

ROLE OF JUDICIARY IN GOOD GOVERNANCE

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INTRODUCTION

In recent years, courts have risen in power across the world and the Indian Supreme Court has rightly been pointed to as an example of this global trend. The concept of governance is as old as human civilization. The term 'governance' simply means the process of decision, making and the process by which decisions are implemented in the continents of Africa and Asia.

Good governance signifies the way an administration improves the standard of living of the members of its society by creating and making available the basis amenities of life, providing its people security and the opportunity to make better their life, instill hope in their heart for a promising future providing on an equal and equitable basis, access to opportunities for personal growth, affording participation and capacity to influence in the decision making in public affairs, sustaining a responsive judicial system which dispenses justice on merits in a fair, unbiased and meaningful manner and maintaining accountability and honesty in each wing or functionary of the Government. Good Governance is a processing unit to enable environment conducive to the enjoyment of human rights and promoting growth and sustainable human development. It enforces the economic, social and cultural rights and has no place for corruption of any kind.

As per United Nations' Commission on Human rights, the key attribute of good governance include transparency, responsibility, accountability, participation and responsiveness to the needs of the people. So, in nutshell, Good governance entails effective participation in public policy making, the prevalence of rule of law and an independent judiciary, besides a system of institutional checks and balances through horizontal and vertical separation of powers and effective oversight agencies. UN Economic and Social Commission for Asia and the Pacific holds that.

"Good governance has 8 major characteristics. It is participatory, consensus oriented, accountable, transparent, responsive, effective and efficient, equitable and follows rule of law. It is also responsive to the present and future needs of the society.

Rule of Law:

Good governance has to confirm the rule of law, Judiciary is the organ of the state entrusted with the task of supervising the faithful implementations of rule of law as its custodian through the judicial process. The efficacy of action and faith in the independence of the legal framework are critical factors in good governance. This is the essence of rule of law.

The Concept of Accountability:

Accountability is one of the cornerstones of good governance and requires the due performance of tasks or functions by an individual or agency. Such a mandate and performance are subject to another's oversight, direction or request that the individual or agency provides information or justification for its action, Thus accountability exists where persons in authority are answerable for their actions and these is transparency in leadership. It outlines national values and principles of governance.

ROLE OF JUDICATORY IN GOOD GOVERNANCE

The Indian Supreme Court has rightly been pointed to as an example of thing global trend of the strengthening judiciary. The SC has come to sit as what amounts to a court of good governance over the rest of the Govt. As Indian Judiciary is described by such scholars as Pratap Bhanu Mehta, Marc Galanter and Jayanth Krishnan as a two-tier system, which are High Courts and Supreme Court which comprise the upper Judiciary are seen as relatively competent and trustworthy. The lower Judiciary, which is made up of district session, family, rent and other courts is viewed as much less skilled and its responsiveness to on-the-ground realities. The constitution has conferred wide jurisdiction on SC to rectify any miscarriage of justice. The Indian Judiciary led by Supreme Court has been proactive in ensuring good governance and into the requirement of "fairness" and 'non-arbitrariness' which are constitutional guarantees.

The First attempt by the court to salvage its review power came in 1967 in 'Golak Nath of State of Punjab, which challenged Articles 31 A and 31 B. In this case, The court confirmed that none of the fundamental rights could be amended. Then the constitutional showdown came to a head in Keshwananda Bharti V/s state of Kerela in 1973. It is widely considered one of the most important Indian constitutional law cases. The Supreme Court stated the fundamental rights can be amended. But the basic structure of the constitution cannot be amended and described the basic structure as containing such principles as judicial review, democracy, federalism, secularism and many of the fundamental rights.

In Indra Nehru Gandhi V/s Raj Narain, the Supreme Court struck down the amendment under the basic structure doctrine as violating the separation of powers and judicial review both core principles of Indian constitution. In Minerva Mills V/s Union of India Chief Justice Chandrachud finds a that fundamental rights occupy a unique place in the lives of civilized societies as they are elementary for proper and effective functioning of the democracy. Most recently in January 2007 the Supreme Court in I.R. Coelho V/s state of Tamil Nadu further developed its interpretation of Article 31B which created the Ninth schedule to protect particular laws from fundamental rights review.

The court grounded the basic structure doctrine in the tangible historical moment of the creation of the constitution. As Gary Jacobsohn has pointed out, "there is something rather Burkean about this claim that rights, judicial review, democracy and other elements of the basic structure doctrine are part of the story of the nation that should not be changed quickly and that this constitutional narrative should instead be safeguarded by the nation's Justices".

Equality clause has been very much elaborated by Supreme Court in the case in. M. Nagaraj V/s Union of India.

The principle of equality is the essence of democracy and accordingly a basic feature of the constitution. Then Amrita V/s Union of India Supreme court further stated that Equality is a declaration to all citizens within the territory of India implying thereby the absence of any privilege in the favour of any individual.

It is the duty of the state to allay fears of citizens regarding discrimination and arbitrariness.

A Nine bench of the SC has in Indra Sawhney case (Popularly) known as the Mandel (Commission case) laid down certain points which summarise the law on the issue of reservations in government employment.

As in the case of E.P. Royappa V/s state of Tamilnadu the Supreme Court examined that Article 14 and 16 strike at arbitrariness in state action and ensure fairness and equality of treatment.

Beginning in the mid 1980' s and then much more quickly in the 1990's the court expanded its article 21 jurisprudence even further to try to tackle not only the problems of criminal justice system and government repression but also social injustices more broadly. A litany of rights was read into the right to life. Including rights to fresh air and water, land for tribal population, protection from environment degradation, shelter, health, education and food and clothing.

A vast range of issues affecting the lives of the people relating to human rights of prisoners, under trials inhabitants of mental and protection homes, bonded and child labour, environment, electoral malpractice affecting free and fair elections, probity in public life, combating corruption etc have been the subject of judicial intervention to ensure good governance. These judicial Interventions to improve governance were occasioned by the failure or Inaction of the executive to discharge their constitutional or statutory obligations. The growth of Article 21 jurisprudence also led to the development of a new form of legal practice, called Public Interest Litigation. The court relaxed its standing requirement allowing any public minded person to petition the court on behalf of anyone he or she perceived as being deprived of his or her rights. This new public Interest litigation often touched on large and complex issues.

The increasing in innovation of right to life by Indian judicially helped a lot for good governance and to define its right to life jurisprudence. In Chameli Singh V/s state of U.P²⁸. the court found that the "right to live" guaranteed in any civilized society implies the right to food, water, decent environment, education, medical care and shelter. These are basic human rights known to any civilized society. Further in Consumer Education & Research Centre V/s Union of India, the court held that right to life provides that the Govt must provide facilities to its people for a minimum standard of health, economic security and civilized living. Again the court invoked these broader meta governance standards in Shantistar Builders V/s Narayan Khimalal Totame. In the face of negligence, Justice Iyer remarks. "one wonders whether our municipal bodies are functional irrelevances, Banes rather than booms and lawless by long neglect, not leaders of the people in local self-government. In Bandhua Mukti Morcha V/s UOI.

The court implicitly reprimands the government in stressing, "we must not be content with the law in books but we must have law in action".

In the case of Right to food. the court points out. "The anxiety of the court is to see that poor and destitute and the weaker sections of the society do not suffer from hunger and starvation. The prevention of the same is one of the prime responsibilities of the government whether Central or the state. Mere schemes without any implementations are of no use. The court's orders concerning implementing a work for food scheme in combination with the efforts of the Right to food campaign played an important role in the creation of the National Rural Employment Guarantee Act (NREGA). The NREGA which became law in 2005 to much fanfare, guarantees employment to one member of every household in rural India for one hundred days per year at minimum wage rates or above. Similarly in the early 1990s two Supreme Court decisions held that the Right to education is a fundamental right. These rulings helped increase pressure on the Government to pass a constitutional amendment in 2002 that clearly states that the right to education is a fundamental right for children between the ages of six and fourteen. The court articulated a right of the public to government information in a number of cases which gave primary impetus to the Right to Information Act, which came to law in 2005.

From above the emerging story of the rise of a good governance judiciary in India is certainly unique. These judicial interventions to improve governance were occasioned by the failure or inaction of the executive to discharge their constitutional or statutory obligations. It is the duty and obligation of the Judiciary to enforce the Constitution as law through decisions or orders. The Judiciary has the ultimate power to interpret the constitution and the law faithfully considering its texts, (or letter), structure and history (or practice). Judicious interpretation, construction or translation of the text, structure and history in the context of the social, economic, technological, cultural or political questions before it will be important in shaping governance and accountability of devolved governments.

This role is called constitution implementation role. The Judiciary is expected to ensure that national and state government implement the constitution in the manner laid down by the law. Thus Judiciary is expected while interpreting the constitution to ensure that its supremacy is not compromised and further to declare void any legislation or conduct that is inconsistent with

the constitution. Thus, the Judiciary is instrumental in facilitating accountability and governance in the Central and state governments.

ADVISORY ROLE OF JUDICIARY IN GOOD GOVERNANCE

Under Article 143 (1) of the Constitution of India. Several references have been made to Supreme Court during the last fifty years which are

1. In re the Delhi Laws Act in 1951.
2. In re the Kerala Education Bill in 1958.
3. In re Berubari in 1960.
4. In re the Sea Customs Act in 1962.
5. Keshav Singh's case in 1965.
6. In re Presidential Poll in 1974.
7. In re the Special Courts Bill in 1978.
8. re in the matter of Cauvery Water Disputes Tribunal in 1992.
9. re in the matter of Ram Janambhoomi
10. Reference on the principles and procedure regarding appointment of Supreme and High court Judges in 1998.
11. Gujarat Assembly Election Matter.
12. In re the Gujarat Gas Act.

Referring to Article 142 (1) the Supreme Court in Supreme court bar association V/s Union of india has characterized its role in good governance in these words.

"Indeed the Supreme Court is not a court of restricted Jurisdiction of only dispute settling. The Supreme Court was always been a lawmaker and its role travels beyond merely dispute settling. It is a problem solver in nebulous areas....."

Recognition of corruption as an egregious form of human rights violation has empowered the judiciary in India to enforce probity in public life and accountability of public men indulging in corruption. The judiciary has to play an active role in eradicating corruption for good governance as in Hawala case, centre for PIL V/s Union of India, 2G spectrum and CWG cases.

CONCLUSION

To conclude, the role of the judiciary in good governance, we may say that Indian judiciary has to step in to fill the lacuna in legislation for the protection and enforcement of fundamental rights to develop Judicial creativity for quicker access to justice, fill the vacuum of executive inaction and moved the executive toward good governance. The Judiciary is assisting the executive in monitoring misgovernance and in improving its quality. The Judiciary as the custodian of the rule of law is the vanguard of all the national institutions' to ensure good governance by overseeing the functioning of all public authorities and by compelling the performance of the public duties by them. The over Sight of Judicial review is meant to serve this purpose as Indian Judiciary is providing new checks on representative institutions which should be considered as the rise of good governance Judiciary in India. As it marks a new form of coexistence between democratic and good governance principles in ruling. The court has expanded its mandate as a result of the shortcomings (real, perceived or feared) of India's representative institutions. The development of India's basic structure doctrine and the court's broad right to life jurisprudence to explore how the court has enlarged its scope. In many ways, India Judiciary has become a court of good governance that sits in judgment over the rest of the India government.