

Impact of Judicialisation of the Economy

What is the issue?

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- In recent times Judiciary has an adverse impact on the country's GDP and employment.

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- To address this issue union finance ministry has called on the legal scholars.

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How SC decisions affect economy?

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- The Constitution has always been a source of guidance while interpreting economic policy matters, but on several occasions the Supreme Court has not been able to keep pace with the changing policy regime.

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- The most recent examples of this are

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1. Affirming a stricter standard of patenting might impact innovation in the pharmaceutical industry.
2. An unconstitutional imposition of a tax can hit the automobile industry.
3. A ban on selling liquor near highways may affect the tourism industry.
4. The shock waves of the quashing of coal block allocations are still being felt throughout our banking system as well as power, metal, steel and mining industries.

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- Many of these decisions by the SC were hailed as the apex court then was battling corruption that had gripped the country at the highest levels.

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What are the concerns with SC's decision?

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- The government is bound by Constitutional diktats and if its actions violate Constitutional provisions, the Court can review such executive action and strike it down if necessary.
- However, when such executive action is being reviewed, the court cannot direct the government to follow a particular kind of economic policy.
- With regard to the coal it an integral part of industrial growth, then ignoring the economic impact of the cancellation of 214 out of 218 coal block licenses was undesirable and unacceptable.
- It is clear that Corruption or mala fides during the licensing process, proved beyond doubt, cannot be tolerated.
- But if SC cancels licenses only based on an apprehension of some wrongdoing the economy and people suffer
- Article 14 (equality before law and equal protection of law) of the Constitution is a safeguard against arbitrary government decision-making, but there are grave dangers if judiciary continues to traverse in alarmist path.

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What measures needs to be taken?

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- India is on the road of economic growth in such an environment it becomes the bounden duty of the Court to have the economic analysis and economic impacts of its decisions.
- The Supreme Court can't be insensitive to the potential economic impact that its decisions might have, especially when there is no statutory violation or

the violation is, at most, of a technical character.

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- Thus the court needs to avoid that particular outcome which has a potential to create an adverse effect on employment, growth of infrastructure or economy, or the revenue of the state.

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- At the same time legal and economic professionals need to build the necessary theoretical framework for assisting the Supreme Court.

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Source: Business Line

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