

GDP And Our Judges

Courts are intervening in economic policy matters in a way that's costing India big

- **Amitabh Kant**

Economic growth is a key catalyst to India becoming a global superpower. India needs to grow at rapid rates of 9-10 % per annum year after year for next three decades to enable a young population to enjoy a good standard of living. At the time of Independence, India was ahead of China and at par with South Korea on a per-capita income (PPP) basis. Fast forward to today, and incomes in China and South Korea are 2 times and 5 times respectively, of those in India on a PPP basis. It is only through a progressive and inclusive development regime that India will lead the way for its residents to prosper and thrive. India is fortunate to have an extremely independent and forward thinking judiciary, one which on several occasions has provided clarity and direction to the country since independence.

However, there are two aspect in which the courts may be intervening in aspects that require further deliberation, external expertise, an assessment framework, and a macro perspective. Firstly, providing certainty through judgements that have an economic implication, as well as by addressing the economic impact of some judgments, balanced by other considerations such as the environment and related areas. Secondly, to accept bonafide decisions by civil servants that have earlier been upheld and cleared. The current situation where the judiciary is involved in decisions that override economic growth or which re-open already settled matters, is an issue of serious concern.

There is absolutely no doubt today that the environment is critical. The Government of India has taken the lead in renewable energy, electric vehicles, green hydrogen, climate change addressal, and of course, Sustainable Development Goals. However, a one sided approach without taking into consideration longer term economic growth prospects balanced by climate and environment concerns will harm infrastructure creation, Make in India, investor confidence, and foreign investment. From the private sector's perspective, nothing will be sacrosanct when it comes to doing business in such a scenario.

The key precedent which should be applied as a long term roadmap and framework is the Shivashakti Sugars Limited vs. Shree Renuka Sugar Limited, where the Court observed that the economic impact and effect of a decision ought to be kept in mind, and critically, the Court needed to 'avoid that particular outcome which has a potential to create an adverse effect on employment, growth of infrastructure or economy or the revenue of the State.'

The outcome uncertainty of a ruling hurts business, compliance, and society overall. One way to move towards a fundamentally sounder middle ground would be by applying an economic impact/cost benefit analysis as being fundamental to responsible and sustainable judgments. A supplemental solution is the institutionalization of assessment of disputes, where a dispute or concern that a stakeholder may have in terms of economic or environmental concerns must be

adequately addressed. To this end, an independent committee of experts of diverse subject backgrounds is required, to assist the court in balancing its assessment and undertaking quantifiable analysis.

There is unfortunately a recent trend of the judiciary acting somewhat arbitrarily against government decisions and decision-makers. There have been quite a few decisions that would have benefited from a quantifiable analysis. For example, in the Goa Airport matter, the order by the Supreme Court suspending the Environmental Clearance (EC) of the project and putting a stop to all work for the Mopa Airport played a large role in impacting infrastructure creation and travel, and tourism. There, the Court set aside the fact that the Environment Assessment Committee and National Green Tribunal both held in favor of an EC being granted after granting all sides due process.

In the Goa foundation vs Sesa Sterlite case which was concerned with the validity of the licences the Supreme Court described the State's iron ore industry 'hallmark' as 'rapacious and rampant exploitation of our natural resources'. This when the mining industry is the major contributor of GDP, jobs and state revenues. Mining is today feasible in the most sustainable manner through use of technology. Mining is now halted for over 4 years and vast number of jobs have been lost. In November, a two-judge bench of the Supreme Court passed an order in the National Confederation of Officers Association of Central Public Enterprises & Others versus the Union of India matter that could potentially put a halt to any asset monetization or strategic disinvestment plans of the Government of India. The order has directed the CBI to open an enquiry into the process behind the strategic disinvestment of Hindustan Zinc Limited, which took place two decades ago. An investigation into a two decades old matter, where a preliminary enquiry was closed by CBI, will put India's bureaucracy in an untenable position

Another case in point was the arrest of former SBI Chairman Pratip Choudhury on the order of a judicial magistrate without even receiving summons for an asset reconstruction case for which the right forum in NCLAT. A CBI Court ordered reopening of an enquiry into the sale of the ITDC hotel Laxmi Vilas in Udaipur despite its earlier closure by CBI and Rajasthan High Court. Such decisions that override time and earlier precedent need to cease.

It is incumbent upon the Courts to accept and protect bonafide progressive decision-making by civil servants instead of re-opening settled verdicts that have earlier passed the litmus test. Otherwise, no civil servant, current or retired, myself included, will be able to take any progressive decision if the threat of criminal proceedings looms no matter how above-board the decision is.

It is also important for courts to balance economic growth and progress with other considerations. The Shivashakti judgment if made a standard procedure of analysis would allow industry and market forces to adapt and stabilize. It is imperative that the courts see the situation in a holistic manner and act in accordance with the overall betterment of society, balanced by environment and economic considerations.

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