International Journal of Law
ISSN: 2455-2194
Impact Factor: RJIF 5.12
www.lawjournals.org
Volume 4; Issue 6; November 2018; Page No. 94-101

Economic Jurisprudence: A Nepalese legal perspective

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Abstract
The concept of economic jurisprudence emerged from an inter-relationship between the application of economic theory and the practice of law. The main concept of economic jurisprudence is that a nation should be capable to provide economic justice to every citizen through proper integration between the legal system and economic system, In other words, the political economy of country is fully dependent on the jurisprudential theory adopted by the nation in formulation of constitution, acts and another legal basis for sustainable economic growth of the nation. The paper tried to elaborate on how the economic theories and jurisprudence interlinked and how the theories were developed in economics as well as in law inter-depending on each other. Similarly, the paper elaborates the inter-relationship of law and economics in context to Nepalese legal and economic environment. Similarly, the paper tried to show in context to Nepal's transition process of the proclamation of New Constitution through the second Constituent Assembly, 2013 and enactment of new Country Codes as well as new acts as per the necessity of the emerging socio-economic environment. Ultimately, the paper tries to show how the legal systems of a nation or acts, rules and regulations can also make a breakthrough in the economic development of the nation and vice versa.

Keywords: economic jurisprudence, economy, Nepal

1. Introduction
The concept of economic jurisprudence emerged from an inter-relationship between the application of economic theory and the method to the practice of law. Economic jurisprudence is a reflection on the relationship between laws and economic which has been a staple of English-speaking jurisprudential thought since the middle of the eighteenth century. The main theme or concept of economic jurisprudence is that a nation's economy and its legal system are intimately related. In other words, the political economy of the country is fully dependent on the exercise of jurisprudential theory by the nation [1].

As per general theory, law is a social tool that promotes economic efficiency, economic analysis, and efficiency as an ideal that can guide legal practice. It considers how legislation should be exercised to improve market conditions in return. Law and economics offer a framework with which they model legal outcomes and common objectives with which unify fundamentally different areas of legal activity. So, an economic jurisprudence ultimately increases the scope of activities of jurisdiction up to the philosophy of law or science of law to an implementation of this science for the prosperity of the economy as a whole [2].

Law affects every citizen in the society in relation to their activities. It is a meaningful expression of the civilized society. The economy of the nation can be flourished through proper formulation, implementation and interpretation of mainly the business or mercantile law. Nevertheless, the constitution of the nation, a fundamental law of nation and other civil and criminal codes also play a major role in proper regulation and operation of economy of the nation.

2. Law as an Autonomous Practice
The law is the body of principles recognized and applied by the state in the administration of justice. The law consists of the rules recognized and acted on in courts of justice. It will be noticed that this is a definition, not of a law, but of the law. The term law is used in two senses, which may be conveniently distinguished as the abstract and the concrete. Similarly, in practice, there is a use of the phrases law and order, law and justice, courts of law. A law means a statute, enactment, ordinance, decree, or any other exercise of legislative authority [3].

Most traditional theories of jurisprudence look to uncover the essence or definitive aspects of the institution of law defining principle and explaining the philosophy of law. The English term is based on the Latin word *jurisprudentia*: *juris* is the genitive form of *jus* meaning "law", and *prudentia* means "prudence". The word is first attested in English in 1628, at a time when the word *prudence* had the now obsolete meaning of "knowledge of or skill in a matter". The word may have come via the French *jurisprudence*, which is attested earlier [4].

The most common philosophical discussion of law assumes that such a characterization is the essential aim of jurisprudence. Second, in order to arrive at a properly analyzed concept of law, both legal positivism and law as integrity are best constructed from specific techniques of analytic and linguistic philosophy which include the investigation and clarification of the legal from the non-legal social practices. The third common assumption is that the best way to understand legal practice is to understand the necessary

and sufficient qualities that make some rule or statement into a law [5].

3. History and significance of economic jurisprudence [6]

Modern law and economics date from about 1960, when Ronald Coase [7] 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*. 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 [8].

Economic Jurisprudence can be seen as an emerging inter-discipline subject dealing with the issues related to the impact of legal decisions in the economic environment of any nations. The decisions are mainly focused on the wealth maximization of the nations the concept that was earlier elaborated by Adam Smith [9].

4. Law for Sustainable Development

Law can be seen as a tool to encourage economic efficiency and sustainable development of the country. The laws are formulated by the legislature, the legislature is elected by the voters. The voters have certain aspirations from their elected leaders. The aspiration can be social, economic, cultural as well as political changes which will bring a better life among the general public. Thus, the development parameters can be clearly seen through the economic growth of the nation which will also ultimately improve the living standard of the people. The concept of economic reasoning can be adapted to analyze how law and economics can be interrelated for sustainable development of the nation.

4.1 Basic concepts in economic reasoning [10]

The most central assumption in economics is that human beings are rational maximizers of their individual satisfaction, and, in turn, respond to incentives. A rational maximize of personal satisfaction adjusts means to ends in the most efficient way possible. It is important to realize that economics is not restricted to the analysis of monetary issues only but as well as monetary satisfaction. Every person within any types of the economy have their wants and desires, so to fulfill them they conduct certain economic activities and expects for the trade-off of costs and benefits. Normally the aim of economic reasoning is the improvement of the efficiency of an economy.

A more efficient allocation is one that increases the net value of resources. Efficiency in the allocation of resources is distinguished from equity, which is concerned with justice in the distribution of wealth. Because some people value specific goods higher or lower than others, economic efficiency can often be raised through voluntary transfers of goods. One party to the transaction values money more than the item owned, and the other values the item owned more than the asking price, the exchange produces a net gain in economic goods. Each person ends up better off than before.

4.2 Law Encouraging Economic Efficiency

The law and economics movement claims that law is best understood as a tool to promote economic efficiency. But how can the institution of law help encourage efficient transactions? One way is to help avoid situations that lead to market failure. Market failure is the existence of monopolies: a situation where a single seller controls the whole market and becomes a price maker and restricts in the entry of any firms in a market. Law can be used as a tool to ensure that monopoly situations are hard to bring about and maintain. The example of maintaining the situation can be seen from The Sherman Antitrust Act of 1890 of USA. Another way legal systems can be used to ensure economically efficient transactions is through the enforcement of valid contracts. By ensuring compliance with contractual terms courts can give parties to a contract confidence that the other party will fulfill the agreed-to obligations. This becomes especially important in situations where the parties must complete their obligations at different times.

But some types of market failure are less obvious, and the legal means toward remedying them subtler. One problem in market transactions is that of externalities. The production act of the firm and the consumption act of individuals cannot always be independent, they are also inter-dependent of each other. There is a difference in private and social evaluation due to externality or interdependence, where a situation of government intervention is seen necessary. Such externality may also lead to market failure. Thus, a part of the government comes into an economy to make a correction by using the system of budgeting and taxation. Pigou [11] argued in regard to this that legal means should be used to impose a marginal tax upon the offending party, to internalize any externalities.

4.3 Law as Economic in Nature

A court is defined as a place where the laws are defined by the judge which were developed by the law-makers. Here, the law as an institution is seen a court, a judicial body, whose duty is to enforce the acts, rules, and regulations through the administrative bodies of the nation. But the act is not seen constraint to the above mention statement as it also punishes with penalties or orders compensations to the victims in terms of monetary value or economic values. What the economic analysis of law manages, though, is to see such disparate areas as a contract, tort and criminal law as all based upon economic aims, therefore giving the law a more coherent basis than other theories can offer. Posner [12] argued that criminal acts are a source of enormous social costs that no society can ignore, and the modem criminal law is the product of a painstaking evolution powerfully influenced by the explicitly economic approach of Jeremy Bentham, i.e. actions evaluations are based upon their consequences. Although judges and legislators do not often speak the language of economics, he suggested that they often do reason implicitly in economic terms, and that economic analysis is therefore helpful in explaining the basic structure of law, including the criminal law.

Secondly, as an analytical analysis of the necessary conditions for the practice of law, it may not be able to account for the internal point of view which Hart [13] thought that if the claims

are comprehensive descriptive accuracy or are of necessary as well as sufficient for foundations of law, whether or not law as a social institution should adopt economic efficiency as the focus point while guiding a judicial decision-making.

5. Later Developments

Another argument for the fertility of the economic analysis of law is that it has spawned a number of further tools that seem helpful in understanding legal institutions. Various theories and concepts of jurisprudence have been proposed to interpret the relation of law and economics.

5.1 Behavioral economics and law

The concept of behavioral economics developed after the integration of economics, psychology, and law. The relation between behavioral economics and law can be stated as the incorporation within law and economics from the insights of the behavioral approach of psychology. The theory tries to understand the behavior and choice of a person to bear on the law [14]. The analysis of law should be linked with what people are learning about human behavior and their choice. Jurisprudential practices could be significantly influenced by preference and values of judges and juries as well as by legal system. Behavioral law and economics attempt to improve the predictive power of law and economics by building in more realistic accounts of actors behavior in the court proceeding. A well-presented defendant's presence in the court with an excellent victim impact statements might be important correctives to proceedings that skews judge or jury's decisions. An awareness of such a cognitive failure could help adjust legal reasoning and its conclusions accordingly.

5.2 Game Theory

The concept of adjoining Game Theory and law was first established in the book of Baird, Gertner and Picker [15] Game theory adds to economic modeling the phenomenon of strategic action. Strategic actions are those adopted because of the competitive nature of many social transactions. They are adopted due to how one individual expects another to act in response. Game Theory is concerned with anticipating how competitors are likely to react to organization's move. So, interpreting legislators as an organization which has power vested by the public to formulate the laws and legal rules. While designing the laws, the legislators can take a support of Game theory and could evaluate the expected outcome of the interpretation from the judicial body. The understanding that legislators might have adopted specific wording for a law based upon strategic motives may help direct the proper aims of judicial interpretation. This type of claim, though, is often better analyzed by the tools offered in public choice theory.

5.3 Public Choice Theory

A public choice theory is focused on how the nature of the legislative process and collective decision making influence the nature of the law. It is the application of economic models of decision-making and their results to the issues where traditionally political science theory influences, for example Arrow's Theorem [16]. The theory emerged in the fifties and received widespread popularity in 1986 when James M. Buchanan [17] was awarded Nobel Prize. The theory focuses on the sub-discipline 'constitutional economics' under the main principle of constitutionalism. It also argued that every constitution should be capable to balance the interest of the state, society and each individual of the nation.

Buchanan explains public choice theory as "politics without romance" because many of the promises made in politics are intended to appear concerned with the interest of others mainly concerning the sentiments of the voters, but in reality are the products of selfish ulterior motives of the politician.

5.4 Economics and Normative Jurisprudence

Normative jurisprudence or also termed as an evaluative theory of law is the legal philosophy that is concerned with the goal or purpose of the law. It tries to find out which acts if committed is to punish and others should not be punished. Here, Posner argues that law can encourage economic efficiency by assigning property rights to those parties who would have secured them through a market exchange if transaction costs were lower [18].

5.5 Economics and Analytic Jurisprudence

The distinction between normative and analytic jurisprudence originates with 19th-century English legal philosopher John Austin [19]. As Austin conceives the distinction, analytical jurisprudence is the study of the concept or nature of law considered in its most general and abstract level. Normative jurisprudence works with the already determined concept of law and asks what the law should be, considering whether particular areas of law or doctrine are as they should be. On its face, the distinction has much to recommend it. Much philosophical writing about such topics as the moral limits of the criminal law, legislation and administrative action, and the normative basis of property or contract law thus falls within normative jurisprudence as Austin conceives it. So, too, do questions about the obligation to obey the law. More generally, the Austinian picture rests on the thought that normative jurisprudence is just the study of what the law should be, where the law is conceived broadly as a tool for bringing people into compliance with their moral obligations [20].

Although utilitarianism no longer occupies as central a place in moral and political philosophy as it once did, and the command theory has largely disappeared from analytical jurisprudence, the residues of each have continued to shape the ways in which both the explanation and justification of legal rules, doctrines, and practices are pursued. Many who reject utilitarianism nonetheless still accept Austin's belief that no specific legal concepts properly figure in the characterization of what the law should be. Instead, they conceive of law as a tool for achieving a moral outcome that does not require any sort of reference to legal ideas [21].

The most important questions of analytic jurisprudence are: "What are laws?"; "What is the law?"; "What is the relationship between law and power/sociology?" and, "What is the relationship between law and morality?" Legal positivism is the dominant theory, although there are a growing number of critics, who offer their own interpretations.

6. Meaning of economic jurisprudence

The law and economics movement applies economic theory and method to the practice of law. This attachment of law and economics develop the concept of an economic jurisprudence. It asserts that the tools of economic reasoning offer the best possibility for justified and consistent legal practice. It is arguably one of the dominant theories of jurisprudence. The law and economics movement offers a general theory of law as well as conceptual tools for the clarification and improvement of its practices. The general theory as well as concept is that law is best viewed as a social tool that promotes economic efficiency, that economic analysis and efficiency as an ideal can guide legal practice. It also considers how legislation should be used to improve market conditions in return and how the legislators should conduct as per the aspiration of the general voters. Law and economics offer a framework with which to model legal outcomes and common objectives with which to unify disparate areas of legal activity. The bringing together of legal theory and economic reasoning has also created new research agendas in the fields of behavioral economics: how rationality affects people's behavior within legal scenarios; public choice theory and how collective behavior should have an effect on legislation; and game theory: understanding strategic action in a legal context [22].

Reflection on the relationship between law and economics has been a staple of English-speaking jurisprudential thought since the middle of the eighteenth century. Adam Smith conceived of his theory of political economy as an essential part of his broader jurisprudential theory. Nineteenth-century utilitarian refined the economic theory and the jurisprudence and explored the connections between them. Holmes spoke prophetically when he said that the lawyer "of the future [will be] […] the master of economics" (Holmes 1995, 3: 399; see chap. 2, sec. 2.5.1) [23]. In the early decades of the twentieth century, progressive economists and legal scholars like Roscoe Pound roundly criticized the naïve assumptions of the United States courts that struck down legislation protecting workers as violations of a constitutional standard of the substantive due process [24].

Thus, an economic jurisprudence merely tries to explore the effects of the law on the nation's economy and the economy on the law but to use the tools and models of neo-classical economics to provide a comprehensive and deep explanation of the nature of law itself.

7. Economic Jurisprudence in Context to Nepal

The perception of a tie-up between the economy of the nation and jurisprudence in Nepal starts properly only after 1990. Historically, Nepal as a state has been exclusionary and unaccountable. Only after the Peoples' Movement and the formal introduction of multiparty democracy in 1990, an accountable government towards the public came in the power. But as per an aspiration of the people, the government could not give good quality of economic justice. This brought out the decade-long Maoist Conflict and Second Peoples' Movement in 2006 which also abolished monarchy from Nepal. The legacies of problems of social and economic inequality were compounded by impurity and weak rule of law.

Constitution of Nepal, 2015, Chapter 3, Article 17 (2) Sub-clause (f) guarantees various levels of citizen and civil society participation and establishes a number of institutions for public accountability and oversight i.e. freedom to engage in any occupation or be engaged in employment, establish and operate industry, trade and business in any part of Nepal. The Right to Information Act, 2007 [25] grants citizens' broad access to public information and is very progressive compared to rest of South Asia. The Good Governance Act, 2008 [26] stresses the need for a public administration that is "pro-people, accountable, transparent, inclusive and participatory." Nevertheless, such laws and acts, there is the lack of effectiveness of proper audit of works as per internationally adopted accounting and auditing standards. There is also a huge gap in public demand and public finances. There is seen a lack of "budget literacy" [27] and "financial literacy" [28] among the related stakeholders.

8. A relation between the economy and jurisdiction activities in Nepal

8.1 Right on Property and its Utilization

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. At the same time, an ideology of the ruling party in the nation also highly influential in the property rights jurisdiction. The threat of amendments of prevailing acts, rules, and regulations could be assumed as per the ideology of the ruling party [29].

In many circumstances, however, who owns the right will matter. Transactions costs are never zero. 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 will be no option for corrective mechanism. This can happen in any sort of economy [30].

In context to Nepal, under the Fundamental Rights and Duties, Article 17 (2) Sub-clause (f) (Chapter 3) of the Constitution of Nepal, 2015 [31], has mentioned the freedom to involve in any occupation or be engaged in employment, establish and operate industry, trade, and business in any part of Nepal.

Clause (1) of Article 25 (Chapter 3) of Constitution of Nepal, 2015 makes provisions for compensation for any property requisitioned, acquired or encumbered by the State in implementing scientific land reform program or in public interest in accordance with law. The compensation and basis thereof as well as operation procedures shall be as prescribed by prevailing law.

Nevertheless, the discussion and conflict in interpretation on the preamble of the Constitution of Nepal, 2015 arises time-to-time regarding the phrase, 'Expressing commitment to

creating the bases of socialism by adopting democratic norms and values……' The discussion or a comment arises on what is the intentions of the law-makers while putting the word, 'socialism'.

After Nepal became a 147th member of the World Trade Organization on April 23, 2004, the trade arena for the country increased but there was a certain lack in various laws. At the moment, Nepal had the challenge to amend the prevailing laws, so the country updated the laws related to intellectual property, namely Patent, Design, and Trademark Act, 2002 and Copyright Act, 2002. These two acts have encouraged local entrepreneurs and researchers to generate new ideas with secured legal protection.

8.2 Tort Law Practice

Tort law is part of the system of private law and is enforced through private actions. The economic analysis of tort law has focused on 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, efficient rules create incentives for both parties to take care; most negligence rules namely; negligence, negligence with a defense of contributory negligence, comparative negligence create exactly these incentives. Tort law used to be uninteresting and unimportant, dealing largely with automobile accidents [32].

Calabresi [33] has argued that on the modern economic analysis and legal policy in context of the torts mainly focused on the accident law of the United States during seventies. He focused on an economics aspects of outcome from an accident and how law can reduce the cost of accident. He argued for the improvement in the legal provisions in accident law as well as in insurance acts.

In context to Nepal, two codes came into operation in the name of *Muluki Daywani (Sahita) Ain*- National Civil Code-2017 and *Muluki Faujdari (Sahita) Ain*- National Criminal Code-2017 as well as National Civil Procedure Code-2017 and National Criminal Procedure Code-2017 on October 16, 2017. Under the Civil Code, Chapter 17, the three major elements of tort (i) an act of or causing omission (ii) damage or loss to another person's body, life, property or other legally protected interest; and (iii) due to error, negligence or recklessness have been defined.

8.3 Criminal Law Practice

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 [34].

However, most criminals do not have sufficient wealth to pay multiplied fines and penalties, and so incarceration or other forms of non-pecuniary punishment must be used. The bail amount that should be deposited as per the order of the court could not be fulfilled by the verdict, thus the option will incarceration or other forms of non-pecuniary punishment. The social and political background as well as in which ground the rise of the crime has occurred also influence in the negations through monetary basis.

Criminal law has been the subject of the most extensive empirical work in law and economics, probably because of the availability of data. Economic theory predicts that criminals, like others, respond to incentives, and there is unambiguous evidence that increases in the probability and severity of punishment in a jurisdiction lead to reduced levels of crime in that jurisdiction. The issue of the deterrent effect of capital punishment has been more controversial, but several papers applying advanced econometric techniques and comprehensive data during research have found a significant deterrent effect; each execution shows the multiple effects of preventing crimes in geometric proportion. No refereed empirical criticism of these papers has been published. Similarly, research on procedural rules has shown that increasing rights for accused persons can just lead to increases in crime [35].

Clause (5) of Article 24 (Chapter 3) of the Constitution of Nepal, 2015 makes provisions for compensation and even specifies monetary amounts. But the basis or framework for giving compensation has not been defined. Additionally, the amounts specified for compensation seem limited. For example, Section 34(L) mentions that as compensation, "up to NRS 25,000 shall be given to rape victims who become pregnant, to either abort or to give birth to and nourish the child." This amount will not be sufficient to help the victim.

Clause (5) of Article 24 (Chapter 3) i.e. Right against untouchability and discrimination makes a provision for a culprit to pay compensation to the victim and even mentions a list of crimes for which this provision is valid. It would be appropriate to go further to add crimes related to communal violence and discrimination to this list. The clause has made a provision of the right to compensation as provided for by law considering all forms of untouchability or discrimination, contrary to the provision as a punishable crime. Ethnic discrimination also falls under criminal acts, and the basis for a culprit paying compensation to the victim has been established under the Caste-Based Discrimination and Untouchability (Offense and Punishment) Act 2011. The clause also makes provision for a victimizer to pay compensation to the state and even mentions appropriate fines. But these fines seem to have been declared arbitrarily.

Under the National Criminal Code-2017, there is a separate act, Criminal Punishment Assessment an Implementation Act, 2017 which have seven chapters. The chapter-3 of the Criminal Punishment Assessment an Implementation Act, 2017 completely deal with the provisions of penalties covering from Sec. (18) to Sec. (21). The chapter-3 clearly defines the provisions of penalties assessment that should be compensated to the victim and the mode of payment and time limit of the payment of the penalties and compensations by the offender [36].

Compensation for Torture Act, 1996 has a provisions for compensation to victim, determination of amount of compensation as well as its execution. Similarly, Consumer Protection Act, 1998 has made a provision of various categories of penalties as per depending on the degree of offense. It is appropriate for these acts to include provisions mentioned in other acts and comprehensively lay out compensations for victims.

8.4 Monetary and Fiscal Policy

Monetary policy is an important part of government economic policy. There is no any precise definition but in general, it is a policy that is dedicated to controlling the expansion and contraction of money and credit by the central banks for achieving definite objectives. It includes all the methods used by the central bank to control credit using instruments like bank rate, cash reserve ratio, open market operation and so on.

At the same time, fiscal policy is a policy that deals with the public or government treasury. The policy mainly focuses on public revenue, public expenditure and public debt, used to achieve pre-determined objectives of the ruling government.

Macroeconomic management should dedicated to higher economic growth without disturbing the macroeconomic stability, which is essential for attaining sustained a higher level of economic growth. Sound macroeconomic management would improve the external sector competitiveness of the economy on a sustainable basis, a basis for reducing the external sector vulnerability of the economy. The deficit balance of payments and foreign debt problems are often caused and aggravated by impulsive fiscal policy, the solution of which would involve some combination of cutting down public spending and raising additional revenue, thereby freeing resources for export and debt servicing. The normal potency of monetary policy gets lost because the money supply is dedicated to maintaining the exchange rate at the announced fixed level. It can be expected that the role of the monetary policy to contribute to creating sound macroeconomic fundamentals and foster sustained economic growth through increased emphasis on the secondary market operation will remain persuasive in the days to come [37].

Chapter 4, Article 50(3) of Constitution of Nepal, 2015 under the Directive Principles, Policies and Responsibilities of the State has made various important provisions regarding the management of the public finance of the nation. The article states the economic objectives of the state. Under Article 51(d), sub-clauses (1) to (12) of the Constitution of Nepal, 2015, various economic objectives of the state have been stated point wise. Mainly the clauses have mentioned policies regarding finance, industry, and commerce. Under Article 51(l), there is mentioned policy regarding tourism and development of the tourism industry.

The major acts that highly influence in the monetary policy of Nepal are Nepal Rastra Bank Act, 2002 and Banks and Financial Institution Act (BAFIA), 2017. These acts have been the milestone in the growth and proper supervision and management of banks and financial institutions in Nepal and to stabilize the economy.

Other than these two acts, Securities Act, 2006 and Company Act, 2006 have also helped in the growth and development of the financial market of Nepal especially, primary and secondary market of Nepal.

8.5. Public Finance

Public finance is also called government finance. It is that section of macroeconomic which deals with income and expenditure of the government. It deals with the economics of the public sector. The government has a responsibility of economic growth, price stability, managing unemployment, inequality and other of same nature, for this purpose government collects the tax and non-tax revenue and makes regular or capital expenditure by formulation budgets as well as other laws, bye-laws, rules and regulations as per the provision and power vested by the constitution of nation.

Public finance now includes the study of financial administration and control as well. The study of public finance is split up into four parts; (1) Public Expenditure i.e. expenditure made by government (2) Public Revenue i.e. income generated by government mainly through tax and non-tax revenue, (3) Public Debt i.e. collecting fund through debt instruments through central bank and (4) Budgeting i.e. planning of estimated revenue and expenditure of governed for a specific period [38].

Chapter 3 of the Constitution of Nepal, 2015 has made the provision regarding state may impose a tax on property and income of a person according to the norms of progressive tax i.e. collecting the tax revenue from the public.

Similarly, Chapter 5, Article 59 (1) to Article 59 (7) of Constitution of Nepal, 2015 states use of the fiscal power of federation, province and the local level. Under Chapter 5, Article 60 (1) to Article 60 (8) there is provisions of distribution of sources of revenues among the various stakeholders of the nations.

At the same time, Chapter 10, Article 115 to 125 of Constitution of Nepal, 2015 describe regarding the collection of the loan, estimation of revenue and expenditure and especially fund management at the state level or local level under the heading of Federal Financial Procedure.

Under Chapter 15, Article 198 to 202 and Chapter 16, Article 203 to 213, the Constitution of Nepal, 2013 has clearly made provisions regarding the financial management of the Province. Finally, Schedule 5 of the Constitution of Nepal, 2015 related to Article 57 (1) and 109 has mentioned list of Federal Powers and Jurisdiction under number 5 which also includes central planning (handled by Planning Commission of Nepal), central bank (handled by Nepal Rastra Bank), financial policy, currency and banking, monetary policy, foreign grants, aids and loan. And at number 9 collection of customs, excise, individual income tax, value-added tax, passport fee, visa fee, tourism fee, service charge, penalties and fines collection provisions under this schedule. Issues related to international trade, foreign exchange, quarantine, aviation sector, national highways, and other transportation facilities, security printing, intellectual property management, and mining.

At the same time, Schedule 6 of the Constitution of Nepal, 2015 related to Article 57 (2), 162 (4), 197, 231 (3), 232 (7), 269 (4) and 289 (4) has mentioned list of Provincial Powers and Jurisdiction which includes collection of establishment of banks and financial institution, cooperatives, and foreign grants and aids with consent from the center. And the collection of tax on remuneration, land, and house registration tax, excise duty, entertainment tax, advertisement tax, tax on tourism and agricultural income, service charge and penalties and fines. The schedule also states establishment of trade and business within the province.

Similarly, Schedule 7 of the Constitution of Nepal, 2015 related to Article 57 (3), 109, 162 (4), and 197 under List of Concurrent (federal and provincial) Powers and Jurisdiction has mentioned the provisions for supply, distribution, price

control, standard and monitoring of essential goods and services. As well as the related articles of the constitution have stated the legal provisions regarding receiving property, acquisition, and creation of rights, matters related to contracts, cooperatives, collaborations, and agencies and finally, matters related to bankruptcy and insolvency.

Similarly, Schedule 8 of the Constitution of Nepal, 2015 related to Article 57 (4), 214 (2), 221 (2) and 226 (1) under List of Powers/Jurisdiction for Local Level has mentioned the subjects of local tax (property tax, house rent tax, fee on registration of houses and land, vehicle tax), service fee, tourism fee, advertisement tax, business tax, land tax (land revenue), fines and entertainment tax.

And finally, Schedule 9 of the Constitution of Nepal, 2015 related to 57 (5), 109, 197, 214 (2), 221 (1) and 226 (1) under List of Concurrent Powers/Jurisdiction for Federations, Provincial and Local Level has covered subjects regarding service fee, registration fee, fine, tourism fee and royalty received from natural resources and management of royalty received from natural resources as well.

Some of the Concurrent Powers/Jurisdiction provided by the Constitution of Nepal, 2015 are seen common for Federations, Provincial and Local Level especially in context to the collection of tax revenue.

8.6 Employment

The employment opportunity as per the International Labor Organization (ILO) [39] also, Nepalese working population is highly involved in the informal sectors for their livelihood. There is a mass of under-employed so-called working poor in Nepal. The earning from the work the working class of Nepal is not sufficient for sustaining a better living. Furthermore, the scenario became worsening after the millennium due to the increasing political instability due to a decade-long Maoist Insurgency [40]. The conflict created brain-drain and lack of employment opportunity as per the worsening economy within the nation, the young Nepalese went aboard for foreign employment. This brought out the necessity for the enactment of Foreign Employment Act, 2007. Thus, the situation has not been different in a decade, and the remittance has been the stronghold in the economy of Nepal from rural to urban households.

9. Conclusion

Jurisprudence has tried to deal from its rigidity position to natural or moral law. Monetary factor has been playing a major role in every aspect of human life. Thus, in this context, the importance of the concept of an economic jurisprudence is emerging in the field of law. The law is best viewed as a social tool that promotes economic efficiency, forms an idea which can guide legal practice for the economic betterment of the citizens. It also considers how legislation should be used to improve market conditions in return to the faith they have got from the voters. Nepal is one of the least developing nations of the world with the majority of the economic indicators at the bottom level have tried to boost up the social security and better perception towards the economic (or monetary) compensations with regards to various tort and criminal laws by legislators. It can be clearly seen that the Constitution of Nepal, 2015 has tried as far as possible to address the various economic aspects and aspiration of the citizens from various provisions at Chapters, Articles, Clauses, and Schedules regarding the economic jurisprudence necessity for the economic betterment from the grass-root level of the nation. Similarly, the country has been maintaining or say managing the budgetary system, the monetary and fiscal policy for good economic scenario or as far as possible to meet the needs and wants of the citizens. After an enactment of the National Civil Code-2017 and Criminal Code-2017 as well as National Civil Procedure Code-2017 and National Criminal Procedure Code-2017, the Nepalese legal system have entered in a new era. At the same time, enactment of new Labor Act, 2017 and new Labor Regulations, 2017 has also brought some changes in the economic sector of the nation. Still, there is a quick need for the amendments in the provisions which are linked with an economic jurisprudence as per the economic scenario of the nation. At the backdrop of the Nepalese economy, the enactment of the Foreign Employment Act, 2007 played a vital role. Finally, the main deadlock in the clear demarcation of authorities and responsibilities of the Federation, Provincial and Local Level has also brought complications in an implementation of Constitution of Nepal, 2015 in a full-fledged way as many acts, bye-laws, rules, and regulations are needed to be enacted.

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16. In social choice theory, Arrow's impossibility theorem, the General Possibility Theorem, or Arrow's paradox, states that, when voters have three or more distinct alternatives (options), no rank-order voting system can convert the ranked preferences of individuals into a community-wide (complete and transitive) ranking while also meeting a specific set of criteria. These criteria are called *unrestricted domain*, *non-dictatorship*, *Pareto efficiency*, and *independence of irrelevant alternatives*. The theorem is often cited in discussions of election theory as it is further interpreted by the Gibbard–Satterthwaite theorem. The theorem is named after economist Kenneth Arrow, who demonstrated the theorem in his Ph.D. thesis and popularized it in his 1951 book *Social Choice and Individual Values*. The original paper was titled "A Difficulty in the Concept of Social Welfare".
17. James McGill Buchanan Jr. was an American economist known for his work on public choice theory, for which he received the Nobel Memorial Prize in Economic Sciences in 1986.
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26. This Act may be called "Good Governance (Management and Operation) Act, 2064 (2006)" authenticated on February 6, 2008.
27. Budget literacy tries to provide information that explains the values of accountability and transparency as a prerequisite for good governance among the local councils.
28. Financial literacy is the ability to understand how money works in the world: how someone manages to earn or make it, how that person manages it, how he/she invests it (turn it into more) and how that person donates it to help others. More specifically, it refers to the set of skills and knowledge that allows an individual to make informed and effective decisions with all of their financial resources.
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40. The Nepalese Civil War, also popularly known as Maoist Conflict or Maoist Insurgency or Maoist Revolution led by the Communist Party of Nepal (Maoist) who fought against the state for a decade from 1996 to 2006.