



ROLE OF SUPREME COURT TOWARDS GOOD GOVERNANCE IN INDIA

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The role of government and description of governance have been changing from time to time, as per the requirement and circumstances and even at a given point of time there is considerable variation when the form of government is a democracy or otherwise.¹ In recent years, the word governance has become a very fashionable term and is being used in a variety of ways and that covers a large number of organisations both in public and private domains.² There is no particular accepted definition of governance or good governance. This term has been used to describe how public institution conduct public affairs by managing public and human resources in order to guarantee the realisation of human rights. Good governance includes features such as transparency, accountability, responsiveness, rule of law, participation, strategic vision, effectiveness and efficiency. It means securing justice, empowerment, employment and efficient delivery of service.

Rule of law as Dicey stated means equality before the law. Hence, independent judiciary is a very important instrument of good governance. In Indian Constitution, every citizen is entitled to equal protection under the law and equality before the law. No individual can be deprived of his life except as per the procedure established under the law. The constitution of India entrenches judicial review as a paramount principle of public law and finally it is the Supreme Court which is the final arbitrator of the issue of constitutional interpretation. The necessity for judicial intervention arises when the citizen complains about unfair treatment or violation of their rights at the hands of the executive or the legislature. When the judiciary is apprised of and is satisfied with gross violations of basic human rights, it cannot fold its hands. It must respond to the knock of the oppressed and the downtrodden for justice with a positive response by adopting certain operational principles within the parameters of the constitution and pass necessary directions in order to render full effective relief. This move of the judiciary is termed as judicial activism. Judicial activism has become a subject of controversy in India. Attempts have been made to curb the power of courts as well as access to them.² When one speaks of judicial activism, he immediately reminds of the innovation of public interest litigation. Public interest litigation and judicial activism go hand in hand because PIL itself is the result of judicial activism.³

Failure to use, as well as abuse, of its powers by Administration, is sure to disturb the heartbeat of social aspiration, thereby, necessitating appropriate correctional therapy. The judiciary operates as a mechanism of this correction and judicial activism serves as a potent pacemaker to correct, as far as possible, malfunctioning in violation of the constitutional mandates and to stimulate the state organs to function in the right direction. Failure on the part of the legislative and executive wings of the government to provide 'good governance' makes judicial activism an imperative. The illustration of a few rulings of the Supreme Court of India evolving new dimensions of public law having implications for public administration would bring out the impact of judicial activism. Most of these cases had witnessed gross and callous failure or neglect on the part of public functionaries or administrative authorities in the discharge of their public duties. Through various cases, like *Maneka Gandhi*,⁴ *Sunil Batra*,⁵ *Bhandhua Mukti Morcha*,⁶ *Francis Coralie* cases⁷, the courts have shown their firm commitment to participatory justice, immediate access to justice and preventing arbitrary state action.

Some Instances of Judicial Activism towards Good Governance in India: The cases raising questions of environmental degradation were really speaking cases against the inaction of the state or wrong action of the state. The court entertained a petition by residents of Bangalore, objecting to the approval of a development scheme that was likely to adversely affect the quality and quantity of water of river.⁸ In another case, the court held that in matter of environment, the burden of proof will lie on the party that wants to change the status quo.⁹

In environmental litigation, the court is at times faced with difficult policy choices. The running of factories may be hazardous to the health of people in the surrounding area but their closure may result in unemployment of the factory workers. In *M.C. Mehta VS Union of India*,¹⁰ the court directed the closure of 168 industries and their relocation to another place. The workers of the industries could either take up employment at the relocated place or be retrenched. If they chose to continue to be employed at relocated place, they were to get their wages during the period of shifting of the industries and one year's wages as shifting bonus. Those who opted not to continue at the relocated place were to be considered as retrenched within the meaning of section 25 (f) (1) of the Industrial Disputes Act and were to get one year's wages plus retrenchment compensation as provided under that Act. After relocation, the company could not absorb all the employees by the date specified in the order of the court since the factory had not become fully operational.



The Supreme Court ordered that all vehicles older than fifteen years should be discarded because of the polluting potential. It was, however, argued that such a ban caused harm to the vehicle owners. The court therefore amended the directions and provided a means by which they could be gradually rid of.¹¹ In another case, the Supreme Court gave directions against hazards of diesel emissions. The Court also held that the manufactures of diesel vehicles were liable for violation of the right to life of the people caused by air pollution.¹²

In a significant judgment in *Vishaka Vs state of Rajasthan*,¹³ the Supreme Court has laid down exhaustive guidelines for preventing sexual harassment of working women in place of their work until a legislation is enacted for this purpose. The court held that it is the duty of the employer or another responsible person in the work place and other institution, whether public or private, to prevent sexual harassment of working women. The immediate cause for the filing of this writ petition was the alleged brutal gang rape of a social worker of Rajasthan. The court directed the employers to set up a procedure through which working women can make their complaints heard. The court held that the court has the power under Article 32 to lay down such guidelines for effective enforcement of fundamental rights of working women at their workplaces and declared that this would be treated as the law declared by the Supreme Court under Article 141 of the Constitution.

Next, in a significant judgment in *Gaurav Jain Vs Union of India*,¹⁴ the Supreme Court has issued a number of directions to the government and all social organisations to take appropriate measures for prevention of women in various forms of prostitution and to rescue them from falling them again into the trap of red light areas and to rehabilitate their children through various welfare measures so as to provide them with dignity of person means of livelihood and socio-economic improvement. The court also held that under Article 32 of the Constitution the court has the power to adopt such procedure as is expedient in a given fact and situation and deal with the matter appropriately, therefore, the rigours of the pleading or the relief's sought for on adversial litigation has been softened, new methods tools and procedures have been evolved to meet out justice and to enforce fundamental rights.

Supreme Court also enforces accountability by enforcing the basic tenet of the Rule of law, which is 'However high you may be' the law is above you. There are instances of the spate of cases against ministers that proceeded at a very tardy pace. The investigating authority, which was under the control of the Prime Minister's office did not pursue their investigations to their logical conclusion. When a public spirited person went to the Supreme Court to claim that although these were serious charges, these matters had been pending for months and years, with little being done to resolve these, the Court sprang into action and directed the investigating authorities to carry out their duties under the criminal procedure code, irrespective of the high status of those involved. The authorities were asked to expedite their investigations and to report to the court about the course of their investigations. On September 18, 2003, the Supreme Court set in motion the legal process against the former U.P. Chief Minister Miss. Mayawati, the former State Environmental Minister. Mr. Nassemuiddin Siddiqi and six officials in the Rs. 175 crore Taj corridor scam by directing the CBI to register FIR against them.¹⁵

Three-judge bench of the Supreme Court of India directed the CBI on March 15, 2004, to investigate 48 Fake stamp paper scam related cases across 12 states and submit a status report in just four months. The bench of the Apex Court directed the 12 states to provide necessary infrastructure and resource facilities to the CBI for taking over these cases for investigation.¹⁶

The Supreme Court recently ordered the transfer of the Chief Secretary of U.P., Neera Yadav to some other post in the cadre/grade to which she belongs. Corruption charges were questioned against her in the Noida Scam. The Bench directed that, steps to give effect to the order should be taken within seven days.¹⁷

In *Laxmikant Pandey V. India*,¹⁸ the Supreme Court gave directions as to what procedures should be followed and what precautions should be taken while allowing Indian children to be adopted by foreign adoptive parents. There was no law to regulate inter-country adoptions and such lack of regulation could cause incalculable harm to Indian Children, considering the possibility of child trade for prostitution as well as slave labour.

Directions in *Common cause Vs India*,¹⁹ provided for how blood should be collected, stored, and given for transfusion and how blood transfusion could be made free from hazards. Directions were given to the government to disseminate knowledge about environment through slides in cinema theatres or special lessons in schools and college.²⁰ The court has insisted that it undertook law making through directions only to fill in the vacuum left by the legislature or the executive and that its directions could be replaced by legislation enacted by the legislature or, where no legislation was required, by the executive, whose power was continuous with the legislature.



Thus, Supreme Court has increasingly been enacting judicial legislation, taking on a task that is meant for the legislative and elected representatives. This trend reached a new high when the apex court recently ordered the Central Government to distribute foodgrains, found rotting for want of storage facilities, to the poor and hungry. After this more recently, the Prime Minister has to intervene to make it clear that the court is stepping into the domain of policymaking, an area meant for the executive and legislature.

The Supreme Court had asked the government to distribute foodgrains rotting in government godowns or rotting due to lack of storage facilities for free to the poor and hungry. According to Times of India, the Supreme Court said that the foodgrains are rotting. You can look after your own people. As a part of short-term measures, distribute it to the hungry for free. Besides this, the court suggested that the government should increase the quantity of food supply to the people living below poverty line and the government should open the fair price shops for all the 30 days in a month.²¹

Lastly, it is said that good governance moves around citizens to improve the quality of life, administrative system, efficiency in delivering services and to establish greater efficiency, legitimacy citizen-caring and responsive administration. It comprises activities of those manning the political system of a country having necessary authority and responsibility to govern, directed towards the maximum good of the maximum number. Failure on the part of the legislature and executive wings of the government to provide 'good governance' makes judicial activism and imperative. The illustration of rulings of the Supreme Court of India evolving new dimensions of public law having implications for public administration would bring out the impact of judicial activism. Most of these cases had witnessed gross and callous failure or neglect on the part of public functionaries or administrative authorities in the discharge of their public duties. The Administration, thus, must enforce the law of the land and should never seek to shift its responsibility in the service of the people, who are the ultimate masters in a democracy.

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