

HUMAN RIGHTS DIMENSIONS: A ROAD MAP TO GOOD GOVERNANCE IN INDIA

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Abstract: The values and contours of human rights differ from time to time and sector to sector. The sectoral differences cut across places, societies and masses. International documents envision human rights as fundamental freedoms originating from inherent dignity of man. When it comes to implementation, there are many intrinsic threats and obstacles like poverty and exclusion of human rights. Apart from that, new challenges are posed by science and technology like bio-technology and ICT. A democratic political system is accepted as the best for free exercise of these individual rights¹. At the same time, democracy cannot be meaningful without recognizing human rights of its subjects. A good democracy ensures civil and political rights to its subjects and aims at achieving socio-economic rights. Indian Constitution envisages the values which are mandatorily included in the governance of the country. The basic human rights precepts gels with the constitutional principles and values and it is important to look at governance from the human rights perspective. Prof. Upendra Baxi² points out human rights should be the grammar of governance.

Governance is defined and understood as a process by which governments are selected, policies are formulated and implemented and citizens are respected.³ When the government and its institutions are more transparent in their policy making and actions and accountable to people then, the governance will be more efficient. The responsiveness of the governance system to cater the needs of the public is also an important factor. When

the interested groups are allowed to participate in the decisions making process and all behave under rule of law then the system is said to be following the attributes of good governance.

Good governance is essential to the realization of all human rights including elimination of poverty and ensuring a satisfactory livelihood for all.⁴ Good governance provides an environment that ensures human rights.

India is a country which is a forerunner in accepting and recognizing the human rights of its subjects. The quality of governance in India is always criticized and people are of the opinion that as a nation, we have a long way to go. Corruption is a big challenge. Transparency International reports that about 40% of Indians had firsthand experience of paying bribes or using a contact to get a job done in public office⁵. India stands 74th out of 176 countries in the Corruption Perceptions Index in 2012⁶. Apart from that the challenges of economic growth and development poses threats to protection of human rights in India. Hence it is a huge challenge to a country like India to link the dynamic human rights to the dynamic constitutional principles⁷ to accomplish good governance.

This paper is a study of the issues relating to human rights read with good governance. The paper also analyses the methodologies which can be adopted to make human rights a part of governance culture and concludes by examining how this can contribute to the inclusive development of the nation.

¹ Speech by Secretary General, United Nations at World Conference on Human Rights, 1993

² Upendra Baxi, The Future of Human Rights, OUP, 2012 at p. 18

³ worldbank.org

⁴ General Comment No. 12 UN Committee on Economic Social and Cultural Rights

⁵ <http://cpi.transparency.org/cpi2012/results/>

⁶ Transparency International, India Corruption Study – 2008

Keywords: democracy, good governance, human rights, inclusive development, transparency

Introduction

Human rights are rights inherent in all human beings, irrespective of nationality residence, sex, origin, colour, religion, language or any other status i.e., without any discrimination. These rights are interrelated, interdependent and indivisible.⁸ The human rights jurisprudence is shaped internationally by three major documents of United Nations (i) Universal Declaration of Human Rights, 1948 (ii) International Covenant on Civil and Political Rights 1966 (iii) International Covenant on Social Economical and Cultural Rights, 1996. There are a lot more human rights documents relating to different areas which are made part of the international human rights jurisprudence and provide a common understanding of meaning and content of human rights internationally. All nations in the world have obligation to ensure the same to its people. India has also accepted the human rights as basic rights of its citizens and the state is committed to guarantee these rights to every subject of this country.

India is a democratic country governed by the constitutional principles in all its deeds. Indian Constitution provides mission and vision of this country. Preamble, chapters on fundamental rights (Part III) and Directive Principles of State Policy (Part IV) project the fundamental policies of governance. These parts lay down the basic constitutional values and ultimate social goals of the country. By ensuring protection of civil and political rights of people as fundamental socio-economic rights and as fundamental principles of governance, Indian constitution is trying to balance the protection of rights of the subjects in all perspective. Indian judiciary has also contributed in its own way by interpreting the provisions guaranteeing fundamental rights in the light of the norms laid down in the directive principles.

The human rights jurisprudence in India also revolves around these parts and their interpretations.⁹ Indian

courts examined the human rights content in the constitution in many instances. The proactive step taken by higher judiciary in protecting the rights of detainee in D.K. Basu's case¹⁰, the rights of women in Vishakha's case¹¹ and Chakma's case¹² are a few examples. By using the tool of harmonious construction for interpreting fundamental rights and directive principles, the judiciary developed the jurisprudence founded on human rights in India.

When this human rights perspective is transported to governance, it poses many challenges. At the same time no democracy is efficient, if it does not protect the basic rights of its subjects. Hence protection of human rights is nothing but part and parcel of good governance in India.

Governance & Good Governance

Governance is a term which cannot be confined by any definition. The meaning of it varies from conservatives, liberals to socialists. World Bank defines governance as the customs and institutions by which authority in a nation is exercised.¹³ It includes (i) the process by which the governments are selected, monitored and replaced (ii) the capacity of the government to effectively formulate and implement sound policies and (iii) respect of citizens and the state for the institutions that govern economic and social communication among them. The government should be selected in the most democratic way, by exercising the right to vote as citizens periodically and if it fails in its duties, it should be replaced. In all its actions the governmental institutions should work transparently and not in an arbitrary manner. These institutions should cater to the needs of the people in a proactive manner. When transparency, accountability and responsiveness in administration are added to the governance, then it is good governance.

Attributes of Good Governance

World bank defines good governance as 'epitomised by predictable open and enlightened policy making, a bureaucracy imbued with a professional ethos; an executive arm of government accountable for its actions, a strong civil society participating in public

⁸ www.ohchr.org

⁹ The Human Rights Act 1993 defines human rights in Sec 2(d). Human rights "means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the constitution or embodied in the international covenants and enforceable by courts in India"

¹⁰ D.K. Basu v. State of West Bengal AIR 1997 SC 610

¹¹ Vishakha v. State of Rajasthan JT 1997 (7) SC 384

¹² State of Arunachal Pradesh v. Chakma AIR 1994 SC 1461

¹³ "A Decade of Measuring the Quality of Governance" Governance Matters (2006) www.worldbank.org/wbi/governance

affairs; and all behaving under the rule of law.”¹⁴ It further says a well governed nation provides (a) rule of law (b) political and civil freedoms (c) medical and health care (d) good educational facilities (e) infrastructural facilities (f) channels of commerce (g) communication net works (h) money and banking system.

If we apply the trust doctrine, the power is vested with the government by the people. To elaborate, sovereign power is vested with the people in a democratic system and when the powers are entrusted with others for governance, the institutions and officials who are the repositories of power have to exercise it for the people. Above all, those who are entrusted with the public power are accountable to the public. Hence in a democratic country like India government is vested with the power by the people through their representatives.¹⁵ Benjamin Franklin says “in free governments, the rulers are the servants and the people are their superiors and sovereigns.” But democracy exists in its true sense, if all citizens have equal say in the decisions that affects their lives. The values of democracy are described as (a) Freedom (b) Equality (c) Fraternity (d) Fundamental rights (e) Social justice (f) Independence of judiciary

These values will be operationalised only when all get opportunities, all share responsibilities, opinions are expressed freely, opinions of others are respected, accept opinion of majority, ensure participation of people and people exercise their voting rights periodically.

The values of democracy and the values enshrined in the constitution of India are complementary. Indian constitution envisages an egalitarian representative democracy where good governance is guaranteed through implementing the values embedded in the constitution.

Good Governance and Human Rights

The World Bank study on Africa in 1989, stressed the rule of law and called for “scrupulous respect for the law and human rights at every level of government.”¹⁶ This demand was based on the very core of governance emanated from UDHR, especially from civil and political rights.

According to the Commission on Human Rights, the key attributes of good governance are *a.* transparency

b. responsibility *c.* accountability *d.* participation and *e.* responsiveness.¹⁷ This resolution links “good governance to an enabling environment conducive to the enjoyment of human rights”¹⁸. Office of the High Commissioner of Human Rights states that the link between good governance and human rights can be organised around four areas *viz.*, (i) democratic institutions (ii) service delivery (iii) rule of law (iv) anti-corruption.

Article 21 and 28 of UDHR recognize the importance of participatory government and every one’s right to social and international order in which rights and freedoms enshrined in UDHR can be fully realised. ICCPR casts a duty on the member states to ensure and enforce the rights recognised by the Covenant.¹⁹ States also have to provide mechanism for determination of individual rights and protection in case of violation of those rights. ICSECR also obligates states to take steps to achieve full realisation of the rights recognised in the document. Committee on Economic, Social and Cultural Rights in its comment on ‘right to food’ stated that “Good Governance is essential to the realisation of all human rights including the elimination of poverty and ensuring satisfactory livelihood to all.”²⁰ Many developing countries are facing poverty and corruption as the most challenging obstacles in development. Right to the essential needs such as food, clothing, shelter and decent living have to be protected and states are taking measures in this direction. But in many times, these are not reaching those who are in need due to high level of corruption in the system. Committee on Rights of Child has pointed out that corruption is the major obstacle in achieving the objectives of the Convention²¹

Human Rights – Governance Dichotomy in India

Contribution of Judiciary

In various instances the High Courts and Supreme Court of India have given priority to protection of basic rights of its subjects whenever there is violation of rights from the part of governmental institutions. In case of protection of civil and political rights the human rights jurisprudence started with Francis

¹⁴ Report on Governance and Development, (1992) World Bank Publications www.worldbank.org

¹⁵ Representative democracy

¹⁶ 1989 World Bank Report on Africa

¹⁷ Commission on Human Rights Resolution No. 2000/64, “The Role of Governance in the Promotion of Human Rights” 27 April 2000

¹⁸ *Ibid*

¹⁹ Article 2

²⁰ Comment No. 12, UN Committee on Economic, Social and Cultural Rights 20th Session 1999 Para 23

²¹ Convention on Rights of Child....

Coralie v. Union Territory of Delhi²², Haskot v. State of Maharashtra²³, Hussainara Khatoon v. State of Bihar²⁴ and still continuing in Selvi v. State of Karnataka and Naz Foundation Case. In protection of human rights in the category of socio-economic rights also Supreme Court has taken very progressive stand. In *Bandhua Mukti Morcha v. Union of India & Ors.*,²⁵ *Olga Tellis v. Bombay Municipal Corporation*²⁶, right to food cases, right to education case and in a series of like cases Supreme Court has proactively interpreted the constitutional provisions in such manner to ensure the basic rights of man. In right to food cases Supreme Court went to the extent of asking the government to cut the money from other heads and provide food to the people. Supreme Court and high courts are trying to support the needs of common man through plethora of judgments by interpreting the constitutional provisions in a beneficial way.

As emanated through various documents human rights is understood as basic needs of man. If the protection of human rights fails, that will definitely lead to aggression which in turn will affect the governance system. Such type of chaos will result in tyranny. The basic needs of man, at least food, shelter and basic living standards if not catered properly, the governance system will become an utter failure.

On the other hand, flaw in governance will lead to human rights violation. If a state is taking actions for protecting the human rights of its people, but not done it effectively, that will lead to human rights violations. India is facing this challenge. If increase in number of custodial torture, illegal arrests, corruption charges and instances of abuse of power are reported, the reason is lack of good governance which result in violations of human rights. Being a welfare country, India is spending a lot of money to fight against poverty and protection of some of the rights through schemes like Mahatma Gandhi Rural Employment Program, mid-day meals to school children, pregnancy care to mothers and village health dispensaries. Still poverty level and poor standard of living continues, why? Where does the money go? All the questions point towards deficiency in good governance.

Challenges in Human Rights Protection and Governance

In case of a country like India, the main reasons are apparent. Ignorance of people, lack of accountability from the part of public servants, (development happens GDP grows-) but marginalisation continues and the divide between have's and have not's is increasing. Inclusive growth is not happening. All contribute to human rights violations.

United Nations analyses in its report²⁷ the causes of human rights violations. According to this report, the main challenges are” *i.* poverty and inequities *ii.* discrimination *iii.* armed conflicts and violence *iv.* Impunity *v.* democracy deficits *vi.* weak institutions.

In developing countries like India, poverty is a major cause of human rights violations. World Bank reports “...generating growth that lifts all boats will be key, for more than 400 million of India's people – or one third of the worlds' poor- still live in poverty. Any of those who have recently escaped poverty are still highly vulnerable to falling back to it”²⁸ Poverty causes a lot of human rights issues like lack of adequate food, living conditions, health and dignity as a ‘man’.

Inequity is present in India in all dimensions. Region, caste and gender pose questions on equity. Access to health care, education and other development initiatives is not even and the benefits are not evenly distributed.

Discrimination on the basis of caste, religion and gender is common element in all sectors. It is reported that more than 165 million people in India continue to be subject to discrimination exploitation and violence simply because of their caste.²⁹ Frederika Meijer, United Nation's FPA representative for India and Bhutan says, “ a deeply entrenched preference for sons exists for various reasons including that a son inherits the property where a daughter is perceived as more of a burden...”³⁰ Harassment and atrocities against women in India is also a serious concern.

The armed conflicts and violence especially in J& K, North Eastern Regions and Eastern and Central India

²² (1981) 1 SCC 608

²³ A.I.R 1978 SC 1548

²⁴ A.I.R. 1979 SC 1360

²⁵ (1984) 3 SCC 161

²⁶ A.I.R. 1986 SC 180

²⁷ UN Report 26th May 2005

²⁸ www.worldbank.org/en/country/india/overview 2013 October country updates says 133 million people are relieved out of poverty between 2005-2012. There is 22% reduction in poverty level.

²⁹ www.chrgj.org “Hidden Apartheid: Caste Discrimination against India's Untouchables (2007)

³⁰ Times of India, 15 November 2013

caused displacement and issues related to that.³¹ Many people are missing and many are killed. Special enactments like Armed Forces (Special Powers) Act are applicable in these regions and hence people are denied the protection guaranteed by the Constitution of India. Amnesty International reports that impunity for abuses and violations remain pervasive.³² In spite of all protest against the special power legislations Government is continuing with the special powers to armed forces. In Kashmir impunity prevails for violation of human rights including unlawful killing, torture and disappearance of thousands of people.

India is the largest democratic country in the world but it is ranked as “flawed democracy”³³ It does not in any way mean that India is a failed democracy. The main problem is that India does not have a system of performance. Every department is doing many things in isolation and without consultation with other departments. Money will be allocated every year and there will be a financial audit. But India does not have a system of performance audit of governmental institutions including local bodies. The details of the working of these institutions are not in public domain. But the way they work is evident to any citizen in this country because they are experiencing the same through inadequate drinking water and sanitation, hectic mass transit and broken roads. One of the reasons for these conditions is lack of performance assessment. Majority of people are ignorant about their rights available against these institutions. Due to policies and efforts from the part of central and state governments the GDP is growing, but many are out of the purview of this growth. In a nut shell, majority of the people are not getting the benefits of development.

Conclusion

India has to follow the accepted principles of good governance for the effective protection of human rights of its subjects and sustainable development. It has to strengthen the democratic institutions by creating opportunities for the general public to participate in policy making. If the state provides any type of protection of human rights like right to education, right to food or right to health, it should reach the targeted group. All public institutions should be accountable to the people and should

maintain transparency and accountability in all their activities. There should be a mechanism for performance audit of all governmental institutions. Citizens charters, right to Information are some of the tools which can be strengthened to ensure good governance. This will automatically ensure rule of law and that is the only way to ensure protection of human rights of the people. In all activities especially by governmental institutions, if done by following the philosophy of the Constitution, it would automatically result in human rights protection.

³¹ www.monitor.upeace.org

³² www.amnesty.org/en/region/india/report/2012

³³ Report from the Economic Intelligence Unit available at www.eiu.com

