

Have recent 'Diktats' of the Supreme Court bamboozled or enlightened India Inc?



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The highest and 'obviously true' court of India means business in the literal sense, at least that's what we congregate from a string of recent diverse judicial verdicts pronounced by it unswervingly impacting the business milieu all across the nation and trans-nation. On one hand Vodafone's judgement went on a tangent of ensuring certainty and clarity of law and policy to the foreign investors resulting in loss to the government exchequer but gain to the corporate segment; while on the other hand 2G spectrum's judgment departed from the principle of ensuring certainty of a contractual transaction with a sovereign, to the investors resulting in eventual gain to the public exchequer but loss to the corporate sector. In each of these cases one fad is common, executive organ of the government got the severe beating and the Court had the last laugh. The dangerous trend as may set in now is fear, panic and lack of confidence not only amongst the investors but also policy makers and implementers who will shy away from experimenting or introducing any novel policy, leading to redundancy and stalemate in the economic administration.

Undoubtedly, justice is truly the greatest divine virtue; but same may not be always true with its administration and deliverance. Whilst administering justice, some constituents may indulge in passivism others in activism or adventurism leading to bedlam in some sections of the society. There has been a mixed response to these commercial limb judgements delivered by the Supreme Court. As a corporate/commercial lawyer and FDI aficionado with more than 20 years experience, I am slightly puzzled and fazed with the trend of latest judicial verdicts. It is true that a responsive judicial environment is the primary condition that would make a country attractive to any investor or business controller; however, in the long run it becomes all the more significant to determine whether the judicial system is sound, predictable and coherent; or is impulsive and inaccurate.

All of a sudden one can sense a huge amount of anxiety, doubt and despair amongst the business community within India including trade organizations, industry federations, corporate community, foreign investors and financial institutions, triggered by the series of tough judgements. Sovereign economic and fiscal actions have been struck down by the Supreme Court thereby unsettling the settled rights. Is it going to be worth it to invest, and engage in commercial contracts in India with a conjured sovereign? Atleast the Supreme Court has made executive organ of the government look like a hoodwinker or inane. The decisions could impact foreign investor's psyche concerning investments in India, which is

already getting immersed in an environment of political and economic uncertainty at present. Investors who like assured point of stability in these matters might stride hesitantly till the government and regulatory authorities come up with unfailing guidelines and policies regarding their future course of action. Commercial activity detests flux and uncertainties. Indian judiciary has consistently been a saviour of the aggrieved but in that process it ought not to be impetuous and obdurate. It is highly fundamental to realize by our judiciary that all the matters brought within its judicial purview for scrutiny cannot be measured with the same idealistic stick. Matters having multi-dimensional economic implications cannot be treated at par with matters of social, public or private allusion. In the current circumstances what is required is a 'workable justice' and not the one which makes all the stakeholders nervous and timorous.

Vodafone judgement endorses strategic tax planning as acceptable and brands unreasonable tax demand as a 'capital punishment'. It calls for out of the ordinary recognition to be extended to fortune - not 'fly by night' kind of companies. Likewise, 2G judgement's heart may be at the right place but it turns India's telecom revolution tale topsy-turvy.

I concur that the judicial establishment has to play an overriding role, since a practical management of disputes will be tactical in the survival of the India Inc. The only aspect, which will need to be addressed or introspected, is that not only the decisions delayed end-up in impoverishment of one party in detriment of another but even the decisions reformulated in a contrary nous will make the economic cost of the situation agonizingly colossal. In order to inspire confidence of a particular section, one cannot lose sight of equality and reasonableness.

It is a matter of fact that investors prefer to dwell and develop their investments where governance is good. They want to envisage their costs and manage their risks as a result thereof. Above all, they want a guarantee as to enforcement of the rules of law be it obligations stipulated by a contract or by the sovereign. We all look up to the Supreme Court to kindle economic growth by curtailing risks and perils. In other words judiciary does condense volatility and advances the eminence of economic/investment policy by making sure that legislative and constitutional mandates are followed when challenges are made. Justice is best delivered without adjectives. The bookish process and meaning of Justice has to undergo change in order to meet the ends of reality.

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