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Justice delayed is markets stymied



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In a market economy like India, a strong judiciary is required for quick settlement of disputes

Since the 1991 economic reforms, India has improved tremendously in almost all economic indicators, and is now one of the fastest growing nations in the world. Various economic policies of the current government have enabled the economy to move faster than ever before. These include tax reforms leading to the introduction of the Goods and Services Tax, reforms making India more competitive in the 'Ease of Doing Business' index, and implementation of the Insolvency and Bankruptcy Code. But it has never been more important to also strengthen the quality of the material which makes up the engine of the economy, i.e. India's institutions. As a democracy, India has an advantage: the roots of all its institutions are strong. However, they have simply failed to grow with the growing population and with increasing demands. The judicial system, in particular, is far from reaching the pace required for efficient functioning.

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The importance of the judiciary cannot be underplayed in a market economy. Three things are crucial for the market economy to function efficiently: transparency in information, efficient dispute settlements, and contract enforcement in a time-bound manner powered by an effective judiciary. In a market economy, the government has little role to play in transactions among players. However, it plays an effective role by setting up efficient dispute settlement mechanisms, so that the costs of transactions are minimal. In such an economy, the judiciary plays the pivotal role by enforcing contracts in the case of disputes through minimal costs.

Over the years, and with the advent of the Internet, India has taken a leap towards transparency of information. However, little progress has been made in the case of dispute settlement mechanisms due to an inefficient judiciary. The situation is so desperate that the Economic Survey of 2017-18 had to set aside an entire chapter on the need for 'Timely Justice'. It noted that the current working capacity of the High Courts and the Supreme Court is only 63.6%. Plus, there are huge numbers of pending cases: 1.8 lakh in six of the major tribunals, and close to 3.5 million in the High Courts. For economic cases, the average duration of pendency is about 4.3 years for the five major High Courts. The Centre and the States approximately spend 0.08-0.09% of the GDP on administration of justice, which is very low. In 2017, India spent about ₹0.24 per person on the judiciary; the U.S. spent ₹12. Even though, understandably, it is a little punitive to compare India's budget with that of the most powerful economy in the world, the point is to set out a benchmark for India.

The problem is with economic theory

Unlike our policymakers, those in other countries seem to have realised the importance of the judiciary in the efficient functioning of a market economy. The problem here lies with economic theory. The proponents of reform belong to the school of neoclassical economics, and are taught that transactions are costless. However, the writings of Richard Coase and Douglass North have taught us that in reality, the rules and regulations that affect economic activity determine whether transactions are costless or not. This theory of new institutional economics questions the two crucial assumptions of neoclassical economics – costless transactions and perfect information – and stresses the role of institutions in facilitating market exchange by reducing transaction costs, providing a predictable framework for exchange, and overcoming imperfect information. In India, there are few practitioners of new institutional economics and that could explain why this aspect has not been addressed in the past decade.

The low focus on the judiciary obviously implies that non-compliance of contracts is not at all costly in India. The official dispute settlement mechanism does not deliver justice in a time-bound manner. Consequently, players are willing to bypass the system by paying rents to government officials, a system that became customary in the License Raj. Officials are willing to accept quick money since there is little chance of getting caught, making venality a norm. Of course, studies in political economy have shown that strengthening institutions and political power enjoyed by the incumbent are in conflict of interest. Thus, the Opposition also has a major role to play in the solidification of institutions, including, and especially, the judiciary. Strong institutions are the key to move India up the economic ladder. Otherwise, India will remain a land of crony capitalists.

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