

Human Rights at Stake in Democracy: An Indian Perspective

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ABSTRACT

Democracy is a multi-faceted concept embracing political and social rights ranging from free and fair elections to accountable and transparent governance and civil society influence. All democratic processes may be assessed on the basis of their realisation of two key democratic principles: the level of popular control and political equality. India is the world's largest democracy, but there is more to a democracy than simply participating in elections by the medium of political parties. The most significant human right issues include police and security force abuses, widespread corruption, instances of censorship and harassment of media outlets, legal restrictions on religious conversion, lack of criminal investigations or accountability for cases related to rape, domestic violence, dowry-related deaths, honor killings, sexual harassment, and discrimination against women and girls, violence and discrimination based on religious affiliation, sexual orientation, and caste or tribe, including indigenous persons, persists due to lack of accountability. A lack of governance and accountability for misconduct at all levels of government persists, contributing to widespread impunity. The question remains can the world's largest democracy help to shed light on matters mentioned above that hold relevance for us all? The article argues that there must be greater specificity in the conceptualisation and operationalization of democracy and human rights, greater care in the development and use of measures and greater attention to the need of good governance. The need of the hour is to fill the gap between human rights standards and principles, on the one hand, and their implementation through governance interventions, on the other.

Key Words : Human Rights, Democracy, Political Parties, Governance, Elections

INTRODUCTION

True democracy goes much deeper than the electoral process and requires much more work. It would be a serious mistake to imagine that freely elected governments are a guarantee of individual rights or that majority rule can be equated with democratic rule. Recent history has also confirmed that democracy as a concept and as a pattern of government cannot be successfully imposed from outside. For democracy to take its root and be flourished there must be common understanding, common agreement and an internal will to change and succeed without any violence. Democracy is a multi-faceted concept embracing political and social rights ranging from free and fair elections to accountable and transparent governance and civil society influence. Although these

rights may appear in different forms in different national contexts, all democratic processes may be assessed on the basis of their realisation of two key democratic principles: the level of popular control and political equality.

India is the world's largest democracy, but there is more to a democracy than simply participating in elections. As the world's largest democracy, India should have a better record of upholding human rights. India's record of upholding human rights is abysmal; it must do better. The weakening of opposition parties such as the Congress and the dominance of the right-wing Bharatiya Janata Party (BJP) have brought to the fore concerns about majoritarianism, the repression of religious minorities, authoritarian strongman politics, the clampdown on institutional freedom including that of the media, and the growing role of big business and money power in the

political process. These are global rather than just Indian concerns. Can the world's largest democracy help to shed light on matters that hold relevance for us all?

Thick and Thin Definitions of Democracy:

Democracy is arguably the oldest concept and it was first formulated in the work of Aristotle, whose notion of 'polity' most closely matches the modern conception of democracy used today. While polity refers to the 'good' form of rule by the many, modern conceptions of democracy are based on the fundamental ideas of popular sovereignty and collective decision-making in which rulers are in some way held to account by those over whom they rule. But beyond this basic consensus, there are many variations of democracy. These definitions can be grouped broadly into (1) procedural democracy, (2) liberal democracy and (3) social democracy.

Procedural democracy:

Procedural definitions of democracy draw on the seminal work of Robert Dahl (1971) in *Polyarchy* and include two dimensions of contestation and participation. Contestation captures the uncertain peaceful competition necessary for democratic rule; a principle which presumes the legitimacy of a significant and organized opposition, the right to challenge incumbents, protection of the twin freedoms of expression and association, the existence of free and fair elections and a consolidated political party system. Participation, on the other hand, captures the idea of popular sovereignty, which presumes the protection of the right to vote as well as the existence of universal suffrage, or that principle that enshrines the right of participation in the democratic process to all within a country's jurisdiction regardless of social categories, such as race, religion, ethnicity, gender, sexual orientation, etc.

Liberal democracy:

Liberal definitions of democracy preserve the notions of contestation and participation found in procedural definitions, but add more explicit references to the protection of certain human rights. These rights were traditionally understood as citizenship rights, but with the advent of the contemporary international law and practice they have become largely understood as human rights. Definitions of liberal democracy thus contain an institutional dimension and a rights dimension. The institutional dimension captures the idea of popular

sovereignty and includes notions of accountability, constraint of leaders, representation of citizens and universal participation. The rights dimension is upheld by the rule of law and includes civil, political, property and minority rights. The protection of these rights provides a particular set of guarantees that guard against the threat of a 'tyranny of the majority'.

Social democracy:

Social definitions of democracy maintain the institutional and rights dimensions found in liberal models of democracy but expand the types of rights that ought to be protected, including social, economic and cultural rights. Such an expanded form of democracy includes the provision of social and economic welfare and the progressive realization of economic and social rights. It also includes the protection of cultural rights, which are concerned with such issues as mother tongue language, ceremonial land rights and intellectual property rights relating to cultural practices (e.g. indigenous healing practices and remedies that may be of interest to multinational companies) (Landman, 2013).

Human Rights and Indian Democracy:

Human rights and democracy are interlinked¹. A truly democratic society is one where all human rights are respected and protected. It is through democratic institutions such as an independent judiciary, a military that is accountable to the democratically elected civilian government, and a free and responsible press that these fundamental principles are realized. One can find a very significant link between democracy and human rights. Primarily, the existence of the link is recognized mainly in policy documents generally conceived not to be legally binding upon the participating states. However, it has convincingly been argued that the qualification of a policy document does not necessarily mean that it does not contain any legally binding norms as such documents may contain clauses stemming from international law, referring to international law or can be traced to international agreements by which the participating states are legally bound.

Secondly, a universal consensus exists on the existence of a link between these concepts. The nature of that link is not specified and thus, skeptics could rightfully argue that as the wording used is general in nature one could question whether a true consensus does exist on the nature of that link. The references to the

existence of a link between democracy and human rights can be divided into two groups. Some texts consider respect for human rights to be a prerequisite for democracy, or the other way around. Other texts list that democracy and human rights are interdependent and mutually reinforcing.

Respect for human rights is often perceived to be a prerequisite for democracy or *vice versa*. Sometimes respecting human rights is perceived to be one set of various elements, including amongst others apart from respect for human rights, respect for the principles of the rule of law and separation of powers. Other texts seem to consider respect for human rights as the only requirement that needs to be fulfilled in order to be considered to be a democracy. Other texts consider democracy to be a prerequisite for respecting human rights insinuating that in a democracy respect for human rights is best assured. If a nation respects human rights it automatically may be considered to be a democracy and a democracy automatically respects human rights. In short both go side by side. Both are complimentary to each other.

Another view with respect to these two concepts is respecting human rights does not automatically turn a nation into a democracy. Certain human rights can adequately be protected in non-democracies. At the same time one cannot accept that in a democracy respect for human rights is best assured is false. Some time one feels that democracy does not necessarily entail better protection of human rights. Democracy may even exacerbate ethnic conflict and lead to greater violations of human rights especially in the period immediately following transition to a democratic system. One can see in Nepal when people decided to remove monarchical government and adopt constitution for Nepal. There had been wide range of violence in all parts of Nepal. Respect for human rights is only said to increase at the end of the democratization process *i.e.* when a democracy is well installed (Benjamin, 2017).

Democracy is underpinned by respect for human rights and the strategy expresses the following principles:

- That democratization builds upon and is strengthened by the respect for human rights, particularly civil and political rights, and rights like freedom of assembly, freedom to organize, freedom of expression, and the protection of

minorities;

- That political parties as key actors in a parliamentary democracy, where parties are tasked with a number of key democratic responsibilities and interacting with e.g. the media and civil society.

Political Parties as the Key Actor:

Human rights and democracy² are interdependent and mutually reinforcing. Democracy provides the environment for the protection and effective realisation of human rights. It is core democratic concepts such as the rule of law, non-discrimination and universal suffrage that promote human rights, and it is through democratic institutions such as an independent judiciary, an accountable military, a free and responsible press, and a vibrant civil society that these fundamental principles are realised. Human rights make sure that democracy is non-discriminatory, inclusive, and participatory.

Political parties act as key actors in democratic societies. They serve as channels for the choices of the electorate and thus the ability for citizens to influence their local and national parliament and government. The two crucial democratic functions of political parties regarding representation and accountability are particularly important. Human rights are important to political parties for three reasons:

- Human rights protect the existence and functions of political parties as important actors in any democracy.
- Human rights outline responsibilities of political parties in carrying out the functions.
- Human rights provide guidance for enhancing the functions of political parties as actors in democracies.

The establishment and well-functioning of several political parties in a country is a guarantee of pluralism in political opinions and representation. This pluralism is both the characteristic of and the condition for a democratic society. Human rights are important to political parties, because they protect their existence, functions, practices and expressions. While most human rights are relevant to the existence and functioning of political parties, including the right to property, right to respect for privacy, home and correspondence, freedom of religion and belief or the right to education, but the focus is on participation rights, which are at the core of the nexus between democracy, human rights and political parties. The rights

concerned are:

- The right to take part in the conduct of public affairs
- The right to freedom of association and assembly
- The right to freedom of expression and information

Together with other civil society actors, political parties have an important role to play in terms of monitoring and promoting human rights³. This includes: (a) hearings and consultations on policies and law projects related to human rights: political parties can give their opinions about new policies and law projects through formal consultations, media and campaigns, etc., (b) dissemination of information about human rights: political parties can choose to focus on specific human rights issues as part of their policies or campaigns or categories of persons and disseminate information about their human rights or their situation through media, campaign, participating in information meeting, etc., (c) monitoring of human rights: political parties may denounce human rights violations or highlight human rights issues and hereby participate in an informal monitoring of the human rights action of the state.

In democratic systems, political parties and their members need to operate legally and therefore respect all the domestic legislation and regulation that implement human rights in the country. For political parties, this means:

- Combat violence in speech and action: Parties in democratic systems must reject the use of violence as a mean of achieving political goals. They should not advocate or resort to violence, maintain their own militias or use hate speech as a political tool.
- Support political pluralism: The right to freedom of association and the right to freedom of expression entail the coexistence of a diversity of political opinions and political organisations in society. The state must protect and encourage it, and all private actors must respect it. For political parties, this implies that they should not act in any way that could hinder the creation of other political parties. In addition, political parties should be taking part in debates and discussions with opposing parties.
- Combat discrimination: The principle of non-discrimination is at the core of human rights. Political parties and their members must follow

equality and anti-discrimination legislation. This means that they may not discriminate when hiring people to work for the party and in their external relationships of the party. In addition, when nominating candidates to elections, they must follow equality legislation imposing for instance gender quota for electoral list.

- Undertake human rights screening of new proposed policies and legislation: It is important that the parties themselves consider the compliance with human rights when proposing new policies or legislative measure or when they consider government proposals in parliament (Lagoutte and Petersen, 2018).

Democracy Today: Challenges and Opportunities

Despite much to be proud of, there is also cause for concern with regard to India's democratic trajectory. A looming threat today is the increasing hold of a Hindu nationalist party on India's national and sub-national political landscape. India's ruling BJP, led by Prime Minister Narendra Modi, is propelled by an ideological movement for Hindutva that advocates India as 'one nation, one culture, one people'. This majoritarian form of politics, which sidelines or even violently obliterates religious minorities, is a threat to the idea of a plural, secular, liberal India that was constitutionally envisaged at independence.

In the most recent government headed by Modi's BJP, the political representation of Muslims, India's largest religious minority is alarmingly low. Recent elections have seen criticism of the Election Commission, with concerns that it is being peopled by those close to the government. Opponents have suggested that the electoral body has delayed announcing the holding of certain elections so as to allow the ruling party to make policy pronouncements that would be monitored once an electoral code of conduct was in place. Opposition parties have also criticised the Election Commission for imposing the election code of conduct more strictly on their leaders than on government functionaries.

However, these repeated concerns around the government's undermining of institutions should be carefully observed and followed closely by anyone interested in the fate of the world's largest democracy. Also to be watched is the clampdown on the media, which is essential to a country's democratic health. In recent years, journalists have been attacked or even killed for

being critical of the government. Are we looking over the edge of a precipice? Is democracy truly under threat in India? (Sud, 2019).

Democracy and human rights are complex, multi-faceted and multi-dimensional concepts that are not mutually exclusive from one another. The first and crucial step in any systematic effort to compare, measure, and analyse democracy and human rights is to provide precise and coherent definitions of the concepts to be measured and analysed, the boundary conditions for them, and the attributes that comprise them. The scholarly and practitioner communities working on democracy and human rights have made great strides in developing increasingly nuanced and effective measurement strategies that have captured more of the inherent complexity and multi-dimensionality of democracy and human rights. Events-based data, standards based data, survey-based data, and socio-economic and administrative statistics are being used in increasingly creative and systematic ways to capture the temporal and spatial variation in democracy and human rights (Sifton, 2016).

From Lipset's (1959) release of the Varieties of Democracy (V-Dem) data set, there have been great strides made in the measurement and analysis of democracy, the quality of democracy, and democratic performance. From the early work of Gastil (1980) to the latest analysis from Fariss (2014) and the Human Rights Data Analysis Group (HRDAG), there have been significant advances in the measurement and analysis of human rights.

Despite these many advances, however, many challenges remain. First, there is still the need to work on how democracy and human rights are defined and how those aspects that are unique to each are circumscribed, while greater attention is given to the different ways in which democracy and human rights overlap with one another and how they are related to one another. Second, the specification of systematic definitions of both concepts is directly linked to the ways in which they are measured. Third, there are increasing types of data being generated that can be harnessed and analysed in ways that can enhance our understanding and explanation of the variation in democracy and human rights. Effective and efficient analytical techniques offer new ways of measuring, mapping, and understanding democracy and human rights (Landman, 2018).

Conclusion:

To conclude democracy and human rights go hand in hand. This means that every human being has a human right to democracy. We generally encounter an expression "democracy and human rights" so frequently that this pair of concepts seems almost unbreakable, taken-for-granted, and not deserving reflection. India's record of upholding human rights is abysmal, it must do better. The primary consideration should be welfare and rights of individuals within the purview of the state. The secondary consideration should be perception and the place that India wants for itself in terms of stature and prestige. From both perspectives, the respect of the rights of individuals must be non-negotiable.

The complex relationship between democracy and human rights shows the need for human rights education in democracy which overcomes the reductionist understanding of democracy to recognize only the will of the majority. Human rights education will help every human being to know about her/his rights in the democratic set-up. Human rights education is a 'must have' and not a 'nice to have' in today's pluralistic society where human rights enable us to live in peaceful coexistence with respect for the human dignity of each other and with tolerance across the boundaries of traditions, cultures, religions, world views and opinions; where human rights empower the individual to participate in a democratic opinion building and decision-making process; where human rights protect minorities from the human rights violating decisions of a majority. Democracy and human rights are complimentary to each other. There is an intimate relationship between these two concepts. Conscientisation of human rights education and promotion of democracy is the need of the hour.

Endnotes:

1. There have been many International organizations which show that there has been a link between these two concepts. Organizations like, African Union, the Organization of American States, the European Union, the Council of Europe, the Organization of Security and Co-operation in Europe, the Commonwealth, the United Nations, the Inter-Parliamentary Union, the Community of democracies, etc have seen link between these two concepts (Benjamin, 2017).

2. In 1993, at the World Conference on Human Rights, the member states of the UN affirmed that: Democracy, development and respect for human rights

and fundamental freedoms are interdependent and mutually reinforcing.

3. India, like the United States, has a federal structure of government. As a practical matter, it is primarily up to state governments to maintain law and order. The central government, however, has often used this as an excuse for its own inaction in addressing human rights concerns and failed to use its power and influence to compel local governments to protect human rights.

REFERENCES

- Benjamin, J. (2017). *Understanding the Relationship between Democracy and Human Rights*, pp.136-139.
- Berge, E. (1992). *Democracy and Human Rights as Conditions for Sustainable Resource Utilization*. Washington: Third Common Property Conference of the International Association for the Study of Common Property (IASCP), Washington, pp.1-20.
- Fariss, C.J. (2014). "Respect for Human Rights has Improved over Time: Modeling the Changing Standard of Accountability". *American Political Science Review*, **108** (2): 297-318.
- Gallagher, A. (2008). *The United Nations, Democracy and Human Rights*. University of Oslo: Norwegian Centre for Human Rights.
- Gastil, R.D. (1980). *Freedom in the World: Political Rights and Civil Liberties*. Westport, CT: Greenwood Press.
- Ghai, Y. (2001). *Human Rights and Social Development toward Democratization and Social Justice*. United Nations Research Institute for Social Development: Democracy, Governance and Human Rights Programme, No.5, pp.1-55.
- India 2017 Human Rights Report (2017). *Country Reports on Human Rights Practices for 2017*. United States Department of State: Bureau of Democracy, Human Rights and Labor.
- Kalse, A. (2016). "Human Rights in Constitution of India", *Maharashtra Legislature Secretariat*, Mumbai: Vidhan Bhavan, pp.1-22.
- Kedzia, Z. and Hauser, A. (2011). "The Impact of Political Party Control over the Exercise of the Parliamentary Mandate", *Inter-Parliamentary Union*, Geneva: Switzerland, pp.1-30.
- Kirchschlaeger, P.G. (2014). "The Relations between Democracy and Human Rights", *Globalistics and Globalization Studies*, pp. 112-125.
- Lagoutte, S. and Petersen, M.J. (2018). *Political Parties and Human Rights: An Introduction*. Danish Institute for Human Rights, pp.1-16.
- Landman, T. (2018). Democracy and Human Rights: Concepts, Measures, and Relationships. *Politics & Governance*, **6**(1): 48-59.
- Landman, T. (2013). *Human Rights and Democracy: The Precarious Triumph of Ideals*. UK: Bloomsbury Academic.
- Lipset, S.M. (1959). Some Social Requisites for Democracy: Economic Development and Political Legitimacy. *American Political Science Review*, **53**(1): 69-105.
- Pillai, P. (2018). The View from the Outside: On India's Human Rights Record. *The Hindu*, January 18, retrieved on 15th May, 2019.
- Sifton, J. (2016). Challenges and Opportunities: The Advancement of Human Rights in India. Human Rights Watch, <https://www.hrw.org/news/2016/06/07/challenges-opportunities-advancement-human-rights-india-0>, retrieved on 19th May, 2019.
- Sud, N. (2019). The Ups and Downs of India's Vibrant Democracy, <http://theasiadialogue.com/2019/03/14/the-ups-and-downs-of-indias-vibrant-democracy/>, retrieved on 6th June, 2019.
- Tibbitts, F. and Kirchschlaeger, P.G. (2010). Perspectives of Research on Human Rights Education. *J. Human Rights Education*, **2**(1): 8-29.
- World Report on India (2018). *Human Rights Watch*, retrieved on 22nd May, 2019.
