

# GOOD GOVERNANCE: AVENUE TO A FAIR LEGAL SYSTEM

**Ritika Semwal\***

*“In order to achieve good result, a pious-objective is determined first and then followed by good Karma for its accomplishment.”*

-Rig Ved

From recent times, the term “good governance” is increasingly being used worldwide in the field of development literature.

The concept was officially introduced for the first time to the world in 1944, when, in the Brettenwoods Conference, the major International financial organizations like the World Bank, IMF and GATT were created and they began to express their core objectives in terms of redistribution with growth and basic human needs. A wide raft of good governance measures were included which aimed at strengthening and modernizing the institutions of Government, rooting out corruption and reinforcing the rule of law within countries. These major donors increasingly based their aid and loans on the condition that reforms ensuring “good governance” are undertaken.

While the concept of Good Governance is relatively new and has been in limelight since 1990s, its core principle is not new to the Indian Society. In ancient India, the king or the ruler was bounded by the Wheel of Dharma where code of conduct or the rule of law was considered superior to the will of the ruler. The key elements of Kautilya’s ‘Arthashastra’ extensively deal with polices of state craft and welfare administration which hold relevance even till date.

As per United Nations (Human Rights), there is no single and exhaustive definition of “good governance,” nor is there a delimitation of its scope, that commands universal acceptance. The term is used with great flexibility; this is an advantage, but also a source of some difficulty at the operational level.

---

\* Judicial Magistrate, Haldwani (Nainital)

*Good Governance : Avenue to a fair Legal System*

Depending on the context and the overriding objective sought, good governance has been said at various times to encompass: full respect for human rights, the rule of law, effective participation, multi-actor partnerships, political pluralism, transparent and accountable processes and institutions, an efficient and effective public sector, legitimacy, access to knowledge, information and education, political empowerment of people, equity, sustainability, and attitudes and values that foster responsibility, solidarity and tolerance.

In general terms it means a system where laws are made and implemented justly, the human rights are respected, and development is so coupled with the preservation of basic social values of the society, that the equity in terms of socio, economic, and political fairness are ensured to each and every citizen. It includes effective participation in the shape of representative democracy and justice in forms of rule of law.

Worldwide Governance Indicators, since 1996 till date, captured six key dimensions of governance:

- i) Voice & Accountability
- ii) Political Stability and Lack of Violence
- iii) Government effectiveness
- iv) Regulatory Quality
- v) Rule of law
- vi) Control of Corruption

The United Nations Development Organisation (UNDP) has recognized nine indicators of good governance:



The various indicators and features of good governance are directly linked processes and ultimately lead to the upliftment of the society, especially in developing countries like India and other third world countries, the good governance does not only have a directive mandate but also a desired one. In the UNDP Report 2013 released in March this year, India has been ranked 136th among 187 countries evaluated for Human Development Index (HDI) - a measure for assessing progress in life expectancy, access to knowledge and a decent standard of living or per capita gross national income. In such a scenario it has become absolutely essential that India works towards realization of various attributes of good governance into its functioning.

In India, legislature has been continuously working towards achieving these (above mentioned) objectives. Examples can be seen right from the Constitution in its Preamble and provisions relating to Fundamental Rights, Fundamental Duties and Directive Principles to the Right to Information Act 2005, Environment related legislations, Gender Specific Laws and Age Specific Laws. These are a few other examples of good governance which form the basis for development and transparency and ultimately lay the foundation for the rule of law.

Globalization is happening not only in relation to market but in respect of all conceivable aspects of organized life to fast changing legal climate in all these matters influencing both policy development and administration. It is now slowly getting metamorphosed into glocalization so that it custom-fits into the respective structure of each society. Another legal dimension includes the jurisprudence of sustainable development, which requires combative deliberance by society, government and the international community. The Doha Summit by the UNFCCC and the upcoming Rio Summit follows this trend and India is an active partner to it.

E-governance is another commendable initiative in this respect, where a National E-governance Plan has been launched by the government. Policy making, budgets, accountability, decision making and service delivery are all embedded within a virtually integrated chain. The aim is to keep the approach citizen centric and not technology centric. Multichannel access for example, web, phone, text messages are made available in various fields. The latest effort in this direction has been seen by the Indian

Judiciary who has taken up the E-Court Project to deliver 'justice' door to door. Efforts have been made to couple E-governance with the theme of social inclusion in this respect. PPP (Public Private Partnership) has been a welcome initiative, UID (Unique Identity Project) ADHAR is one very explicit example of it.

Public Private Partnership can assume a wide spectrum of shapes like BOT (Built operate transfer), BOO (Built Own Operate), BOOT (Built own operate transfer). The idea is to arrive at the right combination of public sector accountability with private sector efficiencies and to also share the risk correspondingly.

### **Elements of Good Governance in Justice Delivery System: The Rule of Law.**

The prosperity and development imbibed in the good governance can be traced into a robust Justice Delivery System of a country. It depicts that the democratic values are not superficial and are deeply rooted. It is only through 'Securing justice' that the basic human rights of the people are effectively protected. There are several inter-related aspects of securing justice; the most important public good is the ensuring the security of life and property. This needs determination towards relentless support extended to the instruments of democracy.

Access to Justice is based on the basic principle that the general public know and rely upon the proper application of law. Some citizens are not aware of their rights and some are though aware, but are completely deprived of them. Methodical and systematized solutions are, therefore, needed to fortify access to justice. The provisions under the Constitution under Article 22, Code of Criminal Procedure 303, 304 support this cause. There has been creation of SALSA (State Legal Services Authority) at State Level and DLSA (District Legal Services Authority) at District Level in every State. These bodies ensure free legal aid to those who cannot avail them or cannot afford them. They provide the deprived, an opportunity to make a legal representation before Court of Law, thus fostering equality before law, in a substantial way.

The concept of good governance is associated with the citizen's right to life, liberty and pursuit of happiness, for example, in Bhutan the development and prosperity is measured in terms of a National Happiness

Index. But in a democracy it can only be secured through the rule of law, under which no one is above law, not even the Government. It is a function of the Judiciary in India to see to it that rule of law is guaranteed to all its citizens. To achieve this objective, the constitutional assembly took pains to ensure formal and procedural justice by making provisions for an independent judiciary in the Indian Constitution. In India, Courts have the final authority to test administrative action on the standard of legality. An incumbent effect of this phenomenon is Judicial Activism. A large number of Public Interest Litigations (PILs) are filed in High Courts and the Supreme Court against the impassiveness of the executive.

India is the world's largest democracy. In this age of technology and IT revolution there are a number of serious problems that need to be met in the years ahead like: divisive tendencies, extremism, unemployment, regionalism, illiteracy, corruption and nepotism. To combat them there is need for empowerment of people and participative development. Good governance is the foundation of participatory development. Social inclusion through Panchayati Raj Institutions, Local Urban Bodies, labor centric decentralized participatory planning, compulsory education laws, work site facilities, employment generation for poor (eg. MNREGA, National Livelihood Mission) and above all accountability and control through social audits, civil societies and right to information are unique and unprecedented efforts in strengthening the pillars of democracy and grass root development ensuring good governance.

Good governance requires fair legal frameworks that are enforced impartially. It also requires complete protection of human rights, particularly those of who are marginalized or belong to the category of minorities. An impartial enforcement of laws requires an independent judiciary and an impartial and incorruptible police force as, the establishment of law and order is crucial, but its maintenance is critical.

The Right to Information Act 2005 has been enacted to usher a new era of empowerment of common man in India. This legislative initiative has emerged as one of the most effective instrument to check corruption and one can examine, audit, review and access the government works and decisions to ensure transparency, openness, accountability, effectiveness, efficiency and responsiveness in administration. To a big extent, the Right to Information Act has actuated the enforcement of the rule of law.

Mahatma Gandhi advocated the concept of 'Welfare State' based upon the principles of good governance, which meant a state where the necessities of down-trodden and welfare of a commoner through indigenous industries would become a hallmark. India during the past six decades has quite evidently worked towards establishing good governance and aims at expansion of social and economic opportunities, removal of poverty and efficient delivery of services at grassroots.

Today, as we are entering into an era of capitalist innovation, the international market laws have developed a tendency to exclude a large number of people and even threatened to dominate our natural environment. We are increasingly linked to the global market, thus the need of the hour is to have a decentralized process of planning, implementation and monitoring of the programme and projects. Public Policy (the official and formal intended picture) and practice (the reality) should not have a huge gap and be seen in isolation with each other. The institutions designed for its implementation that is, the Legislature, the Executive and the Judiciary must demonstrate their integration and work towards bridging the gap between the two. The quality of democracy along with commitment and caliber of public servants both in executive and judiciary would determine the outcome of country's performance in all key areas. It is only this commitment and collaborative effort on part of the Government and the society that, may lead to transparent, corruption free, value and ethics-based governance and lead to the emergence of an equity and an egalitarian value-based society.

*“If men of knowledge, men of power and men of wealth come together; and there is no difference of opinion among them, then the nation is bound to prosper.”*

-Rig Ved

\*\*\*\*\*