

Good Governance and Human Rights in Developing Nations Experiences and Challenges

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Abstract

“Commercialization of biotechnological findings became an important vehicle in the knowledge-based global economy, but it is the law that makes them merchantable by securing intellectual property rights. It is upon the law, and especially intellectual property law, to act as the ‘Gatekeeper’ of ‘Morality and Public Order’, and ‘to tame the genie of science’ although not too severely, for the present and future generations.”

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I. Introduction

We are living in a new era where glorious terms such as democracy, good governance, Human Rights, the rule of law, checks and balances, transparency, and accountability compete with dictatorship and efficiency for the hearts and minds of people across the world. The things to be delivered in this competition are development and a sustainable, stable society where children shall not go to bed hungry, where people shall live with dignity, where governments serve their people, and particularly people have the means to a good life. Our Institution tells us that an open, democratic society that respects the will of its people and upholds human rights in all forms is the answer. India follows republic, democratic and secular form of governance, and these values are enshrined in our constitution as well.

Good Governance at a Glance!

The concept “Good Governance” is relatively a new term which has come to the limelight in 1990s; however the principle of good governance is not new to the Indian society. While throwing attention over the state of affairs in ancient India, it is noticed that the king or the Ruler was bounded by the ‘Dharama’ which precisely meant to ensure good governance to the people. “Rajadharma” was the code of conduct or the rule of law which was superior to the will of the Ruler.

Good governance is a normative conception of the values according to which the act of Governance is realized, and the method by which groups of social actors interact in a certain social context. Good governance has some major characteristics. It is participatory, consensus oriented, accountable, transparent, responsive, effective and efficient, equitable and inclusive and follows the rule of law. It assures that the corruption is minimized, the views of the minority are taken in account and the voices of the most vulnerable in society are heard in decision-making. It is also responsive to the present and future needs of society. The concept of good governance emerged mainly because practices of bad governance, characterized by corruption, unaccountable governments and lack of respect for Human Rights which had become increasingly dangerous

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and the need to intervene in such cases had become urgent. Good governance has become an important element of the political and economic agendas, and has meanwhile been better specified along with the proliferation of good practices that takes the concept into consideration.

The preliminary condition of good governance is the establishment of the Rule of Law supplanting the rule of whims and caprice of the power that be. A strong sense of responsiveness and commitment to serve the governed would ensure efficient delivery of service to the people. Thus, good governance shares or aims at the ethos of a cohesive and responsible democratic society. It provides moral legitimacy, apart from constitutional validity, and creditability to the goals as well as instrumentalities of government.

Human Rights at a Glance!

Human rights are the rights inherent to all human beings, whatever the nationality, and place of residences, sex, national or ethnic origin, colour, religion, language or any other status. The people are equally entitled to human rights without any discrimination. The Magna Carta (1215) is considered a milestone in the history of Human Rights and several great thinkers such as Grotius, Hobbes, Locke, Rousseau and Kant talked about such basic rights. The human rights framework emphasizes explicitly that vulnerable and disadvantaged groups must be protected from the abuse.

The constitution of India provides a robust frame work for the protection of Human Rights and Fundamental Freedoms. It provides comprehensive chapters on the Fundamental Rights and the Directive Principles of the State Policy which directs the State Government to take into consideration certain principles while framing policies and enacting laws. Further, the principle of judicial review is well entrenched in Indian Constitutional Jurisprudence, as the Supreme Court of India as well as the High Courts have been Constitutionally empowered to exercise jurisdiction in enforcing Fundamental Rights. This has resulted in the Judiciary taking proactive role in such matters that eventually supports the good governance in India. The judiciary has taken its constitutionally mandated role quite seriously, and the function of the Indian judiciary has dramatically evolved overtime. The judicial system in India has moved towards broadening access to justice by ensuring that where a legal wrong or a legal injury is caused to a person or to a class of person who by reason of poverty, disability or socially or economically disadvantaged position cannot approach the court for relief, any member of the public, social action group, interest group, or concerned citizen acting in good faith can maintain an application in the high court or the Supreme Court to seek judicial Redressal for the legal wrong or injury caused to such person or class of persons.

Experience and Challenges

At this juncture, it is pertinent to talk about the barriers in protection of Human Rights by the way of good governance. There are various instances such as corruption, population explosion, lack of skills among public servants etc. Corruption is one of the biggest hurdles since it largely depletes resources available for public spending, hence, its presence in the system inversely affected the society and is likely to disable a state from fulfilling its duties to respect, protect and fulfil the need of Human Rights of its citizens.

The recognition of corruption as a major problem needs to be followed by the formulation of legal and institutional mechanism to combat it. Historically, the legislative framework for ensuring corruption free governance in India has largely been based upon two approaches; the

promulgation of anti-corruption laws, and vesting police and other similar law enforcement institutions the task of the investigation and prosecution of crimes relating to corruption.

Prevention of Corruption Act, 1988 (PCA) is India's principle legislation against corruption. Its main thrust is to prohibit public servants from accepting or soliciting illegal gratification in the discharge of their official functions.

Recently, two major initiatives have been taken up in India for empowering common man and effective functioning of governance which include Rights to Information and E-Governance. A nation's progress depends on the free flow of information within the government and citizenry. Armed with information, the citizens are capable of participating in the process of government decision making and policy formulation, there by adhering to the true meaning of Democracy. It is important to note that the United Nation General Assembly in one of its early Resolution 59(1) in 1946 stated that "Freedom of information is a fundamental human right and the touchstone of all the freedoms to which the UN is consecrated".

The journey in India toward open, transparent governance begun in the early 1970s and the Judiciary though its judgments has played a vital role. In a landmark judgment *State of Uttar Pradesh v. Raj Narain*, the supreme court interpreted article 19(1)(a) of the Constitution in order to necessarily include freedom of information as a Fundamental Right. The crux of the judgment was that the people of this country have a right to know every public act, everything that is done in a public by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearings.

By several other decisions including *Bennett Coleman and Co. V. Union of India*, *S.P. Gupta v. Union of India* and more particularly *Centre for PIL v. Union of India* the Supreme Court supported and accelerated the movement for a national law on freedom of information. The enactment of Right to Information Act, 2005 in India has also been hailed as one of the example of vigilant citizenry and civil society working towards openness, transparency and accountability in administration by making the government more open to public scrutiny. Through this act one can examine, audit, review and assess the government works and decisions to ensure that these are consistent with the principles of public interest, integrity and justice. The greater the access of the citizen to the information, the greater would be the responsiveness of the government to community needs. So Right to information is the most effective instrument to check corruption where the citizen has the right to take the initiatives to seek information from the state and thereby enforce transparency and accountability which ultimately protect the Human Rights of the Citizens.

Another milestone in the way of Good Governance is E-Governance. E-Governance effectively delivers better programming and services in the era of newly emerging information and communication technologies (ICT's) which herald new opportunities for rapid social and economic transformation worldwide.

Since the time is limited, I would like to conclude here. Before concluding I would like to say that we all being responsible citizens of this Nation shall endeavour together to achieve the goal of good governance so that an effective, efficient and democratic government is there which is needful for progressively moving towards development and prosperity.

²AIR 1975 SC 865

³(2012) 3 SCC 1