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# Salus Populli Suprama Lex: The Role of Supreme Court in Protecting Good Governance in India

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## ABSTRACT

*Salus Populli Suprama Lex, which means that the welfare of the people is the supreme law, is the very premise on which the modern day societies and civilizations are built upon. Every form of governance from autocracy to democracy, holds the said welfare principle either implicitly or explicitly. However, the said doctrine only fortifies and manifests itself in true letter and spirit in a democratic form of governance. Democracy, ever since President Abraham Lincoln's speech in Gettysburg, has been defined as a system of governance 'of the people, by the people and for the people'. Democracy is often regarded as the most desirable form of governance since the government draws its power from the people, either directly or indirectly and exercise such power as long as they enjoy the pleasure of citizens. In all major democracies throughout the world, the state comprises of 3 separate organs viz. Executive, Legislative and Judiciary to ensure checks and balances on the arbitrariness and illegality of the respective organs. However, having said that, it is the judiciary which acts as the final arbiter and as a conscience keeper of constitutional and normative values. The judiciary also undertakes upon itself to ensure protection and promotion of values of democracy and good governance. Hence, this paper attempts to identify and examine the role of the Supreme Court of India in preserving the democratic fabric and in upholding the essence of a good governance.*

## I. HUMAN RIGHTS AND GOOD GOVERNANCE

India in its present form is a democratic, socialist, sovereign, republic and a secular country. They are not mere tenants of governance but are rather requisites of a system of good governance. As per the United Nations' Commission on Human Rights, transparency, responsibility, accountability, participation and responsiveness are key attributes of a good

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governance.<sup>2</sup> Human Rights as bundle of inexhaustive rights entails different forms of rights such as natural rights, social rights, economic rights, cultural rights *etc.* Therefore, it would be only reasonable to acknowledge that good governance has a direct impact on the exercise and enjoyment of human rights *viz.* principle of *Salus Populli Suprema Lex*. Furthermore, human rights and rule of law are now universally recognised as an index of a civil society wherein protection and promotion of human rights is the natural corollary of a healthy rule of law. Hence, the true indicator of a healthy good governance *vis-à-vis* human rights solely depends on maintain necessary equilibrium between competing interests of a civil society.

Imbibing the said ethos, an Independent India emerged as a democratic welfare state on the eve of 15<sup>th</sup> August 1947. In realization of the same, the founding fathers of the modern India created Constitution of India as the *grundnorm*, entrenched in the principles of rule of law and good governance. The Constitution of India also embraces parliamentary democracy and values of good governance in the form of Directive Principles of State Policy under Part IV, which identifies these principles to be fundamental in the governance of the country and casts an obligation on the State to apply these principles while making laws.<sup>3</sup> Therefore, a careful examination of Part-III of the Constitution along with Part-IV, makes it abundantly clear that the intent of the Constitution is to create a conducive environment for effective good governance, which in turn will ensure maximum realization of human rights.

## II. JUDICIARY AND GOOD GOVERNANCE

Rule of law and principles of good governance in a society do not merely estop itself with obligations cast on the state. It also includes an independent organ *viz.* the judiciary, which acts as the custodian of human rights and a watchdog for ensuring effective realization of good governance. In the words of James Madison, judiciary is truly the only defensive armor of the country and if this armor were to be stripped of its onerous functions, it would leave the door wide open for nullification, anarchy and convulsion.<sup>4</sup> Therefore, it would be fair to agree that the judiciary plays a very crucial role of a safety valve in the governance of a society. However, it would only be possible for the judiciary to perform its role effectively when its independence and integrity is not compromised. An independent judiciary is

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<sup>2</sup> United Nations Human Rights, *Office of the High Commissioner, Report on Good Governance and Human Rights.*, OHCHR, <https://www.ohchr.org/en/issues/Development/GoodGovernance/Pages/GoodGovernanceIndex.aspx> (Last accessed on 25.11.2020).

<sup>3</sup> Article 37, Constitution of India, 1950.

<sup>4</sup> James Madison, Madison Paper (1833), Founders Online, National Archives, <https://founders.archives.gov/documents/Madison/99-02-02-2711>. (last accessed: 26.11.2020).

imperative to ensure that the governmental power is within its constitutional limits and the grievances of the citizens are addressed effectively.

It is pertinent to note that, akin to other organs of the state, even the judiciary draws its powers from the Constitution of India, wherein various provisions *qua* its structure, functions and powers. Consequently, the Indian Judiciary and especially the Hon'ble Supreme Court, has time and again undertaken upon itself to ensure better public governance. The Hon'ble Supreme Court, in the capacity of an arbiter, has enlarged the scope of human rights, ranging from right to dignity, right to privacy, right to healthy environment, right to education and many other aspects. The Hon'ble Supreme Court has also exercised its jurisdiction to import provisions of international obligations wherever there was an impediment in effective realization of good governance.<sup>5</sup> Furthermore, the Hon'ble Court, by way of its judicial interpretation, has also related the scope of fundamental rights to limit the intrusions of the state and its machinery. Therefore, it would only be rational to affirm that the role of an independent judiciary is instrumental in effective public governance and in upholding the spirit of democracy.

### III. ROLE OF SUPREME COURT VIS-À-VIS MATTERS OF GOOD GOVERNANCE

The Hon'ble Supreme Court has time and again played an active role in the matters concerning public governance and has effectively upheld and enlarged the scope of *Salus Populli Suprema Lex*. A bare perusal of the landmark cases passed by the Hon'ble Supreme Court would clearly reveal that, in the absence of exercise of the such extraordinary jurisdiction by the Hon'ble Court, the values of good governance would not have been implemented in true letter and spirit. Though it would be hard to pin point the exact timeline from where the Hon'ble Supreme Court, started exercising judicial assertiveness, however, it would be safe to presume the same from 1973 when the case of *Keshavanand Bharti v. State of Kerala*<sup>6</sup> came to be adjudicated by the Hon'ble Court and the basic structure doctrine came to be recognised. In furtherance of the same, the Hon'ble Supreme Court also solidified its position by recognizing the power of judicial review, as exercised by the Hon'ble Supreme Court and the High Court to be a part of the unalterable basic structure of the Constitution.<sup>7</sup> Hence, the Hon'ble Supreme Court by way of the said pronouncements, ensured that the values of the good governance are of paramount importance and the same are not subject to

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<sup>5</sup> *Vishaka v. State of Rajasthan* [(1997) 6 SCC 241]; Also see *T.N. Godavarman Thirumalpad v. Union of India & Ors.* [(2002) 10 SCC 606].

<sup>6</sup> AIR 1973 SC 1463.

<sup>7</sup> *Indira Nehru Gandhi v. Raj Narain.* (1975) SCC Supp. 1; Also see *Chandra Kumar v. Union of India* [AIR 1997 SC 1125].

whims and fancies of the state mechanisms.

Thereafter, the Hon'ble Supreme Court also donned the role of custodian of human rights, wherein it acted as the voice of the voiceless undertrial prisoners who were languishing in jails under inhumane conditions.<sup>8</sup> Furthermore, upholding the true principles of right to dignity of the undertrial prisoners, the Hon'ble Supreme Court also held the practice of handcuffing the prisoners to be violative of the constitutional safeguards guaranteed under Article 14, 19 and 21 of the Constitution of India.<sup>9</sup> In another landmark case of *D.K. Basu v. State of West Bengal*, the Hon'ble Supreme Court, emphatically reprimanded the use of third degree methods and tortures for extracting confessions. It had also issued a slew of directions to various states and the police stations therein including the mandate of displaying the rights of the arrestee in the police station. The same has been complied by all the police stations and till date serves as an important piece of legal information for the accused. Hence, without a doubt, the said judgments have only served in the interest of good governance, which otherwise would have been seriously prejudiced, if left to the blatant arbitrariness of the state and its agents.

Similarly, the Hon'ble Supreme Court in the matter of *Vishaka & Ors. v. State of Rajasthan & Ors.*<sup>10</sup> in an attempt to address the vacuum in protecting woman from sexual harassment at workplace in domestic laws, had imported the contents of international instruments and covenants and purposefully interpreted the right of a woman to work with dignity. However, despite the aforesaid judgment, the state took more than 16 years to pass Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, until which, it was the directions passed by the Hon'ble Supreme Court that enlarged protection and ensured effective realization of good governance values. Furthermore, while examining the contribution of the Hon'ble Supreme Court to the matters of good governance, it would be unfair to not acknowledge its role in the matters involving environment. The Hon'ble Court has time and again enlarged the right to clean environment as an extension of good governance. Being mindful of the fact that though credit would certainly accrue to the right thinking members of the society and especially Mr. M.C. Mehta for strenuously approaching the Hon'ble Supreme Court, it would still be inadequate without the proactiveness shown by the Hon'ble Court to address the same with an iron fist.<sup>11</sup> Therefore, the contribution of

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<sup>8</sup> *Motiram and others v. State of M.P.* [AIR 1978 SC 1594]; *Hussainara Khatoon and others v. Home Secretary State of Bihar* [AIR 1979 SC 1360].

<sup>9</sup> *Prem Shankar Shukla v. Delhi Administration* [1980 SCC 526]; Also see *Citizens for Democracy v. State of Assam* [1995 SCC 743].

<sup>10</sup> (1997) 6 SCC 241.

<sup>11</sup> *M.C. Mehta v. Union of India* [(1986) 2 SCC 176]; *Indian Council for Enviro-Legal Action v. Union of India*

Hon'ble Court in the matters of environmental governance has been one of the most crucial aspects of the Indian judiciary.

Though it may not be possible to list down and summarise all the contributions of Hon'ble Supreme Court in the matters of good governance, it would certainly be incomplete, if the contribution of cases such as *Navtej Singh Johar*,<sup>12</sup> *Shayara Bano*,<sup>13</sup> *Justice K.S.Puttaswamy*,<sup>14</sup> *Association for Democratic Reforms*,<sup>15</sup> *Mohini Jain*,<sup>16</sup> *Vineet Narain*,<sup>17</sup> etc. are not acknowledged. The Hon'ble Supreme Court has time and again stepped up to protect and promote the doctrine of *Salus Populli Suprama Lex*. Hence, it is abundantly clear that the doctrine of good governance and its impact on the citizens as we see today has largely been influenced by the active role of the judiciary and especially the Hon'ble Supreme Court.

#### IV. CONCLUSION

The Indian legal jurisprudence, ever since its inception, has undergone a sea of change. The Constitution of India, as we know today, is living document which undergoes change, as a result of the intersection between the people, the state and the judiciary. However, the interest of the people is of paramount importance and is often in conflict with the interests of the state. Hence, it is then when the third stakeholder viz. the judiciary steps into the shoes of the arbiter to ensure good governance. A bare perusal of the paradigm of judicial precedents stated in the preceding sections is a testimony of the contribution of the judiciary especially the Hon'ble Supreme Court to good governance. The Hon'ble Supreme Court has time and again exercised its power of judicial review, in due deference to the role of the other organs in the interest of good governance. In addition to the role of an arbiter, if one was to borrow the words of Dr. B. R. Ambedkar, Article 32, is truly the soul of the Constitution.<sup>18</sup> The Hon'ble Supreme Court in exercise of its extra-ordinary jurisdiction has ensured effective realization of human rights, which in turn has supplemented the good governance mechanisms. Therefore, it would only be fair to conclude that the Hon'ble Supreme Court has

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[(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]; *M.C. Mehta (Taj Trapezium Matter) v. Union of India*, [(1997) 2 SCC 353].

<sup>12</sup> *Navtej Singh Johar vs. Union of India* [(2018) 10 SCC 1.]

<sup>13</sup> *Shayara Bano vs. Union of India and Ors.* [(2017) 9 SCC 1]

<sup>14</sup> *Justice K. S. Puttaswamy (Retd.) and Anr. vs Union Of India And Ors.* [(2017) 10 SCC 1].

<sup>15</sup> *Union of India v. Association for Democratic Reforms and Anr.* [(2002) 5 SCC 294].

<sup>16</sup> *Mohini Jain v. State of Karnataka & Ors.* (1992) 3 SCC 666; Also ee, *Unni Krishnan & Ors. v. State of Andhra Pradesh & Ors.* [(1993) 1 SCC 645]; *T.M.A. Pai Foundation v. State of Karnataka & Ors.* [(2002) 8 SCC 481].

<sup>17</sup> *Vineet Narain & ors. v. Union of India & Anr.*, [(1998) 1 SCC 226]; Also see, *Prakash Singh & Ors. v. Union of India & Ors.*, [JT 2006 (12) SC 225].

<sup>18</sup> Sirswal, Desh Raj. (2016). Dr. B.R. Ambedkar: The Maker of Modern India.

played a crucial and an imperative role in protection and promotion of good governance in India.

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