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Chapter Five: Constitution, Democracy and Human Rights

5.1 Chapter Introduction

5.2 Chapter Objectives

5.3 Constitution and Constitutionalism

5.3.1 Conceptualizing Constitution

- The word 'constitution' is used mainly in many senses
 - ✓ In a **political sense**, it signifies **the constitution of the state**
 - ✓ the term has attained a **normative connotation** and has become **another term for a 'democratic political order'**
- Constitution is figuratively defined as
 - the **fundamental or basic law of a state** which sets out the structure of the state
 - **lists the rights of citizens alongside the limits on the power exercise of a government**
- It is a **blue print placed on top the hierarchy of laws** on constitutional governments
- It is **collection of principles** according to which the powers of the government, the rights of the governed, and the relation between the two are adjusted

- Constitution is the mothers of all laws; all other ordinary laws are derived from and subjected to this blue print
- constitution is supreme law of a land, any other law contradicted with the provisions of the constitution becomes void or invalid

5.3.2. Peculiar Features of Constitution

- constitutional documents and traditions take the general form of a contract or an agreement between the ruled and the rulers
 - ✓ Limitations on the rulers are exacted by the ruled in exchange for allowing the rulers to preserve some elements of their right to govern and for preserving the stability of the governing system itself

distinctive features of a constitution

➤ Generality

- provides the general principle of a state and carry on foundation and sets out general framework of the law and the government
- constitutional law announces principles while other laws apply or implement what the constitution announce their respective spheres of fields
- other laws provide the details BUT constitution is always the most general in the sense, short and brief
- The generality is very important because it give the constitution a feature of elasticity through interpretation thereby to accommodate various questions

➤ Permanency

- It is made for undefined period of time; serve for a long lap of ages
- purposely made to be stable and permanent
 - ✓ other laws are tentative, occasional and in the nature of temporary existence

➤ Supremacy

- taking precedence over all others, and defining how all the others should be made
- It is original because it is directly made by the people as the direct expression of the will of the people
 - ✓ other laws are secondary or derivate being commands of representatives of the sovereign

➤ Codified document

- written down; often in a single document that presents the constitution in a systematic manner
- constitutions are not intended to be perfect is evidenced by expressly stated processes for revising or amending them

➤ Allocation of powers

- It outline the proper relations between institutions and offices of the state, and between government and citizens
- most crucial part because it allocates powers and functions to government

5.3.3 Major Purposes and Functions of Constitution

✚ Serves as a framework for Government

- ✓ It is a plan for organizing the operation of government which in turn effectively guides the functions and powers of bodies of government

✚ Limits the Powers of Government

- ✓ In a constitutionally limited government, officials are always abided by the constitution
- ✓ there is no decision or action that will be undertaken arbitrarily and spontaneously rather
 - every decision, act, or behavior is entertained according to rules and laws that originate from the constitution
- ✓ A constitutional Government is neither too powerful nor too weak
 - constitutions shall grant Governments enough powers to effectively and consistently undertake their functions and responsibilities
 - But at the same time must put limits on their powers to make sure that they are not in a position to endanger the rights and freedoms of citizens

✚ Protects individual and collective rights of citizens

✚ Serves as the Supreme (Highest) Law of a Country

- ✓ Constitution is the source of and supreme over all laws in a country

- ✓ No specific law will be valid if it contradicts the constitution
- ✓ constitution of state is referred to as “the law behind other laws” or “the Mother of all laws” of a country

✚ Provides Government legitimacy/stability

- ✓ provide mechanisms through which any potential conflicts can be adjudicated and resolved
- ✓ It provide the vital function of introducing a measure of stability, order, and predictability of government
 - It gives governments a legitimate/legal right to rule or govern and by doing so it serves as the weapon for legitimizing regimes

✚ It is Blue Prints for establishing Values and Goals

- ✓ fundamental aims (objectives) and principles are described or accomplished explicitly in preambles to constitutional documents, which often function as statements of national ideals and values
 - Example: preamble of the FDRE Constitution

5.3.4. Classification of Constitutions

- Constitutions are classified into different categories using different criteria

A. Constitution based on form

- ✓ in view of the breadth of written provisions; based on form/appearance constitutions

➤ Written Constitution

- is one whose provisions are written in detail

- embodied in a single formal written instrument or instruments
- written constitution is a formal document in a codified form
 - Example, India, Kenya, Ethiopia, USA, Germany, Brazil

Merits of Written Constitution

- ✓ easily accessible to citizens that - enable them to monitor the behavior of their government
- ✓ Citizens can easily learn about their rights and duties
- ✓ full of clarity and definiteness because the provisions are written in detail
- ✓ has the quality of stability

Demerits of written constitution

- ✓ It creates a situation of rigidity - leads to the development of a conservative attitude
- ✓ It becomes difficult to change it easily quickly as per the requirements of time - possibilities of mass upheaval are increased
- ✓ becomes a play thing in the hands of the lawyers and the courts - Different interpretations come up from time to time that unsettle the judicial thought of the country
- ✓ not easily adapted to a new situation or changing circumstances. It needs be continuously amended to be adapted to a new situation

➤ Unwritten Constitution

- fundamental principles and powers of the government are not written down in any single document
- written provisions are very brief and most of the

rules of the constitution exist in the form of usages and customs

- Example: British constitution

Merits of Unwritten Constitution

- ✓ has the quality of elasticity and adaptability
- ✓ so dynamic that it prevents the chances of popular uprisings
- ✓ can absorb and also recover from shocks that may destroy a written constitution

Demerits of Unwritten Constitution

- ✓ not easily accessible to the public to determine which aspects of the constitution are violated and when it is violated
- ✓ difficult to create awareness through education
- ✓ It leads to situations of instability - always in a state of flux as per the emotions, passions and fancies of the people.
- ✓ It leads to the state of confusion
- ✓ It certainly does not suit a democracy where people are always conscious and suspicious of constitutional provisions - may be suitable to a monarchical or aristocratic system

B. Constitution based on complexity of amending process

➤ Rigid Constitution

- the process of amendment is difficult
- special procedure is followed to make a change in any rule of the constitution
 - A constitutional amendment bill must be passed by the parliament by special majority
- A more difficult procedure of constitutional amendment is the one which requires a national referendum

- **Referendum** - the process of **direct voting by citizens to support or rejects at constitutional amendment or other major national issues**
- does not adapt itself to changing circumstances immediately and quickly
 - **Example: USA, Australia, Denmark and Switzerland**

➤ **Flexible Constitution**

- **simple amendment procedure** and there is as such **no special required procedure** for amending a constitution
 - absolute majority (two thirds support) in the parliament
- **adapts easily and immediately** to changing circumstances
 - **Example: Constitutions of United Kingdom and New Zealand**

C. Constitution based on degree of practice

- ✓ On the basis of the **degree to which constitution of state observed in practice**

➤ **Effective Constitution**

- **government/citizens practices correspond to the provisions of the constitution**
- **requires not merely the existence of constitutional rules** and laws but also the **capacity of those rules and laws to constrain or limit government behavior and activities**, and establish Constitutionalism

➤ **Nominal constitution**

- constitution accurately describes government'/citizens' limits **yet in practice either or both fail to behave accordingly**
- constitution **only remains to have paper value** or

when there is **absence of constitutionalism**

- a nominal Constitution is **not observed in practice but in form**

D. Based on the kind of state structure

✓ based on the kind of state structure made by the constitution

➤ Federal Constitution

- **distributes power among the different units** of a state administration
- **Some** constitutions purely **classify and decentralize power between the central government and regional/local units**
- The powers divided between the federal government and states or provinces will be **clearly set down in the constituent document**

➤ Unitary Constitution

- state power is **concentrated in the hands of the central government**
- central government **can establish or abolish the lower levels of government; determine their composition, and their power and functions**
 - local government has **no guarantee for their existence**

5.4. Constitutionalism

- refers to a doctrine that **governments should be faithful to their constitutions**
- It is being **subject to limitations** and that **citizens and governments operate in accordance with the general rules and laws** rather than arbitrary
 - ✓ This is because the rules and laws so provided are all that can protect citizens' rights from arbitrary actions and decisions of the government

- constitutionalism is the belief that constitution is the best arrangement of affairs in a society
- essential elements for constitutionalism are constitution and its effective implementation
- It is another name for the concept of a limited and civilised government
- constitutionalism does not merely require the existence of constitution
 - ✓ constitutionalism checks whether the act of government is legitimate and whether officials conduct their public duties in accordance with laws pre-determined in advance

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

5.5.1. Traditional Constitution (Pre- 1931)

- Ethiopia has a very little experience with a written constitution in spite of its long history of state formation.
 - ✓ first written form of constitution promulgated in Ethiopia in 1931
- Such lack of written constitution does not necessarily implicate the total absence of constitutional rules and principles
- Beginning in the 13th Century until the early 20th Century the Ethiopian Orthodox Church was the chief legitimator of monarchical rule
- documents like the Kebra 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

Fetha Negest – (The Law of Kings)

- ✓ a religious and secular legal provision than being a definite constitution
- ✓ It was originally written in Arabic by the Coptic Egyptian writer Abu-l Fada'il Ibn al-Assal

- ✓ designed by monks in the Church the same time Kibre Negest penned
- ✓ It set out the laws and regulations that were used to govern all activities of the Ethiopia society in the late middle age
 - 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 was fundamental laws upon which the government and the administration were based and the king vested with absolute power
 - It contains the idea of divine rights of kings with the assumption that rules have a God given power

Kibre Negest – (The Glory of Kings)

- ✓ written to document for the first time the mythical origins of the royal house
- ✓ written by six Tigrean clerics and completed in the early 14th Century
- ✓ important traditional document that even defined who should become king in Ethiopia
 - It was the principal sources of legitimacy for the kings
- ✓ 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

Ser'ate Mengist

- ✓ provided certain administrative protocol and directives in the 19th century
- ✓ hardly be considered to be a document of Constitutional Law in its widest sense
- ✓ it is the first document known to have been used for allocating power among the Crown, its dignitaries and the

Church

- ✓ tried to lay out a pattern of succession to power, though the problem of primogeniture was more theoretical than practical

5.5.2. The 1931 First Written Constitution

- With promulgation of first written form of constitution on July 16, 1931 by Emperor Haile Selassie, the era of unwritten form of constitution came to an end
- The constitution reinforced the traditional position of the emperor as 'Siyume Egziabiher, Niguse Negast Za Ethiopia' which literally means: Elect of God, King of Kings of Ethiopia
 - ✓ However, on the other marked the end of the role of the nobility or at least the gradual reduction of their role in local leadership, the traditional check against the power of the king of kings, to insignificance
- The constitution unequivocally declared that the sole basis of legitimate authority was the emperor, and that all titles and appointments descended from him - Article 6
- both internal and external factors forced the development of the 1931 constitution

External Factors

- ✓ It was the result of the growing interaction between Ethiopia and the external world, particularly the western European countries
 - Emperor Haile Selassie developed strong aspiration to view Ethiopia as a modern state to the rest of the world
- ✓ The emperor had to convince the world that his country was modernizing and taking her place among the civilized states
- ✓ However, the 1931 constitution was failed to achieve external goals as intended by the emperor

Internal Factors

- ✓ It was intended to provide a legal framework for the suppression of the powerful traditional nobilities to the emperor
- ✓ The emperor has a deep interest of centralizing the state power in the internal politics of the country
 - This was effectively done by absolutist nature of the constitution

5.5.3. The Revised Constitution of 1955

- Ethiopian politics were profoundly affected by World War II and its aftermath. The emperor had been driven into exile when beginning in 1935 the Italian Fascists occupied the country for just over five years
 - ✓ the Ethiopian Orthodox Church and the traditional aristocracy were severely weakened
- the emperor was restored to the throne by the British in 1941
- the world had also been profoundly changed by the War. Ethiopia was surrounded by African colonies which were rapidly gaining their independence and left by the departing colonialists with varying forms of democratic institutions. This trend led to pressures for reform on the Imperial Crown from younger Ethiopians
- There were constellations of social and political events that urged the revision of the 1931 constitution
- The Revised Constitution continued to reinforce the process of centralization
- The Constitution spent one chapter settling the issue of succession on the rule of male primogeniture.
- Detailed provisions vested in the Emperor wide powers over the military, foreign affairs, local administration and so forth
 - ✓ He was both the head of state and of the government and he continued to oversee the judiciary through his Chilot (Crown Court)

- it also contained an elaborate regime of civil and political rights for the subjects. In theory, the Constitution was the supreme law of the land governing even the Emperor
- It was revised because of internal and external factors mainly to cope up with the social and political dynamics of the then period, global politics, and Ethio-Eritrean federation
- revised version comes with a slight modification in the structure of the system of governance, limiting the power of the emperor to a certain extent and a relatively better recognition of rights and freedoms
- The federation of Eritrea with Ethiopia led to the addition of two new documents in to the Ethiopia legal system
 - ✓ the federal act and the Eritrean constitution
 - ✓ Both documents were far modern and better than the existing traditional 1931 constitution of the imperial government. Thus, the emperor was forced to revise the 1931 Constitution

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

- Immediately after came to power, the Dergue setup the Provisional Military Administrative Council (PMAC) type of temporary government
- The PMAC presented itself for elections through a new party- the Workers' Party of Ethiopia. The party became the vanguard communist party
- After coming to power the Dergue issued a series of decrees and proclamations that was used as legal rules until the adoption of 1987 constitution
- However, these, decrees and proclamations cannot be given a constitutional status because it does not touch basic constitutional issues
 - ✓ the time from 1974-1987 was a period vacuum in Ethiopia

of constitutional

- The People's Democratic Republic Ethiopia constitution (1987) was different from the 1931 and the 1955 imperial constitutions in that constitution
 - ✓ State and religion were separated – secularism
 - ✓ State the political power and sovereignty were declared to be the preserve of the working people of Ethiopia
 - ✓ contains provisions on democratic and human rights
 - ✓ recognized the different cultural identities and the equality of Nation and Nationalities
 - ✓ Introduced a party system by giving recognition to the workers party of Ethiopia
 - leading to a transition from a none party system to a single party system
 - ✓ aimed at the principles of Marxist and Leninist ideology
 - ✓ Aimed at giving power to the peoples so that they exercise through referendum, local and national assembly
- Practically, however, the 1987 constitution was not different from the 1931 and 1955 constitutions

5.5.5. The 1995 (FDRE) Constitution

- The FDRE constitution has a wider coverage of both human and democratic rights. one third (approximately 33 articles) is devoted to the discussion of rights

Features

- ✓ introduction of a federal form of governance
- ✓ assignment of the competence of determining constitutionality to the second chamber of the parliament
- ✓ embody many of the core egalitarian principles including the principle of self- determination of collectivities, rule of law, democracy e.t.c
- In the second chapter, the Constitution gives recognition to five fundamental principles

- ✓ principles of popular sovereignty (art. 8)
- ✓ constitutionalism and constitutional supremacy (art. 9)
- ✓ sanctity of human rights (art. 10)
- ✓ secularism (art. 11)
- ✓ accountability and transparency of government (Art.12)

5.6. Democracy and Democratization

5.6.1. Defining 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** - common people
 - **kratos** – rule (legitimate power to rule)
- in its original sense democracy means “rule by the people”
- Gradually, however, the meaning of this term is evolving and changing substantively

+ Abraham Lincoln definition

- ✓ a government comes from the people; it is exercised by the people, and for the purpose of the people’s own interests
- ✓ he defined between two contrasting notions of democracy
 - government by the people
 - public participates in government and indeed governs itself
 - government for the people
 - public interest and the idea that government benefits the people, whether or not they themselves rule.

+ The lexicon or dictionary definition

- ✓ democracy is a state of government in which people hold the ruling power either directly or indirectly through

their elected representatives

- ✓ in democratic system, state power involves compromise and bargaining in decision-making process in a democratic system

■ Joseph Schumpeter definition

- ✓ Democracy is institutional arrangement for arriving at political decisions in which individuals acquire the power to decide by means of a competitive struggle for the people's vote
- ✓ rulers are held accountable for their actions in the public realm and citizens act indirectly through the competition and cooperation of their elected representatives.

■ classical conception of democracy

- ✓ rooted in the ideal of popular participation/ Athenian democracy

- Athenian democracy was the direct and continuous participation of all citizens in the life of their polis or city-state

■ Democracy can also be conceived as the institutionalization of freedom

- ✓ it refers to the process of organizing agencies that can watch the respect of rights and freedoms
- ✓ freedom means responsibility to do in line with national interest and then answerable for one's actions and inactions

■ direct vs indirect democracy

➤ Direct democracy/ pure/classical democracy

- the right to make political decisions is exercised directly by the whole body of citizens acting under procedures of majority rule
- was mainly practiced in Ancient Greece city states
- In modern society it lost its validity because of the

population size and substituted by indirect/ representative democracy.

- However even in modern times there are some cases that governments applied direct democracy. These include

- referendum
- recall
- initiative
- plebiscite

➤ Indirect democracy/ representative democracy

- citizens exercise their rights not in person but through representatives chosen by themselves
- representatives will act on the behalf of the citizens

- for democracy to flourish, this are needed:

➤ procedural democracy

- specific procedural norms must be charted

➤ substantive democracy

- fundamental rights and freedoms of citizens must be respected

- modern democracy constitutes three key portions

- ✓ democracy
- ✓ constitutionalism
- ✓ respect for human rights

5.6.2. Values and Principles of Democracy

- fair and free elections are the prerequisite of democracy
- rule of the law, protection and freedom of human rights and supremacy of the constitution are important elements in true democratic system
- three core values that are central in the discussion of the concept of democracy

✚ Liberty

- ✓ This value includes:

➤ **personal freedom**

- Individuals should be free from arbitrary arrest and detention
- Their homes/property should be secured from unreasonable searches and seizures

➤ **political freedom**

- people of a nation have the right to participate freely in the political process such as elections

➤ **economic freedom**

- citizens should have the right to acquire, use, transfer and dispose of private property without unreasonable governmental interference
- right to seek employment
- right to engage in any lawful labor unions

 Justice

✓ three general senses of fairness:

➤ **distributive Justice**

- distributing benefits and burdens in society via agreed up on standards of fairness

➤ **corrective Justice**

- proportional response should be in place to correct wrongs and injuries

➤ **procedural justice**

- gathering information and making decisions should be guided by such principles as impartiality and openness of proceedings

 Equality

✓ Three notions of equality:

➤ **political equality**

- all people who attain the status of adult hood have equal political rights

- one man-one vote- one value
- **social equality**
 - no social hierarchy at individual and collective level or **no discrimination**
- **economic equality**
 - all peoples of a country deserve **equal and fair assessment to the national resources & services**
- **fundamental principles of democracy**
 - ❖ **Popular Sovereignty**
 - the **citizen as a whole is the sovereign of the state and holds the ultimate authority** over public officials and their policies. Consent is given by the people through their regularly elected representatives
 - **people have the right to withdraw their consent when the government fails** to fulfill its obligations under the constitution
 - **principle of majority rule** - **majorities should have the right to make political decisions**
 - The preamble of the Ethiopian Constitution expressly providing the doctrine of popular sovereignty, or rule by the people, Article 8
 - ❖ **Constitutional Supremacy**
 - puts the **constitution at the highest level in the hierarchy of laws.**
 - Constitutions are **meta-rules** (rules about how to make rules), or the **Basic Law**
 - **it is original law** by which the system of government is created
 - It is **original because it is directly made by the people** as the direct expression of the will of the people
 - ❖ **Rule of Law**

- There are **two aspects** of the rule of law that are important
 1. the **law should govern the people and the people should obey the law**
 2. the **law must be capable of being obeyed ('good' laws)**
 - rule of law different from 'rule of men' where the people were ruled by 'bad' laws
- rule of law is the principle under which a government exercises its authority in accordance with clear, objective, and publicly disclosed laws
- **The principle is intended to be a safeguard against arbitrary rule**

❖ **Secularism**

- an approach that **asserts to dismiss or ignores God, the divine, the supernatural, and other religious viewpoints** when discussing or participating in politics
- **Emphasis** is placed on **human excellence, potential, fulfillment, "actualization," and so on**, instead of the Godly, providential, or spiritual dimensions of life
- secularists demand a **strict separation of religion and politics**
- Secularism is mostly understood to mean **separation of state and religion**

❖ **Separation of Powers**

- **political power should be divided among several bodies** or officers of the state as a **precaution against too much concentration of power**
- constitutionalism ensures that the **principal powers of government legislative, executive, and judicial-were not monopolized by any single branch**

❖ Free, Fair and Periodic Election

- election should be free means all interested parties to the election should get the chance to participate in the election
- fair means after giving the chance of participation all of them should be treated equally without discrimination
- election should be conducted periodically with fixed duration

❖ Majority Rule Minority Right

- 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

❖ Protection and Promotion of Human Rights

❖ Multiparty System

- having several political parties working together in one political system
- political parties should get equal constitutional guarantee, support and treatment to compete for elections and present their offer freely to the voters

5.6.3. Democratization

- Democracy is a variable not a fixed phenomenon; it changes and develops over time
 - needs to be planted and nourished by years of practice and experience through various levels of democratization process
- **Democratization**: the process of transitions from nondemocratic to democratic regimes that occur within a specified period of time and that significantly outnumber transitions in the opposite direction during that period

- There are **three main elements in democratization**
 - ✓ **the removal of the authoritarian regime**
 - ✓ **installation of a democratic regime**
 - ✓ **consolidation**, or long-term sustainability of the democratic regime
- **Democratization involves the full-scale transition from authoritarian regime and its replacement by democratically elected regime**

5.6.4. Actors of Democratization

Political Parties

- ✓ parties have put such a strong mark on contemporary politics and democracy that **twentieth century democracy could be best described as party democracy**
- ✓ **parties are —endemic to democracy, an unavoidable part of democracy**
- ✓ majority party or a combination of parties controls the government, while other parties serve as the opposition and attempt to check the abuses of power by the ruling party
- ✓ **political parties acts as a bridge between a society and its government**

Media

- ✓ Media is a **mirror of the society and how democratic a society is, can be represented through media**
- ✓ media has an influential role in strengthening democracy. Hence, **media and democracy have strong association**
 - Countries which are strong democracies always have strong and free media
- ✓ **Media in all countries serves as a watchdog**, as a **source of information**, a **civic forum** and an **agenda setter**
 - **Watchdogs - monitoring those in power and provide citizens with the information they need to be free and**

self-governing and to hold governments accountable for their actions.

Civic Societies

- ✓ Civil society is the **set of civil rights**, including primarily **everyone's right to participate in public life**
- ✓ 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”
- ✓ Civil society may comprise **civic, issue-oriented, religious, and educational interest groups and associations**.

5.7. Human Rights: Concepts and Theories

5.7.1. What Are Human Rights?

- Human rights are **basic to humanity**. They **apply to all people everywhere**
- The notion of human rights infers that fundamental entitlements belong to every member of the human race.
 - ✓ These are **privileges someone can claim just because he/she is a human being** without any discrimination based on condition
 - ✓ They **derived from fundamental human dignity and worth**
 - ✓ The **only precondition** someone needs to fulfill in order to claim human rights is **being a human**
- also called ‘**natural**’ rights, since they are **natural entitlements** to everyone
- The Universal Declaration of Human Rights (UDHR, Article 2), stipulates **that human rights belong to every human being “without distinction of any kind”**
- Human rights **provide the minimum standards indispensable for people to live worth-living life**
- by **guaranteeing life, liberty, and security**, human rights protect

people against abuse by individuals and groups who are more powerful

- Human rights are established upon some **main principles** including universality, inalienability, indivisibility and interdependence

- + **human rights are universal**

- ✓ show their **worldwide applicability**
- ✓ all rights are expected to be applied equally **everywhere, every-time** and **to everyone** in this world
- ✓ They **transcend time, geographical and cultural disparities**

- + **Human rights are inalienable**

- ✓ That means **you cannot lose these rights** any more than you can stop to be a human being
- ✓ Human rights are not luxury rather part of our **basic necessities**
- ✓ Human rights are indivisible. This implies that **human rights are inherent to the dignity of every human person**

- + **Human rights are interdependent and interrelated**

- ✓ **all rights have equal weight/importance**, and it is not possible for one to fully enjoy any of his/her right without the others
- ✓ The violation of all these rights threatens one's life and existence in general
- ✓ **we cannot prioritize one right from others**, because no right can stand on itself

- principle of **equality and non- discrimination**

- ✓ **all individuals are equal as human beings** and by virtue of the **inherent dignity** of each human person

5.7.2. Human Rights and Responsibilities

- Human rights **involve responsibility and duties toward other people and the community**

- **Individuals** often have a responsibility to ensure that they **exercise their rights with due regard for the rights of others**
 - ✓ example, exercising freedom of speech should not infringe someone else's right to privacy
- **Human rights protection and fulfillment is considered as one of the functions of governments**, one of the very reasons why people need a government or political system in general

5.7.3. Landmarks in Development of Human Rights

- The modern human rights notions are **the result of extended tussles to end many forms of oppressions**; including slavery, genocide, discrimination, and government tyranny, in history of world societies
- human rights are a set of individual and collective rights that have been formally promoted and protected through international and domestic law since the adoption of UDHR in 1948

5.7.4. Rights Holders and Duty Bearers

➤ **Right holders**

- ✓ those who are **entitled to enjoy, possess or claim a given right**

➤ **Duty bearers**

- ✓ those who **carry the obligation of promoting, protecting, and fulfilling these right to the right holders**
- ✓ There must be always someone you will claim the protection, provision and fulfillment of your rights from and become accountable for any failures to do so
- **The primary (not the only) duty bearer for almost all of our rights is the state**
 - individuals and other non-state actors may be named as duty bearers depending on the nature of the right
- **uninterrupted and cyclic relationship is expected among rights holders and duty bearers**

5.7.5. Categories of Human Rights

+ Civil and Political Rights - first generation rights

- uphold the sanctity of the individual before the law and guarantee his or her ability to participate freely in civil, economic, and political society
- Civil rights include such rights as
 - right to life
 - liberty
 - personal security
 - equality before the law
 - protection from arbitrary arrest
 - right to religious freedom and worship
- ✓ civil rights guarantee one's 'personhood' and freedom from state-sanctioned interference or violence
- Political rights include
 - right to speech and expression
 - right to assembly and association
 - right to vote and political participation
- ✓ Political rights thus guarantee individual rights to involvement in public affairs and the affairs of state
- Civil and political rights are seen as an:
Immediately realizable rights
 - This is to mean that all states, regardless of their economic, social, cultural and political developments or realities, are expected to ensure the realization of these rights **immediately**
 - **No precondition could be acceptable for any violations of civil and political rights**
- They have also been called as
'negative' rights
 - indicate the fact that they simply entail the absence of their violation in order to be upheld

- **protection** is the main obligation of the duty bearers for civil and political rights.

✚ **Social, Economic & cultural Rights - second generation**

- an aspirational and programmatic set of rights that national governments ought to strive to achieve through **progressive implementation**
- Social and economic rights include
 - right to **education, health and wellbeing, work and fair remuneration**
 - right to **form trade unions** and free associations, **leisure time**, and the **right to social security**
- When protected, these rights help **promote individual flourishing, social and economic development, and self-esteem**
- Cultural rights include such rights as
 - the **right to the benefits of culture, indigenous land, rituals, and shared cultural practices**
 - **right to speak one's own language** and 'mother tongue' education
- civil and political rights, rights in this category are called **'positive' rights**
 - indicate that **whose realization is highly subjected to the economic capability of states**
 - ✓ **counter- arguments** to this false dichotomy is to assert that **all rights are positive since the full protection of all categories of human rights ultimately relies on the relative fiscal capacity of states**
- Second generation rights are considered as **"less fundamental" or unrealistic rights** because of the issues of justiciability
 - ✓ For this category of rights **there is a room for the state to justify duty failure referring to lack of capacity,**

resources or finance

- ✓ For instance, suppose you are living in Ethiopia and you are **still unemployed**, considered as human rights violation only if the state is economically capable

Peace, Development and Environmental Rights - Third generation (solidarity) rights

- aimed to **guarantee that all individuals and groups have the right to share in the benefits of the earth's natural resources**, as well as those **goods and products** that are made through processes of economic growth, expansion, and innovation
- Many of these rights are **transnational in nature**
 - They requires redistribution of wealth, resources from developed to developing nations
- Solidarity rights also **require global cooperation and shared responsibility** to world peace, development and the environment
- considered as **an emerging rights**
 - **rights holders and duty bearers** of the rights included under this category **are yet to be identified clearly**

Generation	First generation rights	Second generation rights	Third generation rights
Category of rights	Civil and political rights	Socio-economic rights	Solidarity rights
State obligation	Promoting and protecting	Providing and fulfilling	?
What is expected from the State	Non-interference	Positive interference	Positive involvement
Realization	Immediate	Progressive	Progressive
Right holders	Individuals (mostly)	Groups (mostly)	?

5.7.6. Derogations and Limitations on Human Rights

- There are two conditions under which human rights can be restricted: limitation and derogation
- **Limitations**
 - ✓ lawful **infringements of rights**
 - ✓ **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**
 - acceptable or justifiable **limits of human rights during the normal times**
 - Restrictions circumscribed the manner, or place, and the extent to which rights can be enjoyed **in a particular set of circumstances in normal times**
 - **Derogation**
 - a **temporary** non-application and suspension of rights by the state **in abnormal or emergency (natural/artificial) situations**
- **limitation should not be arbitrary**, it should be **based on legality, necessity, rationality and proportionality** supposed to be determined by the human rights law
- Limitations may be made on the enjoyment of human rights for the sake of
 - safeguarding of national security or public peace
 - prevention of crimes
 - the protection of health, public morality
 - protection of the rights and freedom of others
 - safeguarding democratic institutions

- FDRE Constitution (art. 93) clearly specifies **four conditions for declare state of emergency**. The Council of Ministers can declare a State of Emergency in the following situations

1. External Invasion

2. Breakdown of law and order when it

- endangers the constitutional order
- cannot be controlled by regular law enforcement

3. Natural disaster

4. Epidemic

5.7.7. Non-derogability of Human Rights

- States believe that some provisions of derogability are necessary to allow them exercise their sovereign power during exceptional circumstances for the greater good of their people
 - However, this kind of derogation is not unconditional and it has its own limits
- 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)
 - ✓ **freedom from slavery and servitude** (art. 8)
 - ✓ **freedom from imprisonment for inability to fulfill a contractual obligation** (art. 11)
 - ✓ **prohibition against the retrospective operation of criminal laws** (art. 15)
 - ✓ **right to recognition before the law** (art. 16)
 - ✓ **freedom of thought, conscience and religion** (art. 18).

5.7.8. Implementation and Enforcement of Human Rights

5.7.8.1. International Mechanisms and the International Bill of Human Rights

- main objectives of the international law and its institutions is in one way or another related with the protection of human rights
- Charter of the **United Nations make protection of human rights one of the three main objectives** of the UN
- The **United Nations has six prime organs**, namely
 1. General Assembly - **legislative (law making)**
 2. Security Council - **executive (law enforcing)**
 3. Economic & Social Council (ECOSOC)
 4. International Criminal Court (ICC) - **judiciary (law interpreting)**
 5. Office of the Secretariat
 6. Trusteeship Council (Suspended operations-1994 with the independence of Palau)
- **The Office of High Commissioner for Human Rights (OHCHR)** is established under the ECOSOC, and is **an organ particularly dedicated to the promotion, observance and monitoring of human rights worldwide**
- **international bill of human rights** is made up of various treaty and charter based human rights instruments; treaties, covenants, charters and declarations
- **The Universal Declaration of Human Rights (UDHR)**
 - ✓ It is a **human rights instruments** considered as the groundwork of most of the post-1945 codification of human rights.
 - ✓ **It is the basis for human rights protection and promotion** around the world and has been **endorsed by all countries**. Many countries have included its provisions in their basic laws or constitutions
 - ✓ **The UDHR is not a binding instrument** but claimed to

have great moral weight and popularity

- Thus, **no obligation can be drawn from that instrument**, since it is not a treaty based document. However, **its wider global acceptance is enabling it to be seen as a customary law**

- Besides to the UN Charter and the UDHR, the **UN presently has more than ten core human rights treaty** based human rights instruments
 - ✓ Each of the human rights treaty instruments **has an autonomous monitoring body**, composed of independent experts who examine the reports that signatory nations submit under the treaty
- **Ethiopia is a signatory member to all of the aforementioned core international human rights instruments**

5.7.8.2. Regional Mechanisms

- In addition to the international human rights regime functioned under the UN umbrella, **there are regional human rights systems which cover three parts of the world**
 - ✓ Africa
 - ✓ Americas
 - ✓ Europe
- **if an individual or groups feel that his/her/their rights are not protected on the domestic level, “the international system comes into play**, and protection can be provided by the global or the regional system”
- regional human rights systems are currently **established only in Europe, Africa and American regions**
 - In **African**, this system is established under the **African Union (AU)** structure
 - in the **Americas** it is part of the **Organization of American States (OAS)**
 - in **Europe** it is embedded in the **European Union’s (EU)**

organizational structure

- Regional human rights systems are also recognized for providing a better systems of enforcement than the global system
 - ✓ It allows regions to apply the relevant enforcement mechanism that fits to their context
 - ✓ Example: example, the EU founds judicial approaches more appropriate and the AU inclined to non-judicial mechanism

5.7.9. The Ethiopian Human Rights System

- The foundation of the observance of the human rights in Ethiopia is the FDRE Constitution, which was ratified in 1994
 - ✓ FDRE Constitution classifies human rights as one of its five fundamental principles
 - ✓ The FDRE Constitution has established a national human rights regimes by recognizing most of the human rights entitlements acknowledged by the core international and regional human rights instruments
 - ✓ About one-third of the Constitution is devoted to enshrining fundamental rights and freedoms
 - ✓ Article 9/4/ and Article 13 of the Constitution state that international agreements ratified by Ethiopia are an integral part of the law of the land
- Constitution has required the establishment of human rights and democratic institutions; including
 - the national human rights commission
 - general attorney office and office of ombudsmen, with an independent judiciary or courts equipped with the needed resources
- established institutions with the specific and prominent mandate of respect and promotions of human rights and the main organizations in this respect are

- the Ethiopian Human Rights Commission (EHRC)
- the Ethiopian Institution of the Ombudsman (EIO)
- Additionally,
- the Federal and Regional Ethics and Anti-Corruption Commissions and the Chief Auditor's Office
- **The National Election Board** was established on the basis of the Constitution's dictum that state power can be assumed only through representatives elected by universal and equal suffrage held by secret ballot, guaranteeing the free expression of the will of the electors