‘Judicious’ Activism - Hindrance to Economy

What is the issue?

- The global and Indian economies reel under the Covid-19 pressure, so it is necessary to assess the overall economic slowdown.
- The judiciary should practice the constitutional morality with respect to its own power of constitutional review of economic policies.

What is the government’s priority?

- The Indian government wants to improve India’s profile in the World Bank’s Ease of Doing Business (EoDB) index.
- It wants to do so to yield better external and internal investments, which are a shot in the arm that the Indian economy certainly needs.
- In its efforts to improve investor confidence, it has introduced numerous legislations that provide boost to its rank on the EoDB index.

In what parameter does India lag?

- Under the parameter of “enforcing contracts”, India continues to lag behind even lesser economies.
- This parameter, while looking at dispute resolution capacities, reveals the challenges that a litigant faces in the Indian judicial system.
- **Challenges** - Delays and procedural breakdowns, lack of adequate remedy or proper enforceability of a judicial decree.

What did the Parliament do to remedy these ills?

- It enacted **amendments** to the Arbitration and Conciliation Act, 1996, and the Commercial Courts Act, 2015.
- Primarily, both these legislations aim at improving commercial litigation, especially those involving higher economic stakes.
- Yet, no mechanism or legislation comprehensively addresses resolution of disputes pertaining to vital infrastructure development projects.

What is the debate?

- A debate is on how far courts can intervene in developmental and

economic policies of the state to balance divergent interests.

- There is also a debate on whether contemporary jurisprudence is emblematic of more amped up and overzealous judicial activism.
- If there is any violation alleged against the governments undertaking such development exercises, they wind up in constitutional courts through the PIL route.
- Once there, these projects have the unfortunate tendency of beleaguering pendency.

Should courts sit in review of these policies?

- Judicial review and the oversight of courts are an inherent check and balance prescribed by the Indian Constitution.
- However, the apex court itself has upheld that when conducting a constitutional review, the courts must limit it to constitutionality.
- It added that the courts should not delve into the intent of such policies, unless it is prima facie established to be born of mala fide intent.
- There are instances of excessive judicial activism that are viewed as stumbling blocks impeding a booming economy.
- It is within this larger debate on the powers of judicial review and intervention that injunctions emerge as the central contention.

What would be the effect of injunctive orders?

- Injunctive orders have the capacity to offset developmental plans in motion, and their cost implications are significant.
- The Economic Survey of 2017-18 quantifies the costs of such delays.
- The cumulative value of multiple projects snagged by injunctions and interim orders was pegged at Rs 52,000 crore (in March 2017).
- On an average, such injunctions would remain in effect for over four years, thus causing severe delays.
- In turn, it would add the overrun costs to the development projects.

Source: Financial Express

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