



INDIAN JUDICIARY: A CATALYST OF GOOD GOVERNANCE

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The Constitution of India is the supreme law of the country. India's judicial system has a responsibility to interpret and protect it. It also acts as a guardian or protector of the fundamental rights of the people. It exercises the power to determine the constitutional validity of all laws. It has the power to strike down any law or any part of it as unconstitutional or found to be violative of basic principles or fundamental rights of the people. This power of the judiciary is called the power of judicial review. Therefore, the power of judicial review needs to be exercised by the judicial system to establish the rule of law. Judiciary has a very important place in India as it has been made the guardian of the constitution. It is not only a watchdog against violation of fundamental rights guaranteed under the Constitution and thus inculcates against all persons, Indians and foreigners alike, discrimination, abuse of state power, arbitrariness etc.

Ultimately, the judicial system has an important role to play in ensuring good public governance. There may be a lot of rules, and procedures but when disputes arise, they have to be settled in a court of law. There is no area where Supreme Court judgments have not made a significant contribution to governance - good governance - whether - environment, human rights, gender justice, education, minorities, police reforms, elections and limits on constituent powers of Parliament to amend the Constitution.

Its ultimate objective is to protect the fundamental rights of the people from legislative or administrative arbitrariness. The power of judicial review is vested in the Supreme Court of India and the High Courts, but will be further reviewed and upheld by the Supreme Court of India. In a democracy, the judiciary acts as a body that checks the subjective powers of the government to establish good governance and a better democracy for the people. Article 137 of the Constitution of India, 1950, confers the power of judicial review on the Supreme Court of India, providing that, subject to the provisions of any law and rules made under Article 145, the Supreme Court



shall have jurisdiction over any decision or review the order made. According to the principle of separation of power, the three essential bodies are the legislature, the executive and the judiciary. In a democratic form of government where powers are mostly exercised by the executive and bureaucrats, which are conferred on them by the legislature, if found to be arbitrary, arbitrary or volatile of fundamental rights such as preventing minorities from professing and practicing their religion Constitution to uphold and protect the spirit of democratic government and constitution, then the Judiciary being the third organ of government acts as its guardian. These fundamental rights of the people. Judiciary is an important pillar for smooth functioning of democracy and maintenance of peace and justice.

Role of judiciary

Judiciary is uniquely placed in the matrix of power structure within the system of governance. Judges are not elected, but apparently have the power and the responsibility to scrutinize the powers and actions of de facto elected representatives and appointed officials. Despite great challenges in ensuring access to justice, judicial process and issues of transparency and accountability, the judiciary as an institution is highly respected. It is vested with ensuring that the rights and freedoms of the people are protected and that the powers exercised by the government in adopting policies are in accordance with the constitution and other laws.

In theory, if the different branches of the government follow the basic principle of separation of powers and work within their limits, then it is considered a sound system of governance. However, in practice, several issues have cropped up and challenges have emerged. It is in this context that the three branches of government – the legislature, the executive and the judiciary – are needed.

Powers of the judiciary to oversee government operations

Good governance is just a determinant of how the government manages its public affairs through public institutions and how they manage their public resources. Therefore, to achieve all these our constitution has established the judiciary as the guardian of the constitution to protect the people from arbitrary action of the government and to maintain the democratic spirit of the constitution and with the power of judicial review By means of keeping them within the limits of the constitution and establishing the rule of law.



Parliament can amend the Constitution or any part of it under Article 368 of the Constitution, which deals with fundamental rights in Part III of the Constitution, but as per Article 13(2), it can make any law which is not included in Part III curtails the inherent fundamental rights. This thing of the constitution I.C. GolaknathVs. State of Punjab. The fundamental rights are included in Part III of the Constitution to protect the interests of the people and these fundamental rights of the people cannot be taken away by the government as a result of their arbitrary action.

In Kesavananda Bharti v. State of Kerala, the Supreme Court of India also established the basic structure doctrine to protect the democratic structure. The Supreme Court of India established that the Constitution under Article 368 or any part of it including the Preamble can be amended keeping in mind that the basic structure of the Constitution should not be violated. This also rejected the decision of The Golaknath case suggesting the right to property could not be restricted.

However, the trust and respect for the actions of a particular branch should not diminish the responsibility of the judiciary to decide on the constitutional and legislative validity of the actions of the government. Clearly, this delicate balancing act of intervening appropriately when necessary requires a deep understanding and appreciation of the principles of constitutionalism. The rule of law is about all people and institutions respecting the laws and acting according to the law. As a collective power, the legislature and the executive are bound by these principles as much as the common citizens.

The term 'judicial governance' is itself a matter of challenge as the judiciary should not be involved in 'governance'. However, the Indian judiciary's efforts to infuse accountability into the functioning of government institutions, and the growth and development of human rightsjurisprudence, have demonstrated the central importance of the rule of law. There is no doubt, of course, that this has posed significant challenges to parliamentary accountability and executive powers and, more importantly, reinforced the need to improve the efficiency and effectiveness of government institutions.

Judicial review of presidential proclamation of emergency

There has been a sustained effort by the Judiciary to bring the proclamation of Emergency under Article 352 and Article 356 of the Constitution of India under judicial scrutiny. It is an attempt to



put a check on the powers of the government to prevent it from taking any arbitrary decision on the proclamation of emergency.

The essence of judicial review lies in the fact that equality, fairness, play and justice should be manifested in role models for governance and decision-making. Therefore, the act of governance must stand the test of prudence and objectivity so that it does not turn out to be oppressive, capricious and arbitrary.

Therefore the principle of governance should be tested by the judiciary. All rights of citizens are forfeited during emergency, including fundamental rights enshrined in Articles 32 and 226 of the Constitution of India, which prevent citizens from approaching courts during emergency for violation of their fundamental rights. Hence judicial review should not be considered as excessive delegation of power, but as a measure to check whether the acts done are in accordance with the constitution or not.

Sub-section (5) was inserted in Article 352 through the 42nd amendment, which made the satisfaction of the President in declaring an emergency final and conclusive and provided that such satisfaction shall not be called in question in any court on any ground shall not be raised and any further litigation shall be barred for the same. Consider also the validity of the Proclamation made by the President and the continued operation of such Proclamation. This was clearly to exclude a proclamation or judicial inquiry into its continuance. Again, this clause (5) was omitted by the 44th amendment and this itself shows that at any rate the jurisdiction of the court to go into the mala fide issue of a proclamation or its mala fide continuance was not to be excluded.

With this amendment, it is the discretion of the Supreme Court to decide whether it will accept the President's satisfaction for issuing a Proclamation of Emergency or continue to consider it as final and non-justiciable or subject to judicial review on some grounds. In *Minerva Mills Ltd. v. Union of India* 8, it was held that wherever the President had applied his mind while declaring emergency or whether he had acted outside his powers, they cannot be exempted from judicial review.

Civil society has come to expect the concepts of the rule of law. However, keeping in view the prevalence of injustice in the society, there is a strong need for expansion of the judicial regime.



To give meaning to democratic India, two important factors need to be implemented i.e. reform of political system and enforcement of law with support of both from judiciary. Judiciary also keeps an eye on amendment power of Parliament whether any law in Indian Constitution or any part of it as amended by Parliament under Article 368 of Constitution of India violates fundamental rights and basic structure principle, if so, strike it down Parliament was directed to review or repeal it by an order of the Supreme Court.

Conclusion

Thus, it can be concluded that judiciary plays a very important role in implementing good governance. As the guardian of the Constitution, the Judiciary reviews the legislative, executive and administrative actions. It is clear that the role of judiciary is very effective in good governance. Protecting the fundamental rights of the people, implementing the Directive Principles of State Policy, declaring emergency and reviewing other executive actions, helped a lot in promoting good governance and keeping the essence of democracy safe and effective so that peace prevails in the society. And harmony can and should be established. The rule of law should be established in the society.

Judicial administration also settles the disputes between the central government and the state government or more than one state for the smooth and proper functioning of the state administration and manage their affairs instead of discussing these problems and affecting their functioning. Judiciary in settling disputes between states on land, water etc. and on other matters helps in promoting a fair and just way of governance and promotes unity and integrity among the states of India for the smooth functioning of the central government. These help a government to concentrate on other international affairs and development and good governance of their country.

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