

"Good Governance"

Justice S. Ragarajan Memorial Lecture

(9-9-2009)

Delivered by

Hon'ble Mr. Justice N. Santosh Hegde

Lokayukta, State of Karnataka.

Transaction No. 109

THE INDIAN INSTITUTE OF WORLD CULTURE

Post Box 402, 6, B.P.Wadia Road, Basavanagudi,
BANGALORE - 560 004. Ph.: 26678581

Founded: 1945

E-mail: iiwc@vsnl.net

Website: www.iiwcbangalore.org

"Good Governance"

Justice S. Ragarajan Memorial Lecture

(9-9-2009)

Delivered by

Hon'ble Mr. Justice N. Santosh Hegde

Lokayukta, State of Karnataka.

1. 'Action Aid', an organization espousing the cause of good governance, in its Resource Book titled "Good Governance" published in 2004 traces the international thinking on the issue of Governance. It states "the issue of governance and the state came into sharp focus in the aftermath of World War II. While democracy was touted as the 'greatest good for the greatest number' it was often reduced to 'the will of the majority'. Carried to extremes, this majoritarian will, or what the rulers interpret as the majoritarian will, can lead to cruel repression of minorities as was witnessed in Nazi Germany prior to the genocide. Horrified at the depths to which 'rule of law of the majority' could sink if it was not based on democratic values of equity and justice, the United Nations came out with the Universal Declaration of Human Rights. This set forth in detail the minimum obligations of the states to all persons at all times. Neither the will of majority, nor greatest good for the greatest number, could override these principles."
2. In the above background, the above resource book describes the Governance as combination of three major components; that of process, content and deliverables. The process of governance includes factors such as transparency and accountability. Content includes values such as justice and equity. Governance cannot be all process and values. It must ensure that the citizens, especially the poorest, have the basic needs and have a life with dignity. A dictatorship that delivers basic needs to the citizens is no doubt better than a dictatorship that does not, but it is not good governance. Similarly, regular elections alone do not translate into 'good governance'. Rule of law that is transparent, but unjust is certainly not 'good governance'. It is only when all these three conditions are fulfilled that governance becomes 'good governance'.
3. 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.
4. It is in the above understanding of good governance; I propose to place this paper of mine on the topic 'effect of corruption on good governance' in memory of late Justice S. Rangarajan.
5. India fought for its independence not only from foreign domination and to regain its sovereignty but also to be governed by ourselves. It wanted a Government of the people, by the people and for the people. Under the Indian Constitution people who administer the country have a special status. They have been recognized as the 'Executive'. The executive, the legislature and the judiciary form three main pillars of our Constitution.
6. The constitution of India envisages an independent Executive. Its connection with the Legislature is only through the cabinet. The duties and powers to be exercised by the executive are governed by the Transaction of Business Rules made under Articles 77

and 166 of the Constitution. The executive can be broadly divided as political executive i.e. the cabinet and the bureaucrats who actually administers the Country at various levels in their hierarchy. To give good governance or administration the constitution provide for separate administrative services both at the centre and the state level. The members of the bureaucracy are selected with prescribed educational qualification and through competitive examination, thereafter they are trained in the art of public administration. While the political executive, which is the cabinet is selected from the elected representatives, for them no educational qualification or experience is prescribed. They come to the legislature through elections and on being appointed to the cabinet as Minister becomes the political executive. Obviously, this type of dual executive system is adopted by the Indian Constitution with a view to give 'the Executive' a people friendly look. In their own areas political executives and bureaucrats have to work independently but political executive by their presumed popularity as aquired exesive dominance by misusing transction of business rule. If these rules were to be used only for the object for which incorporated in the constitution then the bureaucrats would have been the true administrators and would have been instrumental in providing good administration which is a fundamental right of the citizens of India. The idea that constitutional framers did not intend Articles 77 and 166 to be used for political dominance in governance, is clear from the fact that no qualification was fixed for Members of the Legislature and Cabinet.

7. Over the years political dominance in the guise of representing people's will has overshadowed the importance of bureaucracy. This dominance is not resisted by many in the bureaucracy. On the contrary many willingly or meekly submitted to this dominance because of which good governance has suffered.
8. Lack of good governance was perceived by the country as far back as in 1960's itself. Therefore, an Administrative Reforms Commission was constituted which in its report submitted in 1966 among other recommendations also recommended the creation of an Indian type of Ombudsman called 'lokpal' at the Centre and Lokayukta at the States' level. However, till date no Lokpal is appointed. For the first time in the Country Karnataka State Legislature passed the Karnataka Lokayukta Act, in 1984 and brought it to force in 1986. Though not all, some other States have followed this step. Need for the existence of this institution is reiterated by the II Administrative Reforms Commission in its Report made in the year 2007, which officially indicates that maladministration still continues.
9. Good governance can be provided by public servants only if they realize that they are not masters of the people but they are only servants of the people and they owe a duty to the people. For this they will have to follow certain principles of 'Raj Dharma'. The ingradient of Raja Dharma is enumerated in a Report prepared by Lord Nolan of U.K. which is known as 'Standards in public life', this report though prepared with reference to governance in Great Britain, the same is ipso facto applicable to the governance in India.
10. Lord Nolan has laid down seven principles of public Life and they are:-Selflessness i.e.,
Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

Integrity, i.e.,

Holders of the public office should not place themselves under any financial or other obligation to outside individuals or organizations that might influence them in the performance of their official duties.

Objectivity, i.e.,

In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

Accountability, i.e.,

Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

Openness, i.e.,

Holders of public office should be as open as possible about all the decisions and actions they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

Honesty, i.e.,

Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

Leadership, i.e.,

Holders of public office should promote and support these principles by leadership and example.”

The above principles were accepted by the Hon’ble Supreme Court of India in its judgment in the case of Vineet Narain V/s. Union of India (AIR 1998 SC 889). While accepting the above principles, the Supreme Court stated:

“These principles of public life are of general application in every democracy. And one is expected to bear them in mind while scrutinizing conduct of every holder of a public office. It is trite that the holders of the public offices are entrusted with certain powers to be exercised in public interest alone and, therefore, the office is held by them in trust for the people. Any deviation from the path of rectitude by any of them amounts to a breach of trust and must be severely dealt with instead of being pushed under the carpet. If the conduct amounts to an offence, it must be promptly investigated and the offender against whom a prima facie case is made out should be prosecuted expeditiously so that the majesty of law is upheld and the rule of law vindicated. The adverse impact of lack of probity in public life leading to a high degree of corruption is manifold. It also has adverse effect on foreign investment and funding from the International Monetary Fund and the World Bank who have warned that future aid to underdeveloped countries may be subject to the requisite steps being taken to eradicate corruption, which prevents international aid from reaching those for whom it is meant.

So said the Apex Court in the above cited case.

11. In the case of State of Assam V/s. P.C. Mishra (AIR 1966 SC 430), the Supreme Court stated that:

“It is incumbent for each occupant of every high office to be constantly aware that the power invested in the high office he holds is meant to be exercised in public interest

and only for public good, and that it is not meant to be used for personal benefits or merely to elevate the personal status of the current holder of that office. Constant awareness of the nature of this power and the purpose for which it is meant would prevent situations leading to clash of egos and the resultant fall out detrimental to public interest”

12. There is no doubt, under the Indian Constitution, the executive, both political and bureaucratic are very powerful organs. Still they should always bear in mind their obligation to the people., as also the prophetic words “Be you ever so high, the law is above you”.
13. Having analyzed these dos and don'ts by the administration in good governance, let me consider whether the above principles laid down by Lord Nolan are still followed by the Administration in the present day context. The Public perception is that there is lack of ethics and good governance both at the Centre and at the State. Reasons may be many and this lack is felt not only by the common man, but also by the people holding very high offices. For example, none other than the Hon'ble Prime Minister of this Country, on 15th April 2007 addressing the 2006 batch of IAS probationers stated, (see Deccan Herald dated 16/5/2007) and I quote “the barriers of administrative and political corruption should be tackled by the upcoming bureaucrats and quality of governance be improved at all levels to build an India ‘worthy of our dreams’. If there are barriers, there are barriers in our Country, in our good governance, in our governance processes, it is a fact there is lot of corruption, both at the political level and at the administrative level. We must take it head on.”
14. Very recently, the very same Prime Minister inaugurating the Conference of CBI stated that there is very large scale corruption, even in high places and many big fish are escaping and they should be caught and severely punished at the earliest. Obviously, the Hon'ble Prime Minister was talking about the corruption in Governance. These words of the Hon'ble Prime Minister are certainly not complementary and he was certainly speaking with all responsibility. His words indicate that apart from lack of good governance, there is corruption in the administration.
15. When one speaks of corruption and maladministration, it is not a question of degree or percentage of corruption in administration. But it is about the lack of probity which is the foundation of good governance.
16. The then the Governor of Karnataka Shri T.N. Chaturvedi, who was a bureaucrat himself, in his last Republic Day address said “Corruption is not merely a dirty word. It describes a dirty act. We need to have a policy of zero tolerance towards all acts of corruption. We need to assert that there is no difference between small act of corruption and major instances of malfeasance. There is no such thing as petty corruption - there is corruption, per se. It is necessary to strike at the very roots of corruption, for if we allow its tentacles to grow we will be firmly in its grip, with no way out. This is a very real danger. Corruption in any walks of life can corrode, decay and annihilate our democratic system. We can ignore or minimize its evil effects at our own risk. Corruption and unrefuted allegations of misuse of power for self and pelf do shake the faith of ordinary citizens in our democratic system.”
17. The views expressed by the Hon'ble Prime Minister of the Country and the then the Chief Executive of the State are truly reflecting the perception of the common man also.
18. The Hon'ble Prime Minister has spoken, the then Governor of the State has spoken,

many leaders holding high political offices have spoken about corruption. But who amongst them will bell the cat. Certainly they cannot expect an ordinary citizen to take steps to bring about this change without their being a will power on the part of the people in Governance to tackle corruption. It is one thing to talk of corruption and maladministration and another to act against it. But what action the people in the helm of affairs are taking to stem this rot. The Country does not need to be reminded time and again about this evil. The Country wants to know what is being done about it.

19. Having understood that there is corruption in administration, both political and bureaucratic, let me recapitulate atleast one instance of corruption which must have affected directly the economy of the country and indirectly the rights of an ordinary man. In a recently reported news item in Times of India it is seen that out of very many lakhs of crores released by the Government of India for eight national schemes, it is reported by none other than the CAG that atleast a sum of Rs. 51,000 crores allocated to these schemes have not been accounted for. Imagine a sum of Rs. 51,000 crores in one year only out of 6 schemes being siphoned. There are hundred of such schemes of both Central and States', then how much money earmarked for the poor must have been siphoned of. It is a matter of public knowledge that in the year 1986 the then prime minister reported to have stated that 'out of every rupee earmarked for the benefit of the citizen' only 15 paise reaches the beneficiary. Recently, another top leader of a National Party has reportedly stated that the amount so spent has come down to 10 paise only. This almost means that it is only 10% of the amount sanctioned reaches the poor. If this inference is justly drawn it shows that country spends only 10% of its expenditure on an ordinary citizen, if so where does the balance of 90% go. Put conversely if 90% of the budget amount reaches the ordinary man. Guess what would be the benefit poor will get. If we apply this factual statement made by the then Prime Minister of India, atleast to the amount allocated for the benefit of the ordinary citizens of India in the annual budget of the Central Government, then you will notice the magnitude of corruption. It is said that towards revenue expenditure, the annul budget provides about 8,97,232 crores of rupees annually for the ordinary citizens of India, out of this as per the Late Prime Minister only 15% reaches the beneficiary and 85% of that amount goes unaccounted. This single factor will show the effect of corruption on good governance. It is because of this type of governance, even after 62 years of independence and 60 years of democracy, the poor has remained poor and the rich has become richer, if one has to see the effect of corruption on governance, one has to go to public offices and try seek an interview with a public servant and experience whether it is possible to set an interview with a public servant at any hierarchy without pocketful of money to bribe or political backing to get the work done. If one makes *an* audit of the time spent by the bureaucrats of every level of their work, I am sure that the said report will show that most of the time the bureaucrats are not in their designated places, but are in so-called meetings with the political bosses. India, which boasts of largest democracy in the world which is supposed to be ruled by the Government of the people. Seems to have lost the true meaning of the word 'democracy'.
20. Let me try to find out briefly the cause of this malice. Our Constitution contemplated an independence legislature, executive and judiciary. Over the years, for the reasons well-known the Legislature and Bureaucracy seems to have merged into one group like the conjoined twins, one supported by the other. If our Constitution organ, like the executive, is independent and honest, there could be no political corruption and vice-versa. If there is corruption as stated by the Hon'ble Prime Minister and as I believe it to

be true then it is because of the collective greed of the elected representatives and bureaucracy.

21. Has the Government made any efforts whatsoever to fight corruption, is the moot question. Originally when Indian Penal Code was drafted, it contained a provision against almost all crimes that was perceived by the Society which included corruption. When a particular crime grows out of proportion, the Legislature make special laws to fight the same like Anti-Terrorist Act, Offences against Women, etc. In 1947 itself the Governments of that time perceived that the corruption had reached a stage which required a special law other than the Penal Code to deal with it. Hence, the Prevention of Corruption Act, 1947 was codified. With the tremendous growth in corruption and number of people involved in corruption, one would have expected the law makers to make stricter anti-corruption Laws. Alas, that did not happen. But what has happened on 23rd December 2008 is something unbelievable. While approving 17 laws in 12 minutes, the Indian Parliament approved the amendments to Prevention of Corruption Act, which literally nullified the powers of the prosecuting agency. I ask a question to the law makers since 1947 to December 2008, has corruption reduced, so that it became necessary for the law to be diluted rather than making it stringent.
22. One of the commonest method by which the bureaucrat could be made subservient or even corrupted is by way of 'transfer'. Today, Government servants are used to gussy' postings which one gifts of political bosses. Transferring officials is not and should not be the prerogative of political bosses. It is the most potent weapon by which you can control the honest bureaucrat or reward dishonest one. I strongly believe that the power of transfer should be vested with the bureaucracy itself and politicians should not have any role to play in it. Way back in 2007 itself I had written to the Administrative Reforms Commission about the evils of transfer in the hands of political bosses. But nothing seems to have happened except reproducing my letter in one of its report.
23. Transparency and accountability are other factors which make or mans good governance. Unfortunately both are lacking inspite of Right to Information Act coming into force. It is sad that even the judiciary thought that it is below their dignity to be transparent.
24. Good Governance requires foresight and master planning. Administration should be able to foresee natural calamities and provide measures in advance to face such calamities. But today, as is well said any calamity is a boon to large section of governance. Cynics say in a democracy people get the Government they deserve. I do not believe in it. May be in life many events happen over which we may not have any control. But in a democracy many changes can be achieved if people fight for it collectively. According to me, good governance is our fundamental right. Collective voice for this will have its own effect. Every one should raise their voice about it. If that happens, one day in future I am sure good governance will be the rule of the day. No doubt, an eternal vigilance is the price one has to pay in democracy and that eternal vigilance should be collective one.
25. Very often when I deliver lectures to the students who are graduating, I am fond to quoting a stanza from the Gurudev Rabindranath Tagore's Nobel Prize winning Gitanjali. In the context of today's address, I have emboldened myself to modify that Gitanjali in the following words.

“Where the mind is without fear and every head is held high;

Where knowledge is free;
Where the country will not any more break into fragments of hate based on religion,
caste and language;
Where words of politicians come from the depth of truth;
Where arms of administration stretches towards the needy and Deprived not to fleece
them but to help them;
Where heart of politicians and administrators work towards fulfilling The promises
enshrined in our Constitution;
Into that heaven of freedom our Mother India should awake for its next Independence
Day.
(with profound apologies to Gurudev Tagore)
I am confident all the above are achievable with the application of honesty and
accountability in administration.
With this, Ladies and Gentlemen, I conclude this Memorial Lecture once again
dedicating the same and paying homage to late Justice S. Rangarajan.

(N. Santosh Hedge)
Lokayukta, State of Karnataka.