

Introduction

Meaning of Human Rights

- Fundamental moral rights of person that are necessary for a life with human dignity
- Entitlements that all human beings assert(enjoy) merely because they are human
- They are natural rights(birth rights)
- Human rights apply to everyone or are claimable by everyone
- Emanate from fundamental human dignity and worth
- Human rights belong to person by virtue of his(her) humanity
- The main pillars are: freedom, equality and solidarity

Purposes of Human Rights

- Aspiration to protect human dignity of human beings
- Protect individuals (groups) from actions and omissions of the states and Non-State Actors that affect fundamental dignity
- Means which people can use as a tool for social transformation
- Serve as the morality of governance

Features of Human Rights

- *Universality, inheritance, inalienability and equality*
- **Universality**- applicable to everyone, everywhere and all times
- **Inherence**- neither obtained nor granted through any human action
- **Inalienability**- no deprivation or renunciation
- **Equality**- rights for all

Sources of Human Rights

- International treaties, customary laws, General principles of law; and jurisprudence, judicial decisions and writing of jurists

- Constitution and other subsidiary laws

Taxonomy of Human Rights

- Generation division of rights

First Generation (liberty rights)

- civil and political rights
- Impose negative duty
- Mostly individual rights
- Less resource intensive
- Immediate rights

Second Generation (equality rights)

- Economic, Social and Cultural rights
- Impose positive duty
- Are the sustenance or enjoyment rights
- Societal aspirations(programmatic)
- Resource demanding
- Both individual and group rights

Third Generation (solidarity rights)

- Examples: right to development, environment, peace, etc
- Supplementary to first and second generation
- Collective rights

N.B human rights are indivisible, interdependent and interrelated (Vienna Declaration, 1993)

History of Human Rights Law

- Human rights is the product of millennia of struggle by individuals concerned with human justice and well-being

I. National Cultural Antecedents

a. **Religious Traditions**-all religions impose moral duties and responsibility towards other

b. National Laws

- Code of Hammurabi-1795-1750 B.C.-equal protection of the law and remedies of mistreatment of prisoners

- India- edicts of Asoka300 B.C.- freedom of religion

- **Magna Charta** 1215-grants civil rights and establishes rule of law

- **Virginia Declaration of Rights 1776-**

(Equality, inherent rights)

- **American Declaration of Independence 1776**

(Right to life, liberty and pursuit of happiness)

- **French declaration of rights of man and citizens 1789**

(Freedom, equality of persons, solidarity)

- **U.S. Bill of Rights -1791-** constitution recognition of human rights

ii. International Human Rights Law

a. 17th C-early 20th C

- Concerned with **specific human rights issues**

1. religious liberty

2. abolition of slavery and slave trade

3. emergence of IHL

4. protection of citizens abroad/foreigners

b. Early 20th C-1945

- Concerned with **Specific rights**

1. Economic And Social Rights

- Social justice, labor rights, labor standards

- ILO Conventions
- 2. **League of Nations Treaty On Minorities**
- 3. **Civil and Political Rights For Women**
- c. **1945 onwards**
 - **internationalization** of human rights
 - **Limiting state sovereignty**
 - i. **UN Charter of 1945**
 - preamble
 - art.1(3)
 - Arts.55, 56
 - No content of rights and actions of UN
 - ii. **The UDHR 1948**
 - the **first** international human rights document
 - The start and **Foundation** of current human rights regime
 - **Lists** rights
 - Integrative(comprehensive)
 - Imposes **moral** obligation
 - Inspires and influences standard-setting
 - **Non-binding**(attain status of customary) international law
 - iii. **1966 International Human Rights Covenants**
 - ICCPR, ICESCR
 - **binding** documents
 - International bill of rights(UDHR,ICCPR ICESCR)
 - iv. **Other Complementary Treaties**
 - CERD 1969

- Convention against torture 1984
- Convention on the rights of child 1989
- CEDAW 1979
- Convention on Rights of Persons with Disability(2006)

v. Regional Laws

- **European**
- **Inter-American**
- **African**

Philosophy of Human Rights

What is philosophy?

- to deepen our understanding of truth

Why philosophy of human rights?

- Understanding of Hrts Law
- Application/enforcement of Hrts Law
- Human rights advocacy /Propagation/massification/education of Hrts Law

1. Universalism vs Cultural Relativism

Universalism

- a. Human rights are the same(must be) the same everywhere both in substance and application**
 - Western norms should always be the universal normative model for international human rights law
 - Universalism sometimes equated with western norms(individualization)
- b. They use an individualistic approach to human rights**

- Language of international human rights instruments, every human being, everyone, all persons are entitled to human rights
- c. **There is a universal cultural acceptance of human rights**
 - Universalism: there exists universally accepted norms of behavior for all
 - Claims a common universal value consensus for the interpretation and application of human rights
 - Taking ratification rate of international treaties/ Most states ratified major human rights treaties
- d. **Cultural relativism is unacceptable theory advocated to rationalize human rights violations**
 - Cultural relativism of human rights is 'The gifts of cultural relativist to tyrants'
 - All cultures are not equally valid(some culture contain evil elements) in other words, some cultures are more equal than others
- e. **Cultures are dynamic, open to change(transformation)adaptation**
 - Human rights are consequences of modernizing forces
 - Human rights principles are becoming part of customary international laws
 - Vienna declaration sealed the issue

Cultural Relativism

- a. **Branch of Moral philosophy-** people in different cultures have different beliefs about what is morally right and wrong(= different value judgments)
 - Principles for judgment are relative to society
 - Rights and rules about morality are encoded in and thus depend on cultural contexts
 - Human rights cannot be interpreted without regard to the cultural differences of peoples
 - It emanates from politics of recognition and the need for tolerance of conventions
- b. **All cultures are morally equal or valid**

- Human rights are not exclusively rooted in western culture, but inherent in human nature and based on morality
 - Arguing for universalism tantamount to imposition of cultural imperialism
 - Universalism another form of neocolonialism serving to strengthen the dominance of the west
- c. Legitimacy deficit- less participatory in standard setting**
- Only 58 countries in UN in 1948 (now 193 plus)
 - Eight abstained in UDHR adoption
 - All 18 drafts for the UDHR came from the (democratic) west
- d. No complete value consensus was achieved**
- Documents reflect mainly western ideological views
 - Western-centric and insensitive to non-western cultures
 - Acceptance of documents does not mean that the universal nature of human rights is a foregone conclusion
 - Ratification of human rights instruments are not indication of an acceptance of a strict and exclusive western perspectives(interpretation)

Reconciliation of Debates

- Relativism is prone to abuse and may be used to rationalize human rights violations by different regimes
 - Universalism purely western and not universal
 - Universalism itself is culturally relative to the western values
- a. Cross-cultural reconstruction of human rights**
- A multicultural or cross-cultural approach to the interpretation and application of human rights
 - The bottom line in human rights is the protection of human dignity
 - No civilization or philosophy would not respect human dignity

- Working towards inclusive universalism
- Human dignity(rights) are rooted in all cultures

b. At least certain human rights have gained universal acceptance

- Examples, genocide, torture, slavery, apartheid
- While individual approach getting acceptance in east, collective approach is getting acceptance in the west
- Examples, self-determination, rights of indigenous people, minority rights,

c. Universal character with local flavor

- Universal in standard setting but contextualizing implementation(application)
- Applying margin of appreciation doctrine
- Allowing legitimate variations

2. Individual VS group debate

Individual Rights

a. Human rights is Rights of individuals to protect against the oppression of society(group)

- human rights are, by definition, those rights a human being possesses because he/she is a human being
- Since only individual persons are human beings, therefore, only individuals have human rights
- Many human rights instruments are framed in terms individual persons

b. historically, human rights serve to defend the individual against the power of the state or the group

- Individual human rights are often violated with the excuse that they cannot be protected as long as the collective rights have not been safe guarded

c. There is no group rights but of individuals

- Modernity is promoting individual liberty
- Individual rights are not the enemy of the common goods, social responsibility, and community
- There exists the possibility, and actual occurrence, of political manipulation of collective rights by oppressive regimes

Group Rights

a. human rights protect goods that are necessary for the maintenance of human dignity and that this includes certain collective goods

- People have become increasingly aware of the fact that some major threats to human dignity are of a collective nature
- Individual human rights no longer suffice; collective rights sometimes become a necessity

b. Human rights should be seen as an instrument for guaranteeing human dignity

- Individual human rights alone are not adequate to guarantee a dignified human existence
- Thus, the protection of human dignity requires the observance of certain collective rights
- One cannot have a right as an abstract individual
- One has a right as a member of particular group and tradition within a given context
- the collective dimension of human life has to be taken into account when defining human rights
- Not only freedom, but also solidarity should form a basis for the philosophy of human rights

c. Individualism generates a radical individualism and then a radical competition among self-seeking individuals which breeds social dislocation and social pathology among members of the group

- Individualism undermines civic virtue of communal responsibility

- individual rights have been formulated from the outset in the context of an organized society of individuals

Reconciliation

a. In this day and age, individuals and society are correlated; they cannot exist without one another

- Individual is not an island rather he/she is socially constituted
- Similarly, individual and collective rights are often dependent on one another
- The protection of group rights is essential for human self realization on a community level and individual level
- Therefore, individual human rights would be reinforced if group rights are guaranteed

b. Group rights do not have to clash with individual rights and a complete moral theory would articulate individual rights and group rights

- so that they formed a coherent set
- individual rights frequently presuppose the existence of general social goods and that individual rights themselves frequently promote social goods

c. It may prove impossible to anticipate and avoid every conflict amongst rights

- but, even if it does, we need not suppose that conflicts will arise more commonly between group rights and individual rights than amongst individual rights themselves
- applying balancing rights mechanisms: limitation on both category of rights

3. Food VS freedom debate

Food First

- Basic need first
- Freedom stands in the way of or distract agenda development

- **Freedom is luxury**
- Priority of the development of economic and social rights

Freedom First

- Freedom is the end
- Freedom subsumes food
- Restriction does not contribute to development but maintenance of the repressive regime
- Respect for freedom does not depend on the degree of economic development of a state

Reconciliation

- **Both rights should be realized not one at expense of the other**
- **Denial of food may be the direct consequence of the denial of freedom**
- The emerging consensus
- The respect and promotion of human rights should be encouraged on by cooperation and consensus not through confrontation and imposition of incompatible values
- **Indivisibility, inter-dependence and interrelated nature of human rights(Vienna Declaration,1993)**

Human Rights Systems

Three Levels of Human Rights Systems

- International
- Regional
- National

International Level

Normative Rules

- UN Charter art. 1/3, 55,56
- IBR
- Supplementary CEDAW, CRC, MWR, CERD, CAT, CRPD, disappearances convention
- Clarify specific provisions of the conventions
- Give particular attention to the needs of specific targets/ protection for distinct groups

Functions of Normative Rules

- Providing rights
- Establishing states obligations
- Establishing supervisory institutions
- Mechanisms and procedures for enforcement

Supervisory Mechanisms= subsidiary roles

- Make up for deficiencies in national systems
- Good governance, corruption and inefficient admin or judiciary
- Inability or unwillingness of national systems

Forms of monitoring

I. Reporting System

- reviewing state reports
- providing concluding observations
- recommendations

II. Complaints Procedures

- individual and inter-state

III. Inquiry

- field investigation in cases of grave violations

IV. Judicial Procedure

- ICC, ICJ
- Passes binding decisions

Supervisory Bodies

a. Charter Based

- Dev'd on the basis of UN Charter
- ECOSOC, GA, SC, HRC

Human Rights Council

- Reports to UN GA
- Mandates
- Fostering int'l cooperation on hrts
- Providing capacity building assistance to states
- Responding to specific violations of hrts
- Passing resolution on serious hrts violations

Functions= promotion and protection of hrts

- Undertaking UPR/ regular review of hrts situations in all UN member states
- Passing concluding recommendations

b. Treaty Based

- Emanates from treaties
- Committees or ICC

Regional Systems

- Complements int'l systems
- Higher standards
- More effective

- Passes binding decisions
- Interpret and clarify provisions of hrts instruments
- Cause change of national law in order to bring it into conformity with int'l hrts obligations

a. European System

- 1950s on wards
- EU Conventions on fundamental freedoms and rights,
- ESC,
- EU ct of hrts

b. Inter-American System

- 1969 on wards
- American conventions
- Protocol on ESC
- Commission and Ct

c. African System

- The youngest regional system
- 1981 on wards
- Banjul charter, 1981 and came into effect 1986
- ACRWC , 1990, 1999
- Protocol on the rights women, 2003, 2005

Supervisory Mechanism

- i. **African Commission on HPRts** since 1987

Function

- Reviewing State reports
- Complaints procedure/individual and inter-states

- Special procedures/special rapporteur
- Fact-finding mission
- ii. **African Court of Justice and Human Rights** since 2008
 - Reinforces and complements the commission
 - Passes binding decisions
- iii. **African Committee of Experts ACRWC**

Peculiar Features

- Integrative/comprehensive
- Peoples' rights
- Duties towards the family and society
- Claw back clauses/internal limitation
- Absence of derogation

National Level

- Hrts begins and ends at home
- It is where the tire hits the roads
- Other systems complements
- Primary for effective protection and implementation of all hrts

a. Accessibility

b. Enforcement mechanism

State Obligations

- Scope: jurisdiction which includes both territorial and extra-territorial(effective control)
- State is primary duty bearer
- All branches and all levels of govt is duty bound to enforce hrts

Tripartite Typology (Respect, Protect and Fulfill)

1. Respect

- Refraining from interfering with the enjoyment of rights
- Abstention from interference
- Imposes negative obligation
- Respecting right-holders, their freedoms, autonomy, resources and liberty
- Respect free use of resources
- Abstaining from carrying out, sponsoring or tolerating any practice, policy or legal measures violating rights
- Avoiding measures that hinder or prevent the enjoyment of the rights

2. Protect

- Preventing violations by third parties or regulating third parties
- Preventing third parties from interfering with enjoyment of the rights
- Providing remedies
- Two aspects
- Prevention measures and remedial measures
- Imposes positive obligation
- Active protection against more assertive or aggressive subjects
- Provides protective function
- Protecting right-holders against other subjects by legislation and provision of effective remedies

3. Fulfill

- a. Facilitate/ creating enabling environment
- Facilitating opportunities by w/c the rights can be enjoyed
- b. Provision/for needy/victims/ weakest and worst among us
- Direct provision of good or service

Taking pro-active measures

- More proactive and resource-intensive measures

Specific issues

Culture and human rights

What is culture?

- Is a pattern (way) of life
- Is identity
- Shared heritage of society

Role of culture

- Gives lenses for viewing world
- Lenses of perception and recognition
- Shapes ones understanding and interpretation of events, ideas ,etc
- Individual is culturally conditioned

Culture and human rights

- Friends and foes
- Compatible and contradiction

Contradiction- all cultures contain evil elements

Compatible- all culture protect dignity

- All culture condemn injustice, unfair treatment

Reconciliation

- Transforming negative attitudes
- Accept positive traditions
- Respect the right to culture
- Contextualizing application of human rights in cultural peculiarity

Democracy and human rights

- Human rights requires democratic governance

- Democracy avoids obstacles to the human rights
- Democracy creates conducive environment for human rights
- Human rights can be guaranteed through a functioning democracy
- The realization of human rights is an indicator for the vitality of democracy
- Ensuring human rights is a crucial part of ensuring democracy
- Institutional guarantors of human rights are indeed guarantors of democracy

What is democracy?

- Will of the people (consent)
- Rule (power) of the people
- Government of the people, by the people (popular sovereignty)

Elements of democracy

- Popular participation
- Inclusiveness
- Accountability
- Rule by the consent
- Representation
- Pluralism (political Diversity)
- Majority rule and minority rights
- Rule of law
- Independent judiciary
- Free and fair elections
- Division of powers
- Commitment to human rights

Democracy and human rights – both call for equal political dignity for all

Contradiction = democracy empowering the people

= human rights is empowering individuals (limiting power)

Democracy is issue of who to rule while human rights how to rule (check on sovereignty) undemocratic

Reconciliation- prioritizing human rights

- Subordinate popular rule to human rights
- Substantive limit to government

Human rights and development

What is development?

- **Narrow perspective** – economic growth(increase in GDP) (industrialization) (growth-based model)
- **Broad perspectives**- human development(expanding choices and opportunity) (welfare model)

Elements of human development- has five aspects

- a. Empowerment – expansion of capabilities, choices
 - Increases opportunity to participate in decision making
- b. Co-operation- providing ways in which people work together and interact
- c. Equity- equity in accessing opportunity and social facilities
- d. Sustainability- intergenerational equity (strike balance between present and future generation)
- e. Security- human security(freedom fear and freedom from want)

Human rights and development

A. Contradiction thesis

- Human rights distracts development (development needs stable and sustainable government)
- Development first(development) is alpha and omega
- Aggressive development is sufficient
- Trade off rights for development (rapid change)

B. Compatible thesis

- Both advances human well-being(dignity)

- Human rights enhances development
- Rule of law, transparency, accountability, participation
- Repressive is not requirement for development
- **Directional linkage between human rights and development**
- Development address **inequality(social justice, redistribution)**
- Human rights guarantee for **market failures(welfare state)**
- Both reinforce each other
- Human rights take center stage in development
- Without development human rights is a mere ideal(rhetoric)
- Development and human rights=empowering the people
- **Development is a means to an end(protecting dignity)human rights**
- Development with human face
- Development itself is human rights

C. Implementation

- Human Rights-based Approach –development should be pursued in a human rights way
- Or human rights should be integrated into sustainable human development
- Human Rights Approach-rights way to development
- Incorporating the norms, standards, and principles of human rights into plans, policies and processes of development

Elements of Human Rights Approach

- Primacy of rights(duty-right holders)
- Accountability
- Empowerment/agency, ownership
- Participation
- Non-discrimination
- Attention to vulnerable groups

Globalization and human rights

Globalization? – Economic, political and cultural integration

- One world community(global village)

Advantage= economic Interdependence

Disadvantage - state sovereignty Diminished

- Security, human rights, labor standards, environmental regulation
- Spillover effect of economic crises

a. Economic globalization

- Economic integration(approaching a single world economic system)
- No borders or distance

Actors

- i. Multi-National Corporations(trade)
- ii. International Financial Institutions(IMF , World Bank) Bret
- iii. ons woods system(Washington consensus)- homogenization of economic liberalization
- iv. World Trade Organization –trade liberalization

State sovereignty and globalization

- End of sovereignty(erosion)diminishing of sovereignty
- Non-interventionist ‘night-watchman state
- Denationalization of economic affairs
- Deregulation of economy
- Increase role of Non-State Actors

b. Political globalization

- Extension of political powers and activity across state boundaries
- Increase role of International Organizations, Non-State Actors, NGOs

c. Cultural globalization

- World wide spread of similar norms, values and practices
- Actors= media, technical popular culture,

Impact on human rights

- Mismatch between human rights law and international economic law
- State centric vs supra national

Areas of influence

- Labor standards = poor working conditions, wage, job security
- Welfare scheme = reducing government expenditure/austerity measures
- Environmental protection – investment

Dilemma = duty bearers with little role (free riders) non-duty bearers more roles

Challenge- poses challenge nature of human rights (state centric)

- Created governance gap

Way out?

- Elaboration of existing system**(duty to protect)indirect application
 - Creating new system**(direct obligation) on Non-State Actors
- Enacting new treaty

Terrorism and human rights

What is terrorism? What? Who?

- **Impacts of terrorism on human rights**
- Human rights and counter-terrorism measures

Terrorism- acts of intimidation against civilians committed by NSAs for political motives

Q1 what about state terrorism?

- ‘One person’s terrorist is another person’s freedom fighter’
- Sometimes the T-Word is used as a means to undermine the legitimacy of enemies(opponents)

Elements of terrorism

- Political ends(motives)- to sow seeds of fear
- Atmosphere of intimidation(violence)
- Targeting civilians
- its organized nature (whether the organization involved is large or small);
- its dangerousness (to life, limb and property);
- its attempt to undermine government in particular (by seeking to influence policy and law-makers);
- its randomness and consequential spreading of fear/terror among a population
- Perpetrated by NSAs

State terrorism: when government perpetrates terrorist tactics on its own citizens

E.g Hitler

Outstanding issues

A. terrorist vs freedom fighters

B. state terrorism vs NSAs

Human rights and counter-terrorism

- Terrorism is human rights violation(undisputable)
- Poverty and source of insecurity are root causes of terrorism
- State has moral and legal obligation to counter-terrorism

Impacts of counter-terrorism on human rights

- Torture, ill-treatment, refoulement, use of special courts, repressive measures
- Switching resources to security(diverting from socio-economic rights to security sector)

State obligations on countering terrorism

- Counter-terrorism measures and human rights are complementary and reinforcing ones(= balance liberty and security)
- Strengthening human rights succeed in fight against terrorism
- Violation of human rights and lack of rule of law create conducive environment for terrorism
- Compliance with human rights has advantage in bringing the culprit to justice(criminal procedure rule)

- Non-human rights compliance lead to decline in states moral and human rights standards or ineffectiveness of checks and balances on agencies
- Counter-terrorism measures should take into account human rights protection(=human rights compliance)
- No compromise of human rights for the sake of counter-terrorism
- Counter-terrorism and human rights are compatible
- b/c human rights permits justifiable limitation and derogation on rights

NB

- objective of countering terrorism must not be used as excuse to broaden powers as applicable to other matters
- measures should be applied for the purpose of countering terrorism
- counter-terrorism measures should be directly relate to terrorism and terrorist acts
- avoiding pretextual uses of anti-terrorism campaigns'
- fighting terrorism within human rights frame work(standards)
- *The best – the only – strategy to isolate and defeat terrorism is by respecting human rights, fostering social justice, enhancing democracy and upholding the primacy of the rule of law.*
- *Our responses to terrorism as well as our efforts to thwart it and prevent it, should uphold the human rights that terrorists aim to destroy. Respect for human rights, fundamental freedoms and the rule of law are essential tools in the effort to combat terrorism – not privileges to be sacrificed at a time of tension.*
Former UN Secretary General, Kofi Annan (2003)
- Counter-terrorism strategies that are compliant with human rights not only avoid certain legal pitfalls, but may also prove more effective in the long term at winning the ideological battle against terrorism than strategies that themselves violate human rights
- The international human rights framework is therefore applicable in dealing with the terrorist threat, from addressing its causes, to dealing with its perpetrators, to protecting its victims, to limiting its consequences

Eth. Human rts system

History of hrts in Ethiopia

- At best human rts and Ethiopia are contradiction in terms

- The concept and practice of human rights is not developed (under-developed) in Ethiopia
- a. Era of unwritten constitution pre-1931
 - Unlimited power rulers (absolutism)
 - Characterized by authoritarian political culture
 - No conception of citizenship but mere subjects
 - Rulers owe no duty but enjoy privileges over people and state
 - Subjects owe duty w/o corresponding rights
 - Prevalence of class and identity based injustice were norms
- b. Written constitution
 - Continuity of unmitigated authoritarian rule and mindset
 - i. 1931
 - Imperial grants to the subjects
 - No human rights provisions but duties
 - Unlimited power (absolute monarchy)
 - ii. 1955
 - Continuity of absolute power
 - Rudimentary democracy (lower house elected)
 - Human rights provisions diluted/undermined by claw-back clause
 - No ownership (possession) of land (class oppression) and identity based injustice (national oppression)
 - iii. 1987
 - 1974 ushering in of garrison socialism
 - Transition from autocratic feudal rule to totalitarian military rule
 - No constitution from 1974 up to 1987

- Onset of red terror(dark age of eth) experience of untold, massive human rights violations

Change: secularism

- Primacy of socio-economic rts
- Recognition of diversity
- Denial in practice

c. 1991 transition

- Adoption of liberal charter
- Recognition for fundamental rts
- Incorporation of UDHR and other instruments
- Call for restructuring state democratically
- Recognition of hrts as governing principle
- Provides for self-determination

Sources of hrts in Ethiopia

- Int'l instruments

Art. 9/4 ratified treaties are part of law of the land

So far eth has ratified core int'l human rights instruments

Eth is duty bound to uphold

Eth citizens can benefit from protection of inst'l instruments

d. Constitution

- Place of human rts in FDRE Constitution

I. Preamble

- Gave generous recognition to respect of hrts
- Recognizes principle of self-determination, rule of law, democracy, devt, fundamental rts and freedoms, equality and non-discrimination, peace, affirmative action, etc

II. Basic principle

- Popular sovereignty(demo, participation, etc)
- Constitutionalism and rule of law
- Supremacy of the constitution
- Sanctity/respect of hrts(inalienability and inviolability of rts)
- Secularism(freedom of religion, religious equality)
- Transparency and accountability(responsible and responsive govt)
- Rt to information, participation, good governance

Function: shaping, influencing and controlling behavior of govt/foundation

- Provides framework for understanding and interpretation of the constitution

III. Bill of rights

- Recognizes plethorias of substantive rights
- Nearly a third of the constitution
- Recognition of most of classical civil and political rts, ESC rts and group rts
- Recognition of all generation of rts

IV. National policy directives and principles

- Function: guidelines in implementation of the constitution
- - tools of interpretation
- Granting rts art. 90, 91, 92
- Provides govt duties

Peculiar/ salient features

1. Comprehensive document
 - Holistic of Civil and pol rts, ESC rts and group rts
2. No hierarchy among rts

Co-equal rights

3. Justiciability of all rts
4. Imposition of duties on private actors/ horizontal application of hrts
5. Recognition of self-determination
6. Classification of rts
 - Classification of human rts and democratic rights
 - Reason: human rts emanates from humanity(granted for everyone citizens and aliens alike)
 - Democ rts reserved for citizens

Criticism:

- a. Why classification?
- b. Odd with traditional classification/ **generational division**
- c. Discriminatory among citizens and non-citizens/ odd with equality of hrts

Question: does it have descriptive value or prescriptive value?

- No prescriptive value/ mere poor draftsmanship
- No practical significance/inconsequential
- Only artificial distinction
- Equal rts , no textual or interpretation justification

Weakness/drawback

- A. **No general/ separate limitation clause/ open to abuse or arbitrary restriction**
- B. **No interpretation principle**
- C. **No remedy clause/compensation, restoration, injunction, declaratory, apology, etc**
- D. **Justiciability of some rts/ duty based formulation**
- E. **Derogation of some int'l non-derogable rts**

F. Ambiguity regarding the role of cts in enforcement hrts

Why const'l recognition of rts?

- a. Supremacy nature
- b. Entrenchment
 - Regional constitution
 - Subsidiary legislation

Institutional framework

- a. Legislative
 - Make protective laws/protection
 - Press executive to enforce rts through budgetary control powers and oversight
 - Establishing national hrts institutions
 - Establishing inquiry commission, standing committees
- b. Executive
 - Respecting hrts and prevention of violations of rts
 - Facilitates remedy
- c. Judiciary
 - Ensure respect of rts
 - Custodian of hrts/ determines entitlement, punish violators and provides redress for victims by ordering remedial measures
- d. National hrts institutions/ EHRC, EIO, anti-corruption commission
 - Complementary roles to cts

Functions:

- a. promotion/massification of knowledge)
- b. investigation/ protective role
- c. reporting/shaming by naming

- d. making recommendation for rectifying wrong-doing
- e. mainstreaming hrts into policy, laws and inst'l practices

Others:

- NGOs, press, academic, pol. Parties, citizens, etc

Federalism and human rights

- Human rights traditionally within states jurisdiction
- Double protection at federal and states levels
- Provides better protection by states to federal minimum standards
- Self rule/autonomy for local communities
- Minority rights in states