

BEYOND THE CENTRAL VISTA VERDICT, KEY QUESTIONS

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

The [Supreme Court of India has cleared the decks](#) for the intensely contested [new Parliament and Central Vista projects](#) in New Delhi. Limiting itself strictly to ‘the procedures sanctioned by law’, the majority judgment concluded that the government had followed all processes as stipulated by the regulations and could go ahead with the construction. This may have put an end to the litigation but it does not necessarily mean that such disputes and bitter situations would not recur. The critical questions on ensuring public commitment in civic projects, improving participatory processes in city-building, and effective procurement of professional services remain unanswered. Inadequate regulations that do not incorporate best practices will remain as they are. As judicial reviews are hesitant to direct changes to the mandated regulations, enduring solutions have to be found by improving them through political persuasion and public pressure.

It would be erroneous and unproductive to think that redevelopment of the Central Vista is a unique case, *sui generis* as it was argued in the Supreme Court, and hence the issues. The Delhi project is only the most visible of instances, but the problem is widespread. The imprudent planning and reckless abandonment of Amaravati, the proposed capital for Andhra Pradesh, is but an example. In this project, confusion abounded: plans were erratically changed, the chosen architect was dropped when the project moved towards construction and a new one appointed. After acquiring vast areas of land through a controversial method, the project was abandoned, leaving farmers and others agitated and in difficulty. Failure to effectively address such instances has cumulatively eroded the possibilities of course correction. It is not that there were no efforts to challenge them, but all attempts often hit the dead end of obsolescent regulations.

Editorial | [Building by accord: On Central Vista](#)

Though many issues demand attention, immediate regulatory improvement is needed in two critical areas: public participation and architectural services procurement. First, the point of the participatory process. As an elected body, the state has the mandate and authority to draft civic projects and urban policies. While there is no argument on this, citizens often challenge the claims that they are unalloyed in their public purpose. The flip flop over the Amaravati project, where two elected governments made reckless decisions, is a case in point.

As political scientists have explained, most governments ensure that whimsical agendas do not drive public projects by institutionalising ‘horizontal’ and ‘vertical’ accountabilities. ‘Horizontal accountability’ is about creating interrelated state organisations such as heritage committees and environmental regulators to keep a check. ‘Vertical accountability’ concerns citizen oversight, which currently is limited to elections. The government often argues that horizontal accountability is in place and works well, while citizens, who are unconvinced given the poor track record, have argued for better and expanded vertical accountability such as an improved participatory process.

It is not that the provision for consultation is absent. In select areas such as master planning, regulations mandate stakeholder consultations. However, the processes are vague. They do not stipulate clear objective measures to determine whether stakeholder discussions meet the test of public consultation. As a result, citizens are at the mercy of an official or judges’ interpretation.

This was on display in the case of the Central Vista. The majority and dissenting judgments used two different yardsticks to measure public participation and arrived at two contradicting conclusions. There is a lesson or two to learn from the Land Acquisition Act's abusive use and its subsequent changes. The Act was changed to reduce misuse by spelling out the consent required from a minimum number of landowners. Similarly, in urban projects, clear benchmarks such as the number of meetings, diversity of participants and response time have to determine whether a consultation is inclusive and effective. Regulations have to unambiguously state what prior disclosures are needed when meetings have to be held and insist on publicly listing reasons for accepting and declining suggestions.

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A second regulatory change is required for choosing designers for public projects. Design is a complex service that requires a high level of creativity to meet functional, performative and aesthetic needs. It has a significant bearing on creating public assets and judicious use of taxpayer's money. Poor choices disastrously impact downstream construction activities, building use, city functioning, and value for money. Though the majority and dissenting judgments in the Central Vista project did not find any fault in the manner architecture consultants were appointed, some of the issues raised remind us that the processes of procuring designs services could be improved.

Barring a few instances of open competition, which is an ideal way to choose from a larger pool of solutions, the state follows the alternative method of closed procurement. Here, select architects who meet a set of prerequisites are invited and choices made from the designs they have provided. To execute this, the government, from the methods recommended by the Ministry of Finance, adopts the Quality- and Cost-Based Selection (QCBS). The method allows for stipulating prerequisites for consultants, placing higher weightage on their technical competency and relatively lower weightage on financial proposals. This is meant to prioritise quality and not low price. However, two sets of issues undermine its professed advantage. The first set of problems arise from the range of weightages allowed between technical and financial proposals. It is observed that unless weightage on technical qualification exceeds 80%, firms that quote lower fees can outdo better design firms. The second and a more critical set of issues is related to steep prerequisites and a lack of clarity in evaluative criteria and standards for design assessors.

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Many public projects insist on steep turnover conditions for architecture firms to qualify. The assumption is that the more considerable the turnover, the better it is in terms of expertise. Those familiar with the design profession know that creative outcomes are not a function of the firm's scale. Steep entry requirements eliminate medium and small size firms and enable only a handful of large firms to qualify. This detrimentally reduces the pool of choice.

Going forward, where open competitions are not possible, the next best alternative is to mandate a method that reduces the entry barrier. In this regard, one could take cues from the suggestions made by the Architects' Council of Europe when it faced a similar situation. It advocated dropping turnover requirements and laid an emphasis on qualitative selection criteria. Second, professional services could be disaggregated into design services and project development and management, thereby enabling better design focus. Third, weightage placed on design value has to be unambiguously clear and fixed. Given that more than 65% of the registered architects in India are below 35 years and many firms are medium sized, such procurement changes are all the more necessary.

Whenever a case for adopting better practices is made, policymakers argue that developing countries such as India have a relatively low state capacity. Hence, higher standards set in the matured economy and sustained by governments with higher capacity cannot be hastily implanted. The prevalent argument is that practices will improve as economic growth happens and as the country builds capabilities. On the face of it, such an incremental approach appears to make sense. However, it needs to be moderated in light of two facts. A comparison of responses to the novel coronavirus pandemic by India and the United States has shown that state capacity is not always directly proportional to wealth but more connected to will. Two, state capacity does not grow on its own as wealth increases. It improves only when the state is committed to doing better.

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