

EDITORIAL NOTE

The Crisis of Judicial Authority in India

The recent controversy over the disclosure of assets by judges and the protracted debate that continues, is yet another reminder of our collective treatment of law, as if it were the only means available to chase constitutional aspirations. Yet another time, a debate about ethics and integrity in public domain has been dressed up and served as a question of legal authority and interpretation. The Honourable Supreme Court has helped construct a sense of hyperbole around the simple purpose and provisions of law by challenging the Delhi High Court's judgment before a division bench. Even as we wait for the appeal to be heard, the verdict on this issue is out for many, and it is not that the judges should disclose their assets or withhold from doing so, but that the Supreme Court is remarkably close to undermining its own history of ideas.

It is attributable to only a strange reading by the Supreme Court that we now have a full-fledged contest between those who seek accountability and those who cite the law to shield away from it. The Court has totally misread the terms of the debate as representing a dispute over the correct interpretation of law. However, as we understand/argue, there was no great complexity in the case which needed resolution in the courtroom; nor was any new guiding principle ever going to emerge out of the whole discussion. The fact that accountability matters in public domain should be amply clear to anyone, much more to judges who sit on the bench. The debate was never ever about whether judges should disclose their assets or not; it was rather about the manner in which the court's treatment of the issue would shape the future of accountable politics through public institutions. The court's handling of this issue is symptomatic of a larger lacuna in the way law is understood and employed – as a means to reach predetermined ends often with adhoc arguments of facts and not of principle. The tenor of challenge betrays a sense of supreme insecurity, hides a deep level of immaturity and reflects a false hope that law will say what the judges want it to say. Truly, irresponsibility and impudence have to be the keywords to describe the Supreme Court's conduct in this debate.

It is characteristic only of this unthinking attitude that the court today stands far away, even insulated, from the ideas that have brought it to the bar of Indian politics. The judiciary seems to have over-grown them with

time and they look too small, too simple and probably even unremarkable before the magnificent authority of the courts. But it is probably the most distinguishing character of a democracy to work on simple assumptions, work towards common aspirations and be meaningful for the masses and not only the privileged few. It cannot be anything but the truth that the Supreme Court's stand in the assets disclosure debate is representative of narrow interests held by an exceptionally narrow base. The relevance of the Court in political space is bound to shrink if it continues to be relevant only to itself, just as it has been in this debate. Today when the courts face a serious crisis of credibility and design, it is perhaps the time to hold a mirror to court's own record and impress upon the changing nature of democracy and constitutionalism around it. If judicial authority has to survive and assert itself prominently in India, courts *have to* come to terms with a new democratic culture and what it assumes of judicial politics.

For its own comprehension, the Supreme Court has to structure a political narrative for itself which explains the birth and accumulation of its institutional legitimacy in India. It has to remember that public reception of the Supreme Court can be understood both as a cause and effect of its engagement with terms of Indian politics and its ability to redefine its role through these transformations. And it has to be perceptive enough to make sense of the transformations which are underway just as we speak. Major transformations in the identity and landscape of democracy, changing conceptions of judicial independence and a resultant and evolving culture of public debate should force the court to redesign a framework of constitutionalism where its ideals could be better entrenched. The great new transformation of democracy is marked by a persistent growth and presence of unelected institutions that are positively influencing democratic culture and achieving outcomes that realize democracy's promise of equality. Similarly, Supreme Court's own legitimacy reflects on the manner in which it has adapted itself to respond to political circumstance and how such adaptation has helped itself to deepen democracy in a political system. However, given the nature of democratic transition over the last decade across a broad landscape of institutions, how must the judiciary respond?

Democracy's old understanding was based on its congruity with our understanding of opportunities for progress and yet, more and more of these opportunities are being determined by institutions which would have, ten years back, failed to qualify as democratic institutions. The fact that

judiciaries are in the task of mediating conflicts and adjudicating disputes in a society where both are widespread does not in itself add greatly to judicial legitimacy. Judicial legitimacy, from now on, would be mapped more or less in terms of judiciary's performance and record in dispensing its role. Judiciary has soon realize that its legitimacy is seriously undermined by charges of judicial corruption or pendency of cases and all efforts must be made to come to terms with the reforms process – how case management might be organized, how docketing is done and more and judges be recruited to fill up for the vacancies in the judicial services.

What is even more important here is to realize, in time, the unorthodox nature of court's populism and appeal and contrast it against the changing culture of institutional dynamics. The new shifts, the new institutions and overall a new and lively culture of deliberative democracy are restricting the choices which the courts make in self-adjustment while drawing them in a league of similar, if not equal, unelected institutions. The challenge for the courts, therefore, is not merely in responding to legislative institutions alone but also in measuring upto new standards of judgment and accountability which have emerged due to the ascendancy of unelected institutions, which incidentally are working under and in exceptional cases, along with legislative bodies. How courts adjust to this new world and if they would be able to dictate terms at all here would broadly determine the fate of judicial authority in India.

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