

Appearance of Good Governance as a Principle of Fundamental Law

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Abstract
The contention of "good governance" is emerging as a principle of basic law. As such, the paper will explore the rights-duties framework that is subsumed within the concept of good governance, and establishes a broad hypothesis on the legal standing of the principle of good governance in fundamental law, so, we will determine whether or not there exists a right to good governance in law. In undertaking this investigation, it is anticipated that a theoretical hypothesis will be established to confirm that the concept of "good governance" is indeed emerging as a principle of law.
Keywords: Good governance, Principle, Development Assistance, Digital Governance.

1. Definition of the Principle

I Definition of the Principle In general, good governance is perceived as a normative principle of administrative law, which obliges the State to perform its functions in a manner that promotes the values of efficiency, no corruptibility, and responsiveness to civil society. It is therefore a principle that is largely associated with statecraft. While the government is not obliged to substantively deliver any public goods, it must ensure that the processes for the identification and delivery of such goods are concrete in terms of i) being responsive to public demands; ii) being transparent in the allocation of resources and; iii) being equitable in the distribution of goods. The principle of good governance has also been espoused in the context of the internal operations of private sector organizations. In this way, corporate decision-making strategies integrate the principle of good governance and ensure that shareholder interests (i.e. public limited companies) and employees are taken into account. (Chowdhury&Skarstedt, 2005: 3-4)

Governance refers to the processes in government actions and how things are done, not just what is done. It covers the quality of institutions and their effectiveness in translating policy into successful implementation. Institutions are in general understood to be the bodies setting formal rules (property rights, rule of law etc.) while taking into account informal constraints (beliefs, traditions and social norms) that shape human interactions. if governments are to climb the maturity curve, This process requires putting into place the enabling institutions, procedures and processes surrounding PPPs in order to fully benefit from PPPs. This means also helping governments to play a critical role in the process and involving citizens as well as other stakeholders. Many governments, regional, international organisations and NGOs now recognize the importance of governance for economic development. (Marek, 2008: 13)

Good governance involves some key principles,
(a) Participation: the degree of involvement of all stakeholders;
(b) Decency: the degree to which the formation and stewardship of the rules is undertaken without harming or causing grievance to people;
(c) Transparency: the degree of clarity and openness with which decisions are made;
(d) Accountability: the extent to which political actors are responsible to society for what they say and do;
(e) Fairness: the degree to which rules apply equally to everyone in society; and
(f) Efficiency: the extent to which limited human and financial resources are applied without waste, delay or corruption or without prejudicing future generations.

2- The legal meaning of the principle of good governance

Good governance is therefore chiefly envisaged as a set of procedural tools to guarantee the efficacious improvement of the donor identified subject. The concept of good governance, as invented and applied by the World Bank, is a convenient term that refers to the entire gamut of political and economic frameworks. The term has been largely validated within political science and theories of economic prudence, albeit under a different rubric. Thus the rule of law, transparency and accountability represent indisputable principles of sound governance whose origin is steeped in the tradition of liberal political theory. Perhaps the rapid, widespread popularity and acceptance of the concept at least among donor agencies can be attributed to its historical roots. The origin of good governance, particularly with respect to its construction and application, has resulted in various legal repercussions. Good governance has primarily been constructed as an aid criterion, and has consequently been procedural in nature. (Chowdhury&Skarstedt, 2005: 11)

The concept of democracy is synonymous with the political doctrine of government functioning, which also constitutes a form (or norm) of political governance. Good governance, however, remains a highly subjective concept, which consists of a number of public values like accountability, access to information and non-corruption per se, that characterize a democracy, though not necessarily so. Democracy is associated with electoral democracy and hence public participation. In this light, the principle of good governance serves to intensify the concept of democracy.

Good governance has vitally contributed to the emergence of a substantive and democratic concept that is widely being recognized as a standard of essential law. As a result thereof, the points of convergence between 'good governance' and 'good administration' need to be ascertained. (Chowdhury&Skarstedt, 2005: 18) There are also a number of governance arenas where these issues play out:

1. Government: executive stewardship of the system as a whole;
2. Public administration: where policies are implemented;
3. Judiciary: where disputes are settled;
4. Economic society: refers to state-market, public and private sectors;
5. Political society: where societal interests are aggregated;
6. Civil society: where citizens become aware of and address political issues; and
7. Sustainable development: where environmental concerns are included.

Taking these elements we can say that good governance objectives in PPPs refer to the following:

(a) A fair and transparent selection process by which governments develop partnerships;
(b) Assurance that value for money has been obtained;
(c) An improvement of essential public services especially for the socially disadvantaged and adequate training for those to be involved in the new partnerships;
(d) Fair incentives to all parties and fair returns for risk takers, combined with the achievement of commercial success;
(e) Sensible negotiation of disputes that assures continuation of services and prevents the collapse of projects and consequent public waste; and
(f) Enhanced security in the face of the new threats and for a general improvement in the safety of services provided under PPP arrangements.

Prompted by concerns over the effectiveness of aid, the World Bank has significantly stretched its policy frontiers by endorsing "good governance" as a core element of its development strategy. Governance, which captures the manner in which power is exercised in the management of a country's economic and social resources for development, is a multifaceted concept. Limited by its restrictive mandate and institutional ethos, the Bank has adopted a restrictive approach, confining itself to the economic dimensions of governance. Nevertheless, this evolution represents an ambivalent enterprise with both promises and dilemmas, as the inherent tension between the economic and political dimensions of governance appears the most contentious issue. While democracy tends to refer to the legitimacy of government, good governance refers to the effectiveness of government. The quality of governance is ultimately attributable to its democratic content. Neither democracy nor good governance is sustainable without the other. Consequently, democracy and good governance need to converge, both conceptually and practically, in the study and practice of public policymaking. Therefore, for the Bank to substantially improve good governance in developing countries, it will need to explicitly address issues of power, politics and democracy.

That aid conditionality is not the most appropriate approach to strengthen good governance in developing countries. What is needed is a more radical approach in which donors cede control to the recipient country, within the framework of agreed-upon objectives. (SANTISO, 2001:2)

3- Good Governance and Development Assistance

"Justice without strength is helpless, strength without justice is tyrannical. Unable to make what is just strong; we have made what is strong just." Pascal, Pensées (1670)

Aid conditionality, i.e. conditioning aid on a number of prerequisites and promises of reform, has been extended from the economic realm to the political arena. Some argue the new governance agenda is merely, a smorgasbord of economic and political prescriptions for development and a "fig leaf" hiding renewed conditionalities. Nevertheless, introducing the concept of good governance has resulted in a broadened understanding of development and has significantly altered the agenda of IFIs. More fundamentally, it has affected what they do and how they do it. Assessing The World Bank at the Millennium, forthright former Bank Chief Economist Joseph Stiglitz asserts: "Views about development have changed in the World Bank, as they have in the development community. Today there is concern about broader objectives, entailing more instruments, than was the case earlier" (1999, F587).

The introduction of the concept of governance in the development agenda reflects growing concerns over the effectiveness of aid whose ultimate aim is to reduce poverty and human suffering. Confronted with declining aid budgets and increased scrutiny by civil society, the Bank has given greater consideration to the pervasive effects of mismanagement and endemic corruption. Furthermore, the Bank's involvement in governance work has also upset the traditional division of labor between the United Nations (UN) agencies and the IFIs, questioning their respective roles in global governance. This has resulted in considerable encroachment on other organizations' traditional institutional territory (a trend commonly referred to as "mission creep"). The reform of multilateral development finance is thus an integral component of current efforts at reforming the international financial architecture. (SANTISO, 2001:3)

The governance agenda promoted by the Bank represents an ambivalent enterprise plagued with both promises and dilemmas. Reforming the systems of governance is a politically sensitive endeavor that has traditionally been considered outside its core mandate. The Bank's founding charter prohibits it from taking into account political considerations when designing aid programs. A remnant of the bipolar confrontation of the Cold War, this legal restriction is antiquated and should be revised. Furthermore, the mainstreaming of good governance has been fragmented, leading to multiple understandings of the concept, as it originated within neo-liberal economic development paradigm. This approach tends to give governance a false sense of political neutrality, as it portrays development without politics. The Bank's understanding of good governance continues to reflect a concern over the effectiveness of the state rather than the equity of the economic system and the legitimacy of the power structure. the quality of governance is ultimately attributable to its democratic content. Therefore, for the Bank to substantially improve good governance in borrowing countries and reinvent itself, it will need to explicitly address issues of power, politics and democracy. aid conditionality is not the most appropriate approach for strengthening good governance in developing countries. What is needed is a more radical approach in which donors cede control to the recipient country, within the framework of agreed-upon objectives. As the sixteenth century French thinker Pascal would have said, "Unable to make what is just strong; we have made what is strong just". (SANTISO, 2001:4)

4- Digital Governance

Digital governance in developing countries may seem to be a distant thought for many but it is certainly making its presence felt, and in a form which is different from that evident in the developed countries. We are entering into a brave new world where it will not be the leaders who govern people but it is the people who will let the leaders govern them. The paper provides an insight into how digital governance models are facilitating the transformation of governance in developing countries to more responsive and people-led governance structures. (Vikasd, 2002:1)

Digital Governance is a popular term to focus on the new, evolving forms of governance - electronic governance. Good governance rests on the pillars of information and knowledge and its recognition by the decision-makers. Digitisation of this entire set of knowledge within a network which links every individual including the decision-makers and gives democratic freedom to everyone to access and make use of this knowledge paves the way for Digital Governance. Introduction of Digital Governance is a way to ensure that common citizens have equal right to be a part of decision-making processes which affect them directly or indirectly, and influence them in a manner which best improves their conditions and the quality of lives. The new form of governance will ensure that citizens are no longer passive consumers of services offered to them and would transform them to play a decisive role in deciding the kind of services they want and the structure which could best provide the same. (Vikasd, 2002:4-5) Models of digital governance are still evolving in developing countries and continuously improvising to fully harness the potential of knowledge networks. A few generic models however have shaped up which are finding greater recognition and are being replicated. These models are based on the inherent characteristics of ICT, which are: enabling equal access to information to anyone who is a part of the digital network and de-concentration of information across the entire digital network. In simpler terms, information does not reside at any one particular node in the Digital Governance Models but flows equally across all the nodes- a fundamental change from the more common hierarchical information flow model that leads to unequal distribution of information and hence skewed power-relations. It needs to be noted here that these models of governance are fundamentally different from those popular in the developed countries due to the differences in the basic conditions, and perspectives and expectations from good governance. The five generic models of digital governance in developing countries that have been identified and will be discussed in this paper are: Broadcasting / Wider-Dissemination Model, Critical Flow Model, Comparative Analysis Model, Mobilisation and Lobbying Model. (Vikasd, 2002:4-5)

A) conclusion

The concept of good governance has been applied in several contexts, and as a result thereof, its substantive meaning has undergone considerable change. Accordingly, the concept has been propagated in conjunction with the right to development, human rights and the rule of law.

Within the sphere of sustainable development law, the concept of good governance has been applied amply. This is due in large part to the concept's underlying principles of transparency, accountability and responsiveness. Indeed, the concept of good governance underlies the somewhat disparate frameworks of political decision-making vis-à-vis resource allocation.

Observing these objectives and principles will lead to economic benefits. Good governance also matters from an economic perspective.

(a) An effective procurement regime means that government institutions are able to buy goods and services of higher quality at lower prices;

(b) Mechanisms that secure well-governed projects will heighten the support of society and give policymakers the confidence to provide the necessary political support;

(c) Projects which are well planned and are based on the full agreement of all parties engaged, following a proper and ongoing consultation, have less of a chance of unravelling, thereby avoiding costly litigation;

(d) A public administration that conducts its purchasing in an open manner contributes to the increased confidence of suppliers in the reliability of the administration as a business partner; and

(e) Good governance and efficient institutions are strongly linked to increased competitiveness and faster rates of economic growth and development.

The Bank calls into question the ability, capacity and willingness of political authorities to govern effectively in the common interest. There is heightened awareness that the quality of a country's governance system is a key determinant of the ability to pursue sustainable economic and social development.

B) Recommendations

In proposing for a wider appreciation and recognition of the principle of good governance, nation States must necessarily be allocated sufficient scope for independent policy-making. Fundamentally, countries should be permitted the flexibility to interpret their obligations and duties under the rubric of good governance in conjunction with their respective domestic priorities. This rationale, however, does not preclude the importance of achieving a consensus with respect to a minimum core set of guidelines as set out in the principle of good governance. In an effort to reach an agreement on the concept of good governance, some queries merit attention here. For instance, which key ingredients or values might be integrated into the concept of good governance? Or more generally, can the concept of good governance be adopted in the same way as the human rights regime?

However, while recognizing the importance of the political dimensions of governance, the Bank interprets the concept restrictively, arguing that the first aspect – whether a government is democratic or not - falls outside its mandate. As a result, it focuses on the economic dimensions of good governance, which has been equated with 'sound development management'. Consequently, the main thrust of governance-related activities has been public sector management, financial management, the modernization of public administration, and the privatization of state-owned enterprises.

However, the shift from the notion of governance to good governance introduces a normative dimension addressing the quality of governance. A good governance system puts further requirements on the process of decision-making and public policy formulation. It extends beyond the capacity of public sector to the rules that create a legitimate, effective and efficient framework for the conduct of public policy. It implies managing public affairs in a transparent, accountable, participatory and equitable manner. It entails effective participation in public policy-making.

Digital governance models bring with them the potential to result in far-reaching changes in governance structures in developing countries. The approach to it however has to be cautious and well- thought, and should take into consideration the existing situation in developing countries, such as high rates of illiteracy, lack of private means to own an ICT node, and poor infrastructure availability. Simple replication of popular e-governance models of the North will not be effective and may end up marginalising people who are on the wrong side of the digital divide. The creativity lies in the use of information and blending it with the potential offered by ICT to create customised low-cost digital governance models. Understanding of the political environment is therefore a must. Solutions may often emerge by analysis of reasons behind governance failures by the people themselves and then imaginatively using digital governance models to focus on the weakest spot in the bad governance cycle to bring gradual improvements. Small successes therefore become significant landmarks in the path to transformation to good governance. Last but not the least, the existence of a civil society that is intolerant to bad governance is of no less importance. A civil society which is content or tolerant to the ways of current governance processes and refuses to engage in the political change process will find digital governance models to be of little use.

Sources

1. Vikasd, Nath (2002), "Digital Government Models: Moving Towards Good Governance in Developing Countries", E-Commerce, Vol. 2, No. 4, pp. 12- 29.
2. Gareth, Williams (2011), The rise to prominence of good governance as a key development,This paper is part of a series of policy briefs intended to share our insights on an ongoing basis, in a form that is

easily digestible and readable to policymakers, experts and others in the development field, http://thepolicypractice.com.
3. World Health Organization (2013),Good Governance For Prison Health In The 21st Century A Policy Brief On The Organization Of Prison Health, A Policy Brief On The Organization Of Prison Health: BRAZIL, www.euro.who.int, UNODC/CCPCJ/EG.6/2013/INF/4, p.5.
4. Chowdhury, N., & Skarstedt, C.E. (2005), the principle of good governance. Draft Working Paper, CISDL Recent Developments in International Law Related to sustainable development series. Oxford: UK, PP
5. Belka , Marek (2008), Guidebook on Promoting Good Governance in Public-Private Partnerships, Geneva: United Nations, United Nations Economic Commission for Europe, pp
6. Schelkle, Waltraud (2009), Good Governance in Crisis or a Good Crisis for Governance? A Comparison of the EU and the US, London: LEQS Paper No. 16, LEQS European Institute London School of Economics Houghton Street WC2A 2AE London Email: euroinst.LEQS@lse.ac.uk.
7. SANTISO, CARLOS (2001), Good Governance and Aid Effectiveness: The World Bank and Conditionality, The Georgetown Public Policy Review, Vol. 7, No. 1, pp.1-22