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Editorial Note

- Dr Ranita Nagar

Editor-in-Chief

The COVID-19 Pandemic has forced us to challenge our world views in different forms, leading to the creation of new research domains. Within different disciplines, there was an eruption of new forms of literature, literature focused on how to deal with the worst crisis most of us are living through. While this has been a time of distress for all of us, within this distress, there existed opportunities for us to review our laws, and our societies, and possibly make them more resilient.

The GNLU Journal on Law & Economics wanted to give reflection to newer ideas emerging from the situation of the world today. In furtherance of this, the Journal organised a Symposium asking scholars worldwide to contribute their research on and about the COVID-19 Pandemic. This issue of the GNLU Journal on Law and Economics, comprising of papers from the Symposium, unpacks the pertinent questions and contradictions arising from the pandemic. It hopes to inform action-oriented policy measures to alleviate the uncertainty caused due to the spread of the coronavirus. This issue promises to add to the research through contributions by scholars from around the world, examining the connections between Law and Economics in the 'New Normal' of the pandemic age.

It is true that the 'New Normal' has forced us to regulate differently, and change our policy priorities. Our selected authors have examined these changes from the perspective of two different actors, with varied goals. On one hand, we have businesses and businesspersons who navigate through the Pandemic while making their businesses function profitably in unprofitable conditions for most. On the other hand, we have the government and public policy institutions, plagued by a crisis they have no training in, and scrambling to meet the very diverse needs of their citizenry. The challenges faced by both of these actors are deliberated upon by our authors who seek to answer crucial concerns faced by both of them.

I. THE BUSINESS DILEMMAS

The COVID-19 Pandemic has upturned the business world, presenting new challenges for businesspersons. Dealing with a long-term situation of uncertainty, the business world has seen a slowdown brought on by more cautious spending by consumers, workers being pushed out

of work, and a lack of finances to make up for losses. Our authors have sought to address some business concerns which have arose in the COVID-19 Pandemic.

Contracts are considered as the foundation of modern commerce. Lucas Fulanete G. Bento and Matheus Scussel in their paper titled "**Is COVID-19 an excuse for non-performance and non-enforceability of Business Contracts? Answers from Economic Analysis with a Brazilian Perspective**" highlight improper utilization of COVID-19 to avoid performance of contracts and how law can influence the behaviour of parties to avoid breach of contracts by any one of them. The authors use the Coase theorem to explain how because of inefficient court and dispute settlement mechanism the parties can allocate burdens among themselves if the transaction costs are lower. The pandemic has rendered many contracts and obligations unfulfilled, leading to a rise in disputes. In her essay titled "**International Commercial Arbitration in the Aftermath of the Pandemic: A Law and Economics Account**" Carolina Arlota through an economic analysis of law discusses the impact of the pandemic on the field of international commercial arbitration and how it has changed the incentives for parties in dispute. She also sheds light on the impact of pandemic on pre-existing contracts without international arbitration clauses and the incentives of including such clauses. According to the author pandemic has highlighted the importance of having international commercial arbitration as a popular mechanism for resolving international legal disputes in contrast to the usual court systems across the globe.

Keeping in mind the current deplorable state of Indian economy, Aaryan Mohan in his essay titled **Insolvency and Bankruptcy Code: Financial Death, and Possible Resuscitation of Pandemic Affected Workmen** discusses the role of government to soften the Insolvency and Bankruptcy Code to take into account the condition of the micro, small and medium enterprises and extend support. He discusses the impact of the amendment made to the code during pandemic like the suspension of Section 7,9 and 10 of the code by introducing Section 10-A, on the workmen of a business undergoing insolvency resolution during the pandemic and the shortcomings of pre-existing provisions. The paper also discusses the importance of having an appeal mechanism in place for claims from special class like workmen and the need for new method of insolvency resolution in the labour-intensive sector of real estate taking into account interest of special classes of creditors.

Protecting employees and workmenhas assumed heightened importance in the pandemic. Building on the aspects of the previous article,in a different context, Pranay Jalan in "**The**

Incidence of Safety Regulation on COVID-19 Compensation Claims", attempts to offer a fresh perspective to the aspect of employee compensation claims in the times of the coronavirus and ensuing restrictions. The Essay examines the Employees' Compensation Act, 1923 and the implicit causal connection between injury and workplace. A vital study is undertaken by questioning whether an employee can bring forth a claim for compensation arising out of the coronavirus disease. The author puts forward a strong economic reasoning – resting on the foundation of Prof. Steven Shavell's liability model – to suggest a unique 'joint-liability' model combining safety regulations and a liability rule. The author concludes by commenting that an efficient permanent remedy regarding employee compensation is the need of the hour.

II. THE STATE DILEMMAS

The COVID-19 Pandemic also created a new policy challenge for governments to address and work with. The health crisis, and the accompanying economic crisis forced governments to evaluate the cracks in their policy-making. In this section of papers, our authors present the routes taken by different governments in managing these crises together, and question their approaches.

In the aftermath of the pandemic, countries have been scouting for availability of finance to alleviate the economic downturn. "**Financing the Corona Crisis in Europe**" by the renowned Prof. (Dr.) Hans-Bernd Schäfer investigates the economic response by European nations in wake of the coronavirus pandemic. In his inimitable style, Prof. Schäfer dissects the recent line of credit provided by the European Stability Mechanism (ESM), empirically proving that in only a handful of nations such a line of credit would be cheaper that national government bonds. Even in countries having such a purported advantage of inexpensive credit, the financial benefits accrued would be negligible. The far-reaching consequences of using the European Stability Mechanism loan facility on the general composition of the European Monetary System are scrutinised, considering the increased spending undertaken by EU member states. A comparison between 'Eurobonds', ESM financing and proposed 'Corona bonds' is undertaken to determine which would stand the test of constitutionality, commenting on their realistic and financial implications. A noteworthy aspect which this Essay recognises is the existence of moral hazard in any such financial shielding against crises. Hence, Prof. Schäfer concludes by arguing for a fine balance between aggressive risk diversification, and the principle of liability.

Siddhant Dubey in his paper titled "**Pandemic And the Anecdote of India's Welfare State**" discusses as a repercussion of the pandemic the shortcomings India will encounter on account of not having a robust welfare structure in place. The author mentions instances like death of hundreds of migrant workers, and coronavirus patients and doctors due to the unsustainable and inefficient health care system that reflected the lamentable condition of India's social security system and how it has failed its citizens. He also discusses the impact of pandemic in changing the course of a welfare state and the role of media in shaping the welfare structure of a country. In a welfare state such as India, the judiciary acts as a critical component of our democracy. In this paper titled **Reshaping and Re-Structuring The Judiciary- Law And Economic Analysis**, Krishna Agarwal discusses the need to restructure the judiciary, by analysing the state of Indian judiciary in pre- and post-COVID times. The author uses various microeconomics tools and public choice theory to comprehend the impact and working of the judiciary based on facts, figures and graphs. She highlights the impact of COVID on the judiciary and the government's response in form of government rules and notifications, taking a cue from them she advances probable solutions to restructure and reshape the judiciary efficiently post COVID-19.

In "**Legal Issues of the Coronavirus Pandemic: A Law-and-Economics Perspective**", noted scholar Prof. (Dr.) Thomas S. Ulen analyses entire episode of the coronavirus pandemic, from the angle of law and economics. The immense economic costs of the pandemic are highlighted through macroeconomic indicators such as the decline in GDP and high unemployment levels. Further, Essay deeply reviews policy responses to the pandemic, and the aspect of usage of the emergency powers of the government, along with related reactions by the commercial sector. Criticising the US Federal Government's handling of the pandemic, Prof. Ulen underlines the importance of a calibrated approach, where benefits of regulation outweigh the costs. Courts of law have been closed since the advent of the pandemic and deciding on their reopening involves striking a fine balance between assuring availability of legal remedies, and public safety. The US Presidential election presented a unique scenario with mail-in votes, where the Essay underlines how the pandemic, and absentee ballots, have adversely affected primary voting. In his concluding remarks, Prof. Ulen stresses on the importance of basing policy responses on the foundation of cost-benefit analysis to find common ground.

Following Prof. Ulen's deep and introspective article on the American perspective of the pandemic, "**The 'Law and Economics' of Governments' Response to Pandemics**", by Indervir Singh and V. Santhakumar, presents a timely analysis of the efficacy of the Indian government's response to the coronavirus pandemic through the lens of law and economics. The authors discuss the increased need of government intervention in difficult times, explaining that certain rules and restrictions become essential to avoid the situation of market failure. It is also important to note that governments of distinct nations may differ in their responses. To highlight this point, a comparison is drawn between the nature of restrictions imposed in Sweden, and those imposed in India. The cost and benefit of the stringent lockdown enforced in India is also brought out, with more beneficial alternatives proposed by the authors. The Essay concludes by recognising the need to fine-tune the responses of the government according to contextual, social, economic, and political factors.

In the final article placing emphasis on ensuring welfare, "**An Institutional Economics Analysis of Wearing a Mask: Internalising the Externality**", authors Varada Shyama Bhat N and Mahek Khandelwal delve into the pertinent question of the negative social costs arising by not following safety protocols to curb the spread of the pandemic. Likening the pandemic to a market failure with negative externalities, they argue that information asymmetry worsens in such scenarios, with individuals intentionally flouting safety norms for want of better scientific awareness. An intricate assessment regarding the difference between private costs, private benefits and social costs is presented through the concept of bounded rationality. Breaking away from suggesting the imposition of Pigouvian taxes – the usual approach of tackling such negative externalities – the authors instead emphasise on strengthening the existing institutional framework, especially local self-governments, to increase awareness and achieve socially desirable outcomes.

It is definitely true that there has been nothing as drastic as the COVID-19 Pandemic in our recent past, in terms of losses caused and lives claimed. Through this disaster as well, however, human imagination has been at its peak, in looking for new innovative solutions to ensure limited damage, and to protect as many as one can. This human imagination and perseverance in dealing with every crisis is also what made this Journal possible this year. Although our authors are from different parts of the world, all of them were bound together by one desire, to provide solutions to make the currently injured world around them better. It is that very desire which provides us with hope, amidst a global pandemic- hope that if we can imagine a better world through our writing, maybe we have the power to create it too.

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