



Research Foundation for Governance: in India

Realising our Justice Nomo

The Catalyst Role of the National Consultation Conference

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This is an exciting time in the nation's chapter on seeking justice for itself, which was the first inalienable constitutional promise bequeathed to "*We the People*" more than six decades ago. That justice has time and again been denied to the people of India, and continues to be so, is no new story to recite here. Further, that we have had several Law Commission reports and other Government Committees constituted for addressing this malaise is also not something new. Same old problems have been addressed and the same suggestions have been mooted time and time again. Yet, despite all the steps having taken place towards reforming the system, the people of India have rightly claimed to have not achieved their inalienable right.

This is because every past conference, government committee and law commission so set up has not been truly democratic in its deliberation for two prime reasons. First, it has failed to involve all the three branches of the government to cooperate in the discussions, make recommendations and jointly implement the proposed reforms. Issues such as separation of powers, lack of judicial financial autonomy and improper distribution of the power of administration of justice between the central and state governments have

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repeatedly resulted in making impotent the various proposals. Second, each such engagement has been earmarked by the conspicuous absence of “We the People” in conceptualizing, deliberating and implementing the reforms.

What I mean by this is not the lack of democracy in the form of representation of the polity of India by its three branches. Rather, what is implied is the absence of a *sustained* dialogue between the three branches of the government on one hand, and the mobilized citizenry on the other for achieving justice. *Mobilized citizenry* means the stakeholders representing each segment of the population that would be affected by a particular decision. The dialogue that I refer to is the means of resisting a particular decision by communicating its disapproval to the three branches through various different channels. The aim of such opposition is to respond democratically to any proposal of the popular branch that would result in a change in the constitutional value belonging to the mobilized citizenry. In the words of Prof. Robert Cover, this constitutional value is a “*nomo*” or the national identity that is extremely dear to ‘We the People’, since it stands for what the people regard to be their vision of an ideal society. Any implementation process to realize this constitutional value without the requisite public opinion essentially results in “*backlash*”. This is what Dean Robert Post and Prof. Reva Siegel of Yale Law School term as “*Democratic Constitutionalism*”, a term that recognizes the essential role that public engagement plays in the decisional making process affecting the national identity.

Irrefutably, Justice is a national *nomo* and an indispensable component of the constitutional vision of an ideal society. For We the People, the vision of justice as embodied in the constitution entails delivering quality of justice (impartial and steadfast) which is speedy, accessible and distributive in nature. Without



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any substantive cooperation between the judiciary and the executive in the implementation of the reforms and the absence of a mechanism for stakeholder deliberations, every commission has failed to achieve the vision of justice.

Over a period of time, with the advent of an extremely vibrant media, India has seen the emergence of a mobilized citizenry. The recent controversy involving the Right to Information Act vis-à-vis the judiciary is the finest example of backlash for achieving judicial accountability an essential component of justice. When the judiciary refused to become accountable to the people, the citizenry found the means of opposing the decision of the CJI with the result that judiciary finally agreed to declare its assets.

The recently concluded '*National Consultation for Strengthening the Judiciary towards Reducing Pendency and Delays*' was an initiative in involving every stakeholder in what can essentially be called a pure dialogue process for reducing the huge backlog of cases in India. The "Vision Statement" of the Consultation is a series of proposals in the form of an Action Plan that identifies ten measures for immediate implementation having regard to those areas in the justice system that has created the backlog. The entire body of recommendations is evidence of the success of the mobilized citizenry's demand for doing away with the collegium for the judicial appointment process, acceptance of the blame by the government in being a major litigant that has contributed substantially towards the arrears and ensuring the high quality of judges through the appointment of an All India Judicial Service Commission.

Significantly, every such proposal was not final but was intended to provide the platform in the form of a two day discussion involving all the stakeholders. The Vision Statement itself declares that the functionalities to achieve the



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objectives of it “*include all the stakeholders, the judicial system, the Bar, the litigants and Governments, both Central and States.*”

The two day Consultation process saw the presence of every stakeholder to debate the measures, resist certain recommendations and propose modifications to finally arrive at a consensus on visualizing a road map for reducing arrears. The stakeholders involved the Justices, the Law Officers, Ministers from the Ministry of Law and Justice, the Bar, Jurists, Professors, Students, NGOs and members of the public. The seminar also saw the commitment of both the executive and the judiciary alike to work in sync for reducing the arrears. Whether or not this vision would become a reality is yet to be judged. This would obviously depend upon maintaining the same level of political will that was so enthusiastically displayed during the last couple of days and a strong commitment by the Government to devote a substantial chunk of its financial resources for implementing the vision statement to bring about the judicial reforms. But let us not in the midst of this apprehension forget the pioneer role played by the Consultation in setting an example of democratic constitutionalism, and hope that this is only the first step towards realising the nation’s nomo of achieving social, political and economic justice.