

BLOCK 4 : RIGHTS

Block 4 focuses on the concept of rights. Rights are important conditions of social life without which no person can generally realize his best self. These are the essential conditions for the health of both the individual and society. In simple words, rights are the common claims of people which every cultured society recognizes as essential claims for their development, and which are therefore enforced by the state. According to *Harold Laski*, “Rights are those conditions of social life without which no man can seek in general, to be himself at his best.” *T. H. Green*, for his part, explained that “Rights are powers necessary for the fulfilment of man’s vocation as a moral being.” If democracy is to be government of the people, it has to exist for them. Such a democratic government can best serve the people if it maintains a system of rights for its people. States never give rights, they only recognise them; governments never grant rights, they only protect them. Unit 10 in this block is titled the *Idea of Rights: Entitlements and Boundaries*. Unit 11 is *Bases of Rights: Legal, Moral and Natural*. Unit 12 is *Rights and Obligations* with special focus on human trafficking.

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UNIT 10: THE IDEA OF RIGHTS : ENTITLEMENTS AND BOUNDARIES*

Structure

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10.0 OBJECTIVES

In this unit, you will be reading about the concept of rights and the theoretical framework associated with them. After going through this unit, you should be able to:

- Explain the meaning of rights
- Discuss types of rights and
- Enumerate the main theories associated with rights.

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10.1 INTRODUCTION

A right is described as an entitlement or a justified claim to a certain kind of positive and negative treatment from others, to support from others or non-interference from others. In other words, a right is something to which every individual in the community is morally permitted. Rights are important conditions of social life without which no person can generally realize his best self. These are the essential conditions for the health of both the individual and society. In simple words, rights are the common claims of people which every cultured society recognizes as essential claims for their development, and which are therefore enforced by the state. According to *Harold Laski*, “Rights are those conditions of social life without which no man can seek in general, to be himself at his best.” *T. H. Green*, for his part, explained that “Rights are powers necessary for the fulfilment of man’s vocation as a moral being.” Other theorists like *Isaiah Berlin* defined rights in terms of positive liberties and negative freedoms. A positive right is an entitlement to; a right to free expression, for instance, entitles one to voice opinions publicly. A negative right is a freedom from; freedom of person is a right to be free of bodily interference. Most rights are both positive and negative.

10.2 UNDERSTANDING RIGHTS

There are many definitions of rights, but a generic definition of rights states that it is a legal or moral recognition of choices or interests to which particular weight is attached. Freedom is the central idea of rights. The individual shall have the full freedom to select the required number of alternatives. The system of rights, according to Oxford Dictionary, denotes “some sort of distribution of freedom”. The rights have also been called justified and recognised expectations. It is justified in the sense that when one claims rights, there shall be sufficient justification behind the claims and, at the same time, the claims should be recognised. The claims have been termed by *L. T. Hobhouse* as expectation. It is so people expect them for their betterment.

Another definition is with respect to the idealist overview. *T. H. Green* defines rights as “The capacity on the part of the individual of conceiving a good as the same for himself and others and of being determined to action by that conception is foundation of rights, and rights are the condition of that capacity being realised. No right is justifiable or should be a right except on the ground that directly or indirectly it serves this purpose”. *Andrew* calls rights as entitlements. Rights are entitlements to act or be treated in a particular way. Modern political thinkers are accustomed to treat rights mainly as entitlements. It is a type of entitlement in the sense that an individual who has rights means that he is entitled to have something.

10.2.1 Difference between Rights and Entitlements

Rights for most part are natural laws. Other people can take them away, and may also defend them for you, but they cannot give them to you. Rights include the freedom to do as one pleases (within certain limitations) and the opportunity to excel, achieve, and succeed. They also consist of the freedom from being harmed by or unduly burdened or inconvenienced by the government and others, as well as the privilege to serve or give in any way that one chooses. The concept of rights first appeared in the theory of natural law which existed in the state of nature. In the state of nature people enjoyed certain rights sanctioned by natural law. The natural law, in fact, ruled the society and nobody had any power to violate the natural rights and natural law. It was also maintained that both natural law and natural rights were based on morality. In other words, both were moral order. Any human authority like the state or the government had no power to curtail the natural rights or interfere with the natural law. Examples of rights in contemporary world include those set forth in the Indian Constitution, such the freedom of speech, religion, and assembly, etc. Rights do not include money, material items, or services. Therefore, you do not have a right to forcibly take these things from others or authorize the government to perform this kind of confiscation for you. Entitlements, on the other hand, are established by governments via elected representatives or direct votes by the people. They include money, material items, services, and various forms of aid and assistance. Entitlements can be initiated or revoked at any time. Entitlements can be fully or partially earned. However, many entitlements are completely unearned. Examples of these would be welfare schemes, medical aid etc.

In short, Rights are freedoms from oppression by the state or by society (through ethnicity, religion and gender). These rights do not entail government handouts. Entitlements, however, are welfare measures entailing government handouts. Rights are not limited by budget constraints, but entitlements are. So, rights are universal but entitlements are not.

10.3 TYPES OF RIGHTS

Rights are crucial for the development of a human society and personality. This development depends on the types of rights available to individuals, as different nations-states recognise different sets of rights. This is precisely why we have a classification of rights as natural rights, moral rights, legal rights and human rights.

10.3.1 Natural Rights

Many scholars believed that people inherit certain rights from nature. Before they came to live in society and state, they used to live in a state of nature. In it, they appreciated certain natural rights, like the right to life, right to liberty and right to property. Natural rights are parts of human nature and reason. This strand of political theory maintains that an individual enters

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into society with certain basic rights and that no government can deny these rights. In classical political philosophy, “natural right” denotes the objective rightness of right things, whether the virtue of a soul, the correctness of an action, or the excellence of a regime. For *Aristotle* the virtues and actions that contribute to the good life, and the activities intrinsic to the good life, are naturally right. The modern idea of natural rights grew out of these ancient and medieval doctrines of natural law. Rights are the products of social living. These can be used only in a society. Rights have behind them the recognition of society as common claims for development, and that is why the state protects these rights. In the seventeenth century, *John Locke* identified as natural rights the right to ‘life, liberty and property’; a century later, *Thomas Jefferson* defined them as the right to ‘life, liberty, and the pursuit of happiness’. Such rights were described as ‘natural’ in that they were thought to be God-given and therefore to be part of the very core of human nature. Natural rights did not exist simply as moral claims but were, rather, considered to reflect the most fundamental inner human drives; they were the basic conditions for leading a truly human existence.

10.3.2 Moral Rights

Moral Rights are based on human consciousness. They are supported by moral force of human mind. These are based on human sense of goodness and justice. These are not assisted by the force of law. Sense of goodness and public opinion are the sanctions behind moral rights. If any person disrupts any moral right, no legal action can be taken against him. The state does not enforce these rights. Its courts do not recognize these rights. Moral Rights include rules of good conduct, courtesy and of moral behaviour. These stand for moral perfection of the people.

Moral rights were first acknowledged in France and Germany, before they were included in the Berne Convention for the Protection of Literary and Artistic Works in 1928. Canada recognized moral rights in its Copyright Act. The United States became a signatory to the convention in 1989, and incorporated a version of moral rights under its copyright law under Title 17 of the U.S. Code. There are two major moral rights under the U.S. Copyright Act. These are the right of attribution, also called the right of paternity and the right of integrity.

10.3.3 Legal Rights

Legal rights are rights which are enshrined in law and are, therefore, enforceable through the courts. These rights can be enforced against individuals and also against the government. In this way, legal rights are different from moral rights. Legal rights are equally available to all the citizens. All citizens follow legal rights without any discrimination. They can go to the courts for getting their legal rights enforced. There are three types of legal rights:

(a) **Civil Rights:** Civil rights are those rights which provide opportunity to each person to lead a civilized social life. These fulfil basic needs of human life in society. Right to life, liberty and equality are civil rights. Civil rights are protected by the state.

(b) **Political Rights:** Political rights are those rights by virtue of which inhabitants get a share in the political process. These allow them to take an active part in the political process. These rights include right to vote, right to get elected, right to hold public office and right to criticise and oppose the government.

(c) **Economic Rights:** Economic rights are those rights which provide economic security to the people. These empower all citizens to make proper use of their civil and political rights. This right represents the basic needs of every person in terms of food, clothing, shelter, and medical treatment. Without the fulfilment of these no person can really enjoy his civil and political rights. It is therefore essential, that every person must get the right to work, right to adequate wages, right to leisure and rest, and right to social security in case of illness, physical disability and old age.

In his seminal work, *Fundamental Legal Conceptions* (1923), *Wesley Hohfeld* identifies four types of legal rights. First, there are privileges or liberty-rights which allow a person to do something in the simple sense that they have no obligation not to do it; they are 'at liberty' to do it. Second, there are claim-rights, on the basis of which another person owes another a corresponding duty – for example, the right of one person not to be assaulted or cheated by another. Third, there are legal powers which are best understood as legal abilities, i.e. empowering someone to do something – for example, the right to vote. Fourth, there are immunities, according to which one person can avoid being subject to the power of another – for instance, the right of disabled people not to be drafted into the army.

There is some intrinsic difference between moral rights and legal rights. Legal rights require for their justification an existing system of law. Legal rights are, roughly, what the law says they are, at least insofar as the law is enforced. Legal rights gain their force first of all through legislation or decree by a legally authorized authority. But moral rights must gain their validity through some source other than legal rights, since people can appeal to moral rights to criticize the law or advocate changes in the law (or legal rights), and people cannot do this if moral rights were based upon the law.

10.3.4 Human Rights

The idea of human rights developed out of the 'natural rights' theories of the early modern period. These theories arose, primarily, out of the desire to establish some limits upon how individuals may be treated by others, especially by those who wield political power. Human rights are one of the significant aspects of human political reality; these are the moral rights of the

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highest order. It is intrinsic to all humans without any discrimination of race, sex, nationality, ethnicity, language, religion and colour etc. Human rights comprise of civil and political rights, such as the right to life, liberty and freedom of expression; and social, cultural and economic rights including the right to participate in culture, the right to food, and the right to work and receive an education. Human rights are protected and supported by international and national laws and treaties. The Universal Declaration on Human Rights (UDHR) was the first international document that spelled out the “basic civil, political, economic, social and cultural rights that all human beings should enjoy.” The declaration was ratified unanimously by the UN General Assembly on 10 December 1948. Under human rights treaties, governments have the prime responsibility to protect and promote human rights. However, governments are not solely responsible for ensuring human rights. The UDHR states: “Every individual and every organ of society shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance.” The Protection of Human Rights Act 1993 described human rights as “rights relating to life, liberty, equality and dignity of the individuals guaranteed by the constitution or embodied in the International Covenants and enforceable by courts in India.” The United Nations Centre of Human Rights defines Human Rights as “those rights which are inherent in our nature and without which we cannot live as human beings”.

The historical development of Human Rights can be traced through various documents, primary being Magna Carta of 1251. The signing of Magna Carta, or “Great Charter,” is the most important early influence to establish constitutional law and a defining moment in the fight for freedom. In 1215, after King John of England violated a number of ancient laws and customs by which England had been governed, his subjects forced him to sign the Magna Carta, which enumerates what later came to be thought of as human rights. Among them was the right of the church to be free from governmental interference, the rights of all free citizens to own and inherit property and to be protected from excessive taxes. It established the right of widows who owned property to choose not to remarry, and established principles of due process and equality before the law. Another breakthrough in the development of human rights was the Petition of Right, produced in 1628 by the English Parliament and sent to Charles I as a statement of civil liberties. The Petition of Right, was based upon earlier statutes and charters and asserted four principles: first, No taxes may be levied without consent of Parliament; second, No subject may be imprisoned without cause shown (reaffirmation of the right of habeas corpus); third, No soldiers may be quartered upon the citizenry; *four*, Martial law may not be used in time of peace.

Human rights are rights to which people are entitled by virtue of being

human. They are therefore ‘universal’ rights in the sense that they belong to all human beings rather than to members of any particular nation, race, religion, gender, social class or whatever. Human rights are also ‘fundamental’ rights in that they are inalienable: they cannot be traded away or revoked. This was clearly expressed in the words of the American Declaration of Independence (1776), written by *Thomas Jefferson*, which proclaimed, ‘We hold these truths to be self-evident, that all men are created equal; that they are endowed by their Creator with certain inalienable rights’. Many have further suggested that human rights are ‘absolute’ rights in that they must be upheld at all times and in all circumstances. In 1789, the people of France brought about the abolishment of the absolute kingdom and set the stage for the establishment of the first French Republic. After the storming of the Bastille and the abolition of feudalism, the Declaration of the Rights of Man and of the Citizen (*La Déclaration des Droits de l’Homme et du Citoyen*) was espoused by the National Constituent Assembly as the first step toward writing a constitution for the Republic of France. The Declaration decreed that all inhabitants are to be guaranteed the rights of “liberty, property, security, and resistance to oppression.” It said that the need for law derives from the fact that “the exercise of the natural rights of each man has only those borders which assure other members of the society the enjoyment of these same rights.” Therefore, the Declaration saw law as an “expression of the general will”, intended to promote this equality of rights and to forbid “only actions harmful to the society.”

Another milestone in the development of Human Rights was in 1864, sixteen European countries and several American states attended a conference in Geneva, at the invitation of the Swiss Federal Council, on the initiative of the Geneva Committee. The diplomatic conference was held to adopt a convention for the treatment of wounded soldiers in combat. The main ideologies laid down in the Convention and maintained by the later Geneva Conventions provided for the obligation to extend care without discrimination to wounded and sick military personnel and respect for and marking of medical personnel transports and equipment with the distinctive sign of the red cross on a white background. By 1948, the United Nations new Human Rights Commission had attracted global attention. Under the leadership of *Eleanor Roosevelt*, the Commission set out to draft the document that became the Universal Declaration of Human Rights. It was accepted by the United Nations on 10 December 1948. In its preamble and in Article 1, the Declaration unequivocally proclaims the inherent rights of all human beings: “Disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people. All human beings are born free and equal in dignity and rights.” The Member States of the United Nations promised to work together to encourage the thirty Articles of human rights that, for

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the first time in history, had been assembled and codified into a single document. As a result, many of these rights, in various forms, are part of the constitutional laws of democratic nations in present situation.

In short, human rights are the basic rights and freedoms of all humans and they include the right to life, liberty, freedom of thought, expression and equality before the law. They are unified, interdependent and indivisible. The concept of human rights raises a number of very different questions, about both who can be regarded as 'human' and the rights to which human beings are entitled. There is, for example, a fierce controversy about the point at which 'human' life begins and so the points at which individuals acquire entitlements or rights. In particular, does human life begin at the moment of conception or does it begin at birth? Those who hold the former view uphold what they see as the rights of the unborn and reject absolutely practices like abortion and embryo research. On the other hand, however, if human life is thought to start at birth, abortion is quite acceptable since it reflects a woman's right to control her own body. Such contrasting positions do not only reflect different conceptions of life but also allocate rights to human beings on very different grounds. There are very deep divisions about what rights human beings should enjoy. The idea that rights-based theories in some way stand above ideological and political differences is clearly misguided. From the outset, the idea of natural rights was closely linked to the liberal notion of limited government. The traditional formulation that human beings are entitled to the right to life, liberty and property, or the pursuit of happiness, regarded rights as a private sphere within which the individual could enjoy independence from the encroachments of other individuals and, more particularly, from the interference of the state. These rights are therefore 'negative' rights or 'forbearance' rights; they can be enjoyed only if constraints are placed upon others. For instance, the right to property requires that limits be set to the government's ability to tax, an idea clearly reflected in the principle of 'no taxation without representation'.

Check Your Progress Exercise 1

Note: i) Use the space given below for your answer.

ii) See the end of the unit for tips for your answer.

1) How are rights different from entitlements? Explain.

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- 2) What are human rights and how are they different from other types of rights?

10.4 THEORIES OF RIGHTS

The following section enumerates the various theories of rights.

10.4.1 Theory of Natural Rights

The theory is based on the assumption that certain rights belong to man by nature. They regard natural rights as immunities and freedoms of man which are highly conducive to perfect living in society. According to the Theory of Natural Rights, people inherit several rights from nature. Before they came to live in society and state, they used to live in a state of nature. Natural rights are parts of human nature and reason. This strand of theory maintains that an individual enters into society with certain basic rights and that no government can deny these rights. In classical political philosophy “natural right” represents an objective rightness of the right things, whether the virtue of a soul, the correctness of an action, or the excellence of a regime. *Aristotle* stated in *Politics* that no one would call a man happy who was completely lacking in courage, temperance, justice, or wisdom. A man who was easily terrified, unable to restrain any impulse toward food or drink, willing to ruin his friends for a trifle, and generally senseless could not possibly lead a good life. Even though chance may occasionally prevent good actions from having their normal consequences, so that sometimes cowards fare better than brave men, courage is still objectively better than cowardice. The virtues and actions that contribute to the good life, and the activities intrinsic to the good life, are naturally right.

The modern idea of natural rights grew out of the classical doctrines of natural law. Rights are the products of social living; these can be used only in a society. *Thomas Hobbes* included a discussion of natural rights

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in his moral and political philosophy. Hobbes' conception of natural rights extended from his idea of man in a "state of nature". He argued that the essential natural right was "to use his own power, as he will himself, for the preservation of his own Nature; that is to say, of his own Life; and consequently, of doing anything, which in his own judgement, and Reason, he shall conceive to be the aptest means thereunto." He further added that in his natural state, man's life consisted entirely of liberties and not at all of laws – "It followeth, that in such a condition, every man has the right to everything; even to one another's body. And therefore, as long as this natural Right of every man to everything endureth, there can be no security to any man... of living out the time, which Nature ordinarily allow men to live." (Leviathan. 1, XIV) This would eventually lead to the situation known as the "war of all against all". For Hobbes this world of chaos created by unlimited rights was highly undesirable, since it would cause human life to be "solitary, poor, nasty, brutish, and short". Therefore, according to him, if humans wished to live peacefully they must give up most of their natural rights and create moral obligations in order to establish political and civil society. This is one of the earliest formulations of the theory of government known as the social contract.

Taking the argument forward, *John Locke* argued that people have rights, such as the right to life, liberty, and property that have a foundation independent of the laws of any particular society. Locke claimed that men are naturally free and equal as part of the justification for understanding legitimate political government as the result of a social contract where people in the state of nature conditionally transfer some of their rights to the government in order to better ensure the stable, comfortable enjoyment of their lives, liberty, and property. Since governments exist by the consent of the people in order to protect the rights of the people and promote the public good, governments that fail to do so can be resisted and replaced with new governments. *Thomas Paine* further elaborated on natural rights in his work *Rights of Man* (1791), emphasizing that rights cannot be granted by any charter because this would legally imply they can also be revoked and under such circumstances, they would be reduced to privileges.

10.4.2 Historical Theory of Rights

The theory of natural rights came under attack from later thinkers, *Edmund Burke* being the most important example. Edmund Burke argued rights can only be on the basis of customs and sentiments of the society in which an individual lives. This led to the rise of a new school of thought called the Historical Theory of Rights. According to this theory, rights are the product of history. These are found in ancient customs and traditions. The position taken was that all rights are derived from the character of the state and the law, which are in turn basically entirely historical in nature. Burke argued that rights are the crystallization of custom which in the course of time become rights. If there is a tradition of certain rights or there are rights

which people are accustomed to having, then people start assuming they ought to have those rights. Or in other words, custom is the original form of law and most of the rights according to the historical school are those, which turn out to have had the sanction of the longest and least broken custom. The weakness of the theory was that it did not bother to distinguish between what would be right and wrong in customs as a source of law. The historical theory of rights suffers from its own limitations. It cannot be admitted that all our customs result in rights and all our rights do not have their origins in customs. Progressive reform and social justice comes to a stop if this theory is accepted.

10.4.3 The Legal Theory of Rights

According to this theory, rights are created and maintained by the state. The Theory of Legal Rights was propounded by utilitarianS like Jeremy Bentham, who argued that all rights of man are derived from law and law itself is based upon utility. Law and rights, he said are simply two aspects of something, which is essentially one: law the objective aspect and right the subjective. The state draws up and lays down a bill of rights and so the rights are not prior to the state, but from the existence of the state itself. It is also the legal framework of the state that guarantees rights. It is again the state which changes the content of rights whenever it wants. The legal theory of rights was rejected by the liberal thinkers because for them the state does not create rights but it merely recognizes them. Thinkers like *T.H. Green* and *Harold Laski* argued that men enjoy rights not merely as members of the state, but also as members of the society and various associations and relationships in society. They found the idea of limiting rights to one source, the state, unacceptable. They argued that if the state and the law are the sole source of rights, then there is no right against the state. They saw the need to resist the state in certain circumstances. As Laski argued, the material source of rights is the community's sense of justice and not the law. Law is nothing but the concretisation of the feelings of the community, and hence, the obedience to the state is obedience to right and not might and obedience to the law is obedience to justice and not authority.

10.3.4 The Social Welfare Theory of Rights

The Social Welfare Theory of Rights appears to be a combination of the various theories of rights that came before it like those that were based on natural rights, legal or historical. This theory was developed by the liberal thinkers to support their idea of a welfare state. The major contributors were *T.H. Green*, *L.T. Hobhouse*, *Harold Laski*, *Ernest Barker* etc. Their central proposition was that a law, custom, natural right etc. should all yield to what is socially useful or socially desirable. Harold Laski was the main proponent of this theory and he commented on the concept of rights in his book *A Grammar of Politics*. For him, the concept of Rights emerges only in the context of a society. A right is at once a private claim of the individual

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and a right shared with others together in a community situation. Hence, when promoting individual rights the common good is and must be served. Since establishment of rights are a condition for social welfare, the state must guarantee some rights like the right to work, a right to a minimum or adequate wage, a right to reasonable hours of work, education and the right to participate in industry. The state also needs to limit the right to property. For *Laski*, Rights are a claim against the state and the state must enable the realisation of rights. The state can put limitations on rights in the interest of social welfare of the society as whole, but if these restrictions become unreasonable then it loses its moral authority and then the individual has not only a right, but a duty to resist the state. Adding that, the authority of the state must be limited, democratic and decentralised. The state must not be alien to the citizen and there must be active and proper communication between the two.

10.3.5 Marxist School of Thought

The Marxist school of thought on the concept of rights is understood to be a critique of the liberal bourgeois understanding of rights. Marx had argued that economic inequalities lead to political inequalities and make most constitutionally guaranteed liberal rights meaningless. For Marxist thought, most rights guaranteed in a liberal constitutional set up are abstract and useless really, unless institutional changes were introduced by law to make the rights a living reality. For them, equality of rights is an essential condition for achieving social justice, but it is not enough. That is because, the rich are always protected and given justice differently from the poor due to the influence of the money power. The rights in bourgeois society are, therefore, partial in character -partial in the sense that only a very limited number of persons get the freedom to have rights. The three organs of government are under the control of the powerful class and they work at its behest. Rights of the majority are always suppressed by the dominant class. Marxists have admitted that in a bourgeois society attempts are always made to expand the number of rights and in reality this is done. But the rise in the number of rights does not benefit the deprived sections of population. Moreover, the separation between the two classes stands in the way of exercise of rights by the working class. Hence, Marx declared 'every right is in general a right of inequality' in a liberal set up. According to Marx, the class which controls the economic structure of society also controls political power and it uses this power to protect and promote its own interests rather than the interests of all. In the socialist society which follows the capitalist society, as the Marxian framework suggests, the socialist state, through the proletarian laws, would protect and promote the interests/rights of the working class. As the socialist society, unlike the capitalist society, is a classless society, its state and laws protect the rights not of any particular class, but of all the people living in the classless society.

10.4.6 Late 20th Century Liberals

Idea of Right : Entitlements and Boundaries

In the later part of the 20th century, a new wave of liberal theorists on the concept of rights emerged with the writings of scholars like John Rawls and Robert Nozick. While Nozick argued for uninhibited free markets and free trade capitalism and a minimal state, Rawls argued for the welfare state concept while preserving the capitalist system. Nozick argued that individuals must be the ends and not the means and hence, individual's rights were supreme and society cannot restrict them. Respect for rights, he suggested, was respecting people's rights to be equal. He negated the idea of welfare rights of the individual as held in the positive liberal tradition. He also suggested that all political institutions are coercive by definition and must command the unanimous assent of the governed. Every individual lives in his own exclusive domain and must not be disturbed. *John Rawls*, on the other hand, used the words 'rights' and 'justice' interchangeably. All rights emerge from justice. To do justice, rights are granted and they may also be taken away for the same reason. He was of the view that rights should guarantee a fair share of economic resources and social equality. But Rawls does not wish to change the basic structure and nature of the market economy with its inevitable creation of extreme material inequalities, but wants the system of taxation to be designed which would eventually lead to some level of redistribution of goods to the worse off in society. He advocated that people's rights to social goods should not be dependent upon their natural endowments.

Check Your Progress Exercise 2

Note: i) Use the space given below for your answer.

ii) See the end of the unit for tips for your answer.

1) Discuss the theory of natural rights.

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2) What is the Marxist view of rights?

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10.5 LET US SUM UP

There are numerous theories of rights which explain the nature, origin and meaning of rights. The theory of natural rights describes rights as nature; the historical theory of rights pronounces rights as products of traditions and customs; the theory of legal rights recognises rights as legal; the social welfare theory of rights regards rights as social to be exercised in the interest of both the individual and the society. There are at least two different accounts of the meaning of “rights”. According to one of them, rights are relations between two terms: someone and a good; to the other, rights are relations between three terms: an individual, some person and an action or according something. They are different, but they are not altogether incompatible. Following the rights as entitlements’ interpretation, rights are moral or legal entitlements; that is, moral or legal relations of persons to goods (of benefits granted to persons by a human law, moral or legal). As a kind of rights, human rights are seen as entitlements of persons or individuals to essential goods, of which it can be inferred claims against other persons or against governments and officials.

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10.7 ANSWERS TO CHECK YOUR PROGRESS EXERCISES

Check Your Progress Exercise 1

- 1) Your answer should highlight that while rights are not necessarily given by a government; entitlements are and can, therefore, be taken away by a government

2) Your answer should highlight following points

**Idea of Right : Entitlements
and Boundaries**

- How human rights developed out of the theory of natural rights
- Mention landmarks like Magna Carta of 1251 and others
- How human rights are independent of any government

Check Your Progress Exercise 2

1) Your answer should highlight following points

- Certain rights belong to men by nature
- Include views of Hobbes and Locke

2) Your answer should highlight that the Marxist understanding of rights is a critique of the liberal bourgeois understanding of rights



UNIT 11: BASES OF RIGHTS: LEGAL, MORAL AND NATURAL*

Structure

- 11.0 Objectives
- 11.1 Introduction
- 11.2 Rights: Meaning and Nature
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11.0 OBJECTIVES

In this unit, you will be reading about the concept of rights and the theoretical framework associated with them. After going through this unit, you should be able to:

- Explain the meaning of rights
- Discuss their nature
- Enumerate the main theories associated with rights

11.1 INTRODUCTION

Rights are rightly called social claims which help individuals attain their best selves and help them develop their personalities. If democracy is to be government of the people, it has to exist for them. Such a democratic

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government can best serve the people if it maintains a system of rights for its people. States never give rights, they only recognise them; governments never grant rights, they only protect them. Rights emanate from society, from peculiar social conditions, and, therefore, they are always social. Rights are individuals' rights; they belong to individuals; they exist for individuals; they are exercised by them so as to enable them to attain full development of their personalities.

11.2 RIGHTS: MEANING AND NATURE

The relationship between the individual and the state has been an important question of political theory; one that has baffled, if not confused, political philosophers since ages. Political philosophers have debated as to who, whether the state or the individual is more important and who owes what to whom. There are philosophers, Plato for example, who believe that the state alone can give justice and that the job of the individual is to do his duties to the best of his/her abilities and capacities. We call these philosophers, the Idealists. There are others, John Locke for example, who hold the view that the state as a means exists for an end, and the end is the individual, meaning thereby that individual rights are sacrosanct and inviolable. That individuals have rights is a phenomenon of modern age as it began in the 15th-16th centuries' Europe. That these rights are guarantees against state absolutism and, therefore, they have their origin in society are things that became known in the modern age alone. Rights belong to individuals, and therefore, they are not of the state. Rights are individuals' rights, and, therefore, they are conditions necessary for their development. Rights are the product of our social nature, and as such, the result of our membership of society.

11.2.1 Meaning of Rights

Rights are claims, social claims necessary for the development of human personality. They are not entitlements a person is possessed with. In ancient and medieval times, some people were entitled to enjoy privileges. But to these privileges nobody could give the name of rights. Rights are *not* privileges because they are not entitlements. There is a difference between rights and privileges; rights are our claims on others as are others' claims on us; Entitlements on the other hand are privileges granted to some and denied to others. Rights are *universal* in the sense that they are assured to *all*; privileges are not universal because they are possessed by few. Rights are given to all without any discrimination; privileges are given to some, the selected few. Rights are obtained as a matter of right; privileges as a matter of patronage. Rights emanate in democratic societies; privileges are features of undemocratic systems. Jefferson's declaration that men are endowed by their creator with certain inalienable rights was one which indicated the naturalness of rights, i.e., men have rights because they are, by nature, human beings. That men (including women) have rights or that they should have rights is a fact no one would like to dispute. But this fact

Rights

does not state anything more or less than that. There is no definition stated in this fact. Holland defines rights as “one man’s capacity of influencing the act of others, not by his own strength but by the strength of society.” His definition describes rights, as a man’s activities blessed by society which means that Holland is describing rights only as a social claim. That there are other aspects of rights in a definition of rights has not been given due place. Wilde, in his definition of rights gives a casual treatment to the social claim aspect when he says: “A right is a reasonable claim to freedom in the exercise of certain activities.” Bosanquet and Laski, in their definitions of rights, include the position of society, state and man’s personality, but they too ignore the important aspect of ‘duty’ as a part of ‘rights’. Bosanquet says: “A right is a claim recognized by society and enforced by the state”. According to Laski, “Rights are those conditions of social life without which no man can seek, in general, to be himself at his best.”

A working definition of rights should involve certain aspects. Among these, the social claim aspect is one which means that rights originate in society and, therefore, there are no rights prior to society, above society and against society. Another aspect of rights is ‘the development of personality’ aspect which means that rights belong to the individual and they are an important ingredient which help promote one’s personality – this aspect includes the individual’s right to oppose the government if the latter’s action is contrary to the individual’s personality. The definition of rights, furthermore, must include the state’s role in the framework of rights. This aspect lays emphasis on the fact that the state does not grant rights, it only maintains them. Laski said that a state is known by the rights it maintains. Rights are rights because they are politically recognised. Rights are socially sanctioned claims in so far as they are preceded by duties an individual has as a member of society. Duties came *before* rights and not after them. It is, in this sense that duties are prior to rights and it is what makes rights limited in their nature and in their exercise. There are no absolute rights: absolute rights are a contradiction in terms. The distinction between rights as ‘liberties’ and rights as ‘claims’ has become a matter of importance to social and political theory, as Raphael rightly asserts.

11.2.2 Nature of Rights

It is rather easy to identify as to what lies at the roots of rights on the basis of what has been hitherto discussed. The nature of rights is hidden in the very meaning of rights. Rights are not only claims; they are in the nature of claims. Rights are claims but all claims are *not* rights. Rights are those claims which are recognised as such by society. Without such recognition, rights are empty claims. Society is organised in character and an individual obviously cannot have any right apart from what the society concedes. To quote Hobhouse: “Rights are what we may expect from others and others from us, and all genuine rights are conditions of social welfare. Thus, the rights anyone may claim are partly those which are necessary

for the fulfilment of the function that society expects from him. They are conditioned by, correlative to, his social responsibilities.” Rights are social; they are social in the sense that they emanate from society at any given point of time; they are social because they are never, and in fact, can never be, anti-social; they are social because they had not existed before the emergence of society; and they are social because they cannot be exercised against the common good perceived by society.

Rights, as social claims, create conditions necessary for the development of human personality. These conditions are created; they are made and they are provided. The state, distinct from society, creates and provides and makes these conditions. The state, by creating conditions, makes rights possible. It, therefore, lays down a ground where rights can be enjoyed. It is not the originator of rights, but is only the protector and defender of rights. It is not within the jurisdiction of the state to ‘take’ away the rights of the individual. If the state fails to maintain rights in the sense of conditions necessary for individuals’ development, it forfeits its claim to their allegiance. Rights are responses to society where they exist. The contents of rights are very largely dependent upon the custom and ethos of society at a particular time and place. As the society and its conditions change, so change the contents of rights. It is in this sense, that we say that rights are dynamic. No list of rights which are universally applicable for all times to come can ever be formulated. Rights and powers have to be distinguished. Nature has bestowed every individual with a certain amount of power to satisfy his/her needs. Power is a physical force; it is sheer energy. On the basis of mere force, no system of rights can be established. If a person has power, it does not necessarily mean that he has a right. He/she have a right as a member of the society – as a social being. An isolated person has no rights; what he/she has is energy, physical force, and process. As individuals, we have powers; as social beings, i.e. as members of society, we have rights. Likewise, as isolated individuals, we have no rights, and as social beings, we have no powers – no right to say or do or act the way we want.

Rights are responses to what we do. They are in the nature of ‘returns’ or ‘rewards’. They are given to us after we have given something to society, to others. It is after ‘owing’ that we ‘own’. Rights are not only the returns of our duties, but also they correspond to what we perform. Rights are the rewards given to us by others in response to the performance of our duties towards others. Rights are not absolute in character. The welfare of individuals as members of society lies in a compromise between their rights as individuals and the interest of the society to which they belong. A list of rights must acknowledge the fact that there cannot be such a thing as absolute as uncontrolled, for that would lead to anarchy and chaos in society.

11.2.3 Various Rights

Rights are the essential conditions of human personality. The development of human personality depends on the system of rights available to individuals. Different state systems recognise different rights: rights available to

Rights

Americans would be different from those available to Indians. A liberal-democratic society would give primacy to different rights than a socialist society. That is why we have a classification of rights: moral, legal, civil, political, economic and social. Rights incorporated in the constitution of the land are called fundamental rights. Rights, being basic conditions necessary for the development of human personality, have to be made available to individuals of all the states. The UN Declaration of Human Rights serves as an inspiration and as an agenda for the states to recognise and maintain, for their respective people.

A general framework of major rights available to the people can be, briefly, summed up as under:

Right to life is a basic right without which all other rights are meaningless. This right means that the state guarantees the protection of life, protection against any injury: even suicide is considered a crime. Right to equality has numerous aspects: equality before law, equal protection of law, prohibition of any sort of discrimination: social, economic or political. Protective discrimination as enshrined in the Constitution of India is an integral part of the right to equality. Right to freedom, like right to equality, has several aspects: freedom of speech, of press, of assembly, of association, of movement, of residence, of adopting a vocation. That these freedoms are to be exercised within reasonable restrictions has been the characteristic feature of this right granted to the Indians by the constitution. Right to freedom of religion, conscience, faith is another right available to individuals. Religion is a matter of faith and the voice of one's conscience and as such is given to citizens in present day states. This right does not curtail secularism in so far as religion is accepted as something personal and religion and public life are not allowed to intermix. Right to education is another important right without which the development of man's personality becomes impossible. An uneducated man cannot lead a meaningful life. Illiteracy, being a social curse, should be removed. The state should take up the responsibility of promoting education. Certain economic rights include the right to work, right to social security and rest and leisure. Without work and without material security, an individual is unable to enjoy the fruits of other rights. Right to property, too, is an economic right which means the right to possess and inherit property. It is regarded as an important right in liberal-democracies. There are political rights of individuals. It is these rights which make individuals full-fledged citizens. Among these, the right to franchise, to contest elections, to hold public office, to form political parties are some which need mention.

The Constitution of India provides a list of rights to its citizens. These are called the fundamental rights and these include: right to equality, right to freedom, right against exploitation, right to freedom of religion, cultural and educational rights and right to constitutional remedies – the last one is an important right in so far as this right ensures guarantees for all the

other rights. The liberal-democratic systems ensure the primacy of political rights over social rights and of social rights over the economic. The order is reverse in socialist societies: economic rights first and then social and political rights. For a liberal democrat, right to freedom is more important than the right to equality; right to property is more important than the right to work; economic security is more important than economic equality. Economic rights, in such societies are reduced to the right to protection of property, to workable equality within the framework of private property system, not to be exploited by the employer, to unemployment allowance. In socialistic societies, right to work precedes the right to education; right to education precedes the right to hold independent opinion.

Check Your Progress Exercise 1

Note: i) Use the space given below for your answer.

ii) See the end of the unit for tips for your answer.

1) Differentiate between rights and claims.

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11.3 THEORIES OF RIGHTS

There are numerous theories of rights which explain the nature, origin and meaning of rights. The theory of natural rights describes rights as intrinsic to human nature; the theory of legal rights recognises rights as legal; the historical theory of rights pronounces rights as products of traditions and customs; the idealistic theory, like the theory of legal rights, relates rights only with the state; the social welfare theory of rights regards rights as social to be exercised in the interest of both individual and society. The development of rights, as have come to us had a modest beginning: civil rights with the contractualists; rights as the outcome of traditions, with the historicists, rights as ordained by law, with the jurists; political rights, with the democrats; social rights, with the sociologists and the pluralists; socio-economic rights, with the socialists and the Marxists; and human rights, with the advocates of the United Nations. This explanation oversimplifies what our rights are and how they came to us.

11.3.1 Theory of Natural Rights

The theory of natural rights has been advocated mainly by Thomas Hobbes (*Leviathan*, 1651), John Locke (*Two Treatises on Government*, 1690) and J.J. Rousseau (*The Social Contract*, 1762). These contractualists, after having provided the social contract theory, hold the view that there were natural rights possessed by men in the state of nature and that these rights were attributed to individuals as if they were the essential properties of men as men. The contractualists, therefore, declared that the rights are inalienable, imprescriptible and indefeasible. The theory of natural rights is criticised on many grounds. Rights cannot be natural simply because they were the possessions of men in the state of nature. There can never be rights before the emergence of society: the notion of *pre-society* rights is a contradiction in terms. If at all there was anything in the state of nature, they were mere physical energies, and not rights. Rights presuppose the existence of some authority to protect them. In the state of nature where no state existed, how could one imagine rights in the absence of a state: who would defend people's rights in the state of nature? The contractualists have no answer. To say that natural rights existed in the state of nature is to make them absolute or beyond the control of society. For Bentham, the doctrine of natural rights was 'a rhetorical non-sense upon stilts.' Laski also rejects the whole idea of natural rights. Rights, as natural rights, are based on the false assumption that we can have rights and duties independently of society. Burke had pointed out, rather eloquently, when he said that we cannot enjoy the rights of civil and uncivil state at the same time: the more perfect the natural rights are in the abstract, the more difficult it is to recognise them in practice. Rights are natural, in the sense that they are the conditions which human beings need to realise themselves. Laski realises the significance of rights when he says that rights 'are not natural in the sense that a permanent and unchanging catalogue of them can be compiled, rather they are natural in the sense that under the limitations of a civilised life, facts demand their recognition.'

11.3.2 Theory of Legal Rights

The theory of legal rights or the legal theory of rights connotes the same sense. The idealist theory of rights which seeks to place rights as the product of the state can be, more or less, seen as another name of the theory of legal rights. Among the advocates of such theories, the names of Laski, Bentham, Hegel and Austin can be mentioned. According to them, rights are granted by the state. The theory regards rights as a claim which the force of the state grants to the people. The essential features of these theories, then, are: (i) the state defines and lays down the bill of rights: rights are neither prior nor anterior to the state because it is the state which is the source of rights; (ii) the state lays down a legal framework which guarantees rights and that it is the state which enforces the enjoyment of rights; (iii) as the law creates and sustains rights, so when the content of law changes, the substance of

rights also changes. Harold Laski (1893-1950), a theoretician of the English Labour Party and a political scientist in his own right, has his definite views on the system of rights as expounded in his *A Grammar of Politics* (first published in 1925 and then revised almost every second year). Laski's views on the nature of rights run as follows: (i) they are social conditions, given to the individual as a member of society (ii) they help promote individual personality, his best-self: 'those social conditions without which no man can seek to be his best self' (iii) they are social because they are never against social welfare; they were not there before the emergence of society (iv) the state only recognises and protects rights by maintaining them; (v) rights are never absolute; absolute rights are a contradiction in terms (vi) they are dynamic in nature in so far as their contents change according to place, time and conditions (vii) they go along with duties; in fact, duties are prior to rights; the exercise of rights implies the exercise of duties. If Laski were to give rights to the individual, he would give them in this order: right to work, right to be paid adequate wages, right to reasonable hours of labour, right to education, right to choose one's governors, followed by other rights. Laski's argument is that without granting economic rights first, an individual cannot enjoy his political rights: political liberty is meaningless without economic equality: 'where there are great inequalities, the relationship between men is that of the master and the slave'. Equally important, but lower in order is the right to education: education alone helps an individual exercise all the other rights properly. With the economic and social (education rights) at one's disposal, there is a greater likelihood of the individual exercising his political rights in right earnestness. Critics opine that the state, indeed, defends and protects our rights; but it does not create them as the advocates of these theories make us believe. If we admit that rights are the creation of the state, we will have to accept the view that if the state can give us rights, it can take them away as well. Obviously, such an opinion would make the state absolute. In that case, we would have only those rights which the state would like to give us.

11.3.3 The Historical Theory of Rights

The historical theory of rights, also called the prescriptive theory, regards the state as the product of a long historical process. It holds the view that rights grow from traditions and customs. The conservative Burke argued that the people have a right over anything that they exercise or enjoy uninterruptedly over a fairly long passage of time. So considered, every right is based on the force of long observance. As traditions and customs stabilise owing to their constant and continuous usage, they take the shape of rights. The theory has its origins in the 18th century in the writings of Edmund Burke and was adopted later by sociologists. The historical theory of rights is important in so far as it condemns the legal theory of rights. It is also important in so far as it denies the theory of natural rights. The state recognises, the advocates of historical theory argue, what (the rights included) comes to stay through

long usage. The historical theory of rights suffers from its own limitations. It cannot be admitted that all our customs result in rights: the Sati system does not constitute a right nor does infanticide. All our rights do not have their origins in customs. Right to *social security*, for example, is *not* related to any custom.

11.3.4 The Social Welfare Theory of Rights

The social welfare theory of rights presumes that rights are the conditions of social welfare. The theory argues that the state should recognise only such rights which help promote social welfare. Among the modern advocates of social welfare theory, the name of Roscoe Pound and Chafee can be mentioned though Bentham can be said to be its advocate of the 18th century. The theory implies that rights are the creation of the society in as much as they are based on the consideration of common welfare: rights are the conditions of social good which means that claims not in conformity with the general welfare, and therefore, not recognised by the community do not become our rights. The social welfare theory of rights is also not without its faults. It dwells on the factor of social welfare, a term too vague to be precise. The Benthamite formula 'greatest good of the greatest number' is different to different people. The theory turns out to be the legal theory of rights if, in the end, the state is to decide what constitutes 'social welfare'. A critic like Wilde is of the view that 'if rights are created by the consideration of social expediency, the individual is without an appeal and helplessly dependent upon its arbitrary will.'

11.3.5 The Marxist Theory of Rights

The Marxist theory of rights is understood in terms of the economic system at a particular period of history. A particular socio-economic formation would have a particular system of rights. The state, being an instrument in the hands of the economically dominant class, is itself a class institution and the law which it formulates is also a class law. So considered, the feudal state, through feudal laws, protects the system of rights (privileges, for example) favouring the feudal system. Likewise, the capitalist state, through capitalistic laws, protects the system of rights favouring the capitalist system. According to Marx, the class which controls the economic structure of society also controls political power and it uses this power to protect and promote its own interests rather than the interests of all. In the socialist society which follows the capitalist society, the socialist state, through the proletarian laws, would protect and promote the interests/rights of the working class. As the socialist society, unlike the capitalist society, is a classless society, its state and laws protect the rights not of any particular class but of all the people living in the classless society. The Marxists say that the socialist state, as an instrument of social political and economic change, would seek to establish socialism which will be based on the principle of 'from each to his ability to each according to his work', the

system of rights for all would follow this pattern: economic rights (work, social security) first, followed by social rights (education) and political rights (franchise rights). The Marxist theory of rights, like Marxism itself, suffers from its deterministic ideology, though its emphasis on non-exploitative socialist system is its characteristic feature. Neither the economic factor alone provides the basis of society nor the superstructure is the reflection of only the economic base; for non-economic forces also play their role in determining the superstructure.

**Bases of Rights : Legal,
Moral and Natural**

Check Your Progress Exercise 2

Note: i) Use the space given below for your answer.

ii) See the end of the unit for tips for your answer.

1) Discuss the natural theory of rights.

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2) How do Marxists view the concept of rights?

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11.4 HUMAN RIGHTS

S. Ramphal has very rightly stated that human rights were not born of men but they were born with them. They are not as much a result of the

Rights

efforts of the United Nations as emanations from basic human dignity. They are human rights because they are with human beings as human beings. Human rights may generally be defined as those rights which are inherent to our nature and without which we cannot live as human beings. They are essential because they help us to use and develop our faculties, talents and intelligence. They base themselves on mankind's increasing demand for a life in which the inherent dignity and worth of each human being will receive not only protection, but also respect as well.

Human rights lie at the root of all organisations. They permeate the entire UN charter. In the Preamble of the UN Charter, there is a determination to affirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and the nations, large and small. There is a reference to the promotion of universal respect for Human Rights in the Charter's Articles 13, 55, 62, 68, and 76. The Commission on Human Rights, working under the UN Economic and Social Council, after spending about two and a half years under the chairmanship of Roosevelt drafted what is known as the Universal Declaration of Human Rights. When the UN General Assembly approved this Declaration on December 10, 1948, the day came to be celebrated as the Human Rights Day. Among the 30 articles that are a part of the Declaration of Human Rights, there is a list of traditional rights from articles 3 to 15. These rights include: right to life, liberty, to security, freedom from arbitrary arrest, to a fair trial, to equal protection of law, freedom of movement, to nationality, to seek asylum etc. There are other important rights contained in articles 16 to 21. These include: equal rights to men and women, to marry, to form the family, to property, to basic freedom such as those of thought and expression, right to peaceful assembly and association as well as a share in the government of one's own country. There are economic rights enshrined in articles 22 to 27. These include: right to work, protection against unemployment, just remuneration, right to form trade unions, right to have rest and leisure, to adequate standard of living, education and of participation in the cultural life of the country. Articles 28, 29, 30 ensure social/international order, duties towards the community wherein alone the free and full development of man's personality is possible and the guarantees of these rights respectively. The Universal Declaration of Human Rights is the first segment of the International Bill of Human Rights. It is followed by the International Covenant on Economic, Cultural and Social Rights, the International Covenant on Civil and Political Rights and the Optional Protocol – all adopted in 1966.

Check Your Progress Exercise 3

- Note: i) Use the space given below for your answer.
- ii) See the end of the unit for tips for your answer.

1) What are Laski's views on the concept of rights?

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2) What are the various rights included in the UN Declaration on Human Rights?

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11.5 LET US SUM UP

Rights are social claims necessary for the development of human personality. These belong to the individuals and they provide conditions without which they cannot seek to be themselves. They are social: given by society and secured by state. Even the state cannot take them away from individuals. They reflect a particular stage of development of society. As society changes, so do the character and content of rights. Theories regarding rights reflect partial treatment about their meanings, origin and nature. The theory of natural rights is correct so long as it lays emphasis on the fact that rights are natural because they are in the nature of social claims. Likewise, the legal theory of rights speaks the truth in so far as it makes the state the guarantor of our rights. Rights are of numerous kinds. Those rights which are available to human beings include: right to life, equality, security of person and property, freedom, education, work, freedom of religion, to vote, to hold public office. Liberal democratic societies lay more emphasis on the personal and the political rather than economic and social rights. Socialist societies advocate the opposite arrangement of rights. Laski, as

Rights

a liberal leaning towards the Left, considers rights essential for individual development, but grants economic rights followed by social and political rights. The UN Declaration of Human Rights provides for a list of basic rights available to human beings as human beings.

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11.7 ANSWERS TO CHECK YOUR PROGRESS EXERCISES

Check Your Progress Exercise 1

- 1) Your answer should elaborate that all claims are not rights

Check Your Progress Exercise 2

- 1) Your answer should highlight that all rights inherent to human beings are natural rights
- 2) Highlight that rights are a class phenomenon and socio-economic rights have primacy over the political

Check Your Progress Exercise 3

- 1) Your answer should list and describe rights as given in Laski's '*A Grammar of Politics*'
- 2) See the UN Declaration

UNIT 12: RIGHTS AND OBLIGATIONS

(IMPORTANT ISSUE: HUMAN TRAFFICKING) *

Structure

- 12.0 Objectives
- 12.1 Introduction
- 12.2 Concept of Rights
 - 12.2.1 Development of Rights
 - 12.2.2 Types of Rights
- 12.3 Obligations
 - 12.3.1 Relationship between Rights and Obligations
 - 12.3.2 Theories of Political Obligation
- 12.4 Human Trafficking
 - 12.4.1 Causes
 - 12.4.2 Human Trafficking in India
- 12.5 Let Us Sum Up
- 12.6 References
- 12.7 Answers to Check Your Progress Exercises

12.0 OBJECTIVES

This unit will familiarise the students with the concepts of rights and obligations. After studying this unit, you should be able to:

- Understand the meaning of rights and obligations
- Know the relationship between them; and
- Explain the concept of human trafficking

12.1 INTRODUCTION

The idea of rights is very important in every day life, whether it is related with the life of children, parents, teachers, students, officers, workers etc. Since long time, the term right stood for a power, privileges, as in the right of the nobility, the right of clergy and the divine right of kings. However, in its modern sense, it refers to an entitlement to act or be treated in a particular

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way. In the 18th century, the US Declaration of Independence (1776) and the French Declaration of the Rights of Man and of the Citizen (1789) stated that certain rights are inalienable. Thus, the two most influential political documents of the modern age take the notion of rights as the central concept upon which their political organizations are built. This unit looks into the different notions of rights and its relationship with obligations.

12.2 CONCEPT OF RIGHTS

Rights are always coming as the conflicting claims between the individual and the state. It has a two-way relationship. The benefits which flow automatically from the existence of the state do not constitute rights. It is only when the authority of the state is sought to be limited and when individuals and groups demand a positive role of the state, rights are claimed. Glorification of the state, without an in built mechanism to curb the authority of the state means a complete subordination of the individual to the ruler or the ruling groups, thereby opening the floodgates of corruption, oppression, exploitation and injustice. Every right requires social recognition. Without such recognition, rights are empty claims. Rights do not exist in a vacuum, so to speak. They require the sanction of society.

During the Greek period, Plato and Aristotle gave more emphasis on the role and responsibility of the state. Plato, for example believes that the state alone can give justice and the individual has to perform his duties to the best of abilities and capacities. We call these philosophers, the idealists. There are others, John Locke for example, who hold the view that the state as a means exists for an end, and the end is the individual, meaning thereby that individual rights are sacrosanct and inviolable. Older societies as a rule did not recognise rights to any great extent. They had only petitions and charities. Modern democratic societies on the other hand, give a very important place to rights. Now, new rights frequently come into being like the right to work, right to strike, animal rights etc. Human rights have become a major concern in recent times. Thus, discourse about rights has become persuasive in our society.

12.2.1 Development of Rights

The idea of rights entered politics in the form of natural rights. Rights that exist in nature independently of any human laws or customs. During the medieval period, this idea was developed to promote or violate a person's rights in favour of the command of God. This was based on religious belief about divine purposes in creating the universe. During the Enlightenment of the 16th to the 18th century, when religious authority, hereditary monarchies, and feudal system were being questioned, natural law was given a more rationalist foundation. At this time, rights came to be associated with the idea of a social contract, where 'state of nature' was a predominant condition developed by Hobbes, Locke and Rousseau. Critiques of natural rights also

came from a variety of political positions. In the 18th century Edmund Burke, saw natural rights as undermining the settled traditions on which genuine liberty is based in actual societies, and as licensing the anarchic destruction of legitimate authority and settled rights, resulting in insecurity and war. Jeremy Bentham ridiculed natural rights as a pernicious fiction used to obstruct the social reforms that were needed to promote human happiness.

The historical theory of rights holds that rights are the product of a long historical process. It holds that rights are the crystallization of customs. It suggests that the state cannot create rights at its own will, nor is it required to follow abstract and subjective conceptions of natural rights. The state has only to recognize those rights of men which have already come into vogue through long standing usage and customs. Edmund Burke, the greatest champion of the historical theory of rights, has observed that the French Revolution was based on the abstract rights of man, while the English Revolution was based on the customary rights of Englishmen. Rights have numerous interpretations. These are discussed by several scholars. Wilde, in his definition of rights gives a casual treatment to the social claim aspect when he says: "A right is a reasonable claim to freedom in the exercise of certain activities." Bosanquet and Laski, in their definitions of rights, include the positions of society, and state and man's personality, but they too ignore the important aspect of 'duty' as a part of 'rights'. Bosanquet says: "A right is a claim recognized by society and enforced by the state". According to Laski, "Rights are those conditions of social life without which no man can seek, in general, to be himself at his best." T. H. Green explained that "Rights are powers necessary for the fulfilment of man's vocation as a moral being." Beni Prasad stated that "Rights are nothing more, nor less, than those social conditions which are necessary or favourable to the development of personality".

12.2.2 Types of Rights

With the development of social consciousness, rights are subjected to continual review and redefinition. Now, the concept of rights has been modified in two important directions: 1) the advantages of rights should not be confined to a tiny class which is placed in a privileged position by any means 2) rights should not be confined to delimiting the sphere of activity and authority of the state, but the benefits should reach the bulk of society.

a) Negative and Positive Rights - Negative rights are rights that entail non-interference from the society at large. It suggests that the freedom of the individual shall not be encroached upon by the state like the right to life, liberty, property. Positive rights entail the responsibility of the state in securing the rights of individuals. It requires the state to take positive measures for the protection of the rights of the weaker and vulnerable sections of society. For example, the right to health, basic subsistence etc requires a positive interference to do something.

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b) Civil Rights - In contemporary political thought, the term 'civil rights' is indissolubly linked to the struggle for equality of African Americans during the 1950s and the 1960s. The aim of that struggle was to secure the status of equal citizenship in a liberal democratic state. Civil rights are those rights which provide opportunity to each person to lead a civilized social life. These fulfil basic needs of human life in society. Right to life, liberty and equality are civil rights. Civil rights are protected by the state.

c) Political Rights - Political rights are given to the individual as a part of being the citizen of a country and get a share in the political process. These enable them to take an active part in the political process. These rights include the right to vote, right to get elected, right to hold public office and the right to criticise and oppose the government. These rights are available to the people in a democratic state.

d) Socio-Economic Rights - These rights are provided in order that people have socio-economic security. These enable all citizens to make proper use of their civil and political rights. The basic needs of every person are related to his food, clothing, shelter, medical treatment etc. Without the fulfilment of these, no person can really enjoy his civil and political rights. Harold J Laski has produced an elaborate blue print of a just society with a scheme of social, economic as well as political rights. He insists on the citizen's right to work, as an essential means to earn his livelihood. It is, therefore, essential, that every person must get the right to work, right to adequate wages, right to leisure and rest, and right to social security in case of illness, physical disability and old age.

Check Your Progress Exercise 1

Note: i) Use the space given below for your answer.

ii) See the end of the unit for tips for your answer.

1) Differentiate between the negative and positive rights.

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12.3 OBLIGATIONS

Political obligation is one of the fundamental issues of political philosophy. History of political thought is struggling to provide a satisfactory account of

political obligation, from the time of Socrates to the present. It is primarily concerned with the question that how far, when and why an individual is obliged to obey the law and commands of political authority. This question is so complex that it is not possible to find a definite answer which could be universally acceptable. While rights and obligations are not the same, they are still connected. Whenever you decide to do what you have a right to do, others have an obligation to let you do it. An obligation is a requirement or duty to act in a particular way. H L A Hart distinguished between “being obliged” to do something, which implies an element of coercion and “having an obligation” to do something which suggests only a moral duty. For example, legal obligations have the requirement to pay taxes and observe other laws, which is backed by a system of penalties. On the other hand, moral obligations are fulfilled not because it is sensible to do so, but because such conduct is thought to be rightful or morally correct. One way of approaching issues of obligations is to see how they rise and the form they take in a different political system. The political system under which people live determines not only the laws they are required to obey, but the means available for expressing dissent and exerting pressure to change rules and policies.

12.3.1 Relationship between Rights and Obligations

Rights and obligations are the reverse sides of the same coin. To possess a right, usually, places someone else under an obligation to uphold or respect that right. In the field of jurisprudence, the social life of men is regulated by law. And to protect right to life, government has an obligation to maintain public order and ensure personal security. Negative rights entail an obligation on the part of the state to limit or constrain its power. Positive rights oblige the state to manage economic life, provide a range of welfare services and so on. However, obligations do not always fall on the state. Individuals who possess rights, must acknowledge the obligations towards the state, otherwise civilised life would be impossible. Citizenship, therefore, is a blend of rights and obligations. The duty of the citizen is to acknowledge the authority of the state and obey its laws. The obligation to obey the state is based on an implicit promise made by the simple fact that citizens choose to remain within its borders. The earliest example of this is found in Plato’s Crito. Here, Plato mentions Socrates refusal to escape from prison where he was sentenced to death for corrupting the youth of Athens. Socrates being an Athenian citizen, promised to obey the Athenian law and he intended to keep his promise even at the cost of his own life.

12.3.1 Theories of Political Obligation

a) Doctrine of Force Majuere

According to this theory, political obligation is born out of fear, force and compulsion. The state cannot be challenged or resisted and therefore, this

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theory has put forward the concept of unlimited obligation. It regards the superior strength of the state as the source of political obligation. According to this view, the state is so powerful that the individual has no option but to obey its laws and commands. In this sense, political obligation is based on the fear of punishment or other unpleasant consequences which would follow from a disobedience of law. Under this theory, the individual is too weak to challenge the authority of the state. This theory is not based on any moral ground. It does not allow the individual to inquire whether a law is right or wrong. It does not care to secure his willing obedience.

b) Divine Right Theory

The theory of divine right holds that the authority of the sovereign is derived from God. It states that political obligation is based on the principle of faith. The true source of the authority is independent of human choice and custom and the individual is obliged to obey the sovereign as the divine authority. In Europe, this theory was developed during the ascendancy of monarchy in the middle ages. Robert Filmer was one of the chief exponents of the theory. With the advent of new learning in modern ages, this theory lost its relevance. Since God's will is binding on all decisions, this theory upholds an unlimited political obligation. It establishes political obligation on religious rather than moral grounds. If a king turns out to be a tyrant, people have to obey him as a punishment for their sin. James I of England sought to justify his tyrannical rule precisely on this ground. This theory received a lot of criticism by eminent thinkers like Grotius, Hobbes and Locke, who rejected its metaphysical premises and traced the source of political obligation in the consent of the individual. The theory also started to lose significance due to the growth of democracy and also due to the separation of the church from the state.

c) Conservative Theory - Conservatism is a political and social philosophy that promotes the maintenance of traditional institutions and supports minimal and gradual change in society. Conservative thinkers uphold obedience to the state or political authority for practical reasons. David Hume argued that it is good to follow any type of political authority than to having no government at all. Edmund Burke argued in favour of social continuity. He contended that revolution is an evil and strongly criticised the French revolution. Revolution involves violence and destruction and also, it results in misuse of power by those who manage to capture it after the revolution. Burke was against any extreme version of reform and supported gradual change. Conservatives argue that human beings are morally and intellectually imperfect, and seek the security that only tradition, authority and shared culture can offer. The conservative view of political obligation is based on legitimacy rather than on consent or morality.

d) Consent/Contract Theory - This theory regards the individual's consent as the proper source of political obligation. The individual is expected

to obey a ruler only with his/her consent. A government can exercise its power only with an explicit or implicit consent of its citizens. The chief exponents of the theory of social contract are: Hobbes, Locke and Rousseau. These thinkers have postulated a “state of nature”, that is a hypothetical stage before the creation of political authority. Social contract represents the method of arriving at an agreement for setting up the state. It marks a transition from the state of nature to civil society. The terms of the contract define the ground and limits of political obligation. In *Leviathan*, Hobbes argued that citizens have an absolute obligation to obey political authority, regardless of how governments may behave. Hobbes believed that though citizens were obliged to obey the state, the state itself was not subject to any reciprocal obligations. Although Hobbes postulates an unlimited political obligation, yet it is solely based on consent not imposed from above. An alternative and a more balanced view of political obligation is found in the writings of Locke. Civil society was established by mutual consent of the people, only to deal with few law breakers. Under the social contract, man surrenders the right to be a judge in his own case to the state which is entrusted with the task of protection of his natural right to ‘life, liberty and property’. Government is therefore, created as a trust which can be dissolved if it fails to perform this function. The idea of social contract, however, took a highly philosophical form at the hands of Rousseau, who reposed the fact of political obligation in the “General Will”. This meant that man no longer remains a slave to his impulses of appetite after entering into a civil society, but he becomes bound to obey the law of the general good. In such circumstances, Rousseau acknowledged that citizens should be ‘forced to be free’. Thus, the social contract theory justifies the conception that the ruling authority, if he has to be legitimate, must rest ultimately on the consent of the governed. Among the exponents of the social contract, Locke creates a limited political obligation. Hobbes and Rousseau postulate unconditional consent and absolute sovereignty.

e) Idealist Theory - The idealist school of thought originally created an unconditional and unlimited obligation, but later it was modified to admit a note of caution. G.W.F. Hegel postulated an unlimited political obligation without making a clear distinction between the state and government. He gave a divine reason for the origin of the state when he said, “state is the march of God on earth”. In the 19th century, T H Green modified the idealist tradition when he declared that a government cannot claim an unconditional obedience of its citizens. Green argued that an individual owes his allegiance to society, not to the state or government. In his *Lectures on the Principles of Political Obligation*, he argued that the state itself is obliged to promote the common good as conceived by its citizens, and that individual is obliged to obey only those laws which will promote the common good. Green said, “will not force is the basis of state”. Thus, Green’s view of political obligation is based on the moral nature and capacity of human beings. The

idealistic theories have been criticized on the ground of being too abstract. It places ordinary things in a highly philosophical or metaphysical form that cannot be understood by a man of average understanding. The idealists are reluctant to accommodate the right to resistance in their doctrine of political obligation.

f) Marxist Theory - Marxist theory is different from other theories of political obligation. It comes against the concept of political obligation towards state. According to this theory, the state is by no means the organized power of the community. It is, rather, the organized power of the dominant class, which controls the major means of production. As per the Marxist view, society, is divided on the basis of class haves and have not. Haves always play a dominant role in society. In such a society the purpose is not the general welfare, but helping the strongest group to increase their wealth and power by exploiting weak competitors as well as the dependent class. In such a class divided society, the individual can have no political obligation towards the state. The case of political obligation arises when the 'new state' comes into being after the revolution. This new state is considered by Marx as a 'dictatorship of the proletariat'. The dictatorship of the proletariat means concrete democracy, i.e. the coercive power of a majority over a minority. However, the idea of political obligation ceases to exist with the withering away of the state in the last stage of development, called communism, and finds its final conversion into the injunction of social obligation.

g) Anarchist Theory – The anarchist view holds that society can and should be organised without the coercive authority of state. It had its greatest influence in the late 19th and the early 20th century, when several revolutionary movements in Western countries favoured this mode of thought. All anarchists agree on the need to dispense with a compulsory form of authority, that is the state. They want to build a society wherein all human beings shall freely and spontaneously adjust with each other without requiring an external force to regulate their relations. Anarchists like P.J. Proudhon and Peter Kropotkin argued that all governmental authority is illegitimate, because the state is indeed a coercive institution, which is suited only to a corrupt and unjust society. Although classical anarchists such as Proudhon, Bakunin and Kropotkin rejected the claims of political authority, they nevertheless recognised that a healthy society demands sociable, cooperative and respectable behaviour from its members. This amounts to a theory of social obligation that in some ways parallels the more traditional notion of political obligation. Political obligation is a complex issue. The idea of political obligation is not a political but a moral affair. Government is only an external agency. A good government is a product of human ingenuity. The power of reasoning is still retained by human beings themselves. It cannot be transferred to the instrument created by them. However, it is necessary to realize that the individual owes political obligation to political authority. Green suggested political obligation towards the "organized power of society" as distinguished from the state.

State is necessary to maintain law and order, however public opinion should also be crystallized and mobilized.

Check Your Progress Exercise 2

Note: i) Use the space given below for your answer.

ii) See the end of the unit for tips for your answer.

1) What is political obligation?

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12.4 HUMAN TRAFFICKING

In modern times, functions and role of the state has changed drastically, particularly after the emergence of the concept of human rights. Concept of human rights is a broad one, but it basically entitles rights to an individual by virtue of being a human being. Human rights include civil and political rights of human beings. The concept rules out any discrimination between human beings on the grounds of race, language, colour, sex, religion, nationality etc. One of the important aspects of human rights is that, it provides right to life, liberty, security, prohibition of slavery, slave trade and servitude for everyone. Human rights completely disregards any form or type of human trafficking. The role and responsibility of state is very high to deal with any kind of human rights violation. Human trafficking is a major concern in the modern era of globalization. Globalization has increased the movement of goods, services and people. It also helps in enhancing the modern era of slavery in the form of human trafficking. Slavery is an old concept. Different forms and magnitudes of slavery were present even in the ancient Greek period. Modern slavery is not defined in law; it is used as an umbrella term that focuses attention on commonalities across these legal concepts including forced labour, debt bondage, forced marriage, other slavery and slavery like practices, and human trafficking.

12.4.1 Causes of Human Trafficking - It is not easy to identify the root causes of human trafficking. Causes of trafficking are various and often differ from one country to another. Trafficking is a complex phenomenon

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and is often influenced by social, economic, cultural and other factors. These factors may vary on the basis of individual or region-specific circumstances. Some of the common factors are related with poverty, oppression, lack of social and economic opportunities, human rights violation, war or conflict-ridden zone. Trafficking can further be increased in a political instable region which leads to militarism, civil unrest, internal armed conflicts. Further, human trafficking is a major concern in a natural disaster-prone region. The destabilization and displacement of populations increase their vulnerability to exploitation and abuse through trafficking and forced labour. After the 2015 disastrous earthquake in Nepal, human trafficking has increased particularly affecting women and children from socially and economically disadvantaged groups such as Tamang and Dalit communities. Similarly, war and civil strife may lead to a massive displacement of populations, leaving orphans and street children extremely vulnerable to trafficking, as we can see in several West Asian countries, particularly recently in Syria. Another very common reason for human trafficking is the demand of cheap labour. Because of a high rate of population growth, unemployment and poverty people readily agree to migrate from one place in the hope of better opportunities. These people are used as a forced labourer in construction works, agricultural field and in domestic helps. The victims of trafficking can rarely protect themselves from business owners and brokers because they have very few alternatives.

Human trafficking is considered illegal in India and remains a significant problem under the present socio-economic and political circumstances. According to the Ministry of Women and Child Development, nearly 20,000 women and children were victims of human trafficking in India in 2016; that is around a 25% rise compared to 2015. In South Asia, India is the centre for fastest growing human trafficking. Women and children from Nepal and Bangladesh are illegally migrated to India for different forms of exploitation. People from the lower cast or the tribal communities and the women and children from the excluded groups of society are generally victims of human trafficking. India also has the highest number of child labour in the World. According to the Labour ministry, 12.6 million children in the age group of 5-14 years are presently working in India. In terms of constitutional and legal provisions, any form of human trafficking is completely banned in India. The state also has the power to impose any law for offenders. Article 23 of the Indian constitution talks about prohibition of traffic in human beings and forced labour. Traffic in human beings and begar and other similar forms of forced labour are prohibited, and any contravention of this provision shall be an offence punishable in accordance with the law. Overall, Human trafficking is the third largest organized crime after drugs and the arms trade across the globe. Till date, there is no clear data regarding the number of persons or kids trafficked in any region. Several cases of human trafficking are not reported. It is a complex problem in any society. Only law-making is not an effective step to eliminate this crime.

An effective legal watch system with proper implementation is an urgent requirement. The issue of trafficking is more an issue of society than a simple law enforcement procedure. So, civil society needs to take it more seriously. A collaborative effort between government and civil society organizations is very important. In India, the government must implement all the laws in an effective way to eliminate human trafficking and associated crimes.

Check Your Progress Exercise 3

Note: i) Use the space given below for your answer.

ii) See the end of the unit for tips for your answer.

1) What are the causes of human trafficking?

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12.5 LET US SUM UP

Rights and obligations are the reverse sides of the same coin. To possess a right, usually, places someone else under an obligation to uphold or respect that right. In the field of jurisprudence, the social life of men is regulated by law. And to protect right to life, government has an obligation to maintain public order and ensure personal security. Negative rights entail an obligation on the part of the state to limit or constrain its power. Positive rights oblige the state to manage economic life, provide a range of welfare services and so on. However, obligations do not always fall on the state. Individuals who possess rights, must acknowledge the obligations towards the state, otherwise civilised life would be impossible. Citizenship, therefore, is a blend of rights and obligations. The duty of the citizen is to acknowledge the authority of the state and obey its laws.

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12.7 ANSWERS TO CHECK YOUR PROGRESS EXERCISES

Check Your Progress Exercise 1

- 1) Your answer should highlight that negative rights entail non-interference from the state while positive rights are ensured by state intervention

Check Your Progress Exercise 2

- 1) Your answer should highlight following point
 - Concerned with the question that how far, when and why an individual is obliged to obey the political authority

Check Your Progress Exercise 3

- 1) Your answer should highlight factors like oppression, poverty, lack of economic opportunities, human rights violations, conflict etc