

## **ROLE OF JUDICIARY IN GOOD GOVERNANCE**

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It has been nearly six decades that we inherited a well-entrenched system of judicial administration besides elaborate and codified, substantive and procedural laws from Britishers. These laws had generally stood the test of time. Therefore, we adopted them with suitable corrections wherever required. Over the years, we have fine-tuned the judicial administration so as to meet the needs of changing times and aspirations of the modern India.

The concept of 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. The quality of governance depends, in a large measure, upon the indulgence shown by subjects.

Speaking on basis of experiences of medieval period and the times of colonial rule, in particular in the continents of Africa and Asia,

some political scientists would use sarcasm in describing the system of governance one such scientist<sup>1</sup> said : “the marvel of all history is the patience with which men and women submit to burdens unnecessarily laid upon them by their governments”. Yet others<sup>2</sup> would not mince words in describing the business of governance thus: “So they [the government] go on in strange paradox, decided only to be undecided, resolved to be irresolute, adamant for drift, solid for fluidity, all powerful to be impotent”.

The world has come a long way since the times of such skepticism. The majority of the member States of the comity of nations today are founded on the principle of “Welfare State”, run with full participation of their respective inhabitants, striving to achieve the common good and in the process affording optimum opportunity and involvement for growth of the individual so as to subserve the societal interests. This has led to evolution of “Good Governance”, as opposed to mere governance, as the umbrella concept encompassing within it a system of governance that is able to unequivocally discover the basic values of the society where standards concern economic, political and

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<sup>1</sup> William H. Borah

<sup>2</sup> Sir Winston Churchill, former Prime Minister of England, in an Address on 12<sup>th</sup> November 1936

socio-cultural issues including those involving human rights, and follows the same through an accountable and upright administration.

Good governance signifies the way an administration improves the standard of living of the members of its society by creating and making available the basic amenities of life; providing its people security and the opportunity to better their lot; instill hope in their heart for a promising future; providing, on an equal & equitable basis, access to opportunities for personal growth; affording participation and capacity to influence, in the decision-making in public affairs; sustaining a responsive judicial system which dispenses justice on merits in a fair, unbiased and meaningful manner; and maintaining accountability and honesty in each wing or functionary of the Government.

As per the United Nation's Commission on Human Rights, the key attributes of good governance include transparency, responsibility, accountability, participation and responsiveness to the needs of the people. Good governance is thus linked to an enabling environment conducive to the enjoyment of Human Rights and promoting growth

and sustainable human development. The expectation of every civil society of its Government is that it would fulfill its commitments and provide an equitable atmosphere contributing to individual's growth. A Government is expected to be fully accountable to its people and transparent in the use of public resources. It enforces the Human Rights including economic, social and cultural rights and has no place for corruption of any kind since dishonesty is anathema to economic well-being as it transmits public money allocated for development unjustly into private coffers depriving the citizenry of its use for their welfare.

In nutshell, Good Governance entails effective participation in public policy-making, the prevalence of the rule of law and an independent judiciary, besides a system of institutional checks & balances through horizontal and vertical separation of powers, and effective oversight agencies.

The views evolved in UN Economic & Social Commission for Asia & 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. It assures that corruption is minimized, the view of minorities are taken into account and that the voices of the most vulnerable in society are heard in decision-making. It is also responsive to the present and future needs of society.”

All these expressions convey theories pregnant with time-tested concepts. The “participation” in order to be effective, needs to be informed & organized and, therefore, depends upon the availability to the subjects “freedom of association & expression” on one hand and existence of “an organized civil society” on the other. This necessarily is a pointer to “representative democracy”. The attribute of “rule of law” inheres as prerequisite “fair legal frameworks” that are enforced impartially and particularly “full protection of human rights”, especially of the vulnerable sections of the society. The factor of “transparency” requires that information is freely available and the decisions are taken or enforced in a manner that adheres to the rules and regulations. The attribute of “responsiveness” necessitates that all public institutions and their processes strive “to serve all stake holders within a reasonable time frame”.

Democracy, liberty and the rule of law together represent the troika that is universally accepted now as the 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. It involves equal accountability of all before the law irrespective of high or low status.

Democracy has been evolved through centuries of experience amongst the people, who care for human person, dignity & rights as the best and most acceptable form of good governance. It is a concept that occasions the idea that all citizens have a right to participate in the decision-making processes that lead to adoption of policies that are applicable to the societies<sup>3</sup>. It also means that there are some limits on majority decision-making and, hence the inevitability of certain basic

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<sup>3</sup> See Article 25 of the International Covenant on Civil and Political Rights; Article 3 of Protocol I to the European Convention on Human Rights; and Article 23 of the International American Convention on Human Rights

rights being protected. It rests on maintaining a necessary equilibrium between the numerous competing interests, demands, constraints and compulsions that exist in any civic society eager for development.

India was founded as a democratic welfare State which would allow equal opportunity to one and all, irrespective of caste, creed, colour, sex or any other form of discrimination; a State where everyone would have equal opportunity for personal growth and for contributing to the cause of nation. Democracy has been defined as “a Government by the people, of the people and for the people”<sup>4</sup>. The founding fathers of modern India took this theory further by reading the expression “for the people” as indicative of the desirability to setup a governance that works “for the welfare of the people”.

The members of the Constituent Assembly were not only great visionaries but also architects of consummate skill and fidelity. They created a document which reflected an acute awareness on their part that it was incumbent to entrench the concept of rule of law into the Indian polity, given the possibility of conflicts of interests arising amongst various sections in a free developing society. In order to

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<sup>4</sup> Abraham Lincoln

further the solemn resolve to constitute India into a sovereign, socialist, secular, republic that assured “the dignity of the individual” and secured for one & all not only liberty of thought, expression, belief, faith and worship and equality of status and opportunity but also Justice in all its hues, Parliamentary democracy was chosen as the form of Government in which the State power is divided amongst the three chief organs namely the legislature, the executive and the judiciary.

India incorporated a number of basic human rights as guaranteed fundamental rights, elaborated in every possible manner, in Part III of the Constitution. These fundamental rights go much beyond the American Bill of Rights. They did draw upon the Universal Declaration of Human Rights issued by the United Nations in 1948 but went ahead of them by incorporating alongside, in Part IV of the Constitution, certain ‘Directive Principles of State Policy’ which are principles that would be fundamental for “good governance” of this country<sup>5</sup>.

The Directive Principles have been used as fundamental principles of governance tempered by the Fundamental Rights. From

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<sup>5</sup> Article 37

time to time, adjustments have been made in 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. After all, the purpose of the Fundamental Rights on the one hand and the Directive Principles on the other is common; viz., to provide for an environment that can ensure dignified growth & development of each individual as a useful human being.

In order to guarantee that the role of law would inure to, and for, everyone and the promises made by the Constitution would not remain merely on paper, the Constitution makers made provisions for independence of the judiciary.

Judiciary in India enjoys a very significant position since it has been made the guardian and custodian of the Constitution. It not only is a watchdog against violation of fundamental rights guaranteed under the Constitution and thus insulates all persons, Indians and aliens alike, against discrimination, abuse of State power, arbitrariness etc. but borrowing the words of one of the founding fathers of the American Constitution, James Medison, I would say that the Judiciary in India is

“truly the only defensive armour of the country and its constitution and laws”. If this armour were to be stripped of its onerous functions it would mean, “the door is wide open for nullification, anarchy and convulsion”.

Liberty and Equality have well survived and thrived in India due to the pro-active role played by the Indian judiciary. The rule of law, one of the most significant characteristics of good governance prevails because India has an independent judiciary that has been sustained, amongst others, because of support and assistance from an independent bar which has been fearless in advocating the cause of the underprivileged, the cause of deprived, the cause of such sections of society as are ignorant or unable to secure their rights owing to various handicaps, an enlightened public opinion and vibrant media that keeps all the agencies of the State on their respective 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 of their rights and redress against government actions. These limits help make branches of government accountable to each other and to the people. An independent judiciary is important for preserving the rule of law and is, therefore, most important facet of good governance.

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

Indian Judiciary has been pro-active and has scrupulously and overzealously guarded the rights fundamental for human existence. The scope of right to life has been enlarged so as to read within its compass the right to live with dignity, right to healthy environment,

right to humane conditions of work, right to education, right to shelter and social security, right to know, right to adequate nutrition and clothing and so on. This has been achieved by filling the vacuum in municipal law by applying, wherever necessary, International instruments governing human rights<sup>6</sup>. The Supreme Court has, over the years, elaborated the scope of fundamental rights consistently, strenuously opposing intrusions into them by agents of the State, thereby upholding the rights and dignity of individual, in true spirit of good governance. In case after case, the Court has issued a range of commands for law enforcement, dealing with an array of aspects of executive action in general, and of police at the cutting edge level in particular. Some instances :

- (i) Reiterating the view taken in *Motiram*<sup>7</sup>, the Supreme Court in *Hussainara Khatoon*<sup>8</sup>, expressed anguish at the “travesty of justice” on account of under-trial prisoners spending extended time in custody due to unrealistically

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<sup>6</sup> If any illustration is required of this approach of Indian judiciary, reference can be readily made to the cases of **Apparel Export Promotion Council Vs. A.K. Chopra** [(1999) 1 SCC 759]; **Vishaka v. State of Rajasthan** [(1997) 6 SCC 241] and **T.N. Godavarman Thirumalpad v. Union of India & Ors.** [(2002) 10 SCC 606].

<sup>7</sup> **Motiram and others v. State of M.P.** AIR 1978 SC 1594

<sup>8</sup> **Hussainara Khatoon and others v. Home Secretary State of Bihar** AIR 1979 SC 1360

excessive conditions of bail imposed by the magistracy or the police and issued requisite corrective guidelines, holding that “the procedure established by law” for depriving a person of life or personal liberty (Article 21) also should be “reasonable, fair and just”.

- (ii) In *Prem Shankar Shukla*<sup>9</sup>, the Supreme Court found the practice of using handcuffs and fetters on prisoners violating the guarantee of basic human dignity, which is part of the constitutional culture in India and thus not standing the test of equality before law (Article 14), fundamental freedoms (Article 19) and the right to life and personal liberty (Article 21). It observed that “to bind a man hand and foot’ fetter his limbs with hoops of steel; shuffle him along in the streets, and to stand him for hours in the courts, is to torture him, defile his dignity, vulgarise society, and foul the soul of our constitutional culture”. Strongly denouncing handcuffing of prisoners as a matter of routine, the Supreme Court said that to “manacle a man

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<sup>9</sup> *Prem Shankar Shukla v. Delhi Administration* 1980 SCC 526

is more than to mortify him, it is to dehumanize him, and therefore to violate his personhood....”. The rule thus laid down was reiterated in the case of *Citizens for Democracy*<sup>10</sup>.

- (iii) In *Ichu Devi Choraria*<sup>11</sup>, the court declared that personal liberty is a most precious possession and that life without it would not be worth living. Terming it as its duty to uphold the right to personal liberty, the court condemned detention of suspects without trial observing that “the power of preventive detention is a draconian power, justified only in the interest of public security and order and it is tolerated in a free society only as a necessary evil”.
- (iv) In *Nilabati Behera*<sup>12</sup>, the Supreme Court asserted the jurisdiction of the judiciary as “protector of civil liberties” under the obligation “to repair damage caused by officers of the State to fundamental rights of the citizens”, holding the State responsible to pay compensation to the near and

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<sup>10</sup> *Citizens for Democracy v. State of Assam* 1995 SCC 743

<sup>11</sup> *Ichu Devi Choraria v. Union of India* 1980 SCC 531

<sup>12</sup> *Nilabati Behera v. State of Orissa* 1993 SCC 746

dear ones of a person who has been deprived of life by their wrongful action, reading into Article 21 the “duty of care” which could not be denied to anyone. For this purpose, the court referred to Article 9 (5) of the International Covenant on Civil and Political Rights, 1966 which lays down that “anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation”.

- (v) In *Joginder Kumar*<sup>13</sup>, the court ruled that “the law of arrest is one of balancing individual rights, liberties and privileges on the one hand and individual duties, obligations and responsibilities on the other; of weighing and balancing the rights, liberties of the single individual and those of individuals collectively.....”.
- (vi) In *Delhi Domestic Working Women’s Forum*<sup>14</sup>, the Court asserted that “speedy trial is one of the essential requisites of law” and that expeditious investigations and trial only could give meaning to the guarantee of “equal protection of law” under Article 21 of the Constitution.

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<sup>13</sup> *Joginder Kumar v. State of UP and Others* 1994 SCC 260

<sup>14</sup> *Delhi Domestic Working Women’s Forum v. Union of India & Others* 1995 SCC 14

- (vii) In *PUCL*<sup>15</sup>, the dicta in Article 17 of the International Covenant on Civil and Political Rights, 1966 was treated as part of the domestic law prohibiting “arbitrary interference with privacy, family, home or correspondence” and stipulating that everyone has the right to protection of the law against such intrusions.
- (viii) In *D.K. Basu*<sup>16</sup>, the Court found custodial torture “a naked violation of human dignity” and ruled that law does not permit the use of third degree methods or torture on an accused person since “actions of the State must be right, just and fair, torture for extracting any kind of confession would neither be right nor just nor fair”.
- (ix) In *Vishaka*<sup>17</sup> Supreme Court said that “gender equality includes protection from sexual harassment and right to work with dignity, which is a universally recognized basic human right. The common minimum requirement of this right has received global acceptance. In the absence of

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<sup>15</sup> *People’s Union for Civil Liberties [PUCL] v. Union of India and another* AIR 1997 SC 568

<sup>16</sup> *D.K. Basu v. State of West Bengal*, AIR 1997 SC 610

<sup>17</sup> *Vishaka & Ors. v. State of Rajasthan & Ors.*, (1997) 6 SCC 241

domestic law occupying the field, to formulate effective measures to check the evil of sexual harassment of working women at all workplaces, the contents of international conventions and norms are significant for the purpose of interpretation of the guarantee of gender equality, right to work with human dignity in Articles 14, 15, 19(1)(g) and 21 of the Constitution and the safeguards against sexual harassment implicit therein and for the formulation of guidelines to achieve this purpose.... in the absence of enacted law to provide for the effective enforcement of the basic human right of gender equality and guarantee against sexual harassment and abuse, more particularly against sexual harassment at all workplaces, guidelines and norms are hereby laid down for strict observance at all workplaces or other institutions, until a legislation is enacted for the purpose. This is done in exercise of the power available under Article 32 for enforcement of the fundamental rights and it is further emphasized that this would be treated as

the law declared by the Supreme Court under Article 141 of the Constitution.”

The aforesaid cases are only few examples from numerous judgments concerning human rights. Playing a pro-active role in the matters involving environment, the judiciary in India has read the right to life enshrined in Article 21 as inclusive of right to clean environment. It has mandated to protect and improve the environment as found in a series of legislative enactments and held the State duty bound to ensure sustainable development where common natural resources were properties held by the Government in trusteeship for the free and unimpeded use of the general public as also for the future generation. The Court has consistently expressed concern about impact of pollution on ecology in present and in future and the obligation of the State to anticipate, prevent and attach the causes of environmental degradation and the responsibility of the State to secure the health of the people, improve public health and protect and improve the environment<sup>18</sup>.

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<sup>18</sup> See **M.C. Mehta v. Union of India** [(1986) 2 SCC 176]; **Indian Council for Enviro-Legal Action v. Union of India** [(1996) 3 SCC 212]; **Vellore Citizens' Welfare Forum v. Union of India** [(1996) 5 SCC 647]; **M.C. Mehta v. Kamal Nath**, [(1997) 1 SCC 388]; **S. Jagannath v. Union of India**, [(1997) 2 SCC 87]; **M.C. Mehta (Taj Trapezium Matter) v. Union of India**, [(1997) 2 SCC 353]; **M.C. Mehta (Calcutta Tanneries' Matter) v. Union of India**, [(1997) 2 SCC 411]; **M.C. Mehta (Badkhal and Surajkund Lakes Matter) v. Union of India** [(1997) 3 SCC 715]; **Bittu Sehgal v. Union of India**, [(2001) 9 SCC 181] and **M.C. Mehta v. Union of India**, [(2002) 4 SCC 356].

Democratic form of Government of the kind adopted by India depends in its success of a system of free and fair elections regulated, monitored and controlled by an independent agency. We have in position a high powered Election Commission as an autonomous body to oversee the electoral process. Judiciary has made significant contributions through various pronouncement to plug loopholes and preclude the possibility of abuse by the candidates. I would illustrate this by just one instance.

Criminalization of politics has been one smoldering issue since it has an immediate bearing on the choice of candidates in an election and goes to the root of expectation of good governance through elected representatives. Treating the right to vote as akin to freedom of speech and expression under Article 19(1)(a) of the Constitution and enforcing the “right to get information” as “a natural right” flowing from the concept of democracy, in the case of *Association for Democratic Reforms*<sup>19</sup>, the judiciary brought about a major electoral reform by holding that a proper disclosure of the antecedents by candidates in election in a democratic society might influence intelligently the

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<sup>19</sup> **Union of India v. Association for Democratic Reforms and Anr.** (2002) 5 SCC 294.

decisions made by the voters while casting their votes. Observing that casting of a vote by a misinformed and non-informed voter, or a voter having a one sided information only, is bound to affect the democracy seriously, the court gave various directions making it obligatory on the part of candidates at the election to furnish information about their personal profile, background, qualifications and antecedents.

In the field of education and the rights of minority, there are various judgments in last about 50 years which have contributed immensely in both these fields. Instead of going back 50 years to the cases of *Kerala Education Bill*, *St. Xavier College*, *St. Stephen College*<sup>20</sup>, let me only make a mention of few decisions in the last about 15 years [*Mohini Jain*, *Unni Krishnan* (leading to insertion of Article 21-A), *TMA Pai*, *Islamic Academy and P.A. Inamdar* (leading to insertion of Article 15(5))<sup>21</sup>].

Discussion on this subject would be incomplete without a brief reference to certain decisions which led to formation of the doctrine of

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<sup>20</sup> *In Re. Kerala Education Bill, 1957*. 1959 SCR 995; *The Ahmedabad St. Xavier's Society & Anr. v. State of Gujarat & Anr.* (1974) 1 SCC 717; *St. Stephen's College etc. etc. v. University of Delhi etc. etc.* (1992) 1 SCC 558.

<sup>21</sup> *Mohini Jain v. State of Karnataka & Ors.* (1992) 3 SCC 666; *Unni Krishnan & Ors. v. State of Andhra Pradesh & Ors.* (1993) 1 SCC 645; *T.M.A. Pai Foundation & Ors. v. State of Karnataka & Ors.* (2002) 8 SCC 481; *Islamic Academy of Education & Anr. v. State of Karnataka & Ors.* (2003) 6 SCC 697; *P.A. Inamdar & Ors. v. State of Maharashtra & Ors.* (2005) 6 SCC 537.

basic structure as a limit on the constituent power of the parliament to amend the Indian Constitution. In 1952, in *Sankari Prasad's case*<sup>22</sup>, a Constitution Bench held that any act passed by the Parliament under its amending power under Article 368 would be valid even if it abridged any of the fundamental right contained in Part III of the Constitution. Again in 1964, another Constitution Bench in *Sajjan Singh's case*<sup>23</sup> supported the views expressed in *Sankari Prasad*. These two cases were considered by an 11 Judge Bench in *Golak Nath's case*<sup>24</sup>. The views expressed in *Sankari Prasad* and *Sajjan Singh* were reversed. The Supreme Court held that fundamental rights are primordial rights necessary for development of human personality and these rights enable a man to chalk out his own life in the manner he likes best. The Bench expressed the view by majority judgment that fundamental rights are given a transcendental position under our Constitution and are kept beyond the reach of Parliament. But, at the same time, Parts III and IV of the Constitution were held to constitute an integral scheme forming a self-contained code. The scheme is so elastic that all

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<sup>22</sup> *Sri Sankari Prasad Singh Deo v. Union of India & State of Bihar*, 1952 SCR 89

<sup>23</sup> *Sajjan Singh v. State of Rajasthan* (1965) 1 SCR 933

<sup>24</sup> *I.C. Golak Nath & Ors. v. State of Punjab & Anr.* (1967) 2 SCR 762

the Directive Principles can be reasonably enforced without abridging or abrogating the Fundamental Rights.

Various constitutional amendments were made purporting to overcome the decision in *Golak Nath's case*. A larger Bench of 13 Judges in celebrated *Kesavananda Bharati's case*<sup>25</sup> examined the correctness of *Golak Nath's decision* to determine whether the law relating to Parliament's power of amendment of Constitution had been rightly decided in *Golak Nath's case* or not. In *Kesavananda Bharati's case*, by majority, the *Golak Nath's case* was overruled. It was held that Article 368 does not enable Parliament to amend the Constitution to alter the basic structure of framework of the Constitution. Implied limitations were read in Article 368.

Various constitutional amendments were made after decision in *Kesavananda Bharati* including 39<sup>th</sup> amendment thereby introducing Article 329-A in the Constitution which, inter alia, sought to exclude judicial scrutiny of election of certain Members of Parliament. The provision in clauses (4) and (5) of Article 329-A were struck down by a Constitution Bench in the case of *Indira Nehru Gandhi*<sup>26</sup> applying the

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<sup>25</sup> His Holiness Kesavananda Bharati Sripadagalvaru v. State of Kerala & Anr., (1973) 4 SCC 225

<sup>26</sup> Smt. Indira Nehru Gandhi v. Shri Raj Narain & Anr., 1975 (Supp) SCC 1.

basic structure theory. This was followed by proclamation of internal emergency from June 1975 to March 1977 during which period Articles 14, 19 and 21 stood suspended. Sweeping changes were also made in Article 368 with a view to provide that there shall be no limitation whatever on the constituent power of Parliament to amend by way of addition, variation or repeal the provisions of the Constitution and also providing that no amendment of the Constitution including Part III thereof relating to Fundamental Rights shall be called in question on any ground. With the end of emergency, Articles 14, 19 and 21 again became enforceable. The constitutional amendment to do away with the limitation and judicial scrutiny were struck down, inter alia, on the ground that the exclusion of judicial review would expand the amending power of Parliament in contravention of the decision in *Kesavananda Bharati's case*.

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

What is the extent of judicial review and the extent of power of Parliament to grant immunity to a 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 is also awaiting the decision of the Supreme Court.

On the insulation of Police and other investigating agencies from any kind of external pressure, Supreme Court issued various directions in *Vineet Narain*<sup>27</sup> and *Prakash Singh*<sup>28</sup>.

The paradigm of Indian judicial system is testimony to the manner in which judiciary can contribute in good governance. Indian jurisprudence would insist upon enforcement of various rights, even of persons suspected of involvement in grave crimes. The rights thus guaranteed include right to life & liberty; right against torture or inhuman degrading treatment; right against outrages upon personal dignity; right to due process & fair treatment before law; right against retrospectivity of penal law; right to all judicial guarantees as are

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<sup>27</sup> *Vineet Narain & ors. v. Union of India & Anr.*, (1998) 1 SCC 226

<sup>28</sup> *Prakash Singh & Ors. v. Union of India & Ors.*, JT 2006 (12) SC 225.

indispensable to civilized people; right to effective means of defence when charged with a crime; right against self-incrimination; right against double jeopardy; right of presumption of innocence until proved guilty according to law; right to be tried speedily, in presence, by an impartial & regularly constituted Court; right of legal aid & advice; right of freedom of speech besides right to freedom of thought, conscience & religion.

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 reigns 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.

