UNIT 6: HUMAN RIGHTS

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6.1 LEARNING OBJECTIVES

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

- identify what human rights are and the issues pertaining to human rights
- discuss the different philosophical positions in the human rights discourse.
- understand human rights in the social, legal and political contexts
- understand the relationship between rights and duties
- evaluate human rights issues critically

6.2 INTRODUCTION

In this chapter, we will be discussing issues pertaining to human rights. Human rights are one of the important issues being discussed in the

contemporary world. Human rights are generally considered to be those inalienable rights that are bestowed upon a human being by the virtue of being a member of the human family. In this chapter, we shall deliberate upon the philosophical issues involved with respect to human rights and we shall try to see how it is related to duties. Can there be a moral justification for human rights? Are human rights and moral rights same? What are the different aspects of human rights? These are some of the issues we will be discussing in the subsequent sections of this chapter. To do this exercise, let us start with the question- what this issue of human rights is all about?

6.3.1 Human Rights: what it is

Before getting into a philosophical discussion of human rights, let me give a brief historical account of the human Rights Declaration. Instead of focusing on how many of such **human rights are possible, international institutions like the UN was laid stress on the fundamental prerequisites for every human being to lead a minimal good life.** For instance, have you ever given a thought as to what are all the things you need to lead a basic good life? The Universal Declaration of Human Rights (1948), the European Convention on Human Rights (1954) and the International Covenant on Civil and Economic Rights (1966) have outlined certain rights for every human being for leading a good life and it should be the aspiration for every nation to ensure that these rights are made available to every citizen.

We know that the Universal Declaration of Human Rights (1948) came out with a list of basic human rights. This naturally entails such questions were there no human rights before? Or are human rights merely some constitutional rights or are they something more than that?

6.3.2 Natural Rights and Legal Rights

Can somebody harm you? Can somebody take your property without your knowledge? Do you feel that any such type of action is

wrong? If it is wrong, did you ever think why it is wrong? You may come up with an answer saying that you have a right of not to be harmed and that also you have a right of owning your property. The next question will be who gave you these rights? Or how did you get/acquire these rights? You can come up with an answer that these rights are provided to you according to our legal system. Can we ask further? Let us assume, if the legal system did not provide you with a right of not being harmed, does it mean that you do not enjoy a right not to be harmed? Or do you think that whether legal system accepts or not, you have a right not to be harmed? Answers to these questions shall make us dwell on the philosophical issue of human rights. In the subsequent paragraphs we shall discuss the philosophical rationale for the human rights.

We come across primarily two main positions here. One position holds that human rights are basically an outcome of specific social-cultural contexts and there is nothing like natural human rights. This can be a sort of moral relativism. According to this school, in the context of human rights, whatever is claimed as human rights is nothing but a branch of legal rights given in the laws of individual states or other institutions. As against this, the other position is that there is a natural moral right with which every human being is bestowed with. These natural rights are common to all individuals irrespective of their culture, social class, or any other such types of contingencies. This school takes the moral rights to be universal. Thus, this position resorts to one or the other sort of moral universalism. This means that there is a moral right, which we can identify through our reason and which is beyond any social and historical contingencies and every human being irrespective of his/her race, culture, colour, caste, religion, creed, language, gender does possess such rights. This suggests that these moral rights are universally true.

By accepting the position of moral universalism, we are given the scope for seeing if 'human-made' laws are correct. That is, we

can have an evaluation of a legal system on the basis of whether it is in accordance with the moral law. Aristotle made such claims in his Nicomachean Ethics. In distinguishing between 'natural justice' and 'legal justice', Aristotle writes, 'the natural is that which has the same validity everywhere and does not depend upon acceptance.'

The other camp, legal positivists, talks of legal rights as the only possible rights. The moral rights are not rights as such, rather, they are moral claims. For utilitarian thinker Jeremy Bentham, there cannot be any moral rights existing prior to any legal system. Whether a particular right is there for a person or not, in this scheme of thought it is judged by the fact as to whether that right has been given in the legal system. If it is available in the legal procedures, then that right is allowed and if it is not, then there is no such right. Though this account seems rather simple, yet it has serious problems.



LET US KNOW

Moral relativism: It is a concept that moral judgments are true or false only relative to some particular standpoint and it holds that no standpoint is absolutely true or false.



CHECK YOUR PROGRESS

Q1: What is natural justice? (Answer in about 20 words)

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Q 2: State the name of a utilitarian thinker.

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6.3.3 Moral Universalism

As we raised in the initial part of our discussion, we have seen that it might be possible and, as a matter of fact, it needs to be

possible, for us to evaluate a particular legal procedure. There can be a legal system, which can reject outright certain rights given to certain segments of the people to enjoy. In this case, are we not making an attempt to evaluate whether the laws, which are discriminatory, are taking care of the 'rights' of all the people? If we find that certain laws are discriminatory, we claim that it is against the 'rights' of the people. When we make such types of arguments, we presume a certain kind of 'right' over and above the legal rights. These rights can be argued as moral rights and which can be considered independent of any social or historical conditions and, therefore, they can be thought of as universal moral rights. According to this position, every individual possesses natural rights independent of society or state. This position was particularly held by one influential thinker John Locke in his work *Two Treatises of Government* (1688). The acceptance of moral rights can be taken as the genesis of human rights. According to Locke's argument, an individual possesses natural rights independent of the any political setup and prior to any legal setup as well. The immediate question that comes to our mind is what are all the moral rights the individual possesses and how does the individual possess such natural rights? While addressing the former question, one needs to enumerate with justification the natural rights one is supposed to possess; and for the latter question, one has to justify how such moral rights are possible. According to Locke, they possess natural rights because of natural law and natural law originated from God. Thus, Locke referred to the theological issues when he tried to substantiate the natural law and thereby natural rights theory.

As against Locke, in the 18th century Immanuel Kant tried to base moral rights not on any theological suppositions but on the universal rationality and autonomy of the individuals. Kant tries to give a formal understanding of the rights rather than the substantive one. That is, he was concerned with the rule for making certain rights rather than whether a particular right (for example, a right to

die in case of euthanasia) can be made as inalienable right or not. According to Kant, formal principle consists in making one's maxim to see if it carries a universal applicability that respects equality and individual autonomy. Thus, Kant gives the basis of universal moral rights through his categorical imperative. I shall take up the contemporary debates with respect to this issue in the later part of the unit.

6.4 RIGHTS AND DUTIES

While we talk about human rights we should also be discussing duties as the idea of human rights is related with the concept of duty. To put in simplistic terms, one person's right is another person's duty. But, on a careful analysis of the concept of right, we can find there can be different shades of rights. **W.N. Hohfeld (1919) classified rights into four types – Liberty rights, Claim rights, Power rights and Immunity rights. Current literature (Peter Jones 1994) reduces the last two categories also within claim and liberty rights. Let us see what these liberty rights and claim rights mean.**



CHECK YOUR PROGRESS

Q 3: Who is the author of Two *Treatises of Government*?

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Q 4: What are the kinds of rights, according to W.N. Hohfeld

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6.4.1 Claim Rights and Liberty Rights

Claim rights are those rights which we normally understand as rights, which have corresponding duty onto others. If I have a right, then it means that you (individual or state) have a duty to abide

by it. Peter Jones writes that Claim right is, more important than Liberty rights. Jones classifies Claim Rights into *positive* and *negative* claim rights. Positive claim rights are those that are against some specific person or institution. For example, if I am entitled for some items in ration shop, then I have a positive right to get those items from the government public distribution system. They are bound to give me what I have a right to. Negative claim rights are not directed against any one person, but against all. For example, I have bought a pen and I have a right over it. It means that nobody can take it. Everybody is obligated not to take my pen. This can be treated as negative claim right.

Compared to Claim Rights, Liberty Rights are those rights which are not directed against one or any other person's duty to fulfill that right. It is often marked in negative terms. It comes up with the idea of liberty. I have the freedom (right) to think of having a good peaceful evening on the banks of the Brahmaputra. Is anybody obligated to fulfill your right? No. Similarly can anybody restrain you from having that freedom? No. Thus, Liberty Rights are often negative rights that need not come up with obligation on any person.

The need to make these categories of rights like Claim Rights and Liberty Rights is to see how the different enumerations of rights fit in the ambit of universal rights. When we talk of the substantive rights described in the Universal Declaration on Human Rights and other conventions, we can see that it can be broadly categorized under five heads – *rights to life*, *rights to freedom*, *rights to political participation*, *rights to the protection of the rule of law*; *rights to fundamental social*, *economic*, *and cultural goods*. These rights involve Claim Rights, Liberty Rights or a combination of both.



CHECK YOUR PROGRESS

Q 5: What are the classifications of Claim Right, according to Peter Jones?

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Q 6: Make a distinction between positive and negative claim rights. (Answer in about 20 words)

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Q 7: Human rights can be categorized into five heads. What are they?

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6.4.2 Rights Priorities

When we have a list of human rights does it mean that all rights have the same importance? This will be a difficult question to tackle. Broadly speaking, when we talk of human rights as rights that are needed for every individual to lead a minimally good life, then it will not be possible to prioritize which rights are more important than the others. But, at the same time, when we think practically, depending on the resources of the state to fulfill the requirements of rights, there can be certain level of prioritizing of certain human rights over certain other human rights. For example, realizing in practice that everybody has a right to food actually depends upon the resources available to implement it.

The biggest problem associated with the current human rights discourse is its implementation part. Who owns the responsibility for exercising one's rights? Everybody has got the right to food, but we see in so many African countries and even in our own country lots of people suffer/die from hunger. Do these

people not have the right to live? Who is responsible for this? Does it mean that you and I are responsible for this or is it our government? Some Philosophers like Thomas Pagge (1995) claim that moral responsibility lies upon the institutions rather than the individuals. That is why we consider our government and its policies responsible for any such violation of human rights. The government and international organizations like UN are to take the responsibility from the fulfillment of these human rights aspirations**.** Ronald Dworokin (1977), a thinker, suggests that human rights trump all other policies and social goals. That means catering to the needs of human rights is the priority of the government before it takes up other social issues. In this way, we can at least try to give a formal structure to protect human rights with the resources available to us.

6.5 CONTEMPORARY DEBATES

The current trend on human rights is considered both in terms of moral rights and legal rights. But, this issue is not philosophically resolved. The one big problem of confining human rights to legal rights is to make it contingent and socially and historically contextualized. So, some philosophers tried to defend human rights over and beyond legal rights. Contemporary thinkers like John Finnis in 'Natural Law and Natural Rights' (1997) try to defend a natural law position in rights. We have already seen how the concept of natural rights has been deliberated in the past to lay a foundation for human rights as moral rights. Apart from the natural rights theorists, there are also thinkers who try to give human rights a social-contract perspective. Thinkers like Thomas Hobbes did it. Human rights were also based on the concept of reciprocity – a golden rule – that is, 'do unto others what you want them to do to you.'

4.5.1 Interest theory

In the ongoing debate on the nature of human rights as moral rights, currently two positions can be considered quite important. They are the 'Interests theory' and the 'Will theory'. Interests' theory

approach to human rights bases its idea on some common human interests which are by nature available to human beings. For the interests theorists, the function of human rights are to serve the human interests. As humans have some natural interests, securing those interests is a part of their rights and thus, human rights can be morally justified as it is part of the human's interests. The Interests theory is concerned with listing out the social and biological interests for human beings to lead a minimally good life. Thus for the Interests theorists like John Finnis (1980), human rights act as an instrumental value in order to provide and protect the basic human interests. The human interests based approach to human rights has an appeal to commonality amongst all the human beings and thus try to make those interests as inalienable rights that transcend beyond the contingencies. It can also try to give preference for one human right over the other on the basis of the prioritizing the interests of the humans. For example, the interest to survive is more important than the interest to get education. Maybe, an interest to get education can be more important than interest to enjoy leisure. Thus, prioritizing human rights is both possible and workable in this approach.

One of the important criticisms against the Interest theory is that its bases his human rights account on the universal human nature. But a serious question in this regard is, can there be a universal human nature? The Interest theory, on the basis of universal human nature, insists on creating the necessary conditions to provide a minimal quality of good life, but, the issue is with regard to the minimal things for good life - is it common to all the people? Do the social, cultural and historical factors not play a major role in this? Amartya Sen (1999) has argued that the minimal conditions for a decent life are socially and culturally relative. Once we accept this position, then the Interests theory insists that on the basis of human's social and biological needs, the rights need to be ascertained and the need to be relooked at. And one more important issue is that once we take certain social and biological interests as

the basis of human nature and subsequently those can be established as human rights, we implicitly take a deterministic position with respect to human interests and needs.



LET US KNOW

Inalienable right: A right that cannot be taken away, denied, or transferred.

Contingencies: A future event or circumstance which is possible but cannot be predicted.

6.5.2 Will Theory

Against the 'Interest theorists' are the 'will theorists', who try to rationalize human rights on the basis of one attribute, that is, the human capacity to be free. They argue that the distinctive aspect of human agency is his/her capacity for freedom and hence the human rights issue needs to be addressed through this element of freedom. WLA Hart, Henry Shue, Alan Gewirth are some thinkers who try to argue from this line. Gewirth claims that human rights claims are based upon our capacity as rationally purposive agents. To be human is to be rationally purposive and for that freedom and well-being are the necessary, according to Gewirth, who says that capacity for freedom implies a rationally purposive agency. While such a view of human rights on the premise of rationally purposive agents with the prerequisites of human freedom and well-being is sound, it raises a serious issue against the marginalized people, who are not rational purposive agents. People who are challenged with one or other mental illness or similar illness may not fall under the category of rationally autonomous agents. Does it mean that they do not have any human rights? The implication of Will theory may imply that but it is intuitively unacceptable. However, taken together the interest and the will theory give a good ground for arguing about the possibility of human rights as something common to all people going

irrespective of different cultures and social contexts. The contemporary debates and discussions do suggest that human rights issues are not merely philosophical issues but also have social, political and ethical ramification.



LET US KNOW

Marginalized people**:** People who are confined to a lower or outer limit or edge in case of social standing.



CHECK YOUR PROGRESS

Q 8: What do you mean by Interests theory? (Answer in about 30 words)

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Q 9: What is Will theory? (Answer in about 30 words)

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6.6 LET US SUM UP

- Human rights focus on fundamental prerequisites for every human being to lead a minimal good life.
- Natural rights are common to all individuals irrespective of their culture, social class, or any other such types of contingencies.
- Moral universalism holds that the moral rights are universal. This means that there is a moral right, which we can identify through our reason and which is beyond any social and historical contingencies and every human being irrespective of his/her race, culture, color, caste, religion, creed, language, gender does possess such rights.
- W.N. Hohfeld (1919) classified rights into four types – liberty rights, claim rights, power rights and immunity rights. Current literature (Peter

Jones 1994) reduces the last two categories also within claim and liberty rights.

- Jones classifies Claim rights into positive and negative claim rights. Positive claim rights are those that are against some specific person or institution. For example, if I am entitled for some items in ration shop, then I have a positive right to get that from the government public distribution system. They are bound to give me what I have a right to.
- Negative claim rights are not directed against any one person, but against all. For example, I have bought a pen and I have a right over it. It means that nobody can take it. Everybody is obligated not to take my pen. This can be treated as negative claim right.
- Liberty rights are those rights which are not directed against one or any other person's duty to fulfill that right. It is often marked in negative terms. It comes up with the idea of liberty.
- Philosophers (Thomas Pagge 1995) claim that moral responsibility is upon the institutions rather than the individuals. That is why we see that our government and its policies are considered to be responsible for any such violation of human rights. The government and international organizations like UN take the responsibility to realize these human rights aspirations.
- On the nature of human rights as moral rights, two positions can be considered as quite important. They are the 'Interests' theory' and the 'Will theory'.
- Interests' theory approach to human rights bases its idea on some common human interests which are by nature available to the human beings. For the Interests theorists, the function of human rights are to serve the human interests. As humans have some natural interests, securing those interests is the part of their rights and thus, human rights can be morally justified as it is part of the human's interests. The interests theory is concerned with listing out the social and biological interests for human beings leading a minimally good life.



6.7 FURTHER READINGS

1) Patrick Hayden.(2001) *Philosophy of Human Rights*: *Readings in Context*. Paragaon House Publishers

2) Internet Encyclopedia of Philosophy – Human Rights



6.8 ANSWERS TO CHECK YOUR PROGRESS

Ans to Q No 1: According to Aristotle, 'the natural is that which has the same validity everywhere and does not depend upon acceptance.'

Ans to Q No 2: Geremy Bentham

Ans to Q No 3: John Locke

Ans to Q No 4: Liberty rights, Claim rights, Power rights, Immunity rights

Ans to Q No 5: Positive claim rights and Negative claim rights

Ans to Q No 6: Jones classifies claim rights into two. They are positive and negative claim rights. Positive claim rights are those rights which are against some specific person or institution. For example, I want some items in ration shop. It implies I have a positive right to get that from the government public distribution system. They are bound to give me what I have a right to. On the other hand Negative claim rights are that rights which are not directed against any one person, but against all. For example, I have bought a pen and I have a right over it. It means that nobody can take it. Everybody is obligated to not to take my pen. This can be treated as negative claim right.

Ans to Q No 7: Human rights can be categorized into five heads. They are: Rights to life, rights to freedom, rights to political participation, rights to the protection of the rule of law, rights to fundamental social, economic, and cultural goods.

Ans to Q No 8: It is a theory of human rights which is concerned with the social and biological interests for human beings in order to lead a good life. The advocates of this theory are WLA Hart, Henry Shue, and Alan Gewirth.

Ans to Q No 9: It is also a theory of human rights which is rationalized on the basis of one attribute i.e., human capacity to be free. It also denotes that all human rights issue needs to be addressed through the element of freedom.



6.9 MODEL QUESTIONS

A) Very Short Questions

Q1: What do you mean by Human Rights?

Q2: What is legal rights?

Q3: Define natural rights.

Q4: What do you mean by moral relativism?

Q5: Write the name of an advocate of legal system.

Q6: Who writes: "The natural is that which has the same validity everywhere and does not depend on acceptance".

Q7: What are claim rights?

Q8: Write the definition of liberty rights.

B) Answer briefly (Answer in about 100-150 words)

Q1: Make a distinction between natural rights and legal rights.

Q2: Write briefly on natural rights.

Q3: Write a short note on Moral Utilitarianism.

Q4: Distinguish between claim rights and liberty rights.

Q5: Explain in brief the interest theory approach to human rights.

Q6: What is will theory? Briefly explain.

C) Long Questions (Answer in about 300-500 words)

Q1: Explain the concept of moral utilitarianism.

Q2: Do you find any link between rights and duties? Explain in support of your reason.

Q3: What is human rights? Explain the different kinds of rights.

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