

HARMONISING THE SYNERGIES: ATTAINING GOOD GOVERNANCE BY SETTING A CONSTITUTIONAL COMMITMENT TOWARDS SOCIO-ECONOMIC RIGHTS

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Abstract

The right to good governance has been intrinsic in the Indian Constitution and to enforce the same the government came up with the Right to Information Act. Good governance is nothing but the procedure or the process of analyzing the situation and the needs of the society to arrive at a decision that can further help in achieving the desired developmental goals of the nation. For the longest time in history, the focus of the governance system has been to ensure that basic human and fundamental rights are protected, but there has been a shift in the approach over the past two decades where the government and the judicial organs have started focusing on the social and economic rights of the citizens along with other civil and political rights. Indian Courts always had the power to enforce the rights provided under Part III of the Constitution but could not do so for Part IV, which was solely a matter of concern for the executive wing. But the courts have successfully found a way to enforce these rights and have through recent judgments directed the government, balancing the civil and political rights with socio-economic rights.

The researchers in this paper will emphasize the concept of good governance while analyzing how constitutionalizing socio-economic rights is crucial for enforcing the right to good governance. In the next section, the researcher will study the shift in the approach of the government and policy initiatives taken to enforce socio-economic rights. Then the researcher will focus on the judicial approach, trying to comprehend how the courts have harmonized fundamental rights and directive principles to give powers to themselves for the enforcement of Part IV of the Constitution. Lastly, while concluding the research paper, researchers will try to list down the possible mechanisms that can be adopted for the effective enforcement of socio-economic rights in India.

Keywords: Good Governance, Socio-Economic Rights, Right to Information, Enforcement, Policy Initiatives.

INTRODUCTION

Our nation has a great history and the Indians have been witness to different forms of governance under different rulers. Colonial India has witnessed torture, injustice, humiliation, zero respect for individual liberty, and no social security. There existed social evils like the sati system, bonded labor, child marriage, witchcraft, child labor, gender inequality, and bedeviling, to name a few. To move towards a progressive society our constituent assembly members ensured that the lessons learned in the past are not repeated in the future. The members of the drafting committee while drafting and enacting the Constitution, were successful in tackling various socio-economic problems that were stuck deep down in our society like leeches, for example, bonded labour, untouchability, caste- discrimination, etc. They diligently bifurcated the rights, giving some the status of Fundamental Rights and making some the Directive Principles of State Policy. Various Human Rights were well taken care of and were included

under Part III of the Constitution. They promised social, economic, and political justice within the preamble itself. By including these words in the preamble, the idea behind the Constitution was loud and clear to ensure all the rights be it civil, political, or socio-economic rights to the citizens of the country. Talking specifically about socio-economic rights, they are enshrined under Part IV of the Constitution. The directive principle is nothing but the replica of the socio-economic rights provided under the International Covenant on Economic, Social, and Cultural Rights, 1966. These rights envisage that the governance process should be inclusive and empower the people to participate. Their importance and gravity cannot be neglected for achieving social democracy as they are fundamental for the governance of the nation. But the sad reality is that there has been no enforcement mechanism to enforce socio-economic rights and it has been ignored for a long time as no significance and importance have been associated with these rights. Since independence government has focused on the enforcement of civil and political rights and the socio-economic rights are not constitutionalized or rather, can be said that they are not made enforceable. The reason for the same has been the lack of required infrastructure, funds, and other resources. But now there is a need to bring a change in our approach. It has become important to focus on these rights as people are trapped in poverty, hunger, poor state of living, etc. Fortunately, there is a growing awareness among the people, that they are fighting for the societal rights of the LGBTQ community, and the economic rights of live-in couples, to name a few. This shows that even society has started accepting the changes and is talking about socio-economic rights. These can only be talked about and achieved in a vibrant democracy where the rights and interests of the people are respected and valued.

In this research paper the researchers will try to comprehending various socio-economic rights and its relation with the good governance in a democratic legal structure. Then the researchers will analyse, by reading various policies and governmental orders, the approach of the government towards the enforcement of socio-economic rights. In the next section researchers will focus on the role played by the Judiciary in constitutionalizing these rights and bringing them in parlance with other rights given under Part III of the Constitution. Lastly the researchers will conclude the paper by providing certain measures that can be adopted for further enforcement of socio-economic rights.

INTER-RELATION BETWEEN GOOD GOVERNANCE AND SOCIO-ECONOMIC RIGHTS

Good governance means that there is transparency and accountability in the governmental functioning. All the issues be, the economic issues, political, or administrative issues are well resolved efficiently and the government promotes openness and inclusivity in the governance. By not following the strict separation of power in our constitutional framework, the constituent assembly members have ensured that there exists a continuous check and balance in the functioning of various state organs by other state organs. Moreover, the Indian parliament has tried to formulate various mechanisms in which the government is made accountable and works transparently. Right to Information Act is an example of the same. Right to Information has proved to be an important tool in the hands of the people so to ensure good governance in the society. People can ask numerous questions to the government concerning their rights. It has made the government conscious while using the resources of the nation. The understanding of good governance should not be limited to governmental functioning but should also include privates, who have attained a level, performing various state-conferred public functions. RTI has helped in obtaining information from the privates also and making them accountable to the public. It has checked the menace of corruption by exposing corrupt practices.

Moving towards socio-economic rights, they are the basic needs of the people like food, shelter, dignity, etc. which are necessary for one's existence in society and for individual growth. Socio-economic rights mean the right to access all the material needs and to avail various opportunities. It includes the right to social security, the right to work, the right to health, freedom from hunger, clothing, and housing.

Talking about socio-economic rights is not something new, it was discussed by the Constituent Assembly while the Constitution was being drafted and it has been incorporated well within the Constitution. The existence of the Constitution and the working of democracy without these rights would be a mockery of the entire legal system. Constitutionalizing these rights will help in achieving the holistic development of the nation and then democracy will exist in the true sense. The United Nations Economic & Social Commission for Asia and the Pacific (UNESCAP), also emphasized the importance of enforcing socio-economic rights for the good governance of any nation and laid down eight parameters to identify the existence of good governance. These parameters include participation, rule of law, transparency, responsiveness, consensus-oriented, equity and inclusiveness, and effectiveness and efficiency.¹

In our societal structure where the society is divided among three spheres, the poor are concerned about their bread and butter, the middle class is concerned that they should earn enough to save themselves from entering into the poor sphere and are striving hard to enter the rich population, the rich class, a small percentage of the entire population are involved in the governance process so to ensure that their interests are protected and properly safeguarded under different political regimes. In this structure hardly people care about the existence or the enforcement of socio-economic rights, but it is high time that we need to fight for constitutionalising the same as these rights are intrinsic to good governance, speaking about good governance without ensuring proper protection of socio-economic rights will be a futile exercise and will not lead to upward movement in the happiness index. At present, we are still fighting for the right to social equality where no discrimination is made between the rich class and the poor class but the government has only focused on political democracy, focusing on the rights of the people to vote and choose their representatives. Political democracy is of no use to the people unless they have social and economic democracy which means that, what matters the most to the people is that they have food to eat, clothes to wear, and proper shelter. They seek employment, adequate means to earn, and ensure a safe and secure future for their family and themselves. Until and unless these basic needs are fulfilled, they hardly care for their right to vote.² The irony is that still, there are concerns about gender equality and social security in the country and we are propagating the right to vote and participative government.

GOVERNMENTS' APPROACH: SHIFT THROUGH POLICY INITIATIVES

The legislature and the government of India have been making efforts to make various socio-economic rights enforceable within our legal regime. This shift in the approach of the legislature or the ruling government can be seen through various laws, policies, and programs that have been introduced to cater to various social and economic aspects of society. The Eighty-Sixth Constitutional Amendment Act passed in 2002, brought a major change by adding Article 21 A³ and making the right to education a fundamental right under Part III. Earlier it was just a directive for the state to achieve as per the feasibility. To provide free and compulsory education in the country, the government provides grants, it has made a mandate for all private schools to reserve 25% of seats for the backward classes. Various educational policies like the New Education Policy 2020 have been implemented to ensure that the right is properly implemented. The entire educational structure is being monitored by various governmental boards, institutions, accreditation committees, and other organizations.

¹United Nations Economic & Social Commission for Asia and the Pacific, available at: <https://sdgs.un.org/un-system-sdg-implementation/united-nations-economic-and-social-commission-asia-and-pacific-escap#:~:text=In%20accordance%20with%20ECOSOC%20Resolution,Human%20Rights%20and%20Gender%20Equality> (last visited on February 27, 2024).

²Uday Shankar & Divya Tyagi, "Socio-Economic Rights in India: Democracy Taking Roots", Law and Politics in Africa, Asia and Latin America, Vol.42. No. 4 (2009), pp. 527-551.

³ The Constitution of India, art. 21A.

Ministry of Labour and Employment launched the Aatmanirbhar Bharat Rojgar Yojana to create employment opportunities for the people who lost their jobs during the pandemic. The intention behind the yojana was that job creators should provide opportunities and certain basic social securities to employed persons. There exist various other governmental initiatives like Pradhan Mantri Rojgar Protsahan Yojana, National Career Service Project, Mahatma Gandhi National Rural Employment Guarantee Act, Pradhan Mantri Garib Kalyan Rojgar Abhiyaan, to name a few which were launched in the same line to address unemployment in India and provide social and economic stability to the people in need. The government launched various flagship programs like Digital India, Start-Up India, and Make in India to encourage the innate talents of the people and help in start small ventures by providing the required resources and funding.

The Ministry of Finance came up with the Sukanya Samriddhi Yojana to secure and protect a girl child, so that she is no longer considered to be a burden by her family members. The scheme intends to ensure a deposit amount for the future educational and marriage expenses of the girl child. The Ministry of Rural Development to provide social security and to make the widows of poor families independent launched the Indira Gandhi National Widow Pension Scheme. The state of Uttar Pradesh came up with the Kanya Vidya Dhan Yojna to ensure girl education, similarly, the Balika Samridhi Yojana, launched by the Central government also tries to protect the girl child belonging to the families below poverty line. The scheme intends to support the birth and education of the girl child. Thus, these schemes and programs launched by the government reflect the motive and efforts taken by the authorities to provide social and economic protection by constitutionalizing the various socio-economic rights of the citizens.

ROLE OF JUDICIARY: POWER GIVEN TO ITSELF TO ENFORCE PART IV

The Courts in India are empowered by the provisions of the Constitution to enforce the rights mentioned under Part III of the Constitution but not Part IV as enforcement of Part IV requires a lot of resources and infrastructural requirements from the side of the state and we in the Constitution has chosen to focus on the enforcement of basic civil rights of the people. Despite the Constitutional framework, the courts have taken the responsibility to enforce socio-economic rights while balancing the fundamental rights and the directive principles of state policies. The approach of the courts for the longest time in Constitutional history has been that socio-economic rights are the guiding principles but are non-enforceable, as seen in *State of Madras vs. Champakam Dorairajan*⁴ where the court categorically held that by virtue of Article 37⁵ of the Constitution, the rights mentioned under Part IV are merely the directions for the government, whereas the rights mentioned under Part III will always have superiority over rights mentioned under Part IV. The court also held that fundamental rights by virtue of Article 13⁶ cannot be infringed by any law, order, or notification passed by the government. Then a shift was observed in the approach of the court in cases like *State of Bihar vs. Kameshwar Singh*⁷ and *Bijay Cotton Mills vs. State of Ajmer*⁸, where the court started talking about the harmonious constructions of rights under Part III and Part IV of the Constitution. The court opined that the societal interest should be weighed over the individual interest or individual rights by enforcing certain socio-economic rights, but this doesn't mean that the laws can be formulated violating fundamental rights but instead, a balance should be strived for.

The court took a major turn in the famous case of *Keshvananda Bharti vs. State of Kerala*⁹, where the

⁴State of Madras vs. Champakam Dorairajan, AIR 1951 SC 226.

⁴ The Constitution of India, art. 37.

⁵ The Constitution of India, art. 13.

⁷State of Bihar vs. Kameshwar Singh, (1952) 1 SCR 889.

⁸Bijay Cotton Mills vs. State of Ajmer, 1955 AIR 33.

⁹Keshvananda Bharti vs. State of Kerala, (1973) 4 SCC 225.

court held that the directive principles and the fundamental rights are complementary to each other. DPSP are important for the governance of the nation. This was further upheld in the case of *State of Kerala vs. N M Thomas*¹⁰ and then in *Minerva Mills vs. Union of India*¹¹, where the court observed that neither of them is superior to the other but rather the rights under Part III are means to an end desired by the society but the end itself is mentioned under Part IV. This shift in the court's approach validated various legislations like the labour codes etc. which are drafted for the enforcement of socio-economic rights, thus placing both the rights supplementary and complementary to each other. The recent judicial decisions display the inclination of the courts towards enforcement of various socio-economic rights. Through judicial activism, the courts have interpreted various socio-economic rights under Article 21¹² of the Constitution, hereby expanding its interpretation. Supreme Court in judgments like *Olga Tellis vs. Bombay Municipal Corporation*¹³, *Randhir Singh vs. Union of India*¹⁴, *M H Hoskot vs. State of Maharashtra*¹⁵, *Shantisar Builders vs. N K Totame*¹⁶, *Pt. Parmanand Katara vs. Union of India*¹⁷ and *M.C. Mehta vs. Union of India*¹⁸, to name a few, have upheld that individuals have the right to live a dignified life, right to equal pay for equal work, right to free legal aid, right to shelter, right to free medical assistance and right to clean and safe environment respectively under Article 21 of the Constitution. These rights are enshrined under the chapter of directive principles of policy but the courts have successfully interpreted it within the ambit of fundamental rights, thus making them enforceable.

CONCLUSION: MEASURES FOR FURTHER ENFORCEMENT

Prioritizing socio-economic rights is a global trend and the world's attention has been shifted towards it, thus it becomes important for us to constitutionalize socio-economic rights. We should immediately work on the parameters laid down by the United Nations Economic & Social Commission for Asia and the Pacific to ensure good governance in our nation. The status that has been granted to civil and political rights should also be granted to socio-economic rights, then true democracy will be achieved. They should be made justiciable in the courts, by removing the status of being directives. The infringement of these rights should be taken seriously. It will help in human development and the development of the nation as a whole.

Though the courts and the government have started recognizing the importance of socio-economic rights, still there need to be other mechanisms to enforce these rights which might include giving weightage to the reports produced by various commissions like the Human Rights Commission or Planning Commission, committees, civil society, etc. All the five-year plans must include the blueprint for the effective enforcement of socio-economic rights. Just like the companies have to show CSR activities undertaken by them, similarly all the government departments must be mandated to disclose the actions taken by them for upholding these rights. There must be effective delivery of socio-economic public services. People should be made aware of their socio-economic rights and the mechanisms to enforce them. A separate enforcement body can be constituted whose work should be to ensure that these rights are well protected and enforced, without violating other's fundamental rights. As for the effectiveness of civil and political rights, enforcement of socio-economic rights is sine quo

¹⁰*State of Kerala vs. N M Thomas*, 1976 AIR 490.

¹¹*Minerva Mills vs. Union of India*, AIR 1980 SC 1789.

¹²The Constitution of India, art. 21.

¹³*Olga Tellis vs. Bombay Municipal Corporation*, 1986 AIR 180.

¹⁴*Randhir Singh vs. Union of India*, 1982 AIR 879.

¹⁵*M H Hoskot vs. State of Maharashtra*, AIR 1978 SCC 1548.

¹⁶*Shantisar Builders vs. N K Totame*, (1990) 1 SCC 520.

¹⁷*Pt. Parmanand Katara vs. Union of India*, 1989 AIR 2039.

¹⁸*M.C. Mehta vs. Union of India*, (1987) 4 SCC 463.

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