

## Continuous Development for Good Governance and Rule of Law: Obligations on International Institutions and Pakistan

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Abstract Good Governance' and 'rule of law', the prerequisites of sustainable development are recognized and developed by international organizations to promote democracy. But the situation of both mentioned doctrines has not been so satisfactory in Pakistan, one of the democratic countries where new laws have had been established incompatibility with previous ones. Whereas, objectives of lawmaking and sustainable development can only be achieved by corresponding the laws and implementing rule of law and good governance.

Key Words: Rule of Law, Good Governance, Development, Pakistan

#### Introduction

In the contemporary political world, good governance is considered an essential condition of sustainable development (Clarke, 2005, p. 186). Government institutions work properly because the government is bound by rule of law. Improper functions of judiciary and improper legal system affect respect of rule of law. This situation increases political disgrace and erodes continuous development. The laws are degraded or not implemented properly, and corruption prevails.

Reforms to improve good governance, rule of law, judicial and legal institutions have been introduced by the developmental practitioners. The various regional and international agencies and organizations have remarkably helped to develop judicial and legal institutions. Work of regional banks for development and different UN agencies as World Bank, United Nations Development Programme (UNDP), and United Nations Environment Program (UNEP) highlight international intention for development (Kiipcii, 2005).

New institutions and laws are being made for development instead of increasing the functioning capacity of the existing institutions. Just law-making does not assure sustainable development and rule of law. Regulations and laws are fruitless without their compliance. It is because most of the developing countries whose economy is in a transitional state are suffering from slow development, lack of investment and unsatisfactory judicial and legal development (Purkayastha, 2014). Efforts for reforms must be included capacity building and proper training regarding rule of law for implementation and compliance of these terms. Only establishing of the laws is not satisfactory.

Pakistan, as the third world country, is also indulged into the tense situation of rule of law (Qureshi, 2008). Laws are made but they are not implemented properly. Moreover, making new laws while existing the previous laws make the situation more complex. That is why terrorism was increased due to the inefficiency of the laws and inactivity of the judicial system. The ambiguity of the laws also affected continuity and development of economy.

The study explores links among good governance, rule of law and continuous or sustainable development. It elaborates the work of different organizations to enhance good governance and rule of law. It recognizes the necessity of enforcement, strengthening and compliance of sustainable development through practical efforts along with new lawmaking.

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## **Defining Good Governance**

As a term, 'good governance' is being used in development literature in the course of recent years. International financial institutions and donors decide to fund for the countries based on good governance. Bad governance is considered a root cause of various social evils. 'Governance' is an ancient concept which simply meant the process of decision making and implementation of decisions (Fernando, 2009, p. 45). It is done by formal actors like the government or informal actors like NGOs, landlords, associations of professionals, religious leaders, research institutions, political parties, financial companies, and cooperative societies. They play a great role in decision making and implementation of the decisions. Except government and military, all other influenced entities grouped together in "civil society" involve in informal decision making and implementing it which usually causes abuse practices.

Good governance includes eight characteristics which help to minimize corruption and vulnerable voices in the society. (I) Participation: It may be direct or indirect through intermediate representatives or some legitimate institutions. It is not essential that representative democracy would consider vulnerable in society in the making of decisions. However, key cornerstone of good governance is participation of the individuals of both types, male and female. It must be organized and informed. So, there must be freedom of expression and association in society (Rein, 2004, p. 78). (II) Rule of law: Establishment and impartially enforcement of fair legal framework are essential of good governance. Human rights and rights of minorities must be protected. The incorruptible police force and impartial judicial system help impartially enforcement of laws (Nalla, 2010). (III) Transparency: Direct and free information of the government decisions must be available for aggrieved persons. It must be followed by certain rules and regulation. Information is abundant, easily accessible, understandable and media must be free (You, 2015). (IV) Responsiveness: The entire institutions function to serve all stakeholders within a fair duration and they avoid unnecessary late. They do not discriminate among the haves and haves not. (V) Consensus Oriented: Good governance builds consensus on the most useful view and tries to implement it (Agere, 2000). Several actors in society give birth to various views. So, mediation of different views is necessary to avoid clash. The best interest of the entire society should be preferred over individual interest. To achieve sustainable human development a longtime perspective should be adopted. It is possible by consideration of social contexts, cultural norms and historical perspectives of the society. (VI) Equity and Inclusiveness: Including the most vulnerable, the entire groups of society should have opportunities to maintain and improve their wellbeing. They must not be feeling deprived of stake of society and excluding from its decisions. (VII) Effectiveness and efficiency: The best use of resources at the disposal of institutions and functions provide results for the needs of society. Effectiveness and efficiency demand protection of the environment and sustainable use of resources. (VIII) Accountability: Civil society, private and government institutions should be accountable to the public along with their stakeholders as accountability is considered as the basic requirement of good governance (Kubitscheck, 2014).

International Development Association (IDA) recognizes good governance in the context of institutional assessment. The World Bank prolifically produces document discusses governance concerns in the process of international development. This institution defines good governance to set out criteria to finance the countries. It sets out definition of "good governance" in the 1992 report entitled 'Governance and development' (Fortman, 2001). It is defined as "the manner in which power is exercised in the management of a country's economic and social resources for development". It declared that sustainable development can exist only by transparent and predictable structure of institutions and rules exists for the conduct of public and private business. The conclusion of 'good governance' is described as predictable, enlightened and open policy, professional bureaucracy, and an accountable executive, an important arm of government.

There are three different aspects of good governance identified by this institution, (I) a political regime, (II) a certain process for the exercise of authority managing social and economic resources to develop the country, and (III) government capacity to organize, formulate and implement functions and policies. A report released in 1994 entitled "Governance: The World Bank's Experience" declares the contemporary progress made by this institution in this field indicates four points (Bank, 2017). It provides a template against which its governing capacity can be measured. (I) Government dimension reflects by proper budget works, civil service reforms, and change in structure of the organizations. (II) Government employees are responsible and accountable. (III)

Predictability and stability are reflected by appropriate legal system. (IV) The concepts of information and transparency strengthen accountability and reinforce good governance. This study deals accountability, openness, transparency, and participation as essential elements of good governance because the concept of good governance is defined as transparency, predictability, accountability, and accessibility.

## What is meant by 'Rule of Law'?

It is widely considered that "rule of law" meant "government of law" instead of the government of men (Perry, 1996). But men are not excluded from the government recognizes rule of law. They make laws as legislatures, interpret the laws as judges and enforce the laws as police officers. They help the government to promote rule of law. However, they are not superior to the law. The law is followed by both rulers and the subjects equally (Kuti, 2009). Rule of law has been since a long tie around the world. Through institutions and procedures of the world we can come to introduce essentials, necessities, and definitions of this concept.

King John of England signed the Great Charter or Magna Carta in 1215 (Holt, Garnett, & Hudso, 2015). This document ensures under article 19 that liberty, life, and property of the subjects would not be allowed to take away arbitrarily. Law of the land or subject's peers' lawfully judgments would be considered to be followed. This legend document did a lot with rule of law. It insists that one can't subject to the whims of the king, a single man. It demands that judgment must be made against a person according to the law. The Article 39 reveals, "No freemen shall be taken or imprisoned or disseized or exiled or in any way destroyed, nor will we go upon him nor send upon him, except by the lawful judgment of his peers or by the law of the land" (Wiltshire, 1992, p. 57).

World Justice Project offers a definition of the rule of law derived from internationally accepted standards in which four different universal principals are upheld (Alayarian, 2017, p. 39). (I) Governments its agents, and officials as well private entities and individuals all are accountable to law. (II) The laws protect fundamental rights, personal security, property, and human rights applied evenly, and are just, publicized, stable and clear. (V) The entire process by which laws are enforced, administered, and enacted is efficient and transparent. (IV) Independent, competent and ethical neutrals and representatives deliver justice timely and they have adequate resources, are in enough, and reflect the makeup of the communities they serve. The rule of law means that the government is bound to apply equitable and fair laws prospectively, consistently, equally, and coherently to entire the citizens and encourage accessible, efficient, and independent legal and judicial systems. Rule of law demands the representative government and impartial, fair, and accessible justice as its key elements.

## Mutual Relations among Good Governance, Rule of Law and Sustainable Development

Good governance plays an important role to develop sustainable development along with many other factors (Ghosh, 1999). It encourages the rule of law, accountability, efficiency, and transparency in government institutions. Financial, natural and economic resources and effective management is possible through good governance. It ultimately promotes sustainable and equitable development. Participation of civil society in decision making for state policies, ability of enforcement of rights and duties through legal process and transparency at public authority level recognize good governance.

Absence of good governance can check sustainable development. So, society cannot ignore good governance to attain sustainable development. Similarly, the absence of rule of law must affect economic development and increase corruption (Fredriksson & Mani, 2002). It decreases investment and economic activities. Lack of funds affects provision of facilities as environmental management, education, social security, etc. It affects social development.

The world has taken an important step to promote rule of law through the convention "Access to Information, Public Participation in Decision- making and Access to Justice in Environmental Matters" in 1998. The convention concluded that sustainable development is possible by involvement of all stakeholders. It insisted that accountability and transparency in the government institutions must be promoted. The convention recommended: (I) right to access to information should be assured, (II) Public participation in decision making must be guaranteed, and (III) citizens must be provide justice. The public was offered to avail administrative and

Vol. IV, No. I (Winter 2018) Page | 23

judicial support against absence of these rights. 191 member states pledged to spare no efforts for promotion of rule of law, democracy, fundamental freedom, and the entire international recognized human rights.

## Donor Agencies Promoting Good Governance and Rule of Law

Many institutions are working to promote good governance and rule of law in addition to various international agreements made by different countries. They recognize the importance of good governance and rule of law and support judicial and legal reforms. Capacity building, judicial training, establishment of new laws and development of legal institutions are being preferred. UNEP has planned number of programs to share legal information, to promote judicial communication and to establish different approaches to implement in regional and global instruments. For instance UNDP helps in various fields to develop good governance (Kirch, 2008, p. 1432). It works to promote parliamentary system, electoral process, access to fundamental rights and justice, free access to information, development of local government system and decentralization, and assistance to reform civil service and public administration.

'Global Judges Symposium' on rule of law and sustainable development was organized by UNEP as a key partner in 2002 with the help of International Network for Environment Compliance and Enforcement (INECE) (UNEP, 2002). The participants affirmed the capacity of the prosecutors, judges, legislators, and persons playing role for enforcement, development, and implementation of laws on national level. They considered judicial process and independent judiciary essential for enforcement, development, and implementation of environmental law and adopted 'Johannesburg Principals' for sustainable development and role of law.

Rule of Law and good governance have also developed by various organizations including financial institutions. Organization for Economic Co-operation and Development (OECD) has worked for reinforcement and development of judicial, legal and law enforcement procedures (OECD, 2007, p. 51). legal education, reformation of the law, training of the judges and court personnel, modernization of the courts has improved through various judicial and legal projects initiated by the World Bank (Smith, 2007, p. 76). "Good Governance for Development in the Arab Countries" was a major program to develop good governance in the Arab states launched by UNDP and OECD with help of the World Bank, the Arab League, the European Union and various other regional organizations (Faia, 2012, p. 68). The program initiated on February 6, 2005 was consisted of various objectives as governance of the financial matters of public, role of media and civil society to reform the public sector, public service and private-public partnership, integrity and civil service, reformation and administrative simplification of e-government, and enforcement of the judgments and role of judiciary.

# Sustainable Development: Enforcement and Compliance of Good Governance and Rule of Law

Enforcement and compliance are widely considered to be strengthened. The participants of Rio Earth Summit realized the need through Agenda 21 in Chapter 8.21 and organized mandate on international level to fulfill enforcement and compliance as essential condition of environmental management. This activity empowered other organizations including UNEP to help enforcement and compliance activities more actively because in spite of hundred million dollars of aid even after more than ten years many legal and judicial systems of the world are working poorly due to inadequate consumption in enforcement and compliance struggle.

Various other institutions have done much to develop good governance and rule of law, but the objectives have hardly been achieved in spite of sufficient investment. Corruption must be replaced by law abidingness. The governments must adopt judicial and legal reforms. Otherwise, they will suffer continuation of falter of economic development which hinders to sustainable development.

Along with the responsibilities of aid receiving countries for the improvement of condition of good governance and rule of law, the donor agencies should also increase focus on compliances of the laws by the governments. The citizens must have free access to justice, and they should be allowed to participate in governance (Mgbeke, 2009, p. 1). Fundamental changes necessary for sustainable development and rule of law should be supported and committed by the people within the system.

Efforts of the international community for internal changes are already continued. For instance, the Aarhus Convention assures the right of public participation in government policies and access to information. United

Nations Economic Council for Europe (UNECE), the Global Environmental Facility and UNEP have helped for compliance with and facilitate specific multilateral environmental agreements (UN, 2003, p. 54).

Various research works and public agencies explore the value of strategies and policies with the help of collecting empirical data in addition to efforts for this purpose. Michael Zurn, Oran Young, Helmut Breitmeier and many others empirically explore 23 MEAs by creating International Regimes Database. But the data collecting system should be more reliable, comprehensive and well-functioning because the literature concerning environmental enforcement is scattered still because of failure in obtaining certified information. International agencies and NGOs can help to validate and collect reliable, comprehensive and well-functioning information.

#### Issues of Rule of Law in Pakistan

Pakistan has involved in making new laws without repealing previous laws which resulted contradictions and existence of multiple laws at the same time. Moreover, the laws are also not properly implemented. The officials and lawyers consider that failure of implementation of contemporary procedures and laws have resulted insufficient delivery of justice. New laws prove unable to settle disputes. The instance of 4th schedule included in Anti-Terrorism Act released in 1997 calls proscribed groups and their offices for constant surveillance but the executive rarely does (Shah, 2014, p. 219). Some latest regulation against previous outfits will be disregarded. The executive, legal personalities, and law enforcing entities also aware that new laws are being established without repealing previous laws (Haines, 2013, p. 60). Ordinances about executive matters issued by civil or military governments must raise confusion. Iqbal Haider, a former law minister says, "Nobody in the law ministry or the judiciary can claim to know what the valid laws of the land are". It should be noted that a compendium of valid laws i.e. the Pakistan Code did not publish for long time. Police officers in general and especially new recruits are not aware of the contemporary procedure and laws. Instead of establishing new laws or additional kinds of offenses in the PPC, executive should repeal the entire previous contradicted procedure and laws.

The government must amend the Criminal Procedure Code, Evidence Act, and Civil Procedure Code i.e. Qanun-e-Shahadat. It will improve police capacity to bring criminals and terrorists under the judicial process. Development of IT-related crimes also requires effective laws (Awan & Memon, 2016). Changes should be made in the Explosive Substance Act for regularization of their usage and sale like as potassium chloride and ammonium nitrate used for making explosive articles. Police and other law enforcement agencies should be able to approach telephone record through establishing limitations and terms concerning civilian law.

Procedure and Evidence Act should include skilled staff into investigation branch, aware of modern technology as a computer, IT, internet and other contemporary techniques to collect scientific pieces of evidence. Modern means would assure cases trial substantiated scientifically. Evidence value of confession of criminals in front of high ranked police officers should be determined especially in the public importance cases.

A witness protection program should be initiated. Criminal Procedure Code should guarantee protection of prosecutors, witnesses, and judges through reforms. Because they are justifiably dreadful to risk their lives. Reach of terrorists and criminals and their collusion with notorious and corrupt officials and unchecked proliferation and widespread of arms has made the situation more complex. A Chief Public Prosecutor in Punjab says that in the province during January to September in 2010, convictions could not be achieved by prosecutors in more than three hundred high profile cases of terrorism due to retraction of witnesses. Witnesses "distrust of police, fear, social pressure and compromise between the parties through influential and political personalities". Another prosecutor concerning antiterrorism says, "Nobody is prepared to depose against militants in any court". The police department should have also a separate branch responsible for witness protection along with other important measures.

The protection of public prosecutors and judges is very essential because various prosecutors have to appear at public places and use public transport to appear in antiterrorism courts. Special public prosecutors in high profile cases expressed life threats in September 2010. They said that the government didn't provide additional security in spite of repeated requests. Advocate General of Sind, Raja Qureshi denied continuing prosecution against murderers and kidnappers of the journalist in the case of Wall Street Journal reporter Daniel Pearl (Tribune, 2010). Same was the position of two Special Public Prosecutors in Karachi Antiterrorist Courts who said that they would not prosecute accused of a banned extremist organization, due to insufficient security and receiving life threats.

Vol. IV, No. I (Winter 2018) Page | 25

Terrorists have threatened and murdered various judges (Abbas, 2016). A judge in Lahore High Court acquitted a boy of blasphemy was shot in his chamber in October 1997 (Walbridge, 2012, p. 95). A judge in Antiterrorist Court was threatened at his residence in Swat in June 2010 (Klasra, 2010). This judge was hearing the case against Sufi Muhammad's militants, the leader of Tehreek-e-Nifaz-e-Shariat-e-Mohammadi and his son. The government subsequently transferred the trial from Antiterrorist Court to Mingora.

Some counterterrorism officials were called to counter terrorist threats. In Columbia, in narcoterrorism cases the identity of the judges is concealed, and the cases are heard by a panel of judges instead of a single judge. Identities of the judges are disguised by using voice modulators and mirrors. Pakistan has to adopt alternative judicial system to secure the judges because peaceful society and rule of law demand independent, efficient and impartial judiciary.

The legal system should consist of well paid, ethical, and competent judges following established rules. They should not be interfered by the executive and legislature. The judges are helped by well paid, ethical and competent lawyers. They should have strong back ground-based on legal practice to make the judges enable to resolve the issues through accuracy and within minimum cost. The judges must avoid unnecessary delay during the trial.

Interest for investment is increasing in "institutional environment" during the previous years. Many international and private institutions including World Bank, PRS Group, and Transparency International are presenting data regularly about the institutional environment by which Pakistan has no satisfactory record for rule of law. Moreover, the situation of rule of law within South Asia has not been satisfactory than that of the western world. However, Afghanistan has exception due to war experience after 9/11 2001 (Lansford, 2012).

The rule of law makes the law supreme over the entire individuals (Yack, 1993). It checks the discretionary powers of the rulers possessing abundant authority. It assures freedom of the subjects (Koven, 2015, p. 37). However, the rule of law has remained an elusive dream for an ordinary Pakistani citizen. (Wariach, 2017). The concerns of dominating elites within the society are seriously questionable. Powerful elites do not like to deliver fundamental rights granted by the constitution. It reveals poor performance of government institutions. The institutions have not developed due to ethnic diversity and elite domination. These are the same reasons undermined development in Latin America. They also caused military influence and direct military intervention which caused fatal threat to rule of law and democracy (Oldenburg, 2010).

Government branches have been involved in transgression into the domain of one another and the national constitution has been frequently suspended. So, the rule of law could not be implemented. However, the constitution protects fundamental rights and offers a social justice-based governing system. It also believes in the concept of separation of powers between different branches of the government (Li-ann, 1999). According to a report concerning rule of law in Pakistan asserts that since independence the military and civil governments both have been involved in "rule by law" instead of "rule of law" (Siddique, 2013).

#### Conclusion

Goals of sustainable development can be achieved through good governance and the rule of law. Various worldwide institutions have taken valuable initiatives to promote good governance and rule of law. Work of these institutions is considered valuable. But such efforts, regulations, and environmental laws have eclipsed due to lack of compliance, implementation, and enforcement with contemporary laws. In turn, quality of laws has become progressively worse. It reveals that rule of law and good governance can be assured not only by establishing new laws. Proper implementation of the laws is also essential to meet the fruits of "rule of law and good governance". Efforts for compliance and enforcement of the laws must be assured which can enhance speed of sustainable development. Sustainable development demands good governance and rule of law and these two concepts can't be properly fulfilled only by establishing new laws. Position of rule of law in Pakistan has been unsatisfactory. The civil governments had also been involved in the concept 'rule by law' contrary to the concept 'rule of law'. New laws were made incompatibility with the previous ones. So, the lawyers and judges are hardly able to identify the acting laws. The complex situation has raised many serious questions concerning counter-terrorism action in the country. The laws must be reformed, corresponded and implemented for sustainable development.

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Vol. IV, No. I (Winter 2018) Page | 27

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