

2015



Law Conference 2015 (Cambridge) Series

- Academic International Conference on Interdisciplinary Legal Studies - AICILS
- Annual International Conference on Law and Policy - AICLP
- Annual Conference on Intellectual Property and Information Law - ACIPIL

Conference Abstracts
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KEYNOTE SPEECH**MANAGING MONEY LAUNDERING RISKS IN COMMERCIAL LETTERS OF CREDIT: ARE BANK'S IN DANGER OF NON-COMPLIANCE? – A CASE STUDY OF UNITED KINGDOM****Ramandeep Chhina¹**

The paper critically examines the role of banks in detecting and mitigating money laundering risks in trade finance activities, especially in commercial letters of credit, and to answer the central question: do the banks comply with the regulations but the regulations are inadequate (if so, is more stringent regulation compatible with the commercial world of trade finance?), or the banks are in danger of non-compliance?

The relevant principles promulgated by international organisations as well as the law enacted in UK to prevent money laundering risks in commercial letters of credit was examined to assess bank's compliance with their anti-money laundering obligations. The key provisions of the Money Laundering Regulations 2007, Proceeds of Crime Act 2002, and the Wolfsberg Trade Finance Principles were discussed and the extent of banks' compliance with these provisions was highlighted by carefully analysing the steps a bank might take at various stages of the operation of a commercial letter of credit and what the banks in fact do.

The paper demonstrates in an exceptional way the legal and regulatory requirements for banks to prevent money laundering risks in their trade finance activities and where, in practice, the banks are falling short of compliance with these requirements. By adopting a step-by-step approach in evaluating banks' 'current-and-must have' approach to controlling money laundering risks at various stages of a commercial letter, the paper makes a valuable contribution to the study of combating money laundering in commercial letter of credit transactions.

Day ONE Session ONESession chaired by **Ms. Amira Aftab****Presentation Group** : IP & Law**Conference Hall** : Lucia Windsor Room, Newnham College**THE INTERSECTIONS OF 3D PRINTING TECHNOLOGY WITH INTELLECTUAL PROPERTY LAW****Dr. Tesh Dagne²**

3D printing has emerged as one of the most significantly disruptive technologies in the digital economy. From the manufacturing of guns to food preparation, it has the potential to revolutionize (and improve) many aspects of our lives, in much the same way the Internet has revolutionized communication. The process of 3D printing involves the preparation of a computer-assisted digital (CAD) file, which may be derived from pictures or drawings, scanned from goods using a 3D scanner, or made using 3D modeling software. Such a file can easily be distributed, copied, modified and then 'printed' by a printer device, using fine strands of molten plastic, ceramic, or even metal powder. This makes it possible to turn digital content into physical objects at the press of a button. The technology's potential as a game changer, in this respect, presents challenging legal questions.

¹ Dr. Ramandeep Chhina, Course Director UNITAR & Assitant Professor, Heriot-Watt University.

² Dr. Tesh Dagne, Assistant Professor, Thomson Rivers University Faculty of Law.

This paper explores diverse questions that arise in relation to consumers' use of 3D printing in day-to-day activities. For example, questions arise as to whether a CAD file incorporating a picture or a drawing, which is then customized using a software program, infringes the copyright on the underlying image. Questions also arose as to whether copyright subsists on the shape, configuration, pattern, or aesthetic aspects of a physical good depicted in a CAD file. Based on trends in the wake of other disruptive technologies, such as the Internet, photocopiers, and peer-to-peer file sharing technologies, it can be anticipated that legislatures, judges and policy-makers will be pressurized to regulate aspects of 3D printing activities. Would consumers' act of creating, modifying, and remixing a manufactured good's CAD file and distributing it over the Internet infringe on the rights of manufacturers? To what extent can manufacturers control the shape, configuration, pattern and aesthetic aspect of their goods' CAD files using various technological protection measures (TPMs)?

The paper attempts to give answers as to how existing IP law affects the rights of consumers who embrace 3D printing, by examining such questions at the intersection between IP law and the technology. After exploring how the different activities in 3D printing intersect with IP laws in the light of recent jurisprudential developments regarding use of other technologies, the paper offers recommendations as to possible approach on how best to balance the rights of consumers, innovators, and other stakeholders in dealing with conflict of rights that relate to 3D printing. In this respect, it is proposed that realizing the full potential of 3D printing technology requires an express recognition of user's rights in a similar fashion to Canada's unique approach to regulating the activities of individuals over the Internet as balanced against a number of user's rights integrated in copyright law.

THE ROLE OF MEDIA IN MAINTAINING THE EQUILIBRIUM OF INTERGOVERNMENTAL RELATIONS

Ms. Leah Angela Vitan Robis³

This paper seeks to establish the presence of a correlation between the judicialization of politics, or the expansion of judicial power, and the increased clamour for judicial accountability. It examines whether demands for accountability are grounded upon the fear of court users and stakeholders that the judiciary could dominate policy determination. As a consequence of this fear, interested parties, particularly the executive and legislative branches of government, attempt to restrict judicial independence by enforcing accountability, and thus create an imbalance of power in intergovernmental relations.

Proceeding from the inference that concerted efforts to enforce judicial accountability are not wholly altruistic but are politically motivated, this study takes particular interest in the experiences of Malaysian and Russian judiciaries which are emerging democracies whose governments dominated by strong executives. It notes that while these judiciaries were subjected to institutional attacks, they reacted differently. It has been observed that the Russian constitutional court is slowly solidifying its position in domestic politics but the Malaysia court has been captured and remains to be dominated by the executive.

Amongst other factors affecting intergovernmental relations and judicial independence, this study investigates the role of freedom of expression in maintaining the equilibrium of power in intergovernmental relations. It examines how media could foster an environment conducive to the judicialization of politics and still act as a mechanism to protect judicial independence and to enforce judicial accountability, or thwart the process altogether. For this purpose, the present state of

³ Ms. Leah Angela Vitan Robis, Research Postgraduate Student (DPhil), The University of Hong Kong.

Malaysian and Russian laws with regard to free expression and the characteristics of their respective media will be evaluated according to generally accepted principles of international law.

The study concludes with an assessment of the significance of free expression and the role of a free and unbiased media in balancing the power-play in intergovernmental relations.

A CRITICAL REVIEW OF THE MERITS FACTOR IN CIVIL MEDIATION

Mr. Masood Ahmed⁴

The English courts' reluctance in embracing compulsory mediation was reinforced by the controversial decision in *Halsey v Milton Keynes General NHS* in which the Court of Appeal made a number of significant pronouncements regarding the nature of ADR (in particular mediation), the 'encouragement' of mediation and the approach to be taken by the courts when dealing with a successful party who was found to have unreasonably refused to mediate. In *Halsey* Lord Dyson (as he then was) held that the general rule that costs follow the event (i.e. the loser pays the winner's costs) should not be departed from unless it is shown that the successful party acted unreasonably in refusing to engage with mediation. In assessing unreasonableness, Lord Dyson promulgated six non-exhaustive factors which would determine whether to penalise the refusing party by making an adverse costs order. One of those factors is whether the successful party reasonably believes that he has a strong case (the 'merits factor'). Where the successful party can demonstrate that he had a strong case then that party will not be found to have behaved unreasonably in refusing mediation and, as a consequence, will escape being penalised in costs. In this regard, the key consideration for the court is whether the successful party's assessment of the merits of his case is reasonable. The justification for the existence of the merits factor is that one party to litigation could use the threat of costs sanctions to obtain a nuisance-value offer and force a settlement in respect of a case lacking merit.

This paper takes as its focus the *Halsey* merits factor. It will be argued that judicial and extra judicial interpretation and application of the merits principle is in need of qualification, especially because it has created inconsistent and, at times, contradictory jurisprudence. One of the principle reasons for this, it will be argued, is the flawed policy rationale which underpins the merits factor which undermines the role and the powers of the courts in exercising its discretion on costs. The author will argue for a fundamental change in judicial approaches to the merits factor and for the adoption of a narrower interpretation and application of the principle so that a successful party should only be found to have acted reasonably in refusing mediation in cases which were obviously and completely without merit.

Day ONE Session TWO

Session chaired by **Dr. Evarherhe Veronica Abolo**

Presentation Group : Law

Conference Hall : Lucia Windsor Room, Newnham College

⁴ Mr. Masood Ahmed, Lecturer, University of Leicester.

LEARNERS WITHOUT EYESIGHT BUT VISION : HOWEVER DOES THE INDIAN EDUCATIONAL LAW HAVE THE SPECTACLE? A STUDY

Dr. Ashish Virk⁵ and Dr. Aman A. Cheema (Co-Author)

It was in 1990's that the Indian Disabled population saw a dawn of their rights when India finally shed its traditional largesse approach. The culmination of a long, tenacious struggle for rights could be witnessed from the series of laws that were passed by the Indian government for them from time to time. The excitement about this change went off after a few years when the laws passed were never translated in terms of real enforceable rights. The disability rights movement of India thus took another turn when they brought this into the notice of the Judiciary and demanded for actualization of these laws by filing various cases. The ignorance, insensitivity and resistance of the non-disabled population were exposed by the Judiciary. The disability rights jurisprudence has thus been gradually unfolding in India now.

India has become the first country in the world to ratify the Marrakesh Convention that codifies exemptions to copyrights to benefit blind and vision impaired readers. Blindness, a common form of physical disability has been recognized as an important public health problem in India, a country that is home to a more than a billion blind inhabitants. The various rights legally bestowed to this blessed population includes right to equal opportunity, rehabilitation, participation and most importantly right to education. The present work will target their right to primary education in the country. the analysis shall be drawn on the basis of an empirical work conducted by the researchers by visiting blind children schools, interviewing these students and making the scrutiny between the law and the ground realities. The paper will also make a comparative study of educational laws of India and UK on the primary schooling to visually disabled students. The work will conclude with certain sub-monitions to enhance their educational system in the country for the overall emancipation of this population as we all need to know that just because they are born without eyesight doesnot mean they don't have a vision.

LEGAL PRACTICE IN APPLYING THE EUROPEAN ENFORCEMENT ORDER FOR UNCONTESTED CLAIMS FROM POLAND'S JUDICIARY PERSPECTIVE

Mr. Dariusz Szawurski-Radetz⁶

Legal practice in applying the European Enforcement Order for uncontested claims from Poland's judiciary perspective

This paper aims to present the practical issues that arouse from introducing the European Enforcement Order (EEO) for uncontested claims into the code of polish civil procedure. There has been developed a decision matrix for the courts but still it didn't stopped national courts from making mistakes.

In this short introduction into EEO practice the objective is also to examine the role it plays in the Member States judicial cooperation in civil matters that, in general, is necessary for the proper functioning of the internal market. EEO is sometimes regarded as an instrument of maintaining and developing an area of freedom, security and justice, in which the free movement of persons is ensured. By some it is perceived as a cornerstone of mutual recognition that fundamentally helps to develop judicial co-operation in civil matters within the European Union.

⁵ Dr. Ashish Virk, Assistant Professor, University Institute of Laws.

⁶ Mr. Dariusz Szawurski-Radetz, PhD Student, University of Warsaw.

Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 (applicable from 21 October 2005) has brought to life an EEO for uncontested claims. This general method of enforcing foreign judgments – in this case judgements coming from European Union member states – within the EU without the need of any intermediate proceedings, for example exequatur, offered significant advantages. Mentioned regulation has laid down minimum standards to ensure that judgments, court settlements and authentic instruments on uncontested claims can circulate freely.

Article 3 of the above mentioned regulation has established what shall be regarded as uncontested claim and article 6 settled requirements for certification as a European Enforcement Order. These two articles are the backbones of the Regulation and also caused the most of the problems. As the Regulation became immediately enforceable as a law in all member states (with one exception: Denmark) simultaneously polish civil procedure had to be accordingly changed. It caused some perturbations but also did enhanced the code of civil procedure.

KEYWORDS: European Enforcement Order; judicial co-operation in civil matters; polish code of civil procedure.

RECIPROCITY AND INTERDEPENDENCE IN BILATERAL TIES BETWEEN PAKISTAN AND INDIA: A GAME THEORETIC EXPLANATION

Mr. Ali Ahmed Aamir Mirza⁷ and Dr. Syed Toqueer Akhtar, Assistant Professor of Economics (Co-Author)

The study aims to restate the reasons for conflict between two prominent South Asian neighbors, namely India and Pakistan, for almost seven decades, and the protracted post partition elements of mistrust that tend to intensify the animosity between both nations, as well as the likelihood of options and preferences with regards to the direction of the foreign policy. The current episodic composite dialogues are unstable and do not promote regional integration to the extent of improving relations, rather act as temporary glue to the concept of achieving peace. The Confidence Building Measures being used in the dispute settlement mechanism have a propensity to change with time and inconsistencies in regards with cooperation and non-cooperation, primarily due to the fear element about loss of popular support by respective regimes both in India and Pakistan. Thus, intrastate matters build up to become interstate problems. The scope of game theory is to elucidate economic, political and biological occurrences with respect to normative and positive theories. In this case, it intends to divulge the hurdles faced in proper implementation of the Confidence Building Measures conditional to nine heads and pertinent strategies mentioned in the paper for bi-lateral relations. An important stimulus to unproductive dialogues, per se, is the strong impact of active terrorist groups waging proxy wars ensuing further deterioration in relations. The product of these skirmishes is the distrust and bias created that leads to various contentions. The current nationalistic attitude of the Indian bureaucracy and the political divergence in Pakistan decreases chances of bright prospects in increasing regional amalgamation. For this reason, the model of game theory and the probabilistic function of decision analysis method are employed to reshape and restructure the level of importance given to problems according to their magnitude, and strategic approaches to retort and resolve disputes through different mediums like bilateral dialogues.

Key words: Indo-Pak Relations, Foreign Relations, Nuclear Deterrence, Regional Integration, Two-player zero sum game

⁷ Mr. Ali Ahmed Aamir Mirza, BSc Honors Double Majors in Economics and Finance student, Lahore School of Economics.

ENERGY DEVELOPMENT AND THE CLASH OF SECURITIES

Mrs. Angelica Rutherford⁸

This work analyses the relationship between global security concerns and policies that prioritise unsustainable energy developments over those of green energy. The various concepts of security have been developed in the literature for decades to include threats to security arising from the relationship between man and nature. This paper argues that the growing securitisation of energy, the environment, climate, food and water brings about two main problems closely linked to the energy development discourse: (i) a conflict between securities as well as the legal uncertainty of determining which security issue prevails, and (ii) securitisation being devised in order to achieve certain policy gains since policy makers can place a specific matter of interest within the security umbrella to prioritise and push forward the approval of preferred energy policies. Firstly, this work will explore the conceptual issues by describing the various dimensions of security as well as reviewing the evolution of the different notions of security. Secondly, as a specific case example, the exploration of unconventional reserves and the use of hydraulic fracking in Brazil are analysed. A general background to the Brazilian legal framework for the exploration of unconventional reserves is explained as well as depictions of the events surrounding the approval of the use of hydraulic fracking in Brazil. This case study aims to demonstrate: (i) how energy security was used to push forward the approval of an unsustainable energy policy, and (ii) how strategically energy security can prevail over environmental, climate and water securities in the promotion of unsustainable energy developments.

Day ONE Session THREE

Session chaired by Ms. Leah Angela Vitan Robis

Presentation Group : Law

Conference Hall : Lucia Windsor Room, Newnham College

CULTURAL AND RELIGIOUS RELATIVISM AS OPPOSITION TO THE AIMS OF INTERNATIONAL HUMAN RIGHTS LAW: REVISITING THE UNIVERSALISM VS. REGIONALISM DEBATE

Dr. Musa Njabulo Shongwe⁹

International human rights law is facing the danger of fragmentation. This universally conceived branch of international law is constantly challenged by relativists whose understanding of human rights occasionally diverges from the universal notions of human rights. The divergence is largely based on cultural and religious backgrounds of certain nation states and regions of the world. Divergence is manifested through unique national and regional human rights legislative instruments, as well as through the practice of reservations to international human rights treaties. The paper argues that even though cultural and religious relativism may have legitimacy in the regulation of international relations, they can constitute an opposition to the fundamental aims of international human rights law, and therefore exacerbate the fragmentation of international law. The inquiry commences with an overview of the universal conception of human rights, and then explores regional conceptions of human rights with particular reference to cultural and religious relativism. The paper also analyses how reservations to human rights treaties enable states to make superficial commitments to human rights, while retaining their cultural and religious values which may be in conflict with the universal catalogue of human rights. Finally, the paper explores ways in which human

⁸ Mrs. Angelica Rutherford, PhD Researcher, University of Liverpool.

⁹ Dr. Musa Njabulo Shongwe, Researcher, University of Johannesburg.

rights systems of the world may be unified, and importantly, whether it is desirable, or even possible, that international human rights law be unfragmented.

RETHINKING THE DEATH PENALTY IN TERMS OF RESTORATIVE JUSTICE- IS DEATH PENALTY EVER JUSTIFIED?

Ms. Apala Chaturvedi¹⁰ and Shanu Jain (Co-Author)

This article seeks to examine and formulate the terms of the Indian capital punishment dialogue by approaching death penalty jurisprudence as a problem which not only raises questions of law but also of morality, fairness and rights of the individual vis-a-vis rights of the state. The questions raised in various jurisprudential theories of punishment, i.e., retribution theory, deterrence theory, restorative justice theory have all been examined in detail to answer the question, is death penalty ever justified?

The moral standpoint, the political approach and the causes that lead to such crimes that deserve death penalty are significant issues that need to be answered before we can determine our stance on the death penalty debate.

H.L.A. Hart asked, "What is the weight and character of the evidence that the death penalty is required for the protection of society?" This question, in our opinion, is the most salient one in any discussion of the utility of capital punishment. From the very genesis of the imposition of death penalty to the stand of various countries on the lines of abolition or retention of death penalty and the provisions in the various international treaties and conventions and more specifically, the safeguards for checking arbitrariness in the Indian law have been analyzed to draw a conclusion that might provide a plausible answer on the death penalty debate.

NEW INSTITUTIONALISM AND SHARIA LAW IN THE WEST

Ms. Amira Aftab¹¹

The Sharia Law debate in the West often centres on the question of whether it is desirable or undesirable, examining associated questions of the role of law and possibility of legal pluralism in providing for religious freedom and gender equality. This discussion more often than not looks to the multiculturalism-feminism debate presented by theorists such as Susan Okin. Whilst providing an important lens through which to view and understand the potential scope for Sharia Law in Western liberal democracies, this approach fails to account for why Sharia Law has been more easily "accommodated" in some countries, and completely excluded in others. For instance, within the United Kingdom (UK) over the last decade, there has been an increasing number of Sharia courts and tribunals established. Most notably, in 2007 there was the establishment of the Muslim Arbitration Tribunal, which claims to have jurisdiction as an alternative dispute resolution mechanism under the UK's Arbitration Act 1996. This differs immensely to the experience of Sharia Law in Australia, where there are no such Sharia Law bodies, and the debate of whether Sharia should be accommodated is largely undeveloped - predominantly confined to political debates and social commentary in the media.

Exploring the Sharia Law experience in both countries within the theory of New Institutionalism (NI) can offer a new insight into why both countries have taken different paths. NI focuses on institutions, such as courts and legislatures, as well as the rules administered by state bodies – i.e. constitutions, laws and regulations. However, this focus is not just limited to formal institutions of the state, it looks

¹⁰ Ms. Apala Chaturvedi, Student, Symbiosis Law School.

¹¹ Ms. Amira Aftab, PhD Student, Macquarie University.

at the influence informal institutions, such as religion, culture and ideology, have on shaping these formal institutions. By adopting an NI approach to analyse the multicultural policies and legal systems of both the UK and Australia, it may be possible to better account for the vastly different experiences with Sharia Law in each country.

Day ONE Session FOUR

Session chaired by **Dr. Jacob Adeyanju**

Presentation Group : Law & Social Science

Conference Hall : Lucia Windsor Room, Newnham College

DEFEATING HUMANITY? (AN ETHICO-LEGAL DISCOURSE)

Dr. Madhu Kapoor¹²

The paper opens up with a brief case study of Aruna Shanbaug, a nurse in the Mumbai hospital, who died very recently after living 42 years in comatose stage. The tragic incident occurred after she was chained brutally and cruelly raped, though law says it was not a rape according to the legal definition. She damaged all her senses and brain function, remained in a vegetative stage for a long 42 years. My paper is triggered by this case and an answer is sought through this paper. The fate of the woman was sealed by law. The euthanasia was denied to her as there was no family member by her side to support her plea through her lawyer. The culprit remained free after spending 6-7 years in jail. The concerned hospital did not register foolproof FIR against the culprit because the case was beyond the definitional form of 'rape'. Her co-staff kept her for 42 years under their care, but how did it benefit her? She became a 'dead-living' example for the people. There was no provision for requesting plea for the victim. I must say that the righteousness of law in this case is questionable. The morality too maintains silence here. Such silence in law and morality is focused in this paper with special reference to Kant's concept of 'Humanity Formulation'.

I have discussed in this paper such boundary line cases where both law and morality have their hands cuffed-- justice, right and dignity remain in oblivion and one has to wait eternally for the same.

RARITY OF LAW : APAD DHARMA

Dr. Kakali Ghoshal¹³

Law has been defined as the universal binding force that brings order to the human conduct. Bypassing the universal and uniform character of law, this paper will focus on the exceptional cases where that character of law is not applicable, which goes beyond its jurisdiction. These exceptional cases call for certain emergent rules that are discussed in Indian ethics as Apad dharma (rules applicable only in exceptional cases). This paper addresses the philosophical rootedness of law from the Indian ethical perspective which equates law with dharma and defines its rarity (cases deviating from law). The space between the conscience and infidelity diffuse and the law acts as an anchor which balances the two sides at par. However, during the period of crises when primary need of human being is at stake and saving one's existence becomes priority and law becomes secondary, the rule of apad dharma becomes the part of the ethical framework. It constitutes the extended hands of the law.

The paper substantiates such rarity of law with life-experiences and characters from Indian Epics like the Mahabharata. It appears that Law though necessary yet is not sufficient for protecting (at least in

¹² Dr. Madhu Kapoor, Former Associate Prof of Philosophy, Vivekananda College.

¹³ Dr. Kakali Ghoshal, Assistant Professor of Philosophy, Budge Budge College.

few cases) Individual and societal values. It is true that each legal right speaks of existence and limit of human freedom within the socio-political domain of the civilized society, yet the emergence of critically paradoxical situations remain outside the purview of structural law. It is to be supplemented by the exceptional ones.

A CONTENT ANALYSIS OF MEDIA COVERAGE OF MEDICAL MALPRACTICE DISPUTES IN TAIWAN

Prof. Shu-Yu Lyu¹⁴

Background: Medical malpractice claims in Taiwan can result in both civil and criminal litigation. The three most frequently accused specialties were surgery, obstetrics and gynecology, and internal medicine. **Purpose:** The major purpose of this study was to investigate the nature and volume of the print media reporting of medical malpractice disputes. **Method:** Data were collected from the databases of four major newspapers, the United Daily News, China Times, Apple Daily, and Liberty Times Net by using key word searches. A content analysis was conducted to examine news articles including any of the following three key words: medical litigation, medical disputes, or medical malpractice. The study period was from January 1st, 2008, to December 31st, 2013. **Results:** A total of 2,489 news articles matching the above-mentioned criteria were identified to have been published between 2008 and 2013. It indicated that at least one medical dispute news article was reported each day during the study period. The most common reported specialty was surgery, which accounted for 58.7% of total medical dispute news articles, followed by the emergency medicine (12.5%), obstetrics and gynecology (9.1%), pediatrics (7.3%), dentistry (6.4%), and Chinese medicine (4.8%). Among these, 269 news articles (10.8%) revealed personal patient information while 568 (22.8%) revealed personal information of the medical staff. On average, 2.68 sound bites per news report tended to support the medical staff while 3.07 sound bites per news report tended to blame the medical staff. While analyzing the standpoints of the media reporting, only 13.5% of the news reporting was neutral and non-judgmental. It was noted that 30.3% tended to support the medical staff, while 56.2% tended to support the patients. **Conclusion:** Most of news reporting was not friendly to the medical staff involved in the disputes. Better transparency in the communication between physicians and journalists could help to avoid misunderstandings related to medical disputes and the portrayal of physicians involved.

Day TWO Session ONE

Session chaired by **Dr. Musa Njabulo Shongwe**

Presentation Group : Interdisciplinary Studies

Conference Hall : Lucia Windsor Room, Newnham College

WORLDS FOR NEW: HISTORICAL METHODS, “USEABLE” HISTORY AND POLITICAL REDRESS IN POST-APARTHEID SOUTH AFRICA

Mr. Craig Paterson¹⁵

History legitimises the present. Past narratives give rise to present identities and establish priorities for future action. History defines the injustices of the past and, through this, establishes a programme of action for justice. This paper deals with the new roles of historians in South Africa. From a position of being perceived as re-enforcing apartheid mythologizing of history, historians and the historical method have become instrumental in legal and political attempts to redress the injustices of the past.

¹⁴ Prof. Shu-Yu Lyu, Professor, School of Public Health, Taipei Medical University.

¹⁵ Mr. Craig Paterson, PhD Candidate, Rhodes University.

This has opened up a position for historians to directly engage with the present and future of the country through the application of their skills and training to policy and legislation aimed at redress. The most well known of these are the processes of land reform and redistribution, in which complex land issues are negotiated through government commissions or in the Land Claims Courts. Another part of this redress is an acknowledgement of the value of indigenous culture and practices by the South African government and the protection and promotion of cultural pluralism across the country. But how does this commitment translate into action on the ground? Where does “culture” and “tradition” sit in South Africa in the 21st Century? And where do the land issues of the country find themselves in relation to the former pre-colonial African Kingdoms and traditional leaders who currently administer large tracts of South African land? The paper will ask these questions in an examination of a traditional horse racing sport, *umdyarho wamahashe*, which is found throughout the eastern regions of South Africa and Lesotho. It will describe the experiences of dealing with Intangible Cultural Heritage practices in a policy design process undertaken by the Eastern Cape government while exploring the nexus around which ‘culture’ and ‘land’ meet in the former apartheid ‘homelands’ of Transkei and Ciskei. Through this examination, the paper will demonstrate the important position which historical methods and training have in the processes of redress in South Africa and will argue that the historian’s role has shifted from simply “understanding” past events and present positions to one focused on creating futures.

PROGRAMS IN NIGERIAN HIGHER INSTITUTIONS AND GRADUATE UNEMPLOYMENT

Dr. Evuarherhe Veronica Abolo¹⁶ and Dr Sola Niyi Ayeomoni (Co-Author)

The study investigated the programs in Nigerian higher institutions and how they influence unemployment of graduates in the country. The study employed the survey design. The population of the study includes two universities, two polytechnics and two colleges of education in Lagos State. A total of 350 participants, which include graduates and students were sampled for the study. A structured interview schedule and direct observation were used to collect data on the three research questions drawn for the study. The data were analyzed using rating of the structured interview in tables and percentages. The results of the study revealed that Nigerian graduates are not only unemployed but can hardly meet the requirements of available job vacancies due to the stereotype nature in scope, content and methods of the programs in the institutions. Recommendations such as collaboration of companies (end- users) and institutions in the training of students, restructuring of the content and methodology of programs and providing soft loans and other facilities to the young graduates were proffered to reduce the rate of graduates’ unemployment in Nigeria.

Keywords: Graduates Unemployment, Nigerian Higher Institution, Programs

UNIVERSAL BASIC EDUCATION ACT IN NIGERIA: A REALITY OR PLACEBO?

Dr. Jacob Adeyanju¹⁷

The focus of this paper was a critical examination of the Universal Basic Education (UBE) Act of 2004. It took a step-step appraisal of this Act in comparison with what obtains at the Primary and Junior Secondary Schools in Nigeria. Expo-facto research design was used. The respondents consisted of 76 primary school head teachers, 288 primary school teachers, 33 principals and 165 junior secondary school teachers chosen from a sample of 76 and 33 primary schools and junior secondary schools respectively. Proportionate stratified random sampling technique was used to select these samples. Two instruments were used to collect data. The data collected were used to answer the three research questions raised in the study. The study found among others, that the primary and junior secondary

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¹⁷ Dr. Jacob Adeyanju, Lecturer, University of Lagos.

education in Nigeria were neither free nor compulsory. This negates the UBE Act which stipulates that basic education in Nigeria should be universal, free and compulsory. It was recommended that an institutional framework for the implementation of the Act should be put in place to make it a reality.

THE PRACTICAL CHALLENGES OF FACILITATING ENVIRONMENTAL LAWS: THE ROLE OF RURAL ORGANIZATIONS IN QUEENSLAND AUSTRALIA

Dr. Jo Kehoe¹⁸

The practical challenges of facilitating environmental laws: the role of rural organizations in Queensland Australia

Agriculture and the State of Queensland are inextricably linked. Agriculture contributes in a significant way to the economy and, at the same time, impacts extensively and often detrimentally upon the environment. Past land management practices within Queensland promoted broadscale land clearing primarily of native vegetation. This type of land clearance has far reaching implications for the environment and biodiversity and for the long-term sustainability of rural land in the State. In the wake of an environmental problem there is a tendency to make and implement a law to address the problem. The Vegetation Management Act 1999 (Qld) (VMA), was a specific law created to address the repercussions of extensive land clearing. This Act was part of the solution to widespread land degradation; but it proved to be one of the most controversial statutes enacted within the Queensland Parliament.

The relationship between the agricultural community and government regulators has at times been problematic and, as a consequence, the role of rural bodies has been critical. Queensland has a plethora of environmental legislation which tends to be regarded as excessive and a regulatory imposition by those on the land. There is likewise the ever present issue of public fund availability to meet financial adjustment costs. This ultimately leads into matters of social justice insofar as regulation inevitably places a burden on those regulated. Tensions are inevitable when the price is perceived by the rural community to be borne by their sector for the benefit of society generally; and a public benefit perceived to be borne by a private cost.

Association between the regulators and rural landholders became increasingly strained, not least during a State Labor administration; and was far from conducive to a practical working relationship. As a result, rural organizations, such as Agforce and the Queensland Farmer's Federation (QFF), undertook an essential function in facilitating the transition to an increasingly regulated environment. If legislation is to be implemented effectively the role of education and support for rural landholders is crucial, not least during periods of transition. A further rural association, Property Rights Australia (PRA), was formed primarily in response to discontent with the regulatory environment. The function of these three rural organizations will be examined in this paper as the position of Agforce and QFF differs from that of PRA.

Environmental laws are now an inevitable part of life. These statutes are a significant step towards long-term and widespread sustainable change. Nonetheless, the resulting proliferation of such laws, and the innate and continuing complexities of regulating agriculture, challenged the Queensland Labor government, the regulators and those regulated.

Day TWO Session TWO

Session chaired by **Mr. Craig Paterson**

Presentation Group : Interdisciplinary Studies

Conference Hall : Lucia Windsor Room, Newnham College

¹⁸ Dr. Jo Kehoe, Lecturer, Central Queensland University.

EROSION OF CENSORSHIP IN CLINICAL SETTING

Ms. Sarala Kapoor¹⁹

The paper unfolds the dilemma of practicing psychoanalysis in clinical set-up, when the 'confidentiality and trust' on which the practice is based, is violated. Therapeutic-obligation does not allow the therapist to report to the appropriate authority any criminal act like intake of alcohol/drugs or any other social offence of molestation and rape etc. committed in the clinical relation. If so happens, it will be called 'Boundary violation' and 'Breach of trust'. But the Structural law of the state demands it.

Moreover, as a rule of therapy these information cannot be used as a legal source material, because that might be the mental representation (Phantasy) of the patient. As such, it is also difficult to provide proof against such cases which may expose some other people (as reported by the patient) who are not known to the therapist.

Here, cases will be exemplified to show the inadequacy of the structural law that is not inclusive of mental health (though Mental Health Act is there). Patients, spending their life in correctional homes (not Prison?) are categorized as 'lunatic/ non-lunatic criminals'. Ironically enough, the so-called criminals possess sound mental health, whereas the persons with psychopathology, who commit crime, could be excused on the ground of being insane. The boundary gets blurred !!

I will attempt to explain this dilemma in the background of the erosion of censoring agency of the mind---the super ego, with special reference to Dynamic psychology. The flip side of the problem is when authority itself falls prey to boundary violation in therapeutic sessions. The paper searches for the solution.

UNDERSTANDING THE IMPACT OF SMART CITIES AND THE NEED FOR SMART REGULATIONS

Mr. Manick Wadhwa²⁰

As the world continues to urbanize, with close to 180,000 people moving into cities every day, the competition between urban cities will continue to grow economically, socially, and environmentally. The cities that will embrace technology will surface as the winners. There is, therefore, a pressing need for these cities to get smarter, as to handle this large-scale urbanization and finding new ways to manage complexity, increase efficiency, reduce expenses, and improve quality of life. According to Smart Cities Council, "A smart city is one that has digital technology embedded across all city functions". Governments across the world are keen on setting up smart cities, where technology can help people access, in real time, infrastructure services like traffic, parking, lighting, and water. The Prime Minister of India, Narendra Modi, has spoken about building 100 smart cities in India by 2022. Underline is that Smart cities are the need of the hour to enable an efficient and sustainable solution for servicing urban growth.

These futuristic cities need to address issues of data management, including intellectual property rights, proper data handling, and physical storage and distribution requirements, as well as issues relating to safety of its citizens. Development of smart regulations, stimulating deployment of

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connected devices at the public and private levels, as well as integration of BIG DATA is of critical importance for cities to become “smarter”. Integration of this public and private data can provide valuable insights for the regulators, the policy makers and the citizens, but at the same time cause redundancy, security and privacy concerns. The policy makers need to explore new strategies that will allow them to anticipate and adapt more quickly to changes that the technological advancement brings.

In this paper, I explore some of the most recognized and accepted definitions of “smart cities”, and how this concept proposes to change various domains of our everyday life, such as governance, energy, mobility, infrastructure, healthcare, and citizens, and also shed a light upon some of challenges faced by the current legal and regulatory framework in promoting technological advancement and the need for “smart regulations” to enable “Internet of Things” (IoE) and smart cities.

COURTING SOCIAL CHANGE IN DEVELOPING COUNTRIES - EXPLORING MEANS TO IMPROVE THE COURT’S CAPACITY IN LAW AND POLICY MAKING

Ms. Harsimran Kalra²¹

Scholars have identified various reasons for the limited impact of constitutional courts in effecting socio-economic rights. These include the incompetence of courts to address policy questions (Horowitz 1978); the court’s tendency to secure symbolic but intangible gains (Baxi 1985; Koonan 2010); the polycentric and complex nature of these disputes (Menkel-Meadow 2004) and the politically embedded nature of courts (Rajamani 2007; Cullet 2010; Rosenberg 1991).

This article goes a step further by identifying means to overcome these limitations by focusing on the activities of civil society actors and the procedures that govern their interactions with the court to influence policy making. The Article would rely on international comparison of litigation procedures to contribute to advancing the capacity of the Courts as a space for policy making, a role that courts were not envisioned performing. In order to engage with this analysis, the western conception of constitutionalism is unhinged to give way to tenets of good governance.

The Article is based on the premise that the debate surrounding the propriety of judicial intervention in policy decisions is anachronistic today and in need of reconfiguration. Courts in developing countries, such as India and South Africa, have relied upon judicial review and Constitutionalisation of socio-economic and environmental rights as a means to consolidate their socio-political status and popularity. This judicial review of human rights has resulted in the spread of indigenous forms of constitutionalism and governance in developing countries, where separation of powers is often compromised. This trend is unlikely to roll back, even though research suggests that the courts’ impact on effecting social change is not easily discernible (Yamin & Gloppen: 2011).

To further the analysis, the Article focuses on the judicial system in India which is examined with the help of the CNG Case of 1998, where the Supreme Court ordered a change in fuel choice by all public transport vehicles in Delhi to deal with rising air pollution in the city. The CNG case is particularly relevant to the discussion as it involves both institutional limitations of the judicial process, and what Rosenberg points out is the oft-repeated failure of the environmental movements to adopt political methods to bring social change. The peculiar facts of the case – the lack of interest of the political class; the non-alignment of the market; limited support of the executive; the court’s failure to deliver meaningful change in lived realities despite a decision in favour of the civil society organisations – highlight the limitations of the strategy of social movements, which take refuge from economic analysis and political choices in law.

²¹ Ms. Harsimran Kalra, Asst. Professor, Jindal School of Government and Public Policy.

The Article's first section gives introduces the CNG Case. The second section follows the interaction between different interest groups and their interactions with the Court. The following section analyses the interaction to identify inadequately represented interest groups and reasons for the lack of recognition received by these interests. The last section develops best practices for law and policy makers that address the limitation of the judicial system in providing access and recognition to neglected stakeholders.

INTER-JURISDICTIONAL GOVERNANCE COORDINATION, COMMUNITY SUPPORT AND THE COMPLIANCE WITH ILO 169 CONVENTION ON INDIGENOUS RIGHTS: FINDINGS OF A CROSS SECTIONAL STUDY OF INDIGENOUS PEOPLE OF KALASH VALLEY IN PAKISTAN

Ms. Mahina Ghalib²² and Dr. Syed Toqueer Akhter, Assistant Professor (Co-Author)

This study primarily focuses on the compliance/non compliance with that of International Labor Organization 169 Convention, in relation to inter-jurisdictional governance coordination as well as the internal community support. International Labor Organization 169 Convention allows identity preservation for indigenous communities. Keeping in view the micro foundation of the proposed framework of analysis, a cross-sectional study was carried out on the indigenous people from the Bumburet Valley of Kalash region in form of personal interviews, while sampling units were selected in accordance with convenience sampling. According to the 169 Convention, these people are classified as indigenous due to their unique cultural identity along with living in historical continuity. Over the decades, they face both internal as well as external threats when it comes to exercising their right to self-determination and preserving their identity in the society. For modeling purposes, three competing econometric models were estimated namely the Robust Regression, Quantile regression as well as the Tobit model, all of which rendered coherent results. On apprehension of hetroskedasticity, as caused by cross sectional orientation of the data, Robust Regression was preferred while Quantile Regression has been estimated keeping in mind that it gives relatively more weightage to mainstream observations. Moreover, Tobit Model has also been estimated due to the qualitative nature of the regressand. Estimates of competing econometric models imply that inter-jurisdictional governance coordination, appearing in the form of consultation & the functional autonomy, and community support, result in a positive-sum game for indigenous community of Kalash, with regards to compliance with ILO 169 Convention.

Keywords: Inter-jurisdictional Governance coordination, Community support, International Labor Organization 169 Convention, Cultural absorption capacity, Robust Regression, Interaction Model

Day TWO Session THREE

Session chaired by **Dr. Ashish Virk**

Presentation Group : Trade & Law

Conference Hall : Lucia Windsor Room, Newnham College

²² Ms. Mahina Ghalib, Student, Lahore School of Economics.

TORTIOUS LIABILITY OF GOVERNMENT IN INDIA

Mr. Vaibhav Agrawal²³

India is a country run by rule of law. Constitution of India is law of the land. Preamble to the Constitution imposes obligation on the State to provide social, economic and political justice to the citizens of India. India is a SOCIALIST DEMOCRATIC REPUBLIC AND THUS A WELFARE COUNTRY. If a tortuous act is committed by any public official while performing its welfare function, then it may be very difficult for the individual concerned to sue him/them. Therefore the Government is made vicariously liable for the acts committed by the public servants. But the law regarding tortuous liability of the Government is ambiguous since it applies “common law” which itself is not a codified law.

The distinction of acts done by the Government on the basis of sovereign functions and non-sovereign functions arose for the first time in P&O Steam Navigation Corporation case. But in the absence of any codified law to distinguish those functions lucidly, the protection of rights of the individuals in cases of tort committed by the Government is uncertain. The judicial precedents have given more emphasis on protecting rights of the individuals by making Government vicariously liable even if a tort is committed by it in exercise of its sovereign function.

This paper illustrates the present status of vicarious liability of Government in torts committed by its officials with the help of judicial precedents and it recommends making of a law according to the First Report of the Law Commission of India, 1956.

FOREIGN INVESTMENT, TECHNOLOGICAL DIFFUSION AND COMPETITIVENESS OF EXPORTS: A CASE FOR TEXTILE INDUSTRY IN PAKISTAN

Mr. Muhammad Awais²⁴ and Dr. Syed Toqueer Akhter, Assistant Professor (Co-Author)

Pakistan is a country which is gifted by naturally abundant resources these resources are a pioneer towards a prospect and developed country. Pakistan is the fourth largest exporter of the textile in the world and with the passage of time the competitiveness of these exports is subject to a decline. With a lot of International players in the textile world like China, Bangladesh India and Sri Lanka Pakistan needs to put up a lot of effort to compete with these countries. This research paper would determine the impact of Foreign Direct Investment upon technological diffusion and that how significantly it may be affecting on export performance of the country. It would also demonstrate that with the increase in Foreign Direct Investment, technological diffusion, strong property rights, and using different policy tools, export competitiveness of the country could be improved. The research has been carried out using time series data from 1995 to 2013 and the results have been estimated by using Econometrics modes such as Robust regression, whereas Generalized least squares and Distributed lag have been used as competing models. Distributed Lag model has been used to encompass the lagged effect of policy tools variables used by the government. From Empirical evidence of the study, significance of variables provides sufficient evidence that “FDI” and “Technological Diffusion” do have a significant impact on competitiveness of the exports of Pakistan. In the end policy recommendations have been mentioned that competitiveness of Textile Sector couldn’t be improved by individual elements, but with the collaboration of different factor which should be strategically managed by the government.

Keywords: High Tech Export, Robust Regression, Patents, Technological Diffusion, Export Competitiveness

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GENDER JUSTICE AND UNIFORM CIVIL CODE - A STUDY OF INDIA

Ms. Aastha Agnihotri²⁵ and Professor Simmi, Himachal Pradesh University, Professor Dept. of Public Administration (Co-Author)

India is the world's largest democracy and boasts of a diverse multicultural society. The Constitution of India is based on the principles of equality, freedom and secularism and it aims to empower the women and other weaker sections. It is from the religious freedoms enshrined under Articles 25 to 30 that religious communities derive the right to be governed by their own 'Personal Laws'. Thus, India has pluralistic laws governing family matters and application of these laws depends on the religion and gender. One common feature of all the religious personal laws is that women are given far fewer rights and lower status in comparison to men. In a country where on one hand women are worshipped as Shakti on the other hand in name of religion we deprive them of their human rights. These personal laws are not only in violation of certain constitutional provisions but also human rights. Therefore, these laws have started a debate on gender equality and justice in India. Endless debates on issues of women empowerment are not enough in a country where the law itself is unjust and cause of their agony. Thus, there is another debate on the desirability of enacting a Uniform civil code as envisaged in the Article 44 of the Indian Constitution which is connected with the issue of gender justice. By having different personal laws for different. The biggest problem in absence of Uniform Civil Code is that it goes against the concept of equality which is one of basic tenets of the Constitution. By having different personal laws for different religions we are in a sense undermining the credibility of the secularism as enshrined in the Preamble of the Constitution of India. A Uniform civil code is also desired to simplify the clumsy legal processes involved for deciding matters relating to personal laws. The honorable Supreme Court of India has opined in the landmark cases of Shah Bano (1985), Sarla Mudgal (1995), and in Vallamattam (2003) that Legislation for a common civil code as envisaged by Article 44 of the Constitution should be enacted. However no law can itself bring change till the time the citizens agree to accept it and the problem with enacting a Uniform Civil Code is that the majority of the population is still unwilling to accept a law separated from religious customs. The population in INDIA is very sensitive to their religious identity and enacting a uniform code may lead to riots and turbulence in this country. The Uniform civil code can only be successfully introduced after achieving improved levels of literacy, awareness on various social political issues, enlightened discussions and increased social mobility. However, steps towards uniform law should start to bring a social change in this diverse land. The actual challenge for the Legislature however lies in formulating a uniform code that is able to strike a balance between principles of justice and religious sentiments.

In this paper I shall focus on the issue of Gender justice, the tension between Personal laws and the Constitution ,desirability of a Uniform Civil CODE that is laid down under directive principles(a goal that state should achieve) and problems with enacting it.

Day TWO Session FOUR

Session chaired by Dr. Madhu Kapoor

Presentation Group : Law

Conference Hall : Lucia Windsor Room, Newnham College

²⁵ Ms. Aastha Agnihotri, Student, Guru Gobind Singh Indraprastha University.

RETHINKING LEGITIMACY OF CRIMINAL JUSTICE : BRIDGING THE CRIMINAL LAW – CRIMINOLOGY DIVIDE.

Mr. Lucas Noyon²⁶ and Dr. Jan de Keijser, Professor of Criminology (Co-Author)

The concept of 'legitimacy' is of crucial importance to both criminal law scholars and criminologists. Yet, both disciplines have taken different paths examining the subject. Within the discourse of criminal law, legitimacy is usually considered as a quality of a system that is dependant on its congruency with moral rules, which are to be 'discovered' by the criminal law scholar by rational reasoning. This could be labelled a 'doctrinal' approach. Criminological research, on the other hand, usually inquires after subjective social indicators related to criminal justice, e.g. 'trust', 'acceptance' and 'satisfaction' (Tyler), assuming that these constructs - in sum - constitute empirical legitimacy. This, on a Weberian value free based approach could be termed 'constructivist'.

The emerging paradigmatic division of labour between criminal law and criminology does not only limit the opportunities of knowledge exchange between these potential scientific siblings, but also seems rather unsatisfactory since the scope of each of these approaches seems either too narrow or (partially) off the mark. While legal scholars seemingly overlook the (perhaps increasing, see Rosanvallon) relevance of societal endorsement, criminologists like Tyler obscure the inherently normative character of judgement. Moreover, since any Criminal Law system can be 'legitimate' in criminological terms, due to the value-free moral emptiness, the classical empirical approach provides no answers to the question how to optimize legitimacy of criminal law systems while upholding fundamental moral principles that lie at the root of post-enlightenment criminal law.

The present research endeavours to overcome this criminal law - criminology schism by deploying an understanding of legitimacy of criminal law that is not impaired by the aforementioned shortcomings. First, previous theories in which similar deficiencies are acknowledged or remedied are reviewed. Among the latter are attempts to accommodate societal events or opinions within moral approaches to legitimacy, such as proposing a 'pragmatic turn' in political philosophy (Fossen), or advocating a closer attention to 'sociological legitimacy' in American constitutional law doctrine (Fallon). Vice versa, empirical approaches of legitimacy that renounce the dogma of radically value free research (Beetham, Habermas) are assessed as well. It will be argued that these different perspectives, viewed in conjunction, can be helpful in reducing the conceptual distance between doctrinal and constructivist perspectives on legitimacy, but lack in specificity for the purpose of understanding legitimacy of criminal law. Most notably, the dual task of criminal law – being both an expression of the common will but at the same time an institutionalized shelter for individual suspects against the ad hoc featured common will – remains relatively underexposed. Therefore, it is argued that there is need for a coherent understanding of legitimacy of criminal law systems. This approach, then, should be based on three premises. At first it should be empirically testable. Secondly, the normative features of judgement should be visible in this empirical investigation. Thirdly, the dual task of the criminal law system should be taken into account. Some first thoughts on how this could be operationalized are tentatively explored.

COMPULSORY LICENSING: A TOOL FOR BALANCING TECHNOLOGY TRANSFER AND SOCIAL WELFARE

Ms. Vinita Krishna²⁷ and Prof Sudhir K Jain, Professor DMS, IITD (Co-Author)

Patent law is a primary policy tool which aims to foster innovation, technological development and add to knowledge corpus. A general set of legal rules as per the patent law applies to all kinds of

²⁶ Mr. Lucas Noyon, PhD Candidate, Leiden Law School.

²⁷ Ms. Vinita Krishna, Doctoral Scholar, Indian Institute of Technology, Delhi.

technologies with minor differences in the application of legal standards (Burke and Lemley,2003).In this paper an attempt is made to discuss the legal standards set for “compulsory licensing (CL)”in the pharmaceutical industry and the issues therein.The recent highlights in Thomas(2014) discourse on CL emphasizes the tension between two competing aspirations of the patent system: Encouraging the labors that lead to innovation on one hand and placing the fruits of those labors before the public (economic theory of patents) on the other hand.Extending this line of thought, this paper takes into consideration the poor rate of commercialization of patents (WIPO report,2010;PATLICE survey,2013;Mansfield,1986) and two-fold purpose of patents as means of technology transfer and social welfare (Trade-Related Related Intellectual Property Rights (TRIPS) objective 7) to bring out a multidimensional approach to CL.

The methodology adopted in this paper is a mix of theoretical discourse on CL, supplemented by preliminary empirical findings in the Indian context.This paper seeks to explore CL as a possible solution to removing some of the barricades to technology transfer and commercialization of pharmaceutical patents (Lehman,2003),a major management issue in optimal utilization of patents.

The empirical input to this paper is included in the form of a pilot study on the commercialization of patents by pharmaceutical firms in India The findings highlight the major modes of and challenges in licensing of patents in the said sector.The responses elicited through online survey of Intellectual property (IP) managers and the Research scientists of the selected firms corroborate some of the existing issues in licensing and commercialization of patents.

Given the controversial nature of CL and rhetoric on it in recent times, the author has been motivated to take up this topic.The discussion is framed around global, regional (emerging nations group-Brazil, Russia, India, China and South Africa (BRICS)) and India-specific situation.With an overview of commercialization of patents and the issues involved in the pharmaceutical sector in India, the paper addresses the following : a) comparison of effectiveness of CL as legal provisions vis-a-vis its practical advantages b) the myriad perspectives on instances of CL and c) use of CL of patents to balance innovation and social welfare.This attempt is an add-on to the insights on flexibility requirement in legal provisions of patent laws as well as it suggests possible recommendations for the policy makers.

Keywords: Compulsory licensing, Economics of patents, Indian Patent Act,Management of patents, Patent commercialization, Pharmaceutical patents, TRIPS

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