

# Judiciary's Role in Good Governance: A Comprehensive Study of the Indian Context

Mallika Kumari

Amity University Patna

**Abstract:** This study systematically presents observations on the judiciary's role in good governance, focusing on India. It examines relevant articles from the Indian Constitution of 1950. Which form the basis of the Indian Judiciary's contribution to governance. The research compares the nature of Indian and American judiciaries and offers suggestions for enhancing the Indian judiciary's role in governance. The study underscores the judiciary's importance in a country's governance, highlighting its role in upholding constitutional values and promoting public welfare. **Research Questions and Focus:** 1) What is the role and function of Judiciary in Indian context? 2) What is the current status of the existing judicial setup of India and how does it works in accordance with the constitutional provisions? 3) What is the significance of the judiciary in the functioning of the government or how does it ensure or contribute in good governance? 4) What are the research suggestions to improve the role of the judiciary in ensuring good governance? **Synopsis:** The research work provides a detailed description and summary of the judiciary's role in promoting good governance, specifically in the Indian context. It emphasizes the judiciary's importance and function in upholding welfare principles alongside governmental roles and details how the judiciary actively ensures good governance in a manner that aligns with constitutional principles. **Methodology:** The methodology involved for this research adopts a scientific approach, involving data collection from reliable sources, classification and interpretation of the collected data and critical analysis to succinctly present the findings.

**Keywords:** Separation of Power, Distribution of Power, Judicial Review, Good Governance, Welfare State

- 1) Separation of Power- Concept propounded by Montesquieu in his book called 'The Spirit of the Laws' where there is system of different organs of the government such as legislature responsible for creating and dealing with the legislative aspects of amending or repealing or discussing over the law, Executive which executes or implements the law created by legislative authority and Judiciary which interprets the law or deals with the implementation of the law according to the constitutional spirit.
- 2) Distribution of Power- This emphasize on the notion of 'decentralization' which means distributing the different powers in the shared version at different levels of the government to attain co-operative efficiency in the governing part of the governmental bodies.
- 3) Judicial Review- A power of an independent judiciary where judiciary can struck down any law made by the competent authority which goes against the notion of the basic structure of the constitution or the constitutional spirit.
- 4) Good Governance- It involves representing the 'will of the state' in such a manner that the citizens or the subjects of the state gets individual rights protection, balance between the societal and individual interests in order to lead a holistic development of the people of the land.
- 5) Welfare State- This involves the incorporating concepts of all the aspects of the good governance in this modern era and all aspects of the DPSP or Directive Principles Of The State Policy as mentioned in PART 4 of The Indian Constitution of 1950), focusing on achieving the notion of the people's development in all aspects in a holistic manner with the objective of ensuring economical and social justice.

## 1. Introduction

Government refers to the political setup that represents the 'will of the state'. Governmental bodies always aims for the good governance in order to create and lead a healthy political, economical, social, cultural and psychological aspects of the society or its citizens in order to establish the goal of the 'welfare state' where the individual and societal interests are being balanced and for attaining this spirit through the ends of different explicit goals, often the concept of 'Separation of Power' (as propounded by Montesquieu in his book called 'The Spirit of the Laws') that promotes on a practical basis called the 'Distribution of Power' where the different branches of the government i.e. the legislature, the executive and the judiciary have been assigned with their own respective functions i.e. to make law, to implement law and to check the functioning of the proper implementation of the law respectively. But in reality, in this growing complex modern era there is no water-tight compartments for such organs or branches of the government i.e. their functions often overlapped with each other. At times executive plays an active role in the legislation part through the ambit of (delegated legislation- which empowers to make bye-laws for the proper implementation of the administrative laws as made by the legislature) and (judiciary also plays an active role in setting laws through its precedents or the pre-decided case laws acting as a guiding principle in ensuring the governmental aspects in a country including the notion of maintaining law and order).

### 1.1 Independent Judiciary

The concept of 'Independent Judiciary' plays a vital role in ensuring good governance in a country because an Independent Judiciary is free from any sort of unnecessary influence from the other organs of the government and kept its vision high for the protection of the supreme law of the country the constitution, under which all the governmental

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bodies are bound to act and function for the development of the citizens in a holistic manner. For example- in India, Independence of judiciary is there with regards to the appointment of judges with the collegium system (that there is no or minimal executive interference), in providing salaries to the judges, judges are not allowed to practice law after retirement and many more. In India, the concept of Independent Judiciary has been introduced in the Article 50<sup>1</sup> of the Indian Constitution of 1950, which empowers the state to take steps to maintain the independent nature of the judiciary in order to ensure the smooth protection of the supreme law of the land and the constitutional fundamental spirit. The Indian Judiciary works as the 'Guardian of the Indian Constitution' and often keeps an eye or supervision on the other organs of the government that whether they are infringing the provisions of the constitution or not. The word judiciary has been derived from the word 'judicium' meaning 'judgement' which emphasize on the notion that through the delivery of judgement, judiciary often establishes the path for the good governance of the country by checking functioning of the other organs of the government i.e legislature and executive which are responsible for the governance (legislature at both central and state level legislate the law while executive implement those laws and judiciary checks the implementation of such laws in accordance with the constitutional spirit).

In the landmark case of <sup>2</sup>Kesavananda Bharati v. State of Kerala-The Honorable Supreme Court holds the judgement and evolved the 'The Basic Structure Doctrine' which emphasizes that 'the Parliament the supreme representative of the government cannot alter the basic structure of the Indian Constitution'. This shows the Independent and strong functioning of the Indian Judiciary which is contributing in the good governance of the land (as per Article 368<sup>3</sup> of the Indian Constitution, Parliament is empowered to make amendments in the constitution with the established procedure as stated in the constitution itself with the need of the hour but it is not an absolute power and has been backed by the notion of 'constitutionalism' as stated by the Indian Judiciary's functioning that government cannot abridge the basic fundamental rights and other basic measures of the constitution in a fundamental way).

A society without legislative organs is conceivable but a civilized State without judicial organ is hardly conceivable as there is no better test of the excellence of a government than the efficiency and independence of its judicial system.

All these views supports and explains the idea that how the judiciary plays a crucial role in determining the path of the good governance of the country by promoting welfare of the citizens, individual freedom, balance between the individual and societal interests and by establishing the concept of 'justice' (in political, social and economical sense as stated in the Preamble of the Indian Constitution) through the notion of 'rule of law' which says that everyone is equal before the eyes of the law and carries equal protection of the law ( the

same idea has been incorporated under the Article 14<sup>4</sup> of the Indian Constitution), that establishes supremacy of the law against the concept of arbitrary rule as propounded by (A.V Dicey).

### 1.2 Rule of Law

The concept of 'rule of law' which emphasizes on the supremacy of law without any arbitrary rule and upholding the constitutional spirit to ensure 'equality before law' and 'equal protection of law'- equality before law mandates the state to treat everyone equals in the eyes of the law and equal protection of law ensures that everyone should get the protection from law in a free and fair manner (both has been mentioned under the Article 14 of the Indian Constitution) and has been done timely by the mercy of an independent judiciary which often keeps an eye over the governmental functioning and administration (including different legislative, executive and other governmental setups or functioning at the central, state and local level governmental machinery) to ensure the applicability of the constitutional spirit of the Indian Constitution of 1950 in all aspects. Often in order to ensure the rule of law, judiciary has used its power of 'Judicial Review' (source for Indian Constitution includes borrowed from United States of America) given under the ambit of Article 13<sup>5</sup> of the Indian Constitution of 1950 which grants power to the judiciary to struck down any law made by the legislative unit of the country which goes against the spirit of the constitution in the light of different doctrines involved in the interpretation of the laws or statutes. Several prominent doctrines and cases setting different landmark precedents have been aroused on this notion. Although there are several critics regarding the power of this judicial review which sometimes takes the scope and appearance of the concept of 'Judicial Overreach' which means, that judiciary have been involved in those matters in such a way under the cover of judicial way for the constitutional protection which is not essentially required and often makes the barrier for the governmental machinery (like legislature and executive) to function. But, besides all of these, it has been proved from the facts that judiciary has played and an active and paramount rule in helping and promoting the governmental bodies to implement the Fundamental Rights, Directive Principles of the State Policy; etc for establishing the objective of attaining the concept of 'Welfare State' (which works for the welfare of its citizens in a holistic manner).

### 1.3 Constitutional Provisions for Emphasizing upon the Role of Judiciary in Good Governance

- 1) ARTICLE 137<sup>6</sup>-It empowers the Supreme Court of the country to review the orders and judgement in order to promote the justice and good governance in the country through the judicial spirit subject to the laws made by the Parliament or under Article 145 of the Indian Constitution of 1950.

<sup>1</sup>Article 50 of The Indian Constitution of 1950.

<sup>2</sup>4 SCC 225; AIR 1973 SC 1461.

<sup>3</sup>Article 368 of The Indian Constitution of 1950.

<sup>4</sup> Article 14 of The Indian Constitution of 1950.

<sup>5</sup> Article 13 of The Indian Constitution of 1950.

<sup>6</sup>Article 137 of The Indian Constitution of 1950.

- 2) ARTICLE 145<sup>7</sup>-Under this article, Supreme Court is empowered to make rules for the functioning of the various matters such as for the functioning of the lower or subordinate courts in the matters of appeals; and all these to regulate the good governance in the country's cases to uphold the justice in social, economical and political sense as stated in the Preamble of the Indian Constitution ( as government's duty is to ensure good justice in the society according to the principles of the natural justice).
- 3) ARTICLE 32<sup>8</sup> AND ARTICLE 226<sup>9</sup>-Under Article 32 (Supreme Court) and under Article 226 (High Court) have been empowered to issue writs for the enforcement of the Fundamental Rights as mentioned in the part 3 of the Indian Constitution between the articles (12 to 35), which are justiciable and negative in nature that it stops the state from doing certain acts which prohibits one's fundamental rights because, these have been provided to each citizen of the nation from one's birth or after acquiring the right of citizenship. The ambit of Article 226 is much wider as compared to the scope of Article 32 as under Article 226 (Fundamental Rights and other various Legal Rights have been covered) but under Article 32 only (Fundamental Rights) have been covered. The five types of writs that can be issued are;
- WRIT OF MANDAMUS: it means (we command), this is issued to make a public officer entity to make one responsible in order to perform one's duty.
  - WRIT OF CERTIORARI: it means (to be certified) or (to be informed), this is issued by a higher court to a lower court to transfer a case to them.
  - WRIT OF HABEAS CORPUS: it means (to have a body), it is generally used in the cases of 'illegal detention' and used to present the detained person in the eyes of the court to check whether the detention was lawful or not.
  - WRIT OF QUO-WARRANTO: it means (by what authority), this is issued to check one's authority or claim in the public office that by what authority that person is claiming the office.
  - WRIT OF PROHIBITION: it means (to prohibit), it is used to prohibit the subordinate courts from acting out of their limits in the matters where they don't have any jurisdiction legally.
- 4) ARTICLE 136<sup>10</sup>-Under this article, the Supreme Court is empowered to make special leave to appeal in the cases where the apex court seems to do so for the matter concerning the country's requirement in the good governance. Judiciary also plays a vital role in the conflict resolution between the different tiers of the government (such as between Central and State legislature) in a federal structure with respect to several matters in accordance with the provisions mentioned in the constitution of the land, also it handle the dispute between the states or other as stated in the provisions of the (Article 131<sup>11</sup>-original jurisdiction of Supreme Court), as observed in the case of (State of Rajasthan v. Union of India)<sup>12</sup>-(1977 CASE). Judiciary has also played a vital role in checking executive functioning in the country. For example- it had played a vital role in checking the proclamation of emergency (as defined in part 18 of the constitution between the articles 352 to 360 of The Indian Constitution of 1950-covering 3 types of emergency which is National emergency, State emergency and Financial emergency) by the President (under the ambit of judicial review) if there exists a doubt regarding mala-fide intent behind the conduction of emergency or in case of violation of the constitutional provisions as the notion developed in the landmark case of (Minerva Mills Ltd. And Ors. vs Union of India And Ors)<sup>13</sup>. Judiciary has also played a vital role in checking the functioning of the legislative organ of the government in order to prevent any law from being in force which is against the notion of 'rule of law' or against the constitutional spirit (that legislature cannot make the law violating the provisions of the constitution or which is not under its ambit to legislate upon that the provisions of the constitution in accordance with the state list, union list and concurrent list should be followed as stated in the 7<sup>th</sup> schedule of the Indian Constitution of 1950).
- 5) Article 132<sup>14</sup>-Under this article, Supreme Court is empowered to hear or have appellate jurisdiction from High Courts in certain cases if the case involves a substantial question of law that needs to be addressed or else it will affect the good governance functionary or other as stated in the specified article of the constitution.
- 6) Article 129<sup>15</sup>- Judiciary also in a holistic manner try to evolve different doctrines in their landmark cases to uphold the wider notion of justice in economical, political and social sense wherever necessary in relation with the governance of the land and government are bound to follow it or in case of violation the Supreme Court can punish the liable for the 'contempt of court' as stated in specified article of the constitution.
- 7) Also, Supreme Court plays a vital role in advising the President of the country in the concerned manner of law as per the need of the time which aid the implementation of law and holistic managed justice in the society as stated in (Article 143<sup>16</sup>) of the constitution. The functions and role of an independent judiciary becomes the pillars for the promotion of the good governance, although there is several critics of the same but it is a fact that judiciary plays an active role in ensuring good governance in the land through its machinery as mentioned in (Chapter 4 for Union Judiciary, Chapter 5 for High Courts in the states and Chapter 6 for Subordinate Courts of the Indian Constitution of 1950). Judiciary ensures the proper implementation of the provisions of the constitution and in case of their violation provides the necessary role to ensure its implementation. For example- it ensures the proper implementation of the (Part 9 of The Indian Constitution of 1950 which talks about the relation

<sup>7</sup>Article 145 of The Indian Constitution of 1950.

<sup>8</sup>Article 32 of The Indian Constitution of 1950.

<sup>9</sup>Article 226 of The Indian Constitution of 1950.

<sup>10</sup>Article 137 of The Indian Constitution of 1950.

<sup>11</sup>Article 131 of The Indian Constitution of 1950.

<sup>12</sup>AIR 1977 SC 1361.

<sup>13</sup>AIR 1980 SC 1789.

<sup>14</sup>Article 132 of The Indian Constitution of 1950.

<sup>15</sup>Article 129 of The Indian Constitution of 1950.

<sup>16</sup>Article 143 of The Indian Constitution of 1950.

between union and states in legislative and administrative manner and ensures that no administrative violation should be there that proper administrative law should be followed which work as the running mechanism of the constitution for promoting good governance). It should be highlighted that the Indian Constitution is a (Quasi-Federal) constitution including different descriptive matters or provisions which ensure the basics of the good governance as propounded by the members of the (Constituent Assembly). Judiciary is responsible for upholding transparency and accountability of the governmental organs and departments and ensure fairness and equity with justice and good conscience in the governance at all levels of our 'Quasi-Federal' political machinery or system. It also promotes the notion of efficiency and effectiveness in the various policies and policy making of the government with the essence of ensuring ethical conduct. All these eventually helps in maintaining political stability and effective public administration and civil society development with the medium of conflict resolution and establishing economical and social development.

- 8) The judiciary of the land plays a vital role in ensuring checks and balances between the organs of the government as it checks the functioning of the legislature and executive and also in cases several parts of the judiciary itself to ensure their overall proper functioning. The judiciary also often takes the step in *Suo Moto Cognizance* and empowers the working of *PIL* or *Public Interest Litigation* to ensure that subjects of public importance should be addressed in order to maintain the public harmony which sometimes government lags and have inspired and instructed the government to play its vital role too. The judiciary through the set precedents or the pre-decided case laws have set a benchmark for the government with its respective judgements to enquire into the matters and starts working for the need of the society. The judiciary has also played a vital role in evolving the concept of environmental protection and government has played an active role in co-operation with it.
- 9) The government also relies on the judiciary for the solution of legal disputes, to maintain rule of law and to interpret law in a holistic as well as fair manner and stops the governmental organs from functioning in a wrong and biased manner which plays a vital role in liberal democratic countries. Thus, it can be said that judiciary acts as the fundamental component for a stable government in most modern societies as it provides legal certainty and protects individual rights together with the concept of public welfare at large through different legal principles applicability which the other two governmental organs cannot do on their own without the involvement of judiciary. Also, several prominent speakers have pointed in regards to the role of judiciary in hindrance of the good governance in certain respects such as delay in providing justice, legal machinery is complex in functioning and lack of transparency with respect to political interference in the functioning of the judiciary. It can be suggested that different measures should be adopted such as committees should be adopted to ensure or develop the

effective machinery to handle such political interference checking and maintaining transparency in the working of the judicial system of the country and measures should be adopted to liberalized the complexity in the legal system with the experts opinions.

## 2. Comparative Analysis

Talking about the functioning of Indian Judiciary with respect to American Judiciary-there exists the similarities of the notion of independent judiciary functioning, with the power of judicial review and effective role in protecting individual rights. Also, there exists differences with the notion of the structure of the legal system (in India, there is an integrated judicial system which involves the hierarchy of court and cases of all kinds as per the jurisdiction specified are being heard in America there is dual judicial system that there is separate judicial setup for state's cases and for center's cases as following the strong federal structure or reflecting a part of it), case backlogs, appointment of judges (in India, the judges of the higher judiciary level have been appointed from the President in confirmation or on the advice of the collegium system including the Chief Justice of India and 4 other senior judges of the supreme court while in America, President has a vital role in appointing on his own the members of the judiciary) and with respect to legal culture (including their legal history); both of the system has their own merits and demerits that needs to be addressed with the proper machinery according to the need of the hour.

### Significance of Judiciary in Ensuring Good Governance

This article is significant as it provides a comprehensive understanding of the judiciary's pivotal role in good governance. It offers a detailed analysis of the Indian judiciary's contributions, challenges and potential improvements, contributing to a deeper understanding of governance in democratic societies.

## 3. Suggestions

In order to ensure the correction in the existing judicial setup for its performance in the role of ensuring good governance should include coming up with the better representation of the judges in the judicial setup at all levels (be it from different background, expertise, coming from different genders and ensuring their mindset and professionalism) the role of the judiciary in good governance can be enhanced; also, measures should be taken in order to ensure transparency in the appointment of judges and vacant seats should be filled up necessarily in order to deal with the case backlogs and division of labour should be systematized in a more organized and meaningful matters so that judges can give or spend their intellectual time over the important cases and should deal with the necessity involves in judging the substantial question of law.

Also, with regards to the conflict between judiciary and legislature a third statutory body can be conducted to look over their matters and specifications with regards to the jurisdiction and limitation area but it should not be compromised with the independence of judiciary and in the likewise manner a body can be conducted for the conflict resolution between judiciary and executive where the

constituent members of that body stated should not have any interest in any governmental bodies such as legislature, executive and judiciary as it will lead to further biasness and loopholes. Also, a joint setup should be there in that body for the representation of all the organs of the government under the ambit of the constitution.

Hence, it can be said that in promoting the good governance in the country with the help of judiciary and other governmental organs co-operation should be there.

#### 4. Conclusion

In conclusion, this research establishes the judiciary's integral role in promoting good governance, especially within the Indian framework. It underscores the judiciary's function in upholding constitutional principles and balancing individual rights with public welfare, offering insights for future enhancements in judicial effectiveness in governance.

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