

Role of Judiciary in Good Governance

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Abstract

Good Governance forms the skeleton of a democratic political system. It is part of the tacit consent it commands. While the legislature and the executive branches are more explicitly and directly involved in ensuring it, the Judiciary also plays a critical role. The Judiciary does this by interpreting the law of the land, providing checks and balances on the actions of the other branches of government, protecting individual rights, and resolving disputes.

Historically, it has taken upon itself the role of filling gaps in governance, shaping the legal, democratic, and social system by various landmark judgments relating to corruption, environmental protection, and the protection of civil liberties, among others.

However, this role is not without challenges – both external and internal to the institution.

These include issues such as corruption, massive pendency of cases, judicial overreach, the politicization of the judiciary, lack of access and transparency in it, lack of legal awareness, and the ensuing digital divide – which essentially inhibit it from delivering in line with its potential and expectations given how central it is to democracy.

There are hence calls for judicial reforms and debates surrounding its role in a representative democracy have become more vocal from different centers of power. An assessment of its functioning and a reform process must be both internal and external, keeping the constitution and elements of good governance and democracy as the guiding light.

Keywords: Judiciary, Rule of Law, Checks and balances, Good governance, Rights and Duties, Judicial Reforms, Politicization

Constitution as a living document

The Indian Constitution is often referred to as a living document due to its flexibility and adaptability. Its flexibility and adaptability ensure that it remains relevant and adapts to the changing needs of the society. The Constitution has evolved over time, reflecting the changing needs of society and strengthening the democratic principles enshrined in it. The Constitution provides for amendments to be made as the need arises, allowing for new challenges to be addressed and new rights to be recognized.

The judiciary in India assumes a pivotal role in upholding the rule of law, protecting fundamental rights, and ensuring equity and fairness for all. The Indian Constitution enshrines the judiciary as an independent institution that stands as an equal pillar of democracy alongside the executive and the legislature. The judiciary wields the power of judicial review, empowering it to scrutinize the constitutionality of laws and executive actions. The judiciary, therefore, in India holds a crucial and intricate role in the legal and political system. Its independence and power of judicial review are pivotal in safeguarding democracy, upholding the Constitution, and ensuring good governance.

Good Governance

The United Nations Development Programme (UNDP), in its 1997 policy paper, defined governance as “the exercise of economic, political and administrative authority to manage a country’s affairs at all levels. It comprises the mechanisms, processes, and institutions through which citizens and groups articulate their interests, exercise their legal rights, meet their obligations, and mediate their differences.”

The concept of governance, referring to the process of decision-making and implementation, has been present since the dawn of human civilization. The effectiveness of governance is heavily dependent on the support and cooperation of the governed.

Good governance entails creating and providing basic amenities of life, ensuring security, instilling hope for a better future, providing equal and equitable access to opportunities for personal growth, and fostering participation and capacity for influencing decision-making. Good governance also encompasses a responsive judicial system that dispenses justice fairly and meaningfully and maintains accountability and honesty in all government functions. According to the United Nations Commission on Human Rights, the key attributes of good governance are transparency, responsibility, accountability, participation, and responsiveness to the needs of the people.

Role of Executive and Legislature in Good Governance

The effectiveness of governance heavily depends on the interplay between the legislative and executive branches of government. Good governance requires a strong and independent legislature capable of providing oversight and checks and balances to the executive. The legislature is responsible for enacting laws that promote the common good, provide for basic amenities of life, and protect human rights. It must also hold the executive accountable for its actions and decisions.

The executive branch, on the other hand, is responsible for implementing the laws enacted by the legislature and ensuring that government policies and programs are effectively implemented. The executive must be transparent and accountable in the use of public resources and provide equal and equitable access to opportunities for personal growth.

Good governance also requires effective coordination between the legislature and executive to achieve the desired outcomes. The legislature and executive must work together in a spirit of collaboration to ensure that government policies and programs are well-conceived, well-implemented, and have a positive impact on the lives of citizens. Additionally, the executive must be responsive to the needs of the people and foster a culture of citizen participation in the decision-making process.

The principle of good governance requires that the executive, legislative, and Judicial branches of government work together in a responsible and accountable manner to ensure the welfare of citizens. However, in practice, both branches have often failed to fulfill their responsibilities.

One of the significant failures of the executive branch is its inability to provide essential services to citizens. This can include access to healthcare, education, and infrastructure. Inadequate provision of these basic needs can result in a declining standard of living and hinder the country's progress. The executive often fails to implement policies and programs effectively, leading to inefficiency and waste of resources. Similarly, the legislative branch sometimes fails to pass necessary laws or make changes to existing ones, which can be detrimental to the development and progress of the country. Political polarization and lack of cooperation between political parties can also hinder legislative action, leading to legislative paralysis. Another issue that arises is corruption within these branches of government. Corruption can result in a lack of transparency and accountability, and public resources may be misused or diverted for personal

gain. This can lead to a decline in public trust in government institutions and a sense of disenchantment among citizens.

To ensure good governance, both the executive and legislative branches must work to address these issues and maintain accountability to the people they serve. There needs to be a concerted effort to strengthen institutions, promote transparency and accountability, and create an environment conducive to the effective implementation of policies and programs. This requires a commitment to work towards the betterment of society and a recognition of the crucial role that these branches of government play in shaping the nation's destiny.

Democracy and Good Governance

The concept of a civil society is now universally accepted and founded on democracy, liberty, and the rule of law. Democracy refers to a form of government where the people are the source of power, and it is exercised by elected representatives. The protection of individual liberties is a natural corollary to democracy, and this requires the establishment of laws that regulate society, harmonize competing interests, and prevent anarchy or arbitrary actions. The rule of law, which asserts the supremacy of law over all other forms of governance, is indispensable for the proper functioning of civil society. It is founded on the principle that all citizens are equal before the law, regardless of their status or position.

Democratic governance is the result of centuries of experience among people who care for human dignity and rights. It is a concept that assumes that all citizens have a right to participate in decision-making processes that lead to the adoption of policies that apply to society. However, it also acknowledges that there are limits to majority decision-making, and hence, basic rights must be protected. Democratic governance requires maintaining an equilibrium between competing interests, demands, constraints, and compulsions that exist in any civic society.

India was founded as a democratic welfare state that provides equal opportunities for all citizens regardless of caste, creed, color, sex, or any other form of discrimination. The founding fathers of modern India went beyond the traditional definition of democracy as "a government of, by, and for the people" by emphasizing the need for a government that works "for the welfare of the people." The Indian Constitution, which reflects an acute awareness of the possibility of conflicts of interest in a free developing society, entrenched the concept of the rule of law into the Indian polity. This was done to secure the dignity of the individual and to ensure justice in all its hues.

India has incorporated a number of fundamental human rights as guaranteed fundamental rights, elaborated in Part III of the Constitution, which go beyond the American Bill of Rights. These fundamental rights are tempered by the Directive Principles of State Policy, which are principles that would be fundamental for "good governance" in India. From time to time, adjustments have been made to the fundamental rights through legislative measures, executive action, or judicial pronouncements so as to further the object sought to be achieved by the Directive Principles. The purpose of the Fundamental Rights and the Directive Principles is to provide an environment that can ensure the dignified growth and development of each individual as a useful human being.

To ensure that the role of law applies to everyone, the Indian Constitution makers provided for the independence of the judiciary. The judiciary in India plays a crucial role as the guardian and custodian of the Constitution. It serves as a watchdog against the violation of fundamental rights guaranteed under the Constitution and thus insulates all persons, including Indians and aliens alike, against discrimination,

abuse of state power, arbitrariness, etc. The Indian judiciary is often described as the "only defensive armor of the country and its constitution and laws" and is crucial to maintaining the rule of law in India. Liberty and Equality have survived and thrived in India due to the proactive role played by the Indian judiciary. The rule of law, one of the most significant characteristics of good governance, prevails in India because of its independent judiciary. This has been sustained, among other things, by support and assistance from an independent bar that advocates for the cause of the underprivileged and deprived sections of society. An enlightened public opinion and vibrant media also keep all the agencies of the State on their toes. One of the most important principles of just democratic governance is the presence of constitutional limits on the extent of government power. Such limits include periodic elections, guarantees of civil rights, and an independent judiciary, which allows citizens to seek protection.

Indian Judicial System and Good Governance

India has inherited a well-established system of judicial administration along with a comprehensive set of codified laws, both substantive and procedural, from its colonial masters. These laws have, for the most part, stood the test of time and have been adopted with appropriate adjustments when necessary. As time has passed, the Indian government has carefully refined the judicial administration to ensure it is capable of meeting the ever-changing demands of modern Indian society.

Furthermore, as part of the overall efforts towards modernization and progress, the Indian judiciary has made significant advancements. These include greater public access to legal information and services, enhanced training programs for judges and other legal professionals, and the promotion of alternative dispute-resolution mechanisms. Additionally, the Indian government has prioritized strengthening the rule of law and has invested in developing an independent and impartial judiciary to ensure that citizens' rights are protected and justice is served.

The judiciary system has a crucial role to play in ensuring effective public governance by providing a means to settle disputes that may arise despite the plethora of regulations, rules, and procedures in place. The contribution of the Supreme Court judgments to the promotion of good governance cannot be overstated in various fields, including environment, human rights, gender justice, education, minorities, police reforms, elections, and limits on constituent powers of Parliament to amend the Constitution. This is merely an illustrative list of examples.

The Indian Judiciary has taken a proactive approach to safeguarding fundamental human rights and has been vigilant in protecting them. The right to life has been expanded to encompass the right to live with dignity, the right to a healthy environment, the right to humane conditions of work, the right to education, the right to shelter and social security, the right to know, the right to adequate nutrition and clothing, among others. This achievement has been made by applying international instruments governing human rights wherever necessary to fill the void in municipal law. Over the years, the Supreme Court has consistently elaborated on the scope of fundamental rights and has actively opposed intrusions into them by State agents, thereby upholding the rights and dignity of individuals in the true spirit of good governance. The Court has issued various commands for law enforcement in a range of cases dealing with executive action in general and police at the frontline level in particular.

Good governance is essential for the proper functioning of a democratic country. The judiciary, as one of the three pillars of democracy, plays a crucial role in ensuring good governance. Over the years, the Indian judiciary has delivered landmark judgments in various areas such as environment, human rights, gender

justice, education, minorities, police reforms, elections, and constitutional amendments. In this essay, we will discuss some of the most famous case laws where the judiciary has ensured good governance.

One of the earliest and most significant cases in Indian constitutional history is the Kesavananda Bharati case (1973). In this case, the Supreme Court upheld the doctrine of basic structure, which restricts the Parliament's power to amend the Constitution. This judgment ensured that the Constitution's fundamental principles, such as secularism, democracy, and federalism, were not tampered with by the Parliament.

Another notable case is the Vishaka case (1997), where the Supreme Court laid down guidelines for preventing sexual harassment of women in the workplace. The court held that sexual harassment violates the fundamental right to life and liberty under Article 21 of the Constitution. The judgment has played a significant role in creating awareness about workplace sexual harassment and ensuring women's safety and dignity.

In the case of *Olga Tellis v. Bombay Municipal Corporation* (1985), the Supreme Court held that the right to livelihood is a fundamental right under Article 21 of the Constitution. The court struck down a Bombay Municipal Corporation resolution that prohibited pavement dwellers from residing in the city. The judgment ensured that the state cannot deprive people of their right to livelihood and shelter without following proper procedures.

Another landmark judgment is the *Indira Sawhney* case (1992), where the Supreme Court upheld the concept of affirmative action for socially and economically backward classes. The court held that reservations in public employment and education institutions for SCs, STs, and OBCs are constitutional and necessary to ensure social justice and equality.

In the *Unnikrishnan JP* case (1993), the Supreme Court held that education is a fundamental right under Article 21 of the Constitution. The court held that the state has a duty to provide free and compulsory education to all children until the age of 14. The judgment ensured that education was accessible to all and not just the privileged.

In the landmark case of *M.C. Mehta v. Union of India* (1987), the Supreme Court passed several orders to control industrial pollution in the Ganges River. The judgment ensured that the state takes measures to prevent environmental degradation and protect public health.

Another significant case is the *Sheela Barse v. State of Maharashtra* (1983), where the Supreme Court laid down guidelines to protect the rights of prisoners in India. The court held that prisoners have fundamental rights that cannot be curtailed except by following proper procedures. The judgment ensured that prisoners' human rights were protected and not violated by the state or prison authorities.

In the historic case of *Navtej Singh Johar v. Union of India* (2018), the Supreme Court decriminalized homosexuality by striking down Section 377 of the Indian Penal Code. The court held that Section 377 violated the fundamental rights of LGBT individuals to equality, privacy, and dignity. The judgment ensured that LGBT individuals are not discriminated against based on their sexual orientation.

In the case of *Suresh Kumar Koushal v. Naz Foundation* (2013), the Supreme Court reversed the Delhi High Court's decision and upheld the constitutionality of Section 377 of the Indian Penal Code. The judgment was criticized for ignoring the rights of LGBT individuals and perpetuating discrimination.

In the case of *T.M.A. Pai Foundation v. State of Karnataka* (2002), the Supreme Court upheld the right of private institutions to admit students on the basis of merit. The court held that the economically weaker section of students should be given equal opportunity to be educated. Further, the Fundamental Right to Education be exercised in essence and not only in name hence ensuring good governance.

The role of the Judiciary has, however, not been beyond criticism, and it is under scanner for a lot of different reasons like corruption, judicial overreach, partiality, absence of transparency, accountability, and a host of other factors.

Challenges to the Indian Judiciary and the Judicial System

The Indian judiciary has long been regarded as one of the pillars of the Indian democratic system, upholding the rule of law and ensuring justice for all. However, the judiciary has also been beset with several internal challenges that have called into question its effectiveness and credibility.

One of the key challenges faced by the Indian judiciary is the issue of judicial delay. The backlog of cases in Indian courts is notorious, with millions of cases pending at all levels of the judicial system. This has led to a situation where justice is often delayed and denied, with cases taking years or even decades to reach a resolution. The root causes of this problem are complex and multifaceted, ranging from inadequate court infrastructure and staffing to outdated laws and procedural rules.

Another challenge facing the Indian judiciary is the issue of corruption. While the vast majority of judges and court officials are honest and dedicated public servants, there have been several high-profile cases of corruption and misconduct in recent years. These include allegations of judges taking bribes or being unduly influenced by powerful politicians or business interests. Such cases not only damage the reputation of the judiciary but also erode public trust in the entire legal system.

A related challenge is the issue of judicial accountability. While the Indian Constitution provides for an independent judiciary, there is currently no effective mechanism for holding judges accountable for their actions or decisions. This has led to situations where judges are able to act with impunity, making arbitrary or biased decisions without fear of repercussions.

Another challenge facing the Indian judiciary is the issue of diversity and representation. While India is a country of great linguistic, cultural, and regional diversity, the judiciary has traditionally been dominated by upper-caste male judges from a few elite legal institutions. This lack of diversity not only limits the range of perspectives and experiences brought to bear on legal issues but also raises questions about the legitimacy and inclusivity of the judicial system.

Finally, the Indian judiciary is also grappling with the challenge of balancing competing interests and priorities. As the country faces a range of complex social, economic, and political issues, courts are increasingly being called upon to make decisions that have far-reaching implications for society as a whole. Balancing the competing demands of justice, equity, and efficiency is a difficult task, and the judiciary must strive to maintain its impartiality and independence even in the face of powerful political and social pressures.

The politicization of the judiciary is a significant challenge to the independence and impartiality of the Indian judicial system. The increasing influence of politics on the appointment, promotion, and transfer of judges has raised serious concerns about the neutrality of the judiciary. The politicization of the judiciary has also led to instances of judges succumbing to political pressure, resulting in biased judgments and erosion of public trust in the judiciary. Furthermore, the judiciary is often subjected to criticism and interference from the media and other interest groups, which can create pressure on judges to rule in a particular way. This external pressure can also lead to a lack of accountability in the judicial system, as some judges may prioritize pleasing external stakeholders over upholding the law. Another external challenge is the issue of inadequate resources, which can undermine the effectiveness of the judiciary. Insufficient funding for courts, judges, and support staff can result in a backlog of cases and delays in the

delivery of justice. Additionally, the complexity and volume of cases in India's judicial system can overwhelm judges, leading to errors in judgment and hindering the overall efficiency of the judicial system. To address these external challenges, it is crucial to ensure that the judiciary remains independent, free from political influence, and adequately resourced. Strengthening accountability mechanisms for judges and increasing transparency in the appointment and promotion of judges can help to maintain public trust in the judiciary. Furthermore, investing in the infrastructure and support staff of the judicial system can help to ensure that judges can deliver justice efficiently and effectively.

Need for Judicial Reforms

The Indian judiciary has long been the subject of scrutiny and calls for reform. In recent years, several significant measures have been introduced to address various issues facing the judiciary. One of the primary focuses of judicial reform efforts has been the need to improve access to justice for all citizens, particularly those from marginalized communities. To this end, the introduction of technology-enabled solutions such as e-courts and mobile courts has been an important step towards reducing case backlogs and delays in the disposal of cases. Another critical area of judicial reform has been the need to increase transparency and accountability in the appointment of judges, particularly to higher courts. The establishment of a National Judicial Appointments Commission (NJAC) was seen as a significant step towards achieving this goal, but its constitutionality was later challenged and struck down by the Supreme Court. Other areas of reform include the need to enhance the quality of judicial education and training, ensure the integrity and ethics of judges, and improve the overall efficiency of the judiciary. While many of these reforms are still in the early stages of implementation, there is a growing recognition of the need for continued efforts towards strengthening the judiciary and ensuring access to justice for all.

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