

Business Standard

Why the Indian judiciary needs new tests for economic adjudication

Judicial reforms need institutional reinvention as this is of the highest significance for economic disputes before the courts

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The future of economic constitutionalism and balanced judicial reasoning on economic disputes should be led by the Chief Justice of India | Photo: Pexels

The appointment of Justice Surya Kant as the 53rd Chief Justice of India has provided us with new opportunities and transformative ideas of reforms relating to the administration of justice. A World Bank report released this year noted that India ought to grow by 7.8 per cent on average for the next 22 years to achieve its aspiration of Viksit Bharat by 2047. The report recognized India's accelerated pace of growth that averaged 6.3 per cent between 2000 and 2024, and optimistically observed that the target of 7.8 per cent would be possible to achieve. The report, however, acknowledged that meeting the target would require major reforms.

In the report, World Bank Country Director Auguste Tano Kouamé observed, “[L]essons from countries like Chile, Korea, and Poland show how they have successfully made the transition from middle- to high-income countries by deepening their integration into the global economy ... India can chart its own path by stepping up the pace of reforms and building on its past achievements”.

Judicial reforms need institutional reinvention as this is of the highest significance for economic disputes before the courts. When constitutional courts adjudicate economic disputes, they should transcend the rights-based judicial process and advance towards the paradigm of “economic constitutionalism”. The paradigm requires a judicial reimagination predicated on an evidence-based judicial insight on potential economic outcomes.

While opting to adjudicate economic disputes, the courts should use the test of judicial manageability of standards laid down in the S R Bommai case—whether there are “judicially manageable standards” for the courts to intervene on issues relating to public policy and governance, especially when the question is about constitutional violation.

As the new Chief Justice of India begins to develop measures and standards for improving the judicial process and the system of administration of justice, it is a good time to discuss the need for a judicial framework for economic constitutional adjudication. The following three aspects could constitute a framework for the judiciary to consider while adjudicating economic disputes:

1. **The Threshold Test: Should the court intervene at all?**

Indian courts are inherently democratic in nature as far as being accessible to litigants is concerned. However, economic adjudication should commence with a deeper sense of judicial self-awareness and not instinctive intervention. It is important for the courts to apply a threshold institutional competence test before engaging on merits. The questions that the judiciary may want to ask include, but are not limited to: Is the issue primarily allocative or distributive policy? Is there a demonstrable constitutional violation, such as manifest arbitrariness, lack of procedural fairness, or infringement of fundamental rights? Are democratic, regulatory, or institutional correction mechanisms available? Recognising the economic consequences of legal judgments, Justice Arjan Kumar Sikri, in a landmark judgment in *Shivshakti Sugars v. Renuka Sugars*, 2017, observed, “...Interface between law and economics is much more relevant in today’s time when the country has ushered into the era of economic liberalization, which is also termed as ‘globalisation’ of economy. India is on

the road of economic growth... Various measures are taken in this behalf by the policy makers. The judicial wing, while undertaking the task of performing its judicial function, is also required to perform its role in this direction. It calls for an economic analysis of law approach, most commonly referred to as 'Law and Economics'...".

2. **The Consequences Test: Accounting for economic impact**

The issue of examining the consequences of judicial intervention is essential and central to the adjudicatory process. Courts need to ask the fundamental question: What constitutes the economic and systemic outcomes of a judgement? The courts should be mindful that not taking into account the impact and consequences of judicial intervention is not about neutrality but judicial blind-spotting. The examples of the judicial interventions in the 2G and coal block cases, where constitutional remedies without taking into account the economic consequences resulted in widespread challenges. These include, but are not limited to, regulatory uncertainty, chaos in contract enforcement, market shocks, and distrust generated among investors. However, the judiciary's intervention in the Vodafone case was a sound example of the judiciary taking cognizance of the implication of retrospective taxation on investor confidence.

Judicial reasoning should recognise and appreciate fundamental economic consequences— incentives, transaction costs, reliance interests, spillover effects—without transforming judges into economists. The suggestion is not for courts to optimize outcomes, but they must acknowledge costs. Global academic scholarship in this field, from Posner to Calabresi to OECD judicial governance papers, has demonstrated that courts, willy-nilly, influence incentives, compliance behaviour, and capital flows.

3. **The proportionality of remedies and the stability principle**

In matters relating to economic disputes, the courts should be mindful that remedial proportionality is as important as substantive correctness. In economic governance, the remedy that is offered to the parties concerned often matters more than the substantive declaration of rights. Predictability, consistency, and doctrinal coherence ought to be treated as important constitutional values to be preserved and promoted, and not mere administrative diktats. The World Bank Rule of Law Indicators have consistently found linkages between judicial predictability and economic growth. The economy and the markets function on the basis of certain

expectations. Frequent doctrinal reversals or other forms of unpredictable judicial outcomes run the risk of deterring investment and may even weaken fiscal capacity. Singapore courts emphasise certainty in commercial and public law adjudication. In the Indian context, we have sufficient experience that judicial inconsistency in taxation, infrastructure contracts, and regulatory approvals has mostly expanded uncertainty rather than resolved it. The heart of this test is for courts to recognise themselves as guardians of institutional trust and not episodic disruptors.

The Way Forward

The future of economic constitutionalism and balanced judicial reasoning on economic disputes should be led by the Chief Justice of India. The courts have a responsibility to balance competing rights and interests. The jurisprudential foundations of the Shiv Sagar Mills case should remind us that balancing is not judicial weakness or institutional timidity; it is the essential core of judging. In a complex, global, and interdependent economy, the judiciary needs new and distinct jurisprudential tests for economic adjudication, lest we run the risk of dogmatic adherence to the Constitution inadvertently undermining the very social and economic foundations on which rights, freedoms, welfare, and democratic legitimacy ultimately rest.

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