

FUNDAMENTAL FREEDOM & DEMOCRACY

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Democracy, development and respect for human rights and fundamental freedoms are interdependent and mutually reinforcing. The international Community should support the strengthening and formation of democracy, development and respect for human rights and fundamental freedoms in the entire world.

Freedom and democracy are often used interchangeably, but the two are not synonymous. Democracy is indeed a set of ideas and principles about freedom, but it also consists of practices and procedures that have been molded through a long, often tortuous history. Democracy is the institutionalization of freedom.

Democracies rest upon the principle that government exists to serve the people. In other words, the people are citizens of the democratic state, not its subjects. Because the state protects the rights of its citizens, they, in turn, give the state their loyalty. Under an authoritarian system, by contrast, the state demands loyalty and service from its people without any reciprocal obligation to secure their consent for its actions.

This relationship of citizen and state is fundamental to democracy. In the words of the U.S. Declaration of Independence, written by Thomas Jefferson in 1776, *"We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain inalienable rights that among these are life, liberty and the pursuit of happiness. That to secure these rights, governments is instituted among men, deriving their just powers from the consent of the governed."*

Also the Vienna Declaration on Human Rights States, democracy, development and respect for human rights and fundamental freedoms are interdependent and mutually reinforcing... The international Community should support the strengthening and formation of democracy, development and respect for human rights and fundamental freedoms in the entire world."

Democracy is not a right in itself but rather an integral system comprising certain norms, the core of which lies in the concepts of free debate and informed choice. Democracy therefore generates rights and freedoms, all of which aim to secure conditions and promote channels

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which enable all individuals to exert their influence and control over their government on an ongoing basis.

In the liberal approach which is inherent in democracy, all forms of power are rooted in the will of the people. This approach enhances the rule of law as one of the basic foundations of democracy; it affirms the separation of powers as a vehicle for their restraint; and it promotes individual's rights and freedoms as a prerequisite for their dignity.

Constitutions normally limit governmental actions in two ways: through the goals to be pursued, and the actions to be taken for their attainment. The State may not inhibit or absorb the creative powers of the mind, nor stand for the domination of the most vital aspects of our life; rather, it has to enhance the collective way of thinking and avoid viewing the public mind as one of its own tributaries or advocating concepts based on narrowness or one-sidedness.

The bedrock of any democratic system lies in the preservation of basic human rights for all, including minorities who should have their proportionate share in the exercise of power, along with the right to have their vital interests carefully considered if threatened in proposed legislation, and to practice their own culture.

The influence which the people at large may have on the government is not necessarily achieved through assemblies of a deliberative nature or affected by majority rule, since both may produce on different occasions anti-democratic results.

It is mainly through the right to assemble freely in association with others that influence may be exerted, especially in the form of political parties which by their very nature promote and generate political discourse and bring together like-minded citizens who share similar views and interests.

Unjustified restrictions in the formation of political parties are totally proscribed, particularly if based on political opinions, religious beliefs or affiliation with minorities. When understood in this sense, the formation of political parties ought to be beyond the control of the executive, either initially or in the course of conducting their business. In fact, the freedom to form political parties is not the reserved domain of a particular group or class, nor is it an infinite privilege assigned to them; rather, it is a channel for collective participation in political life combining educational values with vindication of the interests of their supporters.

In all events, political parties provide their members with the requisite information upon which priorities shall be outlined, appropriate decisions taken and activities evaluated and administered.

The undeniable freedom to form political parties ensures the people's supremacy, secures their participation in the exercise of power, the mobilization of public activities and the outlining of national policies and values, and recognizes the enjoyment of fundamental rights and freedoms, including freedom of expression and the right to conduct elections so as to choose freely their own representatives in the administration of governmental affairs.¹¹

Associated with the freedom to form political parties is that of the freedom of expression to which all individuals are entitled. Indeed, ideas need to flourish and expand, and not retreat in concealment or lie in darkness. Freedom of expression implies that those who advocate or defend a particular cause have the right not only to do so, but also to choose the means they consider most appropriate and effective in its furtherance, even if other methods are available for the expression and dissemination of their opinions. Evidently, freedoms are mostly endangered if consumed by formalities and not spread in brightness.

The actual enjoyment of the basic freedom of expression logically involves the assumption of responsibilities which must necessarily accompany the exercise of this freedom. More specifically, in democracies, these fundamental or inalienable rights include freedom of speech and expression, freedom of religion and conscience, freedom of assembly, and the right to equal protection before the law. This is by no means an exhaustive list of the rights that citizens enjoy in a democracy, but it does constitute a set of the irreducible core rights that any democratic government worthy of the name must uphold. Since they exist independently of government, in Jefferson's view, these rights cannot be legislated away, nor should they be subject to the whim of an electoral majority.

Suggestions

The progress of the society is dependent upon the proper application of law to its needs and since the society today relies more than ever before its rights and its obligations. The judiciary has to mould and shape the law to deal with such rights and obligations. The mere existence of a particular piece of beneficial legislation cannot solve the problems of the society at large unless the Judges interpret and apply to law to ensure its benefit to the right quarters,

- 1) Restrictions can be imposed only by or under the authority of law. Restrictions cannot be imposed by the executive action without legal authority;

- 2) The restriction must be reasonable according to article 19(2) to 19(6) of Indian Constitution;
- 3) Restriction must be related to the purpose specifically mentioned in these clauses;
- 4) The judiciary has power to test the validity of these restrictions on two grounds, firstly- whether the restriction is reasonable or secondly whether it is for the purpose mentioned in the clause under which the restriction is being imposed. Legislative determination as to reasonableness is not final and it must be subjected to judicial scrutiny;
- 5) The exercise of any right must not lead to a wrong, either on individuals or on society or State. In all modern states there are certain fixed principles of law enunciated and expanded by decisions of courts or by statutes which demonstrate that individual rights are never absolute but are restricted by certain limitations in the interest of decency, public order, public health, morality, security of the State etc.;
- 6) Whether we regard the State as the *paren patriae* or as guardian and promoter of general welfare, we have to concede, that these restraints on liberty may be justified by their absolute necessity and clear purpose. The larger interest of the community requires the formulation of policies and regulations to combat dishonesty, corruption, gambling, vice, and other things of immoral tendency and things which affect the security of the State and preservation of public order and tranquility;
- 7) The higher judiciary should understand its responsibility towards the nation. They must know that how much trust the people of this country repose on them and they must keep themselves above any sort of suspicion. Ultimately, government of India consists of three wings, i.e., Legislative, Judiciary and Executive. Hence judiciary, irrespective of higher or lower, is well within the need for transparency. This fact should be understood by our higher judiciary. It is the right time for the judiciary to introspect and save its independence, which it itself has established as part of the basic structure of the Constitution of India;
- 8) It is humbly suggested that Fundamental Freedom is not a license to say anything. It is a responsibility;

- 9) It is also humbly suggested that Human rights and other entitlements of citizens of India be spread through specially designed legal literacy programs for awareness of Fundamental Freedom;
- 10) A serious attempt should be made for uniform civil code. A legal restriction should be imposed on the power of making will to deprive female heirs;
- 11) In MNREGA there is no systematic record of delays in wage payments. This is one reason why long delays in wage payments persist in many states, causing immense hardship to MNREGA workers and even inducing some of them to quit. This is the main gaping holes in the statistical system need urgent attention if the MNREGA is to achieve its ambitions transparency norms;
- 12) Effective implementation of legislation should be promoted by involving civil society and community and
- 13) Fair judgment should be given by the judiciary. Principle of natural justice should be followed and to provide social justice to all citizens of India. There should be no corruption in our society.