Human Rights and Good Governance-An Emerging Trend

A.Subasri M.L.
Advocate, High Court, Chennai, India

Abstract: Good governance and human rights are mutually reinforcing. Human rights principles provide a set of values to guide the work of governments. They also provide a set of performance standards against which these works of government can be held accountable. The human rights principles inform the content of good governance. They may inform the development of legislative frameworks, policies, programmes, budgetary allocations and other measures. On the other hand, 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 population.

Keywords: Human Rights, Good Governance, Fundamental Rights.

Introduction

The concept of good governance is as old as human civilization. The concept of good governance is much larger than conventional sense of mere administrative reforms. The term good governance as a concept is applicable to all sections of society. Investing in human development is about providing an efficient and effective administration that is committed to improving the quality of life. In other words it is about what people expect from administration to fulfill their expectation. Good governance signifies the way in which administration improves the standard of living of the members of its society by creating and making available amenities of life, providing its people security and better opportunity to live. Judicial system for dispensing of justice on merits in a fair and unbiased manner, accountability, and honesty in each wing of government is the cornerstone of good governance.

The protection and enforce of human rights can be achieved by the state through its good governance. The twentieth century brought out a radical change in the state polity. During this period two concepts such as welfare state and Human Rights became very prominent and influenced the world community. Therefore the member states of community of nations that are bedrocked of human rights and ethical principles, and rights and obligations of the state to protect and ensure human rights and fighting against corruption.

Meaning of Good Governance

Good governance means ruling justly, enforcing laws and contracts fairly, respecting human rights and fighting against corruption. From the above words it may be easily said that fairness, justice, respect for human rights and corruption free government are necessary for good governance.

Indian Constitution and Governance

One of the most important principles of just democratic governance is the presence of constitutional limits on the extent of government’s power. This constitutional limit is otherwise termed as constitutionalism. Such limits include the guarantees of civil rights and an independent judiciary, which helps the citizens to seek protection of their rights and redress against government actions.

The Fundamental rights of the citizens are guaranteed under part III of our constitution. The ethos of struggle and freedom movement is reflected in part III of our Constitution namely the Fundamental rights of the citizens and people. In this part the word “Human Rights” has not been used but in contents, it is rather almost the same as human rights contained under the Universal Declaration of Human Rights 1948.

The Constitution of India guarantees the fundamental rights which include the right to equality, right to freedom, right against exploitation, right to freedom of religion, cultural and Education Rights. Article 32 is the constitutional remedy for the enforcement of these fundamental rights. This gives protection to individuals against invasion of their fundamental rights. Part IV of the Constitution contains Directive Principles of State Policy which are the principles fundamental in governance to be followed by the state while formulating policies. These principles cast a duty upon the state to secure a social order for the promotion of the welfare of the people, distribute justice, right to work, right to education and social security, provision for just and human condition of work, promotion of interests of weaker sections, duty to raise the level of nutrition and the standards of living and to improve public health, protection and improvement of environment, ecology and wild life etc. The Fundamental duties of every citizen were incorporated as wide spectrum to strengthen the guaranteed Fundamental Right. The constitutional mandates of the constitutional courts are to protect and enforce human rights because rule of law is a basic feature.

Human Rights and Governance

It is not surprising that Human rights itself was considered to be the ethical imperative that compels the State to be just and accountable. Therefore human rights emerged as a moral discourse furnishing the standards of the evolution of state action. The ethics of human rights is what communities and individual outfits desire. At the same time it should be conceded that ethical

1 Art.1,International Covenant On Civil and Political Rights 1966
approach to human rights would strengthen and enforce human rights implementation especially when human rights violations are due to the arbitrary action of the State.

The new understanding and human sensibility gave birth to three core ethical values which revolutionized human rights thinking and understanding. They are nothing but equality, dignity and development.

**Equality**

Abuse of discretion and undue delay in administrative action or decision making violates Art 14 of the Constitution. When the administration is bound to act within reasonable time by express or implied provision of the law, and if it fails to do so, this inaction on the part of the administrator amounts to arbitrariness; abuse of power and it violates Art 14 of the Constitution. This can be understood from the following words of Supreme Court:

“Equality is a dynamic concept with many aspects and dimensions and it cannot be cribbed combined and confined within tradition and doctrinaire limits. From a positivist point of view, equality is antithetic to arbitrariness are sworn enemies one belongs to the rule of law, in a republic while the other, to the whims and caprice of an absolute monarch.”

More over in the same case justice R.M. Sahae observed that

“In a modern society no authority can arrogate to itself the power to act in a manner which is arbitrary. When a citizen seeks to recover compensation from public authority in respect of injuries suffered by him for capricious exercise of power… Then it has a statutory obligation to award the same… It is now imperative and implicit in the exercise of power that it should be for the sake of society”.

The same view was reiterated by the Supreme Court in Rudhal Sha case also. This can be understood from the following words of Chandra Chud Cj. (as he then was):

“For preserving civilization in the country it is said that respect for human right is the true bastion of democracy”

As such jurisprudentially speaking Art 14 of our Constitution strikes unfairness, unjustness and arbitrariness as unconstitutional. It also gives rise to social evil of corruption, the social evils which permeate the fiber of whole administrative set up. The remedy to check this abuse of power is to hold the administration accountable and answerable.

Hence, it can be safely said that for effective governance there is a need for transparent, efficient, dedicated honest and accountable administration. The concept of reasonableness and non-arbitrariness flowing from Art 14 of the Constitution pervades the entire constitutional scheme, and is a golden thread which runs through the whole of the fabric of the Constitution.

**Dignity**

Legally speaking dignity is said to be the mother of all liberties which has come in to existence due to new developments. In fact dignity has become a core ethical value read in to human rights protection there by expanding the scope of many known established human rights. Decency and dignity are non-negotiable facets of human rights as observed by Justice VR. Krishna Iyer way back in 1980 itself.

The Honorable Supreme Court in its judgment explained the meaning of the word life and the right to life includes right to live with basic human dignity and basic needs and not as mere existence. This can be visualized from the following words:

“The right to life includes the right to live with human dignity and all that goes along with it, namely the bare necessities of life such as adequate nutrition, clothing and shelter over the head and facilities for reading and expressing oneself in diverse forms free movement and commingling with fellow human beings.”

Going by the words of the Supreme Court it can be said that right to life includes right to live with human dignity and all that goes along with it. Really this ratio of the Supreme Court has opened the flood gates and allowed the flow of many unenumerated fundamental rights within the purview of Art.21.

Now it is obvious that dignity of the individual being a core value, and the aim of a welfare state through human development being fundamental to governance, the matrix of constitutional governance is bed rocked on human rights. The Fundamental Duties enshrined in Art 51A show the participatory role of the people in governance to make it truly representative in character. The bond between Fundamental Rights, Directive Principles of State Policy and Fundamental Duties has also been judicially recognized in India by resort to some Directive Principles and Fundamental Rights via; right to equality (Art 14) and right to life (Art 21). This was expressed by the Supreme Court in one of its earlier decisions as the linkage between human rights and constitutional governance and an innovation was made to utilize the judicial process for correcting any aberration in governance for enforcing human rights.

**Indian Judiciary and Governance**

The Indian judiciary become proactive and has scrupulously and over zealously guarded the fundamental rights for human existence. The scope of right to life has been expanded so as to read with in its scale with dignity by incorporating International Instrument in the sphere of municipal law. The Supreme Court has over the years broadened the reach of human rights consistently by opposing the intrusion of the state and its authorities by upholding the right and dignity of individuals in true spirit of good governance. In case by case the judiciary out lined commands for law enforcement in general for executive actions and in particular for the police as cutting edge. This stand point of Supreme Court was reflected in the following cases. In Motiram and Hussainara Khatoon the Supreme Court expressed its anguish by holding that obtaining a person as an under trial prisoner for the long period in prison is unfair, unjust and unreasonable. In Prem Shankar shukla case the Supreme Court found the practice of using hand cuff and fetters on prisoners violating the guaranteed basic human dignity which is a part of the constitutional culture in India. Hence it is observed that,”to bind a man’s hand and foot, fetter his limbs with hoops of steel; shuffle him along in the streets, to torture him, defile his dignity, vulgarise society and foul the sole of our constitutional culture”. Once again in Iechu Devi Choraria, the court held that personal liberty is a most precious possession and the life without it would not be worth living. Terming it as its duty to uphold the right to personal liberty, the court condemned detention of suspects without trial observing that “the power of preventive detention is a draconian power, justified only in the interest of public security and order and it is tolerated in a free society only as a necessary evil”.

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Keeping this in mind the judiciary has formulated a new concept called compensatory Jurisprudence. Applying this concept the court directed the State of Orissa to give compensation to the mother of the victim boy. While doing so, the Apex Court asserted the jurisdiction of the judiciary as “protector of civil liberties” under the “obligation” to repair the damage caused by officers of the state to fundamental rights of the citizen. For this purpose, the court referred to Art 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 Delhi Working Women’s Forum the court asserted that “Speedy trial is one of the essential requisites of law and the expeditious investigations and trial only could give meaning to the guarantee of equal protection of law” under Art 21 of the Constitution.

In PUCL, the dicta in Art 17 of the International Covenant on Civil and Political Rights 1966 was treated as part of the domestic law prohibiting arbitrary interference with privacy, family, home or correspondence and stipulating that everyone has the right to protection of the law against such intrusion.

Now a days the Supreme Court plays an innovative role in the matters involving environment. The judiciary in India has read the right to clean environment as a fundamental right under Art 21 of the Constitution. It has mandated to protect and improve the environment as found in series of legislative enactments and held that the state is duty bound to ensure sustainable development where common natural resources were properties held by the Government in trusteeship for the free and unimpeded use of general public as also for the future generation. Thus judiciary has continuously expressed its concern about the impact of pollution on ecology in present and in future and the obligation of the state to anticipate and prevent the causes of the state to protect the health of the people by improving environment.

**Right to Information and Governance**

There has been an almost unstoppable global trend towards recognition of the right to information by countries in governmental organizations, civil society and the people. The right to information has been recognized as a fundamental human right, which upholds the inherent dignity of all human beings. So, people’s faith in democracy rests upon the confidence of governance. The concept and obligation of good governance is also enshrined in our Constitution in the form of Directive Principles of State Policy. The right to information forms of Directive Principles of State Policy. The right to information forms the crucial underpinning of democracy. It is essential to ensure accountability and good governance by the state to its citizen. The greater the access of the citizen to information, the greater the responsiveness of government to meet community needs. However the free flow of information remains severely restricted by the facts (i) Legislative frame work, (ii) bureaucracy and (iii) low level of literacy and awareness among the masses. But during the last decade there has been growing awareness of the responsibility of the Government in its primary role of governance accordingly both the governments at the center and the states have set into motion, new initiatives for better and accountable governance. It empowers the Indian citizen to enforce good governance. It has made the government more accountable for its actions and in effect it is an instrument that increases transparency and exposes corruption within government bodies.

The right to information is implicitly guaranteed in Art 19(1)(a) without which freedom of speech and expression is vacuous. Therefore the Supreme Court treated the right to vote as akin to freedom of speech and expression under Art 19(1) (a) of the Constitution and enforcing the “Right to get information” as “a natural right” flowing from the concept of democracy. In the case of Association for Democratic Reforms, the judiciary brought about a major electoral reform by holding that a proper disclosure of the antecedents by candidates in election in a democratic society might influence intelligently the decision to be made by the voters while casting their votes. Observing that casting of vote by a mis-informed, non-informed voter or a vote having one sided information affect the democracy seriously, to tackle this situation the Indian Judiciary by its directions made it obligatory on the part of the candidates to furnish information about their personal profile, background qualifications and antecedents.

**Conclusion**

In the light of above discussion it may be safely concluded that the paradigm of Indian Human Rights Jurisprudence is a testimony to the manner in which it contributes in good governance. It insists upon enforcement of various rights even of persons suspected of involvement in grave crimes. The right thus guaranteed include right to life and liberty; right against torture or inhuman and degrading treatment; right against outrages upon personal dignity etc are indispensable to civilized society.

The essence of Good governance is the respect for human rights of every individual so that human resources are augmented by full development of each individual with his empowerment. The dignity of the individual assured in the Constitutional along with unity and integrity of the nation emphasizes respect for human rights. The provision in the constitution discussed above, especially Directive principles of state policy determine the nature of polity in which dignity of individual is the cardinal and the focus of governance.

The impact of human rights has brought about drastic changes on the concept of state sovereignty. Today no nation can say that the way it treats its citizen is purely a domestic concern. Hence the human rights situation anywhere in the world is becoming a matter of international concern. Thus the concept of human rights has played a crucial role in development and evolution of society in general and in ensuring good governance by those holding pedals of power in particular.

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