

DISCUSSIONS

TOLERANCE IN LEGAL CONTEXT

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There was time when people talk about tolerance in a slightly narrow context beyond the philosophical aspects of religion and morality. Today tolerance has been mentioned in a quite wide context including political and legal aspects. In the era of globalization, it is thought nations should become closer in their interrelations, which is followed by the harmony in acts and minds. Of course, every nation reserves its mentality as well as religious beliefs and cultural traditions. It seems to be basis for co-existence in today's extremely complicated pluralistic world.

Tolerance is a central virtue of any democracy. Tolerance is defined as having respect for another's right to express their beliefs while maintaining respect for the person even if you disagree and reject their beliefs. This classical meaning of tolerance is an essential component of a free and open democratic society. People live together in societies, interacting in various ways, and so create rules to regulate those interactions. When the rules are broken, for more serious kinds of rule-breaking there are a range of penalties which in different societies and for different offences can be as varied as fines, prison, excommunication from church, exile, or execution. Nobody would reject and misunderstand that democracy is grounded on good laws. As laws by their nature have imperative character, tolerance in legal context can be discussed in connection to human rights. Laws with no doubt are passed in conformity with the constitution. When countries proclaim in their basic law, the Constitution, fundamental human rights and freedoms of individuals and groups, the governments also deliberately refrain from or limit some of their power. The wise and clear determination and separation of rights and powers is that balance that supports the stability not only inside every country, but also outside the country harmonizing the friendly neighborhood.

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The very nature of democracy implies “compromise” and “tolerance to others’ rights”. In Democracy where one of the main principle is the principle of “Rule of Law”, the society would be stable and develop successfully where everyone unanimously agrees that people coexist under certain rules¹. These rules are set by in the laws, which comply with the moral principles common to civilized community. The primary goal of the Constitution is to protect rights and freedoms of individuals and groups from the state. It is considered that two human factors violate human rights. The first is the human who is lack of respect or love to others and who deliberately infringes one’s rights robbing, murdering or violating in other manners. I think, for Mongolians the roots for committing of this kind of actions go deep into the history of civilization. The nomadic lifestyle has been fixed in the behaviour of Mongolians. Living in small groups away from others in the wide steppe, they had been adjusted to act the way that did not directly or seriously breach anyone’s rights. Now, in time of rapid changes toward socializing most people that choose urban lifestyle are adapting too slowly. They act uncompromisingly and sometimes rudely which is characterized as intolerance toward others. However, this does not necessarily mean intolerance to law rules. Under the principle of rule of law, everyone who reasonably believes that his rights are breached has the right to apply to court to protect his infringed rights.

The second human factor that violates human rights is the state or public official, who abuses his power. The Constitution of Mongolia of 1992 proclaims to build a human, civil and democratic society. It includes almost all human right provisions that are affirmed as basic human rights and freedoms in the Universal Declaration of Human Rights. The exercising of the basic rights in the community leads to conflict with other objectives and values of the state concern. An individual’s right to life confronts with duty of police to maintain public order, the right to be free from intervention to someone’s personal property may be violated by the state of emergency when the latter removes or confiscates it. So that it is very important to determine precisely the relationship between such a term of values of the state as the “state security” and the term of basic rights as guarantee for individual freedom. The provision 3 of the article 19 of the Constitution provides “In exercising of his rights and freedoms one shall not infringe the national security, rights and freedoms of others and violate public order”. Although there is no ultimate agreement on what are the grounds to limit the basic rights, most proponents of the constitutional law accept that basic rights may be infringed only on legitimate grounds, while the parts of the Constitution that must not be modified remain

honored and the basic principle of rule of law is respected. Whatever the limitation is, the reason for it should be legitimate.

Few rights are not to be violated on any grounds in countries that admire the rule of law. In Mongolia. The following rights are not to be violated even in time of the state of emergency:

- The right to personal liberty and safety. No one shall be searched, arrested, detained, persecuted or restricted of liberty except in accordance with procedures and grounds determined by law. No one shall be subjected to torture, inhumane, cruel or degrading treatment. (Article 16.13)
- No person shall be discriminated against on the basis of ethnic origin, language, race, age, sex, social origin and status, property, occupation and position, religion, opinion and education. (Article 14.2)

Tolerance only becomes necessary when there is a disagreement. The Constitution of Mongolia, article 6, provides that the State shall have the right ... to take it [land] over with compensation on the grounds of special public need, or confiscate the land if it is used in a manner adverse to the health of the population, the interests of environmental protection and national security. In fact, some public officials manipulate this provision for their personal interest. It should be pointed out the fact occurs not in time the state of emergency. There are common cases to re-sale the confiscated land to others. And those with no due knowledge of law simply admit the decision of the public official because they believe this is the case when they can tolerate.

People disagree on various grounds among which there is a disagreement on sexual distinction. Human rights instruments as well as the Constitution of Mongolia provide for equality. The Constitution guarantees: all persons lawfully residing within Mongolia are equal before the law and the Court. However, Labor Law specifies that men retire at 60, women at 55 if they wish to. In this context, may distinction in sex be the ground for different treatment? For some people engaged in philanthropic work this cannot be fair in contrast with those involved in the work that requires stronger physical potency. It seems inappropriate, people tolerate, and thus they express disagreement. Another example, there is no capital punishment for women in the Penal Code of Mongolia. Advocates of this provision argue that this kind of treatment complies with the principles of humanity². True tolerance entails a respect for the

1 M. Batsuuri, Ch. Unurbayar. *Rule of Law* (Ulaanbaatar: Admon Press, 2010), 113.

2 Ibid. 61.

dignity of human beings regardless of their qualities. Nevertheless, taking away men from this principle seems to be more cruel. Equality and justice, or more precisely fairness, are the two sides of the same coin. Hence, principles of equality should not be put in the position of conflict with principles of freedom. In practice, they should be an inalienable part of the freedom.

On the other hand, the state tolerates in response to the citizens' intolerance regarding strict punishments for grave criminal offences. Lawmakers pass by-laws or amendments to mitigate sentences with the due adoption thereof in the Parliament. The state represented by the President tolerates when it grants pardon or excuse to offenders accused for serious crimes against community and sentenced to the capital punishment or the lawmakers pass amnesty law for release from long term of imprisonment. The President of Mongolia, being believed that Mongolia has been developing as a democratic country, put moratorium on capital punishment according to which if the accused agrees to have life imprisonment instead of the capital punishment. The sentence may be changed.

From the definitions of tolerance in dictionaries, the following can be related in legal context:

- a.** Fair, objective, and permissive attitude toward those whose opinions, practices, race, religion, nationality, etc., differ from one's own; freedom from bigotry.
- b.** Interest in and concern for ideas, opinions, practices, etc., foreign to one's own; a liberal, un-dogmatic viewpoint.

As for the first definition, in Mongolia, there is no race or religion or nationality differences, though there are representatives of many ethnic groups, many Christian churches, not few Muslims. No this is a question in issue. Here there is no need to talk about tolerance. Although transparency is one of the principles of democracy, transparency in press seems to be reviewed. In expressions and critics of the press and media against the decisions of the government and Parliament, we clearly see the influence of the leading two parties in Mongolia. Because of this fact, many ordinary citizens tolerate false and misleading information about the government activities.

Proponents of liberalism argue that in a democratic society, people should be open-minded, this means evaluating the facts and acting appropriately, toward viewpoints, but the actions themselves. A jury must be open-minded about the character of the accused, and whether or not he is guilty of the crime with which he is accused, but the jury cannot be open-

minded about the crime. A society might tolerate a sharp rise in murder, but it cannot be open-minded about murder. We can tolerate injustice, poor education, a corrupt government, an incompetent police, the decline of democracy, the sufferings of others, but we cannot be open-minded about injustice, poor education, a corrupt government, an incompetent police, the reject of democracy, or the sufferings of others.

REFERENCES

- Constitution of Mongolia*, Ulaanbatar, Mongolia. 1992.
- Brown, Wendy. "Wendy Brown on Tolerance", www.wendy-brown-on-tolerance.html.
- Boyne, Ian. <http://www.jamaica-gleaner.com>. Published: October 3, 2010.
- Lewis, Rick. "The Philosophy of Tolerance: Law, Tolerance and Society", *Philosophy Now Magazine*, 2010 <http://www.philosophynews.com>.
- Millar, A. *Close-Minded Tolerance, and the Corruption of Law*, UK. <http://www.brusselsjournal.com/node/3751>.
- Random House English Dictionary*. <http://dictionary.reference.com/browse/tolerance> Unabridged (v 1.1). Random House, Inc.