

CHAPTER FIVE

Constitution, Democracy and Human Rights

5.1. Conceptualizing Constitution

Modern governments are founded on constitutions. Constitutions are laws which govern those people who are in power.

5.2. Peculiar Features of Constitution

With a few exceptions, all constitutions contain some common elements. The following are the major features:

- A. Generality:** As framework of government a constitution provides the general principle of a state and carry on foundation and sets out general framework of the law and the government. Other laws provide the details of the subject for which they are created.
- B. Permanency:** unlike laws, constitution is made for undefined period of time. That means constitution serve for a long lap of ages. It is purposely made to be stable and permanent. One of the mechanisms to ensure this permanency is through constitutional amendment.
- C. Supremacy:** a constitution is a supreme law of the land. They are supreme laws, taking precedence over all others, and defining how all the others should be made.
- D. Codified document:** Constitutions are written down; often in a single document that presents the constitution in a systematic manner.
- E. Allocation of powers:** Constitutions outline the proper nexus between institutions and offices of the state, and between government and citizens.

5.3. Purpose and Function of Constitutions

Among the usually recognized purposes of constitutions the following are the major ones:

1. **It serves as a framework/charter for Government:** A constitution establishes the *structure, composition, powers and principal functions* of the basic organs of government. That means, a constitution establishes the legislative branch that

makes law, the executive branch which enforces law and finally the judiciary branch which interprets law.

2. **It limits the power of Government:** A constitution limits or restricts the degree and extent of power of government officials. Constitutions outline what government officials must do and must not do.
3. **Grants Power to Governments:** A constitution *assigns power* for the different organs of government and between Federal and regional governments.
4. **It protects individual and collective rights of citizens:** To protect the individual and collective rights and freedoms of people, the constitution of a state lay down the relationship between the state and the individual by making out the respective spheres of government on the one hand, and the individual and collective rights and freedoms on the other.
5. **It serves as the Supreme (Highest) Law of a Country:** this implies that Constitution is the source of and supreme over all laws in a country. i.e. No specific law will be valid if it contradicts the constitution.
6. **It provides Government legitimacy/stability:** constitutions usually provide the vital function of introducing a measure of stability, order, and predictability of government. This in turn gives governments a legitimate/legal right to rule or govern and by doing so it serves as the weapon for legitimizing regimes.
7. **Blue Prints for establishing Values and Goals:** a constitution also contains the *aspiration and objective* of people living together a state. Usually, the aspiration of people is found in the preamble part of constitutions.

5.4. Classification of Constitutions

Different authors, by taking different parameters, classified constitutions in to different categories.

A. Constitution based on form

Constitutions, in view of the breadth of written provisions, have been described as written and unwritten constitutions. Or based on form/appearance constitutions can be classified as written and unwritten.

Written or Un-written

Written constitutions are constitutions that are *embodied in a single document*. On the other hand, **Un-written constitutions** are constitutions which are *not assembled and written in a single document*. In this case there is *no single document* that exclusively serves as a constitution. Parliamentary enactments, customary practices, traditions, court decisions etc., serve as constitutions in countries having unwritten constitutions.

A written constitution is always *enacted* while an unwritten constitution is *evolved*. A written constitution is one which is framed at a given time and comes into practice on a fixed date. An unwritten constitution, on the other hand, is *a result of evolution*: it is given by history. It is never framed by any Constituent Assembly. It is *based on conventions, customs and statutes* that grow over the centuries. The British Constitution is the best example of an evolved and unwritten constitution.

Advantages of a Written Constitution

It is *clear* and *definite*. When the constitution is in the form of a document, people have a clear understanding about the powers of the government.

A written constitution can be *made available to all inhabitants* (and visitors). The basis of the political system is therefore *comprehensible to all*.

The Disadvantage of Written Constitution

A written constitution is that it *fails to adapt itself to changing conditions* easily. Generally, the *process of amending* or changing a written constitution is *comparatively complex*.

The implementation of a written constitution usually involves interpretation. In some instances such interpretation *leads to dispute* between branches of the government. It is also *not possible to absolutely define* the extent of devolution of power among different levels of governance in a country.

The Advantages and Disadvantages of unwritten Constitution

One of the major advantages of unwritten constitution is its *flexibility*. However, it is disadvantageous because there is no single document that clearly states the fundamental rights and duties of citizens and of governments. In this case, it would be difficult to quickly determine which aspects of the constitution is violated and when. Since there is no legal restraint and because it is not accessible to public, it *can easily be distorted or even changed* without the consent of the people. As a result there may arise

difference in society regarding which conventions or custom is acceptable and which is not, since there could exist different conventions and customs in a country

B. Constitution based on complexity of amending process

On the basis of the distinction in the process of amendment, constitutions may be classified as rigid and flexible.

Flexible or Rigid

A **rigid constitution**: is one in which *amendment is very difficult*, requiring special procedures to be employed before any changes can be made. Where constitutions were devised by their founders as a complete statement of arrangements for the future, it will generally be difficult to amend them. For this reason *it is particularly difficult to amend a written constitution*: it is 'rigid' rather than 'flexible' in nature. The constitutions of the United States of America, Switzerland and Australia are considered as rigid constitutions.

A **flexible constitution**: is one which can be amended easily by an ordinary legislative process. It can be amended without any special procedure. For example; the constitution of England is flexible because any provision can be changed by an act of Parliament.

Advantages and Disadvantages of Flexible or Rigid Constitution

The strength of a rigid constitution is that it is *a guarantee against quick changes*. It is *stable*, whereas a flexible constitution is *unstable*. Moreover, the fundamental rights of the people and the interests of the minorities are *more secure* under a rigid constitution. A flexible constitution, however, is considered *progressive in nature* and helpful in the development of the nation as it changes easily and adapts to the changing circumstances. A rigid constitution, on the other hand, may not be easily changed according to the changing conditions.

A constitution to cope up with the changing environment must be amended. That is a constitution needs to be adjusted in relation with the changing external environment. This is done by modifying or changing certain provisions of the constitution. This process is known as **Amendment**. Some countries such as USA, Canada, Nigeria, Ethiopia stipulated a serious of amendment procedures in their constitutions. On the other hand, in countries such a united kingdom, a constitution could easily be a mended by a normal legislative process.

C. Constitution based on degree of practice

On the basis of the degree to which constitution of state observed in practice, we can have effective and Nominal Constitution of State.

- **Effective Constitution:** Effective constitution denotes to a situation in which government/citizens practices correspond to the provisions of the constitution.
- **Nominal constitution:** In short when the constitution only remains to have paper value or when there is absence of constitutionalism. Therefore, a nominal Constitution is not observed in practice but in form.

D. Based on the kind of state structure

On the basis of the type of state arrangements, constitutions could also be classified in to Unitary and Federal.

Federal or Unitary

Constitutions which distribute power between the Federal and regional levels of government are Federal constitutions. On the other hand, constitutions that concentrate power at the central government are called unitary constitutions.

5.5. Constitutionalism

Constitutionalism refers to a doctrine that governments should be faithful to their constitutions because the rules and laws so provided are all that can protect citizens' rights from arbitrary actions and decisions of the government. Hence, the essential elements for constitutionalism are constitution and its effective implementation. Constitutionalism is another name for the concept of a limited and civilised government. Thus, constitutionalism does not merely require the existence of constitution.

5.6. The Constitutional Experience of Ethiopia: Pre and Post 1931

5.6.1. Traditional Constitution of Ethiopia (Pre 1931)

Documents like the *Kebrä Nagast*, the *Fatha Nagast* and *serate mengest* from the 13th Century until the early 20th Century were the precursors to the formal written Ethiopian national constitutions of the modern era.

A. The *Fetha Negest* (The law of the Kings)

The *Fetha Negest* (The Law of Kings) was a religious and secular legal provision than being a definite constitution. Law of the Kings, is a collection of laws which in use in Christian Ethiopia for many centuries. It was used as the sources of constitutional, civil, and criminal laws. It was compiled from the Old Testament, the New Testament, and the Roman law. It serves as both religious laws and legal provisions of state.

It was a fundamental law upon which the government and the administration were based and the king vested with absolute power. The throne was hereditary, the king was thought to be appointed divinely, that is derives his power directly from God. It contains the idea of divine rights of kings with the assumption that rules have a God given power.

B. *Kebre Negest* and *Ser'ate Mengest*

The *Kebra Nagast* (The Glory of Kings) was written to document for the first time the mythical origins of the royal house. It was the most important traditional document that even defined who should become king in Ethiopia i.e., it determine the succession of the throne in Ethiopia.

It was the principal sources of legitimacy for the kings. This document takes the Ethiopian history back to the Solomonic dynasty, where the queen of Sheba made romantic tripe to King Solomon of Israel and gave birth to the first Ethiopia king Menelik I. Based on this, the document determined that any king in Ethiopia must descend from the Solomonic dynasty or must have such blood relationship with the dynasty.

C. *Ser'ate Mengeste*: Another is *Ser'ate Mengeste* of the 19th c which deals with administrative protocols within the government institutions.

5.6.2. The 1931 Written Constitution

The constitution was significant not for its liberal traditions but rather for its symbolic role in providing formal definitions of the relations between the emperor and the nobility and the administration of the government. The constitution can be considered as more of a formal agreement between the monarchy and the feudal lords.

Generally, the constitution has **two motives: Internal** and **external**. One of the most important historical goals of the Constitution was to breakdown the powers of the regional lords by bringing them under powerful centralized state machinery. This constitution strengthened the traditional position of the emperor by weakening the role of nobility.

Secondly, its major purpose was modernization. Consistent with their colonial intention, the west, particularly, Italy under Mussolini continued to accuse Ethiopia as uncivilized, backward, arbitrary, feudal etc. Therefore, the constitution was written with the Emperor's strong motivation to reverse all these criticisms and to show the modern picture of the country. Ethiopia was expected to show to the outside world that it is becoming civilized.

The basic theme of the constitution is found in article 6 which states that "in the Ethiopian Empire supreme power rests in the hands of the Emperor."

However, the 1931 constitution is remarkable in the sense that it has established the three branches of government. The constitution established a bicameral parliament containing the senate (Yehig Mewossagna Mikir Bet) and the Chamber of Deputies (Yehig Memiria Mikir Bet). However, these two Houses were not representative. This is because members of the senate were appointed by his majesty from among the nobility and local chiefs who served his empire as princes, masters, judges or high military officials. The primary role of the two Houses was strictly advisory. They had no power to make laws independently by themselves as modern parliaments do today.

The other innovative element of the 1931 constitution is that it provided the constitutional frame work for ministerial system.

Concerning the Judicial body, the constitution introduced two different court systems called **Regular courts** and **administrative tribunals**. The ordinary courts handle civil and criminal cases. All kinds of suits relating to administrative affairs were handled by special courts or administrative tribunals. At the top of the court system was the emperor with his **Zufan chilot**, in which the emperor tries cases in person.

5.6.3 The 1955 Revised Constitution

The Revised Constitution continued to reinforce the process of centralization. The sketchy provisions regarding the powers and prerogatives of the Emperor were extensively elaborated in the new Constitution.

Despite the apparent inclusion of the notion of separation of powers, little change was introduced regarding the position of the Emperor. He was both the head of state and of the government and he continued to oversee the judiciary through his *Chilot* (Crown Court).

Similar to its predecessor the revised Constitution solidified the absolutism of the monarchy. The first two chapters were devoted to the institution of the monarchy, the holiness of the Emperor, His dignity, and the Solomonic root of the dynasty, etc.

The federation of Eritrea (with its liberal constitution) with Ethiopia (which had autocratic constitution) in 1952 was the one that necessitated the revised Constitution.

The persistent effort on the part of few enlightened Ethiopians returning home from abroad for a more liberal and democratic constitution was another reason for the revision of the constitution.

5.6.4. The 1987 Constitution of the People's Democratic Republic of Ethiopia (PDRE)

After assuming power, the military regime, suspended the 1955 revised constitution and began to rule the country by series of decrees and proclamations.

The Constitution starts by making “the Working People of Ethiopia” owners of the Constitution. It goes on at the preamble to note the fact that Ethiopia is a multinational state with various nationalities and diverse communities with essential unity created by cultural intercourse, migration and commerce.

In PDRE the organization and functioning of the organs of state is based on the principles of democratic centralism. Sovereignty lies on the workers of Ethiopia and exercised through the unicameral parliament called the National Shengo and local Shengos established by election, as well as through popular referendums. According to the Constitution, the *Shengo* was the supreme organ of the state power in the country.

5.6.5. The 1991 Transitional Charter

In contrast to a constitution, a charter is a document which grants a limited authority and delegates few authorities to undertake a particular field of operation. Accordingly, the 1991 charter of the transitional government of Ethiopia provided the transitional government the authority to institutionalize the main constitutional order.

The Charter is a very brief document with only 20 articles. The charter granted self-determination up to secession to all Nations, Nationalities and Peoples of Ethiopia.

5.6.6. The 1995 FDRE Constitution

The Constitution gives the ownership of the constitution to “Nations, Nationalities and Peoples of Ethiopia” and established a federal state by dividing and sharing power between the federal and state governments. In line with federal traditions, the constitution stipulated two layers of legislative, executive and judicial organs.

Also an executive organ led by a Prime Minister whose office is accountable for the House of Peoples Representatives (HPR) is set up. All ministers serve for the duration of the legislative session. Executive power is in the hands of the Prime Minister, who is also the commander in chief of the armed forces.

Similarly an independent judiciary with the supreme federal judicial authority vested in the Federal Supreme Court is established. Likewise, states have the State Council (with legislative power), State administration (highest organ of state executive) and a judicial power vested in courts. The judicial branch is composed of federal and state courts.

5.2. Democracy and Democratization

5.2.1. Understanding Democracy

Democracy literally means the government of the people or government of the majority. Etymologically, the word democracy is derived from two Greek words: *demos* and *kratos*, which means common people and rule (legitimate power to rule) respectively. In this case the word democracy refers to the idea of *rule by the people or government by the people*. Hence, in its original sense democracy means “rule by the people”.

You may have already heard about the most common definition of democracy: “*the government of the people, by the people and for the people*”, given by former US President Abraham Lincoln. To put it another way, we can say that a government comes from the people; it is exercised by the people, and for the purpose of the people’s own interests. The lexicon or dictionary definition of the term entails that democracy is a state of government in which people hold the ruling power either directly or indirectly through their elected representatives.

Convincingly it can be also said that Democracy is a *people centered system* where the people are the *heart*, the *root* and also the *fruits*. There are two broad ways of exercising democracy: namely direct and indirect democracy.

Direct democracy: implies a form of government in which the right to make political decisions is exercised directly by the whole body of citizens acting under procedures of majority rule. It is also known as pure/classical democracy. Every decision concerning the government is decided based on popular vote.

Indirect democracy : refers to a form of government in which citizens exercise their rights and freedoms and discharge their obligations not in person but through representatives chosen by themselves. The representatives will act on the behalf of the citizens they are representing.

5.2.2. Fundamental Principles and Values of Democracy

Although we cannot be exhaustive in our list, the followings constitute some of the fundamental principles of democracy. These are:

- A. Popular sovereignty:** Democracy makes people ultimate sources of political power. Accordingly, people elect their own representatives for various positions and when they become dissatisfied with the performance of these representatives, they have the right to replace them by some other individuals.
- B. The Rule of Law:** it means that government decisions and actions shall be made according to the established laws of the country rather than by arbitrary action. It means that the principle of the rule of law means that both government and the governed are, and must be, *subject to the laws* of country.
- C. Separation of Powers:** In a democracy, there is no concentration of power up on a single individual or institution. Instead, *political power will be shared* among the different organs and levels of government.
- D. Checks and Balance:** The powers given to the different branches of government are balanced so that *no branch can completely dominate* the others. Means that many of the powers of one branch are shared and checked by those of the other branches.
- E. Majority Rule and Minority Rights:** After conducting democratic election, those who gets the majority vote will establish a government. The policies, programs and

decisions of the majority will govern the country while the right of the minority respected.

F. Political Participation: Democracy is by definition a rule of the people by the people themselves, and hence requiring active political participation of the public. Participation could take different forms such as voting, being members of apolitical party and running for office, undertaking peaceful demonstrations etc.

G. Liberty: Liberty refers to the freedom enjoyed by citizens to lead their life in their own way. Democracy as a system *ensures freedom* to the possible degree for all the people so that they *could develop their own capacity and potential*.

H. Political Equality: Political equality implies the *enjoyment of all political rights* by all citizens without discrimination on various grounds.

I. Tolerance: Tolerance refers to the *accommodation of divergent views*, believes, cultures languages etc. It means *accepting* and *respecting* other people's customs, beliefs, opinions etc. Majority and Minority rights run smoothly when tolerance is maintained.

J. Free, Fair, Periodic and Competitive Elections:

In order to establish democratic government, first the election should be free means all interested parties to the election should get the chance to participate in the election. Secondly, fair means after giving the chance of participation all of them should be treated equally without discrimination. Finally, the election should be conducted periodically with fixed duration.

K. An election to be democratic should be *free, fair, competitive* and *periodic*. In a democratic election voters are free from any sort of *threat of punishment, coercion* and *intimidation*. That is voters should be independent and autonomous to choose whomever they want.

An election should be *fair* in the sense that contesting political parties should be given with *equal chances and privileges* to air their views, political programmers etc. In addition, every one's vote should carry equal weight. Democratic elections are also hold on the basis of *regular time intervals*.

L. Accepting the Results of Elections: In democratic elections, there would be winners and losers of vote to seize political power. If democracy is to succeed, it is

essential that political parties and their members, even individuals be willful to compete in elections and accept their results.

M. Economic Freedom: In a democratic political system individuals are also given with the *freedom to undertake any kind of business* they want in any part of the country. In economic terms, individuals are *autonomous* and *independent* from arbitrary intervention of the state in their business.

N. Accountability and Transparency: Government officials in a democratic political system are elected by the people and, hence are *responsible to the people*. **Accountability** implies that government officials are *answerable to the decisions and acts* they took. Failure in duty will make an official answerable to it. **Transparency** implies *openness of the activities* of government officials and institutions to the public. That is government officials and institutions in a democracy notify or publicize key decisions they made to the public.

O. The protection of Human and Democratic Rights: Democracy as a political system is characterized by its *recognition and protection of human rights*. Human rights, which all human beings possess simply because they are human beings, include the right to life, liberty, security, equality etc. **Democratic rights** are political rights which citizens exercise in a democratic political system. Democratic rights include the right to assembly, association, press, freedom of speech, the right to elect and to be elected etc.

P. Peaceful Transition of Political Power: One of the most important elements of a democratic system is the prevalence of peaceful transition of political power. This avoids the evil effects of taking political power by force.

Q. Multiparty System: Democracy also requires having several political parties working together in one political system. These political parties should get equal constitutional guarantee, support and treatment to compete for elections and present their offer freely to the voters. That enables to establish market of ideas to the citizens and encourage parties to come with better alternatives to be elected among the competitors.

R. Secularism:

This principle demands strict separation of religious and political affairs hence state and church operations basing on the philosophy that individuals and groups in a free society should have freedom of conscience. It asserts the freedom of religion, and freedom from

the government imposition of religion upon the people, and absence of state privileges or subsidies to religions.

5.2.2. Democratization

Democratization is the process of transitions from nondemocratic to democratic regimes that occur within a specified period of time. It is not a simple process and will take an extend period of time to complete, if it wishes to be prosperous.

There are three main elements in democratization such as the removal of the authoritarian regime, installation of a democratic regime, and the consolidation, or long-term sustainability of the democratic regime.

5.2.2.1 Actors in Democratization Process

Building up of democracy is *not an overnight program*: it needs not only time but different actors must also build democracy and democratic culture.

A. Political Parties

In a political regime characterized by representative democracy, political parties are *vectors of democracy*. *Competition between political parties* in the framework of elections is one of the indispensable characteristics of representative democracies.

B. Mass Media

The mass media refers *institution and to the methods of communication, which can reach large number of people at the same time*. It includes *newspapers, television, radio, books, posters, magazines, and cinema* etc. Media plays a role in the *political training of citizens* and *democratic culture* by informing them.

C. Civic Societies

Civil society forms the backbone of democracy. Larry Diamond (1999: 220-221) defines civil society as “the realm of organized social life that is open, voluntary, bound by a legal order or set of shared rules”. Diamond stated that civil society encompasses “private citizens acting collectively to make demands to the state or to express in the public sphere their interests, preferences and ideas or to check the authority of the state and make it accountable” (ibid: 221).

Civil societies have a potential of playing numerous momentous roles for democratic development and consolidation. To mention some: limiting the power of the state more generally, including challenging the abuses of authority; monitoring human rights and strengthening the rule of law; monitoring elections and enhancing the overall quality and credibility of the democratic process; educating citizens about their rights and responsibilities; building a culture of tolerance; providing alternative means, outside the state, for communities to raise their level of material development.

5.3. Human Rights: Concepts and Theories

5.3.1. What Are Human Rights?

In most general sense human rights are understood as rights which belong to any individual as a consequence of being human, independently of the acts of the law. Human rights are rights that *belong to all of us*, simply because we are human beings. Human rights are also called *natural rights*. They are natural in a sense that they are rights everyone needs to have as a result of being a human creature.

Human rights are *legally guaranteed by human rights law*, protecting individuals and groups against actions which interfere with fundamental freedoms and human dignity. They are expressed in treaties, customary international law, bodies of principles and other sources of law.

5.3.2. Basic Characteristics of Human Rights

The most common attributes of human rights includes the following; *universality, inherence (in human dignity), inalienability, equality*, indivisible and interdependent.

- A. Universal:** Universality refers to the *applicability of human rights to all people* everywhere at all times. That is, it belongs to each and every human being, no matter what he or she is like.
- B. Inalienable:** Inalienability implies that *nobody can deprive anyone of these rights and nobody can renounce these rights by himself*. They are inalienable because *being human cannot be renounced or lost*.
- C. Interdependent and Interrelated:** This is to mean that all rights have equal weight/importance and it is not possible for one to fully enjoy any of his/her right without the others. For instance, one cannot enjoy his/her right to life without

his/her rights of health, education, freedom from torture and inhuman treatment, right to an adequate standard of living and the like.

D. **Equality:** This principle pronounces that all individuals are equal as human beings and by virtue of the inherent dignity of each human person. Accordingly, no one should face discrimination on the basis of race, colour, ethnicity, gender, age, language, sexual orientation, religion, political or other opinion, national, social or geographical origin, disability, property, birth or other status as recognized by many of the international and regional, national human rights frameworks.

E. **Inherent (in human dignity):** Inherence refers to *the existence of rights independently of the will of either an individual human being or a group of people*. Thus, "they are neither obtained nor granted through any human action" They exist in spite of the fact that one has the will or capacity to exercise them.

They are *not given by governments*, or governments cannot give human rights; rather human rights are *endowed naturally*. They exist in the inherent dignity of human beings. Thus, whether governments recognized it or not; whether they respect it or not, human rights exist independently of the acts of governments.

5.3.3. Categories of Human Rights

There are "three generations of human rights" advanced by the French jurist Karl Vasak. Inspired by the three normative themes (principles of *liberte* (liberty), *egalite* (equality), and *fraternite* (fraternity)) of the French Revolution. These are the first generation of civil and political rights; the second generation of economic, social and cultural rights; and the third generation of newly called solidarity rights.

A. The First Generation Rights

The first generation of civil and political rights derives primarily from the 17th and 18th century reformist theories which are associated with the English, American and French revolutions. Based on the political philosophy of *liberal individualism* and the economic and social doctrines of *laissez-faire*, it conceives of human rights more in negative ("freedoms from") than positive ("rights to") terms; it favors the *abstention* rather than the *intervention* of government in the quest for human dignity.

First generation rights are essentially *individual rights*. They only require the state to abstain from interfering in the life of the individual (negative obligation of the state). Belonging to this first generation, thus, are such claimed rights as set forth in Articles 2-21 of the Universal Declarations of Human Rights, including

- Freedom from racial and equivalent forms of discrimination;
- Freedom from slavery or involuntary servitude;
- Freedom from torture and from cruel, inhuman, or degrading treatment or punishment;
- Freedom from arbitrary arrest, detention, or exile;

Each listed above were fundamental to the interest fought for in the American and French revolutions and to the rise of capitalism.

B. The Second Generation Rights

The second generation of *economic, social* and *cultural* rights finds its origins primarily in the socialist tradition that was foreshadowed among the Saint-Simonians of early 19th century France and variously promoted by *revolutionary struggles* and *welfare movements* ever since. In large part, it is a *response* to the *abuses and misuses of capitalist development* and its underlying, essentially uncritical, conception of individual liberty that tolerated, even legitimated, the exploitation of working classes and colonial peoples.

Historically, it is counterpoint to the first generation of civil and political rights, with human rights conceived more in positive ("right to") than negative ("freedoms from") terms, requiring the *intervention, not the abstention*, of the state for the purpose of assuring *equitable participation* in the production and distribution of the values involved. Illustrative are the claimed rights set forth in Articles 22-27 of the Universal Declaration of Human Rights such as:

- The right to social security;
- The right to work and to protection against unemployment;
- The right to rest and leisure, including periodic holidays with pay;
- The right to a standard of living adequate for the health and well-being of self and family;
- The right to education; and
- The right to the protection of one's scientific, literary and artistic production.

Second generation rights are *group* or *collective rights*. They require positive action or intervention of government for their realization.

C. The Third Generation Rights

The third generation of *solidarity rights* are even more seen as *collective rights*, based on notions of *international solidarity* and relating to global structural problems rather than

individual cases. Foreshadowed in Article 28 of the universal Declarative of Human Rights, which proclaims that "everyone is entitled to a social and international order in which the rights set forth in this Declaration can be fully realized," it appears so far to embrace six claimed rights. Three of these reflect the emergence of *Third World nationalism* and its demand for a *global redistribution of power, wealth, and other important values*:

- The right to political, economic and social development;
- The right to participate in and benefit from "the common heritage of mankind"
- The right to peace
- The right to a healthy and balanced environment, and
- The right to humanitarian disaster relief

All six of these claimed rights tend to be collective rights, requiring the concerted efforts of all social forces, to substantial degree on global scale.

5.3.4. Derogations and Limitations on Human Rights

There are two conditions under which human rights can be restricted: **limitation** and **derogation**. **Limitations** are lawful infringements of rights. Limitations are deviations from the standard manner of dealing with rights imposed primarily to facilitate optimal use or exercise of rights in a context of scarce public resources, space and time. Limitations can take the form of restrictions and/or derogation. **Restrictions** are acceptable or justifiable limits of human rights during the normal times. **Derogation** means a temporary non-application and suspension of rights by the state in abnormal or emergency (natural/artificial) situations.

Limitations may be made on the enjoyment of human rights for the sake of: safeguarding of national security or public peace; the prevention of crimes; the protection of health, public morality; the protection of the rights and freedom of others; and safeguarding democratic institutions.

Non-derogability of Human Rights

The concept of non-derogability has been one of the important aspects of the international human rights laws and treaties. There are also certain unique and inherent human rights, which can never be suspended under any circumstances. For instance, the ICCPR, which also allows states to suspend some of the rights under

specific conditions, clearly mentions that some of the articles are non-derogable. They are: right against arbitrary deprivation of life (art. 6); freedom from torture or cruel, inhuman and degrading treatment or punishment; and freedom from medical or scientific experimentation without consent (art. 7); etc.

5.3.5. The Developments of Human Rights Norms and Instruments

The development of Human rights laws was linked to *reaction to massive state abuse* of human beings. The modern concept of human rights has also drawn impetus from the experiences of World War II. As such it is rooted in the experiences of '*legal lawlessness*' that characterized the activities of some oppressive regimes. The *occurrence of holocaust* in pre-war Germany and the *apartheid regime* in South Africa has taken as an example of legal lawlessness. In response to such lawlessness, the *international human rights regime* developed since WWII.

The milestone in the history of the development of the international human rights system is the adoption at the United Nations General Assembly (UNGA) in 1948 of the Universal Declaration of Human Rights (UDHR). The UDHR, meant to serve as "*a common standard of achievement for all nations*", is the single most important instrument that shaped the post-war human rights movement. Today, it forms the core of the *International Bill of Rights (IBR)*. Although it is a declaration of mere 30 articles, it embodies the list of all rights that can be viewed as first, second, and third generation of rights.

The UDHR is viewed by scholars as one of the *most magnificent achievement* of the modern human civilization. The UDHR "gave expression to diffuse, deep-seated longings and *left wings to movements* that would soon bring down colonial empires. Its thirty concise articles, it *inspired or influenced* scores of post war and postcolonial constitutions of many countries and various treaties throughout the world. It became the polestar of an army of international human rights activists who pressure governments to live up to their pledges and train the searchlight of publicity on abuses that would have remained hidden in former times.

It is the *parent document, the primary inspiration*, for most rights instruments in the world today. The adoption of the subsequent covenants on Civil and Political Rights (**ICCPR**) and on Economic, Social, and Cultural Rights (**ICESCR**) in 1966 (to come into

force in 1976) was a gradual but immense stride toward completing what later came to be the regime of the International Bill of Rights (IBR). Through these and other important instruments, the UN has discharged its responsibilities to set normative standards on human rights while also working with specialized UN bodies (e.g. the United Nations High Commissioner for Human Rights [UNHCHR] and the Committees) to develop mechanisms of monitoring and better implementation of rights.