

# Best Practices of Human Rights in a Democratic Country

Dr. Govinda Prasad Guragain<sup>1</sup>

## Abstract

This article has displayed the state of human rights practices and provisions in a democratic nation, Nepal. Democracy, progress, the rule of law, and the preservation of human rights and fundamental freedoms are all inextricably linked and mutually reinforcing. Nepal, being a democratic nation hence ensures human rights to its citizen. From the past few decades to the present date, a number of progress has been made in the practices and provisions. The backward and underprivileged groups have been rendered their rights in accordance with the 2015 Constitution. Nevertheless, the Nepalese government has continuously neglected the Commission's recommendations to examine and prosecute human rights violations in accordance with the obligations of the Constitution. The government of Nepal should focus on the human rights movement which is also facing enormous difficulties from numerous activities that contravene the essential spirit of the constitution, democratic norms, and the Universal Declaration of Human Rights. This paper has presented the progression in human rights provisions and practices and even made suggestions to be more proactive in ratifying the Rome Statute as soon as feasible in order to improve Nepal's international image.

**Keywords:** *Constitution, Democracy, Human Rights, Provisions*

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## Introduction

UN has defined human rights as the rights inherent to all human beings, regardless of race, sex, rationality, ethnicity, language, religion, or any other status. Human rights include the right to life and liberty, freedom from slavery and torture, freedom of opinion and expression, the right to work and education, and many more. Everyone is entitled to these rights, without discrimination. International human rights law establishes governments' obligations to act in particular ways or refrain from acting in certain manners to safeguard and defend people's human rights and basic freedoms. The

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<sup>1</sup> Associate Prof. of Political Science, Padmakanya Multiple Campus, Kathmandu, Tribhuvan University, Nepal

establishment of a complete body of human rights law—a global and internationally protected code to which all states can subscribe and all people aspire—is one of the great triumphs of the United Nations. The UN has defined a wide range of globally recognized rights, including civil, cultural, economic, political, and social rights. It has also put in place measures to promote and safeguard these rights and help states follow their obligations.

Democracy and human rights are founded on the shared concepts of accountability, individual liberty, honesty, fair and equitable representation, inclusion and participation, and nonviolent dispute resolution. Modern notions of democracy are founded on the fundamental concepts of popular sovereignty and collective decision-making, wherein rulers are held accountable by those they rule in various ways (Beetham & International Institute for Democracy and Electoral Assistance, 2008). Democracy as a form of governance is a universal norm for human rights protection; it creates an atmosphere conducive to human rights protection and effective realization. Many democracies appear to be regressing now, despite a period of greater democratization around the world. Some governments appear to be purposefully reducing independent checks on their powers, smothering dissent, eroding democratic supervision, and securing long-term dominance, with detrimental consequences for people's rights (*OHCHR | About Democracy and Human Rights*, n.d.).

Human rights protection is not an impediment to the functioning of a viable democracy, but rather a requirement. Human rights provide free and fair elections in the context of political impartiality. Human rights enable clear communication and a fair system of opinion development. Human rights ensure the execution of democratic decisions, assisting democratic governments in becoming more effective. Human rights, by limiting the authority of the majority, eventually enable individuals and minorities to embrace and abide with the decisions of the democratically legitimated majority: democracy assures the minority that it, too, can become the majority. Human rights ensure that people's interests are protected even when not in the majority. Human rights are most likely to thrive in a democracy, and sustained democratic administration is unimaginable without support for, preservation of, and realization of human rights. Human rights and democracy are not diametrically opposed, but rather mutual prerequisites for a political community's success. Their connection allows individuals to live lives of personal and community self-determination. Human rights protection and realization are thus a truly democratic project (*Why Democracy and Human Rights Are Two Sides*

*of the Same Coin*, 2019). The first credit for the formation of human rights goes to the Magna Carta—the Charter of British Civil Rights. In 1215 AD, King John of Britain and the people reached a written agreement about the division of authority. People's rights were mentioned in the accord. The same agreement, known as the Magna Carta, is regarded as the first written human rights instrument. The Magna Carta explicitly declared that parliament had the ability to enact laws, that the king could not impose taxes without the agreement of parliament, and that there should be an independent judiciary and the supremacy of law.

Following a long struggle between the monarch and the people of Britain, the 'Bill of Privileges' was produced in 1689 to define and limit the king's rights. This is regarded as the king's first social pact with the people. The United States of America likewise released the "Declaration of American Independence, embracing the core concepts of the British 'Bill of Rights'" in 1776 AD. Similarly, the French Revolution was completed in 1779 in pursuit of the belief that every human being has the right to freedom and self-determination, and the basic concept of human rights was developed based on the declaration of the rights of man and citizen, which was eventually passed by the French National Assembly in 1789.

The League of Nations was initially created on January 10, 1920, to allay fears that human rights might be jeopardized as a result of growing antagonism and rivalry among nations, despite major international efforts toward human rights growth in the eighteenth century. It incorporated nondiscrimination policies, regardless of race, religion, language, or gender. However, all previous efforts to achieve HR and peace were proved ineffective in the aftermath of the two global wars - World War I from 1914 to 1918 and World War II from 1939 to 1945, respectively.

Everyone is responsible for respecting and honoring the rights of others. The United Nations - UN - was established on October 24, 1945, in response to the need for a worldwide organization to lead the entire community in embracing and preserving the fundamental ideals of brotherhood, peace, and coexistence in the aftermath of two horrific world wars. Following this, there was a determined and coordinated movement to promote peace and human rights.

The UN took the initiative to establish the Human Rights Commission shortly after its creation, in the early part of 1946, in order to make more extensive and explicit provisions for promoting human rights. In 1947, the Commission prepared the International Bill of Human Rights in conformity with the spirit of the United Nations Charter. On December 10, 1948, the UN General Assembly accepted the document as the Universal Declaration of Human Rights (UDHR).

The UN general assembly also affirms the UDHR as an uniform approach of achievement for all peoples and all nations, with the intent that every individual and every organ of society, keeping this Declaration in mind, shall aspire by teaching and learning to enhance respect for all of these rights and liberties and by progressive national and international measures to safeguard their universal and effective recognition and observance, both among the peoples as well as the nations (*Universal Declaration of Human Rights – Nepal Law Commission, n.d.*).

### **Research Questions**

1. How is the state of human rights practice in Nepal?
2. What are the provisions of human rights for the deprived groups mentioned in the constitution of Nepal?
3. What are the human rights challenges in Nepal?

### **Objectives**

1. To understand the state of human rights practice in Nepal.
2. To explore the human rights provided to the deprived groups.
3. To unravel the human rights challenges in Nepal.

### **Methodology**

This is primarily an analytically evaluated work that assesses the state of human rights practice and provisions made by Nepal, using secondary data and material available in national and international publications and internet platforms. Secondary data was gathered by studying pertinent papers, policy documents, journal articles, books, and other important sources in Nepali and English. The material is also derived from many articles, seminar papers, and reports produced by national and international organizations.

### **Delimitation**

This study reflects the various practice of human rights in democratic nation: Nepal and doesn't necessarily can be generalized for other countries. It covers only some human rights which covers the deprived groups of our nation. The results presented in this study is also based on the various literature surveys mainly based on The Constitution of Nepal.

### **Literature review**

Mere efforts have been made to investigate Nepal's human rights situation. Globally, attempts on the study of human rights practice have been done.

An international book on “THE PRACTICE OF HUMAN RIGHTS”, describes the evolution in the human rights practices in the United nation. It also concentrates on the idea that human rights are global from a conceptual or philosophical standpoint, which is both stating the obvious and making a statement that is only marginally important for anthropologists and others who research human rights as a significant contemporary international discourse. This book focuses mostly on the importance of anthropological debate of human rights discourse on the impact of human rights discourse on local social and political situations. It suggests that anthropologists visit the venues where international human rights legislation and norms are created, as well as acquire access to international criminal tribunals to evaluate their knowledge formation practices (Goodale & Merry, 2007).

Sanford A. Lakoff has also studied the human rights and democratic works toward advancing democratic governance and human rights in developing countries as critical components for sustainable development. Additionally, he describes the development of human rights with the establishment of the democratic nation and its phases of development. This research has given the clear idea that the doctrine of human rights is so important to the understanding and acceptance of democracy that its origins and development must be understood as thoroughly as possible, especially because the idea is in desperate need of restatement or reconstruction (Lakoff, 1991)

Similarly, Hun Joon Kim has enlightened the human rights prosecutions' structural determinants after democratic transition. For responding to the ongoing criminal trials of former state leaders on the allegation of human rights breaches, this article has even investigated three major theories: the balance of power between old and new elites, international advocacy networks, and the diffusion theory (Kim, 2012) a growing number of countries have experienced a transition from authoritarianism

### **Result and Analysis**

Democracy, progress, the rule of law, and the protection of human rights and fundamental freedoms are all interconnected and reciprocal. Governments, intergovernmental organizations, and non-governmental organizations are increasingly emphasizing that democracy is both an end in itself and a significant component to other ends, such as economic growth, economic reform, and better protection of human rights and fundamental freedoms.

For many years, the UN General Assembly as well as the old Commission on Human Rights worked to develop a shared understanding of the principles and

objectives of democracy by drawing on international human rights instruments. In 2002, the Commission affirmed in Resolution 2002/46 that respect for human rights and fundamental freedoms, particularly freedom of thought and speech and freedom of association, were vital parts of democracy (*OHCHR | About Democracy and Human Rights*, n.d.).

Considering the provisions and practices of human rights in Nepal, number of progresses has been made. Nepal, being a democratic country ensures human rights to its citizen. Prime Minister K.P. Oli's government proposed new legislation restricting free expression while failing to follow through on commitments to pursue transitional justice for violations committed during the civil war that concluded in 2006. The government has continued to prioritize impunity for criminals, including security officers and members of the ruling Nepal Communist Party, over justice for victims. Authorities have also failed to examine continuing incidents of alleged extrajudicial executions by security forces and deaths in custody as a result of torture. Members of underprivileged castes and ethnic groups were more vulnerable to abuse. Numerous laws currently before parliament would substantially restrict freedom of expression by creating punitive punishments for vaguely defined new offenses governing media and online communication. Other draft legislation grants the intelligence service unfettered search and surveillance capabilities and limit the sovereignty of the National Human Rights Commission. A proposed citizenship bill kept clauses that limit women's ability to pass on citizenship to their children or spouse. The proposed legislation did, however, assist some persons who are now at risk of becoming stateless, such as orphans whose parents have not been recognized (Human Rights Watch, 2021).

The 'Fundamental Rights and Duties (Part 3, Articles 16-46)' section of Nepal's 2015 Constitution corresponds to the basic human rights enshrined in the Universal Declaration of Human Rights, the HR mechanisms, and international humanitarian law. Article 16 of Part 3 of the Constitution guarantees every person's right to life and expressly declares that no law pertaining to the death sentence will be adopted. Analogously, Article 17 of the Constitution states that no one shall be deprived of personal liberty, except in situations prohibited by law, and includes the following: freedom of expression, right to peaceful association without arms and to establish organizations, right to residency in and movement to any part of the country, right to employment and professional pursuits, and right to establish and operate industrial, business, and professional establishments in any part of the country.

## **Freedom of Expression**

Several proposals of legislation introduced in parliament advocated drastically restricting freedom of expression. The Upper House approved a new Special Service Bill in May, giving Nepal's spy agency, the National Investigation Department (NID), broad extra powers to monitor communications and inspect assets without judicial review. Other bills presently before parliament, such as the Media Council Bill, the Information Technology Bill, and the Mass Communications Bill, comprise a slew of draconian measures aimed at controlling the mainstream press and restricting freedom of expression for reporters and users of social media. Risking custodial sentences for those who violate broad and ambiguous prohibitions, particularly those pertaining to respondents stated.

## **Women's Rights**

Both the Citizenship Act of 2006 and the 2015 constitution of Nepal have clauses that discriminate against women. A proposed citizenship bill that went through the parliamentary committee stage in June retained some discriminatory elements. Three UN human rights experts responded to the government in September, expressing concern that "the bill would continue to discriminate systematically against women, regarding their ability to transmit citizenship through marriage and to their children." Legal flaws and a lack of political will have hampered accountability for sexual violence, particularly for victims from minority communities. A one-year statute of limitations on rape and sexual abuse allegations prohibits many cases from being brought to justice. The law was enhanced to raise punishment for perpetrators of acid attacks and to restrict the sale of acid.

The constitution of Nepal has stated that "Every woman shall have the right to safe motherhood and reproductive health. No woman shall be subjected to physical, mental, sexual, psychological or other form of violence or exploitation on grounds of religion, social, cultural tradition, practice or on any other grounds". Despite laws and programs aimed at preventing child marriage, the practice persisted, with 7% of girls married before the age of 15 and 40% married by the age of 18. However, by the age of 18, 10% of guys are married.

## **Gender Identity**

In sections dealing with equality before the law and social justice, the 2015 constitution recognizes a third gender and protects "gender and sexual minorities." The Supreme Court officially acknowledged a third gender category based simply

on self-identification, but the proposed citizenship law would necessitate the production of a medical certificate in order to select the "other" gender category. The Supreme Court ordered a study on equal marriage rights for same-sex couples in 2007, however the 2018 criminal code acknowledges only marriages between men and women.

### **Rights for minorities**

"Despite constitutional safeguards, impunity for caste-based discrimination and violence remains rampant in Nepal," said UN High Commissioner for Human Rights Michelle Bachelet. The 2015 constitution of Nepal introduced separate commissions to defend the rights of Dalits, Tharus, Muslims, Madhesis, and indigenous people, as well as to encourage inclusiveness; however, the government left them mainly vacant and ineffective.

### **Rights to truth, justice and reparation**

During the 1996-2006 conflict, the government continued to fail to provide truth, justice, and restitution to tens of thousands of victims of international law crimes as well as other grave violations of human rights. The Truth and Reconciliation Commission and the Commission of Investigation on Enforced Disappeared Persons, which received over 60,000 and 3,000 victim complaints, respectively, were unable to resolve a single case. The government has still not revised the Investigation of Enforced Disappeared Persons, Truth and Reconciliation Commission Act of 2014, as mandated by the Supreme Court in 2014 and 2015, to make it in accordance with Nepali and international human rights norms by the end of the year. The tenure of the two Commissions were extended by the administration in July (*Nepal Archives*, n.d.).

### **Human rights challenges in Nepal**

Having looked, it is believed that the HR situation in Nepal improved significantly following the political upheaval of 1950-51, which ousted the century-old Rana government. However, subsequent political events proved to be significant hurdles to improving the country's HR condition. They were the royal coup against the democratically elected government in 1960, the 30-year authoritarian Panchayat control, the King's dictatorial move on February 1, 2005, and the 10-year Maoist insurgency from 1996 to 2006. The reinstatement of democracy within the country that resulted from two political movements - the National People's Movement of 1990 and the People's Movement of 2006 - produced a favorable setting for the



country's HR condition to improve. Furthermore, Nepal's Constitution, which was adopted by the CA in 2015, could be viewed as a positive step in preserving HR ideals and practices. However, one cannot definitely state that there are no further threats to human rights in Nepal.

Part 25, Articles 248 and 249 of the Nepalese Constitution provide for the establishment of the National Human Rights Commission (NHRC) to undertake research and investigations and to recommend actions against perpetrators of human rights breaches (*Nepal\_2015.Pdf*, n.d.). However, the Nepalese government has consistently ignored the Commission's recommendations to investigate and prosecute human rights crimes in compliance with the requirements of the Constitution. Perpetuation of such a state of affairs has posed a significant obstacle to Nepal's protection and promotion of human rights. This demonstrates the government's lack of sincerity regarding human rights issues.

## **Conclusion**

Despite the enormous backing of the people, the current majority government's negative attitude and activities have posed significant obstacles to achieving peace and human rights. The human rights movement is also facing enormous difficulties from numerous activities that contravene the essential spirit of the constitution, democratic norms, the Universal Declaration of Human Rights, and the sentiments voiced by the general voter in elections. The government's thinking and goals are exposed as a result of its insistence on introducing the following bills, which were ultimately dropped in response to widespread public outrage: (i) the Media Council Bill, which contradicts the letter and spirit of the constitution, including the values and norms instilled by universal press freedom; (ii) the Guthi Bill, which contrasts the culture and values and long held traditions followed by the people (later withdrawn due to public pressure); and (iii) the Constitutional Council Bill, which proposed the Council as a fully subordinate organ of the government, in violation of the spirit of the Constitution. As a result of the government's attitude and actions, the advancement of human rights and democracy faces significant hurdles.

The International Criminal Code, popularly known as the Rome Statute, has yet to be ratified by Nepal. The Rome Statute is regarded as an important legal tool for human rights protection. If a country's internal law fails to bring justice to its residents, the citizens might turn to the international court. As a result, Nepal should ratify the Rome Statute, which was drafted on July 17, 1998, signed the next day, and went into effect on July 1, 2002. The Rome Statute has been signed

by 139 countries and ratified by 118. Political party leaders have shown no interest in ratification of the Rome Statute thus far. Human rights organizations have been working on the issue. To improve her international image, Nepal should be more proactive in ratifying the Rome Statute as soon as possible.

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