

Editorial

Wednesday, December 20, 2017

The middlemen business

"Where a society has chosen to accept democracy as its creedal faith, it is elementary that the citizens ought to know what their government is doing." - Justice P N Bhagwati

Easier is said than done - the saying still stands true. Like the nail float in water with the plank, a rowdy sometimes saves his or her life from being spoiled. Saying so, it is always the wisdom of the captain of the ship that the crew managed to sail their ship to the destiny amidst storms and whirlpools. But then had the crew member lacks discipline Columbus could never have landed in America's soil to discover the country which becomes the most powerful country in the world today.

The state is more like a ship in the vast stormy ocean. In democratic state like Manipur, Chief Minister is similar to the captain of the ship. It is his wisdom that will sail towards a better direction. It is his command and qualities that will make his crew member follow rules and regulations frame by him. It is only at the time that all the crew members go by their respective assignment that the ship will reach destination. Similar, is with the running of the state, whether it goes upwards or falls, depends on the wisdom of the Chief Minister and his team.

But then, it is the Indian electoral system that stands as a hurdle to decide on which way to chose for a better society. Every elected representative needs a second thought to say no to his electorate. Particularly, the system practice in India showed that without some clique of strong supporters, it will become difficult for one to become Chief Minister as first thing that is important is to get elected as an MLA.

Good governance is perhaps the single most important factor in eradicating poverty and promoting development. But sometimes the effort to bring good governance remains as a dream with the kind of hurdles from his supporters whom the man in the top post cannot deny as without them it will be difficult to get elected again.

Numbers of middle men including relatives are now the talk every people of the state. What more prove is required than checking the bank balance and the properties of these people in this 8 months? We have seen in the earlier days on how a pharmacist in the state health department became a millionaire just because he was a close relative of the then Chief Minister. Can anyone deny the fact that the pharmacist who became millionaire is a clean person because there is no evidence on how dirty is him?

Good leader falls, not because of his personality but because of those around him.

Coming back to what is going on in the state; everybody knows the amount being asked by these middlemen for the recruitment of Police constable.

On the other hand some of the promises are still yet to be fulfilled as stated by the Chief Minister himself. The more the promises are delayed the more people will criticize.

Well, instead of defending, it is better checking the middlemen so that what has been assured remains true.

Let's make our state free from corruption.

Good Governance and Fundamental Rights

By: Mr. Sandip Bhosale
 Courtesy: Advocate Khoj
"Good governance is perhaps the single most important factor in eradicating poverty and promoting development." - UN Secretary - General Kofi Annan

1. Meaning of Good Governance:

Good governance is associated with efficient and effective administration in a democratic framework. It is considered as citizen-friendly, citizen caring and responsive administration. Good governance emerged as a powerful idea when multilateral and bilateral agencies like the World Bank, UNDP, OECD, ADB, etc. realized that project success substantially depended on conditions of governance in the aid receiving countries.

In general, good governance is perceived as a normative principle of administrative law, which obliges the State to perform its functions in a manner that promotes the values of efficiency, non-corruptibility, and responsiveness to civil society [2]. According to the World Bank, governance is "the manner in which power is exercised in the management of a country's economic and social resources for development."

3. Good Governance and Fundamental Rights:

The Karnataka Lokayukta Hon'ble Mr. Justice N. Santosh Hegde in the first CIPS Foundation Day Lecture said that Good governance is a fundamental right of a citizen and democracy. Such governance includes factors such as transparency and accountability. It also includes values such as justice and equity. It must ensure that the citizens, especially the poorest, basic needs are met and they have a life with dignity. Good governance implies an administration that is sensitive and responsive to the needs of the people and is effective in coping with emerging challenges in society by framing and implementing appropriate laws and measures. It includes strict rules of accountability.

It could be centered on community groups or individuals and based on a notion of rights as inherently comprising duties. Rulers must be strictly bound by generally accepted norms and controlled by institutions to enforce those. Good governance must be made a fundamental right and justiciable there was scope for corruption within the Constitutional framework as well as outside it. Therefore, good governance must be made a fundamental right under the Constitution.

2. Origin:

The use of the term "good governance" was initially articulated in a 1989 World Bank publication. The concept of good governance in international law has also been well received under the rubric of human rights. Increasingly, in international development literature, the concept of good governance parallels a normative (rule-setting) formulation, which reflects the degree to which it promulgates the universality of civil, cultural, economic, political and social rights.

The United Nations High Commissioner for Human Rights (UHCHR) identifies five key attributes of good governance as follows:

- 1) Transparency;
- 2) Responsibility;
- 3) Accountability;
- 4) Participation and;
- 5) Responsiveness

The concept of governance is as old as human civilization. What is "Governance"? It simply means the process of decision making and the process by which decisions are implemented.

The quality of governance depends, in a large measure, upon the indulgence shown by subjects. Speaking on basis of experiences of medieval period and the times of colonial rule, in particular in the continents of Africa and Asia, some political scientists would use sarcasm in describing the system of governance one such scientist said: "the marvel of all history is the patience with which men and women submit to burdens unnecessarily laid upon them by their governments". Yet others would not mince words in describing the business of governance thus: "So they [the

government] go on in strange paradox, decided only to be undecided, resolved to be irresolute, adamant for drift, solid for fluidity, all-powerful to be impotent".

The world has come a long way since the times of such skepticism. The majority of the member States of the comity of nations today are founded on the principle of "Welfare State", run with full participation of their respective inhabitants, striving to achieve the common good and in the process affording optimum opportunity and involvement for growth of the individual so as to sub serve the societal interests. This has led to evolution of "Good Governance", as opposed to mere governance, as the umbrella concept encompassing within it a system of governance that is able to unequivocally discover the basic values of the society where standards concern economic, political and socio-cultural issues including those involving human rights, and follows the same through an accountable and upright administration.

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The government must amend laws to include a timeframe to carry out work in a transparent manner that ensured accountability. Penal clauses must also be introduced so that action could be taken against the official. Provision must be made for compensating the wronged citizen making good governance a fundamental right, widening the scope of the definition of corruption and creating the Lokpal institution through an act of Parliament. More importantly, the Lokpal institution should be accountable to the Lok Sabha and the general public. According to the UN High Commissioner for Human Rights, the true test of "good" governance is the degree to which it delivers on the promise of human rights: civil, cultural, economic, political and social rights.

The key question is: are the institutions of governance effectively guaranteeing the right to health, adequate housing, sufficient food, quality education, fair justice and personal security?

The concept of good governance has been clarified by the work of the Commission on Human Rights. Its resolution 2000/64 expressly linked good governance to an enabling environment conducive to the enjoyment of human rights and "prompting growth and sustainable human development."

By linking good governance to sustainable human development, emphasizing principles such as accountability, participation and the enjoyment of human rights, the resolution stands as an implicit endorsement of the rights-based

approach to development. In its resolution 2001/72, the Commission on Human Rights reaffirmed its earlier resolution by consensus. The following section builds on the ideas of democracy and democratic governance, that is, good governance relative to the development process.

The UNDP Human Development Report 2002 further elaborated on the concept of 'democratic governance' that is governance that would promote human development. Like the concept of 'good governance', democratic governance seeks efficient institutions, and a predictable economic and political environment necessary for economic growth and effective functioning of public services. But the concept of democratic governance concerns political freedom and human rights, and removal of discrimination as central objectives. A reform agenda would aim at building institutions and rules that are not just efficient but also fair, and that are developed through a democratic process in which all people have a real political voice.

Democratic governance thus incorporates into the notion of good governance for development, democratic processes and institutions, and a concern with the securing of political and civil rights and freedoms as human rights.

The views evolved in UN Economic & Social Commission for Asia & the Pacific is almost identical. It holds that "Good Governance has 8 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 corruption is minimized, the views of minorities are taken into account and that 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."

All these expressions convey theories pregnant with time-tested concepts. The "participation" in order to be effective, needs to be informed & organized and, therefore, depends upon the availability to the subjects "freedom of association & expression" on one hand and existence of "an organized civil society" on the other. This necessarily is a pointer to "representative democracy". The attribute of "rule of law" inheres as prerequisite "fair legal frameworks" that are enforced impartially and particularly "full protection of human rights", especially of the vulnerable sections of the society.

The factor of "transparency" requires that information is freely available and the decisions are taken or enforced in a manner that adheres to the rules and regulations. The attribute of "responsiveness" necessitates that all public institutions and their processes strive "to serve all stake holders within a reasonable time frame". Democracy, liberty and the rule of law together represent the triad that is universally accepted now as the index of a civil society. Democracy signifies a government of, by and for the people.

The protection of individual liberties follows the notion of democracy as a natural corollary. This entails the espousal of a methodical configuration of laws by which society might be regulated and different conflicting interests can be harmonized to the fullest extent. This is why "the rule of law" is indispensable. It envisages the pre-eminence of law as opposed to anarchy or capricious dictates. It involves equal accountability of all before the law irrespective of high or low status.

Democracy has been evolved through centuries of experience amongst the people, who care for human person, dignity & rights as the best and most acceptable form of good governance. It is a concept that occasions the idea that all citizens have a right to participate in the decision-making processes

that lead to adoption of policies that are applicable to the societies. India incorporated a number of basic human rights as guaranteed fundamental rights, elaborated in every possible manner, in Part III of the Constitution. These fundamental rights go much beyond the American Bill of Rights.

They did draw upon the Universal Declaration of Human Rights issued by the United Nations in 1948 but went ahead of them by incorporating alongside, in Part IV of the Constitution, certain "Directive Principles of State Policy" which are principles that would be fundamental for "good governance" of this country.

The Directive Principles have been used as fundamental principles of governance tempered by the Fundamental Rights. From Article 37 time to time, adjustments have been made in the Fundamental Rights — through legislative measures, executive action or judicial Pronouncements so as to further the object sought to be achieved by the Directive Principles. After all, the purpose of the Fundamental Rights on the one hand and the Directive Principles on the other is common; viz., to provide for an environment that can ensure dignified growth & development of each individual as a useful human being.

4. Role of Indian Judiciary:

There is no area where the judgments of Supreme Court have not played a significant contribution in the governance - good governance - whether it be - environment, human rights, gender justice, education, minorities, police reforms, elections and limits on constituent powers of Parliament to amend the Constitution.

In Prem Shankar Shukla [16], the Supreme Court found the practice of using handcuffs and fetters on prisoners violating the guarantee of basic human dignity, which is part of the constitutional culture in India and thus not standing the test of equality before law (Article 14), fundamental freedoms (Article 19) and the right to life and personal liberty (Article 21). (iv) In Nilabati Behera, the Supreme Court asserted the jurisdiction of the judiciary as "protector of civil liberties" under the obligation "to repair damage caused by officers of the State to fundamental rights of the citizens", holding the State responsible to pay compensation to the near and dear ones of a person who has been deprived of life by their wrongful action, reading into Article 21 the "duty of care" which could not be denied to anyone.

For this purpose, the court referred to Article 9 (5) of the International Covenant on Civil and Political Rights, 1966 which lays down that "anyone who has been the victim of unlawful arrest or Detention shall have an enforceable right to compensation". In (vi) In Delhi Domestic Working Women's Forum, the Court asserted that "speedy trial is one of the essential requisites of law" and that expeditious investigations and trial only could give meaning to the guarantee of "equal protection of law" under Article 21 of the Constitution [18]. In (viii) In D.K. Basu [19], the Court found custodial torture "a naked violation of human dignity" and ruled that law does not permit the use of third degree methods or torture on an accused person since "actions of the State must be right, just and fair, torture for extracting any kind of confession would neither be right nor just nor fair".

In Vishaka [20] Supreme Court said that "gender equality includes protection from sexual harassment and right to work with dignity, which is a universally recognized basic human right. The common minimum requirement of this right has received global acceptance.

(To be continued)

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