penalty the only factor responsible for deterrence or are there other factors too. One problem with the Indian legal system is Criminalization of politics where we see, Members of parliament having cases pending against them increasing year by year.
Economic analysis can explain why this happens. Gary Becker a pioneer in the field of crime and economics developed which says "a useful theory of criminal behavior can dispense with special theories of anomie, psychological inadequacies, or inheritance of special triats and simply extend the economists usual analysis of choice". While in the Classical theory of criminology, Beccaria said punishment should be in proportionate to the harm caused, thus, the severity of the harm determines the level of punishment. Increasing severity may results in more crimes. In order for deterrence to work three things must occur certainty, severity and celerity (speedy disposal of the

case). On the other hand, Bentham said- “laws should set specific punishments for specific crimes in order to motivate people to act on away rather than another also known as pleasure and pain theory. His presumption was that criminals are rational and discretion should not be given to judiciary. Another economic theory called the Rational choice and routine activities theory states criminal decisions are neither fully rational nor thoroughly considered. It is called limited or bounded rationality and potential offenders consider the and benefits gained from committing crimes and offenders use free will and opportunity. Certain policy measures to correct the situation would include positive measures in the form of manipulation of opportunity and to make crimes less rewarding and riskier for offenders.

Professor Raghuram-

Professor G. Raghuram delivered the valedictory lecture of the GNLU Academy on Law and Economics. He discussed practical examples how an appropriate legal framework is required for infrastructure development which in turn leads to economic development, that is how infrastructure acts as interface between law and economics. Legal field if in its own puritanical form will take its own time where celerity might not be a consideration and by the time a resolution happens the original value of the claim might be lost. Thus, those who are driven by economic perspective may influence areas where only a pure legal system is present to help them solve issues efficiently.

Professor explained how infrastructure development gets affected by legal issues, appropriate allocation of rights specially in land acquisition issues and environmental concerns is important. Many infrastructure projects get affected due to inefficiency issues just because multiple stakeholder angle is not taken into consideration. The respect for law has to come in so the law policy makers become more sensitive.

Legal aspects have partly enabled and partly affected projects sometimes on procedural issues. For instance, public sector could also be abusive of the monopoly situation they are in , just because of lack of effective checks and balances. However, the fact that a particular party is in a monopoly situation is not sole consideration but if it exhibits monopoly behavior is the question. In the same context the judiciary should become more concern about celerity issue and make sure it should not result as an opportunity for one party and a disadvantage for other.

The final dimension professor discussed about was that, matters are sometimes resolved solely on procedural level even though it contains an underlying substantive consideration. Therefore, higher courts should focus more on substantive aspects in the coming future and make the legal system more efficient.