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Indian judiciary's crisis of credibility

Judges at India's Supreme Court have agreed to make public details about their financial assets following an intense public debate. Analyst Manoj Mitta says a lot more needs to be done to make India's judiciary transparent.



The Supreme Court is the most powerful court in India (*Photo: Shailendra Pandey*)

Given the circumstances in which judges of India's Supreme Court finally agreed to make declarations of their assets public, it seems to be a case of too little, too late.

A lot more needs to be done to restore the huge amount of credibility they have lost in recent months over this issue of transparency.

The decision taken by the 23 sitting judges at a special meeting this week seems to be more a damage control exercise than a change of heart.

This is because Chief Justice KG Balakrishnan, for instance, has said nothing yet on whether he has changed his mind about his oft-quoted fear that the disclosure of assets might prompt people to harass judges with frivolous allegations.

Stiff resistance

Reports suggest that the declarations would be put on the Supreme Court's website with the rider that no questions about those disclosures would be entertained.

This gives the impression that, despite their decision to go public with details of their wealth, judges still want the kind of blanket immunity that an abortive government bill had sought to confer on them while trying to keep their declarations

confidential.

The anti-transparency bill, which the government was forced to defer earlier this month because of stiff resistance in the upper house of parliament, said that "no judge shall be subjected to any inquiry in relation to the contents of the declaration".

In any event, judges would be mistaken if they believed that the monkey of transparency would get off their backs once the declarations of their assets were made public.

Former Chief Justice JS Verma sounded overly optimistic when he said that their acceptance of the public demand for disclosing assets would end the "unsavoury debate engulfing the judiciary". It is more likely that the debate will intensify as more and more contradictions and infirmities in the most secretive organ of the state come to surface.

For, the unreasonable hostility judges had displayed to the very idea of being transparent about their wealth is symptomatic of a larger malaise.

It betrayed the reflex of an oligarchy accustomed to functioning beyond the pale of accountability.



Chief Justice Balakrishnan has been sceptical of judges declaring assets (*Photo: Tehelka*)

It showed that judges were inured to the hypocrisy of not applying to themselves the standards of behaviour they had imposed on others.

Not once did Justice Balakrishnan flinch at the irony of judges claiming exemption from transparency even as politicians had been forced by a Supreme Court judgment to make a public disclosure of their assets every time they filed their nominations in elections.

If the same judges have now bowed to public pressure, it is obviously about strategy, not principle.

Half measure

But civil society is unlikely to be mollified by this half-measure. The assets controversy, which is an unintended consequence of the four-year-old Right to Information Act, is a small part of the

larger, longer and more intractable battle for judicial accountability.

This unresolved battle is about reforming fundamental processes such as appointments, promotions, transfers and disciplinary action.

It does not augur well for the rule of law that while the Supreme Court is the most powerful court in India, there are no commensurate safeguards to ensure that judges do not misuse their powers.

The only attempt so far to impeach a judge - Justice V Ramaswami of the Supreme Court - proved disastrous in 1993.

The same year, Justice Verma went on to author a verdict that turned the judiciary into a self-perpetuating oligarchy.

Thanks to this 1993 verdict, judges appropriated to themselves "primacy" in deciding on appointments to the superior courts.

All efforts since then to associate other stakeholders with the critical appointment



and disciplinary processes in judges decision (*Photo: Tehelka*) the judiciary have failed, not

least because of the judiciary's sway over the party or coalition in power.

Little wonder then that the Delhi-based Campaign for Judicial Accountability and Reform, which is spearheading the public movement, has described the judges' concession on asset declaration as no more than a "welcome first step".

The further steps that need to be taken - reforms relating to appointment and disciplining of judges - are far more critical to the quality and integrity of the judiciary.

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