

GOOD GOVERNANCE AND HUMAN RIGHTS: INTERNATIONAL AND NATIONAL PERSPECTIVE

Author: Ishan Krishna Saikia, Department of History, Assistant Professor, Sonapur College, Sonapur, India.

(Abstract)

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 paper is an attempt to analyse the conceptual background of these two concepts disjointedly and how the two contribute to each other and the possibilities of the joint application of the two in general and particularly in a democratic country like India.

(Key Words: Good Governance, Human Right, Development, Rule of Law, Accountability, Transparency, People's Participation)

INTRODUCTION

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.

Simply put "governance" means: the process of decision-making and the process by which decisions are implemented (or not implemented)¹. 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 decision².

On the other hand, 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. Again, 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 brief, good governance has four main characteristics- (a) predictable, open and enlightened policy-making, (b) a bureaucracy

¹<http://www.unescap.org/pdd/prs/ProjectActivities/Ongoing/gg/governance.pdf>

²*Ibid*

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.³

CONCEPTUAL FRAMEWORK

2.1 Good 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"⁴. 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 development⁵. It emphasises on the importance of good governance in fields such as promoting public sector transparency and accountability. According to the UN Economic & Social Commission for Asia & the Pacific, good governance has eight major characteristics. It is participatory, consensus oriented, accountable, transparent, responsive, effective and efficient, equitable and inclusive and follows the rule of law.

The International Monetary Fund and the World Bank instituted structural adjustment programmes imposing specific conditions upon a country suffering from economic malaise caused by balance of payments deficits, high inflation, and sluggish GDP, and seeking financial help to meet those challenges. As a condition for lending development assistance, the Bank requires the recipient government to show effective performance and to promote further reforms⁶.

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.

³World Bank, Governance: The World Bank Experience, (operations policy, Document, Final Draft, Nov, 23, 1993).

⁴ <http://www.uno.org>

⁵ <http://www.imf.org/external/pubs/ft/exrp/govern/govindex.htm>

⁶ Nanda, Ved P., "The "Good Governance" Concept Revisited", <http://www.jstor.org/stable/25097772>, p. 271.

2.2 Human Rights

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.

RELATIONSHIP BETWEEN GOOD GOVERNANCE AND HUMAN RIGHTS

3.1 At the 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 population⁷.

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

⁷UN Office of the High Commissioner for Human Rights, Good Governance Practices for the Protection of Human Rights, 2007, HR/PUB/07/4, available at: <http://www.unhcr.org/refworld/docid/47ea6c842.html>.

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 Convention⁸.

The links between good governance and human rights can be organized around four areas:

Democratic Institutions

When led by human rights values, good governance reforms of democratic institutions 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, especially locally. Finally, they may encourage civil society and local communities to formulate and express their positions on issues of importance to them.

⁸ <http://www.ohchr.org/EN/Issues/Development/GoodGovernance/Pages/GoodGovernanceIndex.aspx>

Service Delivery

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.

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.

Anti-Corruption

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 policies⁹.

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.

⁹ <http://www.ohchr.org/EN/Issues/Development/GoodGovernance/Pages/GoodGovernanceIndex.aspx>

3.2 Good Governance and Human Rights in 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) Article 37 says that these Directive Principles, though not enforceable by any court, are nevertheless fundamental in the governance of the country and it 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".

The State was also directed, *inter alia*:

- 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 subserve the common good.
- Deconcentration 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 life¹⁰.

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 procedures).

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

¹⁰Avimanyu 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.

except the state of Jammu and Kashmir, which has now its own Right to Information Act. As the Act has announced its intention as-

WHEREAS the Constitution of India has established democratic Republic;

AND WHEREAS

democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold Governments and their instrumentalities accountable to the governed;

AND WHEREAS

revelation of information in actual practice is likely to conflict with other public interests including efficient operations of the Governments, optimum use of limited fiscal resources and the preservation of confidentiality of sensitive information;

AND WHEREAS

it is necessary to harmonise these conflicting interests while preserving the paramountcy of the democratic ideal;

Now, THEREFORE,

it is expedient to provide for furnishing certain information to citizens who desire to have it¹¹.

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"¹². 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:

- a. better service delivery to citizens
- b. Ushering in transparency and accountability
- c. Empowering people through information
- d. Improved efficiency within Governments
- e. Improve interface with business and industry¹³

It aims to make people not as means to end, rather as end in themselves.

¹¹ <http://rti.gov.in/rti-act.pdf>

¹² http://arc.gov.in/11threp/ARC_11thReport_preface_contents.pdf

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 still remains 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. So, juxtaposition between good governance and human rights is necessary.

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