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Good governance and protection of human rights: An analysis

Preeti Misra^{1,*} and Alok Chantia²

¹Department of Human Rights, School For Legal Studies, Babasaheb Bhimrao Ambedkar University, Lucknow.

²Department of Anthropology, Sri Jai Narain Post Graduate College, Lucknow University.

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ABSTRACT

Good governance and human rights are mutually reinforcing. Human rights principles provide a set of values to guide the work of Governments and other political and social actors. They also provide a set of performance standards against which these actors can be held accountable. Moreover, human rights principles inform the content of good governance efforts: they may inform the development of legislative frameworks, policies, programmes, budgetary allocations and other measures. However, without good governance, human rights cannot be respected and protected in a sustainable manner. The implementation of human rights relies on a conducive and enabling environment. This includes appropriate legal frameworks and institutions as well as political, managerial and administrative processes responsible for responding to the rights and needs of the population. Good governance is the exercise of authority through political and institutional processes that are transparent and accountable, and encourage public participation. Whereas human right refers to the standards set out in the Universal Declaration of Human Rights. Good governance led by human rights values create avenues for the public to participate in policymaking either through formal institutions or informal consultations. They also establish mechanisms for the inclusion of multiple social groups in decision-making processes. They may encourage civil society and local communities to formulate and express their positions on issues of importance to them. In the realm of delivering State services to the public, good governance reforms further human rights when they improve the State's capacity to fulfil its responsibility to provide public goods which are essential for the protection of a number of human rights, such as the right to education, health and food. Reform initiatives may include mechanisms of accountability and transparency, culturally sensitive policy tools to ensure that services are accessible and acceptable to all. In context of rule of law, human rights-sensitive good governance initiatives reform legislation and assist institutions ranging from penal systems to courts and parliaments to better implement that legislation. Good governance initiatives may include advocacy for legal reform, public awareness-raising on the national and international legal framework, and capacity-building or reform of institutions. Anti-corruption measures are also part of the good governance framework.

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Introduction

The human rights are indisputable rights of every human being that enable a person not only to live but also to live with dignity. But human rights invite a number of preconditions for the realisation of the same. It is now being realised that protection of human rights at the domestic level is possible only when good governance prevails. The provision of good governance works as precondition for human rights' protection and growth. Since good governance can help in the realisation of different human rights from the right to life to the environmental rights and other economic, political and social rights, demand has been made to declare right to good governance as the most basic human right.

The term governance distinct from government implies the existence of the co-operation of people and civil societies with the government machinery. It denotes the condition of absence of any central authority. Governance may be taken as denoting how people are ruled and how the affairs of a state are administered and regulated. It refers to a nation's system of politics and how this functions in relation to public administration and law.

According to the Commission on Global Governance (1995), governance is... "the sum of the many ways individuals and institutions, public and private, manage their common affairs. It is a continuing process through which conflicting or diverse interests may be accommodated and cooperative action may be taken. It includes formal institutions and regimes empowered to enforce compliance, as well as informal arrangements that people and institutions either have agreed to or perceive to be in their interest."

Simply put "governance" means: the process of decision-making and the process by which decisions are implemented (or not implemented). Thus, the concept of governance goes beyond that of "government" where government constitute a part. Since governance is the process of decision-making and the process by which decisions are implemented, an analysis of governance focuses on the formal and informal actors involved in decision-making and implementing the decisions made and the formal and informal structures that have been set in place to arrive at and implement the decision.

Tele:

E-mail addresses: misra9us@gmail.com

Good Governance: Conceptual Analysis

The concept of good governance is efficient governance that can live up to the expectations of the people. It bears several aspects within its fold. For the prevailing of good governance, it requires the existence of rule of law and independence of judiciary. All the functions are to be performed according to the set rules and regulations in the absence of which may cause mismanagement and inefficiency. But, mere following rules are not sufficient. The goal orientation as well as equity is necessary. Everything must have a purpose or goal. Speedy implementation of the policies to achieve the goals is also necessary. People's participation is also to be ensured. It gives ample opportunity to the participation of the civil society organisations in the decision making process of the government. Decentralisation of governance can work as an incentive in giving the people the chance to directly take part in the decision making as well as implementation process. Moreover, the Access to proper information by the people and absence of corruption are also important prerequisites of good governance. It also requires consensus orientation, equity, strategic vision and use of resources in sustainable manner. In short, good governance has four main characteristics- (a) predictable, open and enlightened policy-making, (b) a bureaucracy imbued with a professional ethos acting in furtherance of the public good, (c) the rule of law and (d) transparent process and a strong civil society participating in public affairs.¹

Several international organizations have drawn up principles of good governance for governments. These principles have emerged in parallel to guidelines for good corporate governance as standards for the behaviour of companies. More recently, such standards are also being applied in nongovernmental organizations. Understanding of good governance in relation to governments is well drafted in the World Bank's definition of governance: which defines "governance as the traditions and institutions by which authority in a country is exercised for the common good. This includes (I) the process by which those in authority are selected, monitored and replaced, (II) the capacity of the government to effectively manage its resources and implement sound policies, and (III) the respect of citizens and the state for the institutions that govern economic and social interactions among them".²

According to the United Nations Development Programme (UNDP), good governance is accountable, transparent, responsive, equitable and inclusive, effective and efficient, participatory, consensus-oriented and follows the rule of law. The OECD (2012) takes a similar but broader approach and defines good, effective public governance as: "It helps to strengthen democracy and human rights, promote economic prosperity and social cohesion, reduce poverty, enhance environmental protection and the sustainable use of natural resources, and deepen confidence in government and public administration."

Good governance is therefore an amalgam of guiding principles that transcend specific policies, sectors and actors. In this regard, good governance is better understood as a process than as a destination, as a dynamic rather than a static state of affairs. Good governance is an ideal; the application of good governance principles without proper understanding of the

context in development is often considered unreasonable. The concept of good governance is considered to be a necessary, intellectually helpful concept although good governance is frequently reduced to fighting corruption in the larger context. It can assist each system in analysing progress towards good governance through the eight dimensions of the UNDP definition. The term good governance is sometimes used interchangeably with the concept of ethical governance

Good governance appeared on the World Bank's agenda. One of the themes of the Bank's 1991 Annual Development Economic Conference was "Good Governance". On the relationship between development and governance, the Bank conceptualized governance to indicate the manner in which power and authority are exercised for development "in the management of a country's economic and social resources. According to the International Monetary Fund, good governance is important for countries at all stages of development. It emphasises on the importance of good governance in fields such as promoting public sector transparency and accountability.³

Initially, the term good governance came to the international arena as a part of the initiatives of the World Bank to intend to ensure that the development assistance is used effectively. But it has broadened its dimension including the political and social aspects especially with the emergence of the concept of sustainable development.

Human Rights: Genesis

Human rights are those inalienable and essential rights which are universally possessed by each and every human being by virtue of being human. These are set out in the Universal Declaration of Human Rights of 1948 and codified and further spelled out in a series of international conventions. These lay down the minimum standards to ensure human dignity, drawing on the values found in different religions and philosophies. The states have identified these rights and protection and promotion of these rights are one of the major objectives of the democratic countries.

Human rights concepts, norms and standards evolved from a European discourse that focused on individual civil liberties and civil and political rights. The Universal Declaration of Human Rights (UDHR) (1948) had a broad vision of equality. The focus was on civil liberties of the individual but there were references to economic social and cultural rights including the right to "just and favourable" conditions of work, an adequate standard of living, shelter, education and health. However while civil liberties were considered immediately enforceable, socio economic rights were rights described as rights enjoyed "as a member of society," to be realized through "national effort and international co-operation and in accordance with the organization and resources of each state."⁴

It was in 1993 that the World Conference on Human Rights in Vienna helped to develop a consensus that both regimes of rights were equally important. The Declaration and Plan of Action accepted that civil and political and socio economic rights were indivisible and interdependent, it helped to strengthen the argument that they were universal entitlements of all people. This consensus was important because it contributed to human rights principles that make the State accountable for

¹ World Bank, Governance: The World Bank Experience, (operations policy, Document, Final Draft, Nov, 23, 1993).

² World Bank Document, 2011

³ Nanda, Ved P., "The "Good Governance" Concept Revisited" in *Annals of the American Academy of Political and Social Science*, available at <http://www.jstor.org>.

⁴ See Articles 22-26 of Universal Declaration of Human Rights (UDHR) (1948)

implementing civil liberties and non arbitrary justice through the law, as well as socio economic rights of the people to basic needs such as access to livelihoods, land and property as productive assets, health, education and shelter. National resources must be used to implement both regimes of rights on the basis of a parity of status. It is no longer considered possible to delink human rights and development or development co-operation since state obligations encompass both regimes.

Inter Relationship Between Good Governance And Human Rights At International Level

Good governance and human rights are mutually reinforcing. Human rights principles provide a set of values to guide the work of Governments and other political and social actors. They also provide a set of performance standards against which these actors can be held accountable. Moreover, human rights principles inform the content of good governance efforts: they may inform the development of legislative frameworks, policies, programmes, budgetary allocations and other measures. However, without good governance, human rights cannot be respected and protected in a sustainable manner. The implementation of human rights relies on a conducive and enabling environment. This includes appropriate legal frameworks and institutions as well as political, managerial and administrative processes responsible for responding to the rights and needs of the population.⁵

From a human rights perspective, the concept of good governance can be linked to principles and rights set out in the main international human rights instruments. Article 21 of the Universal Declaration of Human Rights recognizes the importance of a participatory government and Article 28 states that everyone is entitled to a social and international order in which the rights and freedoms set forth in the Declaration can be fully realized. The two International Covenants on Human Rights contain language that is more specific about the duties and role of governments in securing the respect for and realization of all human rights. Article 2 of the International Covenant on Civil and Political Rights requires states parties to respect and to ensure the rights recognized in the Covenant and to take the necessary steps to give effect to those rights. In particular, states should provide an effective remedy to individuals when their rights are violated, and provide a fair and effective judicial or administrative mechanism for the determination of individual rights or the violation thereof. Under the International Covenant on Economic, Social and Cultural Rights, states are obliged to take steps with a view to achieving progressively the full realization of the rights recognized in the Covenant by all appropriate means.

The human rights treaty monitoring bodies have given some attention to the different elements of good governance. In general comment No. 12, on the right to food, the Committee on Economic, Social and Cultural Rights stated that "Good governance is essential to the realization of all human rights, including the elimination of poverty and ensuring a satisfactory livelihood for all." The Committee on the Rights of the Child has on several occasions addressed the issue of governments' capacity to coordinate policies for the benefit of the child and the issue of decentralization of services and policy-making. It has also addressed corruption as a major obstacle to the

achievement of the Convention's objectives. The Human Rights Committee generally addresses issues related to the provision of adequate remedies, due process and fair trial in the context of the administration of justice in each state. It regularly emphasizes the importance of independent and competent judges for the adequate protection of the rights set forth in the **Convention**.

In the realm of delivering state services to the public, good governance reforms advance human rights when they improve the state's capacity to fulfil its responsibility to provide public goods which are essential for the protection of a number of human rights, such as the right to education, health and food. Reform initiatives may include mechanisms of accountability and transparency, culturally sensitive policy tools to ensure that services are accessible and acceptable to all, and paths for public participation in decision-making.

Good Governance and Human Rights

Indian Context

The idea of good governance even existed during the ancient and the medieval period in India in the religious scriptures like the Mahabharata, in the writings of Manu and Kautilya. It was mooted and advocated by the political philosophers who stressed the need of implementing this idea with a view to attain multipurpose development. India incorporated a number of basic human rights as guaranteed fundamental rights. Along with it certain 'Directive Principles of State Policy' which are instrumental for the protection of the fundamental rights as well as good governance in the country.

In so far as the Indian constitution is concerned, the "Preamble" to the Indian Constitution reflects broadly the goals and ideas of the Indian State to pursue for the well-being of its people. The most important goal is "to secure to all its citizens justice-social, economic and political". This fact summarizes the very purpose of any state. The several aspects of this goal and the way to achieve them have been more explicitly spelt out in part IV of the constitution containing the "Directive Principles of State Policy" (Arts 37 to 51)⁶ Article 37 says that these Directive Principles, though not enforceable by any court, are nevertheless fundamental in the governance of the country and it

⁶ To promote the welfare of the people by securing and protecting a social order in which justice- social, economic and political shall inform all institutions of national life; To frame and adopt certain principles of policy towards securing; Right of men and women equally to an adequate means of livelihood; Equitable distribution of material resource to sub serve the common good; De concentration of wealth and means of production; Equal pay for equal work; Opportunities and facilities to children to develop in conditions of freedom and dignity and to protection of childhood and youth against exploitation and moral and material abandonment; Right to work, to education and public assistance in cases of unemployment, old age, sickness and disablement; Participation of workers in the management of undertakings, organizations in any industry; Free and compulsory education for all children until they attain the age of 14 years; Uniform civil code throughout the territory of India; Educational and economic interests of weaker sections of society, in particular, the Schedule Castes and Tribes (SC/ST) and their protection from social injustice and all forces exploitation; Organization and establishment of village *panchayats* to function on units of self-government and Protection and improvement of environment, forests and wild life.

⁵ UN Office of the High Commissioner for Human Rights, Good Governance Practices for the Protection of Human Rights, available at www.unhcr.org

shall be the duty of the state in the governance of the country to apply these principles in the making laws”.

Article 12 defines “The State” to include “The government and the Parliament of India and the Government and the Legislature of each of the states and all local or other authorities within the territory of India or under the control of the Government of India”.

India, with the enactment of the 73rd and 74th constitutional amendments gave constitutional status to the decentralised institutions like the panchayatiraj institutions in rural areas and municipal bodies in the urban. The vertical division of powers and to ensure the participation of the people at the grassroots level at the decision making and implementation process and to achieve good governance, these two amendments are an important step for India.

The concept of good governance stands for the prevalence of the rule of law and an independent judiciary. The rule of law, one of the most significant characteristics of good governance prevails in India where much effort has been taken to ensure independence of judiciary. The judiciary has been playing dynamic role for the protection of the basic rights of the people through the practice of Judicial Review resulting in Judicial Activism and Public Interest Litigation, known for its people-friendly procedures⁷.

To eradicate corruption, various efforts have been taken in India both at the constitutional as well as at the policy level. The establishment of the Directorate General of Income Tax Investigation, Central Vigilance Commission and Central Bureau of Investigation and in certain states the Lokayuktas look after the grievances of people against the officers and the politicians. There are acts like the Indian Penal Code, 1860, the Prosecution section of Income Tax Act, 1961, the Prevention of Corruption Act, 1988, the Benami Transactions (Prohibition) Act, 1988 to prohibit *benami* transactions and the Prevention of Money Laundering Act, 2002. The United Nations Convention against Corruption was adopted by the General Assembly by in 2003 and entered into force on 14 December 2005. India is a signatory to this convention and is bound to obey it. One of the eminent steps is the introduction of the Right to Information Act in 2005 with its applicability throughout India except the state of Jammu and Kashmir, which has now its own Right to Information Act. In its very first session in 1946, the UN General Assembly adopted Resolution 59(I), stating, “Freedom of information is a fundamental human right and the touchstone of all the freedoms to which the United Nations is consecrated”. So, the lack of transparency and secrecy can be expected to be erased with the help of this Act. Besides the Government has taken special interest in introducing e-governance in the recent years following the Second Administrative Reforms Commission’s recommendation. The goals of e-Governance are better service delivery to citizens, ushering in transparency and accountability, empowering people through information, improved efficiency within Governments, improve interface with business and industry. It aims to make people not as means to end, rather as end in themselves.⁸

The links between good governance and human rights can be discussed around following heads:

Human Right Institutions

The international community recognised the growing importance of strengthening national human rights institutions. In this context, in the year 1991 a UN-sponsored meeting of representatives of national institutions was held in Paris and a detailed set of principles on the status of national institutions were developed, these are commonly known as the Paris Principles. These principles, subsequently endorsed by the UN Commission on Human Rights⁹ and the UN General Assembly¹⁰ have become the foundation and reference point for the establishment and operation of national human rights institutions. The Government of India did realise the need to establish an independent body for promotion and protection of human rights. The establishment of an autonomous National Human Rights Commission (Commission) by the Government of India reflects its commitment for effective implementation of human rights provisions under national and international instruments. The Commission is the first of its kind among the South Asian countries and also few among the National Human Rights institutions, which were established, in early 1990s. The Commission came into effect on 12 October 1993, by virtue of the Protection of Human Rights Act 1993. Some Indian States have also set up their own human rights commissions to deal with violations from within their states. Though it is a government institution, yet it has established its integrity and commitment by working independently and impartially, which is borne out by its recommendations.

Rule of law

When it comes to the rule of law, human rights-sensitive good governance initiatives reform legislation and assist institutions ranging from penal systems to courts and parliaments to better implement that legislation. Good governance initiatives may include advocacy for legal reform, public awareness-raising on the national and international legal framework and capacity-building or reform of institutions. The rule of law will be protected only if it is ensured that those who violate it are given the punishment that is appropriate for that violation. Simultaneously, it must ensure that the legal system and the institutional mechanisms that are available, treat all people in a fair and just manner and that acts of corruption committed by even the most powerful and influential persons in society are investigated in a professional manner and justice rendered.

Being a human everyone has some rights relating to life, liberty and to live with his family with maintaining self respect. Without any special circumstances State cannot deny those rights. Those rights may be called as fundamental rights or natural rights or Human rights. These rights are just like as breath and air. But one State may varied from the other State, to maintain those rights. But there must be some object behind recognizing those laws. The main object behind the recognizing those laws is to maintain public order by compelling individuals to behave in a legal manner and for providing protection to every individuals. At the same time, it provides protection to the

Avimanyu Behera, “Good Governance: Human Rights Perspective in India” in *Human Rights and Good Governance: National and International Perspectives*, Noida, Satyam Law International, 2008, pp. 117-118.

⁸ Saikia, I.K., “Good Governance And Human Rights: International And National Perspective”, *International Journal of*

Advancements in Research & Technology, Volume 2, Issue 7, July-2013.

⁹ Commission on Human Rights Resolution 1992/54 of 3 March 1992

¹⁰ General Assembly Resolution 48/134 of 20 December 1993.

people against the arbitrary actions of the officials. The thing meant that the equality before law at the same time equal protection of law. The law shall not differ the human beings, whether he or she is rich person or how much power, he had acquired. Even those rights cannot be altered by other means i.e. opposite to the general conception, as because those are 'genus' in nature. It may happen that there may be some classification on the basis reasonable classification, but shall be prohibited class legislation. Some class or group may classify on reasonable ground but should not be differ in other means. Where in *E.P. Royappa Vs. State of Tamil Nadu*¹¹ the honourable justice Chandrachud and Krishna Iyer of the Supreme Court propounded a new concept of equality, where it is found that Equality is a dynamic concept and it cannot be cribbed and confined within traditional or doctrinaire limits. From the positive point of view, equality is antithesis to arbitrariness. In fact equality and arbitrariness are sworn enemies. As because one may belong to the *lex loci* in a republic State, where the other stands in case of absolute monarchy. That is in one hand equality shall be maintained and the term human justice should be justified and on the other hand equality may be denied in general sense.

Anti-Corruption Measures

Corruption has serious implications for both protecting the rule of law and ensuring access to justice. It is pervasive in our system of governance, severely undermining the effectiveness of all institutions. Since independence, though successive governments have taken numerous measures to reduce the levels of corruption in the country, including legislative and institutional, an absence of political will and sincerity in taking concrete steps to eliminate corruption has resulted in most of these measures not achieving the intended results.

Corruption is not merely a law enforcement issue where the existing laws of the state are violated and can be remedied by more stringent law enforcement. Rather, corruption is a far more fundamental problem that undermines the very social fabric, political and bureaucratic structure of any society. Thus, while it is necessary for the law enforcement machinery to be empowered, the larger issue concerning corruption is how it violates human rights, in particular the rights guaranteed under any legal system.

It needs to be recognized that people have begun to lose faith in the ability of parliamentary institutions and the political process to ensure good governance. The effort to establish an independent Lokpal is thus important, not only because of the need to fight against corruption, but also to help restore the trust and faith of the Indian citizenry in parliamentary democracy. Corruption has reached such alarming proportions in India that it has undermined the foundations of democratic governance.

There is little doubt that the institutional design of a Lokpal as an independent, impartial and effective mechanism will be the sole determinant for its success. The social expectations generated, not just by the Anna Hazare movement but also by the human rights violations committed against people on account of corruption, have created a strong urge among many Indians to fight against corruption.¹²

In fighting corruption, good governance efforts rely on principles such as accountability, transparency and participation

to shape anti-corruption measures. Initiatives may include establishing institutions such as anti-corruption commissions, creating mechanisms of information sharing, and monitoring governments' use of public funds and implementation of policies.

Conclusion

In India's case, apart from the constitutional provisions, efforts have been taken in a number of states to reform the governance to ensure good governance so that economic growth can be accelerated and human rights can be protected. But due to various reasons, it is still remain a distant dream. Mismanagement, corruption, criminalisation of politics, lack of co-operation between the people and bureaucrats, lack of awareness among the people etc. are responsible for it. But, if the human rights especially of the downtrodden groups are to be protected, India has to create necessary conditions to enjoy the rights and it can be provided only through good governance. When led by human rights values, good governance reforms of democratic institutions create avenues for the public to participate in policy making either through formal institutions or informal consultations. They also establish mechanisms for the inclusion of multiple social groups in decision-making processes. They may encourage civil society and local communities to formulate and express their positions on issues of importance to them.

Along with it, gender equality and sustainable environment are also important objectives that can be achieved with the help of good governance. The proper implementation of good governance will lead towards the realisation of the Millennium Development Goals as well as the concept of development as the world needs at the hour. Good governance will ensure equitable sustainable development marked by active citizens' participation, absence of injustice and corruption and in this way contribute towards the protection of human rights. Hence it can be said that good governance is concomitant for the protection of human rights.

The essence of good governance is the respect for the human right of each individual. It provides every individual to develop his capacity to the maximum to sub serve the cause of common good. The concept of human right has not only affected individual but state sovereignty too. In modern times human right is of international concern. Whenever human rights are violated in any country, it draws the attention of international community, in globalised world, no state/country can stand aloof. In present world, sovereign states are required to submit a report to the international community regarding treatment of human rights in their respective states, on which discussions are held and redressal mechanism is laid down. Good governance has become functional due to respect for human dignity, which is the essence and core value of globalized world for the sustenance of humanity.

¹¹ AIR 1974 SC 555

¹² Kaul, J.L. and Sinha, Manoj K. (eds.), "Human Rights and Good Governance: National and International Perspectives", Noida, Satyam Law International, 2008