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Justice Delayed is Markets Stymied

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(The editorial is based on the article “Justice delayed is markets stymied” which appears in The Hindu for 22nd January 2019. The editorial tells us how we need to better our judicial system to improve our market economy.)

Justice delayed is markets stymied – borrowed from the famous saying that ‘justice delayed is justice denied’, the name of the editorial itself is a criticism on and a reminder of the fact that our justice system needs urgent reform. That justice delivery mechanisms bear heavily upon business and market activity is still not very well-known to the masses and remains the prerogative of planners and policy-makers, and in this editorial we’ll see (*briefly*) what this is all about.

Background

- In a market economy like India and especially since the 1991 economic reforms, the country 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**.

Why We Need An Efficient Judiciary

The importance of the judiciary cannot be emphasized enough in a market economy. Three things are crucial for the market economy to function efficiently:

1. **Transparency in information** - clear and transparent information is very important for businesses to flourish. It also undermines the need to follow corrupt practices while doing business.
2. **Efficient dispute settlements** - these build trust in the market and invites more

players to take part in it. It is very good for attracting foreign capital.

3. **Contract enforcement** - when contracts are enforced in a time-bound manner and powered by an effective judiciary it creates a level playing field for all players big or small. This builds the ecosystem for business to grow and flourish, like it happened in the USA.

What Happens When We Don't Have An Efficient Judiciary?

- **Corruption:**
 - **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.
- **Crony Capitalism:**
 - **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.** *[Governments, whose primary aim is preserving its power, are often at odds with institutions like that of the judiciary whose one of many aims is to restrict this government power - 'checks and balances' or 'separation of powers']*
 - Strong institutions (*which are democratic and under public scrutiny*) are the key to move India up the economic ladder because otherwise, India will remain a land of crony capitalists.

Both 'corruption and crony capitalism' repel 'market growth and foreign investment capital'. These are therefore inversely related.

Some Facts on the Judiciary and Markets

- The situation of the judicial system viz. markets and businesses is so important that the Economic Survey of 2017-18 had to set aside an entire chapter on the need for 'Timely Justice'.
- This chapter 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.

Issues Related To Economic Theories and Markets

- There is a problem with the economic theories we follow in India (*currently*) because 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 proponents of reform (in India) belong to the school of **neoclassical economics***, and are taught that transactions are costless. However, 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.

[*Neoclassical economics is an approach to economics that relates supply and demand to an individual's rationality and his ability to maximize utility or profit.]

Way Forward

- It has never been more important to 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 - i.e our institutions are born democratic and are under constant public scrutiny.
- Yet, these institutions have simply failed to grow due to the growing population and with increasing demands (*putting excessive pressure on the system*).
- As of today, the judicial system, in particular, is far from reaching the pace required for efficient functioning.
- Also, 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.
- Thus, in India, a strong judiciary is required for economic growth and

development, and most importantly it is required for generating trust in our markets and businesses globally.
