

Human Rights and Good Governance¹

MANOJ KUMAR SINHA

ABSTRACT

The concern for promotion and protection of Human rights has been extraordinary over the years. Their protection demands an enabling social and political milieu and indeed conducive environment through appropriate regulations, institutions and procedures framing the action of the State. At the same time Good governance has equivocally been highlighted at various platforms, for its immense contribution to peace, progress and democratic institutions. It is rightly stated that Good governance policies empower individuals to live life with dignity and freedom. Good governance and human rights are mutually interdependent and reinforce better conditions of life, stability and freedom. Good governance cannot happen in isolation from human rights. The two concepts reinforce each other and many of their core principles are common. Popular participation, accountability, transparency, and State-responsibility underline the human rights approach as well as underpin the good governance framework as defined by the U.N. Commission on Human Rights. Although the linkages between good governance and human rights can be traced in the provisions of human rights instruments, as well as national constitutions, it is only recently that the idea of good governance has entered the international discourses on economic development and human rights. Interestingly, the importance of good governance was first recognized in the context of development and its first enunciation was in a World Bank Report which pointed out that good governance is a structural necessity for market reform and has emerged as a response to concerns over the impact of different governance practices on economic performance in the context of development policies. Consequently, the international economic institutions and aid agencies interposed good governance policies and regulations as a precondition for disbursing aid. Indeed, democracy and development will only be strengthened by pro-people and pro-human rights strategies. The interplay between good governance and human rights is a remarkable value addition that governance provides to development, human rights, and vice versa.

KEYWORDS: Human Rights, Good Governance, Development, Millennium Development Goals, Transparency, Accountability, Democracy and Civil Society

¹ This paper is written on behalf of International Legal Studies of the National Research Council of Italy, Rome. This study is funded by CNR- Short Term Mobility Scholarship. I sincerely thank Prof. Sergio Marchisio for his help and assistance. This paper is slightly revised from the one which was published in the Indian Journal of International Law, vol. 46, n. 4, 2006, pp. 539-555.

1. INTRODUCTION

The term good governance is frequently used in development literature.² The term governance implies the manner in which power is exercised by governments in managing a country's social and economic resources.³ Good governance is the exercise of power by various wings of the government that is effective, honest, equitable, transparent and accountable. Human Rights and good governance are inherently linked and for the effective implementation of human rights good governance is utmost essential.⁴ The concept of “good governance” emerged in the late 1980s as a response to concerns over the impact of different governance practices on economic performance in the context of development policies.⁵ This concept was subsequently expanded to include other dimensions, including political, human development and the realization of human rights.⁶ Human rights are universal legal guarantees protecting human beings against actions and omissions that interfere with human dignity and fundamental freedoms of individuals.⁷ Human rights also include a set of performance standards, which guide public authorities, and against which governments and their functionaries, as well as other relevant actors, can be assessed and held accountable. Wide ratification of the relevant international treaties by States from all regions and cultures

² Gruberg, I. & Khan, S. (ed.), *Globalisation: The United Nations Development Dialogue: Finance, Trade, Poverty, Peace Building* (United Nations University Press, New York, 2000); Orji, E. “Issues on Ethnicity and Governance in Nigeria: A Universal Human Rights Perspective”, *Fordham International Law Journal*, vol.25 (2001), pp. 430- 82; G.H. Fox & B. R. Roth (ed.) *Democratic Governance and International Law* (Cambridge University Press, Cambridge, 2000).

³ Udombana, N.J. “Articulating the Right to Democratic Governance in Africa”, *Michigan Journal of International Law*, vol. 24(2003), pp. 1209-1287

⁴ Background Note, *Seminar on Good Governance Practices for the Promotion of Human Rights*, Jointly organized by the Office of the United Nations High Commissioner for Human Rights and the United Nations Development Programme, HR/SEL/GG/SEM/2004/BP.2, Seoul, 15–16 September 2004, available at, http://www.ohchr.org/english/issues/development/governance/compilation/forside_02.html, visited on 20 July 2006.

⁵ Gruberg, I & Khan, S. *supra* note 1.

⁶ Background Note, *supra* note 3.

⁷ Sinha, M.K. *Implementation of Basic Human Rights* (Manak Publications, New Delhi, 1999).

affirms the universal nature of human rights.⁸ Human rights are accorded to individuals and groups in order to enable them to realise their self –worth and dignity, and to organise society in such a way that these goals are effectuated and respected. Today, citizens of a State are well aware of the roles they should play in nation building and of the structures they should give to their societies.⁹

Indeed, it is difficult to find a single and exhaustive definition of “good governance”, nor is there a delimitation of its scope, that commands universal acceptance. However, the term is being used with great flexibility.¹⁰ The good governance has been said at various times to encompass: full respect of human rights, the rule of law, effective participation of people, political pluralism, transparent and accountable institutions, an efficient and effective public sector, legitimacy, access to information and education, political empowerment of people, equity, sustainability, and attitudes and values that foster responsibility, solidarity and tolerance.¹¹ Bad governance is largely regarded as one of the root causes of all evil within our societies.

The United Nations Development Programme (UNDP) has defined the word “governance” broadly as “the exercise of economic, political and administrative authority to manage a country's affairs at all levels.¹² It comprises the mechanisms, processes and institutions through which citizens and groups articulate their interests, exercise their legal rights, meet their obligations and mediate their differences.”¹³ It described “good governance” as the “competent management of a country's resources and affairs in a manner that is open, transparent, accountable, equitable and responsive to people's needs.”¹⁴ The Commission on Human Rights (CHR)

⁸ Sinha, M.K. *Basic Documents on Human Rights and Refugee Laws*, (Manak Publications, New Delhi, 2000)

⁹ Udombana, *supra* note 2.

¹⁰ Background Note, *supra* note 3.

¹¹ Background Note, *Supra* note 3.

¹² United Nations Developmental Programme: Good Governance, available at, <http://www.undp.org/governance/mdgs.htm>, visited on 21 July 2006.

¹³ *Ibid.*

¹⁴ *Ibid.*

also adopted an important resolution on the subject of “the Role of Good Governance in the Promotion of Human Rights.”¹⁵ The CHR guided by the principles of Universal Declaration of Human Rights (UDHR) as a common standard of achievement of all peoples and all nations applying to every individual and every organ of society, and also by the Vienna Declaration and Programme of Action, which affirmed that all human rights are universal, indivisible, interdependent and interrelated.¹⁶ This resolution also recognises that transparent, responsible, accountable and participatory government, responsive to the needs and aspirations of the people, is the foundation on which good governance rests and that such a foundation is a sine qua non for the full realization of human rights, including the right to development.¹⁷ The good governance and the building of effective democratic institutions are a continuous process for all Governments, regardless of the level of development of the countries concerned.¹⁸

The resolution emphasised on the universality of the Human Rights and the adoption by the United Nations Millennium Declaration of a commitment to good governance in promoting human rights is further to strengthen the commitment of the international community for good governance.¹⁹ The international community has entered in the 21st century with the hope that worst enemy of mankind poverty will be completely eradicated from the world.²⁰ To achieve this goal the General Assembly of the United Nations has adopted the UN Millennium Declaration in September 2000.²¹ States agreed to do their best to achieve the goals set in the UN Millennium

¹⁵ The Role of Good Governance in the Promotion of Human Rights, *The Commission on Human Rights*, E/CN.4/RES/2004/70, 57th Meeting, 21 April 2004, http://www.ohchr.org/english/issues/development/docs/2004_70.doc, visited on 25 July 2006.

¹⁶ Para.5 of the Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights, 25 June 1993 General Assembly, A/CONF.157/23, 12 July 1993, available at [http://www.unhchr.ch/huridocda/huridoca.nsf/\(Symbol\)/A.CONF.157.23.En?OpenDocument](http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/A.CONF.157.23.En?OpenDocument), visited on 25 July 2006.

¹⁷ The Role of Good Governance, *Supra* note 14.

¹⁸ *Ibid.*

¹⁹ Resolution adopted by the General Assembly, 55/2. United Nations Millennium Declaration, adopted as a Vth principles, Human Rights, Democracy and Good Governance, 8 September 2000, <http://www.unmillenniumproject.org/index.htm>, visited on 21 July 2006.

²⁰ Shepherd, G.W. “The Denial of the Right to Food: Development and Intervention in Africa,” *California Western Journal of International Law*, vol.15, (1985), pp. 528-41.

²¹ 189 States adopted the UN Millennium Declaration. Report is available on <http://www.undp.org>, visited on 26 April 2005.

Declaration by eradicating poverty, promote human dignity and equality and achieve peace, democracy and environmental sustainability.²² The international community has committed, in the Millennium Development Goals, to cut extreme poverty by half by 2015 and by 2025, extreme poverty can be banished.²³ The UN Millennium Declaration, envisaged a new global partnership to reduce extreme poverty and setting out a series of time-bound targets, all with a deadline to eradicate half of the world poverty by 2015,²⁴ to achieve this goal they adopted 8 Goals²⁵ as the Millennium Development Goals (MDGs).

The CHR resolution also urged upon member states to provide governance responsive to the needs and aspirations of the people in order to achieve the full realisation of human rights to eradicate poverty and to build international cooperation on development.²⁶ Governance is the process of decision-making and the process by which decisions are implemented, an analysis of governance focuses on the formal and informal actors involved in decision-making and implementing the decisions made and the formal and informal structures that have been set in place to arrive at and implement the decision.²⁷

Government is one of the actors in governance. The other actors involved in governance vary depending on the level of government, in rural areas, for example, other actors may include influential land lords, associations of peasant farmers, local self government, cooperatives, NGOs, research institutes, religious leaders, finance institutions political parties, the military etc.²⁸ The situation in urban areas is much more complex. At the national level, in addition to the above actors, media, lobbyists, international

²² *Ibid.*

²³ *Ibid.*

²⁴ See home page, <http://www.unmillenniumproject.org/index.htm>, visited on 21 July 2006.

²⁵ The 8 Goals are as follows: Goal 1: Eradicate Extreme Hunger and Poverty, Goal 2: Achieve Universal Primary Education, Goal 3: Promote Gender Equality and Empower Women, Goal 4: Reduce Child Mortality, Goal 5: Improve Maternal Health, Goal 6: Combat HIV/AIDS, Malaria and other Diseases, Goal 7: Ensure Environmental Sustainability, Goal 8: Develop a Global Partnership for Development, available at <http://www.unmillenniumproject.org/goals/index.htm>, visited on 21 July 2006.

²⁶ The Role of Good Governance, *supra* note 14.

²⁷ Gruberg, I & Khan, S (ed.), *supra* note 1.

²⁸ UNESCAP, *What is Good Governance?*, available at <http://www.unescap.org/huset/gg/governance.htm>, visited on 18 July 2006.

donors, multi-national corporations, etc. may play a role in decision-making or in influencing the decision-making process.²⁹

The concept of good governance has been further clarified by the work of the CHR on its earlier resolution 2000\64.³⁰ The CHR has identified the key attributes of good governance³¹ as follows:

(1.) Transparency (2.) Responsibility (3.) Accountability (4.) Participation (5.) Responsiveness (to the needs of the people)

2. ESSENTIAL ASPECTS OF GOOD GOVERNANCE

There are certain essential aspects for the good governance are as follows:

(1.) Democracy based on Free and Fair Elections; (2.) Independence of Judiciary; (3.) Right to Fair Trial; (4.) Right to Information (5.) Respect for human Rights; (6.) Removal of corruption; (7.) Gender Equality; (8.) Role of Civil Society (9.) Civil War and Ethnic Violence

2.1 Democracy Based on Free and Fair Election

The type of political system that a country has is closely related to the standard of human rights its citizens' enjoy.³² It is widely assumed that human rights and democracy are firmly linked together - that is democracy is the form of government most likely to defend human rights.³³ The core idea of democracy is that all citizens' are entitled to participate in public affairs through participation in governments and the associations of civil

²⁹ *Ibid.*

³⁰ Commission on Human Rights Resolution 2000/64, *66th meeting 26 April 2000*, adopted by a roll-call vote of 50 votes to none, with 2 abstentions, available at [http://www.unhcr.ch/huridocda/huridoca.nsf/\(Symbol\)/E.CN.4.RES.2000.64.En?Opendocument](http://www.unhcr.ch/huridocda/huridoca.nsf/(Symbol)/E.CN.4.RES.2000.64.En?Opendocument), visited on 18 July 2006.

³¹ *Ibid.*, para. 1.

³² Background Note, *supra* note 3.

³³ Ramcharan, B "The United Nations and Human Rights in the Twenty – First Century", in G. Alfredsson , et.al. (ed.), *International Human Rights Monitoring Mechanisms: Essays in Honour of Jakob Th. Moller*, (Martinus Nijhoff, Hague, 2001), p. 7.

society.³⁴ This entitlement should be available to all on terms of equality to all. Control by the citizens over their collective affairs and, equality between the citizens in the exercise of that control are the basic democratic principles.

Free and fair election is critical for the continuance of a democracy. A nation can only truly be “of the people, by the people and for the people” when proper procedures are followed in administering the way people choose their leaders to govern them.³⁵ Sadly, the history is full of examples where elections were conducted under the control of dictator, who did not allow any opposition parties to contest the election.³⁶ Thus, it becomes more important for the world community to identify the States where dictatorial form of government is in power and convince the head of the state to adopt democratic process for the good governance. The human rights require an inclusive democracy, which moves beyond the necessary but insufficient system of periodic elections and the establishment of separate institutions for the exercise of power.³⁷ It also calls for innovative formal and informal processes and institutions that may help to resolve the classic dilemma: majority rule versus minority rights. ³⁸

The basic rationale of democracy is that elected representatives of the people and public functionaries are entrusted with power, which is a trust reposed in them by the people. That trust has to be discharged for the benefit of the nation and the people. Public functions and statutory powers are to be performed to serve public purpose and national interest, not for personal aggrandizement, nor for extraneous or ulterior considerations. Democracy must play also an instrumental role in promoting good governance, which also means realizing certain societal goals, such as the eradication of human deprivation, the realization and sustainability of

³⁴ Norris, P “Stable Democracy and Good Governance in Divided Societies: Do Power Sharing Institutions Work?” at [http://ksgnotes1.harvard.edu/research/wpaper.nsf/d745629e080d1fe88525698900714934/ab69bfceef0365c985256fa8006a1102/\\$FILE/ISA%20Norris%20Consensus%20democracy.pdf](http://ksgnotes1.harvard.edu/research/wpaper.nsf/d745629e080d1fe88525698900714934/ab69bfceef0365c985256fa8006a1102/$FILE/ISA%20Norris%20Consensus%20democracy.pdf), visited on 21 July 2006.

³⁵ G. A. O'Donnell, “Democracy, Law and Comparative Politics”, available at, <http://www.polisci.berkeley.edu/faculty/bio/permanent/Collier,D/journal-comparative/scid-odonnell.pdf>, visited on 21 July 2006.

³⁶ Sinha, *supra* note 6.

³⁷ *Ibid.*

³⁸ *Ibid.*

fundamental and human rights, the security of life and human liberty, the democratization of, and participation in, the process of governance, and also the market.³⁹ Regrettably, we noticed that functioning democracies, even those of long-standing, have not been able to sustain good governance, and this has led to the degeneration of democracy and has compromised its sustainability.⁴⁰ Democratic governance and respect for human rights are the foundations for political and social stability and economic progress and they are also intrinsic to the goal of human development.

2.1.1 The Human Rights and Democratic Government

UN charters and resolutions have been interpreted as helping to provide a common framework of international norms and values that link human rights to development and democratic governance.⁴¹ Human rights provide a constitutional framework for all countries to pursue sustainable development because it affords universally acceptable guidelines that transcend national boundaries.⁴² The appeal to human rights is to have common ground for global governance systems that ensure the means to pursue development freedoms for individuals, groups and nations. From a human rights perspective, the concept of good governance can be linked to principles and rights set out in the various international human rights instruments.⁴³ To begin with Article 21 of the Universal Declaration of Human Rights (UDHR), which recognizes the importance of a participatory government and Article 28 states that everyone is entitled to a social and international order in which the rights and freedoms set forth in the Declaration can be fully realized.⁴⁴ The two International Covenants on Human Rights contain language that is more specific about the duties and role of governments in securing the respect for and realization of all human

³⁹ Background Note, *supra* note 3.

⁴⁰ UNESCAP, *supra* note 27.

⁴¹ Franck, T "Legitimacy and Democratic Entitlement" in G. H. Fox & B. R. Roth (ed.), *supra* note 2, pp. 25-48.

⁴² Marcelli, F. "The Principle of Democratic Participation : A Key to Pan European Cooperation on Environmental Issues?" author's personal copy.

⁴³ Background Note, *supra* note 3.

⁴⁴ *Ibid.*

rights.⁴⁵ The UN Charter, the UDHR, International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) offer a normative basis for accountability at varying levels of governance.⁴⁶ Well before the Millennium Development Summit in 2000, the Copenhagen Declaration on Social Development and Programme of Action took up the importance of human rights for development in 1995. Many of the principles and goals enunciated in the Declaration also formed the central theme in the Brussels Programme of Action (BPoA),⁴⁷ including the commitment to “a political, economic, ethical, and spiritual vision for social development that is based on human dignity, human rights, equality, respect, peace, democracy, mutual responsibility and co-operation, and full respect for the various religious and cultural backgrounds of people”.⁴⁸ At that time, governments agreed specifically to promote democracy.⁴⁹ They also undertook to “promote all human rights and fundamental freedoms for all, which are universal, indivisible, interdependent and interrelated, including the right to development as an integral part of fundamental human development and fundamental freedoms for all, including the right to development” commitment.⁵⁰ The BPoA therefore is seen as integral to the goals for poverty eradication articulated in the Millennium Development Declaration; in fact, Goal 8 of the MDGs, to develop a global partnership for development, has direct relevance for democratic governance. Ten years after the Copenhagen meeting, governments recommitted themselves to these same values, with a renewed focus on rule of law and democracy.

⁴⁵ Sinha, *supra* note 6.

⁴⁶ *Ibid.*

⁴⁷ Welch, Gita and Nuru, Zahra *Governance for the Future: Democracy and Development in the Least Developed Countries* (UN-OHRLSS, 2006), available at <http://content.undp.org/go/newsroom/may-2006/good-governance-20060519.en>, visited on 19 July 2006., p.37. The Brussels Programme of Action (BPoA) 2001-2010, adopted in June 2001 at the Third UN Conference on LDCs, articulates policies and supportive actions to promote the long-term economic growth and sustainable human development of LDCs.³⁶ It seeks their successful integration into the global economy through partnerships that focus on developing the human and institutional resources needed to raise the quality of life for the 600 million people in the 50 LDCs.

⁴⁸ *Ibid.*

⁴⁹ *Ibid.*

⁵⁰ *Ibid.*

The Ulaanbaatar Declaration⁵¹ sets forth six key principles or benchmarks endorsed by the Fifth International Conference of New or Restored Democracies (ICNRD) that is, democratic societies are :

- (1) just and responsible,
- (2) inclusive and participatory,
- (3) promote and protect the rights and freedoms of all their members,
- (4) open and transparent,
- (5) function under agreed rules of law and accountability regardless of the challenges they may face, and
- (6) show solidarity toward others. The countries agreed to a total of fifty-two commitments falling under these six principles.

The Outcome Document of the 2005 World Millennium Summit once again reaffirmed the commitment of the international community to address the special needs of the poor from developing Countries , which continue to face persistent human development challenges. It has been realised that concerted effort should be made to achieve Millennium Development Goals (MDGs), in particular the goal of halving the proportion of people living in extreme poverty by 2015.⁵²The UDHR, expressed the values of democracy in proclaiming that “the will of the people shall be the basis of the authority of government” (Article 21) and considered it essential that “human rights should be protected by the rule of law” (Preamble).⁵³

Thus, it is necessary on the part of the state to establish a democratic form of government. In democratic form of government the people are enabled to express and discuss their opinion freely on all matters affecting them. In a democratic society, legislative institutions must exist to check the

⁵¹ The Fifth International Conference of New or Restored Democracies (ICNRD) was held in Ulaanbaatar on 8-12 September 2003 as a forum to share knowledge and experiences in promoting pluralistic democracy and in particular its participatory aspect as the theme of the Conference Democracy, Good Governance and Civil Society specified. The Sixth International Conference of New or Restored Democracies will be held in Doha, Qatar on 13-15 November 2006. Available at, <http://www.icnrd5-mongolia.mn/>, visited on 18 July 2006.

⁵² Welch, Gita and Nuru,Zahra *supra* note 46.

⁵³ *Ibid.*

exercise of executive power and an independent judiciary must exist to safeguard the civil liberties of the people.

2.2 Independence of Judiciary

The justice system has been the major recourse of the human rights community in the enforcement of human rights.⁵⁴ Litigation has been identified as one of the key means of protecting and enforcing the rights of individual. The independence of judiciary is an important requirement for good governance. The establishment and functioning of an independent judiciary for the protection of human rights and other constitutional guarantees are essential for good governance.⁵⁵ The independence of judiciary is often undermined during emergency through various ways , for instance, for instance removal of competent judges by unqualified persons and the establishment of special courts to try those who try to defy the authority. Such court functions under direct control of the State government and discharge its duty in more biased manner to legitimise all illegal practices of the State. The tendency to make judiciary a rubber stamp of government is not very uncommon practice in many developing countries.⁵⁶ Once the State authority proclaims emergency it automatically starts exercising unlimited power. The danger of this unchecked power is that the state may resort to arbitrary methods to silence the people opposing the government.⁵⁷ This particular situation may even become worst when military government overthrows democratically elected government. The suspension of the writ of habeas corpus, arbitrary arrest , trial conducted not by competent court is common practice during time of emergency. Thus, it is imperative to maintain the independence of judiciary for the protection of human rights. Independence of judiciary would help substantially in preventing the abusive exercise of emergency powers by the executive.

⁵⁴ Sinha, *supra* note 6.

⁵⁵ *Ibid.*

⁵⁶ *Ibid.*

⁵⁷ Sinha, M.K. "International Human Rights Regime and States of Emergency: Need for Reform" *Indian Journal of International Law*, vol. 39 (1999), pp. 677-688.

2.3 Right to Fair Trial

The right to fair trial is envisaged under both international as well as regional human rights instruments.⁵⁸ It is absolutely true that the right to fair trial is the most fundamental rights of victims of violation of human rights and this right should be protected in all times.⁵⁹ The right to a fair trial is a basic human right. It is one of the universally applicable principles recognized in the UDHR and still the cornerstone of the international human rights system. The right to fair trial has been reaffirmed and elaborated since 1948 in legally binding treaties such as the ICCPR, and in numerous other international and regional treaties and non-treaty standards, adopted by the UN and by regional intergovernmental bodies.⁶⁰

The right to a fair trial is one of the most important rights enshrined in the UDHR. Article 10 of the UDHR provides that, “everyone is entitled in full equality to a fair and public hearing by an independent trial in the determination of his rights and obligations and of any criminal charge against him.”⁶¹ Article 10 regulates the relationship between an individual and the tribunal and expresses the basic right to a fair trial in both civil and criminal proceedings. This right applies to the individual in all cases , whether he or she initiates the proceedings or is the defending party. The ICCPR further elaborates – particularly in its Articles 14 and 15.⁶² Article 14 of the ICCPR recognises the right to “ a fair trial and public hearing by a competent, independent and impartial tribunal established by law.” Article 14 is the most prominent fair trial provision of the ICCPR and incorporates the content of Articles 10 and 11(1) of the UDHR. Article 14 is paralleled on the regional level by Article 6 of the European Convention on Human Rights, Article 8 of the American Convention on Human Rights and the Article 7 of the African Charter on Human and People’s Rights.⁶³

⁵⁸ Weissbrodt, D., *The Right to a Fair Trial : Articles 8, 10 and 11 of the Universal Declaration of Human Rights*, (Martinus Nijhoff, Hague, 2001).

⁵⁹ Sinha, supra note 6.

⁶⁰ Weissbrodt,D, supra note, 57.

⁶¹ Sinha, supra note 7.

⁶² *Ibid.*

⁶³ Weissbrodt,D, supra note, 57.

Every government has the duty to bring to justice those responsible for crimes. However, when people are subjected to unfair trials, justice is not served. When people are tortured or ill-treated by law enforcement officials, when innocent individuals are convicted, or when trials are manifestly unfair, the justice system itself loses credibility.⁶⁴ If human rights are not upheld in the police station, the detention centre, the court and the prison cell, then the government has failed miserably in its duties and responsibilities towards its citizens. Thus, it is important to protect and promote human rights each State should make right to a fair trial as fundamental rights under their constitution and if necessary, adopt required legislation to fulfil this obligation.⁶⁵

2.3 Right to Information

Advancement of technology has made world a small village, but unfortunately this development did not reach, yet, to some developing countries because of their strong believe in respecting the official secret act. There is no transparency and accountability at the local level where it counts the most. Poor citizens cannot go to the government officials for any information related with the development and any other aspects. Though, the right to information has been recognised as a fundamental human rights in most of the Constitutions of the world. Thus, it is required to urge upon the states to bring out a necessary legislation and make all information available to citizens. Indian Parliament has passed a very revolutionary bill last year, which empowers the citizen to ask for any information from the government officials, the bill is known as Right to Information Act, 2005,⁶⁶ interestingly, several states had already gone ahead with legislations of their own so that the culture of demanding to know what is going on is gradually taking root. Freedom of information lies at the root of the rights discourse. Failure of the State to provide access to

⁶⁴ *Ibid.*

⁶⁵ *Ibid.*

⁶⁶ See for whole Right to Information Act 2005, available at http://www.humanrightsinitiative.org/programs/ai/rti/india/national/rti_act_2005.pdf, visited on 24 July 2006. This Act extends to whole India except the State of Jammu and Kashmir. The Act was enacted by the Parliament on 15 June 2005, and the Act came into force on 12 October 2006. It includes the right to (i) inspect works, documents, records, (ii) take notes, extracts or certified copies of documents or records, (iii) take certified samples of material, (iv) obtain information in form of printouts, diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts

information or State suppression of information can lead to the most egregious forms of human rights violations. The Right to Information (RTI) is fundamental to the realisation of rights as well as effective democracy, which requires informed participation by all.

2.5. Respect For Human Rights

In the past fifty years, the community of nations have produced a series of international and regional instruments both at international as well regional levels. These human rights instruments are designed to promote and protect human rights and fundamental freedoms of individual. Those States, which are parties of these instruments either at regional or universal levels, have an obligation to protect and promote the human rights of its citizens.⁶⁷ One of the important developments of the past couple of years has been the efforts of the United Nations Development Programme (UNDP) to integrate human rights at one of its activities. The UNDP and other development institutions are according more and more importance to issues of governance and capacity building in the process of development.⁶⁸ The UDHR recognises human rights as the foundation of peace, justice and democracy. Human rights are inalienable entitlements; they constitute the ground-rules for human development. The human rights framework reflects the crucial interdependence of economic, social and cultural rights, on the one hand, and civil and political rights, on the other.⁶⁹ The international community has developed a comprehensive legal framework for the protection and promotion of human rights. The ICESCR⁷⁰ and the ICCPR, and its two Optional Protocols together with the UDHR constitute the International Bill of Rights.⁷¹ Alongside these, specific conventions were drafted to protect the rights of certain vulnerable groups, such as women and children, and to address certain specific rights, such as the elimination of racial discrimination.⁷²

⁶⁷ Ramcharan, B, *supra* note, 32.

⁶⁸ *Ibid.*

⁶⁹ Sinha, *supra* note 6.

⁷⁰ Sinha, M.K., *Enforcement of Economic, Social and Cultural Rights: International and National Perspectives*(Manak Publications, New Delhi, 2006).

⁷¹ Sinha, *supra* note 6.

⁷² *Ibid.*

Under international human rights law, States Parties have specific obligations to (i) respect, (ii) protect and (iii) fulfil the rights contained in the conventions. Failure to perform any one of these three obligations constitutes a violation of such rights.⁷³ The World Conference on Human Rights in 1993 also states that, “while development facilitates the enjoyment of all human rights, the lack of development may not be invoked to justify the abridgement of internationally recognised human rights”.⁷⁴ It is important to distinguish inability from unwillingness. Any deliberate retrogressive measures require the most careful consideration, and need to be fully justified by reference to the totality of the rights provided for in the treaty concerned and in the context of the full use of the maximum available resources. In General Comment No. 12 of the Committee on Economic, Social and Cultural Rights, on the right to food, the Committee stated “Good governance is essential to the realization of all human rights, including the elimination of poverty and ensuring a satisfactory livelihood for all.”⁷⁵

The entire UN system – including the funds, programmes and specialised agencies – has a responsibility to support State Parties in these efforts, according to Article 2 (1) of the ICESCR “States have to undertake steps, individually and through international assistance and cooperation, to the maximum of their available resources with a view to achieving progressively the full realisation of the rights recognised”.⁷⁶ Since human development means expanding people’s choices and enhancing their freedoms, empowering people goes beyond the development of human resources as means to economic growth and generation of income.⁷⁷

Human rights and human development are two sides of the same coin. A human rights-based approach provides both a vision of what development

⁷³ Sinha, *supra* note 69.

⁷⁴ Vienna Declaration, *supra* note 15.

⁷⁵ General Comment 12 by Committee on Economic, Social and Cultural Rights on Article 11 (Right to Adequate Food), Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights, 20th Session, Geneva, 26 April-14 May 1999, E/C.12/1999/5, 12 May 1999. Para.23, available at <http://www.ohchr.org>, visited on 25 July 2006.

⁷⁶ *Ibid.*, Paras.14-15.

⁷⁷ Gruberg, I, & Khan, S., *supra* note 1.

should strive to achieve, and a set of tools and essential references.⁷⁸ It is based on the values, standards and principles captured in the UN Charter, the UDHR and subsequent legally binding human rights instruments. It attaches importance not only to development outcomes, as traditional approaches do, but also to the development process, as the latter implies the participation of all stakeholders to ensure that their interests and rights are included in the ultimate development outcomes.⁷⁹ The relationship between good governance, human rights and sustainable development has been recognised by the international community in a number of declarations and other global conference documents. For example, the Declaration on the Right to Development, which was adopted in 1986,⁸⁰ proclaims, according to Article 1, that every human person and all peoples “are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development”.⁸¹ In the Millennium Declaration world leaders affirmed their commitment to promote democracy and strengthen the rule of law as well as to respect internationally recognized human rights and fundamental freedoms, including the right to development. According to the United Nations strategy document on the millennium development goals (MDGs), entitled “The United Nations and the MDGs: a Core Strategy”, “the MDGs have to be situated within the broader norms and standards of the Millennium Declaration”, including those on “human rights, democracy and good governance”.⁸² All recent international conferences, notably the Monterrey Consensus reached at the International Conference on Financing for Development⁸³ and the World Summit on Sustainable Development, have reaffirmed the importance of good governance and human rights to achieve the objectives of development and poverty eradication.⁸⁴

⁷⁸ Welch, Gita, and Nuru, Zahra supra note 46

⁷⁹ Gruberg, I, & Khan, S, note 1.

⁸⁰ Declaration on the Right to Development Adopted by the General Assembly resolution 41/128 of 4 December 1986, available at <http://www.unhchr.ch/html/menu3/b/74.htm>, visited on 21 July 2006.

⁸¹ *Ibid.*

⁸² Welch, Gita and Nuru, Zahra supra note 46.

⁸³ International Conference on Financing for Development, adoption of the Monterrey Consensus, A/Conf./198, 1 March 2002, available at <http://www.un.org/esa/ffd/0302finalMonterreyConsensus.pdf>, visited on 21 July 2006.

⁸⁴ Welch, Gita and Nuru, Zahra, supra note 46.

2.6. Corruption

Corruption is a major threat to good governance. A State that is riddled with the corrupt practices has less regard for any form of democratic norms.⁸⁵ Citizens have to struggle for small things and nothing can move unless they grease the palm of concerned officials. International community is well aware of this deep-rooted evil practice of corruption in majority of the states in Africa, Asia and Latin American countries. By adopting couple of instruments at international and regional levels show the concern and earnestness of the international community in removal of this practice from the state. The human rights dimensions of the fight against corruption, one of the basic challenges to good governance. Corruption erodes the ability of a nation to reform itself, and to build more open, responsive, credible and legitimate political institutions. Corruption seriously undermines the ability of the State to respect, protect and fulfil human rights, particularly of those most dependant on the State because of their marginalized and vulnerable situation. Thus, the fight against corruption is in many countries at the core of government practices that promote human rights.

UN General Assembly in its resolution⁸⁶ recognized that there is a need to have an effective international legal instrument against corruption, decided to establish an ad hoc committee for the negotiation of such an instrument in Vienna at the headquarters of the Centre for International Crime Prevention, Office for Drug Control and Crime Prevention. The text of the United Nations Convention against Corruption was negotiated during seven sessions of the Ad Hoc Committee for the Negotiation of the Convention against Corruption, held between 21 January 2002 and 1 October 2003. The approved United Nations Convention Against Corruption (UN Convention Against Corruption) by the Ad Hoc Committee

⁸⁵ Alam,A, "Crisis of Governance : Need for Political Reforms" in A.Alam (ed.) *Crisis of Governance* (Raj Publications, Delhi, 2003), pp. 9-45.

⁸⁶ UNGA Res. 55/61 of 4 December 2000, available at http://www.unodc.org/pdf/crime/a_res_55/res5561e.pdf, visited on 25 July 2006.

was adopted by the General Assembly by its resolution.⁸⁷ The UN Convention on Corruption has already come into force in 2005.⁸⁸

Corruption undermines democratic institutions, retards economic development and contributes to government instability.⁸⁹ Corruption attacks the foundation of democratic institutions by distorting electoral processes, perverting the rule of law, and creating bureaucratic quagmires whose only reason for existence is the soliciting of bribes.⁹⁰ Economic development is stunted because outside direct investment is discouraged and small businesses within the country often find it impossible to overcome the “start-up costs” required because of corruption.⁹¹

2.7. Gender Equality

No Society can progress where gender inequality persists. Numerous studies and the ground reality have shown that promoting equality between women and men helps a state grow faster, accelerate poverty reduction and enhances the dignity and well being of men, women and children.⁹² Unfortunately, gender inequalities still prevalent in many of developing countries, as evidence by such indicators as high maternal mortality rate, disparities in education, basic health services and scanty representation of women in the political process of a state.⁹³ Gender issues are highly relevant to achieving all of the Millennium Development Goals (MDGs), be it protecting the environment, achieving sustainable development or enabling universal access to health care. The third MDG is to promote gender equality and empower women addresses gender

⁸⁷ UNGA Res. 58/4 of 31 October 2003, available at http://www.unodc.org/unodc/crime_convention_corruption.html, visited on 25 July 2006.

⁸⁸ The UN Convention came into force on 14 December 2005 after getting required 30 ratification, in accordance with article 68 (1) which reads as follows: "1. This Convention shall enter into force on the ninetieth day after the date of deposit of the thirtieth instrument of ratification, acceptance, approval or accession, available at <http://www.unodc.org/unodc/en/corruption.html>, visited on 24 July 2006.

⁸⁹ Corruption, available at <http://www.unodc.org/unodc/en/corruption.html>, visited on 24 July 2006.

⁹⁰ *Ibid.*

⁹¹ *Ibid.*

⁹² Welch, Gita, and Nuru,Zahra, *supra* note 46.

⁹³ Olasfsdottir,O.T., "Equality Between Women and Men", in B. Ramcharan, *supra* note, 32, pp. 608-615.

equality by targeting the elimination of gender disparities in primary and secondary education. It also targets literacy rates, the share of women in non-agricultural jobs, and the proportion of seats women hold in national parliaments. Despite increased awareness that gender equality is a critical factor in economic growth as well as poverty reduction, gender inequalities still prevail in many countries. Gender inequality is evidenced by disparities in access to education and basic health services, women's lack of independent rights to own land, manage property, or conduct business, and women's under-representation at all government levels.⁹⁴

2.8 Role of Civil Society

The term civil society refers broadly to organizations and associations of people, formed for social or political purposes, that are not created or mandated by governments. Civil society broadly includes, non-governmental organizations, trade unions, cooperatives, churches, grassroots organizations and business associations.⁹⁵ These groups are important for their role in articulating and advocating for popular concerns. This advocacy function gives voice to a variety of interests and perspectives that governments and decision makers may otherwise not hear. It is increasingly accepted fact that real progress in tackling development deficits can only be made by building the institutions for good governance and by ensuring genuine civil society participation. In many countries, and even in those countries deemed to be “good reformers”, governments are often extremely nervous of or even hostile to the development of civil society. Democratic governance requires the existence of constant and efficient linkages among governments and all members of society. Civil society is distinct from society in general since it refers to people organizing and acting together in the public sphere to attain collective goals, express shared ideas and views, exchange information, and improve the functioning of state institutions and make them more accountable, among many other functions.⁹⁶ Civil society provides a space for state institutions and members of society to consult with each other, interact, and exchange views and information on public matters. It also

⁹⁴ Tomasevski, K, “Men and Women, Sex and Gender”, in B. Ramcharan, *Supra note*, 26, pp. 429-440.

⁹⁵ Phillips, A, “The Role of International Non-Governmental Organisations in Promoting Minority Rights Monitoring” in Ramcharan, B, *supra note*, 32, pp. 897-906.

⁹⁶ Welch, Gita and Nuru, Zahra *supra note* 46.

creates institutional spaces for the active participation of minorities and vulnerable groups in decision-making processes and for increasing political representation of the views and interests of such groups in state institutions.⁹⁷ It is important to emphasize that civil society is not a homogenous group; it encompasses a broad range of formal and informal organizations, associations and social movements. Community-based organizations, NGOs, charities, voluntary organizations and trade unions are all part of civil society. This intrinsic diversity in origin and ideas is one of civil society's main contributions to democratic governance. Contributions from civil society vary across countries depending on the development stage of the civil society organizations and individual countries' needs and openness to their involvement. Civil society in many countries has been successful in helping enhance civic participation in democratic governance. In many instances, civil society has created awareness about participating in elections, raised issues for election manifestoes, and initiated debates and discussions on issues of public concerns. It has also played a significant role in voter education programmes, particularly among minorities, young and first-time voters, women and indigenous groups.⁹⁸ In countries with weak governance, civil society is frequently equated with political opposition. The United Nations, in many of its General Assembly resolutions and conventions, acknowledges the role of civil society in the promotion of human development, environmental and human rights protection, democracy and good governance. The Millennium Development Goals are very clear in this regard. Successive human development reports by the United Nations Development Programme acknowledge the critical role of civil society.⁹⁹

One of the most important functions of civil society is to provide checks and balances to government power. In this context, civil society serves as the watchdog of democratic institutions, helping ensure that they are accountable to their constituencies. Civil society promotes state accountability in many cases by empowering and making the State's checks and balances work efficiently.¹⁰⁰ In other instances, where government mechanisms of accountability do not exist, civil society can exert pressure to create them in the first place. Civil society in this sense is

⁹⁷ *Ibid.*

⁹⁸ *Ibid.*

⁹⁹ *Ibid.*

¹⁰⁰ Phillips, A, *supra* note , 94.

not an adversary of the State, but instead serves to encourage it to improve and maintain its democratic nature.¹⁰¹ By exposing abuses of power and government wrongdoings, increasing expectations of effective performance and creating political pressure, civil society can push state mechanisms to target corrupt, inefficient and unaccountable practices

2.9 Ethnic Conflict and Civil Wars

Ethnic conflict and civil wars are the most pervasive forms of armed conflict in the world. In the 1990s, ethnic conflict and civil wars raged in dozens of countries, killing an estimated six million people. These conflicts usually involved neighbouring states, often undermining regional stability and respect for international law and organizations. Some conflicts engaged the interest of distant international powers. For these reasons, ethnic conflict and civil wars are major international security problems. Ethnic conflict and civil wars have continued to slow down the pace of development and realization of good governance in number of countries of the world especially in Africa. The nations' wealth is most times spent in quelling one uprising or another. In this type of situation, human rights issues are not properly addressed and a lot of abuses are recorded. Those countries emerging from conflict situations face the immediate task of establishing law and order in the shortest time. These states have to adopt electoral and procedural elements that would help direct people's energies to consolidating peace.

3. CONCLUSION

The protection and promotion of Human rights need a conducive and enabling environment, in particular appropriate regulations, institutions and procedures framing the action of the State. Good governance policies should aim to empower individuals to live with dignity and freedom. Good governance and human rights are mutually linked and complementary. Good governance cannot be achieved in separation from human rights. The two concepts reinforce each other and many of their core principles are common. Popular participation, accountability, transparency, and State-responsibility underline the human rights approach as well as

¹⁰¹ *Ibid.*

underpin the good governance framework as defined by the Commission on Human Rights. Human rights empower people, help them to assume their roles as community members, provide the legal framework for people's participation in public affairs and in claiming their rights. Systems of governance should be expressly concerned about their ability to respect, protect and fulfil civil, economic, political and social rights. The exercise of good governance may well result in economic growth and development, as the experiences of many developing countries can attest. The rule of law is indispensable for the exercise of government in a way that promotes and protects human rights. Proper functioning of the rule of law, it is essential to have a strong legal framework, under a constitution, that upholds human rights and that provides for effective protection, implementation and redress in key areas at the domestic level, that relate to all human rights, be they civil, cultural, economic, political or social rights. The rule of law concerns itself with the substantive and the procedural, as well as with the quality, content and objectives of laws, processes, institutions and practices. States play a very important role in the promotion and protection of human rights. As the principal "duty-bearers", State is required under legally binding human rights instruments to adopt a range of measures, including legislative, economic, social and cultural measures, to respect, protect and fulfil all human rights. The interplay between good governance and human rights is marked by the value added that governance provides to human rights, and vice versa.