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WHEN A COURT PRONOUNCES A VERDICT, WITHOUT GIVING REASONS

Relevant for: Indian Polity | Topic: Judiciary in India: its Structure, Organization & Functioning, Judges of SC & High Courts, Judgments and related Issues

In a highly unusual move, a nine-judge Bench of the Supreme Court resorted to a non-speaking order as it ruled affirmatively on the preliminary issue arising out of the Sabarimala review petition.

The importance of a ‘reasoned decision’ in a constitutional democracy committed to the rule of law, besides being self-evident, cannot be overstated and this curious departure from the norm merits close analysis.

Time and again, the Supreme Court has unequivocally endorsed and underlined the requirement of giving reasons in support of an order. It has often chastised subordinate institutions for their failure to supplement their orders with reasons.

The juristic basis for this has also been explored in a number of cases. In various decisions, the court has ruled that speaking orders promote “judicial accountability and transparency”; “inspire public confidence in the administration of justice”; and “introduce clarity and minimise the chances of arbitrariness”. In addition to being a “healthy discipline for all those who exercise power over others”, recording of reasons has been described by the Supreme Court as the “heartbeat of every conclusion”; the “life blood of judicial decision making”; and a cherished principle of “natural justice”. In his dissenting opinion in the *Madhya Pradesh Industries Ltd* case, Justice Subba Rao K. stated: “The condition to give reasons introduces clarity and excludes or at any rate minimises arbitrariness; it gives satisfaction to the party against whom the order is made; and it also enables an appellate or supervisory court to keep the tribunals within bound... A speaking order will at its best be reasonable and at its worst be at least a plausible one.”

The need for a court to provide an intellectual substrate for its decisions is also implicit in the expression “pronounce judgment” in Supreme Court Rules, 2013. According to settled decisions, the same signifies “judicial determination by reasoned order”. However, when it came to applying the principle to its own verdict, the apex court has inadvertently devalued the importance of concurrent reporting of reasons. The court seems to have downplayed the fact that it may be coming across as inarticulate at best and indecisive at worst. Besides undermining institutional integrity, a decision’s authority as a binding precedent is also potentially compromised by this omission.

The term “transformative constitutionalism” has recently found currency in constitutional adjudication (*Navtej Johar* and *Joseph Shine*). The Supreme Court is yet to articulate a comprehensive theory of the concept but it has been fleshed out in other jurisdictions. For example, Pius Langa, former Chief Justice of the Constitutional Court of South Africa, argued that “transformative constitutionalism” entails a transformation of legal culture from one “based on authority” to the one “based on justification”. Karl Klare (the scholar who coined the term) posited that it may be legitimately expected of constitutional adjudication to “innovate and model intellectual and institutional practices appropriate to a culture of justification”.

In the light of the above, it can be concluded that the practice of issuing non-speaking orders and giving post-hoc rationalisations later is an anathema to the principle of constitutional governance. Duty to give reasons is an incident of the judicial process and constitutional justice

should not be a matter of afterthought.

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To reassure Indian Muslims, the PM needs to state that the govt. will not conduct an exercise like NRC