

**27.04.2021 | Inaugural Session**

*The Economics in Judicial Decisions or Judicialization of the  
Economy?*

**Opening Address - 15 minutes (9:30 - 9:45 am)**

**Good morning everyone. It gives me great pleasure in welcoming you all to this unique and much needed conference, which intends to tackle the contours of ‘law and economics’.**

**This debate, which at its very core, addresses the complex issue of balancing lives and livelihoods, has become more nuanced over the past year.**

**As we have entered the second, more severe phase, of the Covid-19 pandemic, there are newer and greater realisations – for the need of better governance frameworks, policy instruments, better management of supply and distribution chains – for the need of a more balanced, resilient, and equitable world.**

**It is at the intersection of law and economics that these concerns find their roots. Although ‘law and economics’ has often been promoted as a tool to be used by policy makers, there has been a growing discourse – although not a new one – that judges should be guided by economic principles when adjudicating matters.**

**One prominent landmark judgment where such intersection was given due importance in India, was in the ShivShakti Case, where**

**the Supreme Court took a liberal approach to statutory interpretation. The apex Court rightly opined that economic analysis of law is a valid jurisprudential approach to interpretation. The exemplar bench of Justices A.K. Sikri and A.M. Sapre said, and I quote, “*The court needs to avoid that particular outcome which has a potential to create an adverse effect on employment, growth of infrastructure or economy, or the revenue of the state.*”**

**This is not to say that economy, development, or growth trumps other disciplines, including environment, human rights, constitutional law, and others. Rather, the need is to strike a fine balance which can ensure that measures to protect or sustain the environment, or uphold human rights, should not cause an unreasonable adverse impact on the economy. The reverse of that, has been fought and argued for a long time now - and rightly so.**

**However, what we must realise is that the need to fight and stand up against environmental degradation and anti-human rights measures arose because of the skewed focus towards the economy.**

**Turning the table, and only focusing on the environment and other domains, while ignoring the economy, will not bear fruitful results either. We must not repeat our mistakes of looking at anything in silos but realise that the whole-of-government's approach and the systems thinking, needs to be applied and**

**implemented in our day to day functioning. That is the way to a sustainable future.**

**One of the better examples of the application of law and economics, is the domain of competition law. Unlike the common law, where the law is explained in economic terms, competition law derives itself from economics. In competition law, it is the rule of reason which is more important than rule of law. However, over the years, the need has been felt to extend such analysis to other domains of law including trade, constitutional, intellectual property, and corporate law, among various others.**

**In that context, courts and judges must familiarise themselves with economic analysis of law, to ensure mitigating judgments which result in avoidable economic harm and absence of comprehensive justice to the affected people, which goes beyond just the parties to the case. It thus becomes imperative to look at the costs and benefits of judicial orders, with a simple purpose: did the orders meet their objectives or not, how did they impact different stakeholders, and is it possible to design an efficient alternative mechanism or remedy to help judiciary consider varied stakeholder perspectives before giving an order?**

**We must also understand that we must not question the validity of a court's order. However, the judiciary is funded by public money, and thus the public should have an opportunity to review the quality of orders. Of course, one may argue, that examining**

**the economic impacts of its orders, or conducting an economic analysis of law, is beyond the judiciary's remit. However, it must be noted that every order of the judiciary is likely to have an economic impact, big or small. Thus, an attempt to narrow the scope of judicial analysis to only environment or equity considerations is not only futile, but also counterproductive.**

**One way for courts to undertake such economic analysis, could be to appoint expert committees to examine the issue in depth, analyse its enforceability and then action, as it has done on several occasions. The judiciary is increasingly dealing with extremely complex issues interlinking economics, environment, technology, intellectual property, competition, privacy, trade, and allied fields. An inability or unwillingness to take into account economic considerations is putting a significant number of jobs at risk, and a substantial amount of existing and potential investment in peril. This impacts the whole economy with the poor facing the worst burden.**

**Thus, the calls for economically responsible justice are not only fair but also timely. This movement to integrate law and economics is not limited to India but has gained pace in several other countries as well.**

**In fact, there are several instances wherein the courts have been able to achieve such fine balance, such as the Supreme Court's intervention that led to the adoption of CNG and consequent**

**economic benefits and when it directed that overhead power transmission lines in Rajasthan to be laid underground to shore up the plummeting numbers of the Great Indian Bustard.**

**The pressing question that needs to be answered is how can this be done more often? While training judges on basic economic principles can be a medium-term strategy, a more immediate and practical strategy could be institutionalising the mechanism of expert committees which can aid judges in considering diverse perspectives and collecting desired evidence.**

**This conference is a shared vision between JGU, a leading academic institution and CUTS, a leading global public policy research and advocacy group, wherein we are hopeful that the discussions will draw greater attention to the need for imbibing and regularising such analysis by courts. Of course, there are limitations that must be addressed, and proper frameworks implemented, to ensure that adopting such analysis does not slow or skew our justice delivery system.**

**Much before the pandemic, we at CUTS International, have been trying to unearth the facets of law and economics, by studying and analysing various judicial decisions by the Supreme Court and the National Green Tribunal. The objective and the intent have been to push for a balance between environment and economy; lives and livelihoods. This is the same balance that**

**various critics have been demanding during the peak of the spread of the Covid-19.**

**This conference is one such endeavour, and I am pleased to inform that our efforts in this discourse will not end here.**

**Exactly after a year, we all are once again, experiencing unprecedented worries and failures in our governance structures. I hope the discourse in this conference gives you a chance to take back something, which is more relevant and applicable now than ever.**

**With that, I once again welcome you all. Thank you.**