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Human Rights : Theory

SEMESTER III

POLITICAL SCIENCE

BLOCK : 1



KRISHNA KANTA HANDIQUI STATE OPEN UNIVERSITY

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COURSE INTRODUCTION

The second course of Third Semester of M A in Political Science of KKHSOU is titled "Human Rights : Theory". It is designed to help the learners to have an understanding of the concept of human rights. The concept of human rights has become an important subject of study in the contemporary period. Human Rights are inalienable and inherent rights of every human being which enable a person to lead a dignified life. Human rights are very important for the all-round development of all individuals. Accordingly, the first unit of the course makes the learners familiar with the meaning, nature and sources of human rights. The concept of human rights has assumed its present shape by way of its evolution through various stages from the ancient period to the present time. The evolution of human rights is discussed in the second unit. The third unit deals with two main approaches of human rights, such as Universalistic Approach and Relativist Approach. A number of theories have been formulated whereby the concept of human rights is sought to be explained through particular standpoints. Accordingly, the fourth, fifth, sixth units deal with important theories, such as classical liberal theory of human rights, natural, legal and historical theories of human rights and modern theories of human rights. The concept of human rights is examined from various perspectives. Accordingly the seventh, eight and ninth units focus on the feminist perspective, Marxist perspective and third world perspectives on human rights. Right to health is one of the important rights which helps an individual to lead a dignified life. Right to health constitutes basis of enjoying other rights by the individual. The tenth unit discusses the relationship between health and human rights, importance of right to health and the role of the World Health Organisation in this regard. In a democratic country, the process of development and human rights norms must go together. The greatest success of democracy lies with the very idea of human development and human rights. But in the age of globalization, the activities on the part of neo-liberal state mechanism have undermined certain humanitarian issues which ultimately effect the whole process of development and human rights. In the eleventh unit this aspect of human rights, i.e. developement and human rights has been highlighted. The issues related to human rights have become more complicated particulary in the context of global political economy. Accordingly the twelft unit discusses the idea of human rights in the global political economy. The thirteenth unit focuses on the impact of environmental degradation on human rights. The fourteenth unit deals with one of the very important concepts, i.e Human Rights Education which is very important for developing human personality, promoting fraternity and maintaining peace in the society. The last unit of this course discusses the relationship between human rights and human security and various issues and challenges in this regard.

The course "Human Rights : Theory" is divided into two blocks– Block 1 and Block 2. Block 1 contains six units (Unit 1-6) and Block 2 contains nine units (Unit 7-15).

BLOCK INTRODUCTION

This is the first block of the second course or paper of Krishna Kanta Handiqui State Open University's M.A. Third Semester Programme in Political Science. The second course or paper of the MA Third Semester Programme in Political Science is titled "Human Rights: Theory". The first block of this course contains six units (Units 1-6).

The First Unit introduces the learners to the basic knowledge regarding the meaning, nature and sources of human rights.

The Second Unit discusses the evolution of human rights.

The Third Unit focuses on two important approaches of human rights, i.e. the Universalistic Approach and the Relativist Approach.

The Fourth Unit deals with the Classical Liberal theory of human rights.

The Fifth Unit focuses on the Natural, Legal and Historical theories of human rights.

The Sixth Unit discusses the modern theories of human rights.

While going through the units of the block, you will find that unit is further divided into certain sections and sub-sections, wherever necessary, for your better understanding. Again, the units carry certain activities after a particular section where needed. These "ACTIVITIES" will provide you the opportunity to practically apply your own thoughts based on the knowledge gained from reading the text in a particular section. Besides, in order to give you additional information on certain relevant topics, you will find a category called "LET US KNOW" after the sections in each unit. Another category that has been included at the end of each section of a particular unit is "CHECK YOUR PROGRESS". The purpose of this category is to help you to asses for yourself as to how thoroughly you have understood a particular section. You may then match your answers with "ANSWERS TO CHECK YOUR PROGRESS" given at the end of each unit. The section "FURTHER READING" in each unit contains the names of a few books which you might want to consult if you are intereted in learning more elaborately about the concepts discussed in a particular unit. Furthermore, the category called "POSSIBLE QUESTIONS" is intended to give you a hint of the type of questions you are likely to get in the examination.

UNIT 1: MEANING, NATURE AND SOURCES OF HUMAN RIGHTS

UNIT STRUCTURE

1.1 Learning Objectives

1.2 Introduction

1.3 Concept and Meaning of Human Rights

1.4 Nature of Human Rights

1.5 Sources of Human Rights

1.6 Let Us Sum Up

1.7 Further Reading

1.8 Answers to Check Your Progress

1.9 Possible Questions

1.1 LEARNING OBJECTIVES

After going through this unit, you will be able to-

- explain the meaning of human rights
- discuss the nature of human rights
- describe the sources of human rights.

1.2 INTRODUCTION

Human Rights are the basic necessities for individuals to lead a dignified life. Each and every human being of this world are entitled to certain rights and privileges without which they cannot lead a dignified life. Human rights are inherent and inalienable rights of a person by virtue of the fact that he or she is a human being. These rights are equal to all persons irrespective of race, religion, nationality, language, sex or any other factor. Human rights enable one to respect the rights of others. In this sense human rights do not connote only the rights which are requested or demanded but also rights which are respected and be responsible for dignified life of others. Denial of human rights creates havoc and unrest in the society, ultimately leading to the stage of violence and conflict within

and between societies. In this unit discussion will be made on the meaning, nature, characteristics and evolution of human rights.

1.3 CONCEPT AND MEANING OF HUMAN RIGHTS

Human beings are rational beings. They, by virtue of their being human, posses certain basic and inalienable rights which are commonly known as human rights. These rights belong to them because of their existence. Therefore, these rights become operative with their birth. Human rights as birth right are part of all individuals irrespective of their caste, creed, religion, sex and nationality. In fact, the very foundation of human rights is based on the concept that every human being is born equal in this world and he or she must have the equal opportunity to pursue a life with dignity. These rights are essential for them as they give them freedom and dignity and help them in their physical, moral, social and spiritual welfare. Because of their immense significance to human beings, human rights are also sometimes referred to as fundamental rights, basic rights, inherent rights, natural rights and birth rights.

The meaning of human rights becomes more visible in the ways in which it has been defined. In simple language, human rights can be defined as the rights all people have by virtue of their being human. The rights which protect and maintain the dignity of individuals can be termed as human rights.

The United Nations Centre for Human Rights defines human rights as" those rights which are inherent in our nature and without which we cannot live as human being".

The World Conference on Human Rights in 1993 in Vienna stated in the declaration that all human rights derive from the dignity and worth inherent in the human person, and that the human person is the central subject of human rights and fundamental freedoms.

D. D. Basu defines human rights as those minimum rights which every individual must have against the state or other public authority by virtue of his being a member of human family, irrespective of any other consideration.

According to Kim, human rights represent "claims and demands essential to the protection of human life and enhancement of human dignity and should therefore enjoy full social and political sanctions".

Louise Arbour, the High Commissioner of the Office of the United Nations High Commission for Human Rights says "Human rights are our common heritage and their realization depends on the contributions that each and every one of us is willing to make, individually and collectively, now and in the future".

Human rights are, therefore, those rights which belong to an individual as a consequence of being human. An individual can seek human rights only in an organized community, that is, a state where the civil social order exists. Human rights should be protected and made available to all. The functions of all the laws should be to protect them in the interest of the humanity.



CHECK YOUR PROGRESS

Q.1: State the definition of human rights provided by the United Nations Centre for Human Rights.

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Q.2: Write briefly about the meaning of human rights.

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1.4 NATURE OF HUMAN RIGHTS

Human rights are those rights those one has simply because he or she is a human being. These are considered as universal, equal, inalienable rights which every human being has regardless of any kind of distinctions.

In other words it can be said that human rights are inalienable and universal in nature. Every individual must be entitled to these rights equally and without any kind of discrimination. These rights are basic minimum requirements for the survival of human beings. The basic foundation of the concept of human rights is that it is based on the respect for the dignity and worth of each human being. Each and every person of this world must show due respect to other's rights. Human rights can be enjoyed only within the state and the state authority must take initiative to enforce and protect these rights. At the same time these rights also set positive limitations on the state power and prevent the state authority from unnecessary encroachment in the life of the individual.

The characteristics of human rights can be mentioned as follows:

- Human rights are inalienable: Every human being is entitled to human rights due to the very existence of the person as a human being. They are inherent in all human beings irrespective of their sex, caste, creed, religion and nationality.
- Human rights are universal: Human rights are universal in nature. These are applicable to all without any consideration and without exception. Human rights are always been of universal concern of human being.
- Human rights are dynamic: Human rights are not static, they are dynamic. New perspectives and new forms of rights are being evolving with the changing time. Human rights are evolving over the years to meet the new challenges.
- Human rights are permanent: Human rights are permanent. They cannot be away from individual by any authority. These rights originate with the birth of individual.
- Human rights are not absolute: Though human rights are birth rights, they are not absolute. For the common good and greater interest of the society and the state certain restrictions can be imposed enjoyment of the rights. Again human rights should be enjoyed in such a manner that it does not lead to disturbance to the other people of the society.

- Human rights are of individual as well as collective rights: Human rights are rights of individual as well as group of individuals. Some of the human rights can be enjoyed by the person alone and some are enjoyed as a group. For example right to life is an individual right and right to development is a collective right.

VARIOUS KINDS OF HUMAN RIGHTS

Though human rights are classified into various categories, absolute and complete separation of these rights is not possible. These rights are indivisible and interdependent. All human rights are equally important for the survival and dignified life of human being. Classification of human rights into various kinds is made only for better understanding of human rights. Various kinds of human rights are discussed below:

- Civil and Political Rights: Civil rights refer to those rights which are related to the life, liberty and property of individuals. These rights are very essential for civilized and dignified life. Example of civil rights are- right to life, right to liberty, life to property etc. Political rights are those rights which provide opportunity to the individuals to take part in political affairs of the state. Some of the political rights are- right to vote, right to be elected, right to criticize government policy etc.
- Economic, Social and Cultural Rights: Economic, social and cultural rights are very important for survival of human being. Without these rights individual cannot lead a decent life. These rights are essential for ensuring social equality and social justice. Example of some economic, social and cultural rights are right to work, right to education, right to social security, right to leisure, right to participate in the cultural life.
- Collective Rights: Collective rights are also called solidarity rights. These rights are enjoyed by groups at the community level. Some of these collective rights are - right to self determination, right to development, right to peace etc.

1.5 SOURCES OF HUMAN RIGHTS

In the contemporary time the main source of human rights is the Universal Declaration of Human Rights adopted by the UN General Assembly in 1948. The UDHR is regarded as the yardstick for achieving human rights by all the countries. It contains basic civil, political, social, economic and cultural rights. Apart from the UDHR, two Covenants adopted by the UN, such as International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights are also considered as important sources of human rights. Various other human rights treaties and documents adopted by various international and regional organisations, such as the Council of Europe, the Organisation of American States, the European Union etc also constitute important sources of human rights. Some of the such documents are- the American Convention on Human rights of 1969, the European Convention of Human Rights and Fundamental Freedom of 1950, the African Charter on Human and People's Rights of 1981 etc.



CHECK YOUR PROGRESS

Q.3: Write briefly about any two characteristics of human rights.

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Q.4: Collective rights are enjoyed by individuals at …… level. (Fill in the blank)

Q.5: Write briefly about civil and political rights.

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Q.6: Write a short note on the sources of human rights.

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1.6 LET US SUM UP

- Human Rights are the basic necessities for individuals to lead a dignified life. Each and every human being of this world are entitled to certain rights and privileges without which they cannot lead a dignified life. Human rights are inherent and inalienable rights of a person by virtue of the fact that he or she is a human being. These rights are equal to all persons irrespective of race, religion, nationality, language, sex or any other factor.
- Human rights are, therefore, those rights which belong to an individual as a consequence of being human. An individual can seek human rights only in an organized community, that is, a state where the civil social order exists. Human rights should be protected and made available to all. The functions of all the laws should be to protect them in the interest of the humanity.
- The basic foundation of the concept of human rights is that it is based on the respect for the dignity and worth of each human being. Each

and every person of this world must show due respect to other's rights. Human rights can be enjoyed only within the state and the state authority must take initiative to enforce and protect these rights. At the same time these rights also set positive limitations on the state power and prevent the state authority from unnecessary encroachment in the life of the individual.

- Some characteristics of human rights are- human rights are inalienable, human rights are universal, human rights are dynamic, human rights are permanent, human rights are not absolute, human rights are of individual as well as collective rights etc.
- Human rights are of various kinds, such- civil and political rights, socio-economic and cultural rights, collective rights etc.
- Some of the important sources of human rights are- Universal Declaration of Human Rights, International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights, the American Convention on Human rights of 1969, the European Convention of Human Rights and Fundamental Freedom of 1950, the African Charter on Human and People's Rights of 1981 etc.



1.7 FURTHER READING

1. Agarwal, H.O. (2006). *Human Rights*. Allahabad: Central Law Publications.
2. Stephen, R.M. (2002). *Human Rights: Concepts and Perspectives*. New Delhi: Concept Publishing Company.
3. Syed, M.H. (2003). *Human Rights: The New Era*. New Delhi: Kilaso Books.
4. Yasin, Adil-ul & Upadhayay, Archana. (2004). *Human Rights*. New Delhi: Akansha Publishing House.

1.8 ANSWERS TO CHECK YOUR PROGRESS

Ans. to Q. No. 1: The United Nations Centre for Human Rights defines human rights as" those rights which are inherent in our nature and without which we cannot live as human being".

Ans. to Q. No. 2: Human beings are rational beings. They, by virtue of their being human, posses certain basic and inalienable rights which are commonly known as human rights. These rights belong to them because of their existence. Therefore, these rights become operative with their birth. Human rights as birth right are part of all individuals irrespective of their caste, creed, religion, sex and nationality. In fact, the very foundation of human rights is based on the concept that every human being is born equal in this world and he or she must have the equal opportunity to pursue a life with dignity. These rights are essential for them as they give them freedom and dignity and help them in their physical, moral, social and spiritual welfare. Because of their immense significance to human beings, human rights are also sometimes referred to as fundamental rights, basic rights, inherent rights, natural rights and birth rights.

Ans. to Q. No. 3: (i) Human rights are inalienable: Every human being is entitled to human rights due to the very existence of the person as a human being. They are inherent in all human beings irrespective of their sex, caste, creed, religion and nationality.

(ii) Human rights are universal: Human rights are universal in nature. These are applicable to all without any consideration and without exception. Human rights are always been of universal concern of human being.

Ans. to Q. No. 4: community.

Ans. to Q. No. 5: Civil and Political Rights: Civil rights refer to those rights which are related to the life, liberty and property of individuals. These rights are very essential for civilized and dignified life. Example of

civil rights are- right to life, right to liberty, life to property etc. Political rights are those rights which provide opportunity to the individuals to take part in political affairs of the state. Some of the political rights are- right to vote, right to be elected, right to criticize government policy etc.

Ans. to Q. No. 6: In the contemporary time the main source of human rights is the Universal Declaration of Human Rights adopted by the UN General Assembly in 1948. The UDHR is regarded as the yardstick for achieving human rights by all the countries. It contains basic civil, political, social, economic and cultural rights. Apart from the UDHR, two Covenants adopted by the UN, such as International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights are also considered as important sources of human rights. Various other human rights treaties and documents adopted by various international and regional organisations, such as the Council of Europe, the Organisation of American States, the European Union etc also constitute important sources of human rights. Some of the such documents are- the American Convention on Human rights of 1969, the European Convention of Human Rights and Fundamental Freedom of 1950, the African Charter on Human and People's Rights of 1981 etc.



1.9 POSSIBLE QUESTIONS

Q. 1: State the meaning of collective rights.

Q. 2: Write about the meaning of human rights.

Q. 3: Explain various kinds of human rights.

Q. 4: Explain the sources of human rights.

Q. 5: Discuss the nature and characteristics of human rights.

*** ***** ***

UNIT 2: EVOLUTION OF HUMAN RIGHTS

UNIT STRUCTURE

2.1 Learning Objectives

2.2 Introduction

2.3 Evolution of Human Rights

2.4 Evolutionary Theories of Human Rights

2.5 Three Generations of Human Rights

2.6 Let Us Sum Up

2.7 Further Reading

2.8 Answers To Check Your Progress

2.9 Possible Questions

2.1 LEARNING OBJECTIVES

After going through this, you will be able to-

- explain the evolution of human rights
- describe three generations of human rights
- discuss evolutionary theories of human rights.

2.2 INTRODUCTION

From the previous unit, we all have understood that human rights are the basic rights and freedoms without which no individual can develop his or her personality. In other words, human rights are the basic requirements of everybody's life. The concept of human rights is not a new concept. This concept has assumed its present shape by passing through various stages. In this unit we shall discuss evolution of human rights in detail.

2.3 EVOLUTION OF HUMAN RIGHTS

The term human right is comparatively of recent origin. But the idea of the human dignity is as old as history of human civilization. Even, the history of mankind has been firmly associated with the struggle of individuals against exploitation. The roots for the protection of rights of human being

may be traced back to the Babylonian laws. The Babylonian King Hammurabi had issued a set of laws to his people which were called Hammurabi's code, granted fair wage, offered protection of property and required charges to be provided at trial. This kind of precedent and legally binding document protected people from arbitrary prosecution and punishment. The Dharma of the Vedic period in India devised different sets of standards for human rights. The Jurisprudence of Xo-Tze and the teaching of Confucius in China also contained indication for the protection of human society. Thus all major religions have a humanist perspective that supports human rights and security.

- **Human Rights In Greco-Roman Period**

  In philosophy, the development of the notion of natural rights of human being was contributed by the stoic philosophers. They first developed natural law theory and by virtue of it they explained the nature of human rights, that is, the right that every human possesses by virtue of being human. It may be noted that the citizens of the Greek City state enjoyed some basic rights even before the formulation of natural law theory by the stoic philosophers. They were in particular:

  - Right to the freedom of speech
  - Right to the equality before law
  - Right to the equal law for all

  According to Greek philosophers, the laws of nature were unwritten. According to them, human beings are born with inalienable human rights. The stoic philosophers formulated the theory of natural law after the breakdown of Greek states. The central notion of the stoic philosophy was that the principles of natural law were universal in their nature. The idea of justice, at the early stage in Greek philosophy, was a guiding principle not only for the behaviour of the individual, but also for the society.

  In part because the Hellenstic stoicism played a key role in its formation and spread, Rome law had allowed the existence of a Jus naturale (natural law) and the pursuant to the jus gentium (law of nation), contain universal rights that extended beyond the rights of

citizenship. According to the Roman jurist Ulpian, natural law was that which nature not the state assures to all human beings, Roman citizen or not. They believed in the universal brotherhood of man and they relate what they considered to be the 'innate reason 'of man to cosmic order.

- **Christian Period:**

At this stage natural law was considered as Will of God revealed to man by Holy Scriptures. According to Christian father of laws, government and property were the product of sin and so human laws were contrary to laws of God and hence should be discarded and ignored. Thus, Church as the exponent of divine laws could override the laws.

- **Human Rights in Medieval period:**

The concept of natural law or rights gained importance in the middle ages. It was St. Thomas Aquinas who made an important attempt to harmonise the teachings of the Church with those of natural laws. He distinguished between four kinds of law in his 'Summa Theology'. He observed that the law of nature was the discovery of eternal law through reason and reason was the manifestation of religion. However, St. Augustine advocated for natural rights and natural laws and their elaborations were directed towards safeguarding the supremacy of the Church rather than upholding the right of individuals.

- **Social Contractualist:**

The fundamental philosophy of human rights arose from the idea of positive law. According to Thomas Hobbes (1588-1679) natural laws were very vague and too open to vast differences of interpretation. John Locke had often been seen as the important figure of the development of human rights thinking. He claimed that every human being have right to life, liberty and property. These ideas were based on the idea of rational, equal men and the natural rights.

The concept of natural right was pervasive in America. The American Declaration of Independence (1776) certainly reflected

Lockean ideas, as it claims it is self -evident that all men are created as equal and all have right to life and liberty to pursue happiness.

- **Views of Positivist:**

  After the decline of the natural law conception of human rights, positive law evolved and legislation became the main source of human rights. John Austin and Jeremy Bentham are the prominent writers of positivist law. Under positive law, instead of human rights being absolute, they can be given, taken away and modified by a society to suit its needs.

- **British Magna Carta (1215):**

  This great Charter provided a new framework for the relationship between the King and his subjects. For the first time it established that everybody, including the King, was subject to the law. Most importantly, it gave all 'free men' the right to justice and also introduced the concept of jury trial.

- **The Petition of Rights (1628)**

  This petition was sent by the English Parliament to King Charles I. It included the demands that the King could not impose tax on the people without the Parliament's consent nor imprison people without cause.

- **The Bill of Rights (1689):**

  This English document set out certain political and civil rights including the freedom to elect members to the Parliament, the protection of free speech in Parliament that the King or Queen could not interfere with the law.

- **American War of Independence (1776) & French Revolution (1789)** :

  Two major events took place during the 18th century in the United States of America (1776) and in France (1789) also played an important role towards the development of the concept of human rights. The Virginia Declaration of Rights (1776) provided a number of fundamental rights and freedoms. The United States Declaration of

Independence included concepts of natural rights and stated that all men are created equal, that they are endowed with certain unalienable rights, such as right to life, liberty and the right to pursue happiness.

Similarly, the French Declaration of the Rights of Man and Citizen set out the universal and inalienable rights of men. It stated that all are born equal and free, all can participate in civil and political life, can think and speak freely, be presumed innocent until proven guilty and that all have the right to own private property.

- **Human Rights in post World War period:**

In 1944, delegates from the United States, the United Kingdom, Soviet Union and the Republic of China- four of the allied powers in World War II met in Washington, DC to negotiate the parameters of the post war world and with the efforts of the world community the United Nations was established in 1945. The United Nations played a great role in standardizing human rights norms. The Universal Declaration of Human Rights, adopted by the UN General Assembly in 1948, contained all those important rights which are considered as pivotal rights for human being. In 1966 the UN adopted the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. These two Covenants were binding on the signatory countries. Apart from these the United Nations has adopted other documents through which it has tried to standardize human rights norms which are universally accepted.

Thus we can say that the concept of human rights has passed several stages of evolution and by passing though several stages it has assumed its present shape.

2.4 EVOLUTIONARY THEORIES OF HUMAN RIGHTS

In order to gain basic understanding of the concept of human rights one should look at certain theories of the subject so that the shifting priorities of rights during different phases of history could be observed. Some of the

important theories regarding evolution of human rights can be discussed as follows:

- **Theory of Natural Rights:**

  This is the earliest theory of right and its origin can be traced back to the ancient Greeks. According to this theory, rights belonged to man by nature and thus are self-evident truth. They were considered as inborn, absolute, pre-civil and according to some, even pre-social. They can be asserted anywhere and everywhere. Thomas Paine, Grotius and John Locke, to name a few, are the main exponents of this theory. These theorists derived their ideas about rights from God, reason or prior moral assumption. To them every individual possess a unique identity and is expected to account his or her action as per own conscience.

  However, the critics of the natural right theory argue that rights are not abstract, absolute and unidentified phenomena. So restrictions upon rights create social condition as everyone has a share to develop his or her personality and correspondingly has his or her obligation to others. Right and obligation, in fact, are the two side of the same coin.

- **Legal Theory of Rights:**

  This theory is a reaction against the theory of natural rights. Advocates of this theory argue that the idea of natural law and the natural right are abstract. Thomas Hobbes, John Austin and Jeremy Bentham are the main profounders of this theory. According to them, rights are purely utilitarian concept and thus rules and regulations are necessary for the identification and protection of one's rights. Toward this end, every individual is to sacrifice certain rights and freedom for the general welfare of the society.

  The theory has been severely criticized on the ground that law alone does not create rights. It recognise and protects them. Truth in this theory lies in the fact that it enables individual to demand certain specific and recognized rights as guaranteed by the state.

- **Anti-Utilitarian Theory of Rights:**

There are yet other theorists who strongly argue that the priority of well being of the majority as stated by the utilitarians is not the prime object of the state. Among them Dowrkin, Nozic and John Rawls are the leading ones.

They hold the view that the welfare of the majority might lead to detrimental consequences as the welfare of a person or a group of persons is concerned. So there has to be proper reconciliation between the well being of majority and individual well-being for the better enjoyment of the social rights and individual rights. Today, the demand for right to development is perhaps the manifestation of the story.

- **Legal Realistic Theory of Right:**

The legal realist theory of rights is of recent origin. It mainly originated in USA with the expansion of regulatory activities followed by President Roosevelt's "New Deal Policy". A group of jurists such as Karl Liewellyn, Roscoe Pound and others discussed the point as to what law is in highly complex and industrialized society. These theorists did not propound a common theory of rights. Rather, they considered right as the end of both the interaction of prevailing more value of the society as well as the board- based international shearing of values.

- **Marxist Theory of Rights:**

According to Marx, rights are simply a bourgeois concept and product of bourgeois capitalist society primarily designed to reinforce the predominant position of the ruling class. He regarded the state as a coercive agency to uphold the particular type of social organization and law is a tool of the state that perpetuates and safeguards the interest of the dominant group in the society. Karl Marx firmly believed that rights can exist and flourish only in classless society where all are equal and no one is exploiter. Social and economic rights are thus the main concern of this theory.

- **Socialist Welfare Theory of Rights:**

According to the social welfare theory, rights are created by society which aim at realizing social welfare. Conditions which make the individual and society happy are rights and this should have precedence over customs, usages, traditions and natural rights. This theory looks at society through the angle of social welfare. The theory has great merit in upholding the principle of social welfare. Utilitarians who supported the theory have made a practical approach to rights and have advocated legislations in different fields of rights.

- **Idealist Theory of Rights:**

The idealist or personality theory says that human being needs the congenial external conditions for the development of his personality. T.H. Green, the idealist thinker of England said that rights are power necessary for the fulfillment of individual's vocation as the moral being. Krause, Henriki and wilde hold that without rights human being cannot become his or her best self.

It is implied that rights arise in a society, and the rights of the individual are to be linked with the individual good and the common good of all. The theory linked with the moral development of man, and look rights essentially from the ethical point of view. The opportunities on rights are to be enjoyed by the individual and the society. Hence they are to be understood in a social context. As the individual wants to develop his personality, others in society have the similar aim.

According to the idealists like Kant and Green, conditions for the individual's ethical and moral development are created by the state. They expect the individual to surrender himself completely to the state.

- **Historical Theory of Right:**

As per the historical theory of rights, right are the results of historical evolution. In ancient time, rights were based on custom and usages. But in the modern state, rights are recognized and supported by law. In the course of ages, human being in society evolved certain usages, tradition and customs for the common goods

and this unwritten form became the basis of law, which give the rights to the individuals in actual written form. To the primitive man, customs were unwritten laws.

A custom which people go on following generation after generation become a customary right, and this provide the basis for law. The theory says that the several rights rose as a result of historical evolution. When the state was evolved, human being must have had certain customs and traditions hardened by time and this provided an evolution. Besides, certain rights are created by law, and they do not have history as the source of their origin.

All products of history or custom cannot be regarded as right or continued as rights. For example, in some countries in ancient time, buying and selling slave was a custom or right of slave dealers. So we can see that long-standing customs can come in the way of rights instead of becoming rights themselves.

Thus it is evident from the above theories that there is not a single theory which can adequately explain the origin and nature of rights. Each theory is the product of its own time and in conformity with the genius of the people with whom the profounder of the theory were associated. There is some elements of truth in all such theories. But there is one external truth which cannot be ignored; that individual and social good go together. Society is an organic unit and welfare of the community is built upon the welfare of the individuals, both go hand in hand.



CHECK YOUR PROGRESS

Q.1: Write briefly about the concept of rights during the medieval period.

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Q.2: Write briefly about the Marxist theory of rights.

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Q.3: Mention one important provision of the Petition of Rights (1628).

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2.5 THREE GENERATIONS OF HUMAN RIGHTS

Indivisibility and interdependence are the basic features of human rights. Therefore, there cannot be different kinds of human rights. All human rights are equal in importance and are inherent in all human beings.

The classification of human rights into three generations was initially developed by a Czech jurist Karal Vasak at the International Institute of Human Rights in Strasbourg in 1979. Vasak, inspired by the three normative themes of the French Revolution, classified human rights into three categories-

- First Generation - Civil and Political rights (Liberte)
- Second Generation- Economic ,Social and Cultural rights(Egalite)
- Third Generation - Solidarity or Collective rights (Fraternite) which include right to development, peace, common heritage, protection of environment and humanitarian assistance.

First Generation of Human Rights:

First generation of human rights are fundamentally civil and political as well as individualistic in nature. The rights of the first generation derive primarily from the seventeenth and eighteenth century reformist theories which are associated with the English, American and French Revolution. These rights are often called 'Blue Right' as they deal essentially with liberty and participation in political life. But, the genesis of these rights may be

traced back to the Magna Carta (1215) and the Right of Englishmen as expressed in the English Bill of Right (1689). However, these rights were for the first time incorporated and manifested in the Universal Declaration of Human Rights (1948) and International Covenant on Civil and Political Rights (1966) from article 3 to 21.

The civil rights provide minimal guarantee of physical and moral integrity and allow individuals their own sphere of conscience and belief. For example - Right to life; Right to liberty and security of persons; Right to privacy; Right to home and correspondence; Right to own property; Freedom from torture, inhuman and degrading treatment ; Freedom of thought , conscience and religion and Freedom of movement.

Political rights are necessary in order to participate in the life of the community and society. For example- Right to vote ; Right to assemble ; Right to speech and expression ; Right to be elected ; Freedom from torture and abuse etc.

Although the nature of civil and political rights may be different but they are inter-related to each other. Both the rights are equally important.

Second Generation of Human Rights:

The second generation of human right emerged with the Bolshevik Revolution in Russia (1917). These rights are generally economic, social and cultural in nature. They are based on the ideas of equality and guaranteed access to essential social and economic goods, services and opportunities. These rights became increasingly a subject of international recognition with the effects of early industrialization and the rise of working class. These led to the new demands and new ideas about the meaning of a life of dignity.

- Social rights are those that are necessary for full participation in the life of society. They include, at least, the right to education and the rights to find and maintain a family. However many other rights are also regarded as civil right, for example, the right to recreation, health care and privacy and freedom for discrimination.
- Economic rights are the right to work, to an adequate standard of living, to housing and the right to pension. The economic rights reflect

the fact that a certain minimal level of material security is necessary for human dignity.

- Cultural rights refer to a community's cultural way of life and the right to freely participate in the cultural life of the community and also the right to education.

Third Generation of Human Rights:

The third generation of human right emerged in the 20th century. These rights are of relatively recent origin and a positive response to the phenomenon of global interdependence. The third generation of human rights are called Green Rights as these rights found its manifestation in many international environment related programmers like - Stockholm Declaration (1972), The idea of the bases of the third generation of rights is that of solidarity and the rights embrace collective right of society or people- such as the right to sustainable development, to peace or to a healthy environment.

The specific rights that are most commonly included within the category of third generation rights are the right to development, right to self determination ; right to healthy environment ; right to rationality and sustainability ; right to participate in cultural heritage ; right to minority, ethnic, linguistic or religious group etc.

Thus, from the above discussion it can be said that the first generation of the human rights are negative in nature as these right prohibits the state from denying the political rights and freedom to the individuals. The second generation of rights are largely positive in nature. The states have been placed in one form of obligation or another including the international obligation to provide for socio-economic and cultural rights.

The third generation of human rights refers to the cultural rights to minorities in a large country to preserve their cultural instruction and practice. It strengthens their allegiance and commitment to the nation. It promotes unity in diversity. Moreover, existence of variety of culture encourages various cultural groups to learn new language, to study literature of those languages, adopt new art forms and learn new skills. In short third generation rights seek to endow individual with the benefits of world citizenship.

Recently the fourth generation of human rights has also come up. These rights have developed to serve some of the particular needs of the present day. Examples of this category rights are gay right, lesbian rights etc.



CHECK YOUR PROGRESS

Q.4: Who divided the human rights into three generations of right?

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Q.5: Mention any three first generation of rights.

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Q.6: Write briefly about third generation of rights.

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2.6 LET US SUM UP

- The term human right is comparatively a recent origin. But the idea of the human dignity is as old as history of human civilization. Even, the history of mankind has been firmly associated with the struggle of individuals against exploitation. The roots for the protection of rights of human being may be traced back to the Babylonian laws. And the Dharma of the Vedic period in India devised different set of standards for human rights. The Jurisprudence of Xo-Tze and the teaching of Confucius in China also contained indication for the protection of human society. Thus all major religions have a humanist perspective that supports human rights and security.
- Evolution of human rights to a more comprehensive form took a long period of time. Its origin can be traced back to the ancient thought

and philosophical concepts of 'natural law' and 'natural rights'. Some of the important documents of the early period which contained human rights provision are- the Magna Carta of 1215, the American Declaration of Independence of 1776, the French Declaration on the Rights of Men of 1789.

- The concept human rights evolved in the proper sense of the term with the establishment of the United Nations. The United Nations Charter fully universalized the whole concept of human rights. Some of the important documents adopted by the UN in the field of human rights are- the Universal Declaration of Human Rights in 1948, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights in 1966.
- There are various theories regarding evolution of human rights.
- The evolution of human rights can also be discussed in terms of Three Generations of Rights. The first generation rights are the earliest form of rights that emerged in Europe in the 18th century and these rights are basically civil and political rights such as right to life, liberty and property, right to vote, right to be elected etc. The second generation rights emerged with the working class movement in the 19th century and these rights are fundamentally social, economic and cultural in nature such as right to employment, right to equal wages, right to social security etc. The third generation human rights, emerged in the 20th century, are group rights and developed as a result of global consensus on some particular issues. Some of these rights are- right to self determination, right to a healthy environment, right to sustainable development etc.



2.7 FURTHER READING

1. Agarwal, H.O. (2006). *Human Rights*. Allahabad: Central Law Publications.

2. Syed, M.H. (2003). *Human Rights: The New Era*. New Delhi: Kilaso Books.
3. Yasin, Adil-ul & Upadhayay, Archana. (2004). *Human Rights*. New Delhi: Akansha Publishing House.

2.8 ANSWERS TO CHECK YOUR PROGRESS

Ans. to Q. No. 1: The concept of natural law or rights gained importance in the middle ages. It was St. Thomas Aquinas who made an important attempt to harmonies the teaching of the Church with those of natural laws. He distinguished between four kinds of law in his 'Summa Theology'. He observed that the law of nature is the discovery of eternal law through reason and reason is the manifestation of religion. However, St. Augustine advocated for natural rights and natural laws and their elaboration were directed towards safeguarding the supremacy of the Church rather than upholding the right of individuals.



Ans. to Q. No. 2: According to the Marx, rights are simply a bourgeois concept and product of bourgeois capitalist society primarily designed to reinforces the predominant position of the ruling class. He regarded the state as a coercive agency to uphold the particular type of social organization and law is a tool of the state that perpetuates and safeguards the interest of the dominant group in the society. Karl Marx firmly believed that rights can exist and flourish only in classless society where all are equal and no one is exploiter. Social and economic rights are thus the main concern of this theory.

Ans. to Q. No. 3: One important provision of the Petition of Rights was that the King could not impose tax on the people without the Parliament's consent nor imprison people without cause.

Ans. to Q. No. 4: Czech jurist Karal Vasak

Ans. to Q. No. 5: Right to life; Right to liberty and security of persons; Right to privacy.

Ans. to Q. No. 6: The third generation of human right has emerged in the 20th century. These rights are of relatively recent origin and a positive response to the phenomenon of global interdependence. The third generations of human right are called Green Rights as these rights found its manifestation in many international environment related programmers like - Stockholm Declaration (1992), The idea of the basses of the third generation of right is that of solidarity and the right embrace collective right of society or peoples- such as the right to sustainable development, to peace or to a healthy environment. The specific rights that are most commonly include within the category of third generation rights are the right to development, right to self determination ; right to healthy environment ; right to rationality and sustainability ; right to participate in cultural heritage ; right to minority, ethnic, linguistic or religious group etc.



2.9 POSSIBLE QUESTIONS

Q. 1: Write briefly about the theory of natural rights.

Q. 2: Write briefly about the evolution of human rights in the post world war period.

Q. 3: Explain the three generations of human rights.

Q. 4: Discuss the evolution of human rights.

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UNIT 3: UNIVERSALISTIC APPROACH AND RELATIVIST APPROACH TO HUMAN RIGHTS

UNIT STRUCTURE

3.1 Learning Objectives

3.2 Introduction

3.3 Main arguments of the Universalistic Approach and its criticism

3.4 Main arguments of the Relativist Approach and its criticism

3.5 Let Us Sum Up

3.6 Further Reading

3.7 Answers to Check Your Progress

3.8 Possible Questions

3.1 LEARNING OBJECTIVES

After going through this unit, you will be able to-

- discuss the Universalistic approach to the study of Human Rights and criticisms against this approach
- describe the Relativist approach to the study of Human Rights and find out the criticisms against this approach.

3.2 INTRODUCTION

Rights constitute an important element in the life of an individual. Without rights one can't think of leading a dignified life. Every individual is entitled to enjoy certain basic rights, which we call human rights. However, there are arguments whether human rights are same all over the world or they are society and culture specific. The Universalistic and Relativist approaches offer important arguments regarding this. The Universalistic approach holds that human rights are of common nature all over the world. But the Relativist approach holds that human rights can't be common, they differ on the basis of norms and values of society and culture. In this unit we shall critically discuss Universalistic and Relativist approaches.

3.3 MAIN ARGUMENTS OF THE UNIVERSALISTIC APPROACH AND ITS CRITICISM

The Universalistic approach is one of the important approaches to the study of human rights. This approach believes that all individuals should enjoy certain rights as human beings. These rights are common to all individuals living in different parts of the world. These rights are very important and therefore, should be available to all irrespective of the priorities of society and culture. In short, human rights are universal.

The advocates of the concept of universalism of human rights believe that there are certain rights which should be available to all human beings irrespective of their nationality, society and culture, like right to life, right to freedom, right to protection etc. They base this concept on three jurisprudential theories - the natural law theory, the theory of rationalism and the theory of positivism. The natural law theory emphasizes on certain human rights which should be common to all individuals of all nation-states. The theory of rationalism believes that every individual because of their universal capacity to think rationally, possesses certain common rights. And the theory of positivism accepts the existence of universal human rights as most of the states have already recognized common human rights instruments in the world. The universalistic character of human rights becomes popular particularly after the adoption of the UN Charter in 1945. Till now, this has been adopted and ratified by 193 member states and all of them have resolved to protect and promote human rights as has been propagated by the UN Charter. The very objectives of the UN read - to reaffirm faith in fundamental human rights, in the work and dignity of human persons and equal rights of men, women and nations large and small and to promote social progress and better standard of life in larger freedom. Thus, the UN stands for human rights which are universal in character and all its member states should co-operate to preserve them for the greater interest of humanity. The UN has adopted the Universal Declaration of Human Rights in 1948 which can be regarded as the international standard for the rights of all human

beings of the world. It is a comprehensive document of various social, economic, political, cultural and other rights. The United Nations Human Rights Council is there to supervise the conditions of promotion and protection of human rights all over the world. The International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) are the other human rights documents adopted by the UN to give effect to its effort for universal recognition of the basic rights of all individuals.

Besides, there are different regional documents which strengthen the UN movement for universalisation of human rights. The European Convention for the Protection of Human Rights and Fundamental Freedoms was signed in1950 and came into force in 1953. It enlists 20 human rights and freedoms which include right to life, freedom from torture or inhuman or degrading treatment or punishment, freedom from slavery or servitude, freedom from forced or compulsory labour, right to liberty and security of person, right to fair and public hearing, etc. It has been clearly mentioned in the Convention that these rights are available to everyone without any discrimination on the grounds of sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. Likewise, the American Convention on Human Rights, 1969 endorses that the essential rights of man are based on the attributes of human personality, and not upon one's being a national of a certain state and thus, recognizes the international character of human rights. It includes 23 civil and political rights. The African Charter on Human and People's Rights is another regional human rights document adopted in 1981. The preamble to the Charter of the African Charter on Human and People's Rights mentions that the fundamental human rights stem from the attributes of human beings and this justifies their international protection and guarantee for respect of basic human rights.

- **Criticisms**

  Various criticisms have been developed against the Universalistic approach of human rights. Criticism comes particularly from the

advocates of the Relativist approach. Their main point of argument is that as human rights are basically based on moral values of the society, so they differ accordingly from society to society and cannot be universal in character. There are three worlds of human rights, that is, three different views of human rights - the first world which is known as the "western world" emphasizes on civil and political rights and the right to private property, the second world which is known as "socialist world" emphasizes on social and economic rights and the third world of human rights gives importance on self determination and economic development. This stresses that on the basis of political histories, cultural legacies, economic conditions nature of human rights differs. It is not correct to give a universalistic character of human rights. It has also been argued that even though we recognize the universal human rights, yet they cannot be implemented precisely in the same way in all the countries because of different historical, cultural, social and economic conditions. The importance of implementation of the human rights will depend on the priorities and necessities of a particular country and thus, will carry different meaning and identical treatment in implementation is not possible.



LET US KNOW

The Universal Declaration of Human Rights, 1948 is considered as the "common standard of achievement" for all people of all nations in human rights. Yet before that attempt had been made for protection of human rights at different times at different places. The Glorious Revolution of 1688, the American War of Independence of 1776, the French Revolution of 1789, and the Russian Revolution of 1917 were fought for protection of rights of men in one way or the other and consequently paved the way for universal recognition of rights of men.



CHECK YOUR PROGRESS

Q.1: What is the main point of argument of the Universalistic approach of human rights?

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Q.2: How has the universalistic approach of human rights become popular?

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Q.3: The Universal Declaration of Human Rights was adopted by the General Assembly in the year …… . (Fill in the blank)

3.4 MAIN ARGUMENTS OF THE RELATIVIST APPROACH AND ITS CRITICISM

Another important approach of human rights is the Relativist approach. It is just the opposite of the Universalistic approach. Unlike the Universalistic approach it holds the view that the meaning and nature of human rights vary according to the values and priorities of culture and society. The advocates of the Relativist approach don't accept that human rights can be of universalistic in nature because the socio-cultural conditions differ from society to society and accordingly the nature of human rights also differs. It would be wrong if we consider that human rights have same implications everywhere.

The Relativist approach can be understood in three different models - the traditional statist model, the cosmopolitan model, and the internationalist model. The statist model holds the view that the matter of human rights is an exclusive matter of the states alone. The international

community has nothing to say on it. For the statist model, as there is no independent international community, human rights remain under the jurisdiction of the nation states. The cosmopolitan model holds the view that individuals, non-governmental organizations and other international organizations can better protect human rights. This model challenges the state and its power to be the sole protector of human rights. The internationalist model emphasizes on finding out certain norms on human rights accepted by the international society of states consisting of states and non-state actors. It believes that the international community is nothing but a society of states with that of the individuals and the NGOs working together. So, they can better protect human rights.

So far as the Relativist approach is concerned, human rights can be classified from different points of view, like the following:

(i) From historical points of view;

(ii) From chronological development point of view;

(iii) From philosophical point of view;

(iv) From social sciences point of view;

(v) From the enforceability point of view;

(vi) From the point of view of individual and society;

(vii) From geographical point of view;

(viii) From general and specific points of view.

The advocates of Relativism are of four types - moral relativists, radical relativists, strong relativists and weak relativists. The moral relativists emphasize on the moral values of the society. They maintain that history, culture, economy, social norms, etc. determine the moral values of the society. So, while considering the question of human rights these factors must get preference. The radical relativists hold that there are no human rights which will be equally available to all. They emphasize on culture as the source of all values in the society and as values differ from society to society, so, human rights. To them, human rights cannot be universal in character. The strong relativists hold that human rights are principally

determined by culture and according to the weak relativists, human rights are only secondarily determined by cultural factors and they are almost universal.

- **Criticisms**

  The Relativist approach has been criticized as being self-contradictory. On the one hand, it regards that the only source of moral validity are universal cultures and on the other hand, it does not accept any consistent universal moral judgement. It is also argued that in practice, the cultural relativist's position is foundationally incompatible to the concept of human rights. The concept of human right is meaningless if it is separated from common moral judgement. Criticizing the Relativist argument, some scholars maintain that unless there is a collective learning about what should be in the best interest of all human beings all over the world, there cannot be human rights in the true sense. The concept of human rights should absorb cultural differences. It has also been said that looking at the importance of human rights, there can only be little cultural variability. In essence, they should be common for all. Another criticism of this approach is its perception of "culture" as something unchangeable and stable. If culture remains static and does adapt itself to the changes of time and circumstances, then it may lead to violation of human rights. In reality, cultures are dynamic and adaptive.



ACTIVITY 3.1

Try to know about UN Human Rights Council and the High Commission of Human Rights.

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CHECK YOUR PROGRESS

Q.4: What is the main point of argument of the Relativist approach of human rights?

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Q.5: Mention one point of criticism of the Relativist approach.

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Q.6: What are the types of relativism as advocated by the Relativists?

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Q.7: Write briefly about the view point of moral relativists regarding human rights.

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3.5 LET US SUM UP

- There are different approaches to the study of human rights. Among them the Universalistic and the Relativist approaches are the more important. The Universalistic approach holds that human rights are of common nature all over the world but the Relativist approach holds that human rights can't be common, they differ on the basis of norms and values of society and culture.

- The universalistic character of human rights became popular particularly after the adoption of the UN Charter in 1945. Till now, this has been adopted and ratified by 193 member states and all of them have resolved to protect and promote human rights as has been propagated by the Charter. The very objectives of the UN read - to reaffirm faith in fundamental human rights, in the work and dignity of human persons and equal rights of men, women and nations large and small and to promote social progress and better standard of life in larger freedom. Thus, the UN stands for human rights which are universal in character and all its member states should co-operate to preserve them for the greater interest of humanity.
- Universalistic approach of human rights has been criticized by many scholars. The main point of argument is that as human rights are basically based on moral values of the society, so, they differ accordingly from society to society and cannot be universal in character.
- The relativist approach holds the view that the meaning and nature of human rights vary according to the values and priorities of culture and society. The advocates of the Relativist approach don't accept that human rights can be of universalistic in nature because the socio-cultural conditions differ from society to society and accordingly the nature of human rights also differs.
- The Relativist approach can be understood in three different models - the traditional statist model, the cosmopolitan model, and the internationalist model. The statist model holds the view that the matter of human rights is an exclusive matter of the states alone. The cosmopolitan model holds the view that individuals, non-governmental organizations and other international organizations can better protect human rights. The internationalist model emphasizes on finding out certain norms on human rights accepted by the international society of states consisting of states and non-state actors.

- The advocates of Relativism are of four types - moral relativists, radical relativists, and strong relativists and weak relativists.
- The Relativist approach has also been criticized on various grounds.



3.6 FURTHER READING

1. Agarwal, H.O. (2006). *Human Rights*. Allahabad: Central Law Publications.
2. Kapoor, S.K. (2009). *Human Rights*. Allahabad: Central Law Agency.
3. Syed, M.H.(2003). *Human Rights: The New Era*. New Delhi: Kilaso Books.
4. Yasin, Adil-ul & Upadhayay, A. (2004). *Human Rights*. New Delhi: Akansha Publishing House.

3.7 ANSWERS TO CHECK YOUR PROGRESS

Ans. to Q. No. 1: The main argument of the Universalistic approach is that all individuals should enjoy certain rights as human beings. They are common to all individuals living in different parts of the world. These rights are very important and therefore, should be available to all irrespective of the priorities of society and culture. Human rights are universal.

Ans. to Q. No. 2: The universalistic approach of human rights becomes popular particularly after the adoption of the UN Charter in 1945. Till now, this has been adopted and ratified by 193 member states and all of them have resolved to protect and promote human rights as has been propagated by the Charter. The very objectives of the UN read - to reaffirm faith in fundamental human rights, in the work and dignity of human persons and equal rights of men, women and nations large and small and to promote social progress and better standard of life in larger freedom. Thus, the UN stands for human

rights which are universal in character and all its member states should co-operate to preserve them for the greater interest of humanity. Besides the Charter, the UN has adopted the Universal Declaration of Human Rights in 1948 which can be regarded as the international standard for the rights of all men of the world. It is a comprehensive document of various social, economic, political, cultural and other rights. The United Nations Human Rights Council is there to see the conditions of promotion and protection of human rights all over the world. The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights are the other human rights documents adopted by the UN to give effect to its effort for universal recognition of the basic rights of all men.

Ans. to Q. No. 3: 1948.

Ans. to Q. No. 4: The Relativist approach holds the view that the meaning and nature of human rights vary according to the values and priorities of culture and society. The advocates of the Relativist approach don't accept that human rights can be universalistic in nature because the socio-cultural conditions differ from society to society and accordingly the nature of human rights also differs.

Ans. to Q. No. 5: The Relativist approach has been criticized as being self-contradictory. On the one hand, it regards that the only source of moral validity are universal cultures, on the other hand it does not accept any consistent universal moral judgment.

Ans. to Q. No. 6: The advocates of Relativism are of four types - moral relativists, radical relativists, strong relativists and weak relativists.

Ans. to Q. No. 7: The moral relativists emphasize on the moral values of the society. They maintain that history, culture, economy, social norms, etc. determine the moral values of the society. So, while considering the question of human rights these factors must get preference.



3.8 POSSIBLE QUESTIONS

Q. 1: Mention different documents adopted by the UN for the protection of human rights.

Q. 2: Critically discuss the Universalistic approach.

Q. 3: Explain the Relativist approach. Mention its criticism.

Q. 4: Find the differences between the Universalistic and the Relativist approaches.

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UNIT 4: THE CLASSICAL LIBERAL THEORY OF HUMAN RIGHTS

UNIT STRUCTURE

4.1 Learning Objectives

4.2 Introduction

4.3 Views of Hobbes

4.4 Views of Locke

4.5 Views of Rousseau

4.6 Criticisms against the Classical Theory of Human Rights

4.7 Let Us Sum Up

4.8 Further Reading

4.9 Answers to Check Your Progress

4.10 Possible Questions

4.1 LEARNING OBJECTIVES

After going through this unit, you will be able to -

- explain Hobbes' perspective about the classical liberal theory of human rights
- explain Locke's views on classical liberal theory of human rights
- analyze Rousseau's views on the classical liberal theory of human rights
- evaluate the criticisms against the classical theory of human rights.

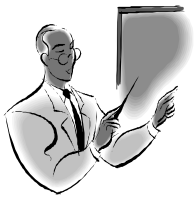
4.2 INTRODUCTION

The theory of classical liberalism of human rights can be traced back to the emergence of classical liberalism. Classical liberalism supported the concepts like individualism, private property, free market and limited government that directly or indirectly paved the way of individual rights.

The liberal individualist theory of Natural Rights is supposed to be the first ever theory of rights. Even though, it is very much clear that the idea of rights can be traced back to the times of Greek political thought;

yet, it came to light in the 17th century that all men possessed some kind of rights irrespective of their political or social setup. Individual had some natural rights which were absolute, inherent, inalienable and sacred rights by birth. These rights were independent of society. The supporters of this theory are of the view that natural rights are pre-political and according to some these are pre-social. In political discourse, this is the oldest theory of rights. However, it gained momentum after the publication of the social contract theory. If anyone looks into the history of fighting for rights, the classical theory of rights had a tremendous influence on American and French Revolutions which were absolutely for individual rights and freedom.

LET US KNOW



Classical liberalism is not a coherent body of political philosophy. However, in relation to human rights, there are three key ideas that most classical liberals subscribe to.

1.The first is the idea that all people are born with rights, which they hold simply because they are human. This is the idea that underpins Article 1 of the Universal Declaration of Human Rights. According to them, rights are universal and inalienable.

2.Classical liberals believe that the list of genuine human rights is quite short. It comprises primarily of those things that are necessary to preserve life and individual liberty. This list includes the right to be free from torture, slavery, arbitrary arrest, or detention. Freedom of association and freedom of speech are also seen as legitimate human rights. But other rights, particularly economic and social rights, are viewed as mere aspirations.

3.Thirdly, classical liberals believe that the role of the state in fulfilling or protecting human rights should be very limited. State should do only what is necessary to protect life and property. Classical liberals believe in a minimal state - as political philosopher Robert Nozick puts it, a 'night watchman state'.

4.3 VIEWS OF HOBBES

Thomas Hobbes (1588-1679) was one of the most influential English political philosophers of 17th century. In 1651, 'Leviathan' got published and Hobbes got his due recognition. While extending social contract theory, Hobbes described the State of Nature which is characterized by the "war of everyone against everyone", and incessant and violent atmosphere of competition where each and every individual has the natural rights to do everything without paying attention to other's interest. To him, in the state of nature, men possess certain characteristics such as solitary, poor, nasty, brutish. To be precise, men are more selfish. Men in such a state of nature are engaged in competition for preservation of honour and dignity resulting in enmity, hatred and lastly war. No justice, no injustice, no right, no wrong prevails in the state of nature. Force is the main factor of guiding society and hails 'might is right'. Men, according to Hobbes, can go to any level to fulfill his desires. As the time passes on, men want to get out of such a desperate condition. Alternatively, in the absence of higher authority to adjudicate disputes, society becomes more chaotic and cruel and such unsustainable condition comes to an end when individuals agree to give up their natural rights and to transfer their self-sovereignty to a higher civil authority. It becomes possible because by virtue men happen to be devotee of passion, reason, imagination and will. It is reason which teaches men to obey "natural laws"; which Hobbes portrays as 'the doctrine of civil society'. Hobbes's theory of natural laws does not imply the concept of common good. It merely sets up those conditions through which individuals can fulfill their own good. To fulfill the goal of a balanced society, Hobbes believes that individuals compose a society by 'human agreement', an artifice. Hobbes says that the third party is the beneficiary of the contract who is the recipient of power of the society. He is the sovereign (king) of the society. However, sovereign is not absolute; only the state is absolute. The sovereign is absolute only in the sense that no authority is above the sovereign. This social contract (as Hobbes describes) allows individuals to

get rid of the state of nature and enter into a civil society where absolute natural rights of all individuals collapses and the sovereign rule i.e. rule of the society, is established.

4.4 VIEWS OF LOCKE

John Locke (1632-1704) is one of the finest English political philosophers next to Thomas Hobbes. His two masterpieces are 'Essay Concerning Human Understanding' (1689) and 'Two Treatises of Government' (1689) through which he extends his political thoughts. To Locke, desire is the main guiding force of human action. Desire is the filling of uneasiness characterized with pain, a filling from which men want to get rid of. The main aim of all human action is to subjugate pain with pleasure. According to Locke, in the state of nature all men are equal and free; they can act as they wish, however, within the framework of law of nature. Natural law empowers men to enjoy natural rights, liberty, right to life and property. His concept of liberty has the extension up to that level where he contrasts with law of nature. The state of nature, to Locke, is characterized by absence of government, but not by absence of mutual obligation (as depicted by Hobbes). To be precise, the state of nature is relatively peaceful, according to Locke. Locke is of the view that natural law not only gives men certain rights, it also imposes some duties upon them.

According to Locke, men make a contract to form a civil society through which they can get out of state of nature. This contract is made of all with all. Furthermore, this is both social and political contract and it is irrevocable. In such contract, men leave some rights and not all the rights they already got in the state of nature. Certain rights and powers, according to Locke, are surrendered because remaining rights can be preserved and protected for the well-being of the society. Men as he was before in the state of nature had to be under the law in the state too. The contract paved the way for a trust and people having a society goes for formation of a government. Government must establish some standing laws, promulgated

and known to the people and not to be extemporary decrease. Locke's state is, in true sense, limited and not absolute. Alternatively, it is limited by natural law as for Locke civil law is none but the restatement of natural law and by authorized legislation. Taking right to property, Locke stresses that it is a natural right which came into existence after formation of political institutions.



CHECK YOUR PROGRESS

Q.1: The classical liberal theory of human rights believes in a minimal state. (True/ False)

.....

Q.2: What kind of human rights, according to Hobbes, individuals enjoy in the state of nature?

.....

Q.3: What is the nature of human rights given by Locke to the individuals?

.....

.....

.....

4.5 VIEWS OF ROUSSEAU

Jean Jacques Rousseau (1712-1778) was a celebrated French political philosopher who influenced the progress of the Enlightenment throughout Europe. His views also contributed to the aspects of French Revolution (1789) and the development of modern political, economic and educational thought. His 'Discourse on Inequality' (1755) and 'The Social Contract' (1762) are the two cornerstones in modern political and social thought.

In his Discourse on Inequality, Rousseau has described his ideas on the nature of men. To him, man by nature is a good creature because the instincts of self-love and sympathy are in man's nature. He also says that conscience and reason are with human nature which restraints the

desires in men's life. Thus, conscience and steadfast reason lead men to live with harmony. However, for all these culture and society is very necessary. Men can enjoy full freedom and liberty only within the society.

Rousseau's idea of state can be seen in his “The Social Contract”. To him, family is the only natural society. Rests are, to him, of men's making and artificial and on agreement. The contract is not to search for a future ruler but to serve the will of the people. The government is merely their agent. Society is needed so that individuals or men can develop themselves to the fullest; however, this cannot happen without freedom. Thus, they form a society in such a way that each and every individual can remain as free as he was before. To Rousseau, this is possible where the law leads and men do not obey other men except the law. It is the law which preserves justice and liberty in the society. Law is the guiding force of the society and the law is voice of the 'general will'. General will is none but the will of all the citizens and can be seen when they give up their self-interest and stress on general good. The general will is inalienable and indivisible. Therefore, general will is the law of the society through which individuals can enjoy their rights.

4.6 CRITICISMS AGAINST THE CLASSICAL THEORY OF HUMAN RIGHTS

The classical theory of human rights has been criticized on several grounds -

- The classical liberal theory of human rights provides maximum level of individual liberty, freedom as well as rights to the individuals. But according to the critics, giving excessive liberty and freedom to the individuals can lead them to misuse their rights.
- According to the classical liberal theory of human rights, the natural rights can be enjoyed only by following the natural law. But, the problem is that such natural law is not codified and there is no authority to punish if anybody does not follow the laws.

- Classical liberal theory of human rights believes in absolute individual rights i.e. it supports the concept "might is right" which is not convenient for the development of a peaceful society.
- The theory does not pay attention to other's right while an individual is enjoying his own right.
- The main exponents of classical liberal theory of human rights were Hobbes, Locke and Rousseau and they all discussed the concept of state of nature. However, in reality the concept of state of nature is unhistorical and illogical.
- There can be no rights beyond society and absolute rights are none but problematic and chaotic.

In spite of the above criticisms, it must be admitted that the classical theory of human rights provides ample scope for maximum level of individual liberty and rights and minimum state interference in the rights of the individuals.



ACTIVITY 4.1

Make a comparison among the views of Hobbes, Locke and Rousseau regarding their views on the classical liberal theory of human rights.



CHECK YOUR PROGRESS

Q.4: What is the nature of general will according to Rousseau?

.....

Q.5: According to the classical liberal theory of human rights, the natural rights can be enjoyed only by following the natural law. (True/ False)

.....



4.7 LET US SUM UP

- The theory of classical liberalism of human rights can be traced back to the emergence of classical liberalism. The liberal individualist theory of Natural Rights is supposed to be the first ever theory of rights. Individual had some natural rights obtained by birth which were absolute, inherent, inalienable and sacred. The supporters of this theory are of the view that natural rights are pre-political and according to some these are pre-social.
- While extending social contract theory, Hobbes describes the State of Nature which is characterized by the "war of everyone against everyone", and incessant and violent atmosphere of competition where each and every individual has the natural rights to do everything without paying attention to other's interest. No justice, no injustice, no right, no wrong prevails in the state of nature. Force is the only factor that guides society and hails 'might is right'. Such unsustainable condition comes to an end when individuals agree to give up their natural rights and to transfer their self-sovereignty to a higher civil authority. The social contract (as Hobbes described) allows individuals to get rid of the state of nature and enter into a civil society where absolute natural rights of all individuals collapses and the sovereign rule is established known as the rule of the society.
- According to Locke, in the state of nature all men are equal and free; they can act as they wish, however, within the framework of law of nature. Natural law empowers men to enjoy natural rights, liberty, right to life and property. Locke is of the view that natural law not only gives men certain rights, it also imposes some duties upon them. According to Locke, men make a contract to form a civil society through which they can get out of state of nature. In such contract, men sacrifice some rights enjoyed under the law of nature. The new contract paves the way for a society based on mutual trust, a society

that eventually forms a government. Government must establish some standing laws, promulgated and known to the people and not to be extemporary decrease. Locke's state is, in true sense, limited and not absolute.

- According to Rousseau, the contract is not to search for a future ruler but to serve the will of the people. The government is merely their agent. Society is needed so that individuals or men can develop themselves to the fullest; however, this cannot happen without freedom. Thus, they form a society in such a way that each and every individual can remain as free as he was before. Law is the guiding force of the society and the law is voice of the 'general will'. General will is none but the will of all the citizens and can be seen when they give up their self-interest and stress on general good. The general will is inalienable and indivisible. Therefore, general will is the law of the society through which individuals can enjoy their rights.
- The classical theory of human rights has been criticized on several grounds. In spite of the criticisms, it must be admitted that the classical theory of human rights provides ample scope for maximum level of individual liberty and rights and minimum state interference in the rights of the individuals.



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4.9 ANSWERS TO CHECK YOUR PROGRESS

Ans. to Q. No. 1: True

Ans. to Q. No. 2: Absolute

Ans. to Q. No. 3: Limited

Ans. to Q. No. 4: Inalienable and indivisible

Ans. to Q. No. 5: True

4.10 POSSIBLE QUESTIONS

Q. 1: What is meant by general will?

Q. 2: Mention any two features of the theory of classical liberalism of human rights.

Q. 3: Write a note on Hobbes' views on the classical liberal theory of human rights.

Q. 4: Mention any four criticisms of the classical liberal theory of human rights.

Q. 5: Critically analyze Locke's views on the classical liberal theory of human rights.

Q. 6: Explain Rousseau's viewpoints upon the classical liberal theory of human rights.

Q. 7: Discuss the similarities and dissimilarities among Hobbes, Locke and Rousseau regarding their views about the classical liberal theory of human rights.

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UNIT 5: NATURAL THEORY OF RIGHTS, LEGAL THEORY OF RIGHTS, HISTORICAL THEORY OF RIGHTS

UNIT STRUCTURE

5.1 Learning Objectives

5.2 Introduction

5.3 Natural Theory of Rights

5.3.1 Main Arguments of the Natural Theory of Rights

5.3.2 Criticisms against the Natural Theory of Rights

5.4 Legal Theory of Rights

5.4.1 Main Arguments of the Legal Theory of Rights

5.4.2 Criticisms against the Legal Theory of Rights

5.5 Historical Theory of Rights

5.5.1 Main Arguments of the Historical Theory of Rights

5.5.2 Criticisms against the Historical Theory of Rights

5.6 Let Us Sum Up

5.7 Further Reading

5.8 Answers to Check Your Progress

5.9 Possible Questions

5.1 LEARNING OBJECTIVES

After going through this unit, you will be able to -

- explain the main arguments of the natural theory of rights
- discuss the criticisms against the natural theory of rights
- describe the main arguments of the legal theory of rights
- explain the criticisms against the legal theory of rights
- explain the main arguments of the historical theory of rights
- examine the criticisms against the historical theory of rights.

5.2 INTRODUCTION

There are a number of theories that discuss about the meaning, nature and most importantly, origin of rights. Although their area of emphasis is same but their viewpoints are different. Each theory is based on own rational arguments. Each theory is criticized on several grounds. However, none can be fully accepted or fully rejected. In this unit we shall critically discuss natural theory, legal theory and historical theory of rights.

5.3 NATURAL THEORY OF RIGHTS

This is the earliest theory of rights. Its origin can be traced back to the ancient Greeks. According to this theory, rights belong to men by nature. They are considered as inborn, absolute, pre-civil and according to some, they are even pre-social. They can be asserted anywhere and everywhere.

Natural rights can be understood as those rights that are not dependent on any laws, customs, and culture, beliefs of any particular society or government. It is, therefore, universal and inalienable in nature. In classical political philosophy natural rights refers to the objective rightness of the right thing, whether the virtue of a soul, the correctness of an action, for the excellence of a region. The modern idea of natural rights developed out of the ancient and medieval concept of natural law, that is, the belief that people as a part of nature and God should live their lives and form their society on the rules created by nature or God. With the development of individualism (in the 17th century) the idea of natural law was modified to stress the fact that individuals had to get the power of self-determination or the rights and the condition of freedom because they were natural beings. The idea of human rights is also related to that of natural rights. However, some acknowledge no difference between the two while others think that these are separate. The theory of natural rights is not just an argument that people naturally have certain rights and that, therefore, they ought to be accorded legal and political rights that

correspond with them. It represents a more general orientation towards politics and society erected on certain quite abstract foundations, composed of elements of natural law and social contract theory. The main advocates of natural rights are Thomas Hobbes, John Locke and Jean Jacques Rousseau. These theorists derived their ideas about rights from God, reason or a prior moral assumption. To them, every individual possesses a unique identity and is expected to account his or her actions as per his or her own conscience.

5.3.1 Main Arguments of the Natural Theory of Rights

The main arguments of the natural theory of rights can be illustrated as below -

- The theory of natural rights is rationalistic in its method, individualistic in its foundation, universal in its scope and hypercritical in its politics.
- The theory of natural rights is an emancipatory theory. It talks about freedom, choice, self-determination as the natural condition of human being and the customs and the structure.
- Natural rights are not dependent on any laws or customs or government. It is self-sufficient which are found in nature and are equally distributed.
- The most famous natural rights formulation comes from Locke who professed that the natural rights include perfect equality, and freedom, and the right to preserve life and property.
- The modern European anti-slavery movement drew heavily from the concept of natural rights and later it became a weapon of the abolitionist.
- Natural rights are perceived as the inherent and original rights of human being which equally belong to all men without exception and which are possessed only because of their human character.

5.3.2 Criticisms against the Natural Theory of Rights

The main points of criticism leveled against this theory are as follows-

- The theory of natural rights is criticized on many grounds. Practically, rights cannot be natural, simply because these were the possessions of men in the state of nature. It is silly to think that rights prevail in the state of nature. Rights can never exist before the emergence of society; the idea of rights of a pre-society is a contradiction in terms. In the state of nature there were only physical energies (i.e. might is right) and not rights.
- Rights can exist when there is an authority to protect them. In the state of nature where no state or authority existed, how could one think of rights? The natural rights theorists have no answer to the question - who would defend the rights of people in the state of nature? By assuming the existence of rights in the state of nature is none but to make a society absolute and beyond control.
- Bentham criticizes the doctrine of natural rights as 'rhetorical nonsense'. One of the most influential political thinkers Prof. Laski also rejects the concept of natural rights. Burkey argues that one 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 recognize those in practices.
- The critics of the natural theory argue that rights are not abstract, absolute or unidentified phenomenon. Liberty, as they argue, should be enjoyed within restraints. So, restraints upon rights only can create social conditions where everyone has a share to develop his personality and correspondingly has his obligation to others. Rights and obligations, in fact, are the two sides of the same coin.

5.4 LEGAL THEORY OF RIGHTS

This theory is a reaction against the theory of natural rights. Advocates of this theory argue that the ideas of natural law and natural rights are abstract and ridiculous phenomenon. Hence, the existence and enjoyment of rights of an individual could be better maintained and practiced by the state rather than by the individual himself.

The theory of legal rights or the legal theory of rights connotes the same sense. Among the advocates of the legal theory of rights, the names of Bentham, Hegel and Austin can be mentioned. According to them, rights are granted by the state, regarding rights as a claim which the force of the state grants to the people. The central theme of the legal theory of rights is that they completely depend upon the institutions and recognition of state. An individual cannot claim rights if those are not recognized by the state. But mere recognition is not sufficient for the exercise of rights. The state must, through law and institutions, implement the rights.



LET US KNOW

Legal rights are of three types -

1. Civil Rights: Civil rights are those rights which provide opportunity to each person to lead a civilized social life. These fulfill basic needs of human life in society. Right to life, liberty and equality are civil rights. Civil rights are protected by the state.
2. Political Rights: Political rights are those rights by virtue of which inhabitants get a share in the political process. These rights 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 criticize and oppose the government. Political rights are really available to the people in a democratic state.
3. 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. The basic needs of every person are related to his food, clothing, shelter, and medical treatment. Without the fulfillment of these rights, 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.

5.4.1 Main Arguments of the Legal Theory of Rights

The main arguments of the legal theory of rights are mentioned below -

- The legal theory of rights argues that all rights of men are derived from law. Law and rights are two important aspects of this theory.
- According to the legal theory of rights, rights are not prior to the state, rather rights come after the formation of the state.
- It is the legal framework of the state that guarantees rights. It is again the state which changes the content of rights whenever it wants. But they accept that rights may not necessarily be the creation of the state but they become rights only when they are enforced by the state.
- Legal rights are those rights which are accepted and enforced by the state. Any defilement of any legal right is punished by law.
- Legal rights are equally available to all the citizens. All citizens can enjoy legal rights without any discrimination. They can go to the courts for getting their legal rights enforced.

5.4.2 Criticisms against the Legal Theory of Rights

The legal theory of rights has been criticized on many grounds-

- Laski raises his objection against the legal theory of rights on the ground that this theory has committed a mistake by making

rights upon the state. 'State recognizes rights' does not mean that it creates rights. Rights existed prior to the state. The validity of rights is not derived from the recognition.

- The legal theory of rights does not cover the whole range of rights. There are rights we enjoy from our society that often don't get legal recognition but they exist nevertheless.
- It seems the legal theory accepts only those rights which are drawn up by the state and legally enforced and recognized. Laski argues men enjoy rights not merely as members of the state but also as members of the society and various associations and relationships in society. He finds the idea of limiting rights to one source, the state, unacceptable and strange.

However, the truth in this theory lies in the fact that it enables individuals to demand certain specific and recognized rights as granted and guaranteed by the state.



CHECK YOUR PROGRESS

Q.1: Mention the name of any two advocates of natural rights theory.

.....

Q.2: Natural rights are perceived as the inherent and original rights of human nature. (True/False)

.....

Q.3: According to the legal theory, what is the main source of rights?

.....

Q.4: Any defilement of any legal right is punished by law. (True/False)

.....

5.5 HISTORICAL THEORY OF RIGHTS

Historical theory of rights argues that rights are the product of historical evolution, i.e. rights are the product of history. It is not created by

any legal system or cannot be found in the state of nature. They had their origin in customs and traditions. In the primitive state, men in society evolved certain usages, traditions and customs for the common good and all these formed the basis of law which gave rights to the individuals in written form. Customs were the unwritten law of a society in the primitive age. Customs and traditions of a given society were inherited by the members of the society as the time passed on.

5.5.1 Main Arguments of the Historical Theory of Rights

The major arguments of the historical theory of rights are as follows -

- The historical theory of rights argues that rights are not created by state but these are the products of historical evolution.
- They have their origin in customs, which one possessed practical social utility and passed on from generation to generation, having been recognized as inherent rights of a particular society. One can easily assume that rights are developed on the basis of customs and traditions. The validity of this fact can be found in the English constitution.
- David George Ritchie points out that those rights which people think they ought to have are just those rights which they have been accustomed to have, or which they have a tradition of having been possessed.
- Supporters of historical theory believe that custom is sanction. Those are considered fundamental to the development of human society because these have been maintained by a long unbroken custom and the generation after generation have habitually followed them as natural. Those are neither created nor invented.
- Burkey is of the opinion that French Revolution was based on the abstract rights of men, whereas the English Revolution was based on the customary rights of the people of that society. The French Revolution itself was the result of the atmosphere

that prevailed in the society. The Glorious Revolution was simply a reassertion of the historic liberties of Englishmen, which had been in their heritage since the days of the Anglo Saxon. There is much truth in the historical theory and many of our rights really find their origin in old age customs.

The historical theory of rights is important in so far as it condemns the legal theory of rights and it denies the natural theory of rights as well.

5.5.2 Criticisms against the Historical Theory of Rights

The historical theory of rights is also not free from criticisms such as -

- To some extent one can validate the truth of the theory, while it is very difficult to assume that all rights enjoyed by individuals in a state originated from customs and traditions.
- Customs are dynamic, not static. From the perspective of dynamism of human society, obviously customs change from time to time and from place to place. Customs change its character in different stages in the evolution of human society.
- The supporters of historical theory of rights want to the recovery of an inheritance (whether violent or peaceful). However, there is no golden age to which we may seek to return.
- There may be thousands of different customs and traditions within a multi-cultural society. Uniformity of rights cannot be found in such societies. So, historical origin of rights cannot be taken into consideration.
- It cannot be accepted that all our customs result in rights. For example, Sati system does not constitute a right nor does infanticide.
- The origin of all our rights is not always customs or traditions. For example, right to social security is not related to any custom.

- Certain rights are created by the laws of the state, and they do not have history as source of their origin. The state has got rid of inequality in the Indian caste system, which was the product of history and introduced equality through a written constitution or law.



CHECK YOUR PROGRESS

Q.5: According to the historical theory, who creates the rights?

.....

Q.6: Is historical theory of rights applicable to a multi-cultural society?

.....



5.6 LET US SUM UP

- According to the natural theory of rights, rights belong to the men by nature. They are considered as inborn, absolute, pre-civil and according to some, they are even pre-social. They can be asserted anywhere and everywhere. Natural rights can be understood as those rights that are not dependent on any laws, customs, and culture, beliefs of any particular society or government. It is, therefore, universal and inalienable in nature.
- The legal theory is a reaction against the theory of natural rights. Advocates of this theory argue that the ideas of natural law and natural rights are abstract and ridiculous phenomenon. Hence, the existence and enjoyment of rights of an individual could be better maintained and practiced by the state rather than by the individual himself. The central theme of the legal theory of rights is that they completely depend upon the institutions and recognition of state. An individual cannot claim rights if those are not recognized by the state. But mere recognition is not sufficient for the exercise of rights. The state must, through law and institutions, implement the rights.

- Historical theory of rights argues that rights are the product of historical evolution, i.e. rights are the product of history. It is not created by any legal system or cannot be found in the state of nature. They had their origin in customs and traditions. In the primitive state, men in society evolved certain usages, traditions and customs for the common good and all these formed the basis of law which gave rights to the individuals in written form. Customs were the unwritten law of a society in the primitive age. Customs and traditions of a given society inherited to the members of the society as the time passed on.
- Any of the theories cannot be fully accepted or rejected. Each of them has their own arguments regarding the source from which human beings can get their rights. However, all of them have been criticized by the critics on several grounds.



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5.8 ANSWERS TO CHECK YOUR PROGRESS

Ans. to Q. No. 1: Thomas Hobbes and John Locke

Ans. to Q. No. 2: True

Ans. to Q. No. 3: Legal framework of the state

Ans. to Q. No. 4: True

Ans. to Q. No. 5: The process of historical evolution

Ans. to Q. No. 6: No



5.9 POSSIBLE QUESTIONS

Q. 1: What is meant by natural rights?

Q. 2: Mention the viewpoint of Laski against the legal theory of rights.

Q. 3: Mention any four arguments of the natural theory of rights.

Q. 4: Mention any four arguments of the legal theory of rights.

Q. 5: Mention any four arguments of the historical theory of rights.

Q. 6: Critically analyze the major arguments of the natural theory of rights.

Q. 7: Explain the major arguments and the criticisms of the legal theory of rights.

Q. 8: Discuss the major arguments of the historical theory of rights along with the criticisms levelled against it.

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UNIT 6: THE MODERN THEORIES OF HUMAN RIGHTS

UNIT STRUCTURE

6.1 Learning Objectives

6.2 Introduction

6.3 Rawls' Conception of Human Rights

6.4 Let Us Sum Up

6.5 Further Reading

6.6 Answers To Check Your Progress

6.7 Possible Questions

6.1 LEARNING OBJECTIVES

After going through this unit, you will be able to-

- explain John Rawls' views on human rights
- examine the criticisms levelled against Rawls' views on human rights.

6.2 INTRODUCTION

In the previous units we have discussed traditional theories regarding human rights. But the views of modern thinkers on human rights differ from that of classical thinkers. In this unit we shall discuss modern theories of human rights with special reference to the views of John Rawls.

6.3 RAWLS' CONCEPTION OF HUMAN RIGHTS

John Rawls is an American political philosopher well known for his remarkable contribution to the theory of Justice. He has become famous for his profound contribution to the world of political philosophy through his works "A Theory of Justice (1971)", "Political Liberalism (1993)" and "The Law of Peoples (1993)".

John Rawls, one of the exponents of the modern theory of human rights, attempts to reconcile the liberal ideals of political obligation with a

redistributionist conception of social justice. Rawls conception of human rights represents postmodern account on human rights. Although John Rawls did not provide a conceptual analysis of human rights yet, he offered a 'thinner' conception of human rights, which would be acceptable to different societies. Consequently, it would make human rights more familiar to different cultures and people, which would lead towards better implementation of human rights. His conception of human rights is more open for diversity than the conception of human rights represented within the Universal Declaration by the United Nations.

Rawls introduces his theory of Human Rights in his book "The Law of Peoples". His theory of human rights is inspired by the ideas of peace and justice. Two main ideas have motivated him to offer the conception of human rights. These are-

a) The great evils of human history- unjust war and oppression, religious persecution and the denial of liberty of conscience, starvation and poverty, genocide and mass murder- follow from political injustice with its own cruelties.

b) The other one is to establish 'just basic institutions' through which political injustice can be 'eliminated' and the 'great evils' found in human history can be eradicated.

Rawls' theory of human rights represents a political conception and it is not founded on any particular comprehensive doctrine. The significance of his theory of human rights is that he doesn't advocate human rights for single metaphysical, authoritative source such as reason or conception of human nature. Rather he emphasizes that the conception of the person is a normative (moral) and political conception. Rawls considers people as moral actors. This morality is derived from the political conception and it doesn't have metaphysical character.

The List of Human Rights:

In the 'The Law of Peoples' Rawls has stated the basic human rights which every society should respect. These are- right to life (to the means

of subsistence and security), to liberty (to freedom and slavery), serfdom and forced occupation and to a sufficient measure of liberty of conscience (to ensure freedom of liberty and thought); to property (personal property); and to formal equality as expressed by the rules of natural justice (e.i. that similar cases be treated similarly). Rawls maintains that these human rights cannot be perceived as peculiarly liberal or special to the Western tradition. They are not politically parochial.

Rawls' scheme of human rights does not include all those rights enjoyed by the citizens in a reasonable constitutional democracy, rather those are the "special class of urgent rights". The violation of this class of rights is equally condemnable by both liberal people and decent hierarchical people.

Nature of Human Rights:

Rawls in his 'The Law of Peoples' made the following points on the nature of human rights-

1. They do not depend on a comprehensive or liberal doctrine.
2. They consist of a special class of urgent rights.
3. They are universal in reach.
4. They are necessary to any system of cooperation.
5. They are not the same as liberal democratic rights.

Roles of Human Rights:

Rawls further writes, his scheme of human rights have threefold role. Those are-

a) Their fulfillment is a necessary condition of the decency of a society's political institutions and of its legal order.

b) Their fulfillment is sufficient to exclude justified forceful intervention by other people.

c) They set a limit to the pluralism among people.



CHECK YOUR PROGRESS

Q.1: Who is the author of the book "The Law of Peoples"?

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Q.2: Mention two main ideas that have motivated Rawls to offer the conception of human rights.

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Q.3: Write briefly about the nature of human rights as provided by John Rawls.

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Q.4: Mention any two roles of human rights as provided by John Rawls.

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Human Rights and Duty of Assistance:

According to Rawls, the human rights conception does not stop with the simple duty of direct compliance but they also include secondary auxiliary duties of assistance or protection. He wrote in his 'The Law of Peoples' about the duty of assistance that liberal and decent people have

towards burdened people. To him, the duty of assistance seeks to raise the burdened societies to decency where human rights is respected and honoured. Rawls said burdened people are burdened more by oppressive regimes than by a shortage of natural resources, and he argued that a regime change may be necessary to alleviate their burdens. In this way, the duty of assistance protects human rights at least indirectly. Rawls criticizes the contemporary rich liberal countries for failing to fulfill their positive duties of assistance.

Human Rights and Rawls' conception of Political Liberalism and the Theory of Justice:

Rawls' theory of human rights is founded on his conception of political liberalism and the theory of justice. According to Rawls, human rights can be interpreted in two ways-

a) They can be seen as the part of the liberal political conception of justice as "liberties secured to all free and equal citizens in a constitutional liberal democratic regime."

b) Another way to perceive those rights is from the associanist perspective "which sees persons first as members of groups, associations, corporations and estates."

According to Rawls' theory, human rights emerge from the notion of justice which guarantees-

i) Equality of political rights as citizens in a democratic country

ii) Fair treatment in the distribution of social and economic values

Rawls in "The Law of Peoples" argued that in his hypothetical 'Society of Peoples' people should be agreed upon eight principles of justice where 'respect to the human rights' is one of that. Those eight principles of justice are-

i) People are free and independent and their freedom and independence are to be respected by other people;

ii) People are to observe treaties and undertakings;

iii) People are equal and are parties to the agreements that bind them;

iv) People are to observe the duty of non-intervention;

v) People have the right of self-defense but no right to instigate war for reasons other than self-defense;

vi) People are to honour human rights;

vii) People are to observe certain specified restrictions in the conduct of war;

viii) People have a duty to assist other people living under unfavourable conditions that prevent their having a just or decent political and social regime.

In these principles of justice, though the principle six i.e. honour human rights specifically mentions the protection of human rights yet the other principles also support the cause of human rights.

Critical Evaluation of Rawls' conception of Human Rights:

John Rawls did not formulate any comprehensive theory on human rights. The chief criticism against the Rawls' scheme of human rights is that it is strictly limited to certain rights. It excludes vast areas of human rights which are widely discussed in the world. Critics find out that Rawls is very selective while formulating his scheme of human rights. Allen Buchanan, a contemporary thinker complains that the omissions in Rawls's list of human rights would allow a society in which gender and ethnic discrimination exist. Moreover, those who criticized Rawls have doubted the applicability of his conception of duty of assistance.

Though many have criticized Rawls, it is true that it leads to the more substantive idea of rights and citizenship, because it values diversity. His theory is advantageous for possible construction of social and political order in the international level. Rawls, as one of the exponents of the modern theory of human rights to reconcile the liberal ideal of political obligation with a redistributionist conception of social justice.



CHECK YOUR PROGRESS

Q.5: Mention any four principles of justice as stated by John Rawls.

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Q.6: Write about the criticisms levelled against Rawls' theory of human rights.

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6.4 LET US SUM UP

- John Rawls as a modern liberal political thinker formulated his theory of human rights. He does not put forward an elaborate list of human rights. John Rawls, one of the exponents of the modern theory of human rights, attempts to reconcile the liberal ideals of political obligation with a redistributionist conception of social justice. Rawls conception of human rights represents postmodern account on human rights.
- Rawls' conception of human rights is more open for diversity than the conception of human rights represented within the Universal Declaration by the United Nations. His theory of human rights was inspired by the ideas of peace and justice.

- The significance of Rawls' theory of human rights is that he doesn't advocate human rights for single metaphysical, authoritative source such as reason or conception of human nature. Rather he emphasizes that the conception of the person is a normative (moral) and political conception. Rawls's considers peoples as moral actors. This morality is derived from the political conception and it doesn't have metaphysical character.
- In Rawls' theory the human rights are those urgent rights which are- right to life (to the means of subsistence and security), to liberty (to freedom and slavery), serfdom and forced occupation and to a sufficient measure of liberty of conscience (to ensure freedom of liberty and thought); to property (personal property); and to formal equality as expressed by the rules of natural justice (that is that similar cases be treated similarly).
- For the enforcement of these human rights Rawls insists on the duty of assistance that liberal and decent peoples have towards burdened peoples. To him, the duty of assistance seeks to raise the burdened societies to decency where human rights is respected and honoured.
- Rawls' conception of human rights is also criticized on a number of grounds.



6.5 FURTHER READING

1. Gauba, O.P. (1995). *An Introduction to Political Theory*. New Delhi: Macmillan India Limited.
2. Jha, Shefali. (2018). *Western Political Thought*. Pearson India Education Services Pvt. Ltd.
3. Yasin, Adil-ul. & Upadhyay, Archana. (2004). *Human Rights*. New Delhi: Akansha Publishing House.
4. Sigurd Lindstad Master's "Rawls's Law of Peoples, Human rights, Recognitional Legitimacy and Positive Duties across Borders" viewed in https://www.duo.uio.no>handle on 08/03/2019

6.6 ANSWERS TO CHECK YOUR PROGRESS

Ans. to Q. No. 1: John Rawls

Ans. to Q. No. 2:

a) The great evils of human history- unjust war and oppression, religious persecution and the denial of liberty of conscience, starvation and poverty, genocide and mass murder- follow from political injustice with its own cruelties.

b) The other one is to establish 'just basic institutions' through which political injustice can be 'eliminated' and the 'great evils' found in human history can be eradicated.

Ans. to Q. No. 3: Rawls in his 'The Law of Peoples' made the following points on the nature of human rights- (a) Rights do not depend on a comprehensive or liberal doctrine. (b) Rights consist of a special class of urgent rights. (c) Rights are universal in reach. (d) Rights are necessary to any system of cooperation. (e) They are not the same as liberal democratic rights.



Ans. to Q. No. 4:

(a) Fulfillment of rights is a necessary condition of the decency of a society's political institutions and of its legal order.

(b) Rights set a limit to the pluralism among people.

Ans. to Q. No. 5:

i) People are free and independent and their freedom and independence are to be respected by other people.

ii) People are to observe treaties and undertakings.

iii) People are equal and are parties to the agreements that bind them.

iv) People are to observe the duty of non-intervention.

Ans. to Q. No. 6: John Rawls did not formulate any comprehensive theory on human rights. The chief criticism against the Rawls' scheme of human rights is that it is strictly limited to certain rights. It excludes

vast areas of human rights which are widely discussed in the world. Critics find out that Rawls is very selective while formulating his scheme of human rights. Allen Buchanan, a contemporary thinker of Rawls, complains that the omissions in Rawls's list of human rights would allow a society in which gender and ethnic discrimination exist. Moreover, those who criticized Rawls have doubted the applicability of his conception of duty of assistance.



6.7 POSSIBLE QUESTIONS

Q. 1: Write the name of the book where John Rawls expressed his conception of human rights.

Q. 2: Mention the factors which motivated John Rawls to formulate his conception of human rights.

Q. 3: In what way the Rawls' scheme of human rights is different from the Universal Declaration of Human Rights?

Q. 4: Explain the Rawls' conception of human rights. What are the major points of criticism against his theory?

Q. 5: What is duty of assistance concept in the Rawls theory of human rights?

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Name of the Paper: .....
Course Code: .....

Centre for Internal Quality Assurance (CIQA)
Krishna Kanta Handiqui State Open University
City Office: Housefed Complex, Guwahati-781006

Learner's Feedback on Course

Dear Learner,

Regarding the course as mentioned above, we would like to know your opinions and comments so as to improve the quality of self learning materials in future. Please respond to the following statements by ticking the number you feel most reflect your opinion. After completion of the additional comments, please detach the page and send/mail the same to us at the address given below.

The Director, Centre for Internal Quality Assurance, KKHandiqui State Open University
Housefed Complex, Dispur, Guwahati-781006
(E-mail id: ciqa@kkhsou.in)

1) Approximately how many hours did you spend for studying the units in the course? ☐☐☐

2) Please give your opinions (by ✓ mark) to the following items based on your reading of the block:

Sl. No.	Statements	Strongly Agree	Agree	Neither Agree nor Disagree	Disagree	Strongly Disagree
I)	The SLMs of the course fulfil the learning objectives set out in the beginning of each unit					
II)	The units of the SLM could satisfy my academic needs and expectations					
III)	The Unit writers have excellent knowledge about the course contents					
IV)	Language and contents of the units were presented at a level which I could readily understand					
V)	Ample opportunity for participation in the activities provided in the units					
VI)	Used enough Illustrations (Diagrams, tables etc.) for conceptual clarity					
VII)	Quality of content is engaging, relevant, and up-to-date					
VIII)	The self check questions are very helpful					
IX)	The Possible/model questions and the answers to check my progress have benefited me a lot					

Additional Comments: *(Please feel free to provide your open comments)*

1) Which aspects of the SLM, according to you, worked well?

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2) What sort of changes/improvements do you feel KKHSOU could implement to improve the overall quality of the SLM?

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Thank you for taking the time to complete this form.