

Highlighting the Economic Impact of Judicial Decisions

Background and Rationale

Judicial decisions have far-reaching economic impacts which are often not taken into account at the time of decision making. Some of the recent judgments/orders of the Supreme Court of India (SC) and the National Green Tribunal (NGT) indicate that the economic impact analysis of judicial decisions is yet to gain broader acceptance. The absence of *ex-ante* analysis of the economic costs associated with a decision is further exacerbated when judicial activism by courts and tribunals is also in play. It is noteworthy here that a Bench headed by A K Sikri, J., of the Hon'ble Supreme Court in ***Shivshakti Sugar Ltd. vs. Sri Renuka Sugar Ltd.*** expressly remarked in 2017 that “[t]he court needs to avoid that particular outcome which has a potential to create an adverse effect on employment, growth of infrastructure or economy, or the revenue of the state”. Additionally, the Bench also noted that “India is on the road of economic growth. In such an environment it becomes the bounden duty of the Court to have the economic analysis and economic impacts of its decisions”.

To address such challenges, it is important to *ex-ante* estimate the economic impacts of judicial decisions through a structured and systematic process to foster discourse on broadening the considerations that courts take into account while decision making. This could aid in economically responsible decision making by exemplifying the costs and benefits of judicial decisions to the relevant stakeholders. The judiciary needs to take into account environment, equity, and economic considerations while deciding cases, and needs to institutionalise a mechanism for it. In parallel, there is a need to create a public discourse among key policymakers, members of the judiciary, and academia for promoting an economically responsible approach by the judiciary while deciding cases.

This study will *ex-post* examine the unintended economic consequences of key judicial/ quasi-judicial decisions and review if the objective of the judicial decision was met. To highlight the economic impact, five cases have been selected of which three were decided by the SC and the other two by the NGT. The three SC cases deal with halting construction of Mopa Airport in Goa, halt on iron ore mining in Goa and Sterlite copper plant shutdown in Thoothukudi. The NGT cases deal with the sand mining ban case and halt on construction activities in Delhi NCR. These have been some of the most significant cases in the recent past that have caused substantial damage to the economy.

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Methodology

The key steps that will be involved in undertaking the study have been elaborated below:

- 1. Secondary Research:** An in-depth review of the cases will be undertaken to understand the rationale for the decision. Different stakeholder categories directly impacted by the decisions will be identified, to assess the economic impact on such stakeholders. The objective will be to identify the unintended adverse impact on different stakeholders. Existing literature, research reports, regulatory filings, and press releases/opinions available in the public domain documenting the impact of respective decisions on stakeholders will be identified and reviewed.
- 2. Gap Assessment and Design of Stakeholder Interaction Tools:** Based on information and data collection from secondary research, information gaps will be identified. Further, information requiring validation through primary research will also be noted. Questions for Key Informant Interviews (KII) will be designed for stakeholder interaction. The stakeholder interaction will intend to fill information gaps and validate the findings of secondary research.
- 3. Primary Research:** Primary research will be conducted through the KIIs of the relevant stakeholders. Personal interviews with experts on the subject shall also be

undertaken, if needed, to understand stakeholders' perspectives on the economic implications of decisions under consideration.

- 4. Data Tabulation and Analysis:** The data and information collected from primary and secondary research will be collected, collated and tabulated for analysis. To highlight the economic impact, the average impact at firm/entity level or total impact on industry/stakeholder group would be assessed, based on data/information available. Attempts will be made to identify economic cost imposed by the relevant decision on relevant stakeholders, in the form of loss of business/revenue, opportunity cost, loss of employment, etc. Recommendations will be made to institutionalise a mechanism to aid the judiciary in examining the impact of its decisions and considering different interests.

Expected Outcome

- Improved recognising of the economic impact of select SC and NGT decisions
- Enhanced understanding of the methodology to identify and highlight the economic impact of judicial decisions
- Initiation of a building of a narrative supporting better sensitivity of economic impacts of judgments by the judiciary
- Will serve as useful training inputs for the training of judicial officers

