

Welfare Governance and Rule of Law--An overview in NE States of India

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Abstract

The constitution of India, a dynamic national legal document, was a by-product of the mid-twentieth century and its underlining philosophy had also been meaningfully shaped during the freedom movement against the British colonial regime. It elucidates its cherished goals in the preamble and also envisages the constitutional obligations to promote a welfare state for which the legitimate government ought to take adequate measures in creating an orderly society based on economic, social cultural and political justice. In this regard, the responsible government has its own constitutional and statutory mechanisms to regulate and control governmental powers inter alia relationship with its citizens in which rule of law and constitutionalism remain as the only antithesis for arbitrary and capricious powers of government. The paper focuses on social, political and legal issues faced by the citizens in a democratically set up governance.

Keywords: Non-justiceable rights, jural postulate, harsh legislation, counter-insurgency, constitutionalism, culture of justification

Introduction

However, it is also found equally reliable on the very existence of capable and adequate government agencies in maintaining law and order and ensuring adequate means of social, economic and cultural condition of every human life in the society. In a way, effective governance of a welfare state normally presupposes the majoritarian rule but on the contrary, the principle of consensual rule of both the majority and minority people in a given society has become one of the inevitable features of parliamentary democracy.

Fundamental rights, incorporated in the part III of the Constitution, further sanctify the constitutional objectives by enumerating certain enforceable rights and freedoms of individual. Directive principles of state policy, enshrined in the part IV of the Constitution also lay down a bundle of non-justiceable social, economic and cultural rights of individuals as the group rights which are termed as the jural postulates. Such principles, laid down therein, are the instrument of instructions for the state, especially in the matter of governance of a welfare state. Public opinion and civil society are also found to be vital in realizing the constitutional values and objectives in matching with the changing needs and requirements of its land and people. The progressive civil society, as the watchdog of the government, could mould and keep pressuring the responsible governments in fulfilling the basic purposes of a welfare state.

Indebted open government

Democracy stands on three majestic pillars, i.e. legislature, executive and judiciary. Executive becomes not only the connecting authority among the said three organs of a welfare state but also acts as an intermediary link with the citizens. A welfare state, as a controller, regulator, arbitrator, promoter and protector, is expected to have all kinds of engagements for its people. However, good governance is not merely concerned only with the issues of integrity and the maintenance of law and order in the state; the reason being is that the democratic rulers are also obliged to take the flip sides of those democratically ruled people as an equally important factor. In the true sense, the good governance essentially reposes a mandatory obligation on the parts of the government to take appropriate steps and measures in order to serve the basic needs and requirements of the citizens and also to promote and protect the rights and freedoms of individuals accorded by the law of the land. Failing of such obligations in constitutional governance shall, obviously be leveled as the poorest index of poor performance of so called a welfare state. In the name of open government, a number of legislative as

well as administrative measures have been adopted by the government for realizing the those unfinished agenda of the constitutional goals for the last more than 70 years of independent India, however, apathy, conflict, mismanagement of public affairs coupled with deep rooted corrupt practices prevailing in the society have always posed a serious threat to the issue of governance in the country. Therefore, on a whole, it is still found overdue on the part the legitimate government to fulfil the long cherished agenda and goals of the nation because of many unfolded factors. One of the practical impediments for the constitutional governance of India is the unusual interplay between the deep rooted socio-economic and the political issues prevailing in different parts of Indian society. Such issues are relatively seen to be quite pertinent almost in all the NE states of India in general and more particularly in the state of Manipur, where legitimate governments are yet to address some of the perennial issues of the region. Prolonged socio-economic and political vacuums have also been advertently or inadvertently left out without addressing for years together that might have, perhaps led to ignite conflict situation. Eventually, the growth of political violence, separatist tendencies, divisible forces, communalism, religious fundamentalism, regionalism, caste based conflict and social and cultural tension have increasingly stimulated the ongoing socio-economic, political and cultural problems in the region.

Despite the profound divisions and diversities in the Indian society, specially on the issue of social, economic, cultural and political fronts, the greatness of Indian constitution and its constitutionalism is that it has survived without any massive change in the working of constitutional governance for more than six decades, and perhaps, it is the uniqueness of the politico- legal system of union of India. Retaining and upholding the true spirits and contents of a welfare state can only be made meaningful if the citizens have the opportunity to participate in the governance. Transparency and accountability of government and its agencies not only inspire such participation but also lend greater legitimacy to the elected government. As democracy always rests on good governance, founded on the principles of truth, justice, peace and development, all competent stakeholders, on the priority basis, also need to take those mandatory norms and principles of parliamentary democracy on the board. An ideal democracy does not merely stress that people should be allowed to exercise their franchise once in five years to choose their rulers, but it obviously tends the citizens to cast their intelligent and rational votes for which the system obligates to empower their sound judgement on the conducts of the government *inter alia* merit of the public policies and programmes, so that, democracy shall not remain merely in a sporadic.

The very concept of rule of law ensures that every man is bound by the ordinary law of the land whether he is a public authority or private individual. It also aims to keep the governmental powers and their activities within the legitimate boundaries of law; therefore, they may not turn out to be arbitrary and capricious in the working of the system. Nevertheless, it is the prerogative power of the elected government to enact and frame laws and policies. If citizens oriented laws and policies are meaningfully adopted and enforced, as otherwise, there will not be much threat to the constitutional government while upholding the rule of law. However, effective implementation of such laws and policies not only depends on state's agencies but also significantly ought to rely on other stakeholders of a welfare state as well, whose participation in the matter of governance are found to be equally relevant. The idea of informing citizens and its contextualization in the matter of state's affairs has been recognized and guaranteed by every civilized country in the world. Accepting the principle of well informed citizenry is the condition precedent for survival and sustenance of a democratic form of government on one hand and enactment and invocation of legislation pertaining to withholding of government secrecy and privileges on the other cite often create the mistrust of the system in the mind of masses. Interestingly, as conventional practice of governance, the government retains its secrecy and privileges as binding rules and accountability and transparency of government as the exception. As a matter of fact, balancing between the need of secrecy and need of transparency in a democratic form of government is a difficult task but at the most, a fair parameter is required to maintain the equilibrium otherwise it would have necessarily been taken roped with the colonial form of governance of the past.

Unfolded secrecy and privileges

People of India rejected the British rule over India but not the institutions and its system of governance of the past colonial ruler that have grown firmly on the Indian soil even after the British regime. This is apparent that the working of the constitution system *inter alia* the mindsets of the Indian people, involved in the matters of public affairs of free India, seem to be remained unchanged till date. One of the glaring examples is that of retaining the infamous doctrine of British legacy of royal practice even after 70 years of working of independent India. Though, it is hard to wipe out such practice from the soil of Indian society, it is, obviously the elected law makers who can mould and transform the Indian society by manifesting new social, political, economic and cultural orders through their prerogative activities. In India, the written constitution is the only source and basis for governance, and social legislation enacted and enforced happen to be the instruments for bringing transformation in the society. However, mere codification and enactment of harsh legislation without complying with the basic norms and principles of democracy, it can't sustain the expected social, economic and political values, instead, people of the region may lose their respect of them, and eventually, unwarranted situation may also be cropped up that would drag the legitimate government and its agencies in a miserable condition. There are quite a few things for the legitimate government, required to be kept confidential in the interest of public security and national interest. In a similar manner, state may enact and enforce legislation with clear vision of providing adequate safeguards for the citizens against the autocratic and partisan state. On the contrary, protective laws may also be enacted with the minimum legal space for the government and its agencies in the name of secrecy and privileges. However, pro-active judicial interpretation has brought a great change during the passage of time by holding that in the larger interest of citizens and individuals, such government secrecy and privileges will not be more than what they are actually required and necessitated for. It is found to be imperative for the law makers to draw a proper line between the required protective secrecy and the openness of governance. Open government is basically bound to act as powerful check on abuse and misuse of authority by the governmental agencies. Since the common law principles of an open and transparent government has emanated from the British royal practices, maintenance of secrecy and privileges, by and large, remains as the badge of an authoritarian government. In this regard, Justice P.N. Bhagwati, the Supreme Court of India observed in S.P. Gupta's case in 1982 that "open government is the new democratic culture of an open society towards which every liberal democracy is moving and our country should be no exception."

Invocation of Indian Official Secrets Act, 1923 followed the same suit of the British Official Secrets Act of 1899 and 1911. That is why Act of 1923 is found to be a colonial version of the British Official Secrets Acts which were restrictive to use and disseminate the governmental information. Fortunately or unfortunately, the republic of India has still continued the colonial tradition of maintaining secrecy in its public administration considering the practice as indispensable for every progressive society. At one point of time, with the advent of welfare state, it has also become increasingly necessary for the government to perform multifarious welfare activities for which they are also circumscribed to claim certain amount of secrecy and privileges in the working of system. Here, the main issue is not the question of asserting and retaining the secrecy and privileges but the question of having effective institutions capable of maintaining a fair equilibrium between the need of secrecy and need of an open welfare government. This is what the constitutional mechanisms ought to play important role in bridging the gaps between the general public and the state authorities. Though the court is an impartial, independence and constitutional arbitrator, it cannot even compel the government authorities to produce their unpublished records and information in the court of law as laid down in the Section 123 of the Indian Evidence Act, 1872. Henceforth, the government enjoys ample privileges to withhold not only from public but also from the disclosure of documents in the court of law, if such disclosure of so called classified documents or information is likely to jeopardize public interest and security of the state, government can withhold those documents legally from the proceedings of the court. In addition, government also enjoys several other privileges, especially in the process of litigation in the law courts that is not accorded to private individuals (Sec. 80 of the C.P.C of 1908). Mention may also be made that judiciary in India have done a commendable task in this regards by harmonizing the conflicting

issue between the claim of privileges and the need for open government, especially through their liberal and dynamic interpretations of laws in a number of apex court verdicts. Nevertheless, the culture of withholding and retaining the official secrecy and privileges are still put in place in India, and they are also rigorously enforced in the public administration. Unfortunately, it is evident that such a deep rooted culture has been considered almost by all the stakeholders of the state as a valued system, inherited from the past colonial authority. One of the major hurdles in eliminating such practice is due to the entrenched culture of bureaucratic altitude and value based culture of maintaining secrecy and privileges in the areas of public affairs. The system has, eventually been unpinned by the colonial Official Secrets Acts by allowing them to continue still in the Indian statute book without changing the contents.

It is worth mentioning that the Right to Information Act, 2005 has been enacted by the parliament of India with the objects to promote openness, transparency and accountability in the working of public functionaries of state. Though, it is found to be a unique social legislation with the purpose of dismantling the deep rooted practice of adopting secrecy and privileges in the name of welfare governance, no much change has been put forward so far in this respect. There are certain provisions in the Act for exemption from disclosure of information, as provided in Section 8 of the 2005 Act which is, in fact a clear replication of the provisos, contained in the past Official Secrets Act of 1923. The colonial pattern of public administration and its notions are being attempted to be done away to some extent with the objective of reducing the gap between the rulers and their subjects through the enactment of social legislation. Experiences reveal that a welfare state shall not be so easily realized by mere enactment of statutory laws unless the activation of pro-active governmental approaches *inter alia* positive intervention of the general public occur.

Impact of repressive measures

In a way, every kind of polity in the world invariably adopts repressive measures either it may be by way of enacting legislation or by way of making rules and policies, so that, the government can, somehow manage the conflicting issues in the society. Eventually, such enactment and invocation of various repressive laws and measures in the name of maintenance of law and order, counter- insurgency, public safety and national integrity by the legitimate government of India in the NE states in particular have, perhaps shown a paradigm shift from the traditional premise of doctrine of secrecy and privileges to the premise of inviolable doctrine of impunity and immunity of public authority, that has, eventually triggered off the prevailing situation deeper in a multiple ways and dimensions. Most of the NE states have become socially, politically and historically the trouble torn region in India ever since she has been a part of union of India in 1949. Movement of insurgency, militant, guerrilla and national liberation have also grown up leading to a perennial issue in the region. One may ponder the relative implications of the AFSPA, 1958 which is often termed as re-incarnation of the Armed Forces Ordinance Act, 1942 of British India. This is also witnessed that the law enforcing agencies of both the state and central governments operating under such law are found to be protected from legal tangle for their illegal and arbitrary actions. This piece of legislation has almost overturned the avenues available to the victims of human rights violations, and on other hand, the perpetrators of such violations of rights of citizens have been allowed to get scot-free without any legal rider on the part of them. The infamous judgement of 1997, given by the apex court of India pertaining to the constitutionality of the AFSPA, seems to justify the principles of secrecy, privileges, immunity and impunity enjoyed by the armed forces personnel, and the same verdict of the court has also overlooked the legal implications of international rule of law *inter alia* the Indian constitutionalism. As such, the court also did not consider the binding international obligations of India, as set forth in the multilateral international treaties to which she had so far acceded. Universally accepted doctrine of rule of law and constitutionalism invariably ensure that every victim of human rights violation can resort to appropriate judicial recourse available under the existing legal order, and it is not an exception to Indian legal system simply because its system of law has been founded on the basis of rule of law and constitutionalism. Invocation of such repressive measures without having proper justification has, obviously ignited and also intensified the already affected situation of the region. Avoiding the culture of justification has, eventually resulted a

negative impact on the society and its people almost in all respects. Instead of resorting to such undemocratic measures merely for maintenance law and order issue, the general existing criminal laws of India could have been applied in this situation and as such perennial issue of the region might have also been mitigated to some extent.

Rapid growth of urbanization and globalization have also brought a great change in the post UN, more particularly in the last two decades, there has been considerable deliberation on the processes of globalization, internationalization and economic reforms in India and particularly in NE region. The relative impact of globalization and urbanization may not be always considered to be conducive simply because it may also have a negative impact on a given society. Accepting the positive notions of binding international human rights and humanitarian laws, such impact of global regimes may even facilitate the further fragmentation of states and peoples into different units, in a way, it may also ignite the identity clashes and conflicts among the ethnic communities in which politically motivated brokers may often get the chance to manufacture and manipulate the tension between the conflicting groups for their own political benefits. Therefore, deep rooted issue of identity, culture, language, place, religion etc. in the NE states have become quite a complicated problem of the legitimate government. Every community has started asserting its own rights and freedoms based on their land, language, culture and place basing on their intrinsic rights accorded by the international regimes with the share of global values. It is true that during the last two decades, a number of community based underground outfits have been found increasing in the region leading to irreparable diversification among the people within their own home land. Since the adoption of 1995 UN Declaration of Rights of Indigenous People took place, the movement of indigenous people in the region had got its momentum in the midst of unending regionalized and localized issues. NE states of India is the land of the indigenous people from the time immemorial where such ethnic based issues may likely to unfold in near future with another hot dimension of socio-legal and political issue in the region.

CONCLUSION

A wide range of legislative as well as administrative measures enforced in the region which have been so far brought into operation during the last twenty years, need to be revisited in the light of the emerging global and national standards. Meaningful implementation of social legislation invariably depends on active participation and involvement of all the stakeholders of a welfare state including the general public. Constitutional organs can't alone realize the expected goals of a welfare state, as set forth in the law of the land. It is equally found to be significant for all functionaries of the modern state as well as its citizens to participate and involve honestly in the process of transforming into a new India because people's participation is both the means as well as the ends. The administrative measures, adopted by both the state and central governments during the last few decades, are also relatively found to be quite commendable in some specific areas, such as health, employment, education and development among others. In a way, such pro-active people oriented welfare measures primarily focus on core objectives to change the condition of citizens' life by reaching, sensitising and moulding the mindset of the general masses. However, such plethora of public oriented endeavour, undertaken by the different agencies of the state, seem to have long overdue to realize the basic objectives set forth in the constitution. Unless the major reforms are made in respect to public administration, mindset of people, system of laws, the common man's faith and participation in the governance will not be sustained. Any kind of positive reform in a given society either it is a social, political or economic reform, the first precondition is to reform and change the mindset of individuals. This is what a welfare state is expected to be, otherwise this would, eventually lead to a serious threat to the very concept of open and welfare government. In India, the sense of fraternity and belongingness are still remained the main keys to reform the welfare state *inter alia* the mainstream of public administrative.

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