

Speedy dispute resolution will silence drumbeats of jobs

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The clamour of drum-beats grows louder. If it was a rallying war cry in 2014– Narendra Modi’s elevation as prime minister was partly on account of this groundswell– it could become a cyclonic storm soon. All the data gathered till now– both admitted, and concealed— point to growing unemployment. A young population without jobs can stay quiet up to a point. Thereafter, it invariably results in violence and mass revolt. No government can afford that kind of uprising. The consequences of such agitations are usually unexpected and unforeseen, but invariably disastrous.

At the same time, there is a growing financial turbulence that is likely to rock the country within a few months. This is because India is likely to continue witnessing growing imports and slowing exports (<http://www.asiaconverge.com/2019/01/india-must-brace-itself-for-an-economic-slowdown/>). The near-empty coffers– a lot of money has been spent on social welfare without focusing on wealth generation as well– will ensure that the government will have little money to spend either on infrastructure or the promotion of industry. Without these, unemployment could get worse.

This will leave the government with two options. One is to opt for waste to energy solutions and rooftop solar in a big way– both are employment generators as well as help reduce import of fuel (<http://www.asiaconverge.com/2019/03/trade-crisis-looms-india-sun-waste-can-prevent/>) The second option will be to woo foreign direct investments (FDI) more aggressively than before. But there is a catch. FDI won’t pour in unless India assures investors that it is willing to protect investments. This cannot be done till the process of judicial dispute redressal is improved considerably (<http://www.asiaconverge.com/2018/01/asking-investments-good-can-india-guarantee-speedy-fair-grievance-redressal/>).

The trouble is that India has done little work on this front. On the contrary, in 2015, the government went about cancelling all bilateral investment treaties (BITs) with as many as 58 countries. It instead demanded that all these countries sign a modified investment treaty which forbade parties from approaching international arbitration tribunals without first exhausting existing legal remedies in India. And everyone knows how efficient Indian dispute resolution can be! For the past three years none of the countries has bothered to sign the modified agreement proposed by the government. A fresh one has been mooted, but has yet to meet with the approval of countries. Only two countries— Cambodia and Belarus with whom India has little foreign trade– have cared to sign the draft agreement proposed by the government of India.

As lawyers from Nishith Desai and Associates (NDA) pointed out at a recently held conference on dispute redressal and arbitration, investor protection is at the heart of most BITs (http://www.nishithdesai.com/fileadmin/user_upload/pdfs/Research_Papers/International_Investment_Treaty_Arbitration_).

They contain “language on investor-State dispute resolution . . . International arbitration is the most sought after remedy in BITs. [Almost] 56% of the treaties offer investors the possibility to choose from among at least two arbitration fora. The number of fora that treaties offer investors to choose from has increased over time.” Without BITs in place, investments have slowed down. In fact, as the NDA document points out, “Today, India stands as a Respondent in more than fifteen cases involving investment treaties – the highest number of cases against a host State till date.” Eleven of them are listed out in the chart alongside. Some of them have been pending since 2012.

One reason for this is that the government is itself a compulsive litigant, as pointed out by the National Law Commission and by the Supreme Court (http://sci.gov.in/supremecourt/2011/30837/30837_2011_Judgement_23-Nov-2017.pdf). In some cases, as in the Ranbaxy damages case where the Singh brothers were required to pay damages to Dai-ici, the Indian legal system has allowed the brothers to evade payment of damages for almost two years since the tribunal award was announced. Fortunately, for Dai-ici, the award came from a seat outside of India, which thus prevented Indian courts from reopening and disputing the decree itself. The Supreme Court verdict of 2012 (http://www.asiaconverge.com/wp-content/uploads/2016/08/arbitration-2012-09-06_SC-5-member-bench-bharat.pdf) ensured this. In spite of this, the Indian system has not allowed as yet the tribunal award to get effected.

If India wants to create jobs, it will need investments. For that, it will have to ensure investment protection. Without that, unemployment just cannot be wished away. And if the situation gets any worse, it will be difficult to rule out riots and acts of violence, much directed against the state machinery and its representatives. India is thus at a crossroads. It must either show investing countries that it is willing to protect investments, or it could end up becoming a failed state. The line dividing a failed state and a respected one is thin, but clear. The dividing line is respect for speedy judicial redressal, and respect for other people’s money. India has some difficult lessons to learn.

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