

Election and Democracy: Human Rights Perspective

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This paper attempted to analyse electoral rights, how it develops within the democratic framework and its correlation with universal and regional human rights charters. The exercise of right to vote adds to the individual's self-respect, dignity, sense of responsibility, political and civic education. In the democracy, if the election is unable to be organised in a regular interval, that may not be treated as democracy on the one hand, and violation of political right like electoral rights on the other.

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I. Introduction

Democracy also needs equal human rights. If not everybody has equal rights, thus there can be no equal influence, and if there is no equal influence, then there can be no democracy. The goal of elections is to have an open competitive to the eligible citizens, aspirant candidates and electorates to exercise their rights for installing a government of the people for the people. If the result of the elections can't reflect accurately the will of the electorates, the process and the outcome will demean democracy. Elections are generally demanding and require a multitude of actors and institutions whose intervention is critical to the holding of a credible election. (Thanikodi 2003: 12) Voting is one important form of political participation through which citizen can influence the behaviour of political leaders. Holding periodic elections may give the system of governance in a country the veneer of being a democracy but whether a society is really a democracy or not is determined by how good and how effective the electoral system is. There is also the need for a clear legal and institutional foundation which establishes the scope and nature of participation, election administration and oversight. (Ibid, 13) Electioneering laws and relevant acts are mostly in all the democratic countries, in order to provide free and fair elections. For this, certain acceptable elements are needed that includes electoral framework; independent electoral management body; acceptable code of conduct; and mechanism to feel all the participants confident or accountability; but all these elements should incorporate human rights elements to get respect of natural rights and freedom.

II. Election and Democracy: Human rights perspective

The creation of public opinion or of the will of the people depends on the equal influence of everybody or, in other words, on the equal ability to convince, and this equal ability requires equal human rights. Since the representation principle is not a democratic one per se, it gains its democratic character only through the specific selection of the representatives of the people by the people. This is done through elections, and elections are democratic only if the voter has alternatives, if all citizens who wish to take part can indeed do so, and if every vote has equal weight. (Dieter 2007: 30) The exercise of right to vote adds to the individual's self-respect, dignity, sense of responsibility, political and civic education. These criteria are met in liberal democracy by the institution of periodic and competitive elections, generally implemented by the constitution. People are called political sovereign because they possess the right to vote a government into power, or to vote a government out of power. In the words of Sartori: "Since in order to have democracy we must have, to some degree, a government of the people, let us immediately ask: When do we find a 'governing people,' the demos in the act of the role of governing? The answer is: at elections." (Sartori 1987: 86) If the representative of the people acts against the will of the people, it will not make the sense of elections. It must therefore be ensured with the institution of elections that representatives rule in accordance with the will of the people which is a vital character of electoral democracy.

According to the theory of liberal democracy, responsiveness is to be structurally generated through the periodicity of elections and the possibility of a change in government. The prospect of the next elections obliges the rulers to take heed of the opinion of the demos in their own interest. (Dieter *op cit.*, 33) The type of

participation in government partly determines the extent of participation. In modern democracy, there is only indirect participation in government, in that the people elect their representatives to govern through periodic and competitive elections. Indeed, sustainable democracy is unthinkable without a viable political party system. In an ideal setting, political parties basically are expected to serve as a formidable democratization force by articulating and aggregating public opinion and interests, engendering popular participation, and promoting political education and national integration. (Shola 2010: 125-145) When Rwanda election 2008 witnessed conflict and dubious experiences, the European Union Observer Mission highlighted some fundamental shortcomings in relation to international and regional standards, but nevertheless it described the elections as ‘an important step in the efforts to further institutionalize the democratic process.’ (European Union Election Observer Mission 2008) The concept of democracy as the basis of the political system had been firmly established, with the key institutions of a liberal democracy in place and emphasised election as consolidation of democracy in Rwanda. (Rachel 2009: 51-52) It is generally described the way forward and significance of election, on the other the government described this as a period of ‘democratic consolidation.’ (Larry 2002: 21-35)

Since elections do not take place periodically, political participation by citizens in modern democracies can be described as occasional and limited. But participation in elections does not exclude engagement on the part of citizens in political parties and collaboration in civil society voluntary associations. (Silvano 2007: 112) In fact, however, only tiny minorities are involved. Precisely, this state of affairs together with the declining participation in elections is a big challenge to electoral right in the sense that the incumbent ruling nature can influence electorates in many ways. According to Arend Lijphart, voter participation is an excellent indicator of democratic quality that it will be no wrong to consider the efficiency of electoral system where electoral rights are mainstreaming that all the electorates can exercise confidently and accountably. (Lijphart *op cit.*) For instance, if all electorates have an equal vote but only have the option of voting for one political party, we would not want to say that such an arrangement fulfilled the requirements of a true democracy. Political equality, which underlies our commitment to democracy, is not secured by simply ensuring each person is entitled to an equal vote and that the will of the majority rules. (Colin 2004: 83) Such instances are weakness of electoral system that produces questions of human rights on that particular electoral system and reflected to the democracy. So, the electoral system should also enable to incorporate rights with a meaningful democracy. In this context, Robert Dahl analysed comprehensively wherein he argued to fulfil some opportunities that must be satisfied include effective participation, equality in voting, and include adult were some of them. (Dahl 1998: 38-41)

In the context of human rights, the electoral system must also be care of effective participation not only the policy matter. .in many countries, regular elections are being held but the participation rate is very minimal, which is reflective results of the system drawback that couldn’t influence electorates. If the system or the executing mechanism fails to check the malpractices then there will not be effective participation. Perhaps this erosion of democratic vitality is an inevitable result of complexity and size that it is being witnessed in Indian democracy where reformation is very difficult even though electoral system has many deficits. For instance, vote bribing and criminals entrance in the electoral politics is a big issue. Most of the criminal background candidate can get elected and even obtain ministerial berth, as such the reformation in the near on the electoral system is out of expectation. Perhaps we should expect no more than limited popular constraint on the activities of government through regular, weakly competitive elections. (Archon & Erik 2003: 25)

‘Liberal feminists seek to inspire a public philosophy that will liberate women by emphasizing the similarities between men and women’. (Colin *op cit.*) Charles Tilly opined that ‘most of Dahl’s standard democratic institutions – elected officials; free, fair, and frequent elections; freedom of expression; alternative sources of information; associational autonomy; and inclusive citizenship – lend themselves awkwardly to comparison and explanation’. (Charles 2007: 113)

Freedom House evaluations incorporate some substantive judgments about the extent to which a given country’s citizens enjoy political rights and civil liberties. But when it comes to analyse in depth in the electoral system or electoral democracy which co-related with human rights perspective may be observed the following elements: (Ibid, 8)

- A competitive, multiparty political system
- Universal adult suffrage for all citizens (with exceptions for restrictions that states may legitimately place on citizens for criminal offenses)
- Regularly contested elections conducted in conditions of ballot secrecy, reasonable ballot security, and in the absence of massive voter fraud that yields results that are unrepresentative of the public will
- Significant public access of major political parties to the electorate through the media and through generally open political campaigning.

III. Electoral rights

Political rights are significant in the sense that the equality of a government considerably depends upon how these rights are exercised. Hence political rights are not granted to those minors, who have not the necessary mental equipment for rightful use of their privileges. Within the perspective of human rights, political rights are considered with more significance and guaranteed by the electoral law and correspond to the fundamental rights¹ where freedom of speech and expression incorporates right to choose and right to know that ensure the participation of the citizen. (Edwin 2010) Mention may be made, 'Labour Party believed that the right to vote² being a birth right, no one aged 21 and above be deprived of it. The Labour Party is not prepared to surrender this inalienable right'. (Varma 2012: 69) A democratic system is one in which the will of the average citizen has channel of direct access to the sources of authority. Hence, a right to political power 'right to vote, right to be candidate, right to form political parties, right to hold public meetings, right to criticize govt., right to hold public office, etc.', are needed. (Saxena 1998: 361)

Electoral rights: Amongst those political rights, the right to vote and right to be candidate is the most important political right which is treated as electoral rights. All people who have attained prescribed age (adult) should have the right to exercise their franchise in order to elect their representatives. This right is of special significance in liberal democratic countries where there are many political parties. Participation in the government is possible for the people only through their representatives. The right to contest election or to be elected, to represent the people is inalienable right in democratic countries except in certain conditions where the law of the state prohibit for offences. (Gopal 2007: 80) The right is a corollary to the right to vote and most of the countries grant this privilege of contesting election to different legislative bodies without any discrimination of caste, race, sex, religion, language and place of birth. But certain restrictions are there on the alien, certain criminals and minors and others that in the same case of right to vote. However it should be clear that all the rights and freedom has certain limitation. Though electoral rights has close link with fundamental rights like freedom of speech and expression which is provided by many constitutions of the world, it is a statutory right in the sense that it has been given to eligible citizens under electoral law (representation of the people act).

In the real sense whatever the representative of the people acts whether it may be right or wrong during the tenure of their terms will consider as done by the electorates that they are elected as best amongst the contestants at the time of elections. It is electoral right to choose accordingly after conceiving the best one amongst all the candidates on certain parameters like 'who will do better for the people as a whole; what policies they or party have; and whether the policy they have planned is feasible or applicable; it needs to make a simply comparative analysis between the candidates on the basis of their achievement, reputation, and records like cheating indulging in violence and other serious criminals activities'. (Maja *et al.*, 2003) It is now mandatory in many democratic countries that all the aspirant candidates have to submit detail information and further it has to be disclosed by electoral management bodies for public awareness. In this context, the Supreme Court of India said,³ at the time of filing nomination papers every candidate must tell citizens at least three information like (a) criminal records; (b) the extent of wealth owned and financial dues in his/her name and those of dependents and (c) the level of education. Significantly, there was uncertainty as many political leaders and parties voiced against the Supreme Court notice and amended to hide some significant information. Later, civil organisation launched National Campaign for Electoral Reform and challenged the amendment through the Supreme Court.⁴

IV. Relevance of universal and regional charters

For instance, The English bill of rights 1689, mentioned that election of members of Parliament ought to be free, which meant electoral rights were already granted to some people under certain condition.⁵ Section six of the Virginia Declaration of Rights 1776, states 'That elections of members to serve as representatives of the people, in assembly, ought to be free; and that all men, having sufficient evidence of permanent common interest with, and attachment to, the community, have the right of suffrage and cannot be taxed or deprived of their property for public uses without their own consent...'⁶

Besides, the universal laws Universal Declaration of Human Rights 1948 are also supported such electoral rights that all the electorates should have freedom to choose their representatives as well as to be candidature to participate in the governance. (Ashwani 2000: 377-89) Article 21 says that,

- Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
- Everyone has the right of equal access to public service in his country.
- The will of the people shall be the basis of the authority of government; this will be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

This article has intimate relation with the electoral rights where political rights are clearly incorporated within. So, all the citizens who have the eligibility conditions to be candidature have the right to contest election or right to vote. Article 13 of the African Charter on Human and Peoples' Rights has also provided that 'Every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law.'⁷

Electoral rights in the International Covenant on Civil and Political Rights, ICCPR may be referred as Article 25 says that⁸

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (a) To take part in the conduct of public affairs, directly or through freely chosen representatives; (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors; (c) To have access, on general terms of equality, to public service in his country.

These articles endow electoral rights to all the citizens under prescribed law of the state. Covenant recognizes and protects the right of every citizen to take part in the conduct of public affairs, the right to vote and to be elected and the right to have access to public service. Whatever form of constitution or government is in force, the Covenant requires States to adopt such legislative and other measures as may be necessary to ensure that citizens have an effective opportunity to enjoy the rights it protects. (Ibid)

V. Concluding observation: Nuances on electoral rights

The word franchise is derived from the French word '*franc*' which means 'free'. It means free exercise of the right to choose one's representatives. (Eric *op cit.*) Adult franchise means that the right to vote should be given to all adult citizens without the discrimination of caste, class, colour, religion or sex. Both the term electoral rights and universal adult franchise are within the parameter of democracy and elections. It is based on equality which is a basic principle of democracy. It demands that the right to vote should be equally available among all. The context of electoral rights covers both the right to vote and right to candidate while the universal franchise can consider only the right to vote. Nevertheless all the elements are seemingly same in the sense that equality principles are ingredients. Movement for universal adult franchise was indeed very slow that it was considered as male franchise so long. Till the second decade of the twentieth century, not all the countries were practising universal adult franchise. Many democratic systems had restricted to male franchise only, based on property, education and other qualifications.⁹ The concept of universal suffrage originally referred to all male citizens having the right to vote, regardless of property requirements or other measures of wealth. In theory France first used universal (male) suffrage in 1792 during the revolutionary period, although the turmoil of the period made this ineffective.¹⁰ France and Switzerland have used universal male suffrage continuously since 1848 (for resident male citizens), longer than any other countries.

In most countries, full universal suffrage – with the inclusion of women – followed universal *male* suffrage by about ten to twenty years. (Ibid) Germany incorporated the principle of universal adult franchise in 1919; it took nine more years for Great Britain to extend franchise to women in 1928.¹¹ In 1918, Britain had granted franchise to limited number of women. It was decided that while all adult men, 21 years of age and above would have the right to vote, women only above the age of 30 years could possess the right to vote. This discrimination was removed only in 1928. Notable exceptions were France, where women could not vote until 1945, Italy 1946, Belgium 1948, India 1950 and Switzerland 1971.¹² It may be noted that convention on the political rights of women 1954 took various decisions,¹³ includes 'Article 1 - Women shall be entitled to vote in all elections on equal terms with men, without any discrimination. Article 2 - Women shall be eligible for election to all publicly elected bodies, established by national law, on equal terms with men, without any discrimination.

References & Notes

- [1]. Archon Fung and Erik Olin Wright, (2003). 'Thinking about Empowered Participatory Governance', in Archon Fung and Erik Olin Wright, (ed.), Deepening Democracy Institutional Innovations in Empowered Participatory Governance, The Real Utopias Project - IV, Verso, London: p. 5
- [2]. Archon Fung and Erik Olin Wright, (ed.), (2003) Deepening Democracy Institutional Innovations in Empowered Participatory Governance, The Real Utopias Project - IV, London: Verso, p. 25
- [3]. Ashwani Kant, G., (2000). Human Rights and Justice System, New Delhi: APH. Pub., pp. 377-89
- [4]. Charles Tilly, (2007). Democracy, New York: Cambridge University Press
- [5]. Chopra PS & Chopra SK, (2005). Political theory and Indian politics, New Delhi: Unique publishers, p. 63
- [6]. Cogan, Neil H., (ed.), (1997). The Complete Bill of Rights: The Drafts, Debates, Sources, and Origins. New York: Oxford University Press, (Online) available at: <http://catalog.loc.gov/cgi-bin/Pwebrecon.cgi?v3=1&DB=local&CMD=010a+96046588+&CNT=10+records+per+page>, accessed on 22 March 2012
- [7]. Colin Farrelly, (2004). Introduction to Contemporary Political Theory, New Delhi, Sage Publications, p. 83
- [8]. Dahl Robert, (1998). On Democracy, New Haven, CT and London: Yale University Press, pp. 38 - 41
- [9]. Dieter F., (2007). 'Participatory, liberal and electronic democracy', in Thomas Zittel and Dieter Fuchs, (ed.), Participatory Democracy and Political Participation Can participatory engineering bring citizens back in? New York: Routledge, p. 30

- [10]. Edwin Odhiambo Abuya, (2010). The role of the judiciary in promotion of free and fair elections, (Online) available at: www.juridicas.unam.mx/wccl/ponencias/1/1.pdf, accessed on 12 March 2012
- [11]. Eric Mann, (2009). Voting Rights vs. Minority Rights, Human Rights and Self-Determination, (Online) available at: www.thestrategycenter.org/article/2008/03/voting-rights-vs-minority-rights-human-rights-and-self-determination, accessed on 9 May 2012
- [12]. European Union Election Observer Mission, Rwanda 2008: Final Report on the Legislative Elections to the Chamber of Deputies, 15-18 September 2008, (Online) available at: http://www.eueomrwanda.org/EN/Final_Report.html, accessed 15 February 2010
- [13]. Filip Spagnoli, (2007) Making Human Rights Real, New York: Algora Publishing, p. 149
- [14]. Gopal, (2007). Political Theory, Nai Sarak, Delhi: Neeraj Pub., p. 80
- [15]. Habermas, J., (2001). The Post national Constellation: Political Essays, (Translated by Max Pensky) Massachusetts Cambridge: The MIT Press, p. 116
- [16]. James Gordon Finlayson (2005). Habermas: A Very Short Introduction, New York: Oxford University Press, pp. 109 - 23
- [17]. Larry Diamond, (2002). Thinking about Hybrid Regimes: Elections without Democracy, Journal of Democracy 13, No. 2, pp. 21-35
- [18]. Lijphart, A., (1999). Patterns of Democracy: Government Forms and Performance in Thirty-six countries. New Haven, CT: Yale University Press
- [19]. Maja Daruwala; Bibhu Mohapatra; Venkatesh Nayak, (2003). Right to know a voter's guide, (preface) Commonwealth Human Rights Initiative, New Delhi and Voluntary Action Network India, New Delhi: (online) available at: www.humanrightsinitiative.org/publications/.../the_right_to_know.pdf, accessed on 12 July 2010
- [20]. Maria Spirova, (2008). Corruption and Democracy, The "Color Revolutions" in Georgia and Ukraine, Taiwan Journal of Democracy, Taiwan: Volume 4, No. 2, pp. 75 - 90
- [21]. Michael Bratton; Yun-han Chu and Marta Lagos, (2010). 'Who Votes? Implications for New Democracies', Taiwan Journal of Democracy, Taiwan: July, Volume 6, No. 1, pp. 107-136
- [22]. Rachel Hayman, (2009). Going in the 'Right' Direction? Promotion of Democracy in Rwanda since 1990, Taiwan Journal of Democracy, Taiwan: Volume 5, No.1, p. 51-52
- [23]. Samuel Huntington, (1991). The Third Wave: Democratization in the Late Twentieth Century, Norman: University of Oklahoma Press
- [24]. Sartori, G., (1987): The Theory of Democracy Revisited, NJ, London: Chatham House Publishers, p. 86
- [25]. Saxena, SC., (1992). Political Science, New Delhi: Macmillan, p. 361
- [26]. Shola Omotola, J., (2010). Political Parties and the Quest for Political Stability in Nigeria, Taiwan Journal of Democracy, Taiwan: Volume 6, No. 2, December, pp. 125-145
- [27]. Silvano Moeckli, (2007). 'Direct democracy and political participation from a cross-national perspective', in Thomas Zittel and Dieter Fuchs, (ed.), Participatory Democracy and Political Participation Can participatory engineering bring citizens back in? New York: Routledge, p. 112
- [28]. Thanikodi, A., (2003). 'People's participation in electoral democracy', Third Concept, New Delhi: Oct-Nov., p.12
- [29]. Thomas Zittel and Dieter Fuchs, (ed.), (2007) Participatory Democracy and Political Participation Can participatory engineering bring citizens back in? New York: Routledge, pp. 30 - 32
- [30]. Varma, M. N., (2012). The Political History of Mauritius (1883-1983) Recollection and Reflections, Vol. 1, Mauritius: p. 69
- [31]. Wayne Gabardi, (2001). Negotiating postmodernism, Minneapolis / London: University of Minnesota Press, p. 107

Notes

¹ The Supreme Court of India made it clear that parliament does not have the power to make laws which take away the fundamental rights of the citizens in relating to a case challenging the amendment of parliament to informed criminal records of the candidates to the voters. People's Union for Civil Liberties (PUCL) vs. Union of India, JT 2003(2) SC 528

² 'In this context Ramgoolam, Labour Party's leader Republic of Mauritius sought for the protection of electoral rights'. Varma, M. N., (2012). The Political History of Mauritius (1883-1983) Recollection and Reflections, Vol. 1, Mauritius: p. 67

³ Association for Democratic Reform (Ahmadabad) vs. Union of India, JT2002 (4) SC 501

⁴ People's Union for Civil Liberties (PUCL) vs. Union of India, JT 2003(2) SC 528

⁵ Hickock, Eugene W., Jr. The Bill of Rights: Original Meaning and Current Understanding. Charlottesville: University Press of Virginia, 1991, (Online) available at: <http://catalog.loc.gov/cgi-bin/Pwebrecon.cgi?v3=1&DB=local&CMD=010a+90019945+&CNT=10+records+per+page>, accessed on 22 March 2012

⁶ Virginia Declaration of Rights, (Online) available at: http://www.wikipedia.org/wiki/United_States_Bill_of_Rights#cite_note_15, accessed on 22 April 2012

⁷ African (Banjul) Charter on Human and Peoples' Rights (*Adopted 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force 21 October 1986*) (Online) available at http://en.wikipedia.org/wiki/Virginia_Declaration_of_Rights, accessed on 23 February 2012

⁸ ICCPR, Adopted by the Committee at its 15th meeting (fifty-seventh session) on 12 July 1996. (Online) available at: http://www.unhcr.ch/html/menu3/b/a_ccpr.htm, accessed on 23 March 2010

⁹ Wikipedia, Universal suffrage, (Online) available at: http://en.wikipedia.org/wiki/Universal_suffrage accessed on 12 March 2012

¹⁰ That parliament does not have the power to make laws which take away the fundamental rights of the citizens in relating to a case challenging the amendment of parliament to informed criminal records of the candidates to the voters as stated by Supreme Court. People's Union for Civil Liberties (PUCL) vs. Union of India, JT 2003(2) SC 528

¹¹ UK Parliament, Electoral Franchise: Who can vote (Online) available at: <http://www.parliament.uk/documents/commons/lib/research/briefings/snpc-02208.pdf>, UK Parliament, accessed on 10 March 2012

¹² Wikipedia, Universal suffrage, (Online) available at: http://en.wikipedia.org/wiki/Universal_suffrage accessed on 12 March 2012

¹³ Convention on the Political Rights of Women, 193 U.N.T.S. 135, entered into force July 7, 1954. (Online) available at: <http://www1.umn.edu/humanrts/instree/e2cprw.htm>, accessed on 12 December 2011