Judicial Overreach

Click here for Liquor Ban article.

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What is the issue?

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The Supreme Court, ruling on a PIL about road safety, has banned the sale of liquor at retail outlets, as also in hotels, restaurants and bars, that are within 500m of any national or state highway.

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What are the impacts?

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- For state governments, there is a **massive loss in revenue.** The auction fees raised from licences to sell liquor will contract sharply. Revenue from taxes on alcohol will also diminish.
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- Tourism will be hurt badly. Existing regulations stipulate that hotels in the four-star and five-star categories, or above, must have a licensed bar; many of them will now lose their premier status with a star-downgrade.
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- Employment and livelihoods are bound to be a casualty.
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- The multiplier effects of the contraction in employment will be considerable at the macro-level, particularly as the services sector is the primary source of job creation, and **one million people could lose their jobs.**
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- Now, the tourism sector and the hospitality industry are up in arms.
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- **State governments are issuing notifications that many roads in and around their cities are no longer state highways.**
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What is the cost of drunken driving?

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- Data compiled by the NCRB shows that of the total road accidents in 2014, over-speeding accounted for 48%, reckless driving for 42%, poor weather conditions for 5%, mechanical defects for 2.5% and **drunk-driving for 2.5%.**
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- More than **40% of the drunken driving victims died,** but the fatality proportion was not much lower, at around 33%, among victims of over-speeding and reckless-driving.
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- And, even if the Supreme Court decision is implemented perfectly, anyone can drive 500m to buy liquor and then return to the highway.
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What can be an effective solution?

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- The only effective and sustainable solution to the dangers posed by drunk-driving is **strict enforcement and punishment** that becomes a deterrent.
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- For this purpose, the law can be strengthened further.
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- In fact, the Union cabinet has recently approved amendments to **the Motor Vehicles Act**, which raise the fine for drunken driving to Rs 10000, and if such driving results in death, it would be treated as culpable **homicide under Section 299 of the IPC,** punishable with imprisonment of up to 10 years.
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- Even stronger penal action is necessary. The fines can be escalated and driving licences can be suspended for longer durations, particularly in repeat offences.
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Is this a matter for the Supreme Court to decide?

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- **It is an administrative matter** where the decision rests with state governments. It is not just about the appropriate authority for such decisions.
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- The problem with Supreme Court decisions is their binding nature, much like law, which cannot be changed unless the concerned bench reviews its decision or a constitutional bench sits and decides.
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- The Constitution of India sets out a **separation of powers** between institutions of the state — executive, legislature and judiciary, to ensure the checks and balances so essential in a political democracy.
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- Of the three, if any one institution of the state attempts to perform a function that essentially belongs to another institution of the state, under the Constitution, this can be described as overreach.
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What are the asymmetries?

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- First, the judiciary has the constitutional right to check the overreach of the executive and the legislature, but there is no such check on the judiciary or its accountability.
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- Second, **the judiciary does not always check the underperformance of the executive.** Example: It has failed to check government inaction against vigilante groups taking the law into their hands - which can be described as judicial under-reach.
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What is the way ahead?

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- An **independent judiciary** is of critical importance in a political democracy, for it provides checks and balances vis-à-vis the executive and the legislature.
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- But there must be some **institutional mechanisms that check judicial overreach or judicial under-reach** to make the judiciary accountable,

particularly to citizens.
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- The answer might lie partly in self-regulation.
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Source: Livemint

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