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By

Prof. Atul Abasaheb Mhaske

B.E., M.B.A., M.A. (Economics), NET (Economics)

Assistant Professor,
New Law College,
Ahmednagar

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Module 1 INTRODUCTION TO LAW AND ECONOMICS

1 INTRODUCTION TO LAW AND ECONOMICS

Law and economics," also known as the economic analysis of law, differs from other forms of legal analysis in two main ways. First, the theoretical analysis focuses on **EFFICIENCY**. In simple terms, a legal situation is said to be efficient if a right is given to the party who would be willing to pay the most for it. There are two distinct theories of legal efficiency, and law and economics scholars support arguments based on both.

Law and economics stresses that markets are more efficient than courts. When possible, the legal system, according to the positive theory, will force a transaction into the market. When this is impossible, the legal system attempts to "mimic a market" and guess at what the parties would have desired if markets had been feasible.

The second characteristic of law and economics is its emphasis on incentives and people's responses to these incentives. For example, the purpose of damage payments in accident (tort) law is not to compensate injured parties, but rather to provide an incentive for potential injurers to take efficient (cost-justified) precautions to avoid causing the accident. Law and economics shares with other branches of economics the assumption that individuals are rational and respond to incentives. When penalties for an action increase, people will undertake less of that action. Law and economics is more likely than other branches of legal analysis to use empirical or statistical methods to measure these responses to incentives.

The private legal system must perform three functions, all related to property and **PROPERTY RIGHTS**. First, the system must define property rights; this is the task of property law itself. Second, the system must allow for transfer of property; this is the role of contract law. Finally, the system must protect property rights; this is the function of tort law and criminal law. These are the major issues studied in law and economics. Law and economics scholars also apply the tools of economics, such as **GAME THEORY**, to purely legal questions, such as various parties' litigation strategies. While these are aspects of law and economics, they are of more interest to legal scholars than to students of the economy.

Interrelation between Law and Economics

The law and the economy interact in many ways. Whereas private law assists individuals and groups who are willing to enter into agreements in a free market, public law seeks to correct the outcomes of a free market system by means of economic and social regulation. Economists themselves should be informed about the legal environment in which economic activities must be conducted, while lawyers should be aware of the economic effects of current legal rules and the expected outcome under a different legal regime. Law & Economics meshes together two of society's fundamental social constructs into one subject, allowing a multi-faceted study of significant problems which exist in each subject.

What can Law & Economics do?

Law & Economics, with its positive economic analysis, seeks to explain the behaviour of legislators, prosecutors, judges, and bureaucrats. The model of rational choice, which underlies much of modern economics, proved to be very useful for explaining (and predicting) how people act under various legal constraints. This positive analysis informs the normative branch of the discipline about possible outcomes. If effects of divergent legal rules and institutions are known, the normative analyst will be able to discern efficient rules from those that are inefficient and formulate reform proposals to increase the efficiency of the law. Also, Law & Economics has the ability to improve the quality of the legal system. In the last decades, an impressive literature has developed, showing the strength of both positive and normative economic analysis in various areas of law.

History of Law & Economics

Law & Economics began its synthesis as a discipline through the theories of the Chicago School, and received guidance and influence from such pioneers as Guido Calabresi and Nobel Prize winners Ronald Coase and Gary Becker. Richard Posner's book 'Economic Analysis of Law' became one of the classics of the discipline. Recently, other methods have moved to the fore, including the Property Rights approach, the Austrian School and the Neo-Institutionalist approach. Finally, the Public Choice School, with Nobel Prize winner James Buchanan as an outstanding author, focuses more specifically on the political context of the law-making process.

History and Significance

Modern law and economics dates from about 1960, when **RONALD COASE** (who later received a Nobel Prize) published "The Problem of Social Cost." Gordon Tullock and **FRIEDRICH HAYEK** also wrote in the area, but the expansion of the field began with **GARY BECKER**'s 1968 paper on crime (Becker also received a Nobel Prize). In 1972, Richard Posner, a law and economics scholar and the major advocate of the positive theory of efficiency, published the first edition of *Economic Analysis of Law* and founded the *Journal of Legal Studies*, both important events in the creation of the field as a thriving scholarly discipline. Posner went on to become a federal judge while remaining a prolific scholar. An important factor leading to the spread of law and economics in the 1970s was a series of seminars and law courses for economists and economics courses for lawyers, organized by Henry Manne and funded, in part, by the Liberty Fund.

The discipline is now well established, with eight associations, including the American, Canadian, and European law and economics associations, and several journals.

Law and economics articles also appear regularly in the major economics journals, and the approach is common in law review articles. Most law schools have faculty trained in economics, and most offer law and economics courses. Many economics departments also teach courses in the field. A course in law and economics is very useful for undergraduates contemplating law school. Several consulting firms specialize in providing economic expertise in litigation.

Substance

Property

A legal system should provide clear definitions of property rights. That is, for any asset, it is important that parties be able to determine unambiguously who owns the asset and exactly what set of rights this ownership entails. Ideally, efficiency implies that, in a dispute regarding the ownership of a right, the right should go to the party who values it the most. But if exchanges of rights are allowed, the efficiency of the initial allocation is of secondary importance. The Coase theorem—the most fundamental result in the economic study of law—states that if rights are transferable and if transactions costs are not too large, then the exact definition of property rights

is not important because parties can trade rights, and rights will move to their highest-valued uses.

In many circumstances, however, who owns the right will matter. Transactions costs are never zero, and so if rights are incorrectly allocated, a costly transaction will be needed to correct this misallocation. If transactions costs are greater than the increase in value from moving the resource to the efficient owner, there may be no corrective mechanism. This can happen in any sort of economy. An extreme example is Russia, where the courts have not been able to provide clear definitions of property rights, and those persons with control of firms are not necessarily the owners. That is, those with control over a firm cannot sell it and keep the proceeds. This creates incentives for inefficient use of the assets, such as sale of valuable raw materials for below-market prices, with the proceeds deposited outside the country. In such circumstances, the Coase theorem will not operate, and correctly defining property rights becomes important. More generally, experience in Russia and its former satellites has emphasized the importance of the legal system for development of a market economy and, thus, has shown the importance of law and economics in influencing policy.

One important finding of law and economics is that, in market economies, property rights are defined efficiently in many circumstances. The characteristics of efficient property rights are universality (everything is owned), exclusivity (everything is owned by one agent), and transferability. Law and economics can also explain the results of inefficient property definitions. For example, because no one owns wild fish, the only way to own a fish is to catch it. The result is overfishing.

INTELLECTUAL PROPERTY is an important area of current research because new copying and duplicating technologies are having profound effects on the definition of this form of property rights and on incentives for creating such property.

Contract Law

The law governing exchange is crucial for a market economy. Most of the doctrines of contract law seem consistent with economic efficiency. Law and economics study of contract law has shown that, in general, it is efficient for parties to be allowed to write their own contracts, and under normal circumstances, for courts to enforce the agreed-on terms, including the agreed-on price. The courts will generally not enforce contracts if performance would be inefficient, but, rather, will allow payment of damages. If, for example, I agree to build something for you in return for $50,000, but meanwhile costs increase so that the thing would cost me $150,000 to build, it is inefficient for me to build it. Courts, recognizing this, allow me to compensate you with a monetary payment instead. This is efficient.

Contracts and contract law are also designed to minimize problems of opportunism. The danger of opportunism arises when two parties agree to something, and one makes irreversible investments to carry out his side of the bargain. So, for example, a company invests in a railroad spur to a coal mine, making a contract in advance to ship the coal at a specific price. Once the railroad is built, the mine owner can refuse to honor his contract and can hold out for a lower shipping rate. As long as this rate exceeds the railroad's incremental costs, the railroad owner will be tempted to accept. If he does so, he will not receive the full return on the spur line that he needed to make the **INVESTMENT** worthwhile. Doctrines such as a duty to mitigate (to reduce the harmful effects of breach of contract) are easily explained as being efficient.

However, not all doctrines are efficient. Contracting parties will sometimes specify damages (called "liquidated damages") to be paid if there is a breach. If the courts decide that these liquidated damages are too high—that they are a penalty rather than true damages—they will not enforce the amount of contractual liquidated damages. This failure to enforce agreed-on terms is a major puzzle to law and economics scholars; it appears that the courts would do better to enforce the parties' agreement, just as they do with respect to price and other terms of a contract. Here, the positive theory of the efficiency of law seems to be violated, but scholars argue that the courts should enforce these agreements.

Tort Law

Tort law and criminal law protect property rights from intentional or unintentional harm. The primary purpose of these laws is to induce potential tortfeasors (those who cause torts, or accidents) or criminals to internalize—that is, take account of—the external costs of their actions, although criminal law has other functions as well.

Tort law is part of the system of private law and is enforced through private actions. The economic analysis of tort law has stressed issues such as the distinction between negligence (a party must pay for harms only when the party failed to take adequate or efficient precautions) and strict **LIABILITY** (a party must pay for any injury caused by its actions). Because most accidents are caused by a joint action of injurer and victim (a driver goes too fast, and the pedestrian he hits does not look carefully), efficient rules create incentives for both parties to take care; most negligence rules (negligence, negligence with a **DEFENSE** of contributory negligence, comparative negligence) create exactly these incentives. Strict liability is important when the issue is not only the care used in undertaking the activity, but also whether the activity is done at all and the extent to which it is done (the level of the activity); highly dangerous activities (e.g., blasting with explosives or keeping wild animals as pets) are generally governed by strict liability.

Tort law used to be uninteresting and unimportant, dealing largely with automobile accidents. But it has become quite important in the United States in the last fifty years, because many events traditionally treated under contract law are now subject to tort law. For example, in products liability and medical malpractice cases, the parties have a preaccident relationship and so could have specified and traditionally did specify in their contracts what damages would be paid in the event of a mishap. But since about 1950, the courts have refused to honor these contracts, treating these instead as tort cases. Many observers believe that this was a fundamental error of the courts and look on it as the primary example of an inefficient doctrine in modern American law. Scholars have found that this error was caused by actions on the part of the

plaintiff's bar, who were seeking to benefit themselves at the expense of the public in general. Problems are exacerbated when claims are aggregated through the mechanism of class actions.

Two factors have caused the major expansion of product liability law. One was finding relatively strict liability for "design defects" in addition to "manufacturing defects." The other was expansion of liability for "failure to warn." One result of treating these events as part of tort law is that injured parties can collect classes of damage payments (such as damages for pain and suffering and sometimes excessive punitive damages) that would be excluded by contract if contracts could be enforced. As a result, prices of many goods and services (including medical services) are driven above the value that consumers would place on them. That is why, for example, private airplanes are so expensive, and obstetricians and gynecologists are unavailable in some markets.

Criminal Law

Criminal law is enforced by the state rather than by victims. This is because efficient enforcement requires that only a fraction of criminals be caught (in order to conserve on enforcement resources) and the punishment of this fraction be multiplied to reflect the low probability of detection and conviction. If, for example, only one out of four criminals is caught and punished, then the punishment must be four times the cost of the crime in order to provide adequate deterrence.

However, most criminals do not have sufficient wealth to pay such multiplied fines, and so incarceration or other forms of nonpecuniary punishment must be used. One implication of law and economics is that a fine should be used as punishment whenever the miscreant can pay. The reason is that fines are transfers and do not create deadweight losses (i.e., losses to some that are not gains to others); imprisonment, on the other hand, transfers virtually no wealth from the criminal but causes two forms of deadweight loss: the loss of the criminal's earning power in a legitimate job in the outside world and the cost to taxpayers of providing a prison and guards. But because so few criminals have enough wealth to pay multiplied fines, private enforcement would not be profitable for private enforcers, and so the state provides enforcement. In some

circumstances, incarceration serves the additional function of incapacitation of potential wrongdoers.

Criminal law has been the subject of the most extensive empirical work in law and economics, probably because of the availability of data. Economic theory predicts that criminals, like others, respond to incentives, and there is unambiguous evidence that increases in the probability and severity of punishment in a jurisdiction lead to reduced levels of crime in that jurisdiction. The issue of the deterrent effect of capital punishment has been more controversial, but several recent papers using advanced econometric techniques and comprehensive data have found a significant deterrent effect; each execution deters between eight and twenty-eight murders, with eighteen being the best single estimate. No refereed empirical criticism of these papers has been published. Research on procedural rules has shown that increased rights for accused persons can lead to increases in crime. One controversial paper by John Donohue and Steven Levitt argues empirically that the easing of abortion restrictions led to a reduction in crime because unwanted children would have been more likely to become criminals. There are also major debates in the literature on the effect on crime of laws allowing easier carrying of concealed weapons. Some, such as John Lott, find significant decreases in crime from these laws, while others find much smaller effects, although there is little evidence of any increase in crime.

Why lawyers should study economics ?

Law as the framework of rules in which a society operates. Many aspects of society are - directly or indirectly - related to economics: your job, renting or buying a house, starting or running a business, doing groceries, trade and travel, et cetera. Inevitably, many branches of law are related to economics: labour law, corporate law, consumer law, European Law (free movement and trade), et cetera.

Although the usefulness of studying economics may almost seem self-evident (considering this strong relationship with law), there are a few concrete examples of how knowledge of economics could help lawyers:

- A better understanding of society (through a better understanding of economics) could help you to better understand the design of the legal system
- It would help you to model/predict the practical implications of legal changes
- It could help you to find potential improvements of the law

In fact, there is a special branch of both economics and law where the fields are brought together: ‘law and economics’, sometimes called the ‘economics of law’ or the ‘economic analysis of law’.

Law and Economics is now part of the curriculum at many American law schools; the current AALS directory lists 159 persons teaching at least one course in the area. Because law schools inexplicably do not generally require a background in economics, such courses usually must teach some principles of economic analysis before applying those principles to legal questions. We wondered what law-and-economics scholars and economists thought lawyers should know about economics' (as opposed to what they should know about the economic analysis of law). The results are important beyond the circle of law-and-economics scholars. Teachers and students of torts, property, and contracts felt the impact of the first wave of law-and-economics scholarship, but every area of law from admiralty to procedure is increasingly subject to economic reasoning. Even those legal educators and lawyers who swore off economics after an encounter with an undergraduate principles course are confronting economic reasoning in scholarly work and judicial opinions. Understanding that reasoning requires some familiarity with economics. The optimal number of economics courses may always be one more (at least in our opinions), but those whose consumption of economics education has somehow fallen short may reasonably substitute the works economists-and particularly economists who think about law-think are important for lawyers.

MODULE 2

Economic Factor Pricing

Theory of Wages

Some of the most important theories of wages are as follows: 1. Wages Fund Theory 2. Subsistence Theory 3. The Surplus Value Theory of Wages 4. Residual Claimant Theory 5. Marginal Productivity Theory 6. The Bargaining Theory of Wages 7. Behavioural Theories of Wages.

How much and on which basis wages should be paid to the workers for services rendered by them has been a subject matter of great concern and debate among economic thinkers for a long time This has given birth to several wage theories, i.e. how wages are determined. Out of them, some important theories of wages are discussed here.

1. Wages Fund Theory:

This theory was developed by Adam Smith (1723-1790). His theory was based on the basic assumption that workers are paid wages out of a pre-determined fund of wealth. This fund, he called, wages fund created as a result of savings. According to Adam Smith, the demand for labour and rate of wages depend on the size of the wages fund. Accordingly, if the wages fund is large, wages would be high and vice versa.

2. Subsistence Theory:

This theory was propounded by David Recardo (1772-1823). According to this theory, "The labourers are paid to enable them to subsist and perpetuate the race without increase or diminution". This payment is also called as 'subsistence wages'. The basic assumption of this

theory is that if workers are paid wages more than subsistence level, workers' number will increase and, as a result wages will come down to the subsistence level.

On the contrary, if workers are paid less than subsistence wages, the number of workers will decrease as a result of starvation death; malnutrition, disease etc. and many would not marry. Then, wage rates would again go up to subsistence level. Since wage rate tends to be at, subsistence level at all cases, that is why this theory is also known as 'Iron Law of Wages'. The subsistence wages refers to minimum wages.

3. The Surplus Value Theory of Wages:

This theory was developed by Karl Marx (1849-1883). This theory is based on the basic assumption that like other article, labour is also an article which could be purchased on payment of its price i e wages. This payment, according to Karl Marx, is at subsistence level which is less than in proportion to time labour takes to produce items. The surplus, according to him, goes to the owner. Karl Marx is well known for his advocation in the favour of labour.

4. Residual Claimant Theory:

This theory owes its development to Francis A. Walker (1840-1897). According to Walker, there are four factors of production or business activity, viz., land, labour, capital, and entrepreneurship. He views that once all other three factors are rewarded what remains left is paid as wages to workers. Thus, according to this theory, worker is the residual claimant.

5. Marginal Productivity Theory:

This theory was propounded by Phillips Henry Wick-steed (England) and John Bates Clark of U.S.A. According to this theory, wages is determined based on the production contributed by the last worker, i.e. marginal worker. His/her production is called 'marginal production'.

6. The Bargaining Theory of Wages:

John Davidson was the propounder of this theory. According to this theory, the fixation of wages depends on the bargaining power of workers/trade unions and of employers. If workers are

stronger in bargaining process, then wages tends to be high. In case, employer plays a stronger role, then wages tends to be low.

7. Behavioural Theories of Wages:

Based on research studies and action programmes conducted, some behavioural scientists have also developed theories of wages. Their theories are based on elements like employee's acceptance to a wage level, the prevalent internal wage structure, employee's consideration on money or' wages and salaries as motivators.

Exploitation of labour is concept defined as, in its broadest sense, one agent taking unfair advantage of another agent.Marxists state it is a social relationship based on an asymmetry of power between workers and their employers. When speaking about exploitation, there is a direct affiliation with consumption in social theory and traditionally this would label exploitation as unfairly taking advantage of another person because of their inferior position, giving the exploiter the power.

Land Reforms in India after Independence: Purposes and Features

At the time of independence ownership of land was concentrated in the hands of a few. This led to the exploitation of the farmers and was a major hindrance towards the socio-economic development of the rural population. Equal distribution of land was therefore an area of focus of Independent India's government. Laws for land ceiling were enacted in various states during 50s & 60s which were modified on the directives of central government in 1972.

Under the 1949 Indian constitution, states were granted the powers to enact (and implement) land reforms. This autonomy ensures that there has been significant variation across states and time in terms of the number and types of land reforms that have been enacted. **We classify land reform acts into four main categories** according to their main purpose.

1. **The first category is acts related to tenancy reform**. These include attempts to regulate tenancy contracts both via registration and stipulation of contractual terms, such as shares in share tenancy contracts, as well as attempts to abolish tenancy and transfer ownership to tenants.
2. **The second category of land reform acts is attempts to abolish intermediaries**. These intermediaries who worked under feudal lords (Zamandari) to collect rent for the British were reputed to allow a larger share of the surplus from the land to be extracted from tenants. Most states had passed legislation to abolish intermediaries prior to 1958.
3. The **third category of land reform acts concerned efforts to implement ceilings on land holdings, with a view to redistributing surplus land to the landless**.
4. **Finally, we have acts which attempted to allow consolidation of disparate land-holdings**.' Though these reforms and in particular the latter were justified partly in terms of achieving efficiency gains in agriculture it is clear from the acts themselves and from the political manifestos supporting the acts that the main impetus driving the first three reforms was poverty reduction.

   Existing assessments of the effectiveness of these different reforms are highly mixed. Though promoted by the centre in various Five Year Plans, the fact that land reforms were a state subject under the 1949 Constitution meant that enactment and implementation was dependent on the political will of state governments. The perceived oppressive character of the Zamandari and their close alliance with the British galvanized broad political support for the abolition intermediaries and led to widespread implementation of these reforms most of which were complete by the early 1960s. Centre-state alignment on the issue of tenancy reforms was much less pronounced. With many state legislatures controlled by the landlord class, reforms which harmed this class tended to be blocked, though where tenants had substantial political representation notable successes in implementation were recorded.

Despite the considerable publicity attached to their enactment, political failure to implement was most complete in the case of land ceiling legislation. Here ambivalence in the formulation of policy and numerous loopholes allowed the bulk of landowners to avoid expropriation by distributing surplus land to relations, friends and dependents. As a result of these problems, implementation of both tenancy reform and land ceiling legislation tended to lag well behind the targets set in the Five Year Plans. Land consolidation legislation was enacted less than the other

reforms and, owing partly to the sparseness of land records, implementation has been considered to be both sporadic and patchy only affecting a few states in any significant way. Village level studies also offer a very mixed assessment of the poverty impact of different land reforms. Similar reforms seemed to have produced different effects in different areas leaving overall impact indeterminate. There is some consensus that the abolition of intermediaries achieved a limited and variable success both in redistributing land towards the poor and increasing the security of smallholders.

For tenancy reform, however, whereas successes have been recorded, in particular, where tenants are well organized there has also been a range of documented cases of imminent legislation prompting landlords to engage in mass evictions of tenants and of the de jure banning of landlord-tenant relationships pushing tenancy under- ground and therefore, paradoxically, reducing tenurial security. Land ceiling legislation, in a variety of village studies, is also perceived to have had neutral or negative effects on poverty by inducing landowners from joint families to evict their tenants and to separate their holdings into smaller proprietary units among family members as a means of avoiding expropriation. Land consolidation is also on the whole judged not to have been progressive in its redistributive impact given that richer farmers tend to use their power to obtain improved holdings. **There is a considerable variation in overall land reform activity across states with states such as Uttar Pradesh, Kerala and Tamil Nadu having a lot of activity while Punjab and Rajasthan have very little**.

New Agency for Land reforms: Government is planning to establish a separate agency for land reforms & upgradation of wasteland. New agency named; "Jai Prakash Narayan Mission for Land Reforms & Wasteland Management" will work under the ministry of rural development. This body will be authorized for making policies and implementing them for land reforms & wasteland upgradation.

The Maharashtra Agricultural Produce Marketing (Development & Regulation) Act was passed in the year 1963

Agriculture produce means all produce (whether processed or not) of agriculture, horticulture, animal husbandry, pisciculture and forests as specified in the schedule.The The APMCs were established by the State Govt. for regulating the marketing of different kinds of agriculture and pisciculture produce for the same market area or any part thereof.The Maharashtra Agricultural Produce Marketing (Development & Regulation) Act was passed in the year 1963, with a view to regulate the marketing of agricultural and pisciculture produce in market areas. After giving due consideration to various committee's recommendations and study groups, some important changes have been made in this Act in the year 1987 and thereafter.

CONSTITUTION

Every market shall consist of:

- Agriculturists residing in the market area and being 21 years of age on the date specified from time to time by the Collector in this behalf.
- Traders and commission agents holding license to operate in the market area.
- Chairman of the co-operative society doing business of processing and marketing of agriculture produce in the market area.

  Chairman of the Panchayat Samiti within the jurisdiction in which the market area is situated, President or Sarpanch of the local authority within the juridiction of which the principal market is situated. Deputy Registrar of Co-operative Society of the district, the Assistant Cotton Extn. Officer or where there is no such officer the district Agriculture Officer of the Department of Agriculture.

OBJECTIVES

It shall be the duty of the Market Commitee to implement the provisions of the Maharashtra Agricultural Produce Marketing (Regulation) Act 1963, the rules and bye-laws made there under in the market area to provide such facilities for marketing of agricultural produce therein as the Director may from time to time, direct do such other acts as may be required in relation to the superintendence, direction and control of markets or for relating marketing of agricultural produce in any place in the market area and for purpose connected with the matters aforesaid, and for that purpose may exercise such powers and perform such duties and discharge such functions as may be provided by or under this Act.

The Act provides for establishment of Market Committees in the State. These Market Committees are engaged in development of market yards for the benefit of agriculturists and the buyers. Various agricultural produce commodities are regulated under the Act. At present there are 307 APMCs with main markets and 597 sub markets.

FEMA Act 1999 or Foreign Exchange Management Act, 1999 (FEMA)

The Foreign Exchange Management Act, 1999 popularly known as FEMA Act 1999, is an Act of the Parliament of India "to consolidate and amend the law relating to foreign exchange with the objective of facilitating external trade and payments and for promoting the orderly development and maintenance of foreign exchange market in India"

It extends to the whole of India replacing FERA, which had become incompatible with the pro-liberalisation policies of the Government of India. It enabled a new foreign exchange management regime consistent with the emerging framework of the World Trade Organisation (WTO). It also paved the way for the introduction of the Prevention of Money Laundering Act, 2002, which came into effect from 1 July 2005.

OBJECTIVE OF THE FEMA ACT:

- Utilize foreign exchange resource of the country effectively.

- Facilitate external trade, payment, orderly development & maintenance of foreign exchange in India.

Its head office is known as **Enforcement Directorate** is situated in New Delhi & headed by a **Director**. It is very important to foreign trade & to maintain good relations with other countries.

THE FEMA IS APPLICABLE:

- To the whole of India.
- Any Branch, office & agency, which is situated outside India, but is owned or controlled by a person resident in India.

MAIN FEATURES OF FEMA ACT

- **Activities such as payments made to any person outside India or receipts from them, along with the deals in foreign exchange and foreign security is restricted. It is FEMA that gives the central government the power to impose the restrictions.**
- **Without general or specific permission of the MA restricts the transactions involving foreign exchange or foreign security and payments from outside the country to India – the transactions should be made only through an authorised person.**
- **Deals in foreign exchange under the current account by an authorised person can be restricted by the Central Government, based on public interest generally.**
- **Although selling or drawing of foreign exchange is done through an authorized person, the RBI is empowered by this Act to subject the capital account transactions to a number of restrictions.**
- **Residents of India will be permitted to carry out transactions in foreign exchange, foreign security or to own or hold immovable property abroad if the currency, security or property was owned or acquired when he/she was living outside India, or when it was inherited by him/her from someone living outside India.**

BROADLY SPEAKING FEMA, COVERS THREE DIFFERENT TYPES OF CATEGORIES

1. **Person.**
2. **Person Resident in India.**
3. **Person Resident outside India.**

RERA Act, 2016

Introduction

- Real Estate (Regulation and Development) Act (RERA) is an act passed by the Parliament in 2016 that came into effect fully from 1st May, 2017.
- It seeks to protect **home-buyers** as well as help **boost investments in the real estate sector** by bringing efficiency and transparency in the sale/purchase of real estate.
- The Act establishes Real Estate Regulatory Authority (RERA) in each state for **regulation of the real estate** sector and also acts as an adjudicating body for speedy d**ispute resolution.**

Need for the RERA

- Real estate sector had been largely unregulated, no standardization of business practices and transactions.
- Prevalence of issues like delays, price, quality of construction. Delays in projects had been a major issue plaguing real estate sector- huge cost overrun due to delays.
- Numerous instances where developers cheated property buyers.
- No grievance redressal mechanism.
- Huge generation of black money in real estate sector.

Objectives of RERA

- Enhance transparency and accountability in real estate and housing transactions.
- Boost domestic and foreign investment in the real estate sector.
- Provide uniform regulatory environment to ensure speedy adjudication of disputes.
- Promote orderly growth through efficient project execution and standardization.
- Offer single window system of clearance for real estate projects.
- Empower and protect the right of home buyers.

Key Provisions of Real Estate Regulation Act

- **Establishment of state level regulatory authorities- Real Estate Regulatory Authority (RERA):** The Act provides for State governments to establish more than one regulatory authority with the following mandate:

    - Register and maintain a database of real estate projects; publish it on its website for public viewing,
    - Protection of interest of promoters, buyers and real estate agents
    - Development of sustainable and affordable housing,
    - Render advice to the government and ensure compliance with its Regulations and the Act.

- **Establishment of Real Estate Appellate Tribunal-** Decisions of RERAs can be appealed in these tribunals.
- **Mandatory Registration:** All projects with plot size of minimum 500 sq.mt or eight apartments need to be registered with Regulatory Authorities.
- **Deposits:** Depositing 70% of the funds collected from buyers in a separate escrow bank account for construction of that project only.
- **Liability:** Developer's liability to repair structural defects for five years.
- **Penal interest in case of default:** Both promoter and buyer are liable to pay an equal rate of interest in case of any default from either side.
- **Cap on Advance Payments:** A promoter cannot accept more than 10% of the cost of the plot, apartment or building as an advance payment or an application fee from a person without first entering into an agreement for sale.
- Defines **Carpet Area** as net usable floor area of flat. Buyers will be charged for the carpet area and not super built-up area.

- **Punishment:** Imprisonment of up to three years for developers and up to one year in case of agents and buyers for violation of orders of Appellate Tribunals and Regulatory Authorities.

Benefits

- **Timely delivery of flats**

    - Developers often make false promises about the completion date of the project, but hardly ever deliver.
    - Strict regulations will be enforced on builders to ensure that construction runs on time and flats are delivered on schedule to the buyer.
    - If the builder is not able to deliver the flats on time, he/she will have to refund the purchaser with interest.

- **Furnishing of accurate project details:**

    - In the construction stage, builders promote their projects defining the various amenities and features that will be part of the project. But not everything goes as per plan, with several features missing.
    - As per the Act, there can't be any changes to a plan.
    - And if a builder is found guilty of this, he/she will be penalized 10% of the project's costs or face jail time of up to three years.

- **Specifying carpet area:**

    - Generally, builders sell flats on the basis of built-in area, which includes a common passage area, stairs and other spaces which are 20-30% more than the actual flat's area.
    - But, not all buyers are aware of the concept of carpet area.

- With this Act it will become mandatory to declare the actual carpet area.

- **All clearances are mandatory before beginning a project:**

  - Builders often attract buyers with huge discounts and pre-launch offers. And, the buyer, enticed by the offers, does not bother about the clearance.
  - But, due to delays in getting clearance, the buyer does not get the flat on time.
  - This Act ensures that developers get all the clearances before selling flats.

- **Each project should have a separate bank account:**

  - Developers raise funds through pre-launch offers and use them to purchase some other land or invest it in other projects.
  - This Act will make it compulsory that a separate bank account be maintained for each project.
  - Each transaction will have to be recorded, and diversion to another project will not be entertained.

- **After sales service:**

  - As per an interesting clause in the Act, if the buyer finds any structural deficiency in the development of the building, the buyer can contact the builder for after sales service.
  - But, the buyer should approach the builder within 5 years of purchase to rectify such defects without further charges.

Concerns

- **Past real estate projects not included**

  - Only new projects are covered by the Act.

- Projects that are ongoing, completed or stuck due to clearance or financial issues, don't come under this.
- Hence, many buyers will not be benefitted by it.

- **Delay from government agencies**

  - There can be delays caused by the government, which sometimes takes a lot of time to clear a project.
  - It is up to government bodies to timely approve projects, so that developers can launch, complete and deliver them on time.

- **No compulsory regulation for projects less than 500 square meter:**

  - Registration with the regulator will not be mandatory for projects less than 500 square meter.
  - So, small developers will not be bound to register.

- **New project launches expected to be delayed:**

  - Because a project will not be allowed to launch without the requisite clearances from the government (which generally takes two to three years), projects will automatically get delayed.

- **It does not deal with the concerns of developers** regarding force majeure (acts of god outside their control) which result in a shortage of labour or issues on account of there not being a central repository of land titles/deeds.
- State governments regulated real estate before RERA as land and land improvement are in the **State List** of the Seventh Schedule of the Constitution. RERA has been enacted under **Concurrent List.** This has increased the tussle between various states and Centre over implementation of RERA.

Way Forward

- Avoiding any conflict between the Centre and the States regarding regulation of real estate sector.
- States should not dilute the RERA provisions. Provisions for punishment of violations, should be kept intact in all State laws.
- States should fully implement RERA to curb black money
- Issues regarding the implementation of RERA in North-Eastern States should be resolved to avoid any uncertainty in the housing sector in that region.
- Government agencies should be made accountable for the delay in granting approvals.
- A robust IT infrastructure should be established for monitoring projects and quick redressal of grievances.
- All the concerns of developers should be addressed in a time-bound manner to avoid unnecessary litigations in courts.

Banking Regulation Act, 1949

Introduction

The banking regulation act 1949 extends to the entire nation. Other acts are used as secondary to this act e.g. negotiable instrument act, Companies Act 1956. Passed as the Banking Companies Act 1949, it came into force wef 16 March 1949 and changed to Banking Regulations Act 1949 wef 01.03.1966, it was made applicable to Jammu & Kashmir in the year 1956. The Banking Regulation Act is not pertinent to primary agricultural credit societies, non-agricultural primary credit societies and cooperative land mortgage banks.

Definitions

Banking

Banking refers to accepting the deposits of money from public. The deposits are accepted for the purpose of investing, lending and repayable on demand and such money can be withdrawn by draft, cheque, etc.

Banking Company

Banking Company is a company which transacts the business of banking in India. This company fulfils the state of affairs of being a company as given in companies' act 1956.

Business allowed for a banking company (Section 6)

• Lending/Borrowing of money with/ without security, issuing travellers' cheque, buying & selling foreign exchange notes, deposits vaults, collecting & transmitting of money & securities, buying bonds and other securities on the behalf of customers.
• Transacting and carrying on every kind of guarantee & indemnity business.
• Selling, managing & realizing any property which comes in possession of the bank in procedure of settlements of claims.
• Executing and undertaking of trusts
• Other works which are advancements of main purpose of the company or incidental
• A form of business that is defined by the Central Government in its issued notification

Prohibition on trading (Section 8)

A banking company cannot get in directly or indirectly contracts in buying or selling or exchange of goods.

Disposal of Non Banking assets (Section 9)

Banks cannot hold any property for more than 7 years for the purpose of settlements of debts or obligations. Such time limit of 7 years can be augmented by the Reserve Bank of India for another 5 years, if it thinks appropriate.

Reserve fund (section 17)

Every banking company must generate a reserve fund out of its earnings after tax and interest. Such reserve amount should be at any rate 20 percent of such profits. Exemption can be provided only if the cumulative amount of reserve fund & securities premium is greater than the paid up capital of the company.

Cash reserve (Section 18)

Atleast 3 percent of the total demand & time liabilities should be kept as cash reserve or should be secured in current account with Reserve Bank of India. Liabilities will not comprise monies received from Reserve Bank of India/ EXIM bank/ Development bank or any such other bank. Such amount should be deposited/ kept on last Friday of every 2nd fortnight of every month. The return should be deposited before twentieth day of every month stating the particulars of amount deposited to Reserve Bank of India.

Accounts & balance sheet (Section 29)

Banking companies should plan balance sheet and profit & loss account on last working day of every accounting year in the forms set out in third schedule. Accounts must be signed by atleast three directors where number of directors exceeds three. If number of directors' fall short of three, then all directors must sign the accounts. In case of banking company incorporated outside the nation, accounts must be signed by principal officer or manager of the company in India.

Auditing of Banking Company (section 30)

• Balance sheet and Profit & Loss made compliant with section 29 must be audited by a person qualified under law to discharge his duties as an auditor

• The banking company must obtain the approval of Reserve Bank of India before removing/ appointing and re - appointment of auditors.

• When Reserve Bank of India is not satisfied with financial statements of the bank, it can give order for carrying out a special audit. And cost of such special audit must be put up by the banking company itself.

• The liabilities, powers and scope of the auditor are same as given in section 227 of companies act 1956.

Additional disclosure requirements

• Whether the details given are correct & present fair and true view, whether transactions done by the company comes under the purview of companies powers.

• Safety of assets

• Any other matter which needs to be disclosed

• Such report of auditor must be submitted to Reserve Bank of India in three copies in prescribed manner. Reserve Bank of India may extend the period of three months for furnishing of such returns, if Reserve Bank of India finds it justified to do so.

MODULE 3

1.Mahatma Gandhi National Rural Employment Guarantee Act", MGNREGA 2005

Introduction

Mahatma Gandhi Employment Guarantee Act 2005 (or, NREGA later renamed as the "Mahatma Gandhi National Rural Employment Guarantee Act", MGNREGA), is an Indian labour law and social security measure that aims to guarantee the 'right to work'. This act was passed in September 2005.

It aims to enhance livelihood security in rural areas by providing at least 100 days of wage employment in a financial year to every household whose adult members volunteer to do unskilled manual work.

NREGA was scoped up to cover all the districts of India from 1 April 2008. The statute is hailed by the government as "the largest and most ambitious social security and public works programme in the world". In its World Development Report 2014, the World Bank termed it a "stellar example of rural development.

Objective

- The MGNREGA was initiated with the objective of "enhancing livelihood security in rural areas by providing at least 100 days of guaranteed wage employment in a financial year, to every household whose adult members volunteer to do unskilled manual work". Another aim of MGNREGA is to create durable assets (such as roads, canals, ponds and wells).
- Apart from providing economic security and creating rural assets, NREGA can help in protecting the environment, empowering rural women, reducing rural-urban migration and fostering social equity, among others."
- The law provides many safeguards to promote its effective management and implementation. The act explicitly mentions the principles and agencies for

implementation, list of allowed works, financing pattern, monitoring and evaluation, and most importantly the detailed measures to ensure transparency and accountability.

- Employment is to be provided within 5 km of an applicant's residence, and minimum wages are to be paid. If work is not provided within 15 days of applying, applicants are entitled to an unemployment allowance. That is, if the government fails to provide employment, it has to provide certain unemployment allowances to those people. Thus, employment under MGNREGA is a legal entitlement.

Overview

According to the Eleventh Five Year Plan (2007–12), the number of Indians living on less than $1 a day, called Below Poverty Line (BPL), was 300 million that barely declined over the last three decades ranging from 1973 to 2004, although their proportion in the total population decreased from 36 per cent (1993–94) to 28 percent (2004–05), and the rural working class dependent on agriculture was unemployed for nearly 3 months per year.

The registration process involves an application to the Gram Panchayat and issue of job cards. The wage employment must be provided within 15 days of the date of application. The work entitlement of '100 days per household per year' may be shared between different adult members of the same household.

The law also lists permissible works: water conservation and water harvesting; drought proofing including afforestation; irrigation works; restoration of traditional water bodies; land development; flood control; rural connectivity; and works notified by the government.

Furthermore, the Act sets a minimum limit to the wages, to be paid with gender equality, either on a time-rate basis or on a piece-rate basis. The states are required to evolve a set of norms for the measurement of works and schedule of rates. Unemployment allowance must be paid if the work is not provided within the statutory limit of 15 days.

The law stipulates Gram Panchayats to have a single bank account for NREGA works which shall be subjected to public scrutiny. To promote transparency and accountability, the act mandates 'monthly squaring of accounts'. To ensure public accountability through public vigilance, the NREGA designates 'social audits' as key to its implementation.

The most detailed part of the Act (chapter 10 and 11) deals with transparency and accountability that lays out role of the state, the public vigilance and, above all, the social audits.

For evaluation of outcomes, the law also requires management of data and maintenance of records, like registers related to employment, job cards, assets, muster rolls and complaints, by the implementing agencies at the village, block and state level.

The law and the Constitution of India

- The Act aims to follow the Directive Principles of State Policy enunciated in Part IV of the Constitution of India. The law by providing a 'right to work' is consistent with Article 41 that directs the State to secure to all citizens the right to work.
- The statute also seeks to protect the environment through rural works which is consistent with Article 48A that directs the State to protect the environment.
- In accordance with the Article 21 of the Constitution of India that guarantees the right to life with dignity to every citizen of India, this act imparts dignity to the rural people through an assurance of livelihood security.
- The Fundamental Right enshrined in Article 16 of the Constitution of India guarantees equality of opportunity in matters of public employment and prevents the State from discriminating against anyone in matters of employment on the grounds only of religion, race, caste, sex, descent, place of birth, place of residence or any of them.
- NREGA also follows Article 46 that requires the State to promote the interests of and work for the economic uplift of the scheduled castes and scheduled tribes and protect them from discrimination and exploitation.
- Article 40 mandates the State to organise village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government. Conferring the primary responsibility of implementation on Gram Panchayats, the Act adheres to this constitutional principle.
- Also the process of decentralization initiated by 73rd Amendment to the Constitution of India that granted a constitutional status to the Panchayats is further reinforced by the

Mahatma Gandhi NREGA that endowed these rural self-government institutions with authority to implement the law.

Quantitative achievements

- Since its inception in 2006, around 1,10,000 crore (about USD$25 billion) has gone directly as wage payment to rural households and 1200 crore (12 billion) person-days of employment has been generated. On an average, 5 crore (50 million) households have been provided employment every year since 2008.
- The average wage per person-day has gone up by 81 per cent since the Scheme's inception, with state-level variations. The notified wage today varies from a minimum of 122 (USD$1.76) in Bihar, Jharkhand to 191 (USD$2.76) in Haryana.
- Scheduled Castes (SCs) and Scheduled Tribes (STs) have accounted for 51 per cent of the total person-days generated and women for 47 per cent, well above the mandatory 33 per cent as required by the Act.
- 146 lakh (14.6 million) works have been taken up since the beginning of the programme, of which about 60 per cent have been completed.
- 12 crore (120 million) Job Cards (JCs) have been given and these along with the 9 crore (90 million) muster rolls have been uploaded on the Management Information System (MIS), available for public scrutiny.

2.National Social Assistance Programme

Introduction

- NSAP stands for National Social Assistance Program. NSAP was launched on 15th August, 1995.
- The National Social Assistance Program (NSAP) represents a significant step towards the fulfillment of the Directive Principles in Article 41 and 42 of the Constitution recognizing the concurrent responsibility of the Central and the State Governments in the matter. In particular, Article 41 of the Constitution of India directs the State to provide public assistance to its citizens in case of unemployment, old age, sickness and disablement and in other cases of undeserved want within the limit of its economic capacity and development.

Objective of NSAP

- National Social Assistance Program is a social security and welfare program to provide support to aged persons, widows, disabled persons and bereaved families on death of primary bread winner, belonging to below poverty line households.

Components of NSAP

- Indira Gandhi National Old Age Pension Scheme (IGNOAPS),
- Indira Gandhi National Widow Pension Scheme (IGNWPS),
- Indira Gandhi National Disability Pension Scheme (IGNDPS),
- National Family Benefit Scheme NFBS) and
- Annapurna.

Eligibility and scale of assistance

For getting benefits under NSAP the applicant must belong to a Below Poverty Line (BPL) family according to the criteria prescribed by the Govt. of India. The other eligibility criteria and

the scale of central assistance under the sub - schemes of NSAP are as follows. Besides the central assistance, states / UT contribute an equal amount as their share:

- **Indira Gandhi National Old Age Pension Scheme (IGNOAPS)** : The eligible age for IGNOAPS is 60 years. The pension is Rs.200 p.m. for persons between 60 years and 79 years. For persons who are 80 years and above the pension is Rs.500/ - per month.
- **Indira Gandhi National Widow Pension Scheme (IGNWPS)** : The eligible age is 40 years and the pension is Rs.300 per month. After attaining the age of 80 years, the beneficiary will get Rs.500/ - per month.
- **Indira Gandhi National Disability Pension Scheme (IGNDPS)** : The eligible age for the pension er is 18 years and above and the disability level has to be 80%. The amount is Rs.300 per month and after attaining the age of 80 years, the beneficiary will get Rs 500/ - per month . Dwarfs will also be a n eligible category for this pension.
- **National Family Benefit Scheme (NFBS)** : Rs. 20000/ - will be given as a lumpsum assistance to the bereaved household in the event of death of the bread - winner. It is clarified that any event of death (natural or otherwise) would make the family eligible for assistance. A woman in the family, who is a home maker, is also considered as a 'bread - winner' for this purpose. The family benefit will be paid to such surviving member of the household of the deceased poor , who after local inquiry, is found to be the head of the household. For the purpose of the scheme, the term "household' would include spouse, minor children, unmarried daughters and dependent parents. In case of death of an unmarried adult, the term household would include minor brothers/ sisters and dependent parents. The death of such a bread - winner should have occurred whilst he/ she is more than 18 years of age and less than 60 years of age. The assistance would be given to every case of death of breadwinner in a family.
- **Annapurna Scheme** : 10 kgs of food grains (wheat or rice) is given per month per beneficiary. The scheme aims at providing food security to meet the requirements of those eligible old aged persons who have remained uncovered under the IGNOAPS

The scheme is administered by the Ministry of Rural Development, Government of India. It is fully funded by the Central Government, unlike some other welfare programs where the Union government shares costs with the State Governments.

In October 2012, the Government of India set up a task force to come up with a proposal for a Comprehensive Social Assistance Programme. Some of the recommendations from the report submitted in March 2013 are listed below:

1. Increase IGNOAPS from 200 (US$2.80) to 300 (US$4.20) per month
2. Reduce minimum age requirement for IGNWPS from 40 to 18 years
3. Revise eligibility criteria for IGNWPS to include divorced/separated/abandoned women who, according to the report, face the same discrimination as widows
4. Reduce disability level from 80% to 40%
5. Assistance to be provided in the event of the death of any adult member (and not just male members) to the bereaved family under NFSB
6. Pension amounts should be indexed to inflation using the criteria adopted for dearness allowance
7. Coverage should be expanded with the aim of covering all households eligible for benefits under the NFSA
8. Pro-active identification of beneficiaries with no demand for documentary proof from applicants.
9. Pension payments must follow a fixed monthly schedule - this should be a 'non-negotiable requirement'
10. Cash payments should be discouraged; states may move to bank or post office based systems
11. Pension payment method should be adopted keeping in mind that no pensioner should have to travel beyond three km to collect pension; ultimate goal should be to ensure door-step delivery of pensions

The Government of India is yet to implement most of these recommendations

Right to Education Act 2009

The Constitution (Eighty-sixth Amendment) Act, 2002 inserted Article 21-A in the Constitution of India to provide free and compulsory education of all children in the age group of six to fourteen years as a Fundamental Right in such a manner as the State may, by law, determine. The Right of Children to Free and Compulsory Education (RTE) Act, 2009, which represents the consequential legislation envisaged under Article 21-A, means that every child has a right to full time elementary education of satisfactory and equitable quality in a formal school which satisfies certain essential norms and standards.

Article 21-A and the RTE Act came into effect on 1 April 2010. The title of the RTE Act incorporates the words 'free and compulsory'. 'Free education' means that no child, other than a child who has been admitted by his or her parents to a school which is not supported by the appropriate Government, shall be liable to pay any kind of fee or charges or expenses which may prevent him or her from pursuing and completing elementary education. 'Compulsory education' casts an obligation on the appropriate Government and local authorities to provide and ensure admission, attendance and completion of elementary education by all children in the 6-14 age group. With this, India has moved forward to a rights based framework that casts a legal obligation on the Central and State Governments to implement this fundamental child right as enshrined in the Article 21A of the Constitution, in accordance with the provisions of the RTE Act.

The RTE Act provides for the:

- Right of children to free and compulsory education till completion of elementary education in a neighbourhood school.
- It clarifies that 'compulsory education' means obligation of the appropriate government to provide free elementary education and ensure compulsory admission, attendance and completion of elementary education to every child in the six to fourteen age group. 'Free' means that no child shall be liable to pay any kind of fee or charges or expenses which may prevent him or her from pursuing and completing elementary education.
- It makes provisions for a non-admitted child to be admitted to an age appropriate class.
- It specifies the duties and responsibilities of appropriate Governments, local authority and parents in providing free and compulsory education, and sharing of financial and other responsibilities between the Central and State Governments.
- It lays down the norms and standards relating inter alia to Pupil Teacher Ratios (PTRs), buildings and infrastructure, school-working days, teacher-working hours.
- It provides for rational deployment of teachers by ensuring that the specified pupil teacher ratio is maintained for each school, rather than just as an average for the State or District or Block, thus ensuring that there is no urban-rural imbalance in teacher postings. It also provides for prohibition of deployment of teachers for non-educational work, other than decennial census, elections to local authority, state legislatures and parliament, and disaster relief.
- It provides for appointment of appropriately trained teachers, i.e. teachers with the requisite entry and academic qualifications.
- It prohibits (a) physical punishment and mental harassment; (b) screening procedures for admission of children; (c) capitation fee; (d) private tuition by teachers and (e) running of schools without recognition,
- It provides for development of curriculum in consonance with the values enshrined in the Constitution, and which would ensure the all-round development of the child, building on the child's knowledge, potentiality and talent and making the child free of fear, trauma and anxiety through a system of child friendly and child centred learning.

3.3 Coase theorem on property rights and liability

Introduction

In law and economics, the **Coase theorem** describes the economic efficiency of an economic allocation or outcome in the presence of externalities. The theorem states that if trade in an externality is possible and there are sufficiently low transaction costs, bargaining will lead to a Pareto efficient outcome regardless of the initial allocation of property. In practice, obstacles to bargaining or poorly defined property rights can prevent Coasean bargaining. This 'theorem' is commonly attributed to Nobel Memorial Prize in Economic Sciences winner Ronald Coase.

The Coase Theorem states "that when there are conflicting property right, bargaining between the parties involved will lead to an efficient outcome regardless of which party is ultimately awarded the property rights, as long as the transaction costs associated with bargaining are negligible."

Specifically, the Coase Theorem states that "if trade in an externality is possible and there are no transaction costs, bargaining will lead to an efficient outcome regardless of the initial allocation of property rights."

Assumptions:

The Coase theorem is based on the following assumptions:

1. It assumes that the number of contracting parties is very small.

2. The cost of negotiating by the interested parties is also small.

3. There are no transaction costs.

4. There are no income or wealth effects.

5. There is no government interference.

Application of the Coase Theorem

The Coase Theorem is applied to situations where the economic activities of one party impose a cost on or damage the property of another party. Based on the bargaining that occurs during the

application of the Coase Theorem, funds may either be offered to compensate one party for the other's activities or to pay the party who's activity inflicts the damages to forgo that activity.

Explanation

1.The Coase Theorem is most easily explained via an example. It's clear that noise pollution fits the typical definition of an externality, or a consequence of an economic activity on an unrelated third party, because noise pollution from, say, a factory, a loud garage band, or a wind turbine potentially imposes a cost on people who are neither consumers nor producers of these items.

Since the potential rights and desires of the turbine company and the households are clearly in conflict, it's possible that the two parties will end up in court to figure out whose rights take precedence. In this instance, the court could decide that the turbine company has the right to operate at the expense of the nearby households or that the households have the right to quiet at the expense of the turbine company's operations. Coase's main thesis is that the decision reached regarding the assignment of property rights has no bearing on whether the turbines continue to operate in the area as long as the parties can bargain without cost.

Let's say that it's efficient to have the turbines operating in the area, i.e., that the value to the company of operating the turbines is greater than the cost imposed on the households. Put another way, this means that the turbine company would be willing to pay the households more to stay in business than the households would be willing to pay the turbine company to shut down. If the court decides that the households have a right to quiet, the turbine company will probably compensate the households in exchange for letting the turbines operate. Because the turbines are worth more to the company than quiet is worth to the households, some offer will be acceptable to both parties, and the turbines will keep running.

2. There is a fish market next to a coffee shop and the smell from the fish market is hurting the coffee shop’s business. We will assume that this is costing the coffee shop $5 per pound of fish sold. When taken to court the judge has to decide whether the fish market is liable or whether the coffee shop is liable, i.e., who has the right to complain.

Possible Outcomes

Fish Market is Liable	**Coffee Shop is Liable**
1) Pay Coffee Shop $5/pound	1) Suffer from smell $5/pound
2) Install Air Cleaner$8/pound	2) Pay Fish Market for Scrubber $8/pound
3) Fish Market Moves $10/pound	3) Pay Fish Market to Move $10/pound
4) Pay Coffee Shop to Move $20/pound	4) Coffee Shop Moves $20/pound

The cheapest option of $5 per pound is chosen.

- However, if the cost to the coffee shop were higher, then the coffee shop would choose the air cleaner since it is the cheapest option.
- If there is a difference in cost in putting the air cleaner, and say the fish market has the lower cost, then the fish market is liable and is the **lowest cost avoider**

Lowest cost avoider Example

Car A hits Car B in an accident. Car A is liable for the accident because he could have avoided the accident more easily. It would be harder for Car B to avoid the accident because he has to drive looking forward. Therefore, Car A is the Lowest Cost Avoider.

Conclusion

Because the conditions necessary for the Coase Theorem to apply in real world disputes over the distribution of property rights virtually never occur outside of idealized economic models, some question its relevance to applied questions of law and economics. Recognizing these real world difficulties with applying the Coase Theorem, some economists view the theorem not as a prescription for how disputes ought to be resolved, but as an explanation for why so many apparently inefficient outcomes to economic disputes can be found in the real world.

Module 4

Types of property

Public property

Public properties are land and buildings owned and directly managed by public authorities which are used for public purposes. They include assets acquired, occupied and used by Federal, State and Local governments, their departments and parastatals, to conduct government business and the specific functions of such parastatals. A public property does not belong to any one person but to the public at large and are not restricted to any one individual's use or possession.

What is public property?

Public property is property and real estate that is owned by a government,generally a government chosen by the people. The concept is that the government is made up of the people, and that therefore the people own the property that is entrusted to the government for care. This does not necessarily mean that the property is available for public use or access,however

it simply recognizes that the property was bought and likely maintained with taxpayer dollars There are many cases where public property is available for use by the general public. A couple of prime examples are libraries and parks, in which the property owned by the library in the form of books, audio equipment, and visuals can often be used by the public and many times be borrowed for a certain period of time. Parks are another form that serves a public purpose by enhancing the quality of life for area residents and visitors. Those in charge of these properties often must answer to a governing board,such as a city council, county commission, or state board. These governing bodies may be elected or appointed, depending on the situation. Their main job or priority is simply to make sure the property is being maintained for its original use, and that it is open to the public on an acceptable schedule. In other words, they are supposed to look out for the public's interests

Private Property

Private properties are lands and buildings owned by individuals and corporations. The owner of a private property has the right of use, occupation, sale or lease of his/her property. Private properties are subject to certain proprietary rights which public authorities have over private owners: right to tax the property, compulsory acquisition, right to regulate the use to which the property is put, escheat (which means the return of the property of a deceased person to the state, where there are no legal heirs or claimants).

Private property is a legal designation for the ownership of property by non-governmental legal entities. Private property is distinguishable from public property, which is owned by a state entity; and from collective (or cooperative) property, which is owned by a group of non-governmental entities. Private property can be either personal property (consumption goods) or capital goods. Private property is a legal concept defined and enforced by a country's political system.

Private property is a legal concept defined and enforced by a country's political system. The area of law that deals with the subject is called property law. The enforcement of property law concerning *private* property is a matter of *public* expense.

Defence of property is a common method of justification used by defendants who argue that they should not be held liable for any loss and injury that they have caused because they were acting to protect their property. Courts have generally ruled that the use of force may be acceptable.

According to Business Dictionary private property is a tangible and in tangiblethings owned by individuals or firms over which their owners have exclusive and absolute legal rights, such as land, buildings, money, copyrights, patents,etc. Private property can be transferred only with its owner's consent, and by due process such as sale or gift.

The economic concept of private property refers to the rights owners have tothe exclusive use and disposal of a physical object. Property is not a table, achair, or an acre of land. It is the bundle of rights which the owner is entitled to employ those objects. The alternative (collectivist) view is that private property consists merely of a legal deed to an object with the use and disposal of the object subject to the whims and mercies of the state. Under this latter view, the

state retains ownership and may at any time regulate or even repossess the property it temporarily cedes to individuals.

The differences between public and private properties include:

1. Public properties are often quite larger than private properties and could be expanded with relative ease because they enjoy the government's power of compulsory acquisition.
2. Performance of public properties is measured in terms of the extent to which they achieve the functional objectives while the performance of private properties is measured in terms of profitability.
3. Unlike public properties, private properties are liable to one form of tax or the other.
4. Private properties are usually managed better than public properties because unlike public properties, accountability for the performance of private properties is to a well defined and more effective group of people or a single individual.

A comparative analysis.

Here is a brief description of public property and private property.Public property:Public property is that property which is owned by a government. Property controlled by a community is also referred to as public property. Public property belongs to the people as a whole. Generally roads, railways,courthouses, public libraries, city halls, national monuments, national park sand reservoirs are owned by the state and are considered as public property.Private property:Any property which is not public property is known as private property.Private property is either owned by an individual or jointly owned by a groupof individuals. Use of private property for production of goods and services increased after industrial revolution. Free market economy considers private property to be essential for a prosperous country. However, for that to happen,

owners of private properties should use them for generating quality goods and services. Then the entire nation will benefit and the Government will get revenue in the form of taxes.Owners of private properties all over the world have made tremendous contributions to their respective countries. Unfortunately, private property owners have also encouraged political corruption, by influencing government policies for personal benefit. Private properties are found in abundance in free market economies like the United States America. Socialist countries do not encourage private ownership of property. They argue that the cost of defending private property is higher than the returns from private property ownership. They also argue that private property owners are not committed to the country. People supporting socialism are of the opinion that private

ownership of property benefits one section of society. Capitalists argue that private ownership encourages entrepreneurship in the country. It provides equal opportunity for all citizens to generate wealth.Irrespective of whether a property is pubic or private, it should ensure maximum benefit for the majority of the people. Then the country benefits asa whole.Conclusion.In the sense of ownership of real property in fee:Public property is state, federal or community owned property that is not restricted to any one individual's use or possession. Think of parks, schools,athletic fields, bike paths, playgrounds, city squares, public libraries &museums, municipal parking garages, courthouses, city halls, etc.Private property is protected from public appropriation. The owner has exclusive control and absolute rights in the property. They may convey it or leave it to their heirs. Private property is all property that is not public and can be owned by trusts, individuals, corporations, railroads, private hospitals,churches, non-profit corporations, etc.In another sense:Property used by the public although privately owned is subject to regulations and laws promulgated to protect public health. This category includes restaurants, stores, indoor athletic facilities, convenience stores, shopping malls, gas stations, private nursing homes, hotels, etc. Smoking bans are a good example of the government's control over private property that is used by the public.

Intellectual Property

Intellectual property refers to creations of the mind: inventions; literary and artistic works; and symbols, names and images used in commerce. Intellectual property is divided into two categories:

Industrial Property includes patents for inventions, trademarks, industrial designs and geographical indications.

Copyright covers literary works (such as novels, poems and plays), films, music, artistic works (e.g., drawings, paintings, photographs and sculptures) and architectural design.

Rights related to copyright include those of performing artists in their performances, producers of phonograms in their recordings, and broadcasters in their radio and television programs.

What are intellectual property rights?

Intellectual property rights are like any other property right. They allow creators, or owners, of patents, trademarks or copyrighted works to benefit from their own work or investment in a creation. These rights are outlined in Articlem 27 of the Universal Declaration of Human Rights, which provides for the right to benefit from the protection of moral and material interests resulting from authorship of scientific, literary or artistic productions. The importance of intellectual property was first recognized in the Paris Convention for the Protection of Industrial Property (1883) and the Berne Convention for the Protection of Literary and Artistic Works (1886). Both treaties are administered by the World Intellectual Property Organization (WIPO).

Why promote and protect intellectual property?

There are several compelling reasons. First, the progress and well-being of humanity rest on its capacity to create and invent new works in the areas of technolog and culture. Second, the legal protection of new creations encourages the commitment of additional resources for further innovation. Third, the promotion and protection of intellectual property spurs economic growth,creates new jobs and industries, and enhances the quality and enjoyment of life.

An efficient and equitable intellectual property system can help all countries to realize intellectual property's potential as a catalyst for economic development and social and cultural well-being.

The intellectual property system helps strike a balance between the interests of innovators and the public interest, providing an environment in which creativity and invention can flourish, for the benefit of all.

Intellectual property rights reward creativity and human endeavor, which fuel the progress of humankind. Some examples:The multibillion dollar film, recording, publishing and software industries – which bring pleasure to millions of people worldwide – would not exist without copyright protection.

Without the rewards provided by the patent system, researchers and inventors would have little incentive to continue producing better and more efficient products for consumers.

Consumers would have no means to confidently buy products or services without reliable, international trademark protection and enforcement mechanisms to discourage counterfeiting and piracy.

A patent is an exclusive right granted for an invention – a product or process that provides a new way of doing something, or that offers a new technical solution to a problem.

A patent provides patent owners with protection for their inventions.

Protection is granted for a limited period, generally 20 years.

Why are patents necessary?

Patents provide incentives to individuals by recognizing their creativity and offering the possibility of material reward for their marketable inventions. These incentives encourage innovation, which in turn enhances the quality of human life.

What kind of protection do patents offer?

Patent protection means an invention cannot be commercially made, used, distributed or sold without the patent owner's consent. Patent rights are usually enforced in courts that, in most systems, hold the authority to stop patent infringement. Conversely, a court can also declare a patent invalid upon a successful challenge by a third party.

What rights do patent owners have?

A patent owner has the right to decide who may – or may not – use the patented invention for the period during which it is protected. Patent owners may give permission to, or license, other parties to use their inventions on mutually agreed terms. Owners may also sell their invention rights to someone else, who then becomes the new owner of the patent. Once a patent expires, protection ends and the invention enters the public domain. This is also known as becoming off patent, meaning the owner no longer holds exclusive rights to the invention, and it become available for commercial exploitation by others.

How is a patent granted?

The first step in securing a patent is to file a patent application. The application generally contains the title of the invention, as well as an indication of its technical field. It must include the background and a description of the invention, in clear language and enough detail that an individual with an average understanding of the field could use or reproduce the invention. Such descriptions are usually accompanied by visual materials – drawings, plans or diagrams – that describe the invention in greater detail. The application also contains various "claims", that is, information to help determine the extent of protection to be granted by the patent.

What kinds of inventions can be protected?

An invention must, in general, fulfill the following conditions to be protected by a patent. It must be of practical use; it must show an element of "novelty", meanin some new characteristic that is not part of the body of existing knowledge in its particular technical field. That body of existing knowledge is called "prior art". The invention must show an "inventive step" that could not be deduced by a person with average knowledge of the technical field. Its subject matter must be accepted as "patentable" under law. In many countries, scientific theories, mathematical methods, plant or animal varieties, discoveries of natural substances, commercial methods or methods of medical treatment (as opposed to medical products) are not generally patentable.

What is a trademark?

A trademark is a distinctive sign that identifies certain goods or services produced or provided by an individual or a company. Its origin dates back to ancient times when craftsmen reproduced their signatures, or "marks", on their artistic works or products of a functional or practical nature.

Over the years, these marks have evolved into today's system of trademark registration and protection. The system helps consumers to identify and purchase a product or service based on whether its specific characteristics and quality – as indicated by its unique trademark – meet their needs.

What kinds of trademarks
can be registered?

Trademarks may be one or a combination of words, letters and numerals. They may consist of drawings, symbols or three dimensional signs, such as the shape and packaging of goods.

In some countries, non-traditional marks may be registered for distinguishing features such as holograms, motion, color and non-visible signs (sound, smell or taste).

In addition to identifying the commercial source of goods or services, several other trademark categories also exist. Collective marks are owned by an association whose members use them to indicate products with a certain level of quality and who agree to adhere to specific requirements set by the association. Such associations might represent, for example, accountants, engineers or architects. Certification marks are given for compliance with defined standards but are not confined to any membership.

They may be granted to anyone who can certify that their products meet certain established standards. Some examples of recognized certification are the internationally accepted "ISO 9000" quality standards and Ecolabels for products with reduced environmental impact.

What is an Industrial Design?

An industrial design refers to the ornamental or aesthetic aspects of an article. A design may consist of three-dimensional features, such as the shape or surface of an article, or two-dimensional features, such as patterns, lines or color. Industrial designs are applied to a wide variety of industrial products and handicrafts: from technical and medical instruments to watches, jewelry and other luxury items; from house wares and electrical appliances to vehicles and architectural structures; from textile designs to leisure goods. To be protected under most national laws, an industrial design must be new or original and nonfunctional. This means that anindustrial design is primarily of an aesthetic nature, and any technical features of the article to

which it is applied are not protected by the design registration. However, those features could be protected by a patent.

Why protect industrial designs?

Industrial designs are what make an article attractive and appealing; hence, they add to the commercial value of a product and increase its marketability. When an industrial design is protected, the owner – the person or entity that has registered the design – is assured an exclusive right and protection against unauthorized copying or imitation of the design by third parties. This helps to ensure a fair return on investment. An effective system of protection also benefits consumers and the public at large, by promoting fair competition and honest trade practices, encouraging creativity and promoting more aesthetically pleasing products.

Protecting industrial designs helps to promote economic development by encouraging creativity in the industrial and manufacturing sectors, as well as in traditional arts and crafts. Designs contribute to the expansion of commercial activity and the export of national products.

Industrial designs can be relatively simple and inexpensive to develop and protect. They are reasonably accessible to small and medium-sized enterprises as well as to individual artists and craftsmakers, in both developed and developing countries.

How can industrial designsbe protected?

In most countries, an industrial design must be registered in order to be protected under industrial design law. As a rule, to be registrable, the design must be “new” or “original”. Countries have varying definitions of such terms, as well as variations in the registration process itself.

Generally, “new” means that no identical or very similar design is known to have previously existed. Once a design is registered, a registration certificate is issued.

Following that, the term of protection granted is generally five years, with the possibility of further renewal, in most cases for a period of up to 15 years.

Hardly any other subject matter within the realm of intellectual property is as difficult to categorize as industrial designs. And this has significant implications for the means and terms of its protection.

Depending on the particular national law and the kind of design, an industrial design may also be protected as a work of applied art under copyright law, with a much longer term of protection than the standard 10 or 15 years under registered design law. In some countries, industrial design and copyright protection can exist concurrently. In other countries, they are mutually exclusive: once owners choose one kind of protection, they can no longer invoke the other.

Under certain circumstances an industrial design may also be protectable under unfair competition law, although the conditions of protection and the rights and remedies available can differ significantly.

What is a Geographical Indication?

A geographical indication is a sign used on goods that have a specific geographical origin and possess qualities or a reputation due to that place of origin. Most commonly, a geographical indication consists of the name of the place of origin of the goods. Agricultural products typically have qualities that derive from their place of production and are influenced by specific local geographical factors, such as climate and soil. Whether a sign functions as a geographical indication is a matter of national law and consumer perception.

Geographical indications may be used for a wide variety of agricultural products, such as, for example, “Tuscany” for olive oil produced in a specific area of Italy, or “Roquefort” for cheese produced in that region of France.

The use of geographical indications is not limited to agricultural products. They may also highlight specific qualities of a product that are due to human factors found in the product’s place of origin, such as specific manufacturing skills and traditions. The place of origin may be a village or town, a region or a country. An example of the latter is “Switzerland” or “Swiss”, perceived as a geographical indication in many countries for products made in Switzerland and, in particular, for watches.

Why do geographical indications need protection?

Geographical indications are understood by consumers to denote the origin and quality of products. Many of them have acquired valuable reputations which, if not adequately protected, may be misrepresented by commercial operators. False use of geographical indications by

unauthorized parties, for example “Darjeeling” for tea that was not grown in the tea gardens of Darjeeling, is detrimental to consumers and legitimate producers. The former are deceived into believing they are buying a genuine product with specific qualities and characteristics, and the latter are deprived of valuable business and suffer damage to the established reputation of their products.

What is the difference between a geographical indication and a trademark?

A trademark is a sign used by a company to distinguish its goods and services from those produced by others. It gives its owner the right to prevent others from using the trademark. A geographical indication guarantees to consumers that a product was produced in a certain place and has certain characteristics that are due to that place of production. It may be used by all producers who make products that share certain qualities in the place designated by a geographical indication.

What is a “generic” geographical indication?

If the name of a place is used to designate a particular type of product, rather than to indicate its place of origin, the term no longer functions as a geographical indication. For example, “Dijon mustard”, a kind of mustard that originated many years ago in the French town of Dijon, has, over time, come to denote mustard of that kind made in many places. Hence, “Dijon mustard” is now a generic indication and refers to a type of product, rather than a place.

How are geographical indications protected?

Geographical indications are protected in accordance with national laws and under a wide range of concepts, such as laws against unfair competition, consumer protection laws, laws for the protection of certification marks or special laws for the protection of geographical indications or appellations of origin. In essence, unauthorized parties may not use geographical indications if such use is likely to mislead the public as to the true origin of the product. Applicable sanctions range from court injunctions preventing unauthorized use to the payment of damages and fines or, in serious cases, imprisonment.

What are Copyright and Related Rights?

Copyright laws grant authors, artists and other creators protection for their literary and artistic creations, generally referred to as “works”. A closely associated field is “related rights” or rights related to copyright that encompass rights similar or identical to those of copyright, although sometimes more limited and of shorter duration. The beneficiaries of related rights are: performers (such as actors and musicians) in their performances; producers of phonograms (for example, compact discs) in their sound recordings; and broadcasting organizations in their radio and television programs.

Works covered by copyright include, but are not limited to: novels, poems, plays, reference works, newspapers, advertisements, computer programs, databases, films, musical compositions, choreography, paintings, drawings, photographs, sculpture, architecture, maps and technical drawings.

What is the World Intellectual Property Organization?

Established in 1970, the World Intellectual Property Organization (WIPO) is an international organization dedicated to helping ensure that the rights of creators and owners of intellectual property are protected worldwide, and that inventors and authors are therefore recognized and rewarded for their ingenuity.

This international protection acts as a spur to human creativity, pushing back the limits of science and technology and enriching the world of literature and the arts.

By providing a stable environment for marketing products protected by intellectual property, it also oils the wheels of international trade.

WIPO works closely with its Member States and other constituents to ensure the intellectual property system remains a supple and adaptable tool for prosperity and well-being, crafted to help realize the full potential of created works for present and future generations.

How does WIPO promote the protection of intellectual property?

As part of the United Nations system of specialized agencies, WIPO serves as a forum for its Member States to establish and harmonize rules and practices for the protection of intellectual

property rights. WIPO also services global registration systems for trademarks, industrial designs and appellations of origin, and a global filing system for patents. These systems are under regular review

by WIPO's Member States and other stakeholders to determine how they can be improved to better serve the needs of users and potential users.

Many industrialized nations have intellectual property protection systems that are centuries old.

Among newer or developing countries, however, many are in the process of building up their patent, trademark and copyright legal frameworks and intellectual property systems. With the increasing globalization of trade and rapid changes in technological innovation, WIPO plays a key role in helping these systems to evolve through treaty negotiation; legal and technical assistance; and training in various forms, including in the area of enforcement. WIPO works with its Member States to make available information on intellectual property and outreach tools for a range of audiences – from the grassroots level through to the business sector and policymakers – to ensure its benefits are well recognized, properly understood and accessible to all.

How is WIPO funded?

WIPO is a largely self-financed organization, generating more than 90 percent of its annual budget through its widely used international registration and filing systems, as well as through its publications and arbitration and mediation services. The remaining funds come from contributions by Member States.

4.3 Bargaining Theory

Bargaining theory is the branch of game theory dealing with the analysis of bargaining problems, in which some parties bargain over the division of certain goods. A solution to a bargaining problem means the determination of such a division. Examples of simple as well as more

complex applications of bargaining theory to economic, political and social situations abound. Essentially, one may apply an axiomatic approach to bargaining pproblem.

What is Bargaining ?

Bargaining or **haggling** is a type of negotiation in which the buyer and seller of a good or service debate the price and exact nature of a transaction. If the bargaining produces agreement on terms, the transaction takes place. Bargaining is an alternative pricing strategy to fixed prices. Optimally, if it costs the retailer nothing to engage and allow bargaining, they can deduce the buyer's willingness to spend. It allows for capturing more consumer surplus as it allows price discrimination, a process whereby a seller can charge a higher price to one buyer who is more eager (by being richer or more desperate). Haggling has largely disappeared in parts of the world where the cost to haggle exceeds the gain to retailers for most common retail items. However, for expensive goods sold to uninformed buyers such as automobiles, bargaining can remain commonplace.

Various Bargaining Theories

Game theory

Bargaining games refer to situations where two or more players must reach an agreement regarding how to distribute an object or monetary amount. Each player prefers to reach an agreement in these games, rather than abstain from doing so. However, each prefers that the agreement favor their interests. Examples of such situations include the bargaining involved in a labor union and the directors of a company negotiating wage increases, the dispute between two communities about the distribution of a common territory, or the conditions under which two countries agree on nuclear disarmament. Analyzing these kinds of problems looks for a solution that specifies which component in dispute corresponds to each party involved.

Players in a bargaining problem can bargain for the objective as a whole at a precise moment in time. The problem can also be divided so that parts of the whole objective become subject to bargaining during different stages.

In a classical bargaining problem, the result is an agreement reached between all interested parties or the status quo of the problem. It is clear that studying how individual parties make their decisions is insufficient for predicting what agreement will be reached. However, classical

bargaining theory assumes that each participant in a bargaining process will choose between possible agreements, following the conduct predicted by the rational choice model.
Nash [1950] defines a classical bargaining problem as being a set of joint allocations of utility, some of which correspond to what the players would obtain if they reach an agreement, and another that represents what they would get if they failed to do so.

A bargaining game for two players is defined as a pair (F,d) where F is the set of possible joint utility allocations (possible agreements), and d is the disagreement point.

For the definition of a specific bargaining solution, it is usual to follow Nash's proposal, setting out the axioms this solution should satisfy. Some of the most frequent axioms used in the building of bargaining solutions are efficiency, symmetry, independence of irrelevant alternatives, scalar invariance, monotonicity, etc.

The Nash bargaining solution is the bargaining solution that maximizes the product of an agent's utilities on the bargaining set.

What is Nash Equilibrium?

Nash Equilibrium is a game theory concept that determines the optimal solution in a non-cooperative game in which each player lacks any incentive to change his/her initial strategy. Under the Nash equilibrium, a player does not gain anything from deviating from their initially chosen strategy, assuming the other players also keep their strategies unchanged. A game may include multiple Nash equilibria or none of them.

Nash equilibrium is one of the fundamental concepts in game theory. It conceptualizes the behavior and interactions between game participants to determine the best outcomes. It also allows predicting the decisions of the players if they are making decisions at the same time and the decision of one player takes into account the decisions of other players.

Nash equilibrium was discovered by American mathematician, John Nash. He was awarded the Nobel Prize in Economics in 1994 for his contributions to the development of game theory.

Example

Imagine two competing companies: Company A and Company B. Both companies want to determine whether they should launch a new advertising campaign for their products. If both companies start advertising, each company will attract 100 new customers. If only one company decides to advertise, it will attract 200 new customers, while the other company will not attract any new customers. If both companies decide not to advertise, neither company will engage new customers. The payoff table is below:

Company A \ Company B	Advertise	Don't advertise
Advertise	100 / 100	0 / 200
Don't advertise	200 / 0	0 / 0

Company A should advertise its products because the strategy provides a better payoff than the option of not advertising. The same situation exists for Company B. Thus, the scenario when both companies advertise their products is a Nash equilibrium.

Prisoner's dilemma

The prisoner's dilemma is probably the most widely used game in *game theory*. Its use has transcended Economics, being used in fields such as business management, psychology or biology, to name a few. Nicknamed in 1950 by Albert W. Tucker, who developed it from earlier works, it describes a situation where two prisoners, suspected of burglary, are taken into custody.

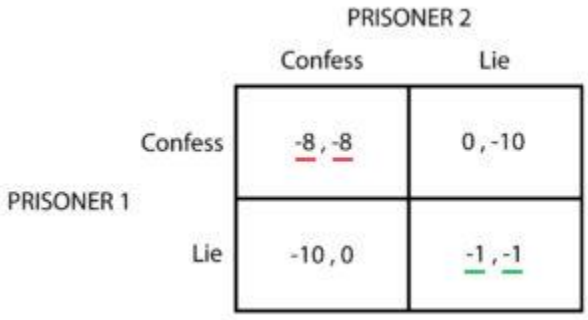
However, policemen do not have enough evidence to convict them of that crime, only to convict them on the charge of possession of stolen goods.

		PRISONER 2	
		Confess	Lie
PRISONER 1	Confess	-8 , -8	0 , -10
	Lie	-10 , 0	-1 , -1

If none of them confesses (they cooperate with each other), they will both be charged the lesser sentence, a year of prison each. The police will question them on separate interrogation rooms, which means that the two prisoners cannot communicate (hence *imperfect information*). The police will try to convince each prisoner to confess the crime by offering them a "get out of jail free card", while the other prisoner will be sentenced to a ten years term. If both prisoners confess (and therefore they defect), each prisoner will be sentenced to eight years. Both prisoners are offered the same deal and know the consequences of each action (*complete information*) and are completely aware that the other prisoner has been offered the exact same deal (therefore, it's *common knowledge*).

Description:

Since prisoners cannot communicate and will (supposedly) make their decision at the same time, this is considered to be a *simultaneous game*, and can be analysed using the strategic form, as in the adjacent game matrix. As described before, if both prisoners confess the crime they will be charged an eight years sentence each. If neither confesses, they will be charged one year each. If only one confesses, that prisoner will go free, while the other will be charged a ten years sentence. These can be seen as the respective payoffs for each set of strategies.



Eliminating all dominated strategies, in order to get the ***dominant strategy***, can solve this game. This is, each prisoner will analyse their best strategy given the other prisoner's possible strategies. Prisoner 1 (P1) has to build a belief about what choice P2 is going to make, in order to choose the best strategy. If P2 confesses ($P2_C$), he will get either -8 or 0, and if he lies ($P2_L$) he will get either -10 or -1. It can be easily seen that P2 will choose to confess, since he will be better off. Therefore, P1 must choose the best strategy given that P2 will choose to confess: P1 can either confess ($P1_C$, which pays -8) or lie ($P1_L$, which pays -10). The rational thing to do for P1 is to confess. Proceeding inversely, we analyse the beliefs of P2 about P1's strategies, which gets us to the same point: the rational thing to do for P2 is to confess. Therefore, "to confess" is the dominant strategy. $P1_C$, $P2_C$ is the ***Nash equilibrium*** in this game (underlined in red), since it is the set of strategies that ***maximise*** each prisoner's ***utility*** given the other prisoner's strategy.

4.4 Economic theory of Property with reference to Locke and Marx

1. ***John Locke Labour theory of Property***

John Locke was an English philosopher physician, widely regarded as one of the most influential of Enlightenment thinkers and commonly known as the "Father of Liberalism".

The **labor theory of property** (also called the **labor theory of appropriation**, **labor theory of ownership**, **labor theory of entitlement**, or **principle of first appropriation**) is a theory of natural law that holds that property originally comes about by the exertion of labor upon natural resources. The theory has been used to justify the homestead principle, which holds that one may gain whole permanent ownership of an unowned natural resource by performing an act of original appropriation.

In his *Second Treatise on Government*, the philosopher John Locke asked by what right an individual can claim to own one part of the world, when, according to the Bible, God gave the world to all humanity in common. He answered that although persons belong to God they own the fruits of their labor. When a person works, that labor enters into the object. Thus, the object becomes the property of that person.

However, Locke held that one may only appropriate property in this fashion if the Lockean proviso held true, that is, "... there is enough, and as good, left in common for others"

Exclusive ownership and creation

Locke argued in support of individual property as natural rights. Following the argument the fruits of one's labor are one's own because one worked for it. Furthermore, the laborer must also hold a natural property right in the resource itself because exclusive ownership was immediately necessary for production.

Jean-Jacques Rousseau later criticized this second step in Discourse on Inequality, where he argues that the natural right argument does not extend to resources that one did not create. Both

philosophers hold that the relation between labor and ownership pertains only to property that was significantly unused before such labor took place.

Enclosure vs mixing labor

Land in its original state would be considered unowned by anyone, but if an individual applied his labor to the land by farming it, for example, it becomes his property. Merely placing a fence around land rather than using the land enclosed would not bring property into being according to most natural law theorists

Acquisition vs mixing labor

The labor theory of property does not only apply to land itself, but to any application of labor to nature. For example, natural-rightist Lysander Spooner, says that an apple taken from an unowned tree would become the property of the person who plucked it, as he has labored to acquire it. He says the "only way, in which ["the wealth of nature"] can be made useful to mankind, is by their taking possession of it individually, and thus making it private property."

Lockean proviso

Locke held that individuals have a right to homestead private property from nature by working on it, but that they can do so only "...at least where there is enough, and as good, left in common for others".The proviso maintains that appropriation of unowned resources is a diminution of the rights of others to it, and would be acceptable only so long as it does not make anyone worse off than they would have been before. The phrase "Lockean Proviso" was coined by political philosopher Robert Nozick, and is based on the ideas elaborated by John Locke in his Second Treatise of Government.

Criticism

Aside from critiques of natural rights as a whole, Locke's labor theory of property has been singled out for critique by modern academics who doubt the idea that mixing something owned with something unowned could imbue the object with ownership:

Why isn't mixing what I own with what I don't own a way of losing what I own rather than a way of gaining what I don't? If I own a can of tomato juice and spill it in the sea so that its molecules (made radioactive, so I can check this) mingle evenly throughout the sea, do I thereby come to own the sea, or have I foolishly dissipated my tomato juice?

A fundamental criticism of Locke's labor theory of property is that it, in practice, values a particular type of labor and land use (i.e.: agriculture) over all others. It thus does not recognise usage of land, for example, by hunter-gatherer societies as granting rights to ownership. In essence, the Lockean proviso depends on "the existence of a frontier, beyond which lies boundless usable land. This in turn requires the erasure (mentally and usually in brutal reality) of the people already living beyond the frontier and drawing their sustenance from the land in question.

2.Karl Marx Theory on Property

Karl Heinrich Marx was a German philosopher, economist, historian, sociologist, political theorist, journalist and socialist revolutionary.

In the 19th century, the economist and philosopher Karl Marx (1818–1883) provided an influential analysis of the development and history of property formations and their relationship to the technical productive forces of a given period. Marx's conception of private property has proven influential for many subsequent economic theories and for anarchist, communist and socialist political movements, and led to the widespread association of private property with capitalism.

Private property in the means of production is the central element of capitalism criticized by socialists. In Marxist literature, private property refers to a social relationship in which the property owner takes possession of anything that another person or group produces with that property and capitalism depends on private property. The socialist critique of private ownership is heavily influenced by the Marxist analysis of capitalist property forms as part of its broader critique of alienation and exploitation in capitalism. Although there is considerable disagreement among socialists about the validity of certain aspects of Marxist analysis, the majority of socialists are sympathetic to Marx's views on exploitation and alienation. Socialists critique the private appropriation of property income on the grounds that because such income does not correspond to a return on any productive activity and is generated by the working class, it represents exploitation. The property-owning (capitalist) class lives off passive property income produced by the working population by virtue of their claim to ownership in the form of stock or private equity. This exploitative arrangement is perpetuated due to the structure of capitalist society. From this perspective, capitalism is regarded as class system akin to historical class systems like slavery and feudalism.

The Marxist theory understands the evolution and development of property through society's level of materialism. More or less, this is the kind of relationship people usually have towards each another while trying to fulfill their material needs and wants. This may involve the need to supplement daily needs like clothing, food, shelter and the likes. Proponents of the Marxist

theory, therefore, view property as a factor of production and not an element of an individual or a group ownership.

In the capitalistic system, property is the tool to which capitalists use to make profit and exert influence over others while people work for the factor of production (land) to make a living (wages). The power of capitalists through the control of property can then be safeguarded through legislations which are also in the control of capitalists to protect their wealth (property). A change in tax policy is one way through which the rich are able to safeguard their wealth.

However, the current systems in place, under the capitalistic system (though meant to have a universal representation), do not necessarily prevent a universal suffrage. In fact, for a long time, the capitalists have used the law to exclude a section of people in the society from having access to property. The population groups which have historically fallen victim to capitalists are women, children, colored people, poor people and other marginalized groups. In this kind of system, therefore, it is apparently clear that the government works to protect capitalists' property because the government is comprised of capitalists at the first place.

However, in as much as the Marxist theory derives its authenticity from capitalism systems, it goes without saying that capitalism can also lead to its own downfall. This happens because capitalism created a new class of working class people whom it made a profit out of, depending on the relationship with the factors of production. However, the working class has forced capitalists to lower their profit levels through an increase in competition and this has created class conflict.

Nonetheless, the Marxist theory does not outline how the working class is able to achieve a state of class-consciousness but some scholars have noted that they are able to achieve this through suffering in the hands of capitalists. Such sort of resistance can potentially lead to the emergence of revolutions against capitalism and often, this is expected in the third world countries.

Nonetheless, we can deduce the fact that since most capitalists hold property, property rights are entitled to them, but the current social consciousness demands a transition of these rights so that other people can also control property. If analyzed critically, this is one of the elements for socialism and it may mark the end of capitalism through the transfer of property rights to socialist economies.

If the working class is able to cover ground, to the disadvantage of the capitalists, there may emerge a system of socialism. This is a form of communism. Communism has been potentially divided into two phases of socialism and stateless communism. Socialism is perceived as the period characterizing the overthrow of capitalism while stateless communism may be achieved when capitalism has already died.

This will be the period when property is communal. However, by property being communal, it does not mean that property will be controlled by all, it means that property will be in the hands of the working class. This will be the new dawn of the democratic communities because they will now own property as a factor of production.

4.5 Theory of Distribution

The theory of distribution is that incomes are earned in the production of goods and services and that the value of the productive factor reflects its contribution to the total product. Distribution refers to the way total output, income, or wealth is distributed among individuals or among the factors of production such as labour, land, and capital. In general theory and the national income and product accounts, each unit of output corresponds to a unit of income.It is the systematic attempt to account for the sharing of the national income among the owners of the factors of production i.e., land, labour, and capital. Economists have studied how the costs of these factors i.e., rent, wages, and profits and the size of their return are fixed.

Advantages of Distribution theory

The great advantages of the theory of distribution is that

• It treats wages, interest, and land rents in the same way.

• Is its integration with the theory of production.

• Itlends itself to a relatively simple mathematical statement.

Aspects of distribution

The aspects of distribution can be as follows:

a. Personal distribution

Personal distribution is primarily a matter of statistics and the conclusions that can be drawn from them. The inequality seems to be greatest in poor countries and diminishes somewhat in the course of economic development. Some authorities point to the natural inequality of human beings (differences in intelligence and ability), others to the effects of social institutions (including education); some emphasize economic factors such as scarcity; others invoke political concepts such as power, exploitation, or the structure of society.

b. Functional distribution

The theory of functional distribution, which attempts to explain the prices of land, labour, and capital, is a standard subject in economics. It sees the demand for land, labour, and capital as

derived demand, stemming from the demand for final goods. Behind this lies the idea that a businessman demands inputs of land, labour, and capital because he needs them in the production of goods that he sells. The theory of distribution is thus related to the theory of production, one of the well-developed subjects of economics.

Influences on distribution

• Price

The traditional inflationary sequence was that as prices rose, profits would increase, with wages lagging behind; this would tend to diminish the share of labour in the national income.

• Technology

Another dynamic influence is technological progress. The concept of the production function assumes a constant technology.

Among What Factors to be Distributed?

National income is distributed among the various factors of production like—land, labour, capital and enterprise. From national income the rent of land, wages of labourers, interest on capital and risk part of money to entrepreneur will be deducted and the balance left will be net profit which will be distributed.

What should be the Theory of Distribution?

Marginal Productivity alias Theory of Distribution

The theory explains how the prices of the various factors of production would be determined under conditions of perfect competition and full employment.

According to the Marginal Productivity Theory, the price of any factor will be equal to the value of its marginal product. For example, we know that a consumer will demand a commodity up to the point at which its marginal utility is proportional to the price he pays for it. Similarly, a firm will go on employing more and more units of a factor until the price of the factor is equal to the

value of the marginal product. This is equal to the value of the additional product, which an employer gets when he employs an additional unit of that factor, the supply of all other factors remaining constant.

Modern Theory of Distribution Demand and Supply Theory:

Demand for a Factor:

First we are going to consider the demand side of the factor. Here, we should remember that the demand for a factor of production is not a direct demand. It is on indirect or derived demand, It is derived from the demand for the product that, the factor produces. For example, we can say that labour does not satisfy our w ants directly. The demand for labour entirely depends upon the demand for goods. If the demand for goods increases, the demand for the factors which help to produce those goods will also increase.

The demand for a factor of production will also depend on the quantity of the other factors required for the process. The demand price for a given quantity of a factor of production will be higher, the greater the quantities of the co-operating productive services. If in production more of a factor of production is employed, the marginal productivity of the factor will fall and the demand price will be lower of the unit of a productive service.

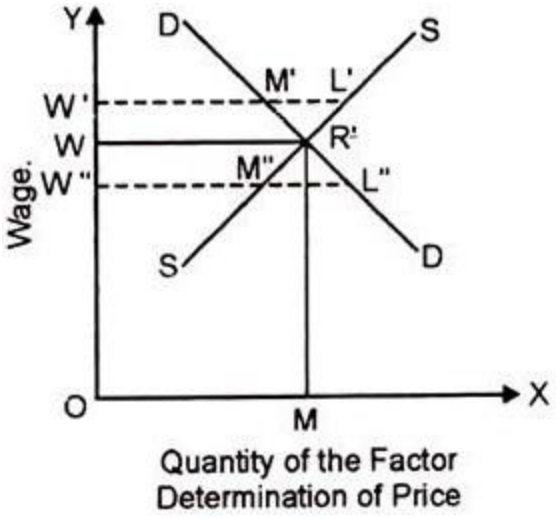
Further, the demand price of a factor of production also depends upon the value of the finished product in the production of which the factor is used. The demand price of a commodity is normally higher, if more valuable is the finished product in which the factor is used. Next, the more productive the factor is, the higher will be the demand price of a given quantity of the factor.

Supply Side

The supply of labour entirely depends upon the size and composition of population, the occupational and geographical distribution, labour efficiency their training, expected income, relative preference for work and leisure etc. By considering all these relevant factors, it is possible to construct the supply curve of a productive service.

Further, the supply of labour does not depend only on economic factors but many non-economic considerations also. Therefore, we can say that if the price of a factor increases, it supply will also increase and vice-versa. Hence, the supply curve of a factor rises from left to right upwards.

This can be shown by the figure given below:



Interaction of Demand and Supply:

We have studied up to this stage the demand curve and the supply curve of the factor of production while in price fixation both curves are needed. Therefore, the price will tend to prevail in the market at which the demand and supply are in equilibrium. This equilibrium is at the point of intersection of the demand and supply curves.

In the diagram above the demand and supply curves intersect at the point R and the price of the factor will be OW at OW' demand W' M' is less than the supply W L'. In this case competition among the sellers of the service will tend to bring down the price to OW. On the other hand, at OW "price the demand W "L" is greater than the supply W "M ", hence price will tend to go up to OW at which the demand and supply will be equal.

To conclude, this is how that the price of a factor of production in the factor market is determined by the interaction of the forces of demand and supply in connection with the factor of production. Thus eminent economists are of this opinion that this is the proper, correct and satisfactory theory of distribution.

Module 5 Impact of Economic Policies on Law

Importance of Planning:

All organizations whether it is the government, a private business or small businessman require planning. To turn their dreams of increase in sale, earning high profit and getting success in business all businessmen have to think about future; make predictions and achieve target. To decide what to do, how to do and when to do they do planning.

Meaning:

Planning can be defined as "thinking in advance what is to be done, when it is to be done, how it is to be done and by whom it should be done". In simple words we can say, planning bridges the gap between where we are standing today and where we want to reach.

Planning involves setting objectives and deciding in advance the appropriate course of action to achieve these objectives so we can also define planning as setting up of objectives and targets and formulating an action plan to achieve them.

Another important ingredient of planning is time. Plans are always developed for a fixed time period as no business can go on planning endlessly.

Features/Nature/Characteristic of Planning:

1. Planning contributes to Objectives:

Planning starts with the determination of objectives. We cannot think of planning in absence of objective. After setting up of the objectives, planning decides the methods, procedures and steps to be taken for achievement of set objectives. Planners also help and bring changes in the plan if things are not moving in the direction of objectives.

For example, if an organisation has the objective of manufacturing 1500 washing machines and in one month only 80 washing machines are manufactured, then changes are made in the plan to achieve the final objective.

2. Planning is Primary function of management:

Planning is the primary or first function to be performed by every manager. No other function can be executed by the manager without performing planning function because objectives are set up in planning and other functions depend on the objectives only.

3. Pervasive:

Planning is required at all levels of the management. It is not a function restricted to top level managers only but planning is done by managers at every level. Formation of major plan and framing of overall policies is the task of top level managers whereas departmental managers form plan for their respective departments. And lower level managers make plans to support the overall objectives and to carry on day to day activities.

4. Planning is futuristic/Forward looking:

Planning always means looking ahead or planning is a futuristic function. Planning is never done for the past. All the managers try to make predictions and assumptions for future and these predictions are made on the basis of past experiences of the manager and with the regular and intelligent scanning of the general environment.

5. Planning is continuous:

Planning is a never ending or continuous process because after making plans also one has to be in touch with the changes in changing environment and in the selection of one best way.

6. Planning involves decision making:

The planning function is needed only when different alternatives are available and we have to select most suitable alternative. We cannot imagine planning in absence of choice because in planning function managers evaluate various alternatives and select the most appropriate. But if there is one alternative available then there is no requirement of planning.

For example, to import the technology if the licence is only with STC (State Trading Co-operation) then companies have no choice but to import the technology through STC only. But if there is 4-5 import agencies included in this task then the planners have to evaluate terms and conditions of all the agencies and select the most suitable from the company's point of view.

7. Planning is a mental exercise:

It is mental exercise. Planning is a mental process which requires higher thinking that is why it is kept separate from operational activities by Taylor. In planning assumptions and predictions regarding future are made by scanning the environment properly. This activity requires higher level of intelligence. Secondly, in planning various alternatives are evaluated and the most suitable is selected which again requires higher level of intelligence. So, it is right to call planning an intellectual process.

Importance/Significance of Planning:

1. Planning provides Direction:

Planning is concerned with predetermined course of action. It provides the directions to the efforts of employees. Planning makes clear what employees have to do, how to do, etc. By stating in advance how work has to be done, planning provides direction for action. Employees know in advance in which direction they have to work. This leads to Unity of Direction also. If there were no planning, employees would be working in different directions and organisation would not be able to achieve its desired goal.

2. Planning Reduces the risk of uncertainties:

Organisations have to face many uncertainties and unexpected situations every day. Planning helps the manager to face the uncertainty because planners try to foresee the future by making some assumptions regarding future keeping in mind their past experiences and scanning of business environments. The plans are made to overcome such uncertainties. The plans also include unexpected risks such as fire or some other calamities in the organisation. The resources are kept aside in the plan to meet such uncertainties.

3. Planning reduces over lapping and wasteful activities:

The organisational plans are made keeping in mind the requirements of all the departments. The departmental plans are derived from main organisational plan. As a result there will be co-ordination in different departments. On the other hand, if the managers, non-managers and all the

employees are following course of action according to plan then there will be integration in the activities. Plans ensure clarity of thoughts and action and work can be carried out smoothly.

4. Planning Promotes innovative ideas:

Planning requires high thinking and it is an intellectual process. So, there is a great scope of finding better ideas, better methods and procedures to perform a particular job. Planning process forces managers to think differently and assume the future conditions. So, it makes the managers innovative and creative.

5. Planning Facilitates Decision Making:

Planning helps the managers to take various decisions. As in planning goals are set in advance and predictions are made for future. These predictions and goals help the manager to take fast decisions.

6. Planning establishes standard for controlling:

Controlling means comparison between planned and actual output and if there is variation between both then find out the reasons for such deviations and taking measures to match the actual output with the planned. But in case there is no planned output then controlling manager will have no base to compare whether the actual output is adequate or not.

For example, if the planned output for a week is 100 units and actual output produced by employee is 80 units then the controlling manager must take measures to bring the 80 unit production upto 100 units but if the planned output, i.e., 100 units is not given by the planners then finding out whether 80 unit production is sufficient or not will be difficult to know. So, the base for comparison in controlling is given by planning function only.

7. Focuses attention on objectives of the company:

Planning function begins with the setting up of the objectives, policies, procedures, methods and rules, etc. which are made in planning to achieve these objectives only. When employees follow

the plan they are leading towards the achievement of objectives. Through planning, efforts of all the employees are directed towards the achievement of organisational goals and objectives.

NITI Aayog

Overview

The National Institution for Transforming India, also called NITI Aayog, was formed via a **resolution of the Union Cabinet on January 1, 2015**. NITI Aayog is the premier policy 'Think Tank' of the Government of India, providing both directional and policy inputs. While designing strategic and long term policies and programmes for the Government of India, NITI Aayog also provides relevant technical advice to the Centre and States.

It is a policy think tank of the Government of India, established with the aim to achieve sustainable development goals with cooperative federalism by fostering the involvement of State Governments of India in the economic policy-making process using a bottom-up approach. Its initiatives include "15-year road map", "7-year vision, strategy, and action plan", AMRUT, Digital India, Atal Innovation Mission, Medical Education Reform, agriculture reforms (Model Land Leasing Law, Reforms of the Agricultural Produce Marketing Committee Act, Agricultural Marketing and Farmer Friendly Reforms Index for ranking states), Indices Measuring States' Performance in Health, Education and Water Management, Sub-Group of Chief Ministers on Rationalization of Centrally Sponsored Schemes, Sub-Group of Chief Ministers on Swachh Bharat Abhiyan, Sub-Group of Chief Ministers on Skill Development, Task Forces on Agriculture and up of Poverty, and Transforming India Lecture Series.

The Governing Council of NITI, with The Prime Minister as its Chairman, comprises Chief Ministers of all States and Lt. Governors of Union Territories (UTs).

The Government of India, in keeping with its reform agenda, constituted the NITI Aayog to replace the Planning Commission instituted in 1950. This was done in order to better serve the needs and aspirations of the people of India. An important evolutionary change from the past, NITI Aayog acts as the quintessential platform of the Government of India to bring States to act together in national interest, and thereby fosters Cooperative Federalism.

On 7 June 2018, the Prime Minister approved the reconstitution of NITI Aayog to include Ex-officio members and special invitees.

PRESENT COMPOSITION OF NITI AAYOG:

Chairperson

Shri Narendra Modi, Hon'ble Prime Minister

Vice Chairperson

Dr. Rajiv Kumar

Full-Time Members

Shri V.K. Saraswat Prof. Ramesh Chand Dr. V. K. Paul

Ex-officio Members

1. Shri Raj Nath Singh, Minister of Defence

2. Shri Amit Shah, Minister of Home Affairs

3. Smt. Nirmala Sitharaman, Minister of Finance and Minister of Corporate Affairs

4. Shri Narendra Singh Tomar, Minister of Agriculture and Farmers Welfare;Minister of Rural Development; Minister of Panchayati Raj.

Special Invitees

1. Shri Nitin Jairam Gadkari, Minister of Road Transport and Highways; Minister of Micro, Small and Medium Enterprises

2. ShriThaawar Chand Gehlot, Minister of Social Justice and Empowerment.

3. Shri Piyush Goyal, Minister of Railways; and Minister of Commerce and Industry

4. Shri Rao Inderjit Singh, Minister of State (Independent Charge) of the Ministry of Statistics and Programme Implementation and Minister of State(Independent Charge) of Ministry of Planning.

Chief Executive Officer

Shri Amitabh Kant

Significance and objectives of Planning

1. To evolve a shared vision of national development priorities, sectors, and strategies with the active involvement of States in the light of national objectives.
2. To foster cooperative federalism through structured support initiatives and mechanisms with the States on a continuous basis, recognizing that strong States make a strong nation.
3. To develop mechanisms to formulate credible plans at the village level and aggregate these progressively at higher levels of government.
4. To ensure, on areas that are specifically referred to it, that the interests of national security are incorporated in economic strategy and policy.
5. To pay special attention to the sections of our society that may be at risk of not benefiting adequately from economic progress.
6. To design strategic and long term policy and programme frameworks and initiatives, and monitor their progress and their efficacy. The lessons learnt through monitoring and feedback will be used for making innovative improvements, including necessary mid-course corrections.
7. To provide advice and encourage partnerships between key stakeholders and national and international like-minded Think tanks, as well as educational and policy research institutions.
8. To create a knowledge, innovation and entrepreneurial support system through a collaborative community of national and international experts, practitioners and other partners.
9. To offer a platform for resolution of inter-sectoral and inter departmental issues in order to accelerate the implementation of the development agenda.
10. To maintain a state-of-the-art Resource Centre, be a repository of research on good governance and best practices in sustainable and equitable development as well as help their dissemination to stake-holders.

11. To actively monitor and evaluate the implementation of programmes and initiatives, including the identification of the needed resources so as to strengthen the probability of success and scope of delivery.

12. To focus on technology upgradation and capacity building for implementation of programmes and initiatives.

13. To undertake other activities as may be necessary in order to further the execution of the national development agenda, and the objectives mentioned in above.

5.2 Impact of globalisation on Law Overview

We live in the age of globalization and free market economics. Globalization refers to the integration of economic activities across borders. Technological and intellectual innovation has been the driving force behind globalization. It has reduced the cost of transportation and communication, thereby propelling profitable economic activity over large distances. The process of globalization has impacted every sphere of life in modern society and the legal arena is no exception.

Globalization has been an inherent part of the human journey. Humankind's ability to navigate the seas has facilitated the birth of global empires, movement of people and expansion in commerce since ages, and the industrial revolution has only accelerated the process. While the steam locomotive, steamship and telegraph drove the globalization of the late 19th and early 20th centuries, the jet aircraft, internet and mobile phones are fuelling the globalization of today.

Globalization impacts the legal field in manifold ways. It boosts international trade and commerce by facilitating the easy movement of capital, labor, goods and services across national borders, thus driving economic growth and the need for trained legal professionals.

Globalization demands a new kind of legal practitioner. The new-age lawyer, whether they be a corporate lawyer or criminal defense attorney, should be an industry expert or an authority on the law as specialized domains such as project finance, M&As and arbitrations are more industry-specific and less about local regulations. Industry experts are increasingly driving transactions and reducing the local, non-specialist lawyers to supporting and advisory roles. The legal professionals who work for global clients must be able to conduct themselves in a foreign language and be well-versed with international norms and usages as the interface lawyers that were found in foreign desks of international law firms have become a relic of the past.

Globalization is changing the dynamics of the legal business. A decade ago, global law firms setting up shop in a new area would only take on the international work of local companies. But today, the same global firms are competing with domestic law firms for local work as the local

firms are unable to contest on equal terms. As a result, the neighborhood law firms are gradually losing ground to their global counterparts.

Globalization is re-writing client expectations. Today's clients are more demanding than their predecessors, compelling law firms to rethink their conventional ways of functioning. Technology is having a dramatic impact on the legal industry. Knowledge management systems are improving client interactions and reducing costs, and social media is reshaping client relationships. As a result of these innovations, the balance of power is shifting into the hands of clients. Globalization has resulted in the adoption of global norms in professional liability, ethics and non-discrimination policies. Legal firms are increasingly attuning themselves to global practices to meet the requirements of worldwide clients and remain relevant in the global marketplace.

Legal firms are taking the globalization route by merging with larger counterparts, making acquisitions and entering into strategic alliances. This spurt in globalization is being driven by the internet boom, automation of legal processes and new technology tools. Globalization will continue to reshape the landscape of the legal industry in the coming years as law firms seek to expand their footprints worldwide.

Globalization is reshaping the demand for legal services in the emerging economies of India, China and Brazil. The gradual liberalization of these economies since the 1990s has led to major foreign investment and privatization, and unleashed competitive market forces like never before. The frenzied economic activity has spurred the demand for new laws and legal institutions such as investment and securities laws, trade and competition authorities, and the need for new lawyers. These economies have thus given birth to a corporate legal sector consisting of large law firms and sophisticated in-house legal departments.The workforce is becoming multi-generational in an increasingly globalized world. Four generations, consisting of traditionalists, baby boomers, Generation X and Generation Y, are rubbing shoulders at the workplace, as legal professionals work beyond their retirement age. The legal firms have to harness the energies of this diverse workforce to achieve the common good of the organization.

Virtual law firms are becoming the norm of the day. Mobile devices and web technology are making it possible for legal professionals to work remotely from home or a virtual law office. Virtual law offices allow flexible working hours and foster a better work-life balance among the legal professionals. Moreover, thanks to the power of the virtual world, the clients are able to avail expert legal services from any part of the world.

The Legal Process Outsourcing sector (LPO) is another manifestation of globalization in the legal arena. The 1990s witnessed the phenomenon of Business Process Outsourcing (BPO), wherein businesses outsourced backroom accounting and IT functions to BPO companies. LPO is business process outsourcing in which large legal firms establish offshore operations in low-cost locations in order to minimize costs, increase flexibility and expand capabilities.

There is a growing trend towards specialized boutique firms focused on a specific area of law such as international law, intellectual property, patents and family laws, to cater to the demands of the global marketplace. Legal firms are establishing themselves as niche experts in their geographic locations.

Globalization has changed the rules of the game, making it incumbent for the legal industry to introspect on where it is today and where it is headed, and prepare itself for an increasingly inter-connected world. The legal systems in various countries have to learn from each other to bring about the necessary institutional changes and evolution of laws.

5.3 Impact of Liberalization and Privatization on Law and Legislation

Globalization and privatization have become the buzzwords in the current economic scenario. The concepts of liberalization globalization and privatization are actually closely related to one another. This LPG phenomenon was first initiated in the Indian Economy in 1990 when the Indian Economy experienced a severe crisis. There was decline in the country's export earnings, national income and industrial output. The government had to seek aid from IMF to resolve it's debt problem. That is when the government decided to introduce the New Industrial Policy (NIP) in 1991 to start liberalizing the Indian economy.

Liberalization

Liberalization means elimination of state control over economic activities. It implies greater autonomy to the business enterprises in decision-making and removal of government interference. It was believed that the market forces of demand and supply would automatically operate to bring about greater efficiency and the economy would recover. This was to be done internally by introducing reforms in the real and financial sectors of the economy and externally by relaxing state control on foreign investments and trade.

The major aspects of liberalization in India were ;

1.Abolition of licensing : NIP'1991 abolished licensing for most industries except 6 industries of strategic significance. They include alcohol, cigarettes, industrial explosives, defense products ,drugs and pharmaceuticals, hazardous chemicals and certain others reserved for the public sector. This would encourage setting up of new industries and shift focus to productive activities.

2.Liberalization of Foreign Investment : While earlier prior approval was required by foreign companies, now automatic approvals were given for Foreign Direct Investment (FDI) to flow into the country. A list of high-priority and investment-intensive industries were delicensed and could invite up to 100% FDI including sectors such as hotel and tourism, infrastructure, software development .etc. Use of foreign brand name or trade mark was permitted for sale of goods.

3.Relaxation of Locational Restrictions : There was no requirement anymore for obtaining approval from the Central Government for setting up industries anywhere in the country except those specified under compulsory licensing or in cities with population exceeding1

million.Polluting industries were required to be located 25 kms away from the city peripheries if the city population was greater than 1 million.

4.Liberalization of Foreign Technology imports : In projects where imported capital goods are required, automatic license would be given for foreign technology imports up to 2 million US dollars. No permissions would be required for hiring foreign technicians and foreign testing of indigenously developed technologies.

5.Phased Manufacturing Programmes :Under PMP any enterprise had to progressively substitute imported inputs, components with domestically produced inputs under local content policy. However NIP'1991 abolished PMP for all industrial enterprises. Foreign Investment Promotion Board (FIPB) was set up to speed up approval for foreign investment proposals.

6.Public Sector Reforms : Greater autonomy was given to the PSUs (Public Sector Units) through the MOUs (Memorandum of Understanding) restricting interference of the government officials and allowing their managements greater freedom in decision-making.

7.MRTP Act : The Industrial Policy 1991 restructured the Monopolies and Restrictive Trade Practises Act. Regulations relating to concentration of economic power, pre-entry restrictions for setting up new enterprises, expansion of existing businesses, mergers and acquisitions.etc. have been abolished.

Privatization

Privatization is closely associated with the phenomena of globalization and liberalization. Privatization is the transfer of control of ownership of economic resources from the public sector to the private sector. It means a decline in the role of the public sector as there is a shift in the property rights from the state to private ownership. The public sector had been experiencing various problems , since planning, such as low efficiency and profitability, mounting losses, excessive political interference, lack of autonomy, labour problems and delays in completion of projects. Hence to remedy this situation with Introduction of NIP'1991 privatization was also initiated into the Indian economy.

Another term for privatization is Disinvestment. The objectives of disinvestment were to raise resources through sale of PSUs to be directed towards social

welfare expenditures, raising efficiency of PSUs through increased competition, increasing consumer satisfaction with better quality goods and services, upgrading technology and most importantly removing political interference.

The main aspects of privatization in India are as follows;

1.Autonomy to Public sector : Greater autonomy was granted to nine PSUs referred to as 'navaratnas' (ONGC, HPCL, BPCL, VSNL,BHEL) to take their own decisions.

2.Dereservation of Public Sector : The number of industries reserved for the public sector were reduced in a phased manner from 17 to 8 and then to only 3 including Railways, Atomic energy, Specified minerals. This has opened more areas of investment for the private sector and increased competition for the public sector forcing greater accountability and efficiency.

3.Disinvestment Policies : Till 1999-2000 disinvestment was done basically through sale of minority shares but since then the government has undertaken strategic sale of it's equity to the private sector handing over complete management control such as in the case of VSNL ,BALCO .etc.

5.4 Impact of market economy on law

A free market economy requires a legal structure to function effectively. A market economy consists of many private actors who establish consensual economic relations to promote their separate and mutual advantage. This multiplicity of actors creates a variety of markets for property and services where supply and demand balance out in equilibrium. It is grossly inefficient for every actor to undertake to negotiate the entire structural framework in which that actor's economic transactions take place.9 Therefore, a legal system is needed to provide the foundations for a superstructure made up of reasonable expectations that a particular transaction can produce. A market economy also needs regulation to internalize the costs of doing business and to prevent the substantial externalization of such costs.The business law system needs to be widely known and accepted as a foundation for economic activity in order to provide an atmosphere of predictability and minimize disputes. When disputes do arise, the legal system needs to provide a systematic approach for the resolution of differences, to minimize transaction costs involved in resolving disputes.

A business regulatory system is also necessary to maintain a level playing field for all economic actors and to curb excesses. Rules that limit this free flow to raise the cost of doing business, reduce a country's share in economic growth, limit the creation of wealth and reduce the standard of living. In particular, it is important that the rules apply equally to foreign as well as domestic actors, to encourage foreign investment and the export of domestic goods and services. This permits a national economic system to participate in the broader economic world and the free flow of capital and resources.

The distinctive rule of law features required for a market economy impact the enactment of laws by the legislature, the resolution of disputes by the judiciary, and the regulation of the economy by the executive branch of government. Together, the various branches of government must enact and administer a legal system that provides a structure for efficient economic activity and provides a dispute resolution system to resolve controversies in the economic system.

A. **Legislation**

The network of legal relations necessary to support a market economy has both public law and private law dimensions.

1. **Private Law**

The private law legal structures include contract law, property law, company law (including partnership law), agency and employment law, secured transaction law, and tort (extracontractual liability)law. Contract law provides the underlying rules to fill in the details of

the obligations of the parties to transactions, absent agreement to the contrary.Property law protects the repository of wealth in the society and provides the economic support for transactions. It typically provides separate legal regimes for real property (immovable property) and for personal property (movable property). Company law provides for the organization of business firms (including partnerships) and regulates their structure and operations. Employment and agency law regulates the rights, powers, and conditions of persons acting on behalf of others, permits numbers of people to conduct economic activity on behalf of a firm, and allows them to aggregate their efforts for collective benefit. Secured transaction law facilitates the provision of secured financing for business expansion. Tort law provides for the

internalization of adverse impacts that a business might otherwise attempt to impose on third parties and the public, and to absorb them as costs of doing business.

2. **Public Law**

The public regulation of private transactions is designed to protect the public good.The public law required to support a market economy includes insolvency and bankruptcy law, tax law, environmental law, securities law, banking law and public international law.

The various business regulatory systems are typically very numerous and often very detailed. Such regulation needs fine tailoring to assure that it does not unduly hinder business development.Insolvency and bankruptcy law provides for the orderly reorganization or termination of unprofitable enterprises that are no longer able to compete efficiently in the marketplace, and the redeployment of their assets to more efficient and productive commercial activities. At the same time, its collective action function substitutes a more efficient and equitable procedure in comparison with individual debt collection efforts. Financial intermediation laws regulate the activities of banks, insurance companies and other institutions that collect capital and funnel it into investments. Banking law provides for payment systems for

the exchange of goods and services and for the accumulation of capital through savings programs. Insurance law provides for the sharing of unexpected exogenous economic risks by institutionalizing the sharing systems.

Securities law regulates the public markets in the public ownership of businesses through bonds and shares of stock in order to promote public investment in the economy. Environmental law protects the environment for public use and enjoyment, and requires businesses to internalize the environmental impacts of conducting business, rather than imposing them on the public. Public international law regulates relations between states and international commerce (which relies on a mixture of public and private law), and provides the legal framework for international commerce.Tax law serves a dual purpose. First, it provides revenue for the financing of governmental regulatory operations and the provision of public goods whose benefits are too diffuse to impose the costs directly on particular businesses. Second, it gives the government an opportunity to balance the costs and benefits of civilization by transferring a measure of wealth from those who are economically well endowed to those who are needy, so that all can share (at least to a certain degree) in the fruits of economic wealth and development.

B. **Administrative Systems**

Government provides several different kinds of functions in a market economy. First, government administration is often needed to assure the effective application of the laws regulating economic activity enacted by the legislature. In addition, government promotes efficiency in the market by intervening to deter monopolies, to secure investor confidence, and to prevent externalities (spillover effects imposed on others outside the marketplace), such as air and water pollution, strip mining, hazardous wastes, unsafe drugs and foods, and radioactive materials. Government regulation also imposes macroeconomic policies to stabilize business cycles and to minimize adverse impacts on employment, income and markets. This regulation includes monetary policy, fiscal policy, and government spending.

Second, government also contributes to the effective functioning of the economy by providing public goods, such as roads, sewer systems, schools, police departments, and national defense - goods that would be uneconomical for the private sector to provide on its own.

Third , government licensing can be beneficial to promote orderly business conditions and to regulate the provision of expertise to the market. Government licensing establishes minimum standards for the provision of expertise by professionals with special training and experience such as lawyers, accountants, stockbrokers, contractors and engineers. Governmental regulation is needed to assure that such professionals obtain a minimum level of education and experience before they are permitted to offer their services to the business community.At the same time, the Rule of Law limits the discretionary intervention of the state in economic activities. One function of the Rule of Law (embodied in the concept of "due process of law") is to constrain and limit arbitrary governmental action in the economic sphere.It is important that regulation be exercised with a light hand so that trade is not restricted and costs increased unreasonably. Excessive government regulation can kill a marketplace, deter investment, and prevent economic growth. The role of government in the economy is to control excesses, not to manage the economy. If government behavior in the marketplace is not constrained, economic freedom cannot be guaranteed, private economic actors will not take risks, and the economy will wither.

CONCLUSION

The Rule of Law is an indispensable foundation for a market economy, and provides an essential instrument for the creation and preservation of wealth, economic security, and well-being, and the improvement of the quality of life. Separate legal structures are required to support a market economy and to provide for its effective operation. These structures must operate at the legislative, the administrative, and the judicial levels. Without adequate legal structures to support economic activity, a country will always be poor.

5.5 International Economic Law

Introduction

International economic law" is an increasingly seminal field of international law involves the regulation and conduct of states, international organizations, and private firms operating in the international economic arena. As such, **international economic law** encompasses a broad range of disciplines touching on public international law, private international law, and domestic law applicable to international business transactions.

Nature of International Economic Law

International Economic Law deals with the regulation of economic affairs between two or more different States. This is its main function. If such regulation applies to two States only, we then speak of **bilateral** economic regulation. If, on the other hand, such regulation applies to more than two States, we speak of **multilateral** economic regulation.

Beyond this, International Economic Law is seen to increasingly deal with the regulation of traders from different countries. As a result, International Economic Law has a dual character nowadays, as it deals both with the regulation of economic relations of different States but also with the regulation of traders from different countries.

Significance and Impact

For several decades, international economic law was most often associated with international trade, largely due to the fact that trade had developed the most mature multilateral legal institutions (e.g. the GATT and later WTO) for governing international commerce. Today, however, a range of disciplines are routinely acknowledged as being as impactful and relevant to the field, including:

- International monetary law;
- International financial regulation (including banking, derivatives, insurance and securities regulation);

- International development;
- International labor and services law;
- International investment law, including international commercial arbitration;
- International intellectual property law;
- International tax law;
- International environmental law;
- Sovereign debt and restructuring.

Because of the breadth of international economic activities and transactions, international economic law is a highly interdisciplinary field of study. Decisions in one area, such as tax or financial regulation, can impact the transmission of monetary policy, which can, in turn, impact the effectiveness or operation of a trade regime, and vice versa. Consequently, a wide range of notable governmental and intergovernmental organizations are involved in formulating international economic law and policy.

Among the most important are:

- National finance ministries, trade officials, and financial market supervisors;
- Multilateral institutions including the IMF, WTO, Bank for International Settlements, IFC, World Bank, EU, ILO, United Nations, and European Commission;
- "Minilateral" institutions associated with regional and bilateral trade, IP, financial regulatory accords, and other targeted diplomatic efforts.

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