Economic Prudence in Judicial Pronouncements

What is the issue?

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- The number of legal disputes involving property, contract, labour, tax and corporate laws is bound to increase with an expanding economy.
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- But the judiciary doesn't seem to fully appreciate the economic consequences of its judgments and its implications on the people.
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What are some high impact judgments that are controversial?

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- Court pronouncements have consequences not only for disputants but also for the larger public both directly and indirectly.
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- The judgements might directly affect individuals, and entities like banks, businesses and also indirectly alter their decision making rationale.
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- **Banckruptcy -** Allahabad High Court has ruled that only 'wilful loan default' will enable starting of bankruptcy proceedings against power companies.
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- But wilful dealt is hard to prove and is open to interpretation.
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- **Uddar Gagan Properties case -** 280 acres of land was acquired by the Haryana government in 2005, and was later transferred illegally to developers.
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- While the supreme court did decipher the fardulent practice involved, it still decided to hand over the land to the state government (a partner in crime).
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- Consequently, farmers were forced to accept a paltry compensations for parting with their land.
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- **Developer State Nexus -** The Haryana government issued an acquisition

notification in 2007 to acquire 688 acres of land.
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- As soon as the notification was issued, developers approached the original land owners to buy their land.
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- Since the official compensation was slated to be meagre, many owners sold their land at throwaway prices to the approaching builders.
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- But after 100's of acres were sold by land owners to builders, the government decided to suspend acquision plans.
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- Subsequently, with utter disregard for rules, the state authorities not only approved these land deals but also granted regulatory approval for builders.
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- Unsurprisingly, the Supreme Court held the State's actions constituted fraud due to a clear case of an unholy nexus between officials and builders.
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- But even in this case, instead of returning the land to its orginal oweners (as the sale was unconscionable), the court handed it to the steat government.
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What are the implications of such judgements?

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- **Land Cases -** Through irrational judgments, rather than protecting the rights of real owners, the judiciary actively denies economic justice to the masses.
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- Moreover, the court has transferred land (precious economic resource), from those who need and use it, to governments which clearly don't need it.
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- Notably, it is due various such judgments, government agencies abuse laws and are sitting on a massive stock of unused land.
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- **Infra projects -** Several infrastructure projects are being held up due to judicial interventions in the bidding process.
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- Courts usually don't seem to realise that the quality of infrastructure assets and the technical capability of contractors to deliver them are serious issues.
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- Mere difference in bid price may or may not be a decisive factor in contract allocation and litigations in this context needs to be scrutinised for prudence.

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- Contraryly, court’s intervention can delay projects, and escalate costs far more than any possible gains from ruling in favour of the lowest price bidder.
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What is the way ahead?

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- **Dynamic Monitoring -** Contract manipulation is a challenging domain where the courts need to get innovative in their judgements.
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- Rather than strictly laying down clauses regarding operational and accessory finances, judgements could consider commissioning monitoring mechanisms.
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- Courts should also exercise prudence so that contracts don’t get too diluted due to excessive judicial intervention (as it will discourage investments).
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- Also, strengthening our pre-trial arbitration mechanisms can help in clarifying laws, reducing legal uncertainty and disputes.
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- **Economic Consideration -** In cases that are squarely open, judges are to make pronouncements that will avoid adverse effects on employment, economic growth, and state revenue.
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- Some judgements like in the “Shivashakti Sugars Ltd (2017) case”, saw prudent economic reasoning, an aspect that needs to be widely adoped.
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- Signficantly, the same judgement also pushed for an inter-disciplinary (law & economics) approach for better litigational outcomes.
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- **Caution -** In its quest for economic prudence, courts should ensure that things don’t go overboard and any such foray must be restricted to genuine public purposes.
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- Adjudication of cases requires a cost-benefit analysis of a different kind and infringement of individual rights is to be done only when absolutely necessary.
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- Moreover, the degree of infringement should be minimum to realise the purpose and the social benefit driven from it must be commensurate enough.
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