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# RELATIONSHIP BETWEEN LAW AND DEMOCRACY

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## **Introduction**

While a democratic country inevitably leads to a democratic government, the opposite is also true. A democratic nation is one in which the people have the power to overthrow the government and exercise sovereign sovereignty. Democracy is indeed an organization of society as well as a mode of state and a government system. A modern democracy is one where equality and fraternity are upheld. A community such as this does not automatically indicate a democratic country or administration (htt). Even after considering democratic as a sort of state, a style of governance, and a social structure, its definition is not fully understood. Although democratic had made significant progress inside the political as well as social spheres, it really has made relatively little progress inside the financial or industrial sphere, so the following phase of democracy will be social. Democracy represents a moral ideal. It implies that each guy is valuable. It affirms the reality that what a state serves not to serve itself instead of the improvement of the individual. If a government doesn't really bring out the best in people, it's got no business calling itself a democracy. Reality in the present demonstrates that what a pure and direct democracy is a completely unreachable goal. Just the indirect or representative form is currently feasible for us. It states that delegates are given control over actual management of business instead of the general populace. The closest thing to direct democratic that we can find now is legislative, referendum, initiative, recalling, and recollect politics. There really are various democratic forms of government in existence today. These include republican and nominal monarchies.

Either a hard or flexible constitution may govern their existence. Society's fundamental concept of individuality doesn't really imply that all people are similar or are placed on equal footing. Democracy is the theory that all men are created equal and is utilized to determine which one is the best. The Austin legal theory is insufficient since it merely provides a formal comprehension of the essence of law not elaborating on its core, and it fails to fit into the concept of free democracy. The relationship among social science and law has become

increasingly intimate, as well as a huge trend towards a less formal and more realistic jurisprudence. Today, few people, with the exception of service members from a previous generation, are satisfied with formal jurisprudence, which simply explains how the law is formed. Only by specifically referring to a economic relationships in a particular culture is it possible to determine the law's content. Democracy is, in essence, the institutionalization of liberty ([www.legalserviceindia.com](http://www.legalserviceindia.com), n.d.). It is therefore easy to pinpoint the tried-and-true principles of constitutional republic, civil rights, and equal treatment under the law that every society should hold in order to be legitimately referred to as democracy. Our Indian constitution and bill of rights preamble proclaims that Indian is a "independent, socialist, atheist, democratic state." In a larger sense, the word "democracy" includes both economic and social freedom in alongside political democratic republic. In the prologue, the word "democratic" is used exactly in this way. It's a republican so because president is not an heir to a throne. In a republican, the people are holding political power and are solely responsible for electing the head of state for a set period of time. According to our law, the office of president, who serves as that of the head of the executive branch, is one that is chosen rather than inherited and has a defined tenure of 5 years. The term "democratic" denotes that law has created a government structure that is based on popular consent.

The people have chosen the leaders, who then answer to them. There are two different styles of constitutional democracy: both direct and indirect. In a representative democracy, all people hold the political and legal authority. The people's elected representatives exercise both legal and political control under the informal system of democracy. The individuals who make up the vote select the officials that run the country. This type of government is known as a representational government for the this reason. A democracy is considered to be a democratic state when it functions in line with a charter that places restrictions on governmental authority and upholds the rights of every citizen. In this kind of community, the majority rules and minorities' rights are secured through institutionalized law as well as the rule of law.

### **Democratic society**

A govt's functioning according to a set of constitutional laws is only one aspect of democratic. Governance inside a republic is but one component of a fabric of society made up of numerous and diverse agencies, political groups, groups, and alliances. Pluralism, the term for this diversity, is predicated on the idea that the numerous institutions and organized groups that make the foundation of democratic community do not rely on the state for its existence,

validity, or power. In a free democracy, hundreds of individual organizations work, some of it on a local while others operate on a national scale. Several of them complete functions that are not assigned to the state and allow people opportunity to express their rights and responsibilities as voters by acting as a mediator between people and the intricate social and political institutions of which they're a part. Those organizations work to promote the views of their members in a number of ways, including by endorsing political candidates, discussing hot-button issues, and attempting to sway public policy. People have a way to actively participate in politics and their affected councils through these organizations. Non-Tranche Rights All men are created equal, and our Creator gives them some unalienable rights, including life, freedom, as well as the desire for happiness. We believe such facts to be obvious. Society is established amongst men to protect these rights, and it receives its legitimate power from of the approval of those governed.

### **Freedom of speech and expression**

Article 19 of the Indian Constitution strengthens freedom of speech and expression, which really is essential to any democracy. They all require the free flow of expression and knowledge, including the capacity to discuss and vote, gather and demonstrate, pray, and guarantee that everyone is treated fairly. "Politics is dialogue: individuals discussing our shared issues and crafting a shared future. Individuals must have the liberty to speak for themselves prior to being able to rule freely."

Politics requires informed, educated citizens who can engage as fully as they can in government issues by having the greatest available variety of data. Apathy grows from ignorance. The vitality of people, who really are fed by the unhindered flow of information, is the lifeblood of democratic. Therefore, what should the administration do when the mainstream media or even other groups misuse their right to free speech by publishing information that vast majority of individuals believe to be untrue, repulsive, reckless, or just plain offensive? There is no response. Put simply, judging such topics is not the province of the state. More freedom of speech is typically the answer to the freedom of speech problem. A republic sometimes must uphold the liberties of people and organizations who support anti-democratic measures like restricting speech, which may seem paradoxical. In a democracy, people stand up for this freedom because they believe that in the end, free speech will provide more accurate information. A right of the populace to gather and quietly request that now the government take notice of their complaints is a corollary to the right to speak freely. The right to speak freely

wouldn't be as valuable without this ability to assemble and be heard. For these reasons, the freedom to assemble, demonstrate, and call for change is seen as being intimately connected to, if not indivisible with, the rights to free expression. Liberal democracies have the right to control the timing and location of political parades and rallies in order to maintain public order, yet they're not permitted to use this power to stifle dissent or prohibit dissident organizations from speaking out.

### **Freedom and faith**

Nobody ought to be forced to follow a religion or indeed any believe against their wishes, according to Article 25 on freedom of religion, or more generally, the right to conscience. Furthermore, nobody ought to be subjected to any form of punishment or discrimination for choosing one religion instead of another or decide not to practice any religion at all. The democratic nation understands how intensely personal a person's religious beliefs are.

In a similar vein, the right to freedom of religion means that nobody can be forced by the state to acknowledge a recognized church or creed. Nobody can be forced to attend religious services, pray, or take part in religious activity against their will, and children cannot be forced to attend a specific religious school.

### **Citizenship – rights and responsibilities**

Democracy is based on the idea that people exist to benefit the government, not the other way around. In those other words, rather than being the democracy government's subject, the public are such citizens. The people offer the government their devotion in exchange again for state defending their rights. On the other hand, in an autocratic state, the state, as a body distinct from society, imposes allegiance and servitude on its citizens without requiring anything in return in order to win their approval for its policies. In a democracy, the people are exerting the rights and responsibilities to choose who will rule on their behalf. Similarly to this, people living in democracies have the freedom to freely join groups of their choice that are not affiliated with the government and take part in societal activities. The duty that comes with so involvement must also be accepted by citizens, who must become informed the about problems, show tolerance when dealing with those who hold different opinions, and compromise when required to reach an accord. In many instances, citizenship requires a broad definition of freedoms and responsibilities because they are two sides of the same coin. In addition to exercising his rights, a person has a duty to defend and advance these rights for himself as well

as other people. Even people who live in very well democracy frequently misinterpret this formula and far too frequently abuse their privileges while disregarding their obligations. Democracy is frequently considered the leadership's will, and freedoms are increasingly seen as people's personal property and as such as inherently being opposed to authoritarian politics. Yet doing so is to undermine both politics and justice.

The direct, voluntarily decided involvement of its people inside the public life of their town and country is the core of feel motivated. Without such a wide-ranging, rising number, democratic will start to dwindle and turn into the domain of a few, elite groups and organisations. "Government is a process, a means of interacting and cooperating. It is dynamic, not static. All people must cooperate, make concessions, and be tolerant. Making things work is difficult, not simple. Freedom is associated with duty, never free from that too. This number of fundamental human rights has recently been expanding, particularly among Indians. Such groups also have rights to appropriate standard of living, work, training, one's own heritage or country, and equal protection of the law in addition to basic rights to freedom of expression and equal protection under the law. Government safeguard unalienable rights like the right to free expression by exercising moderation and limiting their own acts. The contrary is necessary in order to finance education, provide healthcare coverage, or ensure employment: government must actively promote specific policies and initiatives. Every child should have the right to suitable health and learning programs from birth. Unfortunately, these really aren't, and nations' capacities to accomplish these things will differ greatly from one nation to the next

### **Rule of Law**

Any and a just constitutional democracy must uphold the principle of equal legal protection, sometimes known as that of the rights to be treated equally by the law. Everyone has the obligation to receive equal legal defense, regardless of wealth, race, religion, or political affiliation with the state. A democratic nation has no obligation to ensure that all individuals are treated equally in life since it is unable to do so. John P. Frank, an important constitutional specialist, states that the state "must be obligated to deal equitably and equally with every one of its citizens" and that it "so under circumstances must impose more inequities." Nobody is immune from the rule, which was after all made by the people rather than something that was forced on them. Since they understand that, although subtly, they are also surrendering to their fellow lawmakers, citizens of democracies submit to a law. Because law and democratic were served when rules are made by the people and then adhered to. The possibility of abuse and

tyranny exists within the legal system. In the state's name, people have indeed been arbitrarily detained, having their assets confiscated, tortured, banished, and even put to death. Frequently, no official accusations were ever filed. Such violations are intolerable in any free democracy. Each government must have the authority to uphold the rule of law and also to punish crimes, but how each state goes about doing so has to be readily available and clear, free from governmental discretion or political control. The official declaration of either a democratic gov't's essential duties, restrictions, processes, or organizations is known as its charter. All citizens, even the Party Leader and farmers, are bound by the requirements of a charter of rights, which is the highest court in the nation. The law, which is typically written in a unique written document, at the very least defines the legitimacy of a central government, protects innate human rights, and specifies the basic workings of a executive branch. In each republic, the current constitution evolves in this manner. There really are essentially two schools of thinking when it comes to revising a state's constitution.

The first is to follow a challenging process that involves multiple steps and significant numbers. As just a consequence, the law is only occasionally modified, and even then, this only happens when there is strong popular support again for change. In addition to a more detailed list of responsibilities, processes, and, inside the Bill of Rights, the basic privileges of each citizen, the Charter is a succinct explanation of the broad principles, powers, and restrictions of government. The provision that any modification may be enacted by permission of the government and passed by the voters at the polls is a simpler way of modification that many countries use. The foundational element of democracy governmental systems is elections. Why Since in a democratic, the agreement of the ruled is the only source of the president's authority. The staging of elections that are impartial and free is the main vehicle for converting that agreement into government power. The most basic and widely used form of involvement in contemporary democracies is voting in elections for public authorities. A society can only be referred to as democracy if it can hold elections that are fair and free. Opponents frequently believe that because democrats lack the ability to punish, they also lose the capability to rule. That point of view is patently wrong because democracy call for restricted, not weak, governance. Democratic countries also have proven to be extraordinarily resilient placed above a white time and have proven that, with devotion as well as educated devotion of one 's citizens, they can overcome extreme economic adversity, bridging cultural and social divisions, and, when necessary, implementing armed power. The fact that democratic choice in a vast, complex world may be a messy, taxing, and moment process is one of the characteristics of

democratic that its critics usually point out. But, in the end, a government that is based on popular consent may behave and speak with such a conviction of power that is missing in a the establishment of the a checks and balances mechanism to guarantee the decentralization and dispersion of political authority is among the greatest major contributions to democratic practice. It's a system built on the firmly held conviction that governments work best whenever its potential for abuse is minimized and when it is kept as near to the public as is practical. Members have a variety of reasons for casting their ballots, just like the groups and interests they stand for. In addition to choosing politicians who might best serve them, voters are also influenced by other considerations. One is party identification: Voters are significantly more likely to be someone who identify strongly with a political group than independents. People can lawfully resist national policies or even the acts of other organizations in a free democracy through marches, economic sanctions, occupations, protests, and other kinds of direct community activists. In a democratic, anybody can take unilateral action, although historically marginalized, repressed, or minority groups have turned to it when they felt cut off from other avenues for influencing public policy. Such demonstrations have long been a feature of democracies. The court has established a large number of case laws that have influenced how well the legal system functions in India. Supreme court determined that legal system is the fundamental tenet of the law in the case of *Kesavananda Bharati v. State of Kerala* (1973). The *Golak Nath* (1967) ruling was overturned by bench, which declared that although the legislature has broad amending authority, this authority does not stretch to the fundamental provisions of the constitution, such as the restrictions on revision established by Article 368 that are tried to impose by the legal system. The court decided that legal system as it is currently expressed in Article 14 is a fundamental aspect of a law that could not be changed in the case of *Indira Nehru Gandhi v. Raj Narayan* (1975). The case has implications for the constitutional doctrine and asserts that laws of the nation is ultimate and can't be changed at the whim of a single individual. The high court set up the rule of law in the matter of *Maneka Gandhi v. Union of India* (1978), holding that nobody is entitled to be deprived of their life or their freedom other than through a legal process authorized by Article 21 of the Constitution of India. Regarding the judiciary's autonomy, the Honorable Supreme Court ruled in the matter of *Union of India versus Raghu Bir Singh* (1989) that any clause which eliminates its ability to legal challenge is considered as going against the very fabric of a rule of law. Inside the 1987 case of *S.P. Sampath Kumar v. Union of India*, the courts reaffirmed that legal challenge is a component of the constitution and bill of rights fundamental design. It is incorrect to claim that numerous individuals haven't yet endured the effects of a legal system, notwithstanding the

circumstances in India as well as the different concessions included in Indian rule of law. Numerous people have endured the effects of government actions which were deemed to be entirely lawful, such as in emergencies. The phrase "the legal system is a knife, an instrument to establish order & discipline" was coined by Joseph Raz. Nonetheless, occasionally it can be used as a tool to curtail one's constitutional rights. Citizens may become more open to oppressive administrations as a result. On the other hand, a substance approach to rule of law appears to balance the shortcomings of Raz's rule of law by defending fundamental human rights which result from rule. For instance, Raz's interpretation of the rule of law allowed for the operation of segregation, which might have been corrected if the rule of law had a more significant component. Segregation was made possible by laws that have been unfairly crafted that perpetuated terrible acts. A more in-depth strategy would've have given room for debate about criticisms and, ideally, the modification of unjust laws. The fundamental study of justice yields a complex called to the rule of law. This philosophy holds that everyone is "created equal and endowed with certain fundamental rights." So, under a substantive perspective, any legislation that tramples on these basic human liberties also isn't considered to be a law.

### **Conclusion**

In the case of India, the legal system never was employed to defend us against unchecked power; instead, it was employed to uphold the British Raj. The court and the judiciary have worked together over the centuries to develop a system that effectively regulates the complicated Indian politics, despite mounting concerns about structural rules. Democracy on its own offers no assurances. Rather, it provides both the chance to succeed and the risk of failing. "Life, liberty, as well as the quest for happiness are the promises of democracy.

Hence, politics is both a task and a possibility. It is a pledge that, when free people come together, they can rule freely in a manner that meets their desires for social equality, economic mobility, and individual freedoms. It presents a problem so because democracy endeavor depends entirely on its population for its success.



## Bibliography

Ahmed, S. A. (2006). UNIFORM CIVIL CODE (ARTICLE 44 OF THE CONSTITUTION) A DEAD LETTER. *The Indian Journal of Political Science*.

Manooja, D. C. (2000). UNIFORM CIVIL CODE: A SUGGESTION. *Journal of the Indian Law Institute*.

Franklin, M. (1951). On the Legal Method of the Uniform Commercial Code. *Law and Contemporary Problems*.

THE ECONOMIC TIMES . (2021, 6 15). Retrieved from THE ECONOMIC TIMES :  
<http://www.ecoti.in/zjv1uZ>

THE ECONOMIC TIMES . (2021, 6 15). Retrieved from THE ECONOMIC TIMES :  
<http://www.ecoti.in/dE1dKY>

THE ECONOMIC TIMES. (2021, 6 15). Retrieved from THE ECONOMIC TIMES:  
<http://www.ecoti.in/aY2DXb>,

THE ECONOMIC TIMES . (2021, 6 15). Retrieved from THE ECONOMIC TIMES : ,  
<http://www.ecoti.in/awDR7a>

Ministry of Panchayati Raj, G. o. (2019). Retrieved from Basic Statistics of Panchayati Raj Institutions: "Basic Statistics of Panchayati Raj Institutions". Ministry of Panchayati Raj. 2019. Archived from the original on 24 April 2020. Retrieved 28 October 2020.

Government of Rajasthan, R. D. (2021). *Brief History*. Retrieved from Panchayati Raj Government of Rajasthan: <http://rajpanchayat.rajasthan.gov.in/en-us/aboutus/history.aspx#:~:text=Th%20e%20system%20later%20came,held%20in%20September%2DOctober%201959>.

*Visualising the data : Women's representation in Society*. (2020, February 25). Retrieved from UN Women: <https://www.unwomen.org/en/digital-library/multimedia/2020/2/infographic-visualizing-the-data-womens-representation>

Tremblay, M. (2007, July 24). *Democracy, Representation, and Women: A Comparative Analysis*. Retrieved from Taylor & Francis Online:

<https://www.tandfonline.com/doi/full/10.1080/13510340701398261>

Delhi, P. (2020, September 23). *Representation in Panchayats*. Retrieved from Ministry of Panchayati Raj.

*Women's Reservation Bill*. (2016, November 20 ). Retrieved from Wikipedia :

[https://en.wikipedia.org/wiki/Women%27s\\_Reservation\\_Bill#:~:text=The%20Women's%20Reservation%20Bill%20or,state%20legislative%20assemblies%20for%20women.](https://en.wikipedia.org/wiki/Women%27s_Reservation_Bill#:~:text=The%20Women's%20Reservation%20Bill%20or,state%20legislative%20assemblies%20for%20women.)

Mondal, P. (2019). *Women Reservation Policy in India*. Retrieved from Your article library.

Sanyal, K. (2008). *Legislative Brief*. Retrieved from PRS India:

[https://www.prsindia.org/uploads/media/Constitution%20Eighth/bill184\\_20080923184\\_Legislative\\_Brief\\_\\_\\_\\_Womens\\_reservation\\_Bill\\_final.pdf](https://www.prsindia.org/uploads/media/Constitution%20Eighth/bill184_20080923184_Legislative_Brief____Womens_reservation_Bill_final.pdf)

*Women's Reservation Bill: All you need to know about the bill which will bring 33 percent reservation for women in Lok Sabha*. (2020, March 7). Retrieved from India Today:

<https://www.indiatoday.in/education-today/gk-current-affairs/story/women-s-reservation-bill-all-you-need-to-know-about-the-bill-which-is-yet-to-be-passed-in-lok-sabha-1653451-2020-03-07>

*Women's Reservation Bill: Rahul Gandhi appeals to PM for passage, BJP reacts*. (2018, July

25). Retrieved from India Today: <https://www.indiatoday.in/education-today/gk-current-affairs/story/rahul-gandhi-pm-modi-womens-reservation-bill-bjp-1295801-2018-07-25>

*Women's Reservation Bill: Chronology*. (2010, March 9). Retrieved from Deccan Herald:

<https://www.deccanherald.com/content/57134/womens-reservation-bill-chronology.html>

*THE CONSTITUTION (ONE HUNDRED AND TWELFTH AMENDMENT) BILL, 2009*.

(n.d.). Retrieved from mohua.gov.in:

[http://mohua.gov.in/upload/uploadfiles/files/243T\\_Constitution\\_25.pdf](http://mohua.gov.in/upload/uploadfiles/files/243T_Constitution_25.pdf)

Press Information Bureau, G. o. (2011, August 12). *Women Reservation in Panchayats*.

Retrieved from Pib.gov.in: <https://pib.gov.in/newsite/PrintRelease.aspx?relid=74501>

Shivani. (2021, March 8). *International Women's Day: Women MPs push for 33%*

*reservation in Parliament*. Retrieved from Hindustan Times:

<https://www.hindustantimes.com/india-news/international-women-s-day-women-mps-push-for-33-reservation-in-parliament-bill-101615185297685.html>

Liddle, J., & Joshi, R. (1985). *Gender and Imperialism in British India*. Retrieved from Jstor:

<https://www.jstor.org/stable/4374973>

Ghosh, A. (2008). Resistance, Women and the Everyday in Colonial South Asia. In A.

Ghosh, *Behind the Veil*. Retrieved from Springer.

Liddle, J., & Joshi, R. (1985). GENDER AND COLONIALISM: WOMEN'S

ORGANISATION UNDER THE RAJ. *Women's Srudrcs hr. Forum. Vol. 8. No 5. ,* pp. 521-529. 1985.

Newman, L. M. (1999). *White Women's Rights: The Racial Origins of Feminism in the*

*United States*. Oxford University Press.

Britannica, T. E. (2020, September 23). *Indian National Congress political party, India*.

Retrieved from Britannica: <https://www.britannica.com/topic/Indian-National-Congress>

Sharma, K. (1998). *Power vs. Representation: Feminist Dilemmas, Ambivalent State and the*

*Debate on Reservation for Women in India*. Retrieved from core.ac.uk:

<https://core.ac.uk/download/pdf/162461714.pdf>

*Women in India : Politics*. (2020). Retrieved from Wikipedia:

[https://en.wikipedia.org/wiki/Women\\_in\\_India#Politics](https://en.wikipedia.org/wiki/Women_in_India#Politics)

Ghai, K. (n.d.). *73rd And 74th Constitution Amendments and Reservation for Women*.

Retrieved from Your article library:

<https://www.yourarticlelibrary.com/constitution/73rd-and-74th-constitution-amendments-and-reservation-for->

women/40440#:~:text=73rd%20And%2074th%20Constitution%20Amendments%20a  
nd%20Reservation%20for%20Women,-  
Article%20shared%20by&text=Article%2040%20of%2

Pradeep, P. R., Biswas, R., Balikundri, V., f. V., Chatre, A., Diwan, N., & Acharya, K.  
(2021). *In - Depth Panchayats' working women*. Retrieved from Down to Earth.org.

*Rotation of Panchayat Seats Between Men and Women*. (2020, August 25). Retrieved from  
Drishti IAS: [https://www.drishtias.com/daily-updates/daily-news-analysis/rotation-  
of-panchayat-seats-between-men-and-women](https://www.drishtias.com/daily-updates/daily-news-analysis/rotation-of-panchayat-seats-between-men-and-women)

Buch, N. (2009). Reservation for Women in Panchayats: A Sop in Disguise? *Economic and  
Political Weekly Vol.44, No. 40*, pp. (8-10) 3 pages.

Bureau, N. (2016, February 5). *50% quota for women in panchayats planned*. Retrieved from  
The Hindu: [https://www.thehindu.com/news/national/50-quota-for-women-in-  
panchayats-planned/article8194551.ece](https://www.thehindu.com/news/national/50-quota-for-women-in-panchayats-planned/article8194551.ece)

(n.d.). Retrieved from <https://www.legalserviceindia.com/articles/dl.htm>