



# Designing the Human Right to Peace: The UN Perspective and Challenges for Democratic Nations

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## Abstract

The United Nations Charter's purpose is to maintain international peace and security and ensure that armed force shall not be used except in the common interest. The Charter has one primary objective, i.e., to take appropriate measures to strengthen universal peace and prevent another war on a large scale. This is ensured by giving entry to only members who are peace-loving states and who accept the obligations contained in the Charter. For this purpose, the Charter has designed the Security Council so that any threat to peace, breach of peace, or act of aggression can be successfully contained. After the Charter, the United Nations introduced and advanced various declarations, conventions and committees, which raised the idea of peace and the right to peace into the mainstream of human rights. This article critically analyses the right to peace. It looks at the idea of peace being celebrated as an end in itself, within the national framework and the development of the Right to Peace as a Human Right. The paper concludes by emphasising on the relevance of democracy and constitutional framework within nation states.

**Keywords:** Article 21 of Indian Constitution, Democracy, International Peace, Social Conflicts, Universal Declaration of Human Rights

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## **1. Introduction**

The United Nations Organisation (hereinafter UN), through its Declaration on the Right to Peace<sup>1</sup> (hereinafter referred to as the Peace Declaration), asserts that peace is a vital requirement for the promotion and protection of human rights for all. This is done by recalling<sup>2</sup> various declarations of international human rights law and reaffirming through the declaration on the Right to Peace that all Member States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State.<sup>3</sup> The States shall also peacefully settle their international disputes so that international peace, security, and justice are not endangered.<sup>4</sup> The Peace Declaration acknowledges that fostering a culture of peace is integrally linked to the rights of all people (the term people here includes all citizens, non-citizens and those living under colonial or alien domination or foreign occupation) and its realisation. It also recognises the need and importance of settling disputes or conflicts peacefully and deplores all acts of terrorism.<sup>5</sup> The Declaration points out that peace and security are first among the pillars of the UN system and the foundations for collective security and well-being.<sup>6</sup> It attempts to give a positive and dynamic definition of peace. The Declaration points out that peace is not only the absence of conflict but also requires a positive, dynamic participatory process where dialogue is encouraged, and conflicts are solved in a spirit of mutual understanding and cooperation along with socio-economic development. The

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<sup>1</sup>Declaration on the Right to Peace, G.A. Res.71/189 (Dec.19, 2016).

<sup>2</sup>The Universal Declaration of Human Rights, G.A. Res.217(III) A, U.N. Doc.A/RES/217(III)(Dec. 10, 1948),

<sup>3</sup>Supra n. 1.

<sup>4</sup>Declaration on the Right to Peace, G.A. Res.71/189 (Dec.19, 2016)

<sup>5</sup>UNGA Sixth Committee (56th Session) 'Report of the Working Group on Measures to Eliminate International Terrorism' U.N.Doc. A/C.6/56/L.9 (29. Oct, 2001)

<sup>6</sup>Supra n. 1.

Peace Declaration calls for the prevention of armed conflicts. It promotes a culture of prevention of armed conflict to effectively address the interconnected security and development challenges people worldwide face. It also brings in the idea that peace is promoted through the full enjoyment of all inalienable rights derived from the inherent dignity of all human beings. The Peace Declaration also, among other things, focuses on the need to promote a culture of tolerance and peace at all levels of human interaction.<sup>7</sup> The need for a democratic framework based on the rule of law would contribute to the strengthening of cooperation and peace among peoples and States, is emphasised through the Declaration.<sup>8</sup>

Thus, the Peace Declaration emphasises that everyone has the right to enjoy peace, such that all human rights are promoted and protected and development is fully realised.<sup>9</sup> This can be achieved by the States respecting and implementing the rule of law and ensuring that people remain free from fear.<sup>10</sup> There is also a focus on the need for educating and engaging in teaching and research on the right to peace and thus disseminating knowledge through international and national institutions of peace.<sup>11</sup> In this context, academicians have an implied duty to disseminate knowledge by underlying the importance of the right to peace. The critical aspect of the right to peace as a human right can be understood by checking the intention of the UN and examining the practical hurdles in designing and implementing such a right. This article checks the possibility of peace as a right, the legal and political dimensions attached to such a possibility and the impact it creates on the obligations of democratic nations.

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<sup>7</sup>Supra n 1.

<sup>8</sup>Declaration on the Right to Peace, G.A. Res.71/189 (Dec.19, 2016).

<sup>9</sup>*Id.* at Art. 1.

<sup>10</sup>Supra n.10 at Art 2

<sup>11</sup>Supra n.1 at Art. 4.

## **2. International Peace and Right to Peace**

Peace as a mission in the Charter must be understood as international peace and avoiding internal aggression. It is challenging to believe that the Charter intended to include the right to peace as a broader human right. International peace and the right to peace concept cannot coexist for some sound reasons. International peace is an idea for the greater benefit of humanity. Human rights can also do the same. However, international peace can be achieved through international dialogues and cooperation. The mission of an agency like the UN is evident there. The UN categorically must achieve this goal. On the other hand, human rights and their compliance can be the obligation of member nations once they promise to enforce those rights. Even otherwise, the citizen can seek rights protection from their state authorities. Thus, ensuring human rights can be an obligation of the States, but international peace can sometimes have a different commitment.

International peace focuses on the prevention of conflicts. The UN envisages this through diplomacy, mediation and good offices. The UN also has mechanisms to enforce or bring peace in conflicting areas by using special envoys and political missions. For instance, the Department of Political and Peacebuilding Affairs (DPPA)<sup>12</sup> is engaged in conflict prevention, peace-making and post-conflict peacebuilding worldwide. The Department uses Special Political Missions, which are not managed or directed by DPPA but provide guidance and support to these missions. International peacekeeping revolves around the mission's objective of preventing conflict, engaging in peace-making, managing political crises and sustaining peace. The duty of peacekeeping missions is to monitor global developments and assess and detect crises before they become unmanageable. This is aimed

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<sup>12</sup> Political and Peacebuilding Affairs, DPAA Around the World, <https://dppa.un.org/en/dppa-around-world>.

at preventing conflict, which is an ethos of the idea of peace that international law and the international community have. When properly coordinated, it can contribute decisively to preventing and managing armed conflict. However, the design of a new degree of human rights envisaged by the UN through The Declaration is taking the scope of peace and placing the obligations on the shoulders of Member States. This design may have conflicting and damaging results, as it would alter the peace processes which the States are undergoing within their jurisdictions.

Human Rights generally have the nature of claims against persons or institutions. Regarding practical enforcement, human rights per se limits the power of the State, the Government or the Institution which has the obligation to respect human rights.<sup>13</sup> These human rights can be categorised into the first-generation, second-generation and third-generation human rights.<sup>14</sup> The right to peace is designed now to be a core human right by the UN through The Declaration. The third-generation rights were considered collective, shaping into second-generation or first-generation rights. However, the United Nations is poised to transform the human right to peace as a core human right.

Thus, the UN tries to make it an obligation of Member States to ensure such a right. It is true that maintaining internal peace and providing other human rights can be a complimentary action for member nations, but nothing beyond that. International peace and security can be achieved only through bilateral or multilateral operations, which is

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<sup>13</sup>Zlatko Isakovic, *Peace or Human Rights?* (The Institute of European and Russian Studies, Carleton University, Balkan Peace International Research Group, Working Paper, Paper No. 11/00), <https://ciaotest.cc.columbia.edu/wps/isz03/>

<sup>14</sup>Vasak Karel, *A 30-year struggle; the sustained efforts to give force of law to the Universal Declaration of Human Rights*, <https://unesdoc.org/ark:/48223/pf0000048063>.

relative. Extending the right to peace into the hands of member nations resembles a delegation. Decentralising the responsibilities of the UN can also be imagined behind this move, which will only help make the UN irrelevant.

International peace and the right to peace are different in the above means. The concerns and the method of operation for handling both will be different. With the right to peace, it may be possible for a country to draw an internal order of peace. International peace must deal with the greater principles of international law. The role of the UN, thus, cannot be limited to being just as a right provider but should be extended as a mediator, arbitrator or more as an international actor.

### 3. The Idea of Peace

Placing the right to peace among human rights jurisprudence raises many concerns, especially as a new generation's right. These concerns are serious. For instance, is there any particular benefit which can be reaped by placing it as a new generation right? Is the right to peace a solidarity right or a collective right?<sup>15</sup> Thus, placing such a right among human rights jurisprudence questions the nature and scope of the human right to peace. Is this a new way of decentralising responsibility? Is this a way to unmake the right to peace as a civil, political, and socio-economic right? Has the danger of lining up the right to peace among the new generation of human rights streamlined development rights and other similar rights? These are concerns which need to be addressed to bring clarity as to the nature of the right to peace. Thus, a

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<sup>15</sup>Upadhyaya, P., 2004. Human Security, Humanitarian Intervention, and Third World Concerns. *Denv. J. Int'l L. & Pol'y*, 33, p.71. Also see *Joint Written Statement on Peace as a Solidarity Right. A Legal Approach*, Office of the High Commissioner for Human Rights, A/HRC/6/NGO/33(Sep. 5,2007). Further, see, CHRISTIAN GUILLERMET FERNEZ ET AL., THE RIGHT TO PEACE: PAST, PRESENT AND FUTURE 54-63 (2015).

structural analysis of the human right to peace is necessary and inevitable.

Is the UN the custodian of peace? The answer to this question is both yes and no. It can be asserted and vehemently stated that the UN exists for peace, but peace is not the sole contribution of the UN or its Charter. In the Indian Context, peace and non-violence have historical and political significance. During the freedom struggle in India, the most potent weapon used by Mahatma Gandhi in opposing the colonial forces was through non-violence and peaceful protest. Gandhi's reasons are as follows.<sup>16</sup>

World peace is an ideal of freedom, peace, and happiness among and within all nations and people. It generally includes an idea of planetary non-violence by which nations willingly cooperate, either voluntarily or under a system of governance that prevents warfare.

Gandhi's perception of peace does encompass the idea of conflict, but its resolution is envisaged through non-violent and democratic means. The idea of envisaging the right to peace as the complete abstinence of the use of force does not find any practical significance as it can only be a utopia. The different notions of conflict exist in reality, and talking about the right to peace in this midst can bring a catastrophic downfall to the human rights jurisprudence. An absolute claim of the right to peace is not practical and possible in any social system.<sup>17</sup> Apart from Gandhi's demonstration of conflict within the peace agenda, there are many other scholarly arguments for justifying the right to conflict in an ideal social

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<sup>16</sup> Balamurali Balaji, "Gandhi's World of Peace", <https://www.mkgandhi.org/articles/gandhiworldofpeace.html>. (last visited on April 28, 2024)

<sup>17</sup> K. K. MATHEW, 3 LECTURES (2012) p.63. Also, See Hurtubise, Mark Francis, "Philosophy of Natural Rights According to John Locke" (1952). Master's Theses, p.50-57.

system. The right to rebel was theoretically claimed to be an order of natural law and a human right.<sup>18</sup>

The design in which peace revolves would also naturally encompass conflict. The design of conflict may be accepted as natural, and when it comes to social living, it becomes inevitable. The origins of human society and its development as a Political State result from minimising conflicts through social contracts.<sup>19</sup> The notion of the right to peace should also consider the above considerations. In imagining the right to peace as a responsibility of every human individual and to be there on anybody's agenda, the UN is drawing the line too far. At this juncture, it is important to note that the UN tries to place the right to peace as a cherished goal of humanity and an overarching expression that denotes the ambitious quest for living together in harmony.<sup>20</sup> Undoubtedly, it is a cherished goal of humanity. But in reality, humanity is driven by many other aspirations that may be counterproductive to this cherished goal. Some of the aspirations which can be counterproductive are nationality, ethnicity, language and culture, which may invite conflicts in achieving the end goal. Such conflicting realities will make the State or the sovereign responsible for ensuring peace through means which may not always be peaceful.

Thus, peace can be understood as a political agenda and unfit to be presented as such a right in the abovementioned context.<sup>21</sup> It is significant to recall the writing of Kant on Peace.<sup>22</sup> Kant mentions situations that could defeat peace

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<sup>18</sup>*Id.*

<sup>19</sup> Jean-Jacques Rousseau, *Discourse On Political Economy and The Social Contract*, Oxford University Press (1999)

<sup>20</sup> LONG WALK OF PEACE: TOWARDS A CULTURE OF PREVENTION, 20 (David Fernández Puyana ed., 2018).

<sup>21</sup>*Id* at 23.

<sup>22</sup>IMMANUEL KANT ET AL., *TOWARD PERPETUAL PEACE AND OTHER WRITINGS ON POLITICS, PEACE, AND HISTORY* (2006).



content, as discussed above. For instance, Kant speaks about a peace pact about a future war. Any country spending huge expenditure on standing armies and one state interfering with the constitution of another, etc., can be seen as defeating the content of the right to peace as defined and designed by the United Nations. The scenario of peace in the case of social contractarianism, as explained by Kant, is still relevant. Thus, understanding peace more considerably and making it an inclusive responsibility of the State may need to be more attractive.

#### **4. Development of the Right to Peace as a Human Right**

The right to peace as a recognised human right is recent.<sup>23</sup> Formulating the right to peace into its present form has taken a long walk. The appropriateness of such a formulation is to be critically and structurally analysed. Its origin has to be assigned to the experiences from two World Wars. This aspiration for founding peace among the international community was well established in the Charter.<sup>24</sup> There was an attempt even before the Charter's adoption to incorporate peacekeeping's responsibility over the countries through the Declaration of Rights and Duties of the State.<sup>25</sup> Peace was prominently made a concern of international relations, and thus, it was a promise to be kept by the Member States. Even in a close analysis of the Charter, its devotion to human rights seems less focused than its commitment to ensuring international peace and order. Human rights evolved as a tool for assuring international peace through the unprecedented acceptance of the Universal Declaration on Human Rights (UDHR).<sup>26</sup> The Charter and UDHR envisage protecting

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<sup>23</sup>Supra n. 1.

<sup>24</sup>UN, Charter of the UN, 1. U.N.T.S XVI (Oct.24, 1945).

<sup>25</sup>Philip Alston, The Legal Basis of a Right to Peace, 3 PEACE REVIEW 23, 23 (1991).

<sup>26</sup>The Universal Declaration of Human Rights, G.A. Res.217(III) A, U.N. Doc.A/RES/217(III)(Dec.10,1948).

international cooperation and world peace. Thus, human rights are undoubtedly a means for achieving the ends of justice as it was envisaged at its inception.

The Draft Declaration of Rights and Duties of State was adopted by the International Law Commission in 1949.<sup>27</sup> The Declaration again asserts the need for maintaining international peace and harmony, and most of the Declaration's provisions focus on maintaining peace. The document re-establishes the State's right to have a free existence and non-interference over the sovereignty of a Member State. This proposition was accepted and cemented. This non-interference slowly transformed into a solidarity right with shades of the human right to peace. The structuring of human rights to peace failed to culminate neither in the International Covenants nor in the Human Rights Commissions adopted by the UN.<sup>28</sup> Now, the declaration of the right to peace points to the late attempt of the UN and its agencies to design peace as a human right.

The initial thesis of ensuring peace was to reduce war between nations. The huge 'expenses incurred on arms and ammunition can also be curtailed if peace can be ensured. The lack of an efficient army has contributed to the sanctioning and success of the UN Security Council's peacekeeping missions.<sup>29</sup> The current design of the human right to peace can be seen as an attempt by the UN for expelling war, reducing expenses for military and disarmament. Thus, peace is designed as a supreme value and virtue of humanity and a solidarity right.

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<sup>27</sup>UN General Assembly, Draft Declaration on Rights and Duties of States, G.A. Res. 375(Dec.6,1949).

<sup>28</sup>The International Covenant on Civil and Political Rights, 999 U.N.T.S. 171(Dec. 16, 1966), The International Covenant on Economic, Social and Cultural Rights, G.A Res. 2200A(XXI) (Dec 16, 1966)

<sup>29</sup> List of Past Peacekeeping Operations, (Jan 19, 2023), <https://peacekeeping.un.org/en/list-of-past-peacekeeping-operations>.

Here, reference is attributed to Nuremberg's conclusions of categorising certain offences as crimes against peace. The justifications for waging war against another State, causing internal disturbances and anti-national activities, can be made actionable from the context of legal and constitutional frameworks. These actions can be brought within the purview of the right to peace if a human right to peace is enforced and obligated. Placing and designing the human right to peace cannot be envisaged, at least in the national context of a State, but it would become obligatory on the part of the State to enforce and look after the human right to peace. The UN's new design of the right to peace would hamper development and not fall under the solidarity rights envisaged to keep peace.

## **5. The Jurisprudential Analysis of Right to Peace**

International documents on the right to peace are important for discussing the development of the right to peace. As mentioned above, there are various documents on the right to peace, some enacted by the UN and some endorsed by the UN. Initially, every international law document and policy document carried with it the notion of peace and instilled in it the idea of the absence of war and security. This is evident from the UN Charter and the Universal Declaration on Human Rights (UDHR). Both documents give peace the limited and real meaning of the absence of war. From this definition, which is a practical and real one, the concept of peace has reached the stature of sustainable peace. The human right to peace could exist between these two ends. The growth of this concept of peace can be easily visualised through various international documents.

The primary notion of limiting the idea of peace to the absence of war was criticised as negative peace.<sup>30</sup> Scholars in human rights jurisprudence have conceived positive and

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<sup>30</sup>Supra n.22.

stable peace to counter the negative connotation of peace.<sup>31</sup> Positive peace has a very wide connotation, and the scope and practicality of such an approach are immense. Galtung explains,

Positive peace is the absence of structural violence, which concerns structure-generated rather than actor-generated harm to human beings. Structural violence refers to the social, economic and political conditions embedded in unequal, unjust and unrepresentative social structures that contribute systematically to violence, inequality and injustice, or lack of access to social services contributing to death, poor health or the repression of individuals or groups of individuals within a society.

Adopting the Charter and the UDHR has not placed the concept of right as a live agenda, but it was more related and designed thematically with the right to education. The Charter identifies education as a tool for maintaining peace, which is a sensible approach towards achieving peace. The approach to educating and creating awareness can also be seen in the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic Social and Cultural Rights (ICESCR). Peace can be understood by applying the Charter and the International Human Rights law to encompass attempts to create international cooperation, avoid war and prevent internal aggressions.

Through the writings of scholars like Galtung and Boulding in the mid-seventies, the re-appreciation of the right to peace emerged, and it was reflected in its full sense in the resolution passed by the General Assembly of the UN in 1984.<sup>32</sup> This

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<sup>31</sup>Long walk of peace: towards a culture of prevention, 20 (David Fernández Puyana ed., 2018).

<sup>32</sup> The Declaration on the Right of Peoples to Peace, G.A. Res. 39/11(Nov.12,1984)

document also resolves the mission of eradicating war as the essence of peace.<sup>33</sup> The declaration demonstrated peace as a people's right. The document addressed the fear of world nations acquiring more nuclear power as a reason for casting peace as a human right. Further, it is also evident from the document that the fear of world nations acquiring more nuclear power was the real reason for casting peace as a right. The preamble of the Declaration of the Right of Peoples to Peace expresses the will and aspirations of all peoples to eradicate war from humankind's life and avert a worldwide nuclear catastrophe. This declaration also emphasises that ensuring the exercise of the right of peoples to peace demands that the policies of States be directed towards the elimination of the threat of nuclear war. The peace declaration holds that maintaining the right to peace is a sacred duty of the state. In short, there are three main objectives identified by this document as a mission of the State in maintaining peace. The first objective is to eliminate war, especially nuclear war. This point is to be noted with significance.<sup>34</sup> Here, the emphasis was given to eliminating nuclear war, implying the possibility of other kinds of war or aggression as a social reality. The second objective was to avoid force in international relations, and the third was the peaceful settlement of international disputes.<sup>35</sup> In short, this small document on the right to peace concerns peace as an element related to international relations and incidents like war. The broader perspective of the right to peace was not envisaged in this document, even though it came into existence after the writings on positive peace and stable peace.

The Declaration on Culture of Peace is another document that needs scrutiny to identify the flaws in the human right to

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<sup>33</sup>*Id.*

<sup>34</sup>Supra n. 32, Art.3.

<sup>35</sup>Declaration on the Right to Peace, G.A. Res.71/189 (Dec.19, 2016).

peace design.<sup>36</sup> The broader meaning of the right to peace was designed in this declaration. A culture of peace indicates a spectrum of actions, from ending violence to respecting life.<sup>37</sup> This document gives importance to education, especially based on non-violence for cultivating a culture of peace. The government is responsible for promoting a culture of peace in the state. Despite all these points, this document also reaffirms the sovereignty and political independence of a State. This is, to a greater extent, conflicting with the interest of the right to peace. This is due to the possibilities that a democratic political system holds in prioritising internal governance and external relations. So, ultimately, the right to peace will be the total of the attitude of the State in ensuring other human rights. As far as the State is efficient in ensuring human rights, the peaceful co-existence of a population can be made possible. Here, also, peace can be seen as a consequence of State action and not a right as such.

The Culture of Peace intends to link peace with the right to development<sup>38</sup>, and covers the idea of linking peace with environmental rights. This is done to use resources sustainably by considering the needs of future generations. This can be the premise for the evolution of sustainable peace, a novel concept.<sup>39</sup> This document realises the right to peace with the fullest achievement of all human rights. It places the idea of sustainable peace and lines it up with the right to development along with the Agenda 2030. This gives the right to development a colour and aspiration of the right to peace. The benefit of linking the right to development to the right to peace will positively impact the right to development, while the right to peace will remain feeble. The idea that accomplishing more

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<sup>36</sup>The Declaration and Programme of Action on a Culture of Peace, G.A. Res. 53/243(Sep.13,1999)

<sup>37</sup>*Id* at Art.1.

<sup>38</sup>*Supra* n. 35

<sup>39</sup>Declaration on the Right to Peace, G.A. Res.71/189 (Dec.19, 2016).

human rights in a society and reducing socio-economic disparities will make peace is true. However, the liberal States may use this as an excuse to exploit the resources for the noble cause of peacekeeping. Thus, the growth of various documents on the right to peace demonstrates a clear shift from the minimal concept of peace to the elaborate concept of sustainable peace. This, however, is not helping realising the right to peace but making it more complicated and unachievable.

## 6. Civil & Political *vis-à-vis* Socio-economic Conundrum

The situation of absence of war or violence as an idea of peace is closer to civil and political rights. The state is responsible for protecting citizens' life, liberty and property under the social contract.<sup>40</sup> The protection of its boundaries from external aggression, internal control of crime and other sorts of violence is the responsibility of the State. Thus, it is part of the State's obligation to guarantee its citizens' civil and political rights that emanate from the conception of the right to peace.

The newer definition of peace includes avoiding all kinds of discrimination in society and promising all socio-economic rights to its people along with civil and political obligations. In this context, it is important to analyse the civil and political rights scheme and the socio-economic rights placed under international human rights jurisprudence. The classification of rights on these two heads is evident from the UDHR. The ICCPR and ICESCR follow the same pattern of rights. It is reasonable to make this classification from the international sphere. For example, the responsibility for providing internal security and safety for the life and property of its citizens is very expensive. Still, the state cannot compromise this right as the state's very existence is for this purpose. On the other side, the right to education, health, livelihood, etc, can be socio-

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<sup>40</sup>Steven J. Heyman, *The First Duty of Government: Protection, Liberty and the Fourteenth Amendment*, 41 DUKE LAW JOURNAL 507, 526-30 (1991).

economic, and the obligation for a state to provide this right is optional and mostly will be based on the state's economic conditions. This distinction of rights has much to do with the right to peace debate in the present scenario.

## **7. Critical Aspects of Human Right to Peace**

The point of placing peace as a human right is already mentioned above. Keeping peace as an aim is more sensible than keeping it as a means. Illustrating this point will be difficult. The Charter has already focused on and targeted peace as its mission. The design of a new human right to peace will bring a tone that peace itself is a human right. This proposition does bring along with it much significant confusion. These ambiguities need to be answered within it. The first concern is regarding the UN's idea of realising the rights. How the UN envisages the realisation of the right to peace is the most important question to be addressed.

The above point can be discussed and deliberated by taking the position of India and how it is obligated to achieve the right to peace. Regarding the Declaration's definition of the right to peace, India must guarantee all human rights to achieve the best socio-economic equality within the Nation. But, if put into practice, India will be lagging in many areas of human rights work, which is currently underway. As a result of striving to achieve these for a long time in the future, human rights will be neglected for many reasons, whether direct or indirect. For instance, the Indian diaspora's approach towards prohibiting child labour, assuring the right to health to all, and providing the right to privacy may seem problematic due to national concerns like lack of resources, population, corruption, unemployment and ethnic diversities creating multiple challenges. Thus, achieving peace as a human right in accordance with the Declaration can be problematic and challenging.



Another challenge in realising the right to peace as a human right will be international. For instance, nations will have many historical and geographical limitations in conserving the UN mandates to the full extent. Avoiding war and settling disputes based on discussion will be a possible alternative. But every country will be prepared to handle their enemies, which will be reflected in their investment in creating defence forces.<sup>41</sup> Thus, disarmament will be agreeable for a country, but their stand will be subjective and depend on other countries' approaches. The rivalry may be induced by historical factors which cannot be resolved suddenly. Hence, promising peace is very difficult within its narrower meaning. In this reality, the UN tries to enhance the scope of the right to peace. Thus, the UN has yet to achieve the initial goals set through the Charter. Designing a new human right to peace through declaration and focusing on achieving something which may not be possible in practice is a futile exercise.

The economic contest between the countries is another reality before the UN. Development is limited to a few world economies and is receiving threats from its opponents. This scenario gives ample space for international conflicts in the current scenario. The issues like climate change also threaten this struggle for survival. In this scenario, it will be difficult for the UN to convince the member nations with the broadened commitments of the right to peace. This reality is there very much before the UN. The attitude of various nations toward issues like refugee protection and climate change signifies this.<sup>42</sup> Even in the case of such serious issues, it is difficult for the UN to convince the member nations. This brings a feeling that the attempt of the UN to present the right to peace as a human right is unfair. Amid the economic disparities among

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<sup>41</sup>The Military Expenditure Data, Stockholm International Peace Research Institute, (Jan.19, 2023), <https://www.sipri.org/databases/milex>.

<sup>42</sup>Hathaway, James C. "Refugee Rights Are Not Negotiable." A. K. Cusick, co-author. *Geo. Immigr. L. J.* 14, no. 2 (2000), p. 488-90.

nations, linking the right to peace with the right to development will cause greater trouble to the growing economies. The growing economies are already engaged in developing their economies. The attribute of peace to development could invite unwanted troubles to the development process and peace.

Thus, placing peace as a human right will only help to burden the State. This will make the performance index of human rights of many countries poorer than before. They will have their constraints in prioritising and providing the rights of the citizens, and the scheme for that may be interfered with by the UN design of the right to peace. The UN indeed envisages the right to peace as an ongoing process. The design of it as a human right will make it more imaginary than real.

## **8. Right to Peace in a Democracy**

The UN has neglected democracy as an opportunity for peace in its approach to peace as a right. Democratic States may be the best available design for a Nation.<sup>43</sup> The democratic style of government is an example of having an unending potential for conflicts. These conflicting stands in democracy may be creative or destructive. Placing the right to peace more into the internal system of a state is discouraging for the feature of conflicts in a democracy. In India, for instance, there can be laws promoting the growth of developmental activities, and at the same time, these may be conflicted by environmentalists for a greater cause. These conflicts may disturb peace, but democratically, it will be productive.<sup>44</sup> Thus, the concept of

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<sup>43</sup> DEMOCRACY PROMOTION IN TIMES OF UNCERTAINTY: TRENDS AND CHALLENGES, (Research Network External Democracy Promotion, Research Network External Democracy Promotion, & Hessische Stiftung Friedens- und Konfliktforschung eds., 2018).

<sup>44</sup> "Why are people against Vedanta's Sterlite plant in Tuticorin?" *The Economic Times*, 25 May 2018 (Jan.20, 2023), <https://economictimes.indiatimes.com/news/politics-and-nation/whats-wrong-with-vedantas-sterlite-unit-in-tuticorin-6-things-you-should-know/articleshow/64273>

peace in a democratic set-up would be different from the one envisaged by the UN through the Declaration. The scheme of the Declaration and the design of placing the human right to peace is not suitable to a progressive democratic society for the reasons stated above. A very pertinent question needs to be asked at this stage. For whom is the mandate of the UN regarding the right to peace made, if not for a democratic and progressive society? What is the agenda of the UN in doing so?

At this juncture, it is important to analyse the conception of justice within a democratic system. A democratic government has its priorities for justice, most of which will be to draw compromises for social conflicts. The legal scholars like Pound and Rawls narrate this.<sup>45</sup> These justice priorities are strong enough to bring radical changes within the constitutional framework. The Constitutional imperatives are sufficient safeguards for ensuring that conflicts will be settled through democratic means and that justice can be carried out in accordance with the rule of law. Democratic governments can

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066.cms?from=mdr. Also see “Kudankulam row: Democratic protests stifled, says Prashant Bhushan” NDTV, 01, April, 2012,(Jan.20, 2023), <https://www.ndtv.com/india-news/kudankulam-row-democratic-protests-stifled-says-prashant-bhushan-474330>. Also see Rahi Gaikwad, “Narmada Bachao Andolan completes 25 years”, The Hindu, 25 October 2010, (Jan20,2023), <https://www.thehindu.com/news/national/Narmada-Bachao-Andolan-completes-25-years/article15790980.ece>. Bharat Dogra, “Giving reasoned voices their due is democratic” The Statesman, 04 September2017, (Jan. 20, 2023) <https://www.thestatesman.com/opinion/giving-reasoned-voices-due-democratic-1502486953.html>. Also see Upendra Baxi, “Violence, Dissent and Development”, in R. Meagher (ed.), *Law and Social Change Indo-American Reflections* (1988), (20 Jan.2023), <http://upendrabaxi.in/documents/Violence,%20dissent%20and%20development.pdf>. Also see M. K. Prasad, “Silent Valley Case: An Ecological Assessment” Cochin University Law Review1984, p.128.

<sup>45</sup>MICHAEL D. A. FREEMAN, LLOYD’S INTRODUCTION TO JURISPRUDENCE (8. ed., Repr ed. 2011). p 481-501, 715-720. Also see, Michael Martin, “Roscoe Pound’s Philosophy of Law.” ARSP: Archiv Für Rechts- Und Sozialphilosophie / Archives for Philosophy of Law and Social Philosophy (1965) p.51

be more effective in ensuring the human right to peace as the Constitutions of democratic governments are often infused with fundamental human rights. Another important aspect of a democracy is the public's participation through adult suffrage in a free and fair election. This ensures that issues are resolved keeping in mind the larger interest of the people. Democracy has the inherent quality of addressing issues in a non-violent manner when conflict resolution is between two democracies.<sup>46</sup> However, this cannot be expected by non-democratic nations. This is more relevant as the legal framework of the right to peace and the political roadmap of attaining peace can be ascertained and attributed to the form of government in a nation-state.<sup>47</sup> The democratic process is proven to resolve conflicts in a modern and practical manner.<sup>48</sup>

## **9. Indian Legal Framework and Right to Peace**

The Constitution of India also follows a distribution of rights within its scheme that is in tune with the international documents on human rights, especially with that of the International Human Rights Law. Indian constitution also follows a similar distribution of rights within. The fundamental rights resemble civil and political rights, and the directive principles of state policy indicate socio-economic rights. The present right to peace is already explained to have a broad set of aims, including assuring all human rights. This creates a problem in understanding the right to peace. Taking India as an example, the same can be pointed out.

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<sup>46</sup>Elisa Arcioni, *Democracy and the Constitution: The People Deciding the Identity of "the People"*, in *LAW AND DEMOCRACY: CONTEMPORARY QUESTIONS* 45 (Kim Rubenstein & Glenn Patmore eds., 2014).

<sup>47</sup>*DEMOCRATIC CONSTITUTIONALISM IN INDIA AND THE EUROPEAN UNION: COMPARING THE LAW OF DEMOCRACY IN CONTINENTAL POLITIES*, (Philipp Dann & Arun K. Thiruvengadam eds., 2021).

<sup>48</sup>R. J. RUMMEL, *POWER KILLS DEMOCRACY AS A METHOD OF NON-VIOLENCE* (1997).

In India, the right to education was not a fundamental right during its inception. Later, the judiciary read the right to primary education as a fundamental right under Article 21 of the Indian Constitution.<sup>49</sup> Through an amendment, the parliament included the right to education as a fundamental right.<sup>50</sup> The reason for this gradual progression in the right to education under Indian constitutional jurisprudence is very simple. The reason is purely the economics involved in granting education to all. In the initial days of its independence, the Indian political system was economically unfit to guarantee the right to education as a fundamental right. The same is the case with the distribution of rights under the civil-political and socio-economic rights class nationally and internationally. Internationally, the member nations will not be ready to ratify the documents if all rights are viewed in the same parlance.

Now, the right to peace assumes a definition to which it is impossible for the reason mentioned above. Keeping the goal of achieving all human rights as a basis for the right to peace is a misfortune. It simply signifies peace as something impossible. In this point of view, the minimal definition of peace as the absence of war or violence seems practical and sensible. Most of the countries do have their preferences over rights. For some States, the right to religion will be a non-derogable right; for others, it may never be a concern. Likewise, the freedom to guarantee rights is an internal matter of a State. In this case, no universal rule may be applicable. This is another limitation in agreeing with the present formulation of the right to peace. Thus, the UN's steps to improve the right to peace make it more complicated and inaccessible. If avoidance of war and violence were the criteria, then the

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<sup>49</sup> Constitution of India, (1950), Art. 21 A, (the Constitution of India Eighty-Sixth Amendment Act, 2002)

<sup>50</sup>*Id.*

mission for which a nation has to work to achieve peace would be definite and attainable. The transformation of Article 21 of the Indian constitution exemplifies the importance of democracy and constitutionalism in bringing to life many human rights that otherwise could not find a place within the Indian Legal Framework. These changes can bring related transformations in society, too.<sup>51</sup> All these changes can be read as a plot for conflict. This dialectic character of society had to be considered by the UN while designing peace as a human right. The debate can bring violent and non-violent changes in society; in most cases, those changes will be productive. Hence, bringing the right to peace into the internal political systems will not be advisable. The absence or mere deprivation of a political right need not always indicate a violation of peace.

In a country like India, apart from the challenges raised by democratic patterns, factors like nationalism, religion, caste, economic conditions and population can cause social conflict. These social conflicts can only be balanced and not eliminated. The design of peace will not be an acceptable standard for countries like India and other nations with inherent diversities. Democracy can be one feature that raises challenges over the generalised conception of the right to peace. Still, many more such elements can be present in each political society if diligently scrutinised. One such other instance is the international obligations of the UN and other agencies of which India is a member. Implementing labour rights in tune with the WIPO and WTO agreements can be an instance which obligates India to ensure that those labour agreements are complied with. This evidence shows that India is already burdened with obligations, which the nation is striving hard to fulfil. At this juncture, it is not fair for the UN to burden countries like India with its new design of the human right to peace. A non-democratic country need not and in all

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<sup>51</sup> S. P. Sathe, "Judicial Activism: The Indian Experience", 6 WASH. U. J. L. & POL'Y (2001). p.29.

circumstances will not heed the obligations of the UN; however, in the case of India, which follows Constitutional Democracy, it has to comply with the international legal framework. This also ensures that India can make reliable promises, which can be kept.

Therefore, a developing, democratic country like India could hardly afford the notion of the human right to peace as designed by the UN. The idea of peace in India could be seen as a balancing act of socio-economic factors combined with working in a democratic set-up. In the Indian context, the initial framework of international peace<sup>52</sup> makes more sense than the new design of the human right to peace.

## 10. Conclusion

UN itself maintains a military force for peacekeeping. On the same lines, the member Nations also retain a military. This can be seen as the best narrative for peace. Peace is not at all an ongoing process. Peace is an issue-based solution which may vary with time and space. The ceasefire, Round Tables, deploying the army, withdrawing the army, and quantifying and compensating for loss are all part of the peace process. The peace process is not a situation of making zero violence. It is also not for the complete disarmament of nations. The peace process should be the method of finding solutions for internal and international conflicts. Thus, peace should be an aim and a relative concept.

Undoubtedly, securing the best socio-economic equations within the country and providing peace education will help improve states' situations. It will also resolve many national challenges like poverty, illiteracy, social divide, gender parity and ethnic problems. This will bring more harmony and peace. But it will not be grounds to create another right while already set human rights under ICCPR and ICESCR are yet to be

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<sup>52</sup>Supra, n. 14.

accomplished. Yet another danger is linking the right to peace with the right to development. The right to development is a proactive right. It enables development, and the right to peace is a mismatch to it. Sustainable development goals are very novel. Eradication of poverty is a sustainable development goal. Placing a novel concept like eradicating poverty with sustainable development will allow access to resources. Similarly, the right to peace can aid in accomplishing and exploiting resources in the name of humanity. Thus, linking the right to peace with the right to development or other rights is again unwarranted from the side of the UN.

Peace as a concept itself is a tough objective to achieve. The UN and its Charter itself, along with the long list of human rights, are capable of peacekeeping. Peacekeeping needs to be an issue-based approach. Peacekeeping cannot have a uniform style in all circumstances. Thus, the peacekeeping system and its efficiency are relevant, not the human right to peace. Training generations with a peace culture will not contribute to international peace. The internalisation of peace will only help to better the public order of a society, not the international order. This internal order of a society is not static but also threatened by various socio-economic challenges.

Protests in a democracy based on populism can be seen as causing a threat to sustaining peace. However, such dissents may be creative and part of democracy. The Human Right to Peace may not be a novel concept and right for countries like India, at least as designed by the UN. Practising peace will have local derivatives. These derivations will be apposite for designing the internalisation of peace and order. Moreover, internal peace is a subject matter of national criminal law. For India, it is ideal to have its own mechanism for internal peace. Peace need not be a directive from the UN and many other developing nations for India. The commitments towards it will be a sham as well as detrimental to the national interests of the States.