What Is the Difference Between Current Account and Capital Account?

The current account and capital account comprise the two elements of the balance of payments in international trade. Whenever an economic actor (individual, business or government) in one country trades with an economic actor in a different country, the transaction is recorded in the balance of payments. The current account tracks actual transactions, such as import and export goods. The capital account tracks the net balance of international investments – in other words, it keeps track of the flow of money between a nation and its foreign partners.

Like all other forms of financial accounting, the balance of payments always has the same value of debits and credits. A country that has a current accounts deficit necessarily has a capital accounts surplus and vice versa.

Current Account

There are three broad components of the current account: balance of trade, net factor income, and net transfer payments. Most traditional forms of international trade are covered in the current account. These transactions tend to be more immediate and more visible than the transactions recorded in the capital account.

For example, the current account is immediately impacted when U.S. farmers sell wheat to Chinese consumers or when Chinese manufacturers sell computers to U.S. consumers.

Capital Account

Flows in and out of the capital account represent changes in asset value through investments, loans, banking balances, and real property value. The capital account is less immediate and more invisible than the current account. Many common misunderstandings about international trade stem from a lack of understanding of the capital account.

Common forms of capital account transactions include foreign direct investment or loans from foreign governments. The vast majority of global capital account transfers take place between the world's wealthiest businesses, banks, and governments.

When there is a trade imbalance in goods and services between two nations, those imbalances are financed by offsetting capital and financial flows. A country with a large balance of trade deficits, such as the U.S., will have large surpluses in investments from foreign countries and large claims to foreign assets.

Cost Concepts

- **Money Costs:**

Money cost is also known as the nominal cost. It is nothing but the expenses incurred by a firm to produce a commodity. For instance, the cost of producing 200 chairs is Rs. 10000, and then it will be called the money cost of producing 200 chairs.

Therefore, money costs include the following expenses:

(i) Depreciation and obsolescence charges.

(ii) Power fuel charges.

(iii) Wages and salaries.

(iv) Cost of machinery, raw material etc.

(v) Expenses on advertising and publicity,

(vi) Interest on capital.

(vii) Expenses on electricity.

(viii) Insurance charges.

(ix) Transport costs.

(x) Packing charges.

(xi) All types of taxes viz; property tax, license fees, excise duty.

(xii) Rent on land.

Therefore, money costs relate to money outlays by a firm on factors of production which enable the firm to produce and sell a product. Every producer is interested only in nominal costs. Thus, in the words of Prof. Hanson, "The money cost of producing a certain output of a commodity is the sum of all the payments to the factors of production engaged in the production of that commodity."

- **Explicit Costs:**

Explicit costs refer to all those expenses made by a firm to buy goods directly. They include, payments for raw material, taxes and depreciation charges, transportation, power, high fuel, advertising and so on.

According to Leftwitch, "Explicit costs are those cash payments which firms make to outsiders for their services and goods." He has given stress on the word explicit and it may be called the approach used by the accountant of the firm. The payments are explicit-clear-cut, paid to agents (owners) of factors of production. A contract fixes the rate at which the payments are to be made.

The examples are clear to see. These are wages to workers, money paid for raw materials and semi-finished goods, various fixed costs etc. The producer takes money out of his pocket and pays to others. These are payments to attract resources from other uses to the use made by a particular producer. They are also known as Accounting Costs or Historical Costs.

- **Implicit Costs:**

Implicit costs are the imputed value of the entrepreneur's own resources and Services. In fact, these costs refer to the implied or unnoticed costs. They include the interest on his own capital, rent on his land, wages of his own labour etc. Moreover, these costs go to the entrepreneur himself and are not recorded in practice. In the words of Leftwitch, "Implicit costs are the costs of self-owned, self-employed resources."

In short, we can say that:

Economic costs = Explicit costs – Implicit costs

- **Real Costs:**

Another concept of costs is the real costs. It is a philosophical concept which refers to all those efforts and sacrifices undergone by various members of the society to produce a commodity. Like monetary costs, real costs do not tell us anything what lies behind these costs. Prof. Marshall has called these costs as the "Social Costs of Production."

According to Marshall, "Real costs are the exertion of all the different kinds of labour that are directly or indirectly involved in making it together with the abstinence rather than the waiting required for saving the capital used in making it, all these efforts and sacrifices together will be called the real cost of production of the commodity."

In this way, real cost means the trouble, sacrifice of factors in producing a commodity. Though, this concept gained momentum for some time it has been relegated to the background in modern times due to its impracticability.

- **Opportunity Costs:**

The concept of opportunity costs was first systematically developed by Austrian School of Economics. Later on, it was popularized by American economist named Davenport. It is also known as the alternative cost or transfer cost. In simple words, opportunity cost is the cost of production of any unit of commodity for the value of factors of production used in producing other unit.

For instance, a farmer can grow both the potatoes as well as garlic on a farm. On a farm of two hectares, the farmer grows only potatoes and foregoes the production of garlic. Suppose, the price of the quantity of potatoes is Rs. 5000, the opportunity cost of producing the garlic will be Rs. 5000. In this way, the price of garlic which he has to forego to produce is called the opportunity cost of potatoes.

Here, one thing is worth-mentioning that if a factor of production has no alternative use; in that case its opportunity cost will be zero. According to Prof. Benham, "The opportunity cost of anything is the

next best alternative that could be produced instead by the same factors or by an equivalent group of factors, costing the same amount of money."

- ***Private costs*** for a producer of a good, service, or activity include the costs the firm pays to purchase capital equipment, hire labour, and buy materials or other inputs. While this is straightforward from the business side, it also is important to look at this issue from the consumers' perspective. Field, in his 1997 text, Environmental Economics provides an example of the private costs a consumer faces when driving a car:[1]

The private costs of this (driving a car) include the fuel and oil, maintenance, depreciation, and even the drive time experienced by the operator of the car.

Private costs are paid by the firm or consumer and must be included in production and consumption decisions. In a competitive market, considering only the private costs will lead to a socially efficient rate of output only if there are no external costs.

- ***External costs***, on the other hand, are not reflected on firms' income statements or in consumers' decisions. However, external costs remain costs to society, regardless of who pays for them. Consider a firm that attempts to save money by not installing water pollution control equipment. Because of the firm's actions, cities located down river will have to pay to clean the water before it is fit for drinking, the public may find that recreational use of the river is restricted, and the fishing industry may be harmed. When external costs like these exist, they must be added to private costs to determine social costs and to ensure that a socially efficient rate of output is generated.
- ***Social costs*** include both the private costs and any other external costs to society arising from the production or consumption of a good or service. Social costs will differ from private costs, for example, if a producer can avoid the cost of air pollution control equipment allowing the firm's production to imposes costs (health or environmental degradation) on other parties that are adversely affected by the air pollution. Remember too, it is not just producers that may impose external costs on society. Let's also view how consumers' actions also may have external costs using Field's previous example on driving:[2]

The social costs include all these private costs (fuel, oil, maintenance, insurance, depreciation, and operator's driving time) and also the cost experienced by people other than the operator who are exposed to the congestion and air pollution resulting from the use of the car.

The key point is that even if a firm or individual avoids paying for the external costs arising from their actions, the costs to society as a whole (congestion, pollution, environmental clean-up, visual degradation, wildlife impacts, etc.) remain. Those external costs must be included in the social costs to ensure that society operates at a socially efficient rate of output.

Foreign Exchange Management Act, 1999 (FEMA) came into force by an act of Parliament. It was enacted on 29 December 1999. This new Act is in consonance with the frameworks of the World Trade Organisation (WTO). It also paved the way for the Prevention of Money Laundering Act, 2002 which came into effect from July 1, 2005. This topic would be of importance in the IAS Exam for both Prelims and Mains.

Quick Facts about FERA & FEMA

What is FEMA?

It is a set of regulations that empowers the Reserve Bank of India to pass regulations and enables the Government of India to pass rules relating to foreign exchange in tune with the foreign trade policy of India.

Which Act did FEMA replace?

FEMA replaced an act called Foreign Exchange Regulation Act (FERA).

What is FERA and when was it passed?

FERA (Foreign Exchange Regulation Act) legislation was passed in 1973. It came into effect on January 1, 1974. FERA was passed to regulate the financial transactions concerning foreign exchange and securities. FERA was introduced when the Forex reserves of the country were very low.

Why was FERA replaced?

FERA did not comply with the post-liberalization policies of the Government.

What is the main change brought in FEMA compared to FERA?

It made all the criminal offences as civil offences.

For comprehensive information on the Difference between FERA and FEMA, visit the given link.

Main Features of Foreign Exchange Management Act, 1999

1. It gives powers to the Central Government to regulate the flow of payments to and from a person situated outside the country.
2. All financial transactions concerning foreign securities or exchange cannot be carried out without the approval of FEMA. All transactions must be carried out through "Authorised Persons."
3. In the general interest of the public, the Government of India can restrict an authorized individual from carrying out foreign exchange deals within the current account.
4. Empowers RBI to place restrictions on transactions from capital Account even if it is carried out via an authorized individual.

5. As per this act, Indians residing in India, have the permission to conduct a foreign exchange, foreign security transactions or the right to hold or own immovable property in a foreign country in case security, property, or currency was acquired, or owned when the individual was based outside of the country, or when they inherit the property from individual staying outside the country.

Categories of Authorised Persons under FEMA

Category	Authorized Dealer – Category I	Authorized Dealer Category – II	Authorized Dealer Category – III	Full Fledged Money Changers
Entities	1.Commercial Banks 2.State Co-operative Banks 3.Urban Co-operative Banks	1. Upgraded FFMC 2. Co-operative Banks 3. Regional Rural Banks (RRB's), others	1. Select Financial and other Institutions	1. Department of Post 2.Urban Co-operative Banks 3. Other FFMC
Activities Permitted	As per RBI guidelines, all current and capital account transactions	All activities permitted to FFMC and specified non-trade related current account transactions	Foreign exchange, transactions related	Purchase of foreign exchange and sale for private and business visits abroad

Structure of FEMA.

1. The Head Office of FEMA, also known as Enforcement Directorate, headed by the Director is located in New Delhi.
2. There are 5 zonal offices in Delhi, Mumbai, Kolkata, Chennai, and Jalandhar, each office is headed by Deputy Director.
3. Every 5 zones are further divided into 7 sub-zonal offices headed by Assistant Directors and 5 field units headed by Chief Enforcement Officers.

NITI Ayog 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.

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

Objectives

- To evolve a shared vision of national development priorities, sectors and strategies with the active involvement of States.
- 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.
- To develop mechanisms to formulate credible plans at the village level and aggregate these progressively at higher levels of government.
- To ensure, on areas that are specifically referred to it, that the interests of national security are incorporated in economic strategy and policy.
- To pay special attention to the sections of our society that may be at risk of not benefiting adequately from economic progress.
- 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.
- 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.
- To create a knowledge, innovation and entrepreneurial support system through a collaborative community of national and international experts, practitioners and other partners.

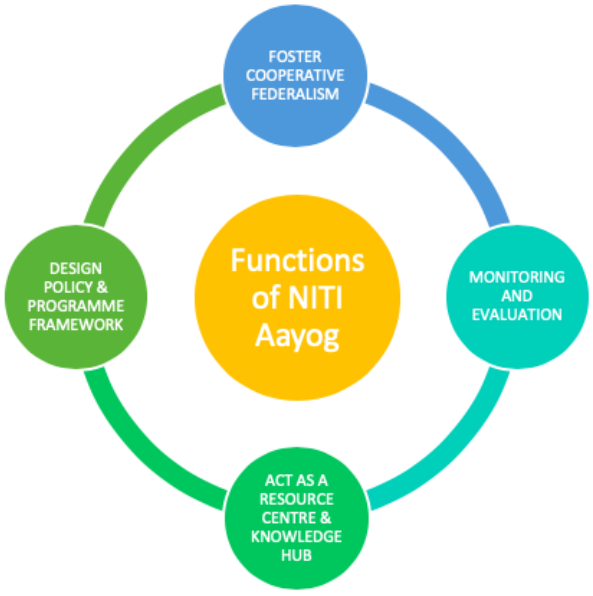
- To offer a platform for resolution of inter-sectoral and inter departmental issues in order to accelerate the implementation of the development agenda.
- To maintain a state-of-the-art Resource Centre, be a repository of research on good governance and best practices in sustainable and equitable development as well as help their dissemination to stake-holders.
- 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.
- To focus on technology upgradation and capacity building for implementation of programmes and initiatives.
- To undertake other activities as may be necessary in order to further the execution of the national development agenda, and the objectives mentioned above.

Features

NITI Aayog is developing itself as a State-of-the-art Resource Centre, with the necessary resources, knowledge and skills, that will enable it to act with speed, promote research and innovation, provide strategic policy vision for the government, and deal with contingent issues.

NITI Aayog's entire gamut of activities can be divided into four main heads:

1. Design Policy & Programme Framework
2. Foster Cooperative Federalism
3. Monitoring & Evaluation
4. Think Tank and Knowledge & Innovation Hub



The different verticals of NITI provide the requisite coordination and support framework for NITI to carry out its mandate. The list of verticals is as below:

1. Agriculture
2. Health
3. Women & Child Development

4. Governance & Research
5. HRD
6. Skill Development & Employment
7. Rural Development
8. Sustainable Development Goals
9. Energy
10. Managing Urbanization
11. Industry
12. Infrastructure
13. Financial Resources
14. Natural Resources & Environment
15. Science & Tech
16. State Coordination & Decentralized Planning (SC&DP)
17. Social Justice & Empowerment
18. Land & Water Resources
19. Data management & Analysis
20. Public-Private Partnerships
21. Project Appraisal and Management Division (PAMD)
22. Development Monitoring and Evaluation Office
23. National Institute of Labour Economics Research and Development (NILERD)

Law and Economics

By Paul H. Rubin

“

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. The positive theory of legal efficiency states that the common law (judge-made law, the main body of law in England and its former colonies, including the United States) is efficient, while the normative theory is that the law *should be* efficient. It is important that the two theories remain separate. Most economists accept 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.

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.[1] 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 (see EXTERNALITIES).

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 (see TRAGEDY OF THE COMMONS). 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 (see CRIME). 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.

LAND ACQUISITION ISSUES

M.M.K. Sardana*

Abstract*: Accentuation of conflicts involving land acquisitions is assuming alarming proportions. It is partly because of trust deficit that has come to exist in the peasantry because the promises accorded to them on earlier occasions for rehabilitation and settlement in case of displacement due to land acquisition have not been fulfilled; the compensation amount has been paltry and irregular. They have been denied benefits of the intended use of their land after acquisitions. Government, influenced by the Industry, has been widening the concept of public purpose indiscriminately and enriching it at the cost of the peasants. The Bill of 2007 seeking to amend Land Acquisition Act and the Rehabilitation and Resettlement Bill 2007 are the Government's initiatives to address the issues. The Bills would not suffice in their present form. Structural Changes are to be brought about and also it would be desirable to make rehabilitation and resettlement (R&R) a part of the Land Acquisition (Amendment) Bill so that multiplicity of agencies is reduced and there is accountability towards settlement by those who take up acquisition proceedings. There would be a need to lay hands on land locked up in factories and plantations. Provisions have to include that acquired land, if not used or found to be in excess of requirement at a later date can be resumed. R&R provisions would be commenced along with the issuance of First Notification for Acquisition. Before Acquisition proceedings are initiated, the requiring and acquiring authorities should satisfy a forum headed by a Judicial officer about (a) Public Purpose, (b) Quantum and specification of land, and (c) Suitability of the site after excluding alternate sites.*

The Central and State Governments bias towards industry *vis-à-vis* agriculture since 1990 begs no description. Industry and related infrastructures and facilitating centres like Special Economic Zones (SEZ's) have to come up on *land*; a source which cannot be created and hence with increasing avenues for its alternate use there would be a fierce competition for possessing it and in such a scenario its cost should rise and the difficulty in its acquisition should increase.

Before 1990, location of industry was decided at the time of grant of license for setting up the licensed industry. The licensing authority took into consideration many factors while deciding upon the same. One such factor was fulfilling the objective of maintaining regional balances. However, in the post 1990 period, the system of licensing has been considerably diluted. Entrepreneurs are free to set up their enterprises, free of location constraints subject to environmental clearances. Such a freedom resulted in competition among states to devise lucrative schemes for attracting the entrepreneurs towards their states. The

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situation has changed. Entrepreneurs now have a wide choice in locating their enterprises and ancillaries. Naturally they will look for not only maximization of fiscal incentives, but also the best locations for their enterprises and related ancillaries. Urban India and media, and also politicians, perceive the need to boost industrialisation and developing related infrastructures at all costs. The progressive leadership in a state reckoned with the interest shown by the industrialists and entrepreneurs for a particular state. In such an atmosphere, the entrepreneurs press for best site irrespective of the socio-economic costs involved. In their hurry to woo the industrialists, the socio-economic studies became the focus of the academicians. Some states, which had an impressive record of growth with justice and fairness for all, and also inclusive growth through progressive legislations and implementing them, lost out to the glamour created by the euphoria of industrialisation which was increasingly perceived as an engine of GDP growth that would ensure ultimate welfare of people through percolation effects. Such progressive states also could not escape falling in line and joined the bandwagon for FDI/Joint ventures in almost all spheres including real estate.

Such a situation generated tremendous pressure on the states to not only provide competitive fiscal incentives, but also competitive sites which could be approached easily and be near to the sites of raw materials necessary for the particular industry. This resulted in locating such sites on fertile lands and involved displacement of traditional rural agricultural families affecting them socially and culturally on the one hand while productivity in agriculture suffered, on the other.

The only instrument available with the State Governments for delivering the land to the entrepreneurs has been the Land Acquisition Act, 1894 through which the peasants would be dispossessed of their land in consideration of monetary compensation accorded to them. With the loss of land, the families would lose their identity and traditional possessions and thus would be disempowered despite financial compensation which in any case they would not have capacity to gainfully use. Earlier the State Governments had been gearing themselves to empower the peasantry by recording their rights and vesting surplus land obtained by the States under Land Reforms Act. The acquisition of land under the Act of 1894 is reversing the forces of empowerment. Even in the State of West Bengal, which takes pride in implementing Land Reform Measures, land acquisition had taken place at a faster pace than land reforms.

Dispossession from one's own means of production results in loss of (a) economic security; (b) social status; (c) empowerment achieved through earlier movements and land reforms; (d) home; and (e) kinship. According to Cernea[1], "Expropriation of land, removes the main foundation upon which people's productive systems, commercial activities and livelihood are constructed. This is the principal form of decapitalisation and pauperization for most rural and many urban displacements, who lose this way both natural and manmade capital."

In search for industrialisation and developing the related infrastructures, states made acquisitions under the Act of 1894. The Act provided for monetary compensation and did not include any commitment for rehabilitation of the displaced. Such a situation was bound to head for a confrontation. The process of confrontation was fuelled by the increasing distrust of peasantry in the Government and the enterprises in going slow on the rehabilitation process and in providing jobs to the displaced families. Though, as stated earlier, rehabilitation provisions were not part of the Act of 1894; promises were held out to the outstees for the same when they had shown their muscles in opposing acquisitions. The peasants also noticed that in many cases the acquired lands were just fenced and no industry was coming up there. There were also instances when the acquired lands were passed on to other parties at a premium. Such situations and instances were bound to cause resentment and increase the measurement of distrust of the peasantry *vis-à-vis* government and industry.

Abhijit Guha in his study has addressed the above state of affairs in West Bengal, a decade earlier to the eruption of Singur and Nandigram.[2] Since the forcing out of Tata's from Singur, a large number of projects in West Bengal and elsewhere have been halted; the latest notable one being halting of work on Yamuna Express Highway.

Most projects require an enormous amount of land. South Korea's Posco's proposed steel mill in Orissa[3] will be built on 16,000 hectares. A six lane highway between the city of Agra and New Delhi will require 43,000 hectares. Compensation ranges, between $4300 per

[1] Cernea, Michael (1999), "Why Economic Analysis is Essential to Resettlement: A Sociologist's View, "in Michael Cernea (ed.) *The Economics of Involuntary Resettlement: Questions and Challenges*, Pp. 5–49, The World Bank, Washington DC.

[2] Guha, Abhijit (2007), "Peasant Resistance in West Bengal a Decade before Singur and Nandigram, " *Economic and Political Weekly*, September 15, Vol. 42, No. 37, Pp. 3706–3711.

[3] Kuncheria, C.J. (2010), "India confronts land grabs in industrialisation push," *Reuters*, August 19. http://in.reuters.com/article/http://in.reuters.com/article/idINIndia-50942720100819?feedType=RSS&feedName=everything&virtualBrandChannel=11709

hectare in the case of Mittal's plant of over 4400 hectares in Jharkhand, to $14,600 per hectare offered to farmers displaced by Posco's Orissa Mill. Despite seemingly attractive prices, protests against the possible displacements of farmers persist. Farmers do not like the prospect of sharing fruits of the economic growth even though millions like them would be pulled out of poverty. The sceptics believe that the upcoming jobs would be shut to them on the grounds that they do not have requisite skills.

Such a scenario seems to be unfolding in China and Indonesia as well.

Chastened by these experiences, the Central Government has brought about Land Acquisition (Amendment) Bill 2007 and Rehabilitation and Resettlement Bill 2007. According to Priya Parker and Sanita Vanka, Centre for Policy Research, the salient features of the Land Acquisition (Amendment) Bill[4] are:

- The Bill redefines 'public purpose' as land acquired for defence purposes, infrastructure projects, or for any project useful to the general public where 70% of the land has already been purchased. The Bill bars acquisition for companies except under the 70% condition.
- For acquisition resulting in large scale displacement, a social impact assessment study must be conducted. Tribals, forest dwellers, and those with the tenancy rights are also eligible for compensation.
- Acquisition costs will include payment for loss or damages to land, and costs related to settlement of displaced persons.
- While determining compensation, the intended use of land and value of such land in the current market is to be considered.
- The Bill establishes the Land Acquisition Compensation Disputes Settlement Authority at the state and central levels to adjudicate disputes resulting from acquisition proceedings.

The Resettlement and Rehabilitation Bill has the following salient features[5]:

a. Policy covers all cases of involuntary displacement;

[4] Parker, Priya and Sanita Vanka (2008), "New rules for seizing land," *India Together*, May 9. http://www.indiatogether.org/2008/may/law-land.htm

[5] Government of India, "Land Acquisition: Resettlement & Rehabilitation," *Business Portal of India*. http://www.business.gov.in/land/policies_procedures.php

b. Social Impact Analysis would be compulsory if 400/200 of more families are being displaced in plains/tribal areas;
c. Rehabilitation before displacement;
d. Land for Land as compensation, if possible;
e. Skill development programmes;
f. Preference for jobs for one person in a family in the project;
g. Housing benefits to all including the landless;
h. Monthly pension to vulnerable sections like disabled, destitutes, orphans, widows, unmarried girls, etc.;
i. Monetary benefits linked to Consumer Price Index;
j. Infrastructure and amenities in resettlement areas;
k. Consultations with *Gram Sabha* and public hearings made compulsory; and
l. Special provisions for Scheduled Castes/Scheduled Tribes.

Thus on the face of it, the Bills for Acquisition and Resettlement are inclusive, exhaustive and have taken into account many aspects which have not been covered in earlier legislative endeavours. However, when legislation becomes exhaustive, the implementation becomes challenging on the verge of touching the domain of impossibility. Some such difficulties also arise because the conflict in concepts remains unresolved and in the face of legislative measures the unresolved conflicts become the basis of litigations and prolonged ones. The interpretation of public purpose would come under such a domain. Would it be mandated public purpose if a party buys 70% of its requirement through its own efforts? Both the Acts do not capture the groups of people who are not directly dependent on land being acquired. Will the landowners who parted with their land to the entrepreneurs in direct sale, be left out of the R&R? If so, would there be another conflict potential? Should the procedures become so cumbersome that the project implementation is delayed and results in cost overruns and the whole exercise of acquisition and R&R becomes meaningless, leaving unmanageable events in the trail?

Issue would, however, remain that land would be needed for growth in industry; which is necessary to reduce the dependence on agriculture for sustaining a growing population and improving the standard of living. There would be limitation on procuring land directly from farmers. State would be required to exercise its power to acquire land. Strategies would have to be devised so that minimum use of such power is resorted to and pain caused to the affected families is minimized by providing them compensation, which includes the benefits

of the use of acquired land in future. Accordingly, in-built legislative provisions should be in the above direction and also should be such that acquisition is done expeditiously to insulate the projects from cost over runs and uncertainties. This would be possible if trust deficit described earlier is bridged through legislation on rehabilitation issues and demonstrative administrative initiatives are taken towards that end. To ensure that acquisition proceedings are resorted to at low scales, land locked up in defunct factories and plantation crops should be taken into account. Similarly land with some establishments may be in excess of their requirements. Account should be taken of such excess possessions.

Hence, there should be clearly understood advocacy on:

(a) There would be requirement of land that would have to be obtained either through acquisition or through open purchase for industrial and infrastructure development;
(b) Process of acquisition, if necessary, be expeditious and on the principles of equity;
(c) The Project Authorities to require as much land and of description and location which is determined by a forum headed by a person of the rank of a High Court Judge and includes people in Public Affairs and Administration. This forum would satisfy itself about the public purpose stated. Further, the forum would satisfy itself that *prima facie* conditions exist towards relief and rehabilitation measures;
(d) Project should be come up in the non-arable monocrop and multicrop areas, in that order of preference;
(e) Projects not taken up by the requiring authority in the prescribed time frame, the land would automatically revert to the state who would be free to settle the land so reverted in the manner it deems fit taking into consideration the interest of the original owners of land;
(f) Earlier, when there was abundance of land, the enterprises had taken huge chunks of land for their factories and plantations. A large number of such premises could have become defunct or would be in areas where they need to be relocated. Excess land with such premises or plantations lying not in use needs to be taken over through a mechanism, if necessary, by way of legislation to accommodate emerging needs of sunrise projects;
(g) As a corollary to the above, if the acquired land is being handed over to the industry, infrastructure or the Government or its undertakings, is perceived to be in excess of their requirements, then the excess land can be resumed by the state. Amendment to this effect may be brought about in the Acquisition Bill 2007 as well. In fact,

amendments in the Bill may be required to accommodate the above-given issues at (c), (d), (e) and (f); and

(h) Prior consultation of *Gram Panchayats* and people involved, whose areas are to be acquired after going through the process at (c) and (d) before the notification for acquisition is issued.

The West Bengal Estates Acquisition Act, 1953 has a provision in Section 6(3) wherein government has a right to take over such lands which are in excess of the requirement of factories and plantations. Recently the State Government has made an amendment to that Act to take over land lying with closed units and the plantations. Such a measure could bring down the requirement of land acquisition to some extent and at least it would be reflective of state's intention to not let go the industry sector without a proper scan regarding its overall requirement of land.

Process of rehabilitation and resettlement should begin along with the issuing of first notification under the Acquisition Act. In fact the long gap between promise and its fulfilment is the reason for distrust and disaffection among the peasantry against the acquisitions now being attempted. National Human Resource Commission (NHRC) and National Human Rights Commission observations on the Rights of Displaced made in 2008 are pertinent. The compensation and rehabilitation packages announced by the concerned states lack credibility as there are thousands of families displaced by various projects still awaiting compensation payments. In a few cases, those displaced in early 1970's are yet to receive compensation. In many cases the true beneficiaries are the absentee landlords, intermediaries and faults that confront Government agencies.

The Resettlement and Rehabilitation Bill as it stands at present may not be able to bridge the gap of distrust that surrounds the peasantry on account of the historical reasons stated above. It is perceived that after the land is parted with, the process of rehabilitation would move at a snail's pace and the peasants would be at the mercy of an unsympathetic administrator as before. Demonstrative implementation of rehabilitation and resettlement measures would bring down their distrust level, which may otherwise become unmanageable and create conflicts.

The two legislations proposed, i.e. Bill of 2007 seeking to amend Land Acquisition Act and the Rehabilitation and Resettlement Bill are complementary. However, both the legislations define different agencies to meet the objectives of the legislations. Such a multiplicity of

agencies may not be conducive for getting the desired results expeditiously and in a straightforward manner. Peasants and Project Authorities would have to interact with multiple agencies who under different dispensations may work at cross purposes. Would it not be desirable to make R&R Bill part of the Land Acquisition Bill so that adjudicating bodies merge and also acquisition process is resorted to by those who ultimately become responsible for R&R? There seem to be too many levels of implementation/monitoring in the existing R&R. Such multiplicity needs to be minimized.

Why Lawyers should study Economics

Many undergraduates considering law school believe that political science, history, or criminology and criminal justice can best prepare them. However, law schools are increasingly admitting economics majors as economic issues are becoming more important in legal circles. In fact, economics is the second most popular major among law school entrants. Law schools realize that a strong background in these areas is extremely helpful for the success of their students.

One reason for the great interest that law schools have for people with a solid economics background is the tremendous crossover of the two disciplines. Contract law, torts, and assigning property rights all consider how legal decisions impact economic outcomes.

For example, both economists and legal scholars examine how different arrangements of property rights determine how efficiently (or inefficiently) resources are used to promote societal welfare. Patent law provides one instance of this as it considers how protecting the rights of the inventor to solely market her product affects decisions to undertake research and development while at the same time recognizing that the inventor will be, at least temporarily, a monopolist. Other examples include governments appropriating private property for public use and the effects that this potential appropriation has on how property owners use their property.

Tort law recognizes that injured parties need to have some recourse to attain compensation for wrongful injury while at the same time recognizing that firms or producers will close shop if they are too susceptible to lawsuits. How does the law try to ensure a reasonable balance?

In contract law, many exigencies arise that the original contract did not consider. Courts not only use fairness to resolve these disputes but also appeal to arguments on grounds of economic efficiency.

In a nutshell, economics examines what choices people make given the various constraints they face. As the constraints change, behaviour often changes as well. Some of the most important constraints are legal ones. Therefore, changes in the law whether enacted by a legislative body or determined by a court will alter people's behaviour. Economics has even been applied to criminal law as society tries to develop laws and punishments that deter deviant behaviour. Judges want their decisions to benefit society by promoting behaviour and environments that raise societal welfare. In many cases, legal decisions are

made on grounds of economic efficiency. Hence, a strong background in economics can help understand how legal decisions stem from economic considerations thereby providing a better indication as to how courts will likely rule.

The discussion above is general in that it applies to broad fields of law. But for lawyers wanting to enter specific areas, a strong economics background can help lawyers in these areas:

- Finance, by better understanding how stock, bond, and other financial markets work
- Industrial organization, by examining how corporations and smaller firms structure themselves to maximize profits. These issues can be further specified by studying particular types of industries such as the healthcare industry.
- Union contracting and negotiation, by having greater insight into labour markets
- Environmental issues, by better understanding the trade-offs between environmental concerns and business interests
- International law and treaties, through studying international trade, financial flows, and globalization