

THE ROLE OF JUDICIARY IN GOOD GOVERNANCE

A Case Study of Pakistan

Mustafa Hyder, Khalid Iraqi

Abstract— The paper is an outcome of our PhD thesis in which we have introduced a Model for Good Governance.

Man has always struggled to build a society which guarantee essentials for human existence. The foundation of good governance has its roots in the fulfillment of fundamental human rights. This can be assured and protected by judiciary. Government is an institution about decision making and implementation of policies made for the betterment of the society and Justice is the first feature of social organizations and social development in all societies. Today, major concern is the role of Judiciary in attaining good governance especially in respect to the society restructuring and the development of an autonomous judiciary.

The substantial issues of sustainable political, economic, social and judicial development are of good governance. The terminology of good governance is gaining more attention in last few decades. A lot of pressure lies on government for making sure that good governance prevails. The effectiveness and accomplishment of good governance lies on transparency, uprightness and competence of the administration, executive and judiciary. Continuous cooperation is also required from civil society.

The key objective of this paper is to evaluate the part of the judiciary in quest of good governance; initially the samples are from Pakistan only. The paper will first try to reconfirm few conclusions through a questionnaire by the relevant samples, later draw logical grounds for the decision makers to identify and prioritize the areas that should be focused for providing a respectable and reasonable life to the common citizen through the association among judiciary, governance, economic stability, administrative skills, peace and harmony and rule of law. Finally, we have developed a layered bottom-up approach model named as K&M Eunomia-Model for Good Governance.

Keywords—Good Governance, Judiciary, Eunomia

Mustafa Hyder
University of Karachi (UoK)
Pakistan

Prof. Dr. Khalid M. Iraqi
University of Karachi (UoK)
Pakistan

I. Introduction

There are numerous factors contributing to building and sustaining the governance and making sure it is “GOOD”.

These include, among others,

- a government that is fair and trails the rules and makes no exemptions whatsoever;
- an administration working on the core command in implementing laws wisely;
- watchdogs that are not influenced by personal interests; autonomous inspectors that properly evaluate accounts;
- an establishment which is ready to serve the public in general with profound interests and professionally;
- private sector that abides by the law with respect and responsibility;
- and autonomous, timely and Impartial judicial system.

Of the many factors, the indispensable factor which embraces the law above everything and everyone is judiciary.

“Good, consistent jurisprudence based on law, as well as predictable and time-efficient resolution procedures are necessary for that sense of predictability, transparency, and accountability”

(Developing a Governability Assessment Framework, 1999)

The K&M Model-Eunomia does not intend to highlight or list the factors of achieving good governance, it only tries to PRIORITIZE the factors that affect the governance process in the light Judiciary. It has layers making a shell approach in which each inner shell has been protected by its outer one and so on. It has four (04) layered protections to the governance and each outer layer will trigger only when its inner one is accomplished.

The research is based towards investigating the role of judiciary in the process of good governance in Pakistan. Judiciary being the strong pillar of state has an important role in protecting the rights of people which is not possible without good governance. Thus, one can clearly establish the direct relations between judiciary and good governance.

“The true administration of justice is the firmest pillar of good government”

Inscription on the Supreme Court building of New York.

Governance is defined as “the management of society by the people” (Albrow M. , 2001), and “the exercise of authority or control to manage a country’s affairs and resources” (Schneider H. , 1999) , or “as a complex system of interactions among structures, traditions, functions (responsibilities) and processes (practices) characterized by three key values of accountability, transparency and participation” (Abdellatif, 2003) . “Good governance has also been described as the striving for rule of law, transparency, responsiveness, participation, equity, effectiveness and efficiency, accountability, and strategic vision in the exercise of political, economic and administrative authority” (Egbe, 2016).

John Locke defined good governance as “the right to life, liberty and the pursuit of happiness.” (Locke , 1988, [1689]), later this is also reflected in the United States Declaration of Independence.

“Judiciary is a pillar of state, its meant to dispense justice and resolve conflicts and disputes” (Gangadar, 2016). This objective is attainable if all the stakes involved try to make it independent of the other institutions and authorities. As good governance is “the instrument of political, economic and administrative authorities to manage a nation's affairs”, (UN, 2006) it has become essential for sustainable economic, social and political development. The term has gained a prominent issue especially in Pakistan in the last few decades. Today we find human inequality, everywhere in our society, which has resulted in social injustice.

“A strong judiciary, with the power to review acts of Government, can protect the citizenry from unlawful acts of Government and hold government officials accountable for their graft, corruption, and abuse of power; and do so promptly” (Kuroda, 2005). As our religion Islam teaches us, the procedures to access justice for the poor and powerless people should be approachable. The reforms to access this justice should be improved as the just or unjust decision could leave a remarkable impact on them.

The challenges related to governance and judiciary can be more effectively met,

“when there are constitutional and operational guarantees of judicial independence;

when sufficient financial resources are predictably and transparently provided to the judiciary;

when competent judges are transparently appointed, assured security of tenure and provided a living wage;

when judgments can be rendered, enforced, and reviewed without danger to the person, family, or property of the judges;

and when discipline within the bench itself is subject to the rules of due process”. (Vile C. M., 1998)

“It is an impression from the developed world that for better governance, there is always a need for government to control the governed and then control itself” (Levi-Faur, 2012). On the other hand, corruption, inefficiency and mismanagement prevail when we look at the developing world like Pakistan, the governments have failed to control themselves and according to law unable to manage the country's affairs.

II. PROPOSED RESEARCH HYPOTHESIS

It is generally presumed that Judiciary and Good Governance has a strong relationship but the direction and degree of this relationship to which the Judiciary has an impact on the Good Governance of the country should be measured based on certain criteria. Following hypotheses were developed in the light of the research issue and objective in order to reach scientific conclusion.

A. *First Hypothesis:*

H0: The attainment of good governance does not require administrative skills.

HA: The attainment of good governance requires administrative skills.

B. *Second Hypothesis:*

H0: Good governance is not a basic requirement for the stability of the political, economic, social and judicial system.

HA: Good governance is a basic requirement for the stability of the political, economic, social and judicial system.

C. *Third Hypothesis:*

H0: Good governance is not a pre-requisite for administrative development.

HA: Good governance is pre-requisite for administrative development.

D. *Fourth Hypothesis:*

H0: Judicial decisions do not play significant role in contributing towards good governance.

HA: Judicial decisions played significant role in contributing towards good governance.

III. RESEARCH MODEL

Following is the summary of the perception of different people about the governance and judiciary with in the domain of Pakistan. The analysis is based on data collected by conducting primary survey of the students and individuals which are studying public administration and law in their

respective departments few practitioners of law were also questioned. The survey data on the issue is collected by 308 individuals.

In following section, we will have a look at the responses of the respondents of the survey about the judicial system and governance only to the queries involved in making of the proposed model.

A. **COMPARATIVE ANALYSES OF ALL HYPOTHESES**

Following is the result of questionnaire containing the cumulative percentages of the questions which covers our hypothesis.

TABLE I. OUTCOME OF THE RESEARCH QUESTIONNAIRE

	H1	H2	H3	H4
Strongly Agree	31.4	50.5	33.9	28
Agree	71.3	81	78.9	67.2
Undecided	88.4	88.8	86.2	82.4
Disagree	96.2	94.9	96.3	92.2
Strongly Disagree	100	100	100	100

Cumulative percentages

As the responses provided in the above tables were collected through a questionnaire filled by students of Public Administration Department and student of School of Law. The response was also taken by the Lawyers. The response over the perception of both groups who knows about administration and law, so that the point of view could be analyzed in a broader perspective. The overall results of survey confirm the hypotheses suggested in the earlier portion of the thesis and suggests that the good governance not only requires good administrative skills but it is also a pre-requisite of administrative development. Moreover, it also confirms that judicial decisions also play an important role in delivering good governance.

From the analysis of above data, it is statistically proved that relationship exist between the variables so, all the null hypotheses are rejected and as the variables have statistical significance, the alternate hypothesis are accepted. By combining the above tables, we can figure out which one in view of the respondents is more significant and can be prioritized. The acceptance in terms of priority.

Hypothesis 2: Good governance is a basic requirement for the stability of the political, economic, social and judicial system.

Analyses: Political, social and judicial system stability is the most important factor around 81% of the respondent

believe that system’s stability is the backbone of good governance.

Hypothesis 3: Good governance is pre-requisite for administrative development.

Analyses: 78.9% of the sample believes that without good governance it is difficult to have a proper administrative efficiency. A transparent system should prevail to administer policies, programs and projects that contributing to the expansion of a nation and having substantial socio-political and socio-economic influence. This transparency can be viewed by seasoned and artistic bureaucrats and legislative oversight.

Hypothesis 1: The attainment of good governance requires administrative skills.

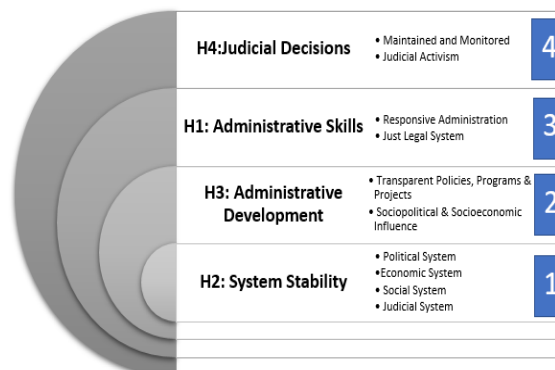
Analyses: Administrative skills are the pivotal characteristics for the government to carry out good governance. One cannot implement good governance if he lacks administrative skills. Around 71% of the respondent think administrative skills are the key factor in achieving the goals of good governance.

Hypothesis 4: Judicial decisions played a significant role in contributing towards good governance.

Analyses: Good governance has to be maintained and monitored by Judiciary with the support of executives. According to 68% of the respondent believes in Judicial activism and its decisions.

B. **GOOD GOVERNANCE: A LAYERED APPROACH**

From the above sequence of alternate hypothesis and theoretical study, we suggest the following layered model following bottom-up approach for achieving good governance.



K&M (Khalid & Mustafa) Model-Eunomia* for Good Governance

*Eunomia; a political condition of good law, well administered

A territory is in the condition of EUNOMIA if its political government system has just rule of law with equality along with proper administrative infrastructure, as Eunomia is “the principle of good order”. It is an image of an extremely antiquated origination of what constitutes good government, in particular authority, peace, stability and the administration of justice. The above proposed model gives the outline how one can achieve that state.

The model does not intend to highlight or list the factors of achieving good governance as all the factors discussed are important and relevant, here we have tried to prioritize the overall system. These layers make a shell approach in which each inner shell has been protected by its outer one and that shell is further covered with its outer one and so on. In our model, we have proposed four (04) layered protection to the governance and each outer layer will trigger only when its inner one is accomplished.

Each layer has been established via study of the research hypotheses and mentioned in the following table,

TABLE II. PRIORITY VISE HYPOTHESIS

Layer 1	System Stability: is the inner most layer, the dimensions covered in this layer are the base to do governance.	Hypothesis 2
Layer 2	Administrative Development: a continued process in administration to maintain the pace of this dynamic world is at second layer from inside and a penultimate level to attain the better governance.	Hypothesis 3
Layer 3	Administrative Skills: the third layer from inner side and is one of the most important ability one should have to run government.	Hypothesis 1
Layer 4	Judicial Decisions: above all judiciary protects all the inner activities by virtue of its standings at the top and this will be the key to have good governance in a state.	Hypothesis 4

The K&M model relations

The standard of living of the members of society can be increased if the methods of good governance implemented, by which an administration advances, making available the elementary desires and creating better quality of life, providing the people the opportunity to foster and security. Instilling hope in people for their future, empowering them to participate and influence effectively in the society, influencing decisions in public concerns, supporting an active judicial system which disseminates justice fairly and impartially and maintain accountability and uprightness in each section of the Government are the main manifesto of good governance.

Although judiciary is one of the major factors but there are other more influential factors which should be considered along with the judicial activism like stability of the political system, social framework etc. Also, the administrative skills are the key to attain good governance which is pre-requisite for administrative development. Judicial decisions are an important contributor towards good governance.

Good governance implies the way government progresses and creates opportunities for the society to improve its living standards by making basic facilities of life easily accessible, providing its masses sanctuary and the prospects to improved life, impart anticipation for an imminent and promising future, giving better healthy environment, where personal progress can be conferred, empowering them to influence in the decision-making of public affairs; nourishing a receptive judicial system which bestows justice on facts in a fair way, impartial and evocative way; and upholding accountability and honesty in all functionaries of the Government.

C. RATIONALE TO THE PROPOSED MODEL

The research is concluded with the introduction “K&M Model of Eunomia of Good Governance.” It is a revival of an old term “Eunomia” with the addition of a layered approach. The K&M Model of Eunomia of Good Governance should be further analyzed, explained and implemented at border domain to achieve a Good and Just Governance not only with in the domain of Pakistan but in different Socio-economic and cross-cultural regimes.

We see Eunomia (good governance according to good laws) as the term for the main political products towards which all political association appropriately points, we summon it contrary to the contemporary administration. Yet, we have selected Eunomia as a method for helping the masses to remember vote based system that their valuable elective administration couldn't exist in any structures without the achievement of the rule of law.

IV. References

- [1] Developing a Governability Assessment Framework. (1999). In D. Lewis-Bynoe (Ed.), Building the Resilience of Small States: A Revised Framework.
- [2] Albrow, M. (2001). Society as Social Diversity: The Challenges for Governance in Global Age, Governance in 21st Century. Paris: OECD Development Centre.
- [3] Schneider, H. (1999). Participatory Governance: The Missing Link for Poverty Reduction, Policy Brief No. 17. Paris: OEDC Development Centre.
- [4] Abdellatif, A. M. (2003). Good governance and its relationship to democracy and economic development. Global Forum III on Fighting Corruption and Safeguarding Integrity, 20, 31.
- [5] Egbe, C. A. (2016). Situating Good Governance within the Context of Common Good: An Assessment of the Place of the Media. International Journal of Social Sciences and Humanities Review, 6(1).
- [6] Locke , J. (1988, [1689]). In P. Laslett, Two Treatises of Government (pp. 87, 123, 209, 222). Cambridge, NY: Cambridge University Press.

- [7] Gangadar, D. (2016, March 28). Retrieved from Quora: <https://www.quora.com/What-are-the-3-pillars-of-democracy>
- [8] UN. (2006). Compendium of basic terminology in governance and public administration. Committee of Experts on Public Administration (p. 15). New York: Economic and Social Council.
- [9] Kuroda, H. (2005). Good Governance and the Judiciary. Asian Development Bank Law and Policy Resources .
- [10] Vile, C. M. (1998). Constitutionalism and the Separation of Powers. Liberty Fund.
- [11] Levi-Faur, D. (2012). From “Big Government” to “Big Governance”? In The Oxford Handbook of Governance.