

Sree Chitira Thirunal Memorial Lecture

29th December 2007

GOOD GOVERNANCE: JUDICIARY AND THE RULE OF LAW

Young children who are sometimes told stories of great people who eventually ascend to the heavenly abode, often ask, “How did he die?” I always tell them, “Ask not how he died, but how he lived”.

It is a great honour indeed to deliver this lecture in the memory of our beloved King, Shree Chitra Thirunal Bala Rama Varma Maharaja of Travancore, the last Chera Maharaj. I will focus on two essential ethos that characterize all that the Maharaja ever stood for- Good Governance and the Rule of Law, effected through an efficient judicial order.

The Maharaja was instrumental in bringing about sweeping social, political and economic reforms in the state of Travancore. He was gifted with a keen insight into practical human problems and was not governed by mere manipulations of the law. Moreover, his gentle

nature, uncontaminated spirit and an innate will to relentlessly strive to improve the lives of his people made him the person we so adore.

The Maharaja is revered not merely because he was a ruler, but because of his vision of prosperity and efficiency in society, brought about by infusing the spirit of the rule of law and good governance, through an eternal and immutable foundation based on equality, freedom and individual happiness.

The institutions that he created form the bulwark of the freedoms that his subjects enjoyed and without which life would be reduced to mere animal existence. His acts represent the tradition and ideals inherent in the rule of law, which form the bedrock of a successful system of governance. His methods to ensure that the rule of law remain at the highest pedestal reflect an insight that is rich and varied with a flexible methodology and finely modulated mechanisms that ensured maximum enjoyment of freedom and equality. From reforming education, industry and society to the promotion of art and culture, the Maharaja's efforts will guide generations of reformers and social thinkers.

On the eve of his coronation, the Maharaja said:

“It is my hope that I shall be enabled by God’s grace to earn the affection and esteem of all communities and classes amongst my people whose advancement in every department of life will be my perpetual pre-occupation and my sole aim”.

Soon after ascending the throne, he divested himself of some of his powers and established a bicameral legislature, called the Moolam Assembly. This sowed the seeds of democracy that have today encompassed our entire nation and form its very sinew. The Maharaja’s foresight enabled him to realize real empowerment comes only through education, especially through the *lingua franca* of the “New World”, the language of English. Towards this end, the Maharaja established the University of Travancore, and laid emphasis on enabling its students to imbibe the best values from Western culture and language while, at the same time, creating a strong sense of patriotism and familial spirit, such that students always maintained a respect for traditional values, thus ensuring that their feet are rooted strongly on the ground from which they rose. The

Maharaja's focus on primary education also deserves mention. The scheme of compulsory primary education for children between 5-11 years of age has received acclaim from far and wide, and a similar mechanism has also been established in our Constitution, which forms the bedrock of the rule of law in India. The Maharaja strengthened this scheme by introducing mid-day meals, free clothing and scholarships to disadvantaged sections of the communities. Such measures are being emulated by the Supreme Court as well as the Central Government to address some of the disabilities that poor children are burdened with, for no fault of their own, except their fate, which has put them where they are.

Sree Chitira Thirunal's humanitarian sensitivity is reflected in the fact that he was one of the first rulers to abolish capital punishment. In those times, such a step was not only progressive, it was nothing short of revolutionary, and displayed a remarkable sense of goodness.

The most path breaking measure by the Maharaja was the epoch making Temple Entry Proclamation of 1936. What was stated in the

Preamble to the Proclamation is relevant to the social milieu of present times as well. It has encapsulated the need of the hour and also shows us the path to righteousness and good governance, in order to ensure that the rule of law guides each of our moves. The Preamble states thus:

“Profoundly convinced of the truth and validity of our religion, believing that it is based on divine guidance and on an all comprehending toleration, knowing that in its practice it has, throughout the centuries, adapted itself to the needs of changing times, soliticious that none of our Hindu subjects should, by reason of birth or caste or community, be denied the consolations and solace of the Hindu faith, we have decided and hereby declare, ordain and command that, subject to such rules and conditions as may be laid down and imposed by us for preserving their proper atmosphere and maintaining their rituals and observances, there should henceforth be no restriction placed on any Hindus by birth or religion on entering or worshipping at the temples controlled by us and our government.”

Hearing of Proclamation, Mahatma Gandhi, in a letter to the Maharaja, wrote,

“People call me as Mahatama and I don’t think I deserve it. But in my view, you have in reality become a Mahatama by your proclamation at this young age, breaking the age old custom and throwing open the doors of the Temples to our brothers and sisters whom the hateful tradition considered as untouchables.”

According to ancient Indian texts, such as the *Dharmashastra*, the duty of a King is to ensure that he is guided by the rule of law in every decision, big or small, and such rule of law is enforced through a system of good governance. “Good governance” often refers to the task of running the Government in an effective manner. It is qualitatively and conceptually superior to a mere good government. It depends on various factors. A Government, in discharge of its sovereign functions, has to discharge many Constitutional obligations and towards fulfilling these obligations it should be capable of enabling, enhancing and deploying the power of the State for sustainable human development. It is essentially a mechanism to

strengthen the institutions of Government and civil society with the objective of making the government more accountable, open and transparent by ensuring participatory democracy. Under our Constitution, Part IV gives sufficient indication as to how good governance is to be maintained by the State. All governments have been given sufficient Constitutional backing by these provisions to ensure good governance for the people.

An essential prerequisite for good governance is a stable and truly representative majority of the people which would go a long way in accelerating economic growth and development and ensuring the welfare of all sections of society. Transparency, as an important attribute of good governance must not be forgotten. Openness and opportunity for public participation have emerged as a universal principle of good governance. Various groups of society should be provided with opportunities to observe and contribute in policy making of the State where availability of relevant information would give them a chance to advance their ideas thereby augmenting the policy making process. Moreover, in India, most social transformations have

come about in society through cross-fertilization of ideas and experiences from different social setups.

Article 31-A of the Constitution is another facet of good governance. The State has been given wide powers for acquisition of any property for public interest in order to secure proper management of public affairs. Moreover, such action shall not be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by Article 14 or Article 19. The State can also interfere with private rights under Article 31-A, 31-C clause (a) to (e). Needless to say, these powers have to be exercised very carefully and under extraordinary circumstances. Nevertheless, if used reasonably, they form an important facet of good governance, in so far that the exercise of such powers is sometimes necessary in public interest. These powers were challenged in various cases and arguably, the Article has lost its efficacy to some extent, though it still survives at the disposal of the State. Furthermore, under Article 39, the State is required to direct its policy towards securing equitable distribution and control of the material resources of the community so as to serve the common good. At the same time, it is to be ensured that wealth and

means of production do not lie in the hands of a few, but are shared by all. Other obligations include equal pay for equal work, ensuring just and humane conditions of work conditions of work, protecting children from all forms of abuse so as to develop their faculties in a healthy manner and in conditions of freedom and dignity. Local self governance as an essential aspect of good governance has also been enshrined, and the State is obliged to take steps to organize village panchayats. The Constitution also addresses the all-important facet of nutrition and standard of living, which must be continually enhanced, especially for those who are economically, socially and educationally backward. By 42nd fundamental duties were added to ensure that citizens play an important role in the democratic process.

Ensuring education for all is a significant task for the state, and an important tool for furthering good governance. Article 21-A, inserted in 2002, includes the Right to Primary Education as part of the fundamental rights. Interestingly, the scheme of compulsory primary education was started by the Maharaja, as far back as 1946! Education is the only way of empowering socially disadvantaged sections and social groups. It helps improve their conditions by

enhancing their abilities to comprehend the prevailing social and economic process. It also helps articulate their own perceptions, experiences and demands, as to maneuver them effectively in the prevailing political ethos. Moreover, today, it is essential for the State to ensure that every girl child attend school and that education imparted by schools be supplemented by the basic nutrition packages to encourage attendance. The latest data collated by the National Family Health Survey 2005-06 shows that every second child under 5 years is malnourished and 30 out of 100 girls entering school do not complete primary level. So, as regards girl students, even in 2006, the dropout rate is as high as 70%. In some states, the situation is dismal, and female education is even below the national average of 55%. This lack of education, especially among the lower strata of society is one of the major reasons that economic growth and productivity do not ensure a corresponding decrease in the level of poverty and hunger. Mere progressive laws and policies that serve as paper tigers only are unable to ensure equity and justice.

Overall development of the country is possible only when there is efficient administration of justice and maintenance of rule of law. The

essence of the rule of law lies in achieving a legitimate balance between governmental authority, individual liberty and constitutional legitimacy. The Rule of Law sets put the broad guidelines that regulate the manner in which the laws and policies are to be applied to particular persons or groups of persons, and the content of such policies. In the words of Paul Craig, the Rule of Law can be defined as that

“...set of closely interlinked principles that together make up the core of the doctrine of constitutionalism and become a necessary component of any genuine liberal or constitutional democratic polity”.

Law thus becomes a means of good governance dependent on reasoned justification. Such good governance, as an essential component of the Rule of Law, must necessarily respect the rights and liberties of the governed. In its progressive perspective, the Rule of Law has, within itself, a mission that was best explained by the International commission of Jurists, in the “Declaration of Delhi” in the following words:

“...the Rule of Law is a dynamic concept for the expansion and fulfillment of which jurists are primarily responsible and which should be employed not only to safeguard and advance the civil and political rights of the individual in a free society, but also to establish social, economic, educational and cultural conditions under which his legitimate aspirations and dignity may be realized”.

This highlights the fundamental role the judicial system plays in ensuring that good governance and rule of law prevail in society. Though all the three arms of governance, viz. the legislature, executive and judiciary, are equal shareholders in protecting and upholding the Rule of Law, the last limb, the judiciary, is endowed with the additional responsibility of safeguarding the Rule of Law, whenever the other limbs fail to perform their function judicially, according to the spirit of the Constitution. According to Chief Justice Warren of the United States Supreme Court:

“Our judges are not monks or scientists, but participants in the living stream of our national life”.

The Founding Fathers were aware of the dangers of excessive powers which could undermine the entire democratic setup and hinder the process of social change. Therefore, a judicious system of balance has been provided in the Constitution, such that each arm of governance functions within assigned parameters, complementing each others' efforts. The Parliament enacts the law, the Executive implements them and the Judiciary interprets them, as an arbiter. This idea of separation of powers is an essential facet of good governance and consequently the rule of law.

The first Chief Justice of India, Sir Harilal J. Kania, at a speech during the inauguration of the Supreme Court on January 28, 1950, described in eloquent terms the special responsibility that rests with the Judiciary in the following words,

“We hope and trust that the Court will maintain the high traditions of the judiciary and perform its duties without fear and favour. If we succeed in doing so, we shall contribute our share to the progress of our Republic and render service to this country which none else can render.”

Indeed, the Indian judiciary has come a long way, and its yeoman service in upholding the Rule of Law has been recognized numerous times. Our former President Shri K.R. Narayanan, on the occasion of the Golden Jubilee of the Supreme Court in 2000 said:

“It is not an exaggeration to say that the degree of respect and public confidence enjoyed by the Supreme Court is not matched by any other institution in this country.”

As a power regulator, rule of law has two functions: it limits government arbitrariness and power abuse, and it makes the government more rational and its policies more intelligent. As F. A. Hayek puts it, rule of law

“means that a government in all its actions is bound by rules fixed and announced beforehand -- rules which make it possible to foresee with fair certainty how the authority will use its coercive powers in

given circumstances, and to plan one's individual affairs on the basis of this knowledge.”

Thus, whenever an imbalance is found due to malfunction or non action by any of the other two organs of the State, namely, Legislature and Executive, it is the inherent duty of the Court, particularly the Supreme Court, to uphold a system of good governance, thereby ensuring adherence to the rule of law.

Role of the Judiciary in Ensuring Rule of Law through Good Governance

The Supreme Court of India has had two distinct phases, as far as the development of rule of law through good governance is concerned. The first was the pre-emergency phase, and the other was propounded in the post emergency days. The former approach was narrow, and only required that the law was as per the Constitution, interpreted narrowly. Soon thereafter, it was held that the former approach was not tenable and the spirit of the rule of law in India had to be read in a different light. Thus, in *Kesavanand*

Bharati's Case, the Supreme Court reinforced the supremacy of the Constitution, and restricted the power of Parliament to amend the Constitution, alienating the “basic features” of the Constitution from such power. Thus, through this stellar judicial pronouncement, the Rule of Law through a system of good governance was given a clear and coherent meaning, which guides us to this day.

Another important facet of good governance is protection to fundamental rights. In India, Article 21 stands at the fulcrum of this facet. Article 21 confers positive rights to life and liberty, which goes beyond mere animal existence. It has been given a multidimensional interpretation by the Supreme Court. In the words of Justice Bhagwati, in *Francis Coralie v. Union Territory of Delhi* (1981) 1 SCC 688,

“we think that the right to life includes the right to live with human dignity and all that goes along with it, namely the bare necessities of

life such as adequate nutrition, clothing and shelter over the head and facilities for reading, writing and expressing oneself in diverse forms.”

Through various other judgments, the apex court has widened the scope of Article 21 and has provided within its ambit, a wide gamut of rights, including the right to education which has been included as apart of right to life.

The rule of law, through effective governance, was also furthered through what may be termed as “environmental activism”. Though under Article 48-A of the Constitution of India, the State is obligated to protect and improve the environment and to safeguard the forest and wildlife of the country little that was done by the states. However, the Supreme Court, over the years, has ensured that people live in a pollution-free and healthy environment. Towards this end, the Court has adopted substantive equality, and aimed for a result oriented approach. This approach has resulted in greater judicial activism, and opened new vistas for judicial innovation and creativity, in order to

fulfill the mandate of achieving the rule of law. This is the foremost example of giving the Rule of Law a practical meaning which is oriented towards social good and forms the cornerstone of good governance.

Dr. S. Radhakrishnan, in the following words, reminds us that good governance and the rule of law go hand-in-glove when it comes to maintenance of efficient judicial administration:

"It is essential for the country to respect law, for the Government of the country to respect law and for the courts to maintain the sanctity and purity of legal administration and dispensation of justice. That is absolutely necessary, if the rule of law has to be continued in this country as it has to be continued...If that happens, if our people develop respect for law and if our courts administer law without ill-will, malice, prejudice or favour, there will be growth in the tendency to respect law."

The statement highlights the fact that the judiciary, shouldered with the pious responsibility of maintaining the rule of law through good governance, cannot do so without the respect and confidence of the

public. Such public confidence is based on two factors. Firstly, whether the judiciary is applying the law in accordance with the interest of the people and our Constitution, and secondly, whether it is doing so in a timely manner. A large pendency of cases adversely affects timely justice. The Courts do not possess a magic wand which they can waive to wipe out the pendency nor can they afford to ignore the instances of injustices and illegalities only because of these arrears of cases. If the courts start doing that, it would be endangering the credibility of the Courts and the tremendous confidence they still enjoy from the common man. It is high time that a scientific and rational analysis of the factors behind accumulation of arrears be made and a specific plan devised to at least bring them within acceptable limit, and to achieve zero pendency within a reasonable timeframe. There are volumes of Law Commission Recommendations, Expert Committee Reports and Opinions of Jurists, highlighting the problem and suggesting ways and means. The need of the hour is to act upon those suggestions swiftly and decisively.

In this era of globalization and rapid technological developments, which is affecting almost all economies and presenting new challenges and opportunities, judiciary cannot afford to lag behind and has to be fully prepared to meet the challenge of the age.

Having said all this, I must note that had we been bestowed with the good fortune and glorious opportunity of having the Maharaja among us today, to discuss the issues I have highlighted before you all, I am sure he would have suggested refreshingly creative solutions that would have addressed these concerns most effectively.

To conclude, I hope that the memory of Shree Chitra Thirunal Bala Rama Varma Maharaja of Travancore is forever shared by all of us, so that we may gain more than just the pride in his accomplishments, so that we imbibe that rare goodness which is radiated only from an unblemished character and so that we are able to give ourselves an opportunity to emulate a person who was inspired by the love and sympathy for his people, and who furthered, with passion, the cause of infusing rule of law and good governance into the deepest roots of society.