

Role of Judiciary in Good Governance and Administrative reforms

Vinod Chaudhary¹

Abstract

The Constitution of India has Constitutionalism i.e. the government powers itself has certain restrictions in law making. The basic structure of our Constitution has universally accepted democracy, Liberty and Rule of Law in it, which forms its backbone. The judiciary is one of the organs of the government, which acts as a balancing wheel to keep in check and balance between legislation on one hand and executive or administrative wing on another. The administrative reforms may bring change in society at 'micro-level' or a transformation at 'macro-level'. Judiciary acts and sometimes takes steps in law-making process by using judicial activism, P.I.L etc as tools of social engineering when there is no legislation on any subject or inadequate law or there is a lacunae in law and the legislative body is inactive in making relevant laws. Through deciding various cases the judiciary has made law that may be termed "as well as fundamental rights". It has stretched the ambit of Article 21 to accommodate various new rights. These timely taken steps by apex court has delivered the end of justice and helped in good governance and social reforms at the doorsteps of a common men.

Keywords: Judicial activism, Administrative reforms, Good governance

Introduction

The constitution of a country is the principal source of determining the type and climate of administrative law. A "constitution" means a document having a special legal sanctity which sets out the frame-work and the principal functions of organs of government of a State and declares the principles governing the operation of that organs.¹ The "constitutional law" refers to the rules which regulate structure, functions, and inter-relations of government organs. The constitution of India is a purposive law-making for leading India into a slow social revolution, and over the period of time the constitution has moulded its shape with the changing needs of the nation.² The affirmative actions taken by amending A-15(4)³, and A-16(4)⁴ by 1st amendment so as to balance the original provisions, prohibiting any discrimination on the basis of caste, class and sex.

Our system is founded on the lofty principle of rule of law, wherein the State power is divided among three main organs each under a duty to conduct itself in a manner that sub serve the common good of all and achieve the objectives of a welfare State. Constitutionalism recognises the need for government, but also insists upon limitations being placed upon government powers....it envisages checks and balances and put powers of legislature and executive under some restraint, other it would jeopardise the freedom of the people and lead to an authoritarian, oppressive and cruel, government. Therefore, to preserve basic freedom of individual and to maintain his dignity and personality, a constitution should per meat with constitutionalism; it should've in-built restrictions on powers. The dicta of the constitution is crystal clear; namely, the goal of good governance.

¹Faculty of Law, Jai Narain Vyas University, Jodhpur, Rajasthan, India.

E-mail Id: advvinodchaudhary.1971@gmail.com

Orcid Id: <http://orcid.org/0000-0002-1644-6504>

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Good Governance

The concept of good governance is as old as human civilization. What is "Governance"? It simply means the process of decision making and the process by which decisions are implemented. Governance is the exercise of economics, political and administration authority to manage a country's affair at all levels. Good governance is an indeterminate term used in international development literature to describe how public institutions conduct public affairs and manage public resources. The concept centres on the responsibility of government and governing bodies to meet the needs of masses as opposed to select group of the society. In nutshell, Good Governance entails effective participation in public policy-making, the prevalence of rule of law and independent judiciary, besides a system of institutional checks and balances through horizontal and vertical separation of powers, and effective oversight agencies. The views evolved in U. N Economic and Social Commission for Asia and the Pacific are almost identical. It holds that "Good Governance has 8 major characteristics. It is participatory, consensus oriented, accountable, transparent, responsive, effective, and efficient equitable and inclusive and follows the rule of law."⁵

Democracy, Liberty and Rule of Law

Democracy, liberty and rule of law together represent the troika that is universally accepted now as an index of a civil society. Democracy signifies a government of, by and for the people. The protection of individual liberties follows the notion of democracy as a natural corollary. This entails the espousal of a methodical configuration of laws by which society might be regulated and different conflicting interests can be harmonized to the fullest extent. This is why "the rule of law" is indispensable. It envisages the pre-eminence of law as opposed to anarchy or capricious dictates.⁶

Reforms: Its Meaning and Concept

However among different cultures, the need and demand for reform (means to 'form again') i.e. bringing the structure to the main stream or 'dhara' that goes on. Reforming the obsolescent or outdated practices, working methods, procedure of work, or the outwork structures in such a way that they become vibrant goal-oriented and effectively functional that is what a reform stands for.

Reforms can be political, social, economic and administrative depending upon the contents, contexts, and exercise lies upon. To some reforms represent a

change, while other may view them as change within the framework of continuity. Old wine in new bottle, new wine in old bottle, or new wine in new bottle may be reform strategies in a system, but every reform presupposes a form. A reform has to be an artificial human device to induct change and if possible social-transformation or catalyse that phenomenon in such a way that desired results may follow the speeding of change or manipulation of change or skipping the stages of growth through artificial methods evokes resistance by all those who are accustomed to culturised ways of status quo.⁷ Hence all reforms have to be conceived of as desired changes in desired directions through manipulative means.

Law as a Tool of Social-Engineering

Indian society has transformed over the period of time from a society governed by Smriti, Sruti, Dharma and other customary laws, to western conceptions of law and authority during the colonial period.

Law as a tool of social- engineering has brought social changes and transformation .Law is perhaps one of the most effective and safest methods to bring about a change and reformation in society to achieve the desired goals. Many academicians have supported the view that law enjoys and uses unifying power to contribute towards better social cohesion as a tool for bringing about homogeneity in the heterogeneous population having socio-cultural diversities.⁸

Through law, legal system social justice, morality and development the good governance is achieved.

The functional definition of social change is understood as "non repetitive" alteration in the established modes of behaviour in society. Social norms, social rules and pattern of social relations should ideally be changed. This is basically at "Micro-Level". But only a massive, structural or far reaching social change would be termed as a social transformation (Macro-Level).

In Indian perspective:

1. Effects of affirmative action's or reservation
2. Codification of Hindu law in India could very well be termed as social transformation. But the effect of the legislation such as Right to Information Act, 2005 could be assessed from the current scenario only to constitute a social change.

M. N. Srinivas, the great Indian Sociologist, had observed that Sanskritization, westernisation, caste mobility, secularisation, the alteration in value arrangement that India has witnessed, could be seen as

examples of social change. Another Indian sociologist Yogendra Singh has mentioned the abolishment of untouchability, restraint on Child marriage and prohibition of sati pratha, the reaffirmation of importance of Panchayati Raj system through constitutional amendment could be very well perceived as instances of Law induced social-transformation.⁹

Judicial Activism: a Step towards Reforms and Good Governance

The access to justice and P.I.L has given birth to "Judicial Activism". The judicial activism is an active, courageous, progressive, and creative approach of judiciary in any sensitive social issues, similar to the Courts in America and issues directions to State to take positive actions with a view to securing enforcement of fundamental right.¹⁰

When the law enforcing authorities show their brutality in the process of implementation of law, the judiciary checks the excesses and also directs the authorities to effectively implement the welfare legislation.

The Supreme Court's role in sensitising the Central Investigating authorities to discharge their legal obligations in the various scam cases and various judgements from the need for Uniform Civil Code, pollution control, directing removal of encroachments, interim compensation to rape victims, protecting working women from sexual harassment. The Supreme Court has delivered its proper role for the transformation of the whole society as an ordered and crime free society. The Supreme Court's pivotal role in making up for the lethargy of legislature and the inefficiency of the Executive is commendable. It has proved a boon for a common man. Judicial Activism has set right a number of wrongs committed by the States.

1. Protection against inhuman treatment in jail¹¹ (In Sunil Batra vs. Delhi Administration)
2. Child Welfare¹² (Laxmi Kant Pandey vs. U.O.I)
3. Protection of Ecology and Environment Pollution¹³ (in Rural Litigation and Entitlement Kendra v. State of U.P., Shriram Food and Fertilizer case)
4. Rape victims compensation¹⁴ (Delhi Domestic Working Women's Forum)
5. Corruption in Public life and P.I.L: PIL has proved to be a very strong and potent weapon in the hands of Court enabling it to unearth many scams and corruption cases in public life and to punish the guilty involved in those scams Hawala scam, Urea scam, Fodder scam in Bihar, St. Kitts scam, Ayurvedic Medicine scam, Illegal allotments of Government Houses and Petrol Pumps, 2G scam,

Adarsh Housing scam (Mumbai), National Herald newspaper scam, Land scam (Vadra), Vyappam scam in M.P, etc.

6. Electoral Reforms¹⁵: In Union of India vs. Association for Democratic Reforms the Supreme Court directed the Election Commission to issue a notification making it compulsory for those contesting elections to make available antecedents at the time of nomination for the benefit of voters.
7. Directions to make CBI independent and efficient¹⁶
8. Custodial Death¹⁷

Judicial Review and Implied Fundamental Rights

A new judicial trend has emerged from the cases of Menka Gandhi, Sunil Batra, Hoskot and Hussainara Khatoon¹⁸, in which Supreme Court has taken the view that the provisions of part III of the constitution of India should be given widest possible interpretation. In Menka Gandhi's case, Bhagwati J. said, 'the correct way of interpreting the provisions of part III is that attempt of the court should be to expand the reach and ambit of the fundamental rights rather than to attenuate their meaning and content'.

By an activist interpretation most of the fundamental rights, especially the right to equality (Article 14), freedom of speech and expression (Article 19(1)(a)) and right to life and personnel liberty (Article 21) have been converted into a regime of positive human rights unknown to previous constitutional diction. By an affirmative action the Courts are trying to force the government to create favourable conditions for effective realisation of the new individual, collective diffuse rights. Article 21 is worded in negative terms as it prohibits or restricts State's action s, rather than require it to do something beneficial of the citizen's, a positive aspect. By an activist interpretation most of the fundamental rights, especially Article 21, have been converted into a regime of positive human rights. By an affirmative action's courts are trying to force the government to create favourable conditions for effective realisation of the new individual, collective, diffuse rights, e.g. right to dignity, right to privacy, right to education, right to livelihood, right to clean environment, right against torture, right against bondage, right to legal aid etc.

In Chander Kumar's¹⁹ cases, a Seven Judge Bench held that the power of judicial review over legislative action vested in the High Court's under Article 226 and Supreme Court under Article 32 is an integral and essential feature of the Constitution and is part of the basic structure.

What is the extent of judicial review and the extent of power of Parliament to grant immunity to legislation by placing it in the Ninth Schedule is presently under consideration by a Nine Judge Bench.

The power of the Parliament to expel its members in exercise of its power, privilege and immunity granted under Article 105 are also awaiting the decision of the Supreme Court.

Conclusion

The approach of judiciary in India has time and again been that while it may be appropriate that the courts show due deference and margin of appreciation to the opinion formed by the executive, any State action making inroad into the personal liberties or basic human rights of an individual must invariably be subject to judicial scrutiny which would rest on objective proof, relevant material in accordance to law and through a procedure that passes the muster of fairness and impartiality.

It is indeed a matter of great satisfaction that the two other chief organs of the State in India have always respected the jurisdiction of the judiciary to subject every State action to "judicial review" and therefore, have either abided by the decisions taken or taken requisite follow-up action in furtherance of such decisions.

Judiciary has thus, played a crucial role in development and evolution of society in general and in ensuring good governance by those holding reins of power in particular. Perhaps, there can be no two views about the significance of the role expected of judiciary, viz-a-viz, the goal and good governance in a free society. I believe that judiciary has played its role well.

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