

Shared Responsibility Towards Development

Human Rights, Democracy and Rule Of Law

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ABSTRACT:

Human Rights are those fundamental and inalienable rights which are essential for human existence. As defined by D.D. Basu, Human Rights are those minimum rights which every individual must have against the state or other public authority by virtue of his or her being a member of human family, irrespective of any other consideration. The notion of Human rights was developed by Greek philosophers for the first time.

After the destruction caused by second world war, the people of the world felt a necessity of an international organization for keeping the world away from war and generate a feeling of peace, fraternity and co-operation among all nations, this led to laying the foundation of United Nation Organization. In 1948, Universal Declaration of Human Rights was adopted on by General Assembly of United Nations followed by various conventions towards the same goal of providing human rights to all the people for them to live in peace and tranquility. The framing of the U.N. Charter, the Universal Declaration of Human Rights 1948, the International Covenant on Civil and Political Rights 1966, the International Covenant on Social, Economic and Cultural Rights 1966 and the other International and Regional Instruments can be said as the most captivating episode in the twentieth Century.

Democracy is the most popular form of governance today and among its many strong pillars is a stand of respect for human rights. Democracy can't exist without human rights. It is additionally evident that there is a more prominent probability that human rights are "better" respected herein. Democracy originates from the society; it requires a political and social responsibility and commitment. All things considered a democracy can't be forced from the outside as its combination requires a generation in time.

Given that democracy's destiny is joined to that of human rights, as long as no universal agreement can be found on the precise substance on human rights no obvious advancement can be made on the issue of democracy and their development.

I. INTRODUCTION

Human Rights are those fundamental and inalienable rights which are essential for human existence. Human rights are necessary for every person irrespective of his/her nationality, race, sex, religion, place of birth, etc. simply because he or she is human being. Thus, these rights are inherent in nature, without which a person can't survive as a human being.

As defined by D.D. Basu, Human Rights are those minimum rights which every individual must have against the state or other public authority by virtue of his or her being a member of human family, irrespective of any other consideration.¹

Types of Human Rights:

1) *Human Rights I Generations*

¹ D.D. Basu, Human Rights in Constitutional Law. Prentice hall of India Pvt. Ltd., New Delhi (1994). p.5

The rights contained in International Covenant on Civil and Political Rights, 1966 are the human rights of first generation. Developed in Greek city states these rights found place in national constitution of most democracies.

Part III of Indian Constitution have these rights specifically defined from Article 14-32.

2) *Human Rights II Generations*

The rights contained in International Covenant on Economic, Social and Cultural Rights are the human rights of second generation. They were recognized and developed after accomplishments of Civil and Political Rights.

Part IV of Indian Constitution have these rights as Directive Principles of State Policy to direct state to make laws for these Rights.

3) *Human Rights III Generations*

Certain Rights which has been incorporated in the charter of UN may be called Human rights of Third generation. The Right to Self-determination, Right to Development and Right to peace & security, etc. which has found in UN Charter are examples of Human Rights of Third generation.

II. ORIGIN OF HUMAN RIGHTS

The battle to save, secure and advance human rights is as old as human civilization. The cause and improvement of human rights can be followed to the absolute starting point of life in the general public. In crude social orders man had various boundless opportunities, however in a composed society these opportunities have no significance on the grounds that the boundless opportunity of certain individuals more likely than not brought about the hopeless concealment of the opportunity of another class of individuals. For instance, in a primitive society just the rulers, the nobles and the church have opportunities and rights, other individuals have just weights and obligations.

The notion of Human rights was developed by Greek philosophers for the first time. The citizens of Greek city states were insured and enjoyed certain rights like Right to freedom of speech, Right to equality before law, Right to equal respect for all.

Romans applied the concept of natural law in the formulation of body of rules for the administration of justice. They made 'jus-civile' for their own citizen, it contained natural rights for citizen of Rome and 'jus-genitum' for the non-citizen.

Individuals started to perceive the presence of a higher law. The higher law in the general public was named as 'Jus Naturale' by the Romans and 'Lex Naturales' by the medieval Christian scholars and was initiated as

Natural Law by present day Jurists.² This was Dharma for the old Hindus. Present day jurist name it as Natural Law. The premise of natural law is man's normal tendency to right reason that is as per nature, unalterable and interminable.

Further the Magna-Carta was trained by the British Monarch as a code of Rights of his citizen. It was framed on 12 June 1215 as a first permanent document which ensured certain basic natural rights to the British citizens. Later two more bill of rights were framed by British monarch in 1628 & 1689 respectively.

After the French revolution in 1789, the French constitution ensured certain basic human rights and the after these rights were incorporated in the constitution of several democratic countries.

In 1791, US incorporated 10 amendments in its constitution in form of human rights to its citizen. In these amendments it was proclaimed that human rights were being provided to every citizen without any discrimination on grounds of caste, creed, sex, language, etc.

III. DEVELOPMENT OF HUMAN RIGHTS IN UNIVERSAL BASIS

After the destruction caused by second world war, the people of the world felt a necessity of an international organization for keeping the world away from war and generate a feeling of peace, fraternity and co-operation among all nations.

Henceforth, the United States (US), United Kingdom (UK), the Soviet Union and some other countries held several meetings and as a result of their efforts United Nation Organization came into being on 24th October 1945 when the representatives of 51 nations signed the Charter of UN at San Francisco.

This UN Charter establishes an organization for preserving peace and promoting social, economic and political populations among all nations as well as respect for human rights of each and every individual.

The first important step of this organization in direction of human rights on universal basis was adoption of Universal Declaration of Human Rights on 10th December 1948 by General Assembly of United Nations. It provided human rights to all the people for them to live in peace and tranquility.

The Universal Declaration of Human Rights 1948 can be viewed as the encapsulation of regular standard to be received for accomplishment of human rights. It presents the key freedoms and rights basic to all individuals on earth. It's anything but a legitimately restricting instrument, yet it throws commitment on the Member States to fuse its arrangements into their national constitutions and laws.

Aside from the preface, the Universal Declaration comprises of 30 Articles.

² D.K. Bhat, "Human Rights and Gender Issues: A Socio-Legal Perspective", XXVII (1) Indian Bar Review 24 (2000)

Article 1-21 manages the conventional common and political rights, for example, right to life, liberty and security of person, effective remedy before competent tribunals for acts violating human rights, to be presumed innocent until proved guilty, freedom of movement, right to nationality, right to property, freedom of thought, conscience and religion, freedom of opinion and expression, right to peaceful assembly and association, right to take part in the government of a country, right to access to public services in his country etc.

It denounces bondage, torment and barbaric and debasing treatment, self-assertive capture and so on. Right to marry, Right to privacy and so forth., are additionally ensured in the Declaration.

Articles 22 to 27 are concerned about the social, economic and cultural rights. They declare that everybody has a privilege and right to social security, to work under just and favorable conditions, to join trade unions for the protection of interests, to rest and leisure, to adequate standard of living, to education, to participate in the cultural life of the community etc.

As per Article 28 everybody is entitled for a social and global/international order in which the rights and freedoms set out in the Declaration can be completely accomplished.

The rights referenced in Articles 2 to 21 of the Universal Declaration force negative obligation with respect to the States not to meddle with the rights and these rights are called first generation rights.

The rights referenced in Articles 22-27 force a positive obligation and they are called second generation rights.

Rights referenced in Article 28 comprise of aggregate rights and are named as third generation rights.

Thereafter two important International Conventions which are International Convention on Civil and Political Rights and International Convention on Economic, Social and Cultural rights were adopted in 1966 by the united Nation General Assembly but were imposed decade later.

The two covenants with the Universal Declaration on Human Rights comprise the 'International Bill of Rights'. Aside from these there are such a large number of regional conventions to give acknowledgment, regard, insurance and advancement of human rights.

The International Covenant on Civil and Political Rights comprises of 53 Articles, which are separated into 6 parts.

Part I and II deal with the content and meanings of different rights and freedoms the other three parts meanwhile deal with the procedure for implementation.

Part III of the Covenant deals with explicit right of people and obligations with respect to the State Parties. It incorporates right to life, freedom from inhuman or degrading treatment, freedom from slavery, servitude and forced labour, the right to liberty and security of a person and to be free from arbitrary arrest and detention, the

treatment of a person deprived of their liberty, freedom of movement, the right to fair trial, non-retroactive application of criminal law, the right to privacy, right to family, home or correspondence and freedom from attacks on honor and reputation, freedom of thought, conscience and religion, freedom of opinion and expression, the right of peaceful assembly and freedom of association, the right relating to marriage and family protection, the right of the child, the right to take part in the conduct of public affairs, the right to vote and the right to be elected.

The International Covenant on Economic, Social and Cultural Rights 1966 comprises of 31 Articles, partitioned into 5 parts.

Part I manages the privilege of the general population to self-determination.

Part II manages the obligation of the State Parties to take vital measures for the acknowledgment of the rights.

Part III lists the rights of the people. The rights of individual includes the right of work, the right to just and favourable conditions of work, trade union rights, right to social security, rights relating to motherhood and childhood, marriage and family. It also includes the right to adequate food and clothing, housing, standards of living and right to freedom from hunger, the right to health and right to education.

Part IV contains the procedure for implementation. Article 16 to 25 accommodate an arrangement of accommodation of occasional reports by State gatherings concerning the measures taken by them for execution of different arrangements to the Economic and Social Council. The Council will consider these reports and give counsel or help to the concerned State in the matter of social and financial improvement.

Furthermore, European Convention on Human Rights was signed in November 1950 in Rome. 22 countries of Europe are signatory to this convention that became effective in September, 1953. This convention is exclusive to members of European Council.

Section 1 of the convention enlists and defines various rights and freedoms of people of signatory parties. These include Right to life, Freedom from torture or inhumane or degrading treatment or punishment, freedom from slavery or servitude, Freedom from forced or compulsory labour, Right to liberty and security of person, Right to fair and public hearing, Non-retrospective application of criminal law, Right to respect for private and family life, Right to freedom of thought concise and religion, Right to freedom of expression, Right to freedom of peaceful assembly, Right to marry and to found a family, Right to education, Right to have free election, Abolition of Death Penalty, Right of review of a conviction by a higher court, etc.

These rights were implemented by European Convention on Human rights and European Court of Human Rights.

Lawless v. Ireland³, Ireland v. United Kingdom⁴, Broghan v. United Kingdom⁵, Lingens v. Austria⁶, etc. are some of the important cases related to human rights violation that were decided by European Court of Human Rights. These judicial pronouncements were praise worthy and victims of human rights violation hailed to them.

The Organization of Latin American States embraced the American Convention on Human Rights, 1969, which came into power on Eighteenth June 1978. It gives that Human Rights are sacred and made the obligations of the conventions binding on state parties. The convention has been partitioned into three parts.

Part I manages the rights to be ensured and advanced and Part II deals with methods for security and protection of Human Rights.

Part III deals with general provisions in regards to signature, ratification and so forth.

The preamble of the Convention recognized that the essential rights of man are not derived from one being a national of a State but are based upon the attributes of human personality and therefore entitled to protection through Convention and through incorporation of the norms of the Convention in domestic laws of the American States.⁷

The State Parties to the Convention attempt to regard these rights and opportunities to all people with no segregation as to race, sex, language, religion, birth or some other social conditions. The Member States are under a obligation to fuse these provisions into their domestic laws.

Part I of the Convention manages civil and political rights, for example, right to life, right to human treatment, freedom from slavery, right to personal liberty, right to a fair trial, freedom from ex-post-facto law, right to compensation, right to privacy, freedom of conscience and religion, freedom of thought and expression, right to reply, right to assembly, freedom of association, right to family etc. Part III deals with economic, social and cultural rights.

Another Regional Agency for Human Rights was proposed at the African Conference on 'Rule of Law' at Lagos (Nigeria) in 1961 and adopted a resolution named as Law of Lagos.

African Charter, also known as the Banjul Charter, was adopted on 27 June, 1981 and entered into force on October 21, 1986. The charter has been ratified by 49 members of Organization of African Unity (OAU).

³ (1961) ECHR, Series A, Vol.3

⁴ (1978) ECHR, Series A, Vol. 25

⁵ (1988) (11) ECHR 117

⁶ (1986) 8 ECHR 407

⁷ Justice Palok Basu, Law Relating to Protection of Human Rights under Indian Constitution and Allied Laws, Modern Law Publications, Second Edition, New Delhi-Allahbad (2007), p.6, 7

African Charter lays importance over “people’s rights”. The individual isn't viewed as free of society however subordinate to the group, and the group has rights also and the individual has obligations or duties to the group. Charter hence stipulates duties just as rights of person.

Chapter I of Part I lays down the rights while Chapter II deals with duties. Rights include Equality before law, Right to respect of his life and integrity of his person, right to liberty and to security of his person, right to have his cause heard, freedom of conscience, the profession and free practice of religion, right to receive information, right to free association, right to assemble freely with others, right to freedom of movement and residence, right to participate freely in government of his country, right to property, right to work under equitable and satisfactory conditions, right to education, right to enjoy state of physical and mental health, right to existence, right to national and international peace and security, right to economic, social and cultural development etc.

Some duties of parties contracting and individuals are duty towards his family and society, state and other legally recognized communities; duty to respect and consider fellow beings without discrimination and to maintain relations aimed at promoting safeguarding and reinforcing mutual respect and tolerance; duty to preserve the harmonies development of family and to work for the cohesion and respect of family, to respect his parents at all times, to maintain them in case of need; duty to serve his national community; duty not to compromise security of state whose national or resident he is; duty to preserve and strengthen social and national security; duty to preserve and strengthen the national independence and territorial integrity of his country; duty to work to the best of his abilities and pay taxes imposed by law in interest of society; Duty to preserve and strengthen positive African cultural values in his relation with other members of society; Duty to contribute at all times to the promotion and achievement of African Unity.

The framing of the U.N. Charter, the Universal Declaration of Human Rights 1948, the International Covenant on Civil and Political Rights 1966, the International Covenant on Social, Economic and Cultural Rights 1966 and the other International and Regional Instruments can be said as the most captivating episode in the twentieth Century.

IV. CLASSIFICATION OF HUMAN RIGHTS:

Human rights can be extensively characterized from two alternate points of view, first from the viewpoint of different parts of Human Life, Social Economic, Political, Moral, and Civil and furthermore, from the point of view of the techniques for verifying them. On the second premise they are constitutional or legal. These classifications can be talked about under the following heads:

- **Natural Rights**

Natural rights are those rights which are innate and fundamental to human instinct. Truth be told, each person naturally is given his very own individual property which can't be removed by any expert. Such rights incorporate intellectual rights, rights of the mind and furthermore rights of going about as a person for his own solace and joy gave they are not damaging to the natural rights of others.

- **Moral rights**

These rights depend on the general standards of fairness and justice. These are essentially yearnings and beliefs of individuals. Some of the time, individuals legitimize this privilege by the job they play in the family or the situation in the general public. Elders of the family should be consulted about what is happening in their family. So it is moral obligation of different individuals from the family to help this sort of status of the Elders.

- **Fundamental rights**

There are certain rights which are more significant and fundamental than the other. For instance, Right to life is the most essential of all rights whereupon the delight in different rights depends. These rights can never be confined or removed by any authority (subjected to reasonable restrictions). The other is the privilege to be perceived as an individual under the eyes of the law, the right to equal protections under law and opportunity from illegal arrest or detainment.

- **Legal rights**

Legal rights are also called positive rights. These rights are set down in law. They are likewise ensured and secured by the law of the state. Along these lines lawful rights are uniform and given to all independent of the caste, colour, race, culture, sex or place of birth.

- **Civil and Political Rights**

The rights that are granted by government or civil society are called civil and political rights. These rights give the premise to the satisfaction rudimentary states of public activity. Without them edified life is unimaginable and they are, in this manner, viewed as extremely basic for the free and dynamic existence of man. Civil and Political Rights, be that as it may, incorporate right to freedom of speech, of assembly, the right to move freely, to hold properly, and practice trade or profession, and the right to take part in the government of one's country. Part III of the Constitution of India has likenesses with these rights.

- **Economic, Social and Cultural Rights**

The rights are so as to kill social disparity, economic lopsided characteristics and to restrain drawbacks brought about by nature, age, etc. These rights, be that as it may, not bound to meet every one of these qualifications

without a moment's delay. It will rely on the economic assets or resources of the society. The vast majority of the Socialist states views these rights as fundamental rights of the general population. Rights the equality, right to work, right of have family, right to privacy, right to information, right to public assistance during old age and sickness, right to health care, right to special care during childhood and during motherhood are some of the examples of these rights. They are incorporated in part IV of the Constitution of India as directive principles of state policy.⁸

V. DEMOCRACY AND HUMAN RIGHTS

In the phrase of Abraham Lincoln, democracy is a government "of the people, by the people, and for the people."

Freedom and democracy are frequently utilized reciprocally, however the two are not synonymous. Democracy is without a doubt a lot of thoughts and standards about freedom, yet it likewise comprises of a lot of practices and strategies that have been formed through a long, frequently convoluted history. So, democracy is the organization of opportunity. Hence, it is conceivable to recognize the tried and true essentials of constitutional government, human rights, and equality before the law that any society must have to be appropriately called democratic.

Democracies fall into two fundamental classifications, direct and representative. In a direct democracy, all residents, without the mediator of designated authorities, can take part in settling on open choices. Such a framework is obviously just handy with generally little quantities of individuals - in a network association or ancestral gathering, for instance, or the nearby unit of a worker's guild, where individuals can meet in a solitary space to talk about issues and touch base at choices by agreement or greater part vote. Old Athens, the world's first democracy, figured out how to practice direct democracy with a assembly that may have numbered upwards of 5,000 to 6,000 people - maybe the greatest number that can physically assemble in one spot and practice direct democracy.

Present day society, with its size and intricacy, offers very few to none chances for direct democracy. Today, the most well-known type of democracy, regardless of whether for a town of 50,000 or countries of 50 million, is representative democracy, in which citizens choose authorities to settle on political choices, formulate laws, and administer programs for public good and welfare. For the sake of the general population, such authorities can ponder on complex public issues in an attentive and deliberate way that requires a venture of time and vitality that is regularly unfeasible by far for most of private citizens.

⁸ Das Supta, Dev Arjun, Dev Arjun Indira, Human Rights, Source Bok, 1996, NCERT Publications

THE PILLARS OF DEMOCRACY

- Sovereignty of the people.
- Government based upon consent of the governed.
- Majority rule.
- Minority rights.
- Guarantee of basic human rights.
- Free and fair elections.
- Equality before the law.
- Due process of law.
- Constitutional limits on government.
- Social, economic, and political pluralism.
- Values of tolerance, pragmatism, cooperation, and compromise.

Respect for human rights is regularly seen to be an essential for democracy or the other way around to be specific that democracy comprises an essential for the regard of human rights. Once in a while respecting human rights is seen to be one of a lot of different components, including among others - separated from respect for human rights- respect for the principles of the rule of law and separation of powers.

The *Rule of law* is concerned about how political power is exercised. The fundamental reason of Rule of law suggests that each and every citizen is liable to and responsible under the law, including officials and those in government positions. In this sense, the Rule of law appears to energize administration through democracy made for and by the society, as much as it remains as a glaring difference to the ideas of dictatorship, autocracy and oligarchy where those in position of power and administration direct their issues outside or above the purview of law. In its most genuine sense, principle of law administration is known as a "nomocracy", from the Greek *nomos* (law) and *kratos* (rule). Today, democracy is the most firmly lined up with rule of law administration / governance.

Different writings appear to consider respect for human rights as the main prerequisite that should be satisfied so as to be viewed as a democracy. For example the Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights for example express "the articulation "in a democratic society" will be translated as forcing a further confinement on the impediment statements it qualifies. The weight is upon a state forcing restrictions so qualified to exhibit that the restrictions don't

debilitate the democratic setup of society. While there is no single model of a democracy, a society which perceives and regards the human rights set out in the United Nations Charter and the Universal Declaration of Human Rights might be seen as meeting this definition".

Other writings turn around the request and consider democracy to be an essential for regarding human rights implying that in a democracy respect for human rights is best guaranteed. Respecting human rights does not naturally transform a country into a democracy. Certain human rights can satisfactorily be secured in non-democratic setups also. On the other hand, the above made suggestion that in a majority rules system regard for human rights is best guaranteed is not always true. Observational investigations have outlined that a democracy not necessarily entails better protection or security of human rights.

Democracy may even compound ethnic clash and lead to more noteworthy infringement of human rights particularly in the period promptly following progress to a democratic framework. Respect for human rights is just said to increment toward the end of the democratization procedure for example at the point when a democratic system is all around introduced.

Moreover, longstanding democracies don't naturally give the most noteworthy and best protection of human rights. For example, in numerous democracies (for example Belgium and the United States) economic and social rights are not justiciable or just somewhat justiciable. Governments may give an assortment of welfare advantages including food and shelter, medical care, health facilities and access to education. However, citizens by and large don't reserve the privilege or right to sue the legislature (government) for such advantages or benefits in court.⁹

VI. CONCLUSION

It is clear that a democracy can't exist without human rights. It is additionally evident that there is a more prominent probability that human rights are "better" respected. Democracy originates from the society; it requires a political and social responsibility and commitment. All things considered a democracy can't be forced from the outside as its combination requires a generation in time.

“Human rights, the rule of law and democracy are interlinked and mutually reinforcing and that they belong to the universal and indivisible core values and principles of the United Nations.” United Nations General Assembly, 2012.

Building democracy and the rule of law might be mutually reinforcing procedures. The rule of law is a basic factor for the progression of democracy, established in equivalent rights and accountability. By fortifying the

⁹ All Answers Ltd, 'Democracy and Human Rights: A Complex Relationship' (Lawteacher.net, June 2019) <<https://www.lawteacher.net/free-law-essays/international-law/democracy-and-human-rights-a-complex-relationship-law-essay.php?vref=1>> accessed 22 June 2019

rule of law, we secure the rights of all peoples, advance comprehensiveness, and limit the discretionary arbitrary exercise of powers of authorities, which are the cornerstones of present-day democracy.

Given that democracy's destiny is joined to that of human rights, as long as no universal agreement can be found on the precise substance on human rights no obvious advancement can be made on the issue of democracy and their development.

The connection among democracy and human rights is mind boggling, harmonious and mutually constitutive. A right based way to deal with democracy grounded in the rule of law is considered progressively the most predictable safeguard against human rights mishandles. The calls for Democratic reform as they emerge and be engaged with manageable human rights base building processes need to be noticed and due stress be laid over it.

The achievement of a democracy building attempt will be legitimately influenced by the comprehensive and consultative nature of the constitution making procedure, and human rights guidelines give a nitty gritty establishment to these procedures. Endeavor to guarantee incorporation and dynamic cooperation in the constitution making process and fitting and adequate assets to help these procedures in the long haul need to be distinguished.

Identification and assembling existing resources inside the framework and work in a brought together way to all the more likely in one of a kind capacity to promote rights based democratic procedures, particularly in connection to hindered and under-spoken to groups, including women and youth.

Discussions as to universality of human rights and how the respect, assurance, promotion and satisfaction of human rights are a piece of the fundamental structure for successful and effective democratic administration should be carried on.

These recommendations require a global shared effort and thus only international organization such as the United Nation can bring forth the required necessities and meanwhile nations across the world can enjoy the fruits of development brought forward by democracies by employing their means to best ways. Further, The UN ought to consider a companion audit process for democracies so as to evaluate how Member States are satisfying commitments made to their kin under the worldwide human rights settlements they have sanctioned. So, by using stick of checks and balance reforms could be brought to the present-day scenario wherein acceptance and action are different task as ratification is not necessarily pointing towards a full-fledged effective action plan.

Thus, requirement is of a Shared Consented approach to development of Human Rights to uplift the standard of life of the people for whom and by whom democracy came in into being. Without their development, growth

and development of democracy would be impossible feat and hence it is responsibility of all in power to join hands to ensure to those who gave them the power at least basic human rights for a happy and prosperous life cause a prosperous happy citizen leads to a prosperous developed nation.