

Moral and Citizenship Education (MCED 1011)

Condensed notes on Chapter Five

Natural Science Freshman students (Section K-P)

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Constitution, Democracy and Human Rights

Conceptualizing Constitution

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- Every state must have constitution of its own and that its government must be organised and conducted according to the rules of the constitution so that the people must have a rule of law, it constitutes the case of constitutionalism.
 - Constitution is figuratively defined as the fundamental or basic law of a state which sets out the structure of the state and also 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.
 - A constitution may be said to be a collection of principles according to which the powers of the government, the rights of the governed, and the relation between the two are adjusted.
 - In other words, constitution refers to body of rules and laws, (written or unwritten) that determine the organization of government and the distribution of powers and functions to various organs of government, regulate the relationship among themselves and also between the state and its individuals through general principles on which these powers are to be exercised.
 - Constitution is the mothers of all laws; all other ordinary laws are derived from and subjected to this blue print.
 - Hence, since 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

- With a few exceptions, all constitutions contain some common elements.
- From Magna Carta of 1215 to today, 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.
- In addition, constitution has distinctive features that distinguish it from any other laws.
- The following are some of the distinctive features of a constitution.

A. Generality

- A constitution provides the general principle of a state and carry on foundation and sets out general framework of the law and the government.
- As other laws provide the details of the subject for which they are created, Constitutional principles are guidelines for others laws.
- In other words, constitutional law announces principles while other laws apply or implement what the constitution announce their respective spheres of fields.
- It builds substantial foundation and basis and general framework of the law and government.
- All other laws provide the details of the subject which they treat.
- Of course, the degree of generality of laws may depend on other factors like hierarchy of laws. But constitution is always the most general in the sense, short and brief.
- The general set up of the government and its functions in all spheres, including political, economic, legal, etc is by the constitution.

- The generality is very important because it give the constitution a feature of elasticity through interpretation thereby to accommodate various questions.

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.
- ❖ It is made to be stable, i.e., not to be worked upon by the temper of the times or to rise or fall with the occasional events.
- ❖ On the contrary, other laws are tentative, occasional and in the nature of temporary existence.

C. Supremacy

- ❖ Constitutions are laws about the political procedures to be followed in making laws.
- ❖ They are supreme laws, taking precedence over all others, and defining how all the others should be made.
- ❖ As a mother of law, it is original law by which the system of government is created, and to which the branches of government must look for all their powers and authority.
- ❖ It is original because it is directly made by the people as the direct expression of the will of the people.
- ❖ All other laws are secondary or derivate being commands of representatives of the sovereign.

D. Codified document

- Constitutions are written down; often in a single document that presents the constitution in a systematic manner.
- The constitutions are not intended to be perfect is evidenced by expressly stated processes for revising or amending them.
- Constitutional change by means of an orderly procedure is far preferable to overthrowing a government by force whenever a country's constitution has fallen out of favour with a majority of its people.

E. Allocation of powers

- Constitutions outline the proper relations between institutions and offices of the state, and between government and citizens.
- This is probably the most crucial part because it allocates powers and functions to government and specifies the rights and duties of governments and citizens-who can do what, to whom, and under what circumstances.

5.3.3. Major Purposes and Functions of Constitution

The following are some of the major purposes and functions of constitution.

1. It serves as a framework for Government

- ➔ This means that the constitution of state is a plan for organizing the operation of government which in turn effectively guides the functions and powers of the executive, legislative and judicial bodies of government.
- ➔ In other words, it is a brief and a general outline of duties and rights of governments and also that of citizens.

2. It Limits the Powers of Government

- ➔ In a constitutionally limited government, officials are always abided by the constitution. i.e 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.
- ➔ This subjection to the laws and rules from the part of the government and the governed (the people) is coined as the rule of law.
- ➔ However, Constitutional government protects the rights and a freedom of citizens doesn't mean that the government has no authority to effectively exercise its functions.
- ➔ A constitutional Government is neither too powerful nor too weak because if a government is excessively powerful, i.e. if it has unlimited powers, it tends to abuse the rights and freedoms of citizens.
- ➔ If, on the other hand, a government is too weak it can't protect citizens. Therefore, 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.

3. 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.

4. 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.
- All laws in a country are made to fulfil the objectives and goals clearly specified in a constitution of a given country. Because of this, the constitution of state is referred to as “the law behind other laws or “the Mother of all laws” of a country.

5. It provides Government legitimacy/stability

- As it formalize and regulate relationships between political bodies and citizens and also provide mechanisms through which any potential conflicts can be adjudicated and resolved, constitution 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.

6. Constitution Blue Prints for establishing Values and Goals:

- In a constitution there is also an ideological aspect of constitution making where the people truly aspired for it. In such a situation, it would be a common belief of the constituent, or at least, their leaders, what the envisioned state should be geared towards providing the people either as citizens or as members of any organization.

5.3.4. Classification of Constitutions

Constitutions are classified into different categories using different criteria. For instance, taking the criteria, form, amendment procedure and degree of implementation/practice, constitutions can be classified into the following 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.

1. Written Constitution

- In simple terms, a written constitution is one whose provisions are written in detail.
- A written constitution is one in which most of the provisions are embodied in a single formal written instrument or instruments.
- It is a work of a conscious art and the result of deliberate effort to lay down a body of fundamental principles under which a government is organised and conducted.
- Thus, written constitution is a formal document that defines the nature of the constitutional settlement, the rules that govern the political system and the rights of citizens and governments in a codified form.
- It exists in a single document containing the fundamental laws and principles specifying the rights of citizens, defines the political structure of a state and determines the distribution of government powers; it serves as a supreme law of the state.
- For example, India, Kenya, Ethiopia, USA, Germany, Brazil, Indonesia, Jordan, Venezuela and Nigeria have written form of constitution. Written constitution has certain merits and demerits.

Merits of Written Constitution

- 1) It is easily accessible to citizens that enable them to monitor the behavior of their government thus preventing the emergency of dictatorship
- 2) Citizens can easily learn about their rights and duties and the basic laws governing the patterns of political processes of their nation

- 3) It is full of clarity and definiteness because the provisions are written in detail.
- 4) It has the quality of stability, since people know the nature of constitutional provisions, they feel a sense of satisfaction

Demerits of written constitution

- 1) It creates a situation of rigidity. Since all important rules are on writing, attempts are made to act according to rules. It leads to the development of a conservative attitude.
- 2) It becomes difficult to change it easily quickly as per the requirements of time. As such the possibilities of mass upheaval are increased.
- 3) A written constitution 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.
- 4) Written constitution is not easily adapted to a new situation or changing circumstances. It needs be continuously amended to be adapted to a new situation

2. Unwritten Constitution

- Unwritten constitution is basically means that the fundamental principles and powers of the government are not written down in any single document.
- An unwritten constitution is one whose written provisions are very brief and most of the rules of the constitution exist in the form of usages and customs.
- It consists of customs, conventions, traditions, and some written laws bearing different dates.
- The British constitution is the best example of unwritten constitution.
- The most of the prescriptions of an unwritten constitution have never been reduced to writing and formally embodied in a document.
- It is made up, largely of customs and judicial decisions.

Merits of Unwritten Constitution

- 1) It has the quality of elasticity and adaptability. Since, most of the rules are in an unwritten form, people may adapt them in response to the new constitution.
- 2) It is so dynamic that it prevents the chances of popular uprisings.
- 3) Unwritten constitution can absorb and also recover from shocks that may destroy a written constitution. It looks like a natural outgrowth of a national life.

Demerits of Unwritten Constitution

- 1) Since it is not compiled in to a single document, it is not easily accessible to the public to determine which aspects of the constitution are violated and when it is violated
- 2) It is difficult to create awareness through education on the fundamental constitutional rights and duties of citizens because it is not easily accessible to citizens
- 3) It leads to situations of instability. The provisions of such a constitution may change the spur of the moment and so they are always in a state of flux as per the emotions, passions and fancies of the people.
- 4) It leads to the state of confusion. Controversies often arise over different provisions of the constitution having their place in the usages and customs of the country.
- 5) Unwritten constitution may be suitable to a monarchical or aristocratic system. It certainly does not suit a democracy where people are always conscious and suspicious of constitutional provisions.

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.

1. Rigid Constitution

- Here, the process of amendment is difficult.
- A 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.
- Then it is to be approved either by the provincial units or by the people in a referendum or both.

- Thus, rigid constitution is one that does not adapt itself to changing circumstances immediately and quickly or simply one whose amendment procedures are relatively complex or difficult.
- A more difficult procedure of constitutional amendment is the one which requires a national referendum.
- A referendum is the process of direct voting by citizens to support or rejects at constitutional amendment or other major national issues.
- Those countries like USA, Australia, Denmark and Switzerland are known to have rigid constitutions.

2. Flexible Constitution

- Flexible constitution is the constitution which set up simple amendment procedure and there is as such no special required procedure for amending a constitution.
- The simplest and commonest amendment procedure is the one which requires an absolute majority (two thirds support) in the parliament.
- If it is very simple and convenient, the constitution is flexible.
- Any new law made by the parliament gives a new rule to the constitution.
- Flexible constitution is one that adapts easily and immediately to changing circumstances or simply one whose amendment procedures are relatively simple.
- For instance, constitutions, such as those of the United Kingdom and New Zealand, may be altered by a simple majority vote in the legislature.

C. Constitution based on degree of practice

- On the basis of the degree to which constitution of state observed in practice, or on the basis of the relationship between constitutional rules and laws and principles, on the one hand, and the practice of the government (the workings) of the constitution, on the other hand, we can have effective and Nominal Constitution of State.

1. Effective Constitution

- Effective constitution denotes to a situation in which government/citizens practices correspond to the provisions of the constitution.
- Thus, an effective constitution of state 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.

2. Nominal constitution

- ❖ The constitution accurately describes government'/citizens' limits yet in practice either or both fail to behave accordingly.
- ❖ In short when the constitution only remains to have paper value or when there is absence of constitutionalism.
- ❖ This is a constitution of state that shows the texts, principles, rules and laws that may accurately describe the government behavior but fail to limit government behavior and activities in practice.
- ❖ Therefore, a nominal Constitution is not observed in practice but in form.

D. Based on the kind of state structure

- Constitutions either concentrate powers at the centre or distribute it among the different branches and levels of government.
- Such a constitution is called unitary and federal constitution respectively.
- This classification of constitution is based on the kind of state structure made by the constitution.
- In this regard, it can be classified as federal or unitary.

1. Federal Constitution

- Federal constitution is one that distributes power among the different units of a state administration.
- But the model that is followed by constitutions in distributing state power differs from each other.
- Some constitutions purely classify and decentralize power between the central government and regional/local units and such constitutions are referred as federal constitutions.
- In many states, for example, the United States of America, Canada, Australia and Malaysia, there exists a division of powers between central government and the individual states or provinces which make up the

federation. The powers divided between the federal government and states or provinces will be clearly set down in the constituent document.

2. Unitary Constitution

- On the other hand, in unitary constitution state power is concentrated in the hands of the central government.
- And the central government can establish or abolish the lower levels of government; determine their composition, and their power and functions.
- In this case the local government has no guarantee for their existence.
- Powers and responsibilities are delegated to them by the central government.
- The constitution of the unitary state presents a very different arrangement from constitution of federal state outlined above.

5.4. 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.
- 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.
- In other words, constitutionalism is the belief that constitution is the best arrangement of affairs in a society.
- Hence, the essential elements for constitutionalism are constitution and its effective implementation.
- Constitutionalism, desires a political order in which the powers of the government are limited.
- It is another name for the concept of a limited and civilised government.
- There exists no government in the world that may not be called constitutional, though such a government hardly exists in a country under a totalitarian rule where the constitution is seen with 'contempt'.
- Because of this, it is only in a democratic country that a constitutional government can be said to exist.
- A form of government can only be classified as constitutional when the rulers are subject to a body of rules and principles, which limits the exercise of their power.
- Thus, constitutionalism **does not** merely require the existence of constitution.
- This is because, 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.
- For this reason, the first written form of constitution promulgated in Ethiopia in 1931.
- But before that the country has a far back constitutional history of unwritten form.
- Such lack of written constitution does not necessarily implicate the total absence of constitutional rules and principles in the legal history of the country.
- Beginning in the 13th Century until the early 20th Century the Ethiopian Orthodox Church was the chief legitimator of monarchical rule.
- However, the rights and obligations of the Crown and its subjects were not spelled out in a written secular constitution.
- Instead, there was developed by monks of the Church an elaborate set of codes rooted in an Ethiopian national epic.
- Despite the fact of existence of constitutionally significant documents in traditional Ethiopia, no written constitution in the modern sense formed the basis for the constitutional process.
- Thus, 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.

A. Fetha Negest

- ❖ 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 originally written in Arabic by the Coptic Egyptian writer Abu-l Fada'il Ibn al-Assal (commonly known as Ibn al-Assal) when Cyril III was the Patriarch of Alexandria (1235-1243).
- ❖ It was 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.
- ❖ 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 fundamental laws 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. Kibre Negest

- Kibre Negest was another traditional document that has constitutional relevance.
- Literally, Kibre Negest means glory of king. The Kebra Nagast (The Glory of Kings) was written to document for the first time the mythical origins of the royal house.
- This document was written by six Tigrean clerics and completed in the early 14th Century.
- 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 trip 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 Mengist

- Ser'ate Mengist was another traditional document that had been used as constitution by the traditional rulers before 1931.
- The ser'ate Mengist was one of the traditional documents of the nineteenth century that provided certain administrative protocol and directives in the 19th century.
- The Ser'ate Mengist can hardly be considered to be a document of Constitutional Law in its widest sense.
- Nonetheless, as it is the first document known to have been used for allocating power among the Crown, its dignitaries and the Church, by means of "... a protocol of ceremonies which had to be consulted whenever occasions required it..." and tried to lay out a pattern of succession to power, though the problem of primogeniture was more theoretical than practical as incessant rivalries among members of the royal house intermittently switched lines.

5.5.2. The 1931 First Written Constitution

- It is often said that the key sources of legitimacy in Ethiopia's past were force (conquest, military expansion), religion (i.e. Orthodox Christianity), and tradition (i.e. 'right' genealogy).
- 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' but 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.

Factors that accounted for the promulgation of the 1931 written constitution

A. External development

- It is believed that both internal and external factors forced the development of the 1931 constitution.
- Externally, the introduction of the 1931 constitution 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.
- Yet, it is important to note that Haile Selassie was crowned with full support of the pre-war modern elite with a mission of Japanizing Ethiopia.
- The Meiji Constitution of Japan was conceived as a benevolent gift of the Emperor of Japan to his people.
- The emperor embodied the state itself and was the source and repository of all state power.
- The emperor had to convince the world that his country was modernizing and taking her place among the civilized states.
- A few years before that it became a member of League of Nations, over some nations' objection that it was not "civilized enough" to join the club of civilized nations.
- The constitution unequivocally declared that the sole basis of legitimate authority was the emperor, and that all titles and appointments descended from him.

B. Internal Development

- Internally, the 1931 constitution 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. It was designed to unify and centralize all state power in the hands of the monarch.
- This also marked the beginning of the culmination of the struggle for centralization, which began with the attempt at unification by emperors during the 19th century and reached its consolidation under the absolutist rule of Emperor Haile Selassie to be further reinforced by the military.
- The consequence was the alienation of the bulk of the regional actors leading to the center- periphery polemics.

5.5.3. The Revised Constitution of 1955

A. The Federation of Eritrea with Ethiopia, socioeconomic factors

- There were constellations of social and political events that urged the revision of the 1931 constitution.
- The revision of the 1931 constitution was urged by both internal and external factors.
- 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.
- 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.
- Interestingly enough 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 contemplated even an independent ministerial government responsible to the monarch and parliament, an elected chamber and independent judiciary but these liberal provisions were overshadowed by executive prerogatives reserved to the Emperor who exercised them expansively.
- 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).
- Fourteen years after the end of a five year colonial suppression by the Italians in 1941, a revised constitution was embraced in the Ethiopian legal system in 1955.

- 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.
- This revised version of the 1931 constitution 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.
- However, **like its predecessor**, the constitution declares the inviolability of the Emperor's dignity and the power of appointing and dismissing members of the parliament and other offices were in the hand of the Emperor.
- The federation of Eritrea with Ethiopia led to the addition of two new documents in to the Ethiopia legal system.
- These were the federal act and the Eritrean constitution.
- The federal act was a document that specified the terms of agreements for the federation between Eritrea and Ethiopia.
- The Eritrean were established their own constitution with the support of UN.
- This constitution incorporated the human rights provisions of the universal declaration of human rights and other progressive concepts.
- It also implied a more liberal government that incorporated the values and ideas of a democratic society as the result of colonial heritage and the influences of United Nations.
- 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 Provisional Military Administration was also in the process of reconstituting itself. To legitimize itself within and broad it had, at least, to take off the uniform and appear in a civil dress.
- ➔ The PMAC presented itself for elections through a new party- the **Workers' Party of Ethiopia**.
- ➔ The party became the vanguard communist party.
- ➔ The establishment of the Dergue inevitably brought profound changes in the country.
- ➔ 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.
- ➔ It took sweeping measures through series of decrees and proclamations that includes nationalization of rural and urban land, extra urban houses, private schools and factories by passing series.
- ➔ In the Article 3, state would control key production, distribution and service enterprises, which legalized the massive nationalization of private businesses after the government came to power in 1974.
- ➔ However, these, decrees and proclamations cannot be given a constitutional status because it does not touch basic constitutional issues.
- ➔ This may lead us to the conclusion that the time from 1974-1987 was a period of constitutional vacuum in Ethiopia.
- ➔ Though it was late, during the Dergue regime a new constitution was adopted in 1987.
- ➔ The regime facilitated the adoption of a new constitution, through a constitutional commission, which was different in its nature form the constitutions of its predecessors.
- ➔ The People's Democratic Republic Ethiopia constitution (1987) was different from the 1931 and the 1955 imperial constitutions in that constitution:

- 1) State and religion were separated (issue of secularism was included in the constitution) for the first time;
 - 2) State the political power and sovereignty were declared to be the preserve of the working people of Ethiopia.
 - 3) contains provisions on democratic and human rights;
 - 4) recognized the different cultural identities and the equality of Nation and Nationalities;
 - 5) Introduced a party system by giving recognition to the workers party of Ethiopia. Thus, leading to a transition from a none party system to a single party system;
 - 6) aimed at the principles of Marxist and Leninist ideology;
 - 7) 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.
- Of the total 106 articles of the constitution just about one third (approximately 33 articles) is devoted to the discussion of rights.
- While the democratic rights enshrined in the constitution tend to be essentially group-oriented and political in nature the human rights on the other hand are individualistic and natural.

Salient features of the 1995 constitution

- The introduction of a federal form of governance and the assignment of the competence of determining constitutionality to the second chamber of the parliament” among the other things.
- Besides, the FDRE (1995) Constitution takes a breakthrough departure in the constitutional history of the country by embodying many of the core egalitarian principles including
 - ✓ the principle of self-determination of collectivities,
 - ✓ rule of law, democracy, development, fundamental rights and freedoms,
 - ✓ Equality and non-discrimination, sustainable peace and affirmative action in its preamble part.

In the second chapter, the Constitution gives recognition to five fundamental principles; to be precise \

- 1) The principles of popular sovereignty (art. 8),
- 2) Constitutionalism and constitutional supremacy (art. 9),
- 3) Sanctity of human rights (art. 10),
- 4) Secularism (art. 11) and
- 5) 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 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”.
- 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.
- Accordingly, democracy embraces the principles of equality, individual freedom and opportunity for the common people, as those who actually wield political power.
- Moreover, the definition entails, among others, in democratic system, state power involves compromise and bargaining in decision-making process in a democratic system.
- One of the mostly quoted definitions of (modern day) democracy is the one given by **Joseph Schumpeter** (1943: 269), which defines democracy as an “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”.
- The cornerstone of Athenian democracy was the direct and continuous participation of all citizens in the life of their polis or city-state.

Forms of democracy

- If one maintains the definition of democracy to be a government system in which supreme power is vested in and exercised by people, two broad ways of exercising it can be singled out namely direct and indirect democracy.

A. Direct 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.
- This kind of democracy was mainly practiced in Ancient Greece city states.
- As the city states were relatively had small population it was manageable to conduct direct democracy.
- In modern society/state, because of the population size of countries direct democracy has lost its validity 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 and plebiscite**.

B. Indirect (Representative) Democracy

- Indirect democracy on the other hand 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.
- Citizens will submit their sovereignty for their representatives.
- The representatives will act on the behalf of the citizens they are representing.
- Like all regimes, democracies depend upon the presence of rulers, persons who occupy specialized authority roles and can give legitimate commands to others.
- What distinguishes democratic rulers from nondemocratic ones like monarchy, aristocracy and dictatorship are the means by which governments/rulers come to power and the practices that hold governments accountable for their actions.
- However, for democracy to flourish, specific procedural norms must be charted (**procedural democracy**) and fundamental rights and freedoms of citizens must be respected (**substantive democracy**).
- The overall concept of modern democracy constitutes three key portions: democracy, constitutionalism, and respect for human rights.

Note: Robert Dahl (1982:11) provides the most generally accepted listing of procedural minimal conditions must be fulfilled for modern political democracy to be existent. The major ones are:

- 1) Control over government decisions about policy is constitutionally vested in elected officials.
- 2) Elected officials are chosen in frequent and fairly conducted elections in which coercion is comparatively uncommon.
- 3) Practically all adults have the right to vote in the election of officials.
- 4) Practically all adults have the right to run for elective offices.
- 5) Citizens have a right to express themselves without the danger of severe punishment on political matters broadly defined.
- 6) Citizens have a right to seek out alternative sources of information. Moreover, alternative sources of information exist and are protected by law.
- 7) Citizens also have the right to form relatively independent associations or organizations, including independent political parties and interest groups.

5.6.2. Values and Principles of Democracy

- Democracy is a popular political notion in today's world, fair and free elections are the prerequisite of democracy and rule of the law, protection and freedom of human rights and supremacy of the constitution are important elements in true democratic system.
- There are some key elements that distinguish states organized under democratic principles from dictatorship.

Key elements/ Fundamental principles of democracy.

1. The respect of fundamental freedom and fundamental rights,
2. Elections,
3. Citizen's participation,
4. Equality, rule of law,
5. Separation of powers,
6. Democratic pluralism,
7. Multi-party political system

➔ There are three core values that are central in the discussion of the concept of democracy. These are values of liberty/freedom, justice and equality. Let us now briefly look at what each of them means.

1. **Liberty:** This value includes

- A. **personal freedom** (to mean that Individuals should be free from arbitrary arrest and detention and also their homes/property should be secured from unreasonable searches and seizures),
- B. **Political freedom** (to imply that people of a nation have the right to participate freely in the political process such as elections without being subject to arbitrary arrest, harassment and electoral corruption such as buying votes, intimidation and obstruction of voter) and
- C. **Economic freedom** (to mean that citizens should have the right to acquire, use, transfer and dispose of private property without unreasonable governmental interference and more over to enjoy right to seek employment wherever one pleases, to change employment at will and to engage in any lawful labor unions or business corporations).

2. **Justice:**

➤ This value of democracy can be understood in three general senses of fairness. These are

- A. distributive Justice (the sense of distributing benefits and burdens in society via agreed up on standards of fairness),
- B. corrective Justice (the sense that a proportional response should be in place to correct wrongs and injuries) and
- C. procedural justice (the idea that procedures used for gathering information and making decisions should be guided by such principles as impartiality and openness of proceedings).

3. **Equality:**

➤ Three notions of equality are of particular significance here for our discussion. These are

- A. Political equality (implying that all people who attain the status of adult hood have equal political rights or in short one man-one vote- one value),
- B. Social equality (implying that there should be no social hierarchy at individual and collective level or no discrimination what so ever) and
- C. Economic equality (implying that all peoples of a country deserve equal and fair assessment to the national resources services).

The followings constitute some of the fundamental principles of democracy. These are;

A. Popular Sovereignty

- ➔ This type of sovereignty is associated with power and legitimacy.
- ➔ In this way, 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 and through approval of all constitutional changes.
- ➔ Popular sovereignty **also means** that the people have the right to withdraw their consent when the government fails to fulfill its obligations under the constitution.
- ➔ On the other side, popular sovereignty in democracy assumes the principle of majority rule, which means that within constitutional limits, majorities should have the right to make political decisions.
- ➔ Such decisions are made within the framework of regular elections and include the choice of who should be elected to public office and what laws should be passed by legislative bodies.

- The notion that sovereignty came from the people (popular sovereignty) became one of the main foundations of modern democracy and constitutional principle.
- Rousseau asserted that sovereignty was based in the general will of a population (or the common good) and that there was no distinction between the source of sovereignty and its exercise.
- Sovereignty implies the power to have a final say on an issue. The preamble of the Ethiopian Constitution for instance says, “We the Nation, Nationality and Peoples... adopted.... this Constitution”, expressly providing the doctrine of popular sovereignty, or rule by the people.
- Article 8 of the Constitution is more explicit in providing that ultimate political authority resides not in the government or in any single government official, but rather, in the Nations, Nationality and Peoples of Ethiopia.
- In democracy, the peoples own the government. The delegation of powers in no way damages or diminishes the peoples’ right as the supreme sovereign.
- The government's legitimacy remains dependent on the people, who retain the inalienable right peacefully to alter their government or amend their constitution.
- Besides, there are situations where the people’s sovereignty in a democracy is expressed through their direct participation.

B. Constitutional Supremacy

- This is a principle that puts the constitution at the highest level in the hierarchy of laws.
- Constitutions are laws about the political procedures to be followed in making laws.
- They are supreme laws, taking precedence over all others, and defining how all the others should be made.
- Some analysts call them ‘meta-rules’ (rules about how to make rules), but the German constitution calls them ‘the Basic Law’.
- As a mother of law, it is original law by which the system of government is created, and to which the branches of government must look for all their powers and authority.
- It is original because it is directly made by the people as the direct expression of the will of the people.
- All other laws are secondary or derivative being commands of representatives of the sovereign.
- Because, after all, the direct will of the people outweighs the will of any other single individual.
- Thus, according to this principle, the **constitution is above all laws and organs of a state.**
- This principle dictates **all laws and governmental** or non-governmental acts to be under the constitution.
- It also implies that if an act is found to be against the constitution, it would be out of effect or void.
- In the Ethiopian case, **Article 9 of the FDRE** constitution states that the highest power and authority is vested in the nations, nationalities and peoples of Ethiopia to indicate that they are the sovereign in the land.

C. Rule of Law

- In contemporary time, almost in all countries, the concept of the rule of law has been reflected either in their constitutions or statutes.
- There are two aspects of the rule of law that are important. **First**, the law should govern the people and the people should obey the law.
- And **second**, the law must be capable of being obeyed (‘good’ laws). This made the rule of law different from ‘rule of men’ where the people were ruled by ‘bad’ laws.
- In order to maintain the rule of law, an institution, independent from the legislative or executive or other forces, impartial and free from interference or influence is required.
- In this case, the rule of law is the principle under which a government exercises its authority in accordance with clear, objective, and publicly disclosed laws.
- Laws must be adopted and enforced through established procedure and in compliance with international recognized standards.
- The rule of law is a key component of a social order grounded in consistency, predictability, and transparency.
- It is the foundation of a democratic society-the means by which people protect their liberty.
- The principle is intended to be a safeguard against arbitrary rule.
- Thus, the concept of rule of law is embodying the predominance of law over unrestricted authority; equality before the law; and the law asserting individual rights.

- This also implies that due process of law and lack of arbitrary treatment recognized and this has been added to the maintenance of order as necessary for law to prevail.
- It requires government abided by written rules and statutes rather than the arbitrary or absolutist “**rule of man**”.

D. Secularism

- Secularism referred to as 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.
- Contemporary expressions of secularism occur in the mainstream liberal media, business, public education, and social organizations.
- In church and state matters, secularists demand a strict separation of religion and politics, keeping prayer and religious instruction out of government, public schools, and other common institutions.
- **Secularism is mostly understood to mean separation of state and religion.**
- 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 (the right to decide for themselves what to believe in which case it can be threatened if government becomes religious and supports some religions but not others).
- 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.
- Government should do only what is necessary to keep the peace and prevent one religious group from violating the rights of others.
- To achieve this goal government should **not** interfere with religion in any way.

E. Separation of Powers

- The doctrine of separation of powers refers to the idea that political power should be divided among several bodies or officers of the state as a precaution against too much concentration of power.
- Most of the literature on federalism has emphasized the relationship between national and sub-national governments but overlooked the organization of sub-national powers.
- Likewise, the debate on the separation of powers in presidential and parliamentary systems has neglected the role of federalism in strengthening the separation of powers.
- A federal polity is a constitutional arrangement that creates executive, legislative, and judicial branches of government in its constituent units.
- This definition is applied to all countries that are classified as federations, or unions.
- In order to promote accountability of government, hinder corruption and protect the fundamental freedoms of citizens from the will of the government of the day, it is essential to keep separate the parliament’s power to make laws, from the executive’s power to administer laws, and from the judiciary’s power to hear and determine disputes according to the law.
- This separation is designed to protect the people from a concentration of power, and the ability of individuals or groups to manipulate government for personal gain and to ignore the will of the people.
- Separation of powers is, therefore, an essential feature of constitutional government.
- Further, constitutionalism ensures that the principal powers of government legislative, executive, and judicial-were not monopolized by any single branch.

F. Free, Fair and Periodic Election

- 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.

G. Majority Rule Minority Right

- 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.

H. Protection and Promotion of Human Rights

- Human rights are those naturally given values that reflect respect for human life and dignity hence their protection and promotion test the legitimacy and constitutionality of a democratic government.

I. 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.

5.6.3. Democratization

- Democracy is a variable not a fixed phenomenon; it changes and develops over time, so that what was regarded as good democratic practice a hundred years ago may not be now.
- Democracy does not automatically arise out of “primal mud” but needs to be planted and nourished by years of practice and experience through various levels of democratization process.
- **Democratization** is 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.
- It is not a simple process and will taken an extend period of time to complete, if it wishes to be prosperous.
- There are **three main elements** in democratization such as
 1. The removal of the authoritarian regime,
 2. installation of a democratic regime, and
 3. The consolidation, or long-term sustainability of the democratic regime.
- By democratization simply we refer to the institutionalization and routinization of democratic ideals and principles and their effective functioning.
- Moreover, democratization is a conclusive and extended process, which involves the emergence or presence of the formal elements of a democratic political system such as the recognition of basic civil and political rights, multiparty system, electoral system and etc.
- Democratization in this sense, involves the full-scale transition from authoritarian regime and its replacement by democratically elected regime.
- It involves the rupturing all the links and connections of authoritarian leaders, party or army to the state apparatus.
- In this sense, democratization represents a true rapture and a political transformation.

5.6.4. Actors of Democratization

5.6.4.1. Political Parties

- It has been argued that parties are —endemic to democracy, an unavoidable part of democracy.
- In a democratic system, political parties provide the proper mode of functioning for the government so that the 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.
- Citizens extend their desires, needs, and problems to the government through the political parties.
- In fact, political parties represent an essential and important tool that acts as a **bridge** between a society and its government.
- The existence of a strong and viable opposition keeps the ruling party alert.
- It is also the duty of political parties to promote policies that will educate the people about how a democratic system functions and offer different policy packages to the electorates.

5.6.4.2. Media

- Mass Media and Democracy are always related to each other.
- Media is a mirror of the society and how democratic a society is, can be represented through media.
- Opinion leaders influence the public opinion regarding political leaders and political system of any country.
- Hence, 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.
- Studies show that a free and democratic society is not possible without an independent, free and responsible media and active civil society.
- To better understand how free press enhance democracy, we need to look at various and distinct role of media, namely, media as source of information, media as a watchdog, media as a civic forum and media as an agenda setter.
- Norris (2006) measures how press freedom affects democracy, good governance and human development and concludes that there is a strong relation between the critical role of the free press, as one of the major components of democracy and good governance.
- Media in all countries serves as a watchdog, as a source of information, a civic forum and an agenda setter.
- Theoretically, the role of free media in processes of democratization is straightforward.
- The free media serve as 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.
- Therefore, freedom of the media is often included in the measures developed to assess and compare the quality of democracy across countries.

5.6.4.3. Civic Societies

- Civil society is the set of civil rights, including primarily everyone's right to participate in public life.
- 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"
- Following Diamond's definition, civil society may contain a wide range of establishments concerned with public matters.
- Civil society may comprise civic, issue-oriented, religious, and educational interest groups and associations.
- Civil societies have a potential of playing numerous momentous roles for democratic development and consolidation.

Some of the roles of civil societies are

- 1) limiting the power of the state more generally, including challenging the abuses of authority;
- 2) monitoring human rights and strengthening the rule of law;
- 3) monitoring elections and enhancing the overall quality and credibility of the democratic process;
- 4) educating citizens about their rights and responsibilities;
- 5) building a culture of tolerance and civic involvement;
- 6) incorporating marginal groups into the political process and enhancing the latter's responsiveness to societal interest and need;
- 7) providing alternative means, outside the state, for communities to raise their level of material development;
- 8) opening and pluralizing the flows of information; and building a constituency for economic as well as political reforms.

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.
- An understanding of human rights is an important part of our individual status as human beings and of our collective status as members of the global community of humankind.
- 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.
- The basic idea of human rights lies in people's recognition of the need to protect and affirm every other person's individual dignity.
- It is also common to call them 'natural' rights, since they are natural entitlements to everyone.
- Hence, one of the points most scholars in the field agreed on is the fact that human rights derived from fundamental human dignity and worth.
- The Universal Declaration of Human Rights (UDHR, Article 2), stipulates that human rights belong to every human being "without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status" (Art. 2).
- Thus, the only criteria someone must fulfill to enjoy these rights is being a human.
- However, there is no universally agreed definition of the term human rights.
- Peoples understanding towards the notion of human rights is changing from time to time.
- Human rights provide the minimum standards indispensable for people to live worth-living life.
- Human rights allow people to live the life they deserved to live, they aspire to live, and to live a life with dignity and equality.
- Human rights give people a full control of their life and the freedom to choose how they live, how they express themselves, and what kind of government they want to support, among many other things.
- Human rights also guarantee people the means necessary to satisfy their basic needs, such as food, housing, and education, so they can take full advantage of all opportunities.
- Finally, by guaranteeing life, liberty, and security, human rights protect people against abuse by individuals and groups who are more powerful.
- Human rights are not just theoretical; they are recognized standards to which governments are to be held accountable.
- The only precondition someone needs to fulfill in order to claim human rights is being a human.
- Human rights are established upon some main principles including **universality, inalienability, indivisibility and interdependence**.

Human rights include the following rights.

- 1) Right to live free from fear and want;
- 2) Right to be treated as an equal and not to be discriminated against;
- 3) Right to be protected from cruel, inhuman and degrading treatment;
- 4) Right to have equal opportunities for the pursuit of livelihood;
- 5) Right to be free to own and dispose of property;
- 6) Right to be in good health and receive care and treatment when ill;
- 7) Right to receive education;
- 8) Right to have shelter;
- 9) Right to express one's thoughts and opinion freely;
- 10) Right to pursue the religion of one's choice;
- 11) Right to have access to justice and an effective remedy when one or more of these entitlements are violated.

Essential Features of Human Rights

A. Human Rights are Universal

- When we say human rights are universal, it is to show their worldwide applicability.
- This means all rights are expected to be applied equally everywhere, every-time and to everyone in this world.
- They transcend time, geographical and cultural disparities.
- However, this is not to mean that no room is available to contextual realities and value differences among various communities around the globe.
- Article one of the Universal Declaration of Human Rights (UDHR here after) stipulated that “All human beings are born free and equal in dignity and rights.”

Note: Human rights are universal because they are based on every human being's dignity, irrespective of race, color, sex, ethnic or social origin, religion, language, nationality, age, sexual orientation, disability or any other distinguishing characteristic. Since they are accepted by all States and peoples, they apply equally and indiscriminately to every person and are the same for

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B. Human rights are inalienable.

- That means you cannot lose these rights any more than you can stop to be a human being.
- These entitlements are essential to live a human or worth-living life.
- Human rights are not luxury or privileges we only enjoy after some preconditions are met, rather part of our basic necessities.
- We may not die, but we cannot live the life we supposed to live a human creature without our rights and freedoms.
- Human rights are indivisible. This implies that human rights are inherent to the dignity of every human person. It is not possible for one to live a worth living life without the full respect of these rights; this concerns all the civil, cultural, economic, political or social rights endowed for all human beings.

C. Human rights are 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.
- **All human rights are universal, indivisible and interdependent and interrelated.**
- 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.
- The violation of all these rights threatens one's life and existence in general.
- That is true for all our human rights, not possible to enjoy the one ignoring the other.
- That means we cannot prioritize one right from others, because no right can stand on itself.
- The fulfillment of one right often depends, wholly or in part, upon the fulfillment of others.
- The respect of one right (e.g. right to life) is subjected to the respect of our other rights (e.g. right to an adequate standard of living), and the vice versa.
- Thus, human rights are entitlements which apply to all equally, and all have the right to take part in all the decisions that affect their lives.

D. The principle of equality and non-discrimination.

- ❖ 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, color, 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. Human Rights are Irrevocable

- ➔ Human rights are irrevocable.
- ➔ They cannot be taken away by any power or authority because these rights originate with the social nature of man in the society of human beings and they belong to a person simply because he/she is a human being.
- ➔ As such human rights have similarities to moral rights.

F. Human Rights are Never Absolute

- ➔ Man is a social animal and he/she lives in a civic society, which always put certain restrictions on the enjoyment of his rights and freedoms.
- ➔ Human rights as such are those limited powers or claims, which are contributory to the common good and which are recognized and guaranteed by the State, through its laws to the individuals.
- ➔ As such each right has certain limitations.

G. Human rights are not to be given by Government

- Government is not a body that gives human rights.
- We cannot inherit human rights rather we possess them by our nature of human being. They are not transferred rights.

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.
- For example, exercising freedom of speech should not infringe someone else's right to privacy.
- Human rights are part of a context of people living together in societies. As part of this, there must be a legal, social and international order for human rights to be realized effectively.
- Promoting for the respect of human rights is one of the core missions of the UN and its agencies.
- Besides, state parties to the UN are mandated with the promotion, protection and fulfillment of human rights.
- 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.
- This is clearly states in various human rights instruments and resolutions issued by the UN including
 - A. The UN Charter
 - B. Universal Declaration of Human Rights (UDHR)
 - C. International Covenant on Civil and Political Rights (ICCPR)
 - D. International Covenant on Economic, Social and Cultural Rights (ICESC)
 - E. Convention on the Rights of Children (CRC)
 - F. Convention on all forms Discrimination against Women (CEDAW) and
 - G. The Paris Principles.

The Ethiopian Constitution and the issues of Human Rights

- Mandates of state institutions in relation to human rights are also clearly stipulated in the FDRE Constitution.
- The Constitution shows its dedication to human rights and freedoms by reserving one of its eleven chapters, if not the biggest one, to human rights and fundamental freedoms.

- The third chapter of the Constitution guarantees a list of civil, political, economic, social and cultural rights (arts. 13 to 44) in consistence with the core international human rights instruments; mainly the UDHR.
- The Constitution clearly declares the superior legal status given to international human rights instruments over domestic laws in interpreting the constitutional provisions speak human rights.
- Article 13 of the FDRE Constitution reads “the fundamental rights and freedoms specified in this Chapter shall be interpreted in a manner conforming to the principles of the Universal Declaration of Human Rights, International Covenants on Human Rights and international instruments adopted by Ethiopia”.

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.
- In their contemporary manifestation, 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.
- The following diagram shows the timeline of major international human rights treaties or instruments with the dates of their adoption.

5.7.4. Rights Holders and Duty Bearers

- Rights become rights when the job of identifying the two main actors is done.
- This works for every rights we may possess as an individual or group.
- These are right holders and duty bearers.
- **Right holders** are those who are entitled to enjoy, possess or claim a given right. Human rights provisions usually started by mentioning the right holder using terms like “every human being, all children, women, people with disability...” from that we can simple know for whom is a given right intended.
- **Duty bearers** are 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.

Identify the rights holders and duty bearers of the following rights in the FDRE Constitution;

- 1) The right to life (Article 15)
- 2) The right to Privacy (Article 26)
- 3) Freedom of Religion, Belief and Opinion (Article 27)
- 4) Rights of Nations, Nationalities, and Peoples (Article 39)
- 5) The right to development (Article 43)

- **The primary (not the only) duty bearer for almost all of our rights is the state.**
- Besides, individuals and other non-state actors may be named as duty bearers depending on the nature of the right.
- Thus, it has been typically understood that individuals and certain groups are bearers of human rights, while the state is the prime organ that can protect, provide and fulfil human rights.
- Moreover, uninterrupted and cyclic relationship is expected among rights holders and duty bearers.
- The rights holders should always claim their rights from the duty bearers and the duty bearers should discharge their responsibility of promoting, protecting, and fulfilling the rights out of sense of obligation or duty. The following diagram shows the relationship among rights holders and duty bears from human rights perspective.

Duty Bearers (State, NGOs, Community, Individuals)

Promoting, protecting, providing and fulfilling rights of rights holder

Right Holders (Individuals or groups)

Categories of Human Rights

- ✓ Human rights cover virtually every area of human activity.
- ✓ They include civil and political rights, such as freedom of speech and freedom from torture.
- ✓ They also include economic and social rights, such as the rights to health and education.
- ✓ Some rights apply to individuals, such as the right to a fair trial: these are **called individual rights**.
- ✓ Others apply to groups of people, such as the right to a healthy environment or to native title: these are called **collective rights**.
- ✓ There are various ways used by different scholars to categories human rights.
- ✓ These writers use various reference point in classifying rights in to different clusters.
- ✓ The common way of categorization is the one developed by **Karl Vasak (1982)** who have classified **Human Rights into three: First, Second and Third generation rights**.
- ✓ However, Vasak's representation of generations is criticized by many authors for its failure to capture the nature of human rights mainly in "one respect: classes of human rights, unlike generations in life, don't replace each other sequentially over time" (Alston, 2000: 641).
- ✓ Carl Wellman states the problem in Vasak generational categorization stunningly: "generations succeed one another, not only in that the members of one generation are born before those of the next generation, but also in that parents tend to die before their children" (Wellman, 2000: 641).

5.7.5.1. Civil and Political Rights

- ❖ Civil and political rights are the **first generation rights** which 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 the right to life, liberty and personal security, equality before the law, protection from arbitrary arrest and the right to religious freedom and worship.**
- ❖ When protected, civil rights guarantee one's 'personhood' and freedom from state-sanctioned interference or violence.
- ❖ Political rights include such rights as the right to speech and expression, assembly and association, 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 to indicate the fact that they simply entail the absence of their violation in order to be upheld.
- ❖ The state, as a primary duty bearer, is expected here to let citizens enjoy their rights and freedoms and not intrude in their private life.
- ❖ Besides staying aside of the life of the rights holders, the state is also responsible to protect them from any potential interventions from other non-state actors; such as individuals, groups and organizations.
- ❖ Hence, protection is the main obligation of the duty bearers for civil and political rights.

5.7.5.2. Social and Economic Rights

- ❖ In contrast to the above set of rights, **the second generation** (social, economic, and cultural) rights are considered by many writers as an aspirational and programmatic set of rights that national governments ought to strive to achieve through progressive implementation.
- ❖ **Social and economic rights include such rights as the right to education, health and wellbeing, work and fair remuneration, 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, and speak one's own language and 'mother tongue' education.**

- ❖ Cultural rights are meant to maintain and promote sub-national cultural affiliations and collective identities, and protect minority communities against the incursions of national assimilationist and nation-building projects.
- **Unlike** the civil and political rights, rights in this category are called **‘positive’ rights** to indicate that whose realization is highly subjected to the economic capability of states.
- One of the strong 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.
- For instance, the protection of property rights requires a well-funded judiciary, police force, and fire service, as well as a well-developed infrastructure that can relay information, goods, and services in the event that property is under threat in some way.
- The same is true for the rights to vote. Besides to avoiding segregation and discrimination at the polls, running a free and fair election requires a tremendous amount of financial support, technology, and infrastructure.
- However, by claiming that all rights are positive, it is not to undermine the negative characteristics or dimensions of human rights.
- **Second generation rights** are considered as “less fundamental” or unrealistic rights because of the issues of justiciability. Justiciability is not obviously the quality of economic, social and cultural rights.
- 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 for some years after finishing college. You may argue that “I have the right to work and fair remuneration, and should be taken as a violation of my human right at the time the state fails fulfill or provide it to me”.
- This will be considered as human rights violation only if the state is economically capable (in the condition to fulfil that right for every citizen with the resources at hand).
- If the state able to justify that the needed resources and finance to fulfil or provide that particular rights are not adequately available – then that will be the end of the story.
- That means, the state’s duty failure and the violation of your right can be justified. This makes many authors in the field to question the justiciability of most of the economic, social and cultural rights.

Peace, Development and Environmental Rights

- ❖ **Third generation (solidarity) rights** are 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.
- ❖ **Third Generation (solidarity) rights include rights to public goods such as the right to development, the environment and peace.**
- ❖ The third generation rights are still considered as **an emerging rights**, where the rights holders and duty bearers of the rights included under this category are yet to be identified clearly.

The following table provides the summary of the classification of rights.

Generation	First Generation Rights	Second Generation Rights	Third Generation Rights
Category	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
Rights 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.**

A. Limitation

- ❖ **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.
- ❖ Restrictions circumscribed the manner, or place, and the extent to which rights can be enjoyed or exercised in a particular set of circumstances, often in normal times.

B. Derogation

- ❖ **Derogation means** a temporary non-application and suspension of rights by the state in abnormal or emergency (natural/artificial) situations.
 - ❖ Enjoyment of human rights is subject to limitations and this limitations are normally found in constitutional human rights and international human rights treaties.
 - ❖ But that 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;
 - ➔ the prevention of crimes;
 - ➔ the protection of health, public morality;
 - ➔ the protection of the rights and freedom of others; and
 - ➔ safeguarding democratic institutions
- In Ethiopia, for example, both federal and regional governments have constitutional powers to limit exercising human rights since they have the power to declare state of emergency is their respective domains.
- **Regional states can declare in two conditions:** natural disaster and epidemics.
- Besides, the FDRE Constitution (art. 93) clearly specifies four conditions for such declaration by the Federal Government.
- **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:
 - (i) Endangers the constitutional order,
 - (ii) Cannot be controlled by regular law enforcement,
 - 3) Natural disaster, and
 - 4) Epidemic.

5.7.7. 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.
- ❖ Some of the important treaties concerning human rights, including the ICCPR have special provisions explaining whether its member states can derogate from certain rights during some exceptional situations.
- ❖ 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**.

1. They are: right against arbitrary deprivation of life (art. 6);
3. freedom from torture or cruel, inhuman and degrading treatment or punishment; and freedom from medical or scientific experimentation without consent (art. 7);
4. freedom from slavery and servitude (art. 8);
5. freedom from imprisonment for inability to fulfill a contractual obligation (art. 11);
6. prohibition against the retrospective operation of criminal laws (art. 15);
7. right to recognition before the law (art. 16); and
8. freedom of thought, conscience and religion (art. 18).

- ❖ The FDRE Constitution (art. 93(3[c])) states that rights under Articles 1, 18, 25, and sub-Articles 1 and 2 of Article 39 of the Constitution are non-derogable rights.
- ❖ However, it is good to mention here that this is not to mean that all other rights are suspend-able anytime at the will of the state.
- ❖ In this regard, Article 4 of ICCPR clearly established the specific conditions could be used as a ground for derogation.
- ❖ Conditions like the existence of real emergency, threat to life of a nation, official proclamation of emergency, and guarantee of non-discrimination are justifiable grounds to suspend some of or all the derogable rights.

5.7.8. Implementation and Enforcement of Human Rights

5.7.8.1. International Mechanisms and the International Bill of Human Rights

- The very reason behind the establishment of the international law is ensuring global peace and security, and help men to lead a worth-living life; a life with liberty, equality, and freedom from violence.
- Hence, the main objectives of the international law and its institutions is in one way or another related with the protection of human rights.
- The issues of human rights come into picture in the international law starting from the adoption of the Charter of the United Nations on October 24, 1945.
- The charter make protection of human rights one of the **three main objectives** of the UN, in addition to preserving global peace and stimulating comprehensive development.

Organs/structures of the United Nations Organization (UNO)

→ The United Nations has six prime organs, namely;

- 1) the General Assembly,
- 2) Security Council,
- 3) Economic & Social Council (ECOSOC),
- 4) International Criminal Court (ICC),
- 5) Office of the Secretariat and
- 6) The Trusteeship Council (Suspended operations-1994 with the independence of Palau).

- The General Assembly, Security Council and ICC are functioning as the legislative (law making), executive (law enforcing) and judiciary (law interpreting) organs of the UN respectively.
- 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.
- The international bill of human rights is made up of various treaty and charter based human rights instruments; treaties, covenants, charters and declarations.

The UN Charter

- The UN Charter clearly stated that the organization is dedicated to help men live a life free from fear of war, the promotion of human rights and the worth of human person and dignity of mankind.
- It also seeks to establish justice, and promotes corporation between the States to discharge their duties to create a just economic, social and cultural order wherein mankind can realize the fundamental human rights in accordance with the principles of international law.

Universal Declaration of Human Rights (UDHR)

- The Universal Declaration of Human Rights (UDHR) is a human rights instrument 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.
- Most of the modern national, regional and international human rights regimes are established based on this declaration.
- Many of the UN human rights instruments are drafted under the shadow of the UDHR.
- Actually, almost all international human rights instruments comprises at least a preambular reference to the Universal Declaration, as do many declarations adopted unanimously or by consensus by the UN General Assembly.
- It has served as a model for most of the laws, constitutional provisions and rules aimed at protecting citizen's rights and freedoms.

- The UDHR is **not a binding instrument**, but claimed to have great moral weight and popularity.
- It is a declaration adopted by the General Assembly of the United Nations in 1948.
- 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.
- The UN claims that the Declaration is the most translated document in the world to show its inclusive nature and spread (UN, 2015: iii).
- Hence, beyond doubt the UDHR is most widely accepted declaration of its kind (Walter, 2014: 121).
- The preamble of the UDHR states that “the General Assembly proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms [...]” (UN, 1948:

❖ **Besides to the UN Charter and the UDHR, the UN presently has more than ten core human rights treaty based human rights instruments. These includes, but not limited to,**

1. the Convention on the Prevention and Punishment of the Crime of Genocide (1948),
2. the Convention Relating to the Status of Refugees (1951),
3. the International Covenant on Civil and Political Rights (ICCPR),
4. the Slavery Convention (1926, but amended by Protocol in 1953),
5. the International Covenant on Civil and Political Rights (1966),
6. the International Covenant on Economic, Social and Cultural Rights (1966),
7. the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT),
8. the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD),
9. the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),
10. the Convention on the Rights of the Child (CRC),
11. and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

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, the Americas and Europe.
- These two (international and regional) systems are aimed to make sure state actors are fulfilling their obligation in promoting, protecting, providing and fulfilling their citizen's rights.
- Hence, 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”.
- Actually, this works only for the countries found in regions of the world where such systems are in place.

- These human rights systems are established independent, but as part of regional integration arrangements.
- This is the case in all the three regions have human rights institutions.
- 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**); and in Europe it is embedded in the European Union's (**EU**) organizational structure.
- The other regional integration agreements we found in various places in the world does not have such human rights mandate. This includes, for instance, North American Free Trade Area (**NAFTA**), **ASEAN**, and **OPEC**.
- Such arrangements are established for economic or political purposes other than human rights.

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.
- The Constitution is the supreme law of the land and the source and basis of legality of all other laws.
- The FDRE Constitution classifies human rights as one of its five fundamental principles and declares that human rights and freedoms, emanating from the nature of mankind, are inviolable and inalienable and that the human rights of citizens and peoples are respected.
- The Constitution further empowers all Federal and State legislative, executive and judicial organs at all levels with the responsibility and duty to respect and enforce the Constitutional provisions of human rights.
- 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.
- **These rights cover civil and political rights (arts. 14 to 38), socio-economic rights (arts. 41 to 42) and group rights (arts. 39, 43 and 44).**
- About **one-third** of the Constitution is devoted to enshrining fundamental rights and freedoms.
- Accordingly, most civil and political rights and economic, social and cultural rights as well as environmental rights and the right to development are stipulated in detail.
- The Constitution has required the establishment of human rights and democratic institutions; including the
 1. National human rights commission,
 2. General attorney office and
 3. Office of ombudsmen, with an independent judiciary or courts equipped with the needed resources.
- To end with, there have been established institutions with the specific and prominent mandate of respect and promotions of human rights and the main organizations in this respect are:
 1. The Ethiopian Human Rights Commission (EHRC) and
 2. The Ethiopian Institution of the Ombudsman (EIO).
 - Additionally, the **Federal and Regional Ethics and Anti-Corruption Commissions** and the **Chief Auditor's Office** are agencies that consolidate transparency and accountability.

End!

"I am not an Athenian, nor a Greek, but a citizen of the World".
Socrates

November, 2021 G.C