STRENGTHENING GOOD GOVERNANCE FRAMEWORK: A KEY TOOL IN COMBATING CORRUPTION AND PROMOTING HUMAN RIGHTS

Dr. Monica Narang[1], Nitan Sharma[2]

Sr. Assistant Professor[1], Research Scholar[2], Department of Law, University of Jammu, Jammu- 180006

monicanarang@yahoo.com, nitansharmaadv@gmail.com

Abstract-- **Good Governance implies utmost concern for people's welfare wherein the government and its bureaucracy follow policies and discharge their duties with a deep sense of commitment; respecting the rule of law in a manner which is transparent, ensuring human rights and dignity, probity and public accountability. It is significant because it promises to deliver on the promise of human rights: civil, cultural, economic, political and social rights in the climate which is marred by an insidious plague of corruption from all sides. Corruption is prevalent in all nations irrespective of their size and standings but it is in the developing world that its effects are most cancerous. Success in eradicating corruption depends on embracing the core values of accountability, transparency, rule of law, participation, consensus orientation, effectiveness and efficiency, equity and inclusiveness, responsiveness in the functioning of government. Action towards curtailing corruption is perceived as a commitment towards creating good governance. Good Governance flourish in a necessarily corruption free situation. Promoting integrity in government and the marketplace improves the global governance climate, nurtures long term growth, and extends the most cherished human right of people to live in corruption free societies. Good governance is thus, a function of installation of positive virtues of administration and elimination of vices of dysfunctionalities. It makes the government work effective, credible and legitimate in administrative system and citizen-friendly, value caring and people-sharing. This paper is an attempt to analyse the interplay between good governance, Anti-Corruption measures and Human rights. It further explores how strengthening good governance framework helps in combating corruption and promotion of human rights.**

Key words: Good Governance, Corruption, Human Rights, Accountability, Transparency, Rule of Law.

1. INTRODUCTION

Since inception of human civilization the effort has been to establish a society which caters to the need of one and all. Thinker Hobbes, Locke and Rousseau had emphasized on social contract theory. Rousseau specifically talks about general will theory in which each individual gives up his own will to see that one person or a group looks after the welfare of the entire society, thus the responsibility may be entrusted to chosen few but they have a moral obligation to rule in the best interest of the people.[1] Today the members of the comity of nations are founded on the principle of "welfare State'' which allows full participation of their respective inhabitants, striving to achieve the common good and in the process affording optimum opportunity and involvement for growth of the individual so as to subserve the societal interests. This has led to the evolution of "**Good Governance**", as opposed to mere governance, as an umbrella concept encompassing within it a system of governance that is able to unequivocally discover the basic values of the society where standards concern economic, political and socio-cultural issues including those involving human rights, and follows the same through an accountable and upright administration.[2] But with the emergence of welfare state there is a phenomenal growth in the powers and functions of the state too. When the powers and functions of the state so increases, there arises a danger of abuse of power or excessive use of power by those who act on behalf of the state. We cannot deny adequate powers necessary for competent discharge of its functions to the state. At the same time, it is necessary to provide checks upon the exercise of such power.

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1. Rafia Nisar, " Governance: With Pro-People Approach" 4 *The Indian Journal of Political Science* 657 (2012).
2. Justice Y.K. Sabarwal, "Role of Judiciary in Good Governance", *available at:* highcourtchd.gov.in/sub-pages/left-menu/publish/articles/articles_pdf/goodgovernance.pdf (last visited on May 27, 2017).

Power must be exercised strictly within limits drawn by the law.[3] Lord Acton's saying that, "Power corrupts and absolute power corrupts absolutely" holds true in the current Indian milieu as corruption has become an inevitable and unavoidable part of our daily life.

From the Panama Papers to the impeachments of the presidents of Brazil and South Korea, 2016 was a year marked by corruption scandals and by rising public outrage over graft. These events show people want more transparency and accountability from their leaders. Described as potentially the largest whistle blowing document disclosure in history, the release of 11.5 million records in the Panama Papers will inherently force societies globally to make basic choices about the conflict between secrecy and accountability. That is because they expose the secret financial lives of the wealthy and powerful in some 200 countries from all continents and ideologies, including Russian and Chinese leaders. [4]

"The publication of the Panama Papers reminds us of the rapid expansion and power of transparency", the head of the World Bank, Jim Yong Kim, told a London anti-corruption summit in May. He urged more transparency and accountability in public life, stressing that "corruption is quite simply, stealing from the poor."[5]

The human cost of corruption is huge, yet all too often leaders with notoriously corrupt records continue to enjoy lives of luxury at the expense of people living in grinding poverty. Given the increased salience of corruption in the modern world, it comes as little surprise that in recent times social scientists have also conducted ever more analysis of corruption's underlying causes, its effects, and naturally what policy-makers have tried to do (and indeed should do in the future) to try and counteract it. Working to reduce the underlying negative effects of corruption therefore seems to be very much the order of the day.[6]

Combating corruption is instrumental to the broader goal of achieving more effective, fair, and efficient governance. When there is inadequate transparency, accountability, and probity in the use of public resources, the state fails to generate credibility and authority. Corruption undermines the credibility of democratic institutions and counteracts good governance. There is a high correlation between corruption and an absence of respect for human rights, and between corruption and undemocratic practices. Corruption alienates citizens from their government.

2. CORRUPTION: ITS MEANING AND FORMS

The term "corruption" comes from the Latin word *corruptio* which means "moral decay, wicked behaviour, putridity or rottenness". The concept may have a physical reference, as in "the destruction or spoiling of anything, especially by disintegration or by decomposition with its attendant unwholesomeness and loathsomeness; putrefaction"; or moral significance, as in "moral deterioration or decay...the perversion or destruction of integrity in the discharge of public duties by bribery or favour."[7]

These definitions are representative of two shortcomings: they define corruption only in terms of bribery, or in terms that are very general. As a result, corruption definitions tend either to be too restrictive or excessively broad. In fact, this is not as contradictory as it may seem. Corruption has indeed broad causes and consequences. Corruption demands a multidisciplinary approach, and many fields of study, from political science to economics, have addressed the issue.

In the economics field, for example, Robert Klitgaard has defined corruption in terms of an equation:

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3. S.P. Sathe , *Administrative Law* 1 (N.M. Tripathi Ltd., Bombay, 4th edn.,1984).

4. Whistle blowing and the Panama papers- Government Accountability, *available at:* https://www.whistleblower.org/whistleblowing-and-panama-papers-exploring-connections (last visited on June 2, 2017).

5. Tackling Corruption to Create a More Just and Prosperous World: Jim Yong Kim, *available at*: www.worldbank.org/en/news/speech/2016/05/12/remarks-by-world-bank-group-president-jim-yong-kim-at-anti-corruption-summit-2016 (last visited on June 2, 2017).

6. D. Hough, *Corruption, Anti-Corruption and Governance* 1 (Palgrave Macmillan, UK, 2013).

7. V.N. Viswanathan (ed.), *Corruption and Human Rights* 70 (Allied Publishers, New Delhi, 2012).

$$C \quad = \quad M \quad + \quad D \quad - \quad A$$

(Corruption) = (Monopoly power + Discretion)- (Accountability).[8]

The equation shows that if a system gives an official monopoly power over a good or service, the discretion to decide how much a particular client receives, and is not accountable, then the system will be prone to extortion or bribery.

It is significant to mention here that UNDP takes into account other factors such as integrity and transparency, which work as a balance to monopoly and discretion. For UNDP, therefore, the definition of corruption is:[9]

$$C \quad = \quad (M \quad + \quad D) \quad - \quad (A \quad + \quad I \quad + \quad T)$$

Corruption = (Monopoly Power + Discretion) – (Accountability + Integrity + Transparency)

Development banks and other national and international organisations have also variously defined corruption. World Bank (1997) has defined corruption as the "use of public office for private gain". Stephen D. Morris, Professor of Politics, writes that [political] corruption is the illegitimate use of public power to benefit a private interest.[10]Probably the most used definition is the one adopted by Transparency International: "corruption is the abuse of entrusted power for private gain".[11]

2.1 DIFFERENT FORMS OF CORRUPTION

There are several forms of corruption. A well-known classification distinguishes grand from petty corruption. *Grand corruption* refers to the corruption of heads of state, ministers, and top officials and usually involves large amount of assets.[12] *Petty corruption,* also called "low" and "street" corruption, indicates the kinds of corruption that people experience in their dealings with public officials and when they use public services (hospitals, schools, local licensing authorities, police, tax offices, etc.).[13] It generally involves modest sums of money.

Others have classified corruption by type. *Political corruption* involves law-makers (monarchs, dictators, legislators) acting in their role as creators of the rules and standards by which a polity operates. Such officials seek bribes or funds for their political and personal benefit and provide favours to their supporters at the expense of broader public benefits. *Administrative corruption* includes the use of bribery and favouritism to lower taxes, escape regulations and win low-level procurement contracts. *Corporate corruption* occurs between private businesses and suppliers or private service providers. It also involves illegal behaviour by corporate officials for private monetary gain. Institutionalised corruption names the behaviour of those who exploit institutional positions to influence institutional processes and actions, such as law enforcement personnel and members of the judiciary; operational corruption, narrower, describes specific activities and goals.[14]

3. MEANING OF GOOD GOVERNANCE

The concept of 'Governance' is not new. It is as old as government itself. Both the terms are derived respectively, from the old French *gouvernance* and *governement*. Initially, there meanings were very close, referring to acts or manner of government. By the mid-16th century, however, government denoted a "system by which something is governed" and by the early 18th century it further evolved to acquire the meaning of a 'governing authority'. In this process the term governance gradually became marginalized, and by the 19th century it was deemed to reflect an

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8.   *Ibid.*
9.   Anti-corruption, *available at*: www.pogar.org/publications/finances/anticor/undp-ati03e.pdf (last visited on June 5, 2017).
10. Corruption-ESDAW, *available at*: www.esdaw.eu/corruption.html (last visited on June 5, 2017).
11. Transparency international- What is Corruption?, *available at*: www.transparency.org/what-is-corruption (last visited on June 5, 2017).
12. Corruption Glossary, *available at*: www.u4.no/document/faqs5.cfm#grandcorruption (last visited on June 5, 2017).
13. Corruption Glossary, *available at:* www.u4.no/document/faq5.cfm#pettycorruption (last visited on June 5, 2017).
14. Corruption and Human rights: Making the connection, *available at*: www.u4.no/recommended-reading/corruption-and-human-rights-making.../2329 (last visited on June 5, 2017).

incipient archaism. For the next 100 years, it would hardly be used as a political term. Dictionaries would define government in terms of a governing authority, including the political order and its institutional framework, while governance was treated as the agency and process of governing, and was often viewed as archaic.[15]

However, during 1980s under economic reforms, especially under globalization the use of the term governance became popular with its emphasis on the process and manner of governing to the notion of sustainable development. Meanwhile, organizations such as the IMF, NGOs, the UN and its agencies, the World Bank and International media were quick to pick up the term and use it in a variety of ways.[16]

In 1989 World Bank study "Sub –Saharan Africa- from crisis to sustainable growth" analysed the developmental problems in Sub-Saharan Africa. In the 1980s, the economic performance of the countries in the region had worsened despite the implementation of the Bank's structural Adjustment Programs (SAP's). Failure of public institutions was cited as reason for weak performance. In the 1989 study the term "governance" was first used to describe the need for institutional reform and a better and more efficient public sector in Sub-Saharan countries.

The Africa- study defined governance as 'the exercise of political power to manage a nation's affairs'.[17]

3.1.   Defining Good Governance

The 1989 Study on Sub-Saharan Africa introduced governance without explicitly referring to the connotation "*good*". It was only in the foreword, that former World Bank President Barber Conable used the term " Good Governance" , referring to it as a ' public service that is efficient , a judicial system that is reliable, and an administration that is accountable to its public.[18] In following publications the Bank firstly avoided the frequent use of the word 'good' in connection with governance. According to Frischtak, a reason for this reluctance could have been that the use of the adjective 'good' referred to a subjective view on the performance of a state and that interpretation of the meaning of 'good governance' may vary. Nevertheless, the Bank started using the term 'good governance' more and more frequently.

Good governance being an adjective expression connotes certain value-assumptions, whereas governance as a process denotes a value-free dispensation.[19]

In the 1992 report entitled "Governance and Development", the World Bank set out its definition of good governance. This term is defined as "the manner in which power is exercised in the management of a country's economic and social resources for development". The report stated that the World Bank's interest in governance derives from its concern for the sustainability of the projects it helps finance. It concluded that sustainable development can only take place if a predictable and transparent framework of rules and institutions exists for the conduct of private and public business. The essence of good governance was described as predictable, open and enlightened policy, together with a bureaucracy imbued with a professional ethos and an executive arm of government accountable for its actions. All these elements are present in a strong civil society participating in public affairs, where all members of the society act under the rule of law.[20]

Governance is the manner in which power is exercised in the management of a country's social and economic

15. Mikhali llyin, "Governance: What is Behind the World?" 37 *Indian Political Science Association Bulletin* 4 (2013).

16. *Ibid.*

17. The World Bank's evolving concept of good governance and its impact on human rights, *available at:* www2.warwick.ac.uk/fac/...maldonado_nicole_paper-final_ii.doc (last visited on June 6, 2017).

18. Sub-Saharan Africa: From Crisis to Sustainable Growth, A Long-Term Perspective Study, The World Bank(Nov 1989) Foreword by Barber B. Conable, p. Xii.

19. Hilal Wani, "Constrains and Impediments of Good Governance in Africa: Future prospects" 5 *Afro   Asian Journal of Social Sciences* 19 (2014).

20. Definitions and Elements of Good Governance, *available at:* www.ipa.government.bg/sites/default/files/pregled-dobro upravlenie.pdf (last visited on June 6, 2017).

resources for development.[21]Governance is the sum of many ways individuals and institutions, public and private, manage their common affairs. It is a continuing process through which conflicting or diverse interests may be accommodated and co-operative action taken. It includes formal institutions and regimes empowered to enforce compliance, as well as informal arrangements that people and institutions either have agreed to or perceive to be in their interest.[22]

The Organization of Economic Cooperation and Development (OECD) defines governance as "the use of political authority and exercise of control in a society in relation to the management of its resources for social and economic development".[23]

The United Nation Development Programme's (UNDP) definition of good governance is set out in a 1997 UNDP policy document entitled "Governance for Sustainable Human Development''. The document states that governance can be seen as the exercise of economic, political and administrative authority to manage a country's affairs at all levels. It is explained that governance has three dimensions economic, political and administrative. Economic governance includes the decision-making processes that affect a country's economic activities and its relationships with other economies. Political governance is the process of decision-making to formulate policy. Administrative governance is the system of policy implementation. Encompassing all three, good governance defines the processes and structures that guide political and socio-economic relationships.[24]

Governance encompasses the capacity of the state, the commitment to the public good, the rule of law, the degree of transparency and accountability, the level of popular participation, and the stock of social capital. Without good governance, it is impossible to foster development. No amount of resources transferred or infrastructure built can compensate for or survive bad governance.[25]

Canada Institute of Governance visualises Governance as the process whereby societies or organization make important decisions, determine whom they involve and how they render account. [26]Thus it is focussed on three dimensions: authority, decision-making and accountability.

According to O.P. Minocha, the good governance refers to adoption of new values of governance to establish greater efficiency, legitimacy and credibility of the system. In simple terms good governance can be considered as citizen-friendly, citizen-carrying and responsive administration.[27]

Governance thus allows us to conceptualise the complex arrangement of relationships and rules needed to manage and distribute resources in today's world, where traditional federal and top down structures of command and control may no longer suffice.

4. CONCEPT OF HUMAN RIGHTS

Human Rights are those irreducible minima, which belong to every member of the human race when pitted against the state or other public authorities or groups and gangs and other oppressive communities. Being a member of the human family he/she has the right to be treated as human once he/she takes birth or is alive in the womb with a

21. Governance-Asian Development Bank, *available at:* https://www.adb.org/sites/default/files/instituional.../31483/omc04.pdf (last visited on June 6, 2017).
22. Commission on Global Governance-wikipedia, *available at:* http://en.wikipedia.org/wiki?commission _on_Global_Governance (last visited on June 6, 2017).
23. Anil Kumar Thakur and Parmanand Singh(eds.), *Economics of Good Governance* 38 (Deep and Deep Publications Pvt. Ltd., New Delhi, 2009).
24. Governance for Sustainable Human Development, A UNDP policy paper UNDP 1997, p 2-3.
25. USAID, Promoting Democratic Governance, *available at:* http://www.usaid.gov/fani/overview_ governance.htm (last visited on June 6, 2017).
26. Defining Governance, *available at:* iog.ca/defining-governance/ (last visited on June 6, 2017).
27. O.P. Minocha, "Good Governance: New Public Management and Perspective" XLIV 3 IJPA 272 (1998).

potential title personhood.[28] While there are certain necessities like food, water, shelter, basic for sustaining life and saving it from hunger and destitution, disease and despair and without which one cannot live, there are also certain fundamental and freedoms without which it would not be worth living. A human being is a live and living creature and humanity is a live and living organism, united from within by basic human rights inseparable from human dignity, liberty and freedom.[29]

According to Boutros Boutrous-Ghali, the former Secretary General of the UN, human rights constitute a "common language of humanity".[30]

Milne argues that human rights are simply what every human being owes to every other human being and as such represent universal moral obligations. These rights can be summarised as the right to life, to freedom from unprovoked violence and arbitrary coercion, to be dealt with honestly, to receive aid in distress, and to be respected as a human person.[31]

Susan Moller Okin states that a human right is "a claim to something (whether a freedom, a good, or a benefit) of crucial importance for human life."[32]

In his Tagore Law Lecture, Krishna Iyer, a former outstanding judge of the Supreme Court, has defined human rights as under:

Human rights are writ on a large canvas, as large as the sky. The lawmakers, lawyers and particularly, the judges must make the printed text vibrant with human values, not be scared of consequences on the status quo order.[33]

Rosenbum Alan defined human rights as "the legitimate basis for a universal human community." By human community he refers that an ideal association of human persons conceived for the individual and collective benefit of its members.[34]

Human rights are sometimes called fundamental rights or basic rights or natural rights. They may also be described as 'common rights' for they are rights which all men and women in the world would share, just as the common law in England, for example, was the body of rules and customs which, unlike local customs, governed the whole country.[35]

4.1   Universalisation of Human Rights: From Declaration to Conventions under UN System

One of the most significant features of the legal system of the United Nations is the inclusion of the promotion of Human Rights as one of the basic purposes of this organisation. There are seven provisions under the United Nations Charter, which deals directly with the human rights. The provisions concerning human rights run throughout the U.N. charter 'like a golden thread'[36].

The preamble of the U.N. charter begins with the words' 'WE THE PEOPLE OF THE UNITED NATIONS'' and to say the least, these words are neither superfluous nor have crept in the preamble incidentally. The framers of the charter were really serious and did not rest with the using of these words in the preamble but went on to give content to these words in numerous provisions concerning human rights, elimination of colonialism, non-self governing territories, economic and social co-operation, etc. In this context, the words "WE THE PEOPLE OF

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28. Justice V. R. Krishna Iyer, *The Dialectics and Dynamics of Human Rights in India- Yesterday, Today and Tomorrow- Tagore Law Lectures* 54 (Eastern Law House, Calcutta,1999).

29. Shveta Dhaliwal (ed.), *Human Rights Advocacy: Global Approaches, Local Experiences* (Rajiv Gandhi National University of Law, Punjab, 2011).

30. K.C. Joshi, *International Law & Human Rights* 474 (Eastern Book Company, Lucknow, 3rd Edn., 2016).

31. Quoted in Lloyd's Introduction to Jurisprudence (5th Edn.) 143.

32. *Id., at* 233-34.

33. Quoted in *Ram Deo Chauhan v. Banti Kant Das* (2010) 14 SCC 209.

34. R. Alan (ed) (1980), *The Philosophy of Human Rights: International Perspective 4* (West Port,   Connecticut, Green Wood Press, 1987).

35. J.E.S. Fawcett, *The Law of Nations 151* (The Penguin Press, London, 1968)

36. P Sukumaran Nair (ed.) , *Human Rights in a Changing World 312* (Kalpaz Publications, Delhi, 2011).

THE UNITED NATIONS ''': are very meaningful. They show the objectives which the framers of the charter wanted to achieve. After having made this significant innovation in an international treaty, the preamble further reaffirms "faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women".[37]

An event of much wider significance is the declaration adopted by the United Nations on 10 December 1948 popularly known as the Universal Declaration of Human Rights .It was recognised at the time of drafting of the UDHR that it would not create legally binding obligations. So it was decided that the Commission on Human Rights (CHR) should undertake the drafting of a legally binding human rights instrument modelled on the UDHR. The outcome of this effort resulted in two separate human rights instruments adopted, one dealing with Economic, Social and Cultural rights (ICESCR),[38] and the other dealing with Civil and Political rights (ICCPR).[39] They contain language that is more specific about the duties and role of governments in securing the respect for and realization of human rights.

Some other basic international instruments for safeguarding of human rights have also been adopted, such as the International Convention on the Elimination of All forms of Racial Discrimination[40],Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)[41],   the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment[42] , the Convention on the Rights of the Child (CRC)[43], the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.[44] The Convention on the Rights of Persons with Disabilities[45] and the International Convention for the Protection of all Persons from Enforced Disappearance (ICPPED)[46] are the recent ones in this direction.

Most notably, more than 80 percent of member states have ratified 4 or more of the 9 core international human rights treaties. At the same time, the UN Convention against Corruption currently has 181 states parties. It shows that States around the world are committed to international fight against corruption.

Keeping in view the premise of the present study, it is significant to mention here that international anti-corruption play a very important role in the global fight for integrity and accountability by bringing the fight against corruption to the political forefront and by setting legally binding standards and principles by which signatory states can be held to account

5. KEY INTERNATIONAL EFFORTS TOWARDS STRENGTHENING GOOD GOVERNANCE BY COMBATING CORRUPTION

 Following are the key international efforts aimed at strengthening good governance by addressing the root cause common to all national systems viz., corruption

➢   *International Conventions:*

a.. United Nations conventions against Corruption, 2003[47];

b. OECD Anti-Bribery Convention (officially Convention on Combating Bribery of Foreign Public officials in

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37. Dr. S.K. Kapoor, *International Law and Human Rights 799* (Central Law Agency, Allahabad, 16th edn., 2007).

38. The International Covenant on Economic, Social and Cultural Rights adopted under General Assembly Resolution 2200A (XXI) on 16 December 1966, entered into force on 3 January 1976.

39. The International Covenant on Civil and Political Rights adopted under UN General Assembly Resolution 2200A (XXI) on 16 December 1966, entered into force on 23 March 1976.

40. Adopted under UN General Assembly Resolution 2106A (XX) on 21 December 1965. It came into force on 4 January 1969.

41. Adopted under General Assembly Resolution 34/180 on 18 December 1979. It came into force on 3 September 1981.

42. Adopted under General Assembly Resolution 39/46 on 10 December 1984. It came into force on 26 June 1987.

43. Adopted under General Assembly Resolution 44/25 on 20 November 1989. It came into force on 2 September 1990.

44. Adopted under General Assembly Resolution 45/158 on 18 December 1990. It came into force 1 July 2003.

45. Adopted under General Assembly Resolution 61/106 on 13 December 2006. It came into force on 3 May 2008.

46. Adopted under General Assembly Resolution 61/177 on 20 December 2006. It came into force on 23 December 2010.

47.   Adopted by General Assembly Resolution 58/4 on 31 October 2003. It entered into force on 14 December 2005.

international Business Transactions) 1997;

c. UN Convention against Transnational Organized Crime 2000[48];

➢ *Regional Conventions:*

a. African Union Convention on Preventing and Combating Corruption 2003;

b. South African Development Protocol Against Corruption 2001;

c. Economic Community of West African States Protocol on the Fight Against Corruption 2001;

d. Organisation of American States Inter-American Convention Against Corruption 1996;

e. Council of Europe criminal Law Convention on Corruption 1999;

f.   Council of Europe Civil Law Convention on Corruption 1999;

g. European Union Convention Against Corruption involving officials 1997;

h. Convention on the Protection of the EC financial interests 1995;

The legal standards and objectives articulated by human rights and anti- corruption instruments are in many aspects complementary and their implementation may be significantly enhanced if practitioners draw on this synergy. In recent years, United Nations and regional organisations have increasingly recognised the negative impacts of corruption on the enjoyment of human rights. Almost all the texts refer only to a "negative impact" on the enjoyment of human rights,[49] or state that corruption "undermines" human rights, or emphasize the "grave and devastating effect" of corruption on the enjoyment of human rights.[50]   Moreover, the treaty bodies and special procedures of the United Nations Human Rights System have regularly identified corruption as a critical factor contributing to the failure of states to satisfy their human rights obligations.

5.1 Indian Position:

The Government in India, both at the centre and the states, share the concern for ensuring responsive, accountable, transparent, decentralised and people-friendly governance at all levels. There is, however, considerable frustration and dissatisfaction amongst the people, especially the weaker section of society, about the apathy, irresponsiveness and lack of accountability of public servants. There is continuous growth in instances of corruption and criminalisation in public life and administration. Taking strong note of the problem of corruption and equating it with the age old evils of casteism and untouchability in Indian society PM Modi while addressing the 21st National Youth Festival by video Conferencing, underlined that over 80 crore people aged 35 years can contribute immensely to the social changes. He urged the youth to fight against black money and corruption as it has the tendency to destroy the country.[51]

The pervasive presence of corruption in the system of governance in India undermines the effectiveness of all institutions of governance. From independence to now, successive governments have undertaken various legislative and institutional measures to reduce the levels of corruption in the country viz.,

➢ *Legislative framework:* The existing statutory framework to combat corruption in India includes the following key acts:-

a.   Prevention of Corruption Act, 1988

b.   Benami Transaction Prohibition act, 1988

c.   Prevention of Money Laundering Act, 2002

d.   Central Vigilance Commission Act, 2003

e.   Right to Information Act, 2005

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48.   Adopted by General Assembly Resolution 55/25 on 15 November 2000. It entered into force on 29 September 2003.

49. Human Rights Council Resolutions 29/11 "The negative impact of corruption on the enjoyment of human rights" of 2 July 2015.

50. UN Human Rights Commission, Progress report 2005 (n. 17), para. 41.

51. "PM Narendra Modi urges youth to fight against black money and corruption", Huffington Post India, Jan 12, 2017.

f.   Whistleblower's Protection Act, 2011

g.   Lokpal and Lokayuktas Act, 2013

h.   Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015.

➢   *Institutional Framework:*

Mere enactment of laws cannot promote Good Governance. There must exist strong institutional framework to enforce or implement those laws.

In India, there are many bodies in place for implementing laws and policies meant to strengthen good governance framework by ensuring accountability, transparency and responsiveness among the public functionaries both at the Central and State level.

At the federal level institutions like Central Vigilance Commission (CVC), Central Bureau of Investigation (CBI) and Central Information Commission (CIC) exist.

But unfortunately most of these measures have not achieved the results that were intended. So there is a need to view corruption as a human rights violation. The human rights approach allows one to look at the problem of corruption through a different lens and it adds a new perspective to the fight against corruption. Corruption occurs at different phases or levels. Programmes and policies aimed at enhancing socio-economic rights can be designed in such a way as to make them more or less susceptible to corruption. The human rights approach focuses on the victims rather than the perpetrators and it allows one to confront corruption at these different levels by building public policy into the fight against corruption. By approaching corruption from this different angle it adds human rights' norms and institutions to the arsenal of weapons to combat corruption.

6. INTERPLAY BETWEEN GOOD GOVERNANCE, ANTI-CORRUPTION AND HUMAN RIGHTS

Good Governance and Human rights are mutually reinforcing. Human rights principles provides a set of values to guide the work of government and other social and political actors. They also provide a set of performance standard against which these actors can be held accountable. Moreover, human rights principles inform the content of good governance efforts: they may inform the development of legislative framework, policies, programmes, budgetary allocations and other measures. However, without good governance, human rights cannot be protected and respected in a sustainable manner. This includes appropriate legal frameworks and institutions as well as political, managerial and administrative processes responsible for responding to the rights and needs of the population.[52]

Based on the definitions provided by the UN, UNDP and the AusAID, it may be argued that the full enjoyment of human rights relies on good governance and therefore the focus should be on promoting good governance in the assumption that respect for and enjoyment of human rights will follow more readily.

From the human rights perspective, the concept of Good Governance can be linked to principles and rights set out in the main international human rights instruments. The Universal Declaration of Human Rights recognizes the importance of a participatory government[53] and also 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.[54]

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 human rights. The International Covenant on Civil and Political rights requires state parties to respect and to ensure the rights recognized in the covenant and to take the necessary steps to give effect to those rights[55]. In particular, states should provide an effective remedy to individuals when their rights are violated, and provide a fair and effective judicial or administrative mechanism for the determination of individual rights or the violation thereof .Under the International Covenant on Economic,

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52. Good Governance practices for the protection of human rights- ohchr, *available at*: www.ohchr.org/Documents/Publications/GoodGovernance.pdf (last visited on June 10, 2017).

53. Universal Declaration of Human Rights, 1948,Article 21.

54. *Id.,* Article 28.

55. International Covenant on Civil and Political Rights, Article 2.

Social and Cultural Rights, states are obliged to take steps with a view to achieve progressively the full realization of the rights recognized in the covenant by all appropriate means.[56]

The true test of Good Governance is the degree to which it delivers on the promise of human rights : Civil, Political, Economic, Social and Cultural Rights .

Furthermore, the human rights treaty monitoring bodies have also given some attention to the different elements of Good Governance. The Committee on Economic, Social, and Cultural Rights stated that "Good Governance is essential to the realization of all human rights, including the elimination of poverty and ensuring a satisfactory livelihood for all." The Committee on the Rights of the Child has on several occasions addressed the issue of governments' capacity to coordinate policies for the benefit of the child and the issue of decentralization of services and policy-making. It has also addressed corruption as a major obstacle to the achievement of the Convention's objectives. It was debated in UN General Assembly regarding the practical strategies to counter the threat of radicalization through people centred and inclusive measures, and the need to address drivers of violent extremism through " renewed focus on good governance, rule of law, sustainable development, respect for human rights, accountable institutions, the equitable delivery of services, the role of youth, women and marginalized and disenfranchised communities, education and inclusivity in the political process." [57]

 Anti-corruption measures forms the core agenda of the good governance framework. In fighting corruption, good governance efforts rely on principles such as accountability, transparency and participation to shape anti-corruption measures. Initiative may include establishing institutions such as anti-corruption commissions, creating mechanisms of information sharing, and monitoring Governments' use of public funds and implementation of policies.

It is beyond doubt that corruption undermines the principles of non-discrimination through discretion, favouritisms and nepotism, and it undermines the rule of law .The impact of corruption on the economy is manifold. For example, the World Bank estimates that over one trillion dollars is spent on bribes alone each year, which is more than ten times the amount of money spent on development aid. The IMF estimates that money laundering is the third world largest business, estimated at over US$500 billion a year. In a number of countries the looting of state resources by heads of state and their cronies exceed national debts.[58]

When corruption is widespread, people do not have access to justice. Court officials and the police pay more heed to bribes than law. Hospitals do not heal people because the medical staff giver better treatment to patients who pay backhanders or because clinics lack supplies due to corrupt public contracting procedures. Poor families cannot feed themselves because social security programmes are corrupt or distorted to support a patronage network. Schools cannot offer their students a sound education because the education budget has been looted and as a result teachers cannot be paid and books cannot be purchased. In numerous ways like these, corruption encourages discrimination, deprives vulnerable people of income, and prevents people from fulfilling their political, civil, social, cultural and economic rights. UN treaty bodies and UN special procedures have concluded that, where corruption is widespread, states cannot comply with their human rights obligations.[59] Some international documents have even considered corruption to be a "crime against humanity", a category of crimes that includes genocide and

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56. International Covenant on Economic, Social and Cultural Rights, Article 2.

57. High-Level Thematic Debate on Promoting Tolerance and Reconciliation: Fostering Peaceful, Inclusive societies and Countering Violent Extremism. United Nation General assembly, New York (2015)

58. World Bank Institute Governance & Anti-Corruption, *available at:* web.worldbank.org/archives/website00818/WEB/MEDIAMEN.HTM (last visited on June 10, 2017).

59. See, for example, statements by the Committee on Economic, Social and Cultural Rights that " 	states face serious problems of corruption, which have negative effects on the full exercise of rights covered by the Covenant [ICESCR]'' E/C. 12/1/ADD.91 (CESCR, 2003, para. 12); and by the Committee on the rights of the Child that it " remains concerned at the negative impact corruption may have on the allocation of already limited resources to effectively improve the promotion and protection children's rights, including their right to education and health'' CRC/C/COG/CO/1 para. 14.

torture.[60]

If there is consensus that corruption has a negative impact on human rights, we should also have consensus that fighting corruption promotes human rights. For example, the following common principles underpin human rights, good governance and anti-corruption: transparency, accountability, citizen participation, rule of law, freedom of expression, right to information, separation of powers, equality and non discrimination, equity and fairness. Therefore, one could assume that, because there are common principles between human rights, good governance and anti-corruption, that anti-corruption and human rights are mutually self-reinforcing. It is, among other issues, and on the basis of this linkage that today we are advancing the argument that corruption is a human rights violation, because we are satisfied that the linkage and nexus exist.

Furthermore, there are numerous advantages of viewing corruption through a human-rights lens. *Firstly*, by recognizing corruption as violating human rights, it creates a social, political, and moral response that is not generated by crime, notwithstanding the seriousness of the act". *Secondly,* it invites courts and other institutions to scrutinize corruption. *Thirdly,* it invites international attention and brings international human rights law into the equation and finally it empowers victims to act and seek redress. What this boils down to is that a human-rights approach seeks to use human rights in an instrumental way to place the harm caused by corruption, rather than the actual act of corruption itself, centre stage: to foreground the victim rather the perpetrator; and to motivate and empower individuals, civil society, courts, and institutions to fight corruption. In this way, the human-rights approach "would lead to the eventual elimination of corruption".[61]

CONCLUSION:

Without Good Governance, human rights are at risk of remaining a theoretical and idealistic concept never to be realised at practical level. However, Good governance in all sectors is not negotiable and in order to achieve this citizens must be empowered to hold the government to a higher level of accountability. Empowerment of the people is often overlooked in the fight against corruption and the right to information is underestimated. People will become empowered through education and access to information. A culture of secrecy only breeds corruption and therefore the necessary first step is to create a culture of transparency through access to information. The role of civil societies and media in enhancing good governance by exposing corruption, putting pressure on the government to implement anti-corruption machinery and to govern in a transparent and accountable manner with integrity cannot be overstated. Transparency, accountability and integrity must become a lifestyle if we are to effectively eradicate corruption. A combination of political will from the top and public pressure from the base is needed to strengthen good governance. The public needs to be educated on the advantages of good governance and participate in promoting it.

So, keeping in view the mutually reinforcing and sometimes even overlapping relationship between Good governance, anti-corruption measures and human rights promotion it is imperative that strengthening good governance practices is certainly an excellent way to start the enhancement of fight against corruption.

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60. See, for example, the Seoul Findings, 11th International Anti-Corruption Conference, Seoul, May 2003; and the Nairobi Declaration, adopted at the Regional Conference on the Human Rights Dimensions of Corruption convened by the Kenya National Commission of Human Rights, March 2006.

61. C. Raj Kumar, *Corruption and Human Rights in India- Comparative Perspectives on Transparency and Good Governance 43* (Oxford University Press, New Delhi, 2011).