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Conceptual and Historical Perspective on Human Rights

UTTARAKHAND OPEN UNIVERSITY

HISTORICAL AND PHILOSOPHICAL PERSPECTIVES ON HUMAN RIGHTS

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1.1 INTRODUCTION

The age-old idea of natural rights, which is predicated on natural law, predates human rights. The modern definition of "human rights" is a very recent development. They originate from post-World War II international accords and charters.

"Human Rights" are defined by the Protection of Human Rights Act, 1993 as the individual's rights to life, liberty, equality, and dignity as guaranteed by the Constitution or as reflected in international covenants and able to be upheld in Indian courts.

India signed and ratified the Universal Declaration of Human Rights in 1948, which included goals to ensure that human rights be recognized and upheld everywhere. Additionally, the Indian constitution incorporates the essential rights and highlighting the importance of human rights and their subsequent development from 1968 to 1993

India has ratified a number of international treaties pertaining to the defense of human rights, such as:

1. The international convention on the elimination of all forms of racial discrimination
2. The international covenant on civil and political rights
3. The international covenant on economic social and cultural rights
4. The convention on the elimination of all forms of discrimination against women
5. The convention on the rights of the child

On December 18, 1993, India's parliament approved historic legislation known as the Protection of Human Rights Act.

The Paris Principles, which were established in October 1991 to advance and defend human rights in Paris, guided the creation of the National Human Rights Commission (NHRC). The Paris Principles, which were adopted in October 1991 with the goal of promoting and protecting human rights, guided the establishment of the National Human Rights Commission (NHRC), which was officially endorsed on December 20, 1993 by the UN General Assembly. The work of National Human Rights Institutions (NHRIs) is framed and directed by a set of international standards known as the Paris Principles.

1.2 OBJECTIVES

Protection of Human Rights Act, 1993 have been enacted to provide for the constitution of a National Human Rights Commission, State Human Rights Commissions in States and Human Rights Courts for better protection of human rights and for matters connected therewith or incidental thereto.

The basic idea of human rights law is the outcome of international treaties and conventions. It is based on the principles of international recognition which aims to achieve the following objectives:-

1. To protect human beings from any kind of discrimination and injustice all over the world.
2. To develop individual self-respect.
3. To value human dignity.
4. To promote and develop respect, understanding and appreciation of diversity.
5. To promote democracy, social justice, friendship and brotherhood to gain unity in diversity.

1.3 SUBJECT

Governments are obligated by international human rights law to take specific actions or abstain from taking specific actions in order to advance and defend the fundamental freedoms and human rights of individuals and groups. The development of a comprehensive body of human rights law. It is a globally recognized and universally enforceable set of rules that all people can aspire to and all nations can subscribe to. A wide range of globally recognized rights, such as civil, cultural, economic, political, and social rights, have been defined by the United Nations. Additionally, it has put in place systems to support and defend these rights and help states fulfill their obligations.

The United Nations Charter and the Universal Declaration of Human Rights, which were ratified by the General Assembly in 1945 and 1948, respectively, serve as the cornerstones of this body of law. Since then, the United Nations has progressively broadened the definition of human rights law to include particular requirements for minorities, women, children, people with disabilities, and other vulnerable groups. As a result, these groups now have rights that shield them from prejudice that was once widespread in many societies.

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One important document in the history of human rights is the Universal Declaration of Human Rights (UDHR). The Declaration, which was drafted by delegates from all over the world with varying legal and cultural backgrounds, was adopted as a common benchmark of success for all peoples and all nations on December 10, 1948, by the UN General Assembly in Paris by resolution 217 A (III).

It lays out the principles of universal protection for fundamental human rights for the first time. The Universal Declaration of Human Rights (UDHR) has been translated into over five hundred languages since its enactment in 1948, making it the most translated document globally. It has also served as an inspiration for the constitutions of numerous recently independent States and emerging democracies.

The International Bill of Human Rights is made up of the UDHR, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social, and Cultural Rights, and their respective Optional Protocols on the death penalty and the complaints procedure.

In India, on September 27, 1993, the President of India issued an Ordinance creating a National Commission on Human Rights in response to demands from both domestic and International sources. After that, the Lok Sabha replaced the ordinance with a Bill on Human Rights on December 18, 1993, which was ratified as an Act on January 8, 1994. In accordance with Section 1(3) of the Act, this Act became effective on September 28th, 1993.

Consequently, the commission was created on September 27, 1993, by an ordinance signed by the president. On October 12, 1993, Justice Ranganath Mishra, the former Chief Justice of India, was appointed as the commission's first chairperson.

1.3.1 MEANING OF HUMAN RIGHTS

According to section 2(1) (d) of the Protection of Human Rights Act, 1993, "Human Rights" means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India.

Every human being is entitled to certain rights, which are known as human rights. It seeks to promote independence of thought and opinion, equality, justice, freedom, and peace. It does not discriminate against people based on their economic status, gender, race, or place of birth. Once granted, these rights cannot be withdrawn unless and until they are used illegally or in a way that compromises national security. Basic rights are mentioned in treaties and declarations

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that make up international law, which includes human rights. Additionally, each country's domestic legislation has its own set of rights. Some of the jurists have also defined Human rights like:-

- ❖ Definition of human rights by Susan Moller Okin: “Human Rights as a claim to something (whether a freedom, a good, or a benefit) of crucial importance to human life”.
- ❖ Definition by Dr. Purohit: “Human rights are the basic values which underlie the human being, born in any part of the world, are equal in dignity and rights”.

Human rights are widely recognized as belonging to the category of rights that are inherent, inherited, and bestowed by birth. These rights must be exercised without discrimination, and the state and its subordinate authorities have the responsibility to carry out these duties. As a result, the state protects human rights.

1.3.2 NATURE AND CONCEPTS OF HUMAN RIGHTS

Human rights include the freedom of speech, equality before the law, and the right to life and personal liberty. When these rights are violated, it is as though a person is not being treated like a human being. These are fundamental rights that are unalienable, ought to be protected by statutes, and should be viewed as a duty to advance human rights. Because human rights encompass a number of other rights, such as political, social, cultural, economic, civil, and social rights, they are also interdependent. These rights are all interdependent and cannot be divided by national laws or by authorities who may choose to uphold one human right while disregarding others. These rights are also recognized globally.

In the first place, the idea of human rights is predicated on giving people a decent life and fostering their personal development. Without these rights, it would be impossible to provide people with a dignified and high-quality life. As previously stated, human rights are universal, unalienable, and interconnected. These rights are indivisible, which can be further explained as follows: regardless of whether a right is protected by local legislation or not, it is an essential right that cannot be taken away or divided from one another by political order or government action.

1.3.3. KINDS OF HUMAN RIGHTS: -

We can divide human rights into the following categories:

1. Civil Human Rights: Include-

- “Civil right includes equality among people, right to life, liberty, security etc.
- Right to freedom from slavery and servitude.
- Right to freedom from torture”.

2. Social rights: Include-

- Right to freedom from interference with privacy, family, home etc.
- Right to marry and have family and right to property.
- Right to education healthcare, food clothing, shelter

3. Economic Rights: Include

- Right to social security
- Right to work and the right to equal pay for equal work
- Right to form trade unions
- Right to rest and leisure
- Right to food, health and adequate standard of living.”

4. Political Human Rights:

- Rights to life, nationality.
- Right to equality before law and equal protection of law.
- Right to judicial remedies, fair trial and freedom from arbitrary arrest, detention or exile
- Right to freedom of thought, expression, belief, faith, conscience and religion
- Right to freedom of peaceful assembly and association
- Right to take part in government affairs and equal access to public service”

5. Cultural Rights:

- Right to participate in the cultural life of the community,
- Right to enjoy the art and to share in the scientific advancement and its benefits
- Right to the protection of the moral and material interests resulting from any scientific, literary and artistic production of which the individual is the author
- Right to a social and international order in which the human rights as provided in the Universal Declaration can be fully realized.”

1.3.4. CHARACTERISTICS OF HUMAN RIGHTS

Human rights have the following characteristics:

1. **Human Rights are Fundamental:-** Human rights are vital and therefore essential to ensuring the right to life and dignity, without which they would be meaningless.
2. **Human Rights are Inherent:-** Human rights are not provided by any national or international authority. Human rights are provided to all people without interference, but neither a person nor an authority can guarantee them.
3. **Human Rights are universal:-** Every person has the right to human rights from birth, and no one can have those rights taken away from them. The term "Human Rights" only implies that because it advocates for equality rather than rights that are exclusive to the wealthier segments of society. It is universal because it does not discriminate based on factors like caste, sex, religion, or place of birth.
4. **Human Rights are Inalienable:-** Because they are unalienable, human rights cannot be taken away from anyone at any time. Furthermore, they are independent of an individual's caste, creed, religion, sex, or nationality.
5. **Human Rights are Essential and necessary:** Human rights are essential for improving society and guaranteeing human well-being on a moral, physical, social and spiritual level. These rights guarantee the quality rights of each person, while at the same time providing opportunities to achieve the purpose of human life.
6. **Human Rights are Imprescriptible:-** It is up to the individual to exercise human rights or not. But human rights cannot simply disappear, they remain, so human rights cannot be defined, they cannot be spoken.
7. **Human Rights are irrevocable:-** Human rights cannot be taken away from people because these rights are social values and belong to each person. No government has the right to curtail these rights until a person moves against the government and proves that he violates the norms of society, so human rights cannot be denied.
8. **Human Rights are connected with human dignity:** - Human rights are inherent to all individuals by virtue of their innate humanity. There should be no discrimination on any grounds, and everyone should be treated equally.
9. **Human Rights and state power:** - The government is responsible for ensuring that human rights are respected and is also responsible for addressing human rights issues.

Therefore, the government has limited authority over human rights, the government must follow the international human rights document. The government does not grant human rights; it only recognizes and protects them. Human rights are inherent rights of all human beings.

- 10. . Human Rights are not absolute:** - In a dynamic social environment, reasonable restrictions, including restrictions on the enjoyment of rights and freedoms, are necessary for maintaining public order, ensuring the rights and freedoms of others.

1.3.4.1. LIBERTY

According to the Human Rights Act, everyone is entitled to security and liberty. This right guards against arbitrary or illegal deprivations of freedom. When someone is taken into custody or arrested, they are entitled to certain basic rights. They also have the right to a trial that is held without undue delay.

One of the most fundamental human rights is the right to liberty, along with the right to life. All people have the right to liberty, which includes the freedom to move about freely and the freedom from being detained arbitrarily by others. In the past, one of the greatest accomplishments of the common law was the defense of individual liberty. An old common law remedy called the writ of habeas corpus enables someone who is being held to contest the legality of their custody.

A person detained in accordance with a legitimate law is not guaranteed their release by habeas corpus. Both detention for mental health reasons and detention to stop the spread of infectious diseases are permitted by law. The Commonwealth Crimes Act permits preventative detention orders for counterterrorism purposes; however, the constitutionality of these orders has not yet been examined.

From the French Revolution's clarion call, "Liberty, equality, fraternity," to the 1948 Universal Declaration of Human Rights (UDHR):-

1. Article 3 ("Everyone has the right to life, liberty, and security of person"), to the 1967 International Covenant on Civil and Political Rights (ICCPR)
2. Article 9 ("Everyone has the right to liberty and security of person"), every declaration of rights includes the right to liberty. Nobody is allowed to be arbitrarily detained or

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arrested. Nobody may have their freedom taken away from them unless there are legal justifications and procedures followed.

According to Article 21 under Indian Constitution: -Protection of Life and Personal Liberty means:-

“No person shall be deprived of his life or personal liberty except according to procedure established by law.”

Under the provisions of the Constitution of India this fundamental right is available to every person, citizens and foreigners alike. Article 21 deals with two rights:

- Right to life
- Right to personal liberty

The fundamental right provided under Article 21 is one of the most important rights that the Constitution guarantees. The Supreme Court of India has described this right as the ‘heart of fundamental rights’.

The right specifically mentions that no person shall be deprived of life and liberty except as per the procedure established by law. This implies that this right has been provided against the State only. State here includes not just the government, but also, government departments, local bodies, the Legislatures, etc. Any private individual encroaching on these rights of another individual does not amount to a violation of Article 21. The remedy for the victim, in this case, would be under Article 226 or under general law.

The right to life is not just about the right to survive. It also entails being able to live a complete life of dignity and meaning.

The chief goal of Article 21 is that when the right to life or liberty of a person is taken away by the State, it should only be according to the prescribed procedure of law. Some of the important decisions wherein right to have been interpreted:-

1. AK Gopalan Case (1950): Until the 1950s, Article 21 had a bit of a narrow scope. In this case, the SC held that the expression ‘procedure established by law’, the Constitution has embodied the British concept of personal liberty rather than the American ‘due process’.
2. Maneka Gandhi vs. Union of India Case (1978): This case overturned the Gopalan case judgement. Here, the SC said that Articles 19 and 21 are not watertight compartments. The idea of personal liberty in Article 21 has a wide scope including many rights, some of which are embodied under Article 19, thus giving them ‘additional protection’. The

court also held that a law that comes under Article 21 must satisfy the requirements under Article 19 as well. That means any procedure under law for the deprivation of life or liberty of a person must not be unfair, unreasonable or arbitrary. Read the Maneka Gandhi case in detail in the linked article.

3. Francis Coralie Mullin vs. Union Territory of Delhi (1981): In this case, the court held that any procedure for the deprivation of life or liberty of a person must be reasonable, fair and just and not arbitrary, whimsical or fanciful.
4. Olga Tellis vs. Bombay Municipal Corporation (1985): This case reiterated the stand taken earlier that any procedure that would deprive a person's fundamental rights should conform to the norms of fair play and justice.
5. Unni Krishnan vs. State of Andhra Pradesh (1993): In this case, the SC upheld the expanded interpretation of the right to life.

1.3.4.2 EQUALITY

Human rights are inherent to our existence as human beings and are not bestowed upon us by any political entity. All people have these fundamental rights, regardless of their gender, race, nationality, ethnicity, color, religion, language, or any other characteristic. They include the most basic, the right to life, as well as those that are essential to a fulfilling life, like the rights to food, shelter, employment, health care, and liberty.

The first official document outlining fundamental human rights to be universally protected was the 1948 UN General Assembly adoption of the Universal Declaration of Human Rights (UDHR). On December 10, 2023, the UDHR celebrated its 75th anniversary as the cornerstone of all international human rights law. The tenets and fundamental elements of all present and future human rights conventions, treaties, and other legal documents are laid forth in its thirty articles.

The International Bill of Rights is composed of the UDHR and the two covenants, the International Covenant for Civil and Political Rights and the International Covenant for Economic, Social, and Cultural Rights.

Equality and non-discriminatory:- Article 1 of the UDHR states: "All human beings are born free and equal in dignity and rights." Freedom from discrimination, set out in Article 2, is what ensures this equality.

All international human rights law is compatible with non-discrimination. Each and every major human rights treaty contains this idea. Additionally, it serves as the main framework for

two important agreements: the Convention on the Elimination of All Forms of Discrimination against Women and the International Convention on the Elimination of All Forms of Racial Discrimination.

Under Indian Constitution regardless of caste, ethnicity, place of origin, gender, or religion, every Indian citizen is granted a number of fundamental rights under the part three of the constitution. These are the parts of the Constitution that are most beneficial to citizens, according to Dr. B. R. Ambedkar. Given the authority vested in the government in a democracy, the protection of people's rights and freedoms against abuse or intervention by the state is why the fundamental rights are regarded as an essential component of the constitution. The goals of justice, equality, liberty, dignity, and fraternity as stated in the Preamble are attempted to be achieved by these rights.

Right to Equality: -Equal treatment for all individuals is ensured by the right to equality, which forbids legal discrimination based only on factors such as class, ethnicity, religion, gender, or place of birth. Positive and negative equality are both covered by the right to equality; it demands equal treatment and prohibits unequal treatment.

The Right to Equality is contained in Articles 14 - 18 under Indian Constitution

1. Right to Equality under Article 14 –

The idea of equality is embodied in Article 14, which mandates that the government guarantee equal rights for all citizens of India and refrain from denying any individual equal treatment under the law. It is everyone's legal right to be treated equally, regardless of gender, nationality, or ethnicity.

Equality under Law -

- This means that no one has any unique rights or benefits
- There is no prejudice in the eyes of the court based on irrelevant factors such as status, position, and so on
- Declares that all individuals, regardless of status or position, are susceptible to the exclusive jurisdiction of regular courts

Equal legal protection under the law -

- It is a logical extension of equal treatment under the law
- It specifies that all individuals inside the legal boundaries shall be afforded equal protection

- This indicates that such security must be provided without regard for favour or prejudice
- This entails fair treatment in identical situations, both in terms of legal rights and duties
- It is the government's affirmative responsibility, which it must fulfill by enacting essential economic and social reforms, to ensure that everyone receives such equitable protection

2. Right to Equality under Article 15 -

According to Article 15, the government must guarantee equal rights to all people and refrain from discriminating against them based only on their place of birth, class, gender, religion, or any combination of these characteristics. Additionally, these citizens must not be subject to any limitations, disabilities, or preconditions. Nothing in this article restricts the country's ability to make special accommodations for women and children.

3. Equality of opportunity regarding public employment under Article 16 -

Article 16 states that a person's religious beliefs, ethnicity, class, gender, ancestry, place of birth, residency, or any combination of these factors should not be used as a basis for disqualification or discrimination in any government occupation or position. It gives Parliament the power to pass laws mandating residency in that state or Union Territory prior to being appointed to or employed there.

4. Abolition of Untouchability under Article 17 -

It is well known that the idea of untouchability is socially constructed and that it discriminates against and denigrates particular underprivileged classes based only on their place of birth.

5. Abolition of Titles under Article 18

Article 18 nullifies all ranks and prohibits the government from granting titles to any individual, whether they are a resident or not. Conversely, those who have served in the armed forces or achieved a degree are not subject to this limitation.

Principles of equality embodies:-

Since no two people are exactly alike, the fundamental tenet of the right to equality is that rather than treating everyone equally, people should be treated equally for characteristics that are similar and differently for distinctive elements.

There must be a fair classification of people in order to develop strategies that help reduce disparities as much as is practical in order to eliminate them.

1.3.4.3 JUSTICE

A fundamental component of welfare and peacebuilding is justice. It is a fundamental human value and a need for equity, justice, equality, and respect for the rights of others. In order to achieve socio-economic growth, all parties involved must accept the idea of justice, and all systems produced through this process must be based on both justice and respect for human rights.

Relation between Justice and Human Rights: -Justice is characterized as appreciating variety and confronting social injustice, whereas human rights are the advantages that come with simply being a human. When everyone is treated equally, shares communal resources fairly, and is supported in exercising their human rights, justice is said to exist. Justice states that people should not be subjected to discrimination or have their welfare or well-being restricted because of their gender, religion, age, belief, race, political affiliation, or even sexual orientation.

To be just is to provide each individual what they are due. Fairness and justice are closely related concepts that are occasionally used interchangeably. Justice is defined as the standard of rightfulness, which is the minimal norm that should apply to determine what constitutes right and wrong. Historical evidence has demonstrated that the presence of justice in an administrative system is essential for the survival of a civilized society. With time, the civilizations that lack a just administrative framework disappeared.

The need for justice to be included in the administrative system has grown with time and social advancement, which has made the approach of those in positions of authority more methodical and cautious.

One of the most significant moral and political ideas that lack a consensus definition is justice. The demand for justice takes on significance in particular situations and cultural settings. The idea of justice is evolutionary. It's fascinating to learn how the definition of justice has evolved from ancient Greek civilization to contemporary society.

1.3.4.4 CONCEPT OF JUSTICE IN INDIAN CONSTITUTION

The Indian Constitution's preamble contains a definition of justice. The Indian constitution's framers made sure that justice was included because they understood how important it was to establish justice in a nation. The concept of justice expressed in the preamble of the Indian constitution is also reflected in Articles 14, 15, 16, and 17. Part III of the constitution, which grants every citizen fundamental rights, incorporates all of these articles.

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The Indian constitution contains provisions pertaining to "Equal Justice and Free Legal Aid" in article 39A which grant every citizen the right to receive pro bono legal assistance from court officers. No one can be refused free legal representation. In order to guarantee that no citizen is denied the opportunity to obtain justice because of their financial situation or other disabilities, the State must ensure that the operation of the legal system is founded on justice, equal opportunity, and free legal aid.

Distributive justice is defined in Indian Constitution Articles 38 and 39. Fair resource distribution to those who need it is known as distributive justice. The basic objective behind the concept of justice is:-

1. To guarantee that citizens and companies have efficient access to justice and to improve judicial collaboration in civil and criminal cases, including training for judges and other legal professionals.
2. To advance the idea of justice based on the rule of law, which includes judicial cooperation, mutual recognition, mutual trust, and the independence and impartiality of the judiciary.
3. To strengthen the power of fundamental rights, democracy, and the rule of law.

Types of justice: - Indian Constitution deals with three types of justice as follows: -

1. Social Justice
2. Economic Justice
3. Political Justice

The three different forms of justice are interconnected. It is impossible to obtain one without other two. Only in the presence of economic and political justice can social justice be achieved. All three forms of justice are upheld by the Indian Constitution's part III, which addresses equality through articles 14 and 15.

1. Social Justice

The idea of social justice emerged during the 19th-century industrial revolution. Various institutions define social justice differently. While some define it as equality of status among individuals, others define it as the equitable and comprehensive distribution of goods among people for economic growth.

More good for more people is what social justice entails, and those who are unequal should be treated equally. In the Kesavananda Bharati case, the Supreme Court ruled

that social justice is a component of the Indian constitution's basic structure. Social justice is the availability of equal social opportunities for each person's personal growth without any form of caste, sex, or race-based discrimination. These differences should not deprive anyone of the social conditions required for their development. Social equality is the foundation of the idea of social justice. Only in a society where there is no man-on-man exploitation can social justice be upheld. The Indian Supreme Court ruled in *S.R. Bommai v. Union of India* that social justice and judicial review are two fundamental aspects of the constitution.

2. **Economic Justice:** -The Indian constitution envisions socio-economic justice as included under the Directive principles of state policy. Economic justice is in some ways a component of social justice itself.

To achieve economic justice, one must ensure economic equality, opportunity, and removal of financial barriers. It is consistently carried out under the auspices of social justice. All members of society should have equal access to the economy in order to achieve economic justice. Individuals should not be treated differently based on their financial situation.

Nobody should be denied a chance because of their financial situation. Any person's lack of opportunities shouldn't be attributed to his or her financial situation. The goal of economic justice is to end poverty by increasing the nation's wealth and resources and allocating them equally to all those who contribute to its creation.

3. **Political justice:** - A system devoid of political arbitrariness is referred to as political justice. Political equity ought to be a feature of how the government operates. A person's political status should not be used against them; rather, they should be treated equally with all other citizens. All people should be subject to the same laws, regardless of their political status.

However, above three forms of justice are interconnected. It is impossible to obtain one without the other two. Only in the presence of economic and political justice can social justice be achieved. All three forms of justice are upheld by the Indian Constitution's part III, which addresses equality through articles 14 and 15.

1.5 SUMMARY

Humans have equal rights and dignity from birth. These are moral assertions that, independent of caste, color, creed, place of birth, sex, cultural differences, or any other factor, are unalienable and intrinsic in every person by virtue of their humanity alone. These assertions are made in the framework of what is now called human rights. The terms inherent, fundamental, basic, natural, and birth rights are occasionally used to refer to human rights. Human rights are inherent to our existence as human beings and are not bestowed upon us by any political entity. All people have these fundamental rights, regardless of their gender, race, nationality, ethnicity, color, religion, language, or any other characteristic. They include the most basic, the right to life, as well as those that are essential to a fulfilling life, like the rights to food, shelter, employment, health care, and liberty.

The first official text outlining fundamental human rights to be universally protected was the 1948 UN General Assembly adoption of the Universal Declaration of Human Rights (UDHR). On December 10, 2023, the UDHR will celebrate its 75th anniversary as the cornerstone of all international human rights law. The tenets and fundamental elements of all present and future human rights conventions, treaties, and other legal documents are laid down in its thirty articles. The International Bill of Rights is composed of the UDHR and the two agreements, the International Covenant for Civil and Political Rights and the International Covenant for Economic, Social, and Cultural Rights.

The Indian Constitution's preamble contains a definition of justice. The Indian constitution's framers made sure that justice was included because they understood how important it was to establish justice in a nation. The concept of justice expressed in the preamble of the Indian constitution is also reflected in Articles 14, 15, 16, and 17. Part III of the constitution, which grants every citizen fundamental rights, incorporates all of these articles.

Human rights are defined as "those minimal 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 consideration." This definition highlights the essence of human rights. The Human rights are described as "rights derived from the inherent dignity of the human person" in the 1948 Universal Declaration of Human Rights (UDHR). Since a written constitution is the fundamental law of the state, human rights that are protected by one are referred to as "fundamental rights."

HISTORICAL AND PHILOSOPHICAL PERSPECTIVES ON HUMAN RIGHTS

Human rights are the fundamental freedoms that every person has just by virtue of being a member of the human race. All people have it by nature, regardless of their ethnicity, religion, language, sex, color, or any other factor. Human rights are defined as "the rights relating to life, liberty, equality, and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India" in the Protection of Human Rights Act, 1993.

Human rights are fundamental freedoms that are vital to a person's growth as a person. These fundamental rights, known as DPSPs and Fundamental Rights, are safeguarded by the Constitution. The importance of fundamental rights has increased, and they are directly able to be upheld in court. Almost all of the rights outlined in the UDHR (Universal Declaration on Human Rights) are covered in Parts III and IV of the Indian Constitution, as can be seen by carefully examining these two sections.

The judiciary has also made significant advancements, such as easing the "locus standi" rules so that anyone else may petition the court in place of the impacted parties. After the supreme court's interpretation of the citizen's fundamental rights, rights like the right to privacy, the right to a clean environment, the right to free legal representation, the right to a fair trial, and others are now included in the list of rights.

1.6 GLOSSARY

1. UN- United Nations
2. UDHR- Universal Declaration on Human Rights
3. LOCUS STANDI- *The right of a party to appear and be heard before a court.*
4. ICCPR - International Covenant on Civil and Political Rights
5. NHRC- National Human Rights Commission

1.7.SAQS

1. Fill in the blanks:-

1. Human rights are _____. (Universal, local).
2. Human rights are necessarily _____. (static, dynamic, closed)

HISTORICAL AND PHILOSOPHICAL PERSPECTIVES ON HUMAN RIGHTS

3. Human Rights encompass the _____ principles of humanity. (oldest, medieval, fundamental)

2. MCQS

1. Definition of Human Rights is provided under:

- A) Section 2 (d) of the Protection of Human Rights Act, 1993
B) Section 2 (a) of the Protection of Human Rights Act, 1993
c) Section 2 (b) of the Protection of Human Rights Act, 1993 D) Section 2 (c)
of the Protection of Human Rights Act, 1993

2. Characteristics of Human rights are:

- A) U n i v e r s a l
B) Inalienable
C) B o t h A a n d B
D) N e i t h e r A n o r B

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1.9. SUGGESTED READINGS

1. The Protection of Human Rights Act, 1993
2. The Constitution of India, 1950
3. The U.N. Charter

1.10. TERMINAL QUESTIONS AND MODEL QUESTIONS

1. Discuss the developments taken place in the evolution of Human Right, since the Universal Declaration of Human Rights 1948 was adopted.
2. Define Human Rights. Discuss various principles of Human Rights.
3. Give a detailed note on the Evolution of Human Rights in modern times.

UNIT 2: Society, Ethics and Human Rights

STRUCTURE

2.1 INTRODUCTION

2.2 OBJECTIVES

2.3 SUBJECT

2.3.1 INTERDEPENDENCE IN THE SOCIETY

2.3.2 MEANING OF HUMAN RIGHTS

2.3.3 MEANING OF HUMAN VALUES

2.3.3 IMPORTANCE OF HUMAN VALUES IN RESPECT OF HUMAN RIGHTS

2.3.5 CATEGORY OF HUMAN VALUES

2.4 HUMAN VALUES AND THEIR NECESSITY

2.4.1 EVERY PERSON MUST POSSESS THE FOLLOWING FIVE HUMAN VALUES

2.4.2 ROLE OF FAMILY IN INCULCATING HUMANISTIC VALUES

2.4.3 ROLE OF SOCIETY IN INCULCATING VALUES IN HUMANS

2.5 SUMMARY

2.6 GLOSSARY

2.7 SAQs

2.8 REFERENCES

2.9 SUGGESTED READINGS

2.10 TERMINAL QUESTIONS

2.11 ANSWER TO SAQs

2.1 INTRODUCTION

According to Aristotle, humans are social animals by nature. Animals that live in societies are called humans. There are other animals besides humans that also reside in communities. Numerous other species and animals follow suit, including termites, ants, birds, monkeys, and apes. The simple fact that an animal lives in a group does not, however, imply that it has a "society" or that human civilization and animal society are the same. The definition of society and the social links that exist in human society are essential for drawing distinctions between animal and human societies.

The word "society" in sociological context refers to a complex system of interactional rules that emerges among a group of individuals. However, in everyday speech, the term "society" refers to the individuals that make up a particular group and is typically understood in reference to concrete observations. People are only valuable as the intangible agents of social relationships in sociology. Consequently, society is a system of relationships and the normative pattern of interaction that its members use to sustain themselves.

2.2. OBJECTIVES

Following are the objectives of Human Values in a Civil Society respecting the Human Rights of people:-

1. To understand the moral values that ought to guide the people to respect the human rights of people.
2. To create awareness among the people in society and develop human values essential for betterment of society and people.
3. To inspire Moral and Social Values and Loyalty for law abiding society.
4. To appreciate the rights of others.
5. To resolve the moral and legal issues among the people in society.
6. To justify the moral judgment concerned with the present legal system protecting the rights of people.

2.3. SUBJECT

Society involves Likeness: -Society is based on similarity: If there was no similarity and the perception of similarity, there would be no shared acknowledgment of "being part of the same group" and, consequently, no society. Society is present among individuals who share some level of resemblance, both physically and mentally, and who are close enough or sufficiently intelligent to recognize this fact.

Society involves Difference:

The foundation of society is based on similarity, but it also relies on diversity. If everyone was identical, social connections would be as restricted as those of certain animals like ants and bees, which lack reciprocity due to their uniformity. Unlike these organisms, human society thrives on the complementarity of different individuals, leading to meaningful social interactions. Our society features an ongoing interplay of both similarities and differences, with reciprocal relationships between differences evident at every societal level. For instance, the family unit is built on the biological distinction between genders, as well as on natural differences in abilities, capacities, and interests within the society.

Difference Subordinate to Likeness:

The presence of both similarities and differences is essential for society. While differences are important, they alone cannot form a society. Similarities take precedence over differences and serve as the foundation for mutual relationships within society. According to MacIver, "The primary presence of similarities and the secondary presence of differences give rise to the most important social structure - the division of labor." The division of labor, which is based on differences, is essentially a form of cooperation before it becomes a division. It is an intentional effort to harness the diverse abilities of individuals for a common purpose.

2.3.1 INTER-DEPENDENCE IN THE SOCIETY:

Besides similarity, reliance on mutual support through collaboration is another crucial component that forms the fabric of society. No community can thrive without the mutual reliance of its parts. It's important for members of a community to be mutually dependent and to work together for the society to function properly. People cannot lead isolated lives within

a community since community life is essential for their well-being. Hence, there must be mutual reliance among the community's members.

Multiplicity of Relationships:

The fabric of society is woven from a multitude of social connections, which can span hundreds to thousands of individuals. Within a family, there can be as many as fifteen connections defined by age, gender, and generation. Beyond the family unit, the possibilities for social interactions are endless. The diversity of social connections mirrors the complexity of society itself. Examples of these connections include the relationship between a voter and a candidate, a mother and her child, an employee and their employer, friends, teachers and students, and so forth. These social connections can be grouped into various categories such as "economic", "political", "personal", "impersonal", "friendly", "antagonistic", and more.

Relation between Individuals and Society:-

The community is made up of people who naturally seek social interaction. This concept suggests that both individuals and the community rely on each other. Their relationship is reciprocal, meaning each is crucial for understanding the other. Individuals are not just members of the community, similar to how cells are part of the body, and the community is not just a creation to fulfill specific human desires. The core characteristic of humanity, which is its social inclination, is what enables people to exist within a community.

2.3.2. MEANING OF HUMAN RIGHTS

According to MacIver and Page, "society is the web of social relationships." According to T. Parsons, "Society may be defined as the total complex of human relationships in so far as they grow out of action in terms of mean-end relationship, intrinsic or symbolic."

According to Giddings, "Society is the union itself, the organization, the sum of formal relations in which associating individuals are bound together." Lapiere emphasized the intricate social interaction patterns that exist in society. According to his definition, "the term society refers not to a group of people but rather to the intricate pattern of interaction norms that develops within and between them." Professor Wright stressed that a group of individuals does not necessarily constitute a society. He stated, "Society is not a group of people, it is the system of relationships that exists between the individuals of the group".

2.3.3. MEANING OF HUMAN VALUES

Most people agree that values are the moral guidelines for socially acceptable human behaviour. It is a characteristic of people that is applied to their actions. It is passed along to a circumstantial aspect that is dependent on the factual assessment. The phrase Originating from the Latin word "valere," which originally signified strength and health, the term "value" evolved naturally to denote effectiveness and sufficiency. "Value" is the French word for excellence. Value is a combination of three ideas: Supervening, Quality, and Idea. The ideas that direct people's life are known as values, and they can have a variety of meanings. We make judgments, trust people, and allocate our time and energy in our social lives based on our values, which are the core of our personalities. The values could be seen as essential to resolving a lot of global issues.

2.3.4. IMPORTANCE OF HUMAN VALUES IN RESPECT OF HUMAN RIGHTS

Understanding human values is crucial because it helps people realize what matters to them in life and also to others as well. Human values encompass many different facets. Human values, for instance, include morality, kindness, and honesty. These are the basic foundations of a humanistic society. Depending on the social setting or context, the value system is subject to change. This implies that some people may have values that are entirely different in one situation but that are specific to another. A particular facet of values is the concept of selfworth. Internal and outward self-esteem are the two types of self-esteem. How you see yourself is the focus of internal self-esteem, but how other people see you are the focus of external selfesteem. When someone has high self-esteem, they want other people to think well of them, but when they have high self-esteem, they only want other people to like them because they like themselves. This makes a division in society into a poor and elite class and brings attentions towards the protection of human rights of people in society.

2.3.5. CATEGORY OF HUMAN VALUES

Values can be categories into the following three types:-

- Values are essential beliefs that can direct or inspire human behaviors or attitudes.
- Values can be also be said that a person who possesses, of principles, standards, or qualities.
- Values are one of the essential components of self-awareness and act as guiding Principles for human and society.

2.4. HUMAN VALUES AND THEIR NECESSITY

For the following reasons every person need to develop human values:-

- While interacting with others, as a virtue human values evoke human elements in us.
- Human values are the foundation of any viable social existence. Harmony occurs from the space they create for a push or movement towards one another
- They include truth, honesty, loyalty, love, and peace—the core human ideals. They emphasize the values of society as a whole as well as the inherent kindness of persons.

2.4.1. EVERY PERSON MUST POSSESS FOLLOWING FIVE HUMAN VALVES

- **Right Conduct:** The conduct of a person is most important aspect. It is conduct that makes a responsible for legal consequences. It includes principles such as self-help skills (self-reliance, modesty, etc.), social skills (environmental awareness, decent behaviour, etc.), and ethical skills (courage, efficiency, timeliness, etc.)
- **Peace:** It is most recognised element of human behaviour which contains values like humility, optimism, patience, self-confidence, self-control, self-esteem etc. Hence one of the most valued part of human rights.
- **Truth:** It is the base of every type of value like accuracy, fairness, honesty, justice, quest for knowledge, determination etc.
- **Peaceful co-existence:** Maintain peace in human society is also an essential element of human rights as it contains values concerning socio-economic and political relations among people in order to maintain fraternity, equality and respect for one another.
- **Discipline:** It is the basic element of a civilized society that contains values like regulations, direction, order, law etc.

2.4.2. ROLE OF FAMILY IN INCULCATING HUMANISTIC VALUES

- **Emulating Behaviour:** Particularly parents are the role models in the family. Their behaviour is observed and imitated by the others in family. Hence, it is very important for the parents to be careful about their behaviour and try to do the acts in such manner that children learn to respect the rights of others.
- **Instructional Teaching:** In families, values are instilled through clear guidance and monitoring. Teaching religious rites, cultural traditions, or moral principles like honesty

and integrity can all fall under this category. A family that values honesty, for instance, could talk about how important it is to tell the truth and encourage children to be honest with others, even when it can be challenging.

- **Facilitating Experiences:** The experiences that families create strengthen values. This can be attending religious services, doing community work, or adhering to family traditions. Children can learn the importance of helping others and developing empathy for those in need, for instance, from a family volunteering at a nearby food bank.
- **Fostering a Supportive Environment:** Families provide a supportive environment where people can safely explore and express their values. People get courage to act on their convictions and confidence in them thanks to this encouraging environment. A family that values open communication, for instance, can encourage kids to voice their feelings and thoughts, even if they differ from their parents'. This promotes an atmosphere of respect and understanding between people.
- **Ethno-Religious Observances:** Families frequently introduce their children to religious and cultural traditions that are based on moral standards and ideals. Engaging in these activities can promote moral awareness, appreciation for cultural heritage, and a sense of community. For instance, moral values and ethical conduct that are taught in the family context, such empathy, forgiveness, and accountability, are commonly included in religious teachings.

2.4.3. ROLE OF SOCIETY IN INCULCATING VALUES IN HUMANS

- **Socialization:** People develop values that direct their actions and choices throughout their lives through their encounters with family, friends, schools, religious organisations, and the media.
- **Modelling and Observation:** People watch other people in society, especially powerful people like parents, professors, community leaders, and celebrities, and try to imitate their actions.

Through their words, deeds, and interactions, these role models exhibit ideals that have the power to influence the values that people choose to embrace.

Norms and Expectations: Common values serve as the foundation for the standards and expectations that society sets about what conduct is acceptable and undesirable. These standards act as rules for proper behaviour and support the significance of particular values in the society.

- **Social Support and Enforcement:** Through societal acceptance, incentives, and penalties, society offers support systems and means of upholding moral principles.

While social disapproval or punishments for breaking norms act as deterrents, positive reinforcement for behaviours consistent with societal standards encourages people to uphold those ideas.

- **Cultural Traditions and Rituals:** Through cultural customs, ceremonies, rituals, and festivals, societies uphold and convey values.

These group experiences give people the chance to strengthen their bonds with their cultural heritage, reaffirm common values, and develop a feeling of identification and belonging in the community.

2.5. SUMMARY

Human rights are inherent to our existence as human beings and are not bestowed upon us by any political entity. All people have these fundamental rights, regardless of their gender, race, nationality, ethnicity, color, religion, language, or any other characteristic. They include the most basic, the right to life, as well as those that are essential to a fulfilling life, like the rights to food, shelter, employment, health care, and liberty.

The presence of both similarities and differences is essential for society. While differences are important, they alone cannot form a society. Similarities take precedence over differences and serve as the foundation for mutual relationships within society. According to MacIver, "The primary presence of similarities and the secondary presence of differences give rise to the most important social structure - the division of labor." The division of labor, which is based on differences, is essentially a form of cooperation before it becomes a division. It is an intentional effort to harness the diverse abilities of individuals for a common purpose.

A particular facet of values is the concept of self-worth. Internal and outward self-esteem are the two types of self-esteem. How you see yourself is the focus of internal self-esteem, but how other people see you are the focus of external self-esteem. When someone has high self-esteem, they want other people to think well of them, but when they have high self-esteem, they only want other people to like them because they like themselves. This makes a division in society into a poor and elite class and brings attentions towards the protection of human rights of people in society.

2.6. GLOSSARY

1. Social Animal – Means Human beings
2. Society- Means a society wherein Human lives.
3. Human- Include both Male and Female
4. Inter-dependence- Means mutual support through collaboration

2.7. SAQS

1. Fill in the blanks:-

- A. Society is not a group of people; it is that exists between the individuals of the group.
- B. Society exists only when individuals have..... of the presence of one another.
- C. Human Development essentially means.....

2. MCQS:-

1. Human Values are Essential for:-
 - A. Living in Harmony with self, each other and nature
 - B. Making Life Easier and Happy
 - C. Living with Family and Friends
 - D. Making Money to fulfill desires
2. The Harmony should maintained in
 - A. Between Body and Life
 - B. Between Self and Society
 - C. Between Life and Environment
 - D. All of the above

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2.10 TERMINAL QUESTIONS: -.

1. Explain how human relationships are social.
2. Distinguish between individual and group rights.
3. Associate human values with human rights.

2.11 ANSWER TO SAQS

1. A) A pattern of relationship B) Physical Awareness C) transformation from animal consciousness to human consciousness
 2. 1) Living in Harmony with self, each other and nature, 2) All of the above.
-

UNIT 3: CLASSICAL INDIAN PERSPECTIVES ON HUMAN RIGHTS

STRUCTURE

3.1 INTRODUCTION

3.2 OBJECTIVES

3.3 SUBJECT

3.3.1 HUMAN RIGHTS IN ANCIENT INDIA

3.3.2 HUMAN RIGHTS IN MEDIEVAL INDIA

3.3.3 HUMAN RIGHTS IN MODERN INDIA

3.3.4 DEVELOPMENT OF HUMAN RIGHTS IN CONTEMPORARY INDIA

3.4 DHARMA: IT'S MEANING

3.4.1 RAJNEETI

3.4.2 DANDANEETI

3.4.3 NYAYA

3.5 SUMMARY

3.6 GLOSSARY

3.7 SAQS

3.8 MCQS

3.9 REFERENCES

3.10 SUGGESTED READINGS

3.11 TERMINAL QUESTIONS AND MODEL QUESTIONS

3.12 ANSWERS TO SAQS

3.1 INTRODUCTION

The Concept of Human Rights: -

Human rights are inherent entitlements possessed by individuals by virtue of human being. These rights are universally and equally applicable to all people, enduring throughout time. As stated in the quote, "All individuals are born free and equal in dignity and rights. They possess reasoning and conscience and should treat each other with a sense of solidarity. This perspective aligns with the belief that humans hold a unique intrinsic value that distinguishes them from lifeless objects. To infringe upon a human right would signify a failure to acknowledge the inherent value of human existence.

Human rights have changed over time and continue to be entwined with cultural, religious, and legal customs. Treating people like one wishes to be treated is a value that many societies uphold. This is known as the "golden rule." A few of the earliest written sources that address issues of rights, obligations, and responsibilities are the Hindu Vedas, the Bible, the Quran (Koran), the Analects of Confucius, and the Code of Hammurabi from Babylon.

The methods used by various nations to protect these rights differ. For example, these rights are guaranteed by statute in India, where they are established as fundamental rights in the Constitution. On the other hand, in the UK, courts create different principles through case law, which establishes legal precedence for certain rights. In addition, particular protections for these rights are provided by international law and treaties.

3.2 OBJECTIVES

1. To know the meaning and definition of Dharma as Law
2. To be aware of the characteristics of Dharma and relation with human rights
3. To learn about evolution and landmarks in the development of Danda and Nyaya
4. To get acquainted with the classifications of Human Rights under the concept of Dharma, Nyaya and Rajneeti

3.3 SUBJECT-

History of Human Rights in India

The history of human rights in India can be divided into three stages:

1. Ancient
2. Medieval
3. Modern

3.3.1 HUMAN RIGHTS IN ANCIENT INDIA-

Indian political intellectuals and philosophers have a long tradition of supporting human rights, which dates back to prehistoric times. As evidenced by epics such as the Ramayana and Mahabharata, legal systems in ancient India were based on Dharma, which sought to advance the welfare of all creatures and prevent harm among them. The central theme of Dharma, according to the Bhagavad Gita, is righteousness. According to the Upanishads, Dharma is the foundational principle that supports the entire cosmos. The idea of "Vasudhaiva-Kutumbakam," which depicts the world as one big family, is supported by the Vedas and Smritis. All four Vedas emphasise each person's equality and dignity.

The preservation of human rights was greatly aided by the teachings of the Lord Buddha. The well-known King Ashoka successfully created a welfare state for his people, guaranteeing fundamental liberties. Thus, it is clear that ancient Indian literature actively supported and encouraged equality, liberty, and human rights for all people, irrespective of prejudice based on caste, creed, gender, sex, or religion.

3.3.2. HUMAN RIGHTS IN MEDIEVAL INDIA-

In India, the Muslim era began during the Mediaeval period. There were rights pertaining to politics, society, religion, and culture before the Mughal era. But the Mughals' entrance presented difficulties for the idea of human rights. Political, religious, and social liberties were nevertheless given a lot of weight under Akbar's rule (1526–1605).

Din-E-Ilahi, or "divine religion," was a religious policy that Akbar instituted with the intention of advancing secularism and religious tolerance. Furthermore, religious groups such as the Sufi (Islamic) and Bhakti (Hindu) movements were essential in improving India's human rights history. But occasionally, later Mughal emperors like Babar, Humayun, and Aurangzeb repressed these advances.

3.3.3. HUMAN RIGHTS IN MODERN INDIA-

In India, the Modern era is marked by British dominance. The Indian people suffered economic, political, cultural, and spiritual suffering throughout this time since the British administration not only curtailed their freedom but also based its existence on widespread exploitation. Each and every Indian, having lived through centuries of colonial domination, was certain that a

civilised life could not be lived without the acceptance, protection, and application of human rights.

India's modern history of human rights is shaped in part by important constitutional provisions. A few of these are the Preamble, the Fundamental Rights, the Directive Principles of State Policy, the recently added Fundamental Duties, the reservations for scheduled castes and tribes, and the special treatment of Anglo-Indians and other underprivileged groups.

A comparison of the Indian Constitution with human rights reveals that almost all of the rights specified in numerous international treaties, covenants, and accords are included in the Constitution. Some of these include:

1. Universal Declaration of Human Rights, 1948
2. International Covenant on Economic, Social and Cultural Rights, 1976
3. International Covenant on Civil and Political Rights, 1976
4. Convention on the Prevention and Punishment of the Crime of Genocide, 1948
5. International Convention on the Elimination of All Forms of Racial Discrimination, 1965
6. Convention on the Elimination of All Forms of Discrimination against Women, 1979
7. Convention on the Rights of the Child, 1989
8. Convention on the Rights of Persons with Disabilities, 2006

In addition to these constitutional provisions, various laws have been enacted by the Indian legislature to safeguard and promote human rights. Some significant legislation introduced by the union includes:

1. Protection of Human Rights Act, 1993
2. National Commission for Minorities Act, 1992
3. National Commission for Women Act, 1990
4. Protection of Civil Rights Act, 1955
5. Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989
6. Immoral Traffic (Prevention) Act, 1987
7. Bonded Labour System (Abolition) Act, 1976
8. Juvenile Justice (Care and Protection of Children) Act, 2000
9. Child Labour (Prohibition and Regulation) Act, 1986 and more.

India has also implemented numerous labour-related legislative measures to ensure social security, significantly influenced by the standards set by the International Labour Organization (ILO).

Through these means, the concept of human rights in India has evolved and firmly taken root.

3.3.4. DEVELOPMENT OF HUMAN RIGHTS IN CONTEMPORARY INDIA

A number of essential rights that are available to Indian citizens are covered by Part III of the Constitution. The goal of this strategy was to give the United Nations Declaration of Human Rights (UDHR) national legal effect. Potential rights for citizens are outlined in Part III, Articles 14 to 30. Additionally, Directive Principles are incorporated in Part IV, providing the State with additional recommendations to guarantee the welfare of its citizens.

When it came to addressing cases, the judiciary was initially inflexible. But eventually, in an effort to handle instances more flexibly and add subjectivity, they adopted the idea of "Audi Alteram Partem." This change in perspective is apparent in how Article 21 is interpreted. You can learn more about the evolution of human rights in India in the modern age by reading through the following rulings.

A.K. Gopalan v. State of Madras involved a restrictive interpretation of Article 21, which practically reduced the right to life to that of an animal. The *Maneka Gandhi v. Union of India* case, however, broadened the definition of Article 21 by connecting it to Articles 14 (Right to Equality), 19 (basic freedoms), and 21 (Right to Life and Liberty). In addition to protecting against potential abuses of fundamental rights, the concept of the right to life now takes into account an individual's culture and traditions.

The dispute revolved over the incorporation of the Right to Privacy under Article 21 in the case of *Kharak Singh v State of UP*. The petitioner objected to the practice of nightly domiciliary visits as a surveillance practice by police as they believed it violated their right to privacy.

Hon'ble, Supreme Court set rules for the treatment of detainees in *D.K. Basu v. State of Bengal*, a case involving deaths that occurred while the person was in custody. This case demonstrated that, in the absence of any legal protections, police officers frequently mistreated and abused detainees. The court ruled such activity as a violation of human rights and felt it important to condemn such actions to protect captives.

The Right to Livelihood was further connected to the Right to Life in the *Olga Tellis v. Bombay Municipal Corporation* case. The claim was that a person's means of subsistence has a substantial impact on their quality of life and should not be viewed in isolation from the right to life. The court stressed that if someone is unable to support themselves as they like. The rights outlined in the Indian Constitution also focus on the welfare of women and children, as evidenced by the following cases:

HISTORICAL AND PHILOSOPHICAL PERSPECTIVES ON HUMAN RIGHTS

1. In *Unni Krishnan v State of AP*, compulsory primary education for children was established, which is also reflected in Article 21A of the Constitution (Part III). This article guarantees free and compulsory education for children until they reach the age of fourteen.
2. The *People's Union of Civil Liberties v Union of India* case resulted in the immediate release of all child laborers, along with compensation for their efforts.
3. In *Public at large v State of Maharashtra*, measures were taken to protect children from sexual exploitation.
4. Similarly, in *Vishaka v State of Rajasthan*, the Court established guidelines to prevent sexual harassment of women at workplaces, considering Articles 14, 19 and 21 (often referred to as the golden trio) of the Constitution. Additionally, *Associate Bank Officers Association v State Bank of India* demanded equal pay for women compared to men, aiming to eliminate gender discrimination within the organisation, while keeping Article 14 in mind.
5. In *State of Maharashtra v Madhukar Narayan Mandlikar*, Article 21 was interpreted differently, extending protection to the life and liberty of sex workers. The court held that even women who are labelled as having an "easy virtue" have a right to privacy, deviating from the previous ruling in *Tukaram v State of Maharashtra*, where the court ruled against the victim due to her perceived character.
6. In recent times, several cases have provided optimism about the judiciary's commitment to upholding human rights. The landmark case of *Naz Foundation v Govt. of NCT of Delhi* stands out, declaring that criminalising consensual homosexual relationships violated fundamental rights as per the Constitution. Relying heavily on Articles 19 and 21, it argued that such laws infringed upon individuals' privacy by suppressing their sexual orientation, forcing them into secrecy and fear. This also amounted to a breach of Article 21 by denying individuals the freedom to live according to their preferences, hindering their ability to lead a fulfilling life. Additionally, the stance was discriminatory and regressive, signifying a violation of human rights. Consequently, Section 377 was struck down.
7. The *Sabarimala* case also recognised women's Right to Religion (Article 25) and upheld their right to visit the temple. While respecting religious beliefs, the court took a middle path in its decision.

However, despite these advancements, India has witnessed setbacks in recent years. The situation in Jammu and Kashmir has been a grave human rights violation, inadequately addressed by the government. Revoking the region's special status and subsequent mistreatment of its residents, including arbitrary arrests, highlighted a major issue. Even though Right to Internet is now a fundamental right and high-speed 4G Internets is expected, the region faced prolonged Internet suspension and remains limited to 2G speeds, indicating subpar living conditions.

The Protection of Human Rights Act (PHRA) advocates for the establishment of Human Rights Commissions at both the Central and State levels. The Central Commission is granted the authority to conduct trials and make enforceable decisions. While it has made notable decisions, such as the investigation during the Godhra riots, its power has waned in recent years, with limited action despite ongoing violations. NGOs, empowered by the PHRA, have been more proactive in exposing violations and seeking justice for those affected.

During the lockdown, incidents of domestic violence have surged significantly, but there has been a lack of action against the perpetrators, despite reports and statistics highlighting the issue. Police arrests made under the pretext of 'violating COVID rules' during the lockdown have resulted in arbitrary detentions and mistreatment of detainees. Disturbing cases have emerged, such as one in West Bengal where a man was fatally beaten by the police for going out to obtain essential items.

Journalists' lives have also been at risk, as arrests have been justified by citing 'national security' and 'public interest.' However, no clear explanation has been provided for these arrests. These actions not only infringe upon freedom of expression but also violate the Right to Privacy. Moreover, numerous detentions are occurring under a stringent Sedition Law that has seen minimal changes since the British era. Yet, there has been minimal accountability for these human rights violations.

3.4. DHARMA: IT'S MEANING

The Vedas are the ultimate source of human knowledge and the wellspring of Dharma, as they recount the stories of the ancient priests, who are Sruti. They include commentary on a wide range of topics, including politics, the military, and the daily lives of common people. One of its other origins is Smriti, which is the Vedic interpretation. The dharmashastras were proposed by four sages, referred to as Smritikars. These are:

1. Manu
2. Yagnavalkaya
3. Brihaspati
4. Narada

Post-Independence Era

When creating the Indian Constitution, the fight for independence was framed as a fight for the fundamental civil liberties and rights that every human being should have. According to the findings of *Ambujam v. T.S. Ramaswamy*, AIR 1973 Delhi 46, Hindu law, or Dharma, began to be defined in accordance with shifting perspectives and lifestyles once it was recognised that the traditional way of living should give way to a more practical one.

Through fundamental rights, the tenets of natural law (Dharma) were included into the constitution. As we all know, Dharma was a duty-based legal system before it was codified, but the modern legal system is now focused on rights. Naturally, these rights are not unqualified and are subject to various limitations. Among the essential rights granted are the freedom of movement, the right to equality, and—above all—the right to life. However, there are plenty of examples from both our own and other historical periods that demonstrate the abuse of power, whether it was Hitler's Nazi regime or the notorious Emergency that Indira Gandhi imposed and the events that followed. These examples are sufficient to call into question the fundamental principles upon which our constitution is based.

On what is referred to as "the black day of Indian legal history," the judiciary rendered a verdict in *A.D.M. Jabalpur V. Shiv Kant Shukla*, (AIR 1976 SC 1207), severely undermining public confidence in the judicial system. Personal freedoms and fundamental rights were arbitrarily taken away in this decision, and the Honourable Supreme Court in a less than honourable ruling justified it for personal benefit. However, the errors were quickly fixed.

Earlier, in the well-known *Golaknath v. State of Punjab* case (AIR: 1967 AIR 1643), the fundamental rights had been declared absolute. Also, the Hon'ble Supreme Court in *Keshvananda Bharati* (AIR 1973 SC 1461) case introduced the doctrine of basic structure, changing the perspective from absolute to relative. However, law can never be static, so it must be clear to avoid becoming ambiguous and pointless.

3.4.1. RAJNEETI:-

Eliminating evil and bad, preventing the powerful from taking advantage of the vulnerable, and advancing human happiness and knowledge are all necessary to bring about justice in the world.

Indeed, justice is truth, and justice is the goal, and the law is a tool to achieve it. Social justice is built on a knowledge-based society, and since serving others is serving God, the idea of service becomes a national ideal. Therefore, every regulation must support what is beneficial to individuals.

The king's happiness and welfare are found in the subject's happiness and well-being, respectively. The monarch will consider anything that pleases his subjects good, but he will not consider anything that pleases himself good. For the above purpose Bentham states "The public good ought to be the object of the legislator; general utility ought to be the foundation of his reasoning". The science of legislation is determining what the actual good of the community is; the art is figuring out how to achieve that good.

The king's contentment and his own well-being are found in the subject's happiness and welfare. If it pleases his subjects, the monarch will deem it good; if it pleases himself, it will not. The public welfare should be the legislator's goal, and his reasoning should be based on general utility, according to Bentham, who expresses this clearly. The science of law is determining what the actual good of the community is, and the art is figuring out how to get there.

One of man's unique qualities is dharma. Without dharma, humans are on par with animals. The 'initial source of dharma' is said to be the Vedas. The basis of all that happens in the world is dharma. Since dharma is the foundation of everything in this world, it is regarded as "supreme." Dharma commandants acknowledge no interference, much like the laws of nature. Since "principles of dharma govern every sphere of activity including governance of the country," it has been underlined that people in positions of political authority must wear the hand glove of dharma.

Dharma Rajya, which translates to "rule of law," establishes the king's obligation, which is spelled out in detail in the Dharma Sastras. If the king violates this duty, he loses his right to rule. King was only revered by the populace if he followed the law (dharma). The exercise of political authority must be in accordance with dharma, which is a fundamental component of government, and the rules of dharma cannot be changed at the whim or fancy of the king. 'Rule of law' is what it means in the modern sense. As said by Dr. S. Radhakrishnan: "Dharma righteousness is the king of kings. It is both the people's and the ruler's own ruler. It is the law's sovereignty. In Indian tradition, dharma also refers to morality and the rule of law, and no polity can exist without these elements. Dharma, also known as virtue, is adherence to the reality of things; dharma is proper action. According to K.M. Panikkar, Dharma encompasses the entire

idea of the rule of law; those who defend it are protected, and those who destroy it are destroyed. The coronation ritual is a diksha devoting the king's life to the cause service of the people.

3.4.2. DANDNEETI

The terms Dam and Dand, which mean tame, subjugate, to conquer, to restrain, and similar terms, are the roots of the word Danda. Also, this phrase refers to a stick. It is true that one of the components of a state is danda. The primary goal of Danda's establishment is to instill discipline in the lives of people, who are inherently corrupt and bad. The only person who can truly protect all of humanity, according to Manu, is the king, and the king utilizes Danda as a tool or a means to achieve this.

The king was in charge of upholding Dharma through Danda under the old Indian political structure. It was commonly held that the only way to make people more disciplined is to instill a dread of punishment. This penalty serves as a conscious or unconscious restraint on their behavior. This penalty, though, ought to be applied sparingly and only when absolutely required. Otherwise, the Danda notion is lost. Furthermore, Indian philosophers of antiquity believed that Danda should only be applied when there were anti-social elements in the community, not at the whim of the ruling class. According to their statement, Danda is a code that God has given humans to live a moral existence. Danda should be held accountable for the transgressions of his subjects by this code. If the monarch is wronged, even the populace as a whole may act to overthrow him.

3.4.3. NYAYA

Morality, danda (punishment), and justice are given particular emphasis in the first Hindu legal system, which enshrines both the philosophy of life and the law. A moral state is justice. Gandhi said: "My soul refuses to be satisfied so long as it is a helpless witness of a single wrong." Friedmann, said that "The story of natural law is the quest of humanity for absolute justice and of its failure,". According to the law, legal justice, or justice in reality, has a number of shortcomings.

The level of legal justice must be raised to absolute justice standards, and attempts must be made to include an increasing amount of moral content into the law. In conclusion, it can be said that the rule of law is based on the solid basis of efficient legal enforcement. The rule of law disintegrates if laws are not properly enforced. Democracy crumbles when the rule of law is undermined, and the core of "free government" vanishes as well, and the government is no longer a government of laws but rather a "rule of men." Democracy, liberty, and freedom would

all be lost at that point, and the political system would turn into a dictatorship and a tool of tyranny.

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3.5. SUMMARY

In India, the Modern era is marked by British dominance. The Indian people suffered economic, political, cultural, and spiritual suffering throughout this time since the British administration not only curtailed their freedom but also based its existence on widespread exploitation. Each and every Indian, having lived through centuries of colonial domination, was certain that a civilised life could not be lived without the acceptance, protection, and application of human rights.

India's modern history of human rights is shaped in part by important constitutional provisions. A few of these are the Preamble, the Fundamental Rights, the Directive Principles of State Policy, the recently added Fundamental Duties, the reservations for scheduled castes and tribes, and the special treatment of Anglo-Indians and other underprivileged groups.

A comparison of the Indian Constitution with human rights reveals that almost all of the rights specified in numerous international treaties, covenants, and accords are included in the Constitution.

Dharma Rajya, which translates to "rule of law," establishes the king's obligation, which is spelled out in detail in the Dharma Sastras. If the king violates this duty, he loses his right to rule. King was only revered by the populace if he followed the law (dharma). The exercise of political authority must be in accordance with dharma, which is a fundamental component of government, and the rules of dharma cannot be changed at the whim or fancy of the king. The level of legal justice must be raised to absolute justice standards, and attempts must be made to include an increasing amount of moral content into the law. In conclusion, it can be said that the rule of law is based on the solid basis of efficient legal enforcement. The rule of law disintegrates if laws are not properly enforced. Democracy crumbles when the rule of law is

undermined, and the core of "free government" vanishes as well, and the government is no longer a government of laws but rather a "rule of men." Democracy, liberty, and freedom would all be lost at that point, and the political system would turn into a dictatorship and a tool of tyranny.

3.6 GLOSSARY

1. **PHRA:** - The Protection of Human Rights Act
2. **Democracy:** - A system in which the government of a country is elected by the people.
3. **Rule of Law:** - It is a principle of governance in a society.
4. **UDHR:-** Universal Declaration of Human Rights
5. **ILO:-** International Labour Organisation

3.7. SAQS

Fill in the Blanks:-

1. The central theme of Dharma, according to the Bhagavad Gita, is
2. Every regulation must support what is beneficial to.....
3. The Vedas are the ultimate.....of human knowledge and the wellspring of Dharma.
4. The level of legal justice must be raised to absolute.....

3.8. MCQS

1. 'Sarva Darsana Samgraha' is written by:- A.

- Jaimini
- B. Madhavacharya
- C. Vatsyayana
- D. Kanada

2. The Term 'Nyaya' means

- A. Word
- B. Number
- C. Argumentation

D. Particularity

3. Who among the following is the founder of Nyaya System

A. Pathanjali

B. Jaimini

C. Gautama

D. Kanada

4. The history of human rights in India can be divided into three stages:

A. Ancient

B. Medieval

C. Modern

D. All of the above

3.9 REFERENCES

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2. <https://www.yourarticlelibrary.com/political-science/concepts-of-danda-dandaneethi-dharma-and-raja-dharma/40148>
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3.10 SUGGESTED READINGS

1. Nyaya-Dharma (Ethics of Justice): Truth (Dharma) Vs Hype (Adharma) by Subhash Chandra Gahlawat, Independently Published (15 September 2018)

2. Human Rights in India: Discourses and Contestations by K.S. Pavitharan, Gyan Publishing House (1 January 2018)

3.11 TERMINAL QUESTIONS AND MODEL QUESTIONS

2. Discuss the developments taken place in the evolution of Dharma in India.
3. Define Nyaya and discuss various stages of its development in India.
4. Give a detailed note on the Evolution of Dharma in post-Independence era.

3.12 ANSWER TO SAQS

- 1) Righteousness, 2) Individuals, 3) Source 4) Justice Standards
(Students are advised to consult para 3.3.1, 3.4. 3.4.1 and 3.4.3)

UNIT 4: HISTORICAL DEVELOPMENT OF HUMAN RIGHTS: FROM ANCIENT ROOTS TO MAGNA CARTA AND BETWEEN 1215-1689

STRUCTURE

4.1 INTRODUCTION

4.2 OBJECTIVES

4.3. IMPORTANT MILESTONES IN THE DEVELOPMENT OF HUMAN RIGHTS

4.3.1 VEDIC LITERATURE

4.3.2 THE CODE OF HAMMURABI (1795-1750 B.C.)

4.3.3 CYRUS CYLINDER (C. 539 B.C.)

4.3.4 THE EDICTS OF ASHOKA (C. 269-231 B.C.)

4.3.5 MAGNA CARTA (1215)

4.3.6 RENAISSANCE MOVEMENT

4.3.7 REFORMATION MOVEMENT

4.3.8 DUTCH DECLARATION OF INDEPENDENCE, 1581

4.3.9. GLORIOUS REVOLUTION AND ENGLISH BILL OF RIGHTS, 1689

4.4. SUMMARY

4.5. TERMINAL QUESTIONS

4.6. SUGGESTED READINGS

4.1 INTRODUCTION

Most of history is an account not of rights but rather of abuses and violations by traditional, hierarchical and brutal authoritarian regimes. Mankind had to go through long struggles to realize the worth of human beings in the face of prejudice, discrimination, exploitation, oppression, enslavement, persecution, torture and extermination.¹

The notion of human rights was perceived differently throughout the world. There was no unanimous definition of the concept of human rights. The Renaissance in Europe followed by the American and French Revolution had changed the world order by establishing the concept of nation-state governed by Rule of Law. Though the concept of nation-state had gained wide acceptance, the other major contribution of the Renaissance-Human Rights was not embraced with much fervour. The 19th century was defined by expansion of colonial powers of the industrialized nations. Hence, the colonies of these imperialist countries became the playground for grave violations of human rights. With this, the early part of the 20th century saw two world wars where the notion of human rights was further debilitated. The outcome of the two World wars brought the world together to recognise the growing need of a universally acceptable instrument of human rights. This realisation paved the way for the adoption of the UN Charter in 1945 which asserted the need to protect human rights and fundamental freedoms. It was followed by the birth of the Universal Declaration of Human Rights in 1948.²

A number of important political, economic, religious and cultural developments took place in the Europe in the centuries following the signing of Magna Carta. Each of them left a deep impact on the development of the notion of human rights.³

4.2 OBJECTIVES

- To provide an historical perspective of the origin and evolution of human rights and examine the significance and implications of the milestones in the development of human rights till the renaissance.

¹ <https://ebooks.inflibnet.ac.in/hrdp01/chapter/historical-development-of-human-rights-from-ancient-roots-to-magnacarta/> accessed on 02-08-2024.

² *Ibid.*

³ *Id.*

- To understand various political, religious and cultural developments during period between 1215 and 1689 in Europe.
- By this module, students will explore the series of events that shaped the evolution of human rights as we know them today.
- To understand the significance of each of these developments and their impact on the development of human rights.

4.3. IMPORTANT MILESTONES IN THE DEVELOPMENT OF HUMAN RIGHTS

The concept of human rights has evolved through a series of struggles which culminated into certain historic events which are regarded as milestones in the development of human rights.

4.3.1 VEDIC LITERATURE

The Vedic literature constitutes the fulcrum of Sanskrit literature and is repositories of some fundamental concepts of human rights. This manuscript endeavors to decode the tenets of human rights concealed in the Vedic texts. It further endeavors to view a connection between archaic Vedic literature and human rights and approaches the subject of human rights from the perspectives of Vedic texts. As an articulated concept, human rights have distinct western inception though the elements that constitute the concept postulate different cultural forms and are found in sundry civilizations of which one is Vedic civilization. The Vedic rights are certainly not akin to modern-day human rights but then it would not be feasible to expect much from the texts that are approximately 3500 to 4000 years old.³ Important teachings of Vedas:

Rig Veda: All human beings are equal. All life is sacred, to be loved and respected.

Yajur Veda: Right of a human being to live long and do his work.

Atharva Veda: Equal rights over food and water. Right to live peacefully without any fear.

4.3.2 THE CODE OF HAMMURABI (1795-1750 B.C.)

The king of Babylon-Hammurabi is credited to have given the earliest framework of laws. The unique feature of the code was that it was carved out in stone and kept in public view. While

³ https://www.researchgate.net/publication/347950089_Ancient_Vedic_Literature_and_Human_Rights_Resonances_and_Dissonances accessed on 04-08-2024. ⁵ *Supra* note 1.

many portions of the code would be regarded as barbaric today, many aspects of the code laid down the basic human rights principles.⁵

4.3.3 CYRUS CYLINDER (C. 539 B.C.)

In 539 B.C., the armies of Cyrus the Great, the first king of ancient Persia, conquered the city of Babylon. But it was his next actions that marked a major advance for Man. He freed the slaves, declared that all people had the right to choose their own religion, and established racial equality. These and other decrees were recorded on a baked-clay cylinder in the Akkadian language with cuneiform script. Known today as the Cyrus Cylinder, this ancient record has now been recognized as the world's first charter of human rights.⁴

4.3.4 THE EDICTS OF ASHOKA (C. 269-231 B.C.)

Ashoka the Great, after adopting Buddhism in his personal life, attempted to apply the principles of Buddhism in his administration. Ashoka states in his edicts, *"It is my desire that there should be uniformity in law and uniformity in sentencing."* His edicts also promote fair treatment of all mankind, including *"proper behavior towards servants and employees."* This aligns with Article 5 of the UDHR: *"No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."*⁵

4.3.5 MAGNA CARTA (1215)

The Magna Carta, or "Great Charter," was arguably the most significant early influence on the extensive historical process that led to the rule of constitutional law today in the Englishspeaking world.⁶

In 1215, after King John of England violated a number of ancient laws and customs by which England had been governed, his subjects forced him to sign the Magna Carta, which enumerates what later came to be thought of as human rights. Among them was the right of the church to be free from governmental interference, the rights of all free citizens to own and inherit property and to be protected from excessive taxes. It established the right of widows who

⁴ <https://www.unitedforhumanrights.in/what-are-human-rights/brief-history/> accessed on 04-08-2024.

⁵ <https://worldwidewalkers.wordpress.com/2013/10/03/ashokas-edicts/#:~:text=Ashoka%20states%20in%20his%20edicts,to%20torture%20or%20to%20cruel> accessed on 05-08-2024.

⁶ <https://www.youthforhumanrights.org/course/lesson/background-of-human-rights/the-background-of-humanrights.html> accessed on 05-08-2024.

owned property to choose not to remarry, and established principles of due process and equality before the law. It also contained provisions forbidding bribery and official misconduct.⁷

Some of the important articles of Magna Carta:

...WE HAVE GRANTED TO GOD, and by this present charter have confirmed for us and our heirs in perpetuity, that the English Church shall be free, and shall have its rights undiminished, and its liberties unimpaired. That we wish this so to be observed, appears from the fact that of our own free will, before the outbreak of the present dispute between us and our barons, we granted and confirmed by charter the freedom of the Church's elections – a right reckoned to be of the greatest necessity and importance to it – and caused this to be confirmed by Pope.

Innocent III. This freedom we shall observe ourselves, and desire to be observed in good faith by our heirs in perpetuity.

TO ALL FREE MEN OF OUR KINGDOM we have also granted, for us and our heirs forever, all the liberties written out below, to have and to keep for them and their heirs, of us and our heirs:

(8) No widow shall be compelled to marry, so long as she wishes to remain without a husband. But she must give security that she will not marry without royal consent, if she holds her lands of the Crown, or without the consent of whatever other lord she may hold them of.

(9) Neither we nor our officials will seize any land or rent in payment of a debt, so long as the debtor has movable goods sufficient to discharge the debt. A debtor's sureties shall not be distrained upon so long as the debtor himself can discharge his debt. If, for lack of means, the debtor is unable to discharge his debt, his sureties shall be answerable for it. If they so desire, they may have the debtor's lands and rents until they have received satisfaction for the debt that they paid for him, unless the debtor can show that he has settled his obligations to them.

(20) For a trivial offence, a free man shall be fined only in proportion to the degree of his offence, and for a serious offence correspondingly, but not so heavily as to deprive him of his livelihood. In the same way, a merchant shall be spared his merchandise, and a villein the implements of his husbandry, if they fall upon the mercy of a royal court. None of these fines shall be imposed except by the assessment on oath of reputable men of the neighbourhood.

⁷ *Ibid.*

HISTORICAL AND PHILOSOPHICAL PERSPECTIVES ON HUMAN RIGHTS

28) No constable or other royal official shall take corn or other movable goods from any man without immediate payment, unless the seller voluntarily offers postponement of this.

(31) Neither we nor any royal official will take wood for our castle, or for any other purpose, without the consent of the owner.

(38) In future no official shall place a man on trial upon his own unsupported statement, without producing credible witnesses to the truth of it.

(39) No free man shall be seized or imprisoned, or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any other way, nor will we proceed with force against him, or send others to do so, except by the lawful judgement of his equals or by the law of the land.

(40) To no one will we sell, to no one deny or delay right or justice.

(41) All merchants may enter or leave England unharmed and without fear, and may stay or travel within it, by land or water, for purposes of trade, free from all illegal exactions, in accordance with ancient and lawful customs. This, however, does not apply in time of war to merchants from a country that is at war with us. Any such merchants found in our country at the outbreak of war shall be detained without injury to their persons or property, until we or our chief justice have discovered how our own merchants are being treated in the country at war with us. If our own merchants are safe they shall be safe too.

(45) We will appoint as justices, constables, sheriffs, or other officials, only men that know the law of the realm and are minded to keep it well.

(52) To any man whom we have deprived or dispossessed of lands, castles, liberties, or rights, without the lawful judgement of his equals, we will at once restore these. In cases of dispute the matter shall be resolved by the judgement of the twenty-five barons referred to below in the clause for securing the peace. In cases, however, where a man was deprived or dispossessed of something without the lawful judgement of his equals by our father King Henry or our brother King Richard, and it remains in our hands or is held by others under our warranty, we shall have respite for the period commonly allowed to Crusaders, unless a lawsuit had been begun, or an enquiry had been made at our order, before we took the Cross as a Crusader. On our return from the Crusade, or if we abandon it, we will at once render justice in full.

HISTORICAL AND PHILOSOPHICAL PERSPECTIVES ON HUMAN RIGHTS

(54) No one shall be arrested or imprisoned on the appeal of a woman for the death of any person except her husband.

(60) All these customs and liberties that we have granted shall be observed in our kingdom in so far as concerns our own relations with our subjects. Let all men of our kingdom, whether clergy or laymen, observe them similarly in their relations with their own men.

(61) SINCE WE HAVE GRANTED ALL THESE THINGS for God, for the better ordering of our kingdom, and to allay the discord that has arisen between us and our barons, and since we desire that they shall be enjoyed in their entirety, with lasting strength, for ever, we give and grant to the barons the following security:

The barons shall elect twenty-five of their number to keep, and cause to be observed with all their might, the peace and liberties granted and confirmed to them by this charter.

(63) IT IS ACCORDINGLY OUR WISH AND COMMAND that the English Church shall be free, and that men in our kingdom shall have and keep all these liberties, rights, and concessions, well and peaceably in their fullness and entirety for them and their heirs, of us and our heirs, in all things and all places for ever.

Both we and the barons have sworn that all this shall be observed in good faith and without deceit. Witness the above-mentioned people and many others.

To sum up, Magna Carta provided that

- Church should be free with all its rights and liberties
- King must not take more than the customary due from Barons and must not waste the property of the minor
- No freeman was to be punished without proper trial.
- Fines were to be proportionate to the crimes, and the means of subsistence should not be taken as the basis for fine.
- Cities, boroughs, town and ports were to have their liberties and free customs.
- Protected the interests of the commoners from heavy taxes and exactions, forest laws etc.

Widely viewed as one of the most important legal documents in the development of modern democracy, the Magna Carta was a crucial turning point in the struggle to establish freedom.

4.3.6 RENAISSANCE MOVEMENT

The term 'renaissance' literally means rebirth. It is used to signify the reawakening or revival of Greek and Roman culture in the 14th and 15th Centuries. There was a great impetus to the study of classical literature in Europe during middle ages through the establishment of Universities in Britain, Italy, Germany and other countries. The printing press and printed publications also contributed to this expansion of intellectual activities and the spread of knowledge. It was a period of discovery of the world and of man. Literature, painting, sculpture, architecture flourished during the Renaissance period. Great discoveries led by Copernicus, Galileo, Ptolemy during this period have proved many long-held religious beliefs wrong.⁸

Blind obedience to authority gave way to critical questioning and inquiry. All these developments have challenged traditional customs and beliefs and weakened the hold of the Church on society to a certain extent. It also contributed to rise of humanism and religious tolerance. This period witnessed scientific inventions, geographical discoveries and growth of material prosperity. It left a rich legacy and contributed to the growth of individualism in Europe.⁹

4.3.7 REFORMATION MOVEMENT

In the 16th Century, the Catholic Church's authority was challenged following a revolt against abuse of authority, papal taxes and corruption in the Church. The growing capitalist interests not only resented heavy demands made by the Church on national incomes but also opposed them. There was a movement against several doctrines and practices of Roman Catholic Church. Martin Luther led the Protestant Reform movement in the Germany which had counterparts in many countries of Western Europe. There was resentment against the practice of 'indulgences' which meant the remission for a cash payment of temporal punishment for sins already forgiven. In other words, these were assurances given by Church for the reduction of punishment for sins. The protestant reform movement sowed the seeds of modern democracy. Soon the questioning spirit or revolutionary ideals moved from religion to politics.¹²

John Calvin led the Reformation movement in England. He asserted that congregation, not the civil power, the basis of his Church. Calvinism which highlighted austerity, distrust of all ceremony and colour, spread its appeal to many other places. A number of political, economic

⁸ <https://ebooks.inflibnet.ac.in/hrdp01/chapter/historical-development-of-human-rights/> accessed on 06-08-2024.

⁹ *Ibid.* ¹² *Id.*

and religious causes resulted in the reduction of papal authority. These include, among others, rising nationalism, capitalism etc. Renaissance contributed to Reformation movement by spurring a spirit of religious skepticism. Freed from the Church control, education became secularized over a period of time.¹⁰

The Roman Catholic Church evolved measures to fight the new doctrines through the decrees of the Council of Trent (1545-63). Many of the abuses complained were corrected. The Society of Jesus, founded by Ignatius Loyola, contributed in this effort. The Popes who were in charge during the second half of 16th century followed counter-Reformation policy.¹¹

4.3.8 DUTCH DECLARATION OF INDEPENDENCE, 1581

On July 26, 1581, the State's General of the United Provinces of the Low Countries issued the Plakkaat van Verlatinge. The Plakkaat, commonly known in English as the Act of Abjuration, argued that the actions of King Phillip II of Spain delegitimized his rule over the Low Countries. As stated in its preamble, when a "prince" does not "defend them from oppression and violence as the shepherd his sheep.... but, on the contrary, oppresses them, seeking opportunities to infringe their ancient customs and privileges, exacting from them slavish compliance, then he is no longer a prince, but a tyrant, and the subjects are to consider him in no other view. And particularly when this is done deliberately, unauthorized by the states, they may not only disallow his authority, but legally proceed to the choice of another prince for their defense."¹²

One who is not familiar with the Plakkaat might find these sentiments familiar; this is likely because of its similarities to the American Declaration of Independence, which states that "when a long train of abuses and usurpations, pursuing invariably the same Object evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government, and to provide new Guards for their future security."¹³

The Dutch Declaration of Independence of 1581 is considered significant in the evolution of human rights because it:

¹⁰ .Id.

¹¹ .Id.

¹² <https://www.newnetherlandinstitute.org/history-and-heritage/additional-resources/dutch-treats/the-act-of-abjuration#:~:text=On%20July%2026%2C%201581%2C%20the,rule%20over%20the%20Low%20Countries,accessed on 12-08-2024.>

¹³ .Ibid.

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- Described the "Rights of man".
- Questioned the right of one country to limit the rights and liberties of another country's people.
- Inspired the Puritan Revolution, the American War of Independence, and the French Revolution.
- Became an emblematic instrument that incorporated the main features of human rights law as we understand it today described the "Rights of man".
- Questioned the right of one country to limit the rights and liberties of another country's people.
- Inspired the Puritan Revolution, the American War of Independence, and the French Revolution.
- Became an emblematic instrument that incorporated the main features of human rights law as we understand it today.

4.3.9. GLORIOUS REVOLUTION AND ENGLISH BILL OF RIGHTS, 1689

The English Bill of Rights was an act signed into law in 1689 by William III and Mary II, who became co-rulers in England after the overthrow of King James II. The bill outlined specific constitutional and civil rights and ultimately gave Parliament power over the monarchy. Many experts regard the English Bill of Rights as the primary law that set the stage for a constitutional monarchy in England. It's also credited as being an inspiration for the U.S. Bill of Rights.

Glorious Revolution

The [Glorious Revolution](#), which took place in England from 1688-1689, involved the ousting of King James II. Both political and religious motives sparked the revolution. Many English citizens were distrustful of the Catholic king and disapproved of the monarchy's outright power. Tensions were high between [Parliament](#) and the king, and Catholics and Protestants were also at odds. James II was eventually replaced by his Protestant daughter, [Mary](#), and her Dutch husband, William of Orange. The two leaders formed a [joint monarchy](#) and agreed to give Parliament more rights and power. Part of this settlement included signing the English Bill of Rights, which was formally known as "An Act Declaring the Rights and Liberties of the Subject and Settling the [Succession](#) of the Crown." Among its many provisions, the Bill of

HISTORICAL AND PHILOSOPHICAL PERSPECTIVES ON HUMAN RIGHTS

Rights condemned King James II for abusing his power and declared that the monarchy could not rule without consent of the Parliament.

What's in the Bill of Rights?

The English Bill of Rights includes the following items:

- A list of King James's misdeeds.
- 13 articles that outlined specific freedoms.
- Confirmation that William and Mary were rightful successors to the throne of England.

In general, the Bill of Rights limited the power of the monarchy, elevated the status of Parliament and outlined specific rights of individuals.

Some of the key liberties and concepts laid out in the articles include:

- Freedom to elect members of Parliament, without the king or queen's interference.
- Freedom of speech in Parliament.
- Freedom from royal interference with the law.
- Freedom to petition the king.
- Freedom to bear arms for self-defense.
- Freedom from cruel and unusual punishment and excessive bail.
- Freedom from taxation by royal prerogative, without the agreement of Parliament.
- Freedom of fines and forfeitures without a trial.
- Freedom from armies being raised during peace times.

Other important provisions were that Roman Catholics couldn't be king or queen, Parliament should be summoned frequently and the succession of the throne would be passed to Mary's sister, Princess Anne of Denmark and her heirs (than to any heirs of William by a later marriage).

Constitutional Monarchy

The English Bill of Rights created a constitutional monarchy in England, meaning the king or queen acts as head of state but his or her powers are limited by law. Under this system, the monarchy couldn't rule without the consent of Parliament, and the people were given individual

rights. In the modern-day British constitutional monarchy, the king or queen plays a largely ceremonial role. An earlier historical document, the 1215 [Magna Carta](#) of England, is also credited with limiting the powers of the monarchy and is sometimes cited as a precursor to the English Bill of Rights.

John Locke

Many historians also believe that the ideas of English philosopher [John Locke](#) greatly influenced the content of the Bill of Rights. Locke proposed that the role of the government is to protect its citizens' natural rights. The Bill of Rights was quickly followed by the 1689 Mutiny Act, which limited the maintenance of a standing army during peacetime to one year. In 1701, the English Bill of Rights was supplemented by England's Act of Settlement, which was essentially designed to further ensure Protestant succession to the throne.

U.S. Bill of Rights

The English Bill of Rights encouraged a form of government where the rights and liberties of individuals were protected. These ideas and philosophies penetrated into the colonies of North America. Many of the themes and philosophies found in the English Bill of Rights served as inspirations for principles that were eventually included in the American Declaration of Independence, the Articles of Confederation, the U.S. Constitution and, of course, the U.S. Bill of Rights. For example, the 1791 U.S. Bill of Rights guarantees freedom of speech, trial by jury and protection from cruel and unusual punishment.

Legacy of the English Bill of Rights

The English Bill of Rights has had a long-lasting impact on the role of government in England. It's also influenced laws, documents and ideologies in the United States, Canada, Australia, Ireland, New Zealand and other countries. The act limited the power of the monarchy, but it also bolstered the rights and liberties of individual citizens. Without the English Bill of Rights, the role of the monarchy might be much different than it is today. There's no question that this one act greatly affected how the English government operates and served as a stepping stone for modern-day democracies.

4.4 SUMMARY

Renaissance left a rich legacy and contributed to the growth of individualism in Europe. Blind obedience to authority gave way to critical questioning and inquiry. All these developments have challenged traditional customs and beliefs and weakened the hold of the Church on society to a certain extent. It also contributed to rise of humanism and religious tolerance.

Renaissance contributed to Reformation movement by spurring a spirit of religious scepticism. Freed from the Church control, education became secularized over a period of time. The Reformation movement have had many other consequences. A number of political, economic and religious causes resulted in the reduction of papal authority. These include, among others, rising nationalism, capitalism etc.

The Dutch Declaration of Independence, 1581 has a great significance in the evolution of human rights. The 'Rights of man' were described in detail in that Declaration which questioned the right of one country to curb the rights and liberties of the people of another country. It led to the establishment of the Dutch Republic. The Dutch Declaration of the Rights of Man inspired the Puritan Revolution, American War of Independence and the French Revolution.

The English Revolution refers to the Civil War during 1642 to 1649 and the bloodless Glorious Revolution of 1688. The English Revolution is significant for many other reasons as well. As a result, the powers of the Parliament, which represents the will of the people, were recognized while powers of the monarch were curtailed. While the King remained constitutional head, real power was bestowed on the Parliament. Movement towards absolute monarchy was reversed in favour of parliamentary form of government. The Westminster model in Britain became a model for many other democratic countries.

The Bill of Rights stipulated that all the future sovereigns of England were to be only Protestants. In the event that William and Mary did not have children, the Bill of Rights laid down that reins will pass on to Anne, sister of Mary, who was also a protestant. Thus, the Glorious Revolution demolished the divine right of Kings to rule in England and succession rights to throne would depend upon the provision made by Parliament and not upon mere hereditary right.

It is evident from the above discussion that the concept of human rights as we know today has evolved over the years and is a result of centuries of human struggle to affirm the importance of human dignity.

4.5 TERMINAL QUESTIONS

1. What are the important milestones in the evolution of human rights?
2. What is the significance of Magna Carta?
3. What human rights principles did Magna Carta lay down?
4. What is the significance of English Bill of Rights, 1689?

4.6 SUGGESTED READINGS

1. H.A.L. Fisher, History of Europe
 2. C.J.H. Hayes, Modern Europe up to 1890
 3. G.M. Trevelyan, History of England
 4. Dr. K.S.S. Seshan, European Legacies, University of Hyderabad.
 5. <http://www.kloosterman.be/genealogy-eng/netherlands-history/william-of-orange/>
 6. <http://www.humanrights.com/what-are-human-rights/brief-history/magna-carta.html>
 7. <http://www.humanrights.com/what-are-human-rights/brief-history/magna-carta.html>
- Philosophical Foundations of Human Rights; Duties and Responsibilities

UNIT-5: AMERICAN CONSTITUTIONAL DEVELOPMENTS AND HUMAN RIGHTS

STRUCTURE

5.1 LEARNING OUTCOMES

5.2 INTRODUCTION

5.3 HISTORICAL BACKGROUND

5.4 PRINCIPLES

5.5 SIGNIFICANCE

5.6 SUMMARY

5.1 LEARNING OUTCOMES

- To provide an analysis of the American Declaration of Independence and its importance in the evolution of the concept of human rights.
 - By this module, students will examine the impact of the American Declaration on subsequent developments in the sphere of human rights.
-

5.2 INTRODUCTION

The American Declaration of Independence is considered as one of the most important milestones in the history of the evolution of human rights. The reason attributed for its significance is that it was perhaps the first time in the history of mankind that the expression ‘all men are created equal’ was accepted as the foundation of a modern democracy. The principle of equality before law is the first proposition mentioned in the declaration and is arguably marks the biggest contribution in the evolution of human rights. The declaration also highlighted that the principles like equality were not an artificial creation but were self-evident principles. It is regarded as the most significant document in the constitutional history of the United States of America as it affirmed the principle of self-determination as the foundation of a democratic nation. The document was approved on July 4, 1776, which is celebrated as the Independence Day in the United States. The declaration was a formal expression of independence from the control of the British Empire and was authenticated by the representatives from 13 former colonies. The Declaration of Independence was adopted in the Second Continental Congress after more than a year of the beginning of the American Revolutionary war. The document continues to be among the most discussed documents as it forwarded the idea of equality and self-determination not just for itself but for all times to come and for everyone. That is the reason why it continues to be relevant in present discourse in the domain of human rights. There are several important facets in the declaration which have continued to inspire democratic struggles around the world. While the declaration never acquired any legal force, it was a profound expression of the foundation of nation conceived on the idea of self-government. The Constitution of the United States came in the year 1789 and till then, the declaration formed the ground stone of the political tradition of the newly freed colonies and gave direction to future course of its constitutional destiny. The declaration is considered a historic moment in the history of United States as it validated the principles that united the people against the oppression of a foreign ruler.

It is interesting to note here that the text of the Declaration is not limited to the expression of human rights but also lays down the background of the struggle. The Declaration is comprised of three parts- the preamble, the list of grievances against the British King and a conclusion which reiterates the right of nation to determine its destiny.

The founding fathers of the United States were mindful of the fact that the declaration was not enough to determine the future course of governance of the states. Therefore, the necessity of

a federal constitution was realised and hence, the Constitution of the United States was passed in 1789. However, the federal constitution did not elaborate the constitutional protection of individual rights. Hence, the growing demand for an express provision for individual rights was recognised in the Bill of Rights, which was adopted in the year 1791. The Bill of Rights is a collective term used for the first ten amendments to the US Constitution. The purpose behind these amendments was to guarantee certain fundamental rights to the citizens and also to limit the power of the government.

5.3 HISTORICAL BACKGROUND

American Declaration of Independence

The American Revolutionary War had begun more than a year before the adoption of the Declaration of Independence. The outbreak of the war was motivated by decades of imperialist policies of the British rule in all spheres of government. Initially, the opposition towards the oppressive policies was carried out with an objective to reconcile the differences. Overtime, the impact of those policies had started to unite the people to protest. The primary grievance of the people was against the taxation policy imposed by the King. However, the protest against the taxation policy did not succeed in influencing the stand of the British.

The crux of the issue was the objection by the American colonies about being taxed by a distant body situated thousands of miles away in which they had no representation. Thus they coined the slogan, “No taxation without representation” and launched their struggle. Each of the 13 colonies had a Legislative Assembly which could pass local acts but their aspiration was for their own assemblies to have powers on par with the British Parliament in matters relating to taxation and to decide their own expenses.

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Timelines

Serial No.	Measures	Impact

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1.	Navigation Acts of 1660-1672	Trade between England and the colonies be conducted only English-owned or English built ships. It prohibited export of certain articles like tobacco, sugar and Cotton to any country other than England
2.	Sugar Act, 1764	These stringent import restrictions affected the American merchants hard.
3.	Stamp Act, 1765	The aim was to pass off a part of the financial burden of maintaining a English army for the security of the colonies. It was repealed in 1766 following severe opposition. The colonists held the Stamp Act Congress in New York and issued a Declaration of Rights which included, among other things, right of trial by jury and of self-taxation.
4.	1767-Import duties on glass, lead, paper, paints, colors, tea imposed by Charles Townsend, then Chancellor of Exchequer which were later reversed by then PM, Lord North with the exception of import duty on tea.	This was not accepted by colonists. In 1773, some citizens of Boston boarded a British Ship and threw away many chests of tea into the sea in what was known as 'Boston Tea Party'. The British Government closed the Boston port and deprived Massachusetts of self-government
5.	1774-meet of the American Congress	Decision to stop trade with Britain
6.	1775-meet of the second American Congress	Decision to send a petition to the British King seeking constitutional concessions, which did not work
7.	1775	US Congress appointed Col. George Washington as the Commander-in-Chief of the American Army and decided to wage a War.

The Bill of Rights of the US Constitution protects basic freedoms of United States citizens.

The adoption of Bill of Rights is one of the most important events in the American history. As mentioned earlier, the term-‘Bill of Rights’ is used to collectively refer to the first ten amendments to the Constitution and the need for the amendments started growing right after passing the federal Constitution in 1789. While the structure of the federal constitution was being debated, there was a difference of opinion among the drafters regarding the subject of fundamental rights. There were several states advocating provisions for protection of individual rights in the Constitution. However, when the Constitution was passed, it did not provide for constitutional protection for fundamental freedoms. Thereupon, after great persuasion by leaders like James Madison and George Mason, the Bill of Rights was ratified by the Congress.

5.4 PRINCIPLES

5.4.1 The American Declaration of Independence

The American Declaration of Independence was adopted on 4 July 1776 at the second American Congress held at Philadelphia. The Declaration asserted that ‘all men are created equal’, besides stressing inalienable rights, popular sovereignty and the right of revolution. Based on these, the Declaration asserted that “*these United Colonies are, and of right ought to be, FREE AND INDEPENDENT STATES*”. The American revolutionaries defeated the English army which led to the recognition of the independence of the United States of America by England in 1783.

“When in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature’s God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

*We hold these truths to be self-evident, **that all men are created equal**; that they are **endowed by their Creator with certain unalienable rights**; that among these are **Life, Liberty, and the pursuit of Happiness**; that, to secure these rights, governments are instituted among Men, deriving their just powers from the consent of the governed; that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute new government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness. Prudence, indeed, will dictate that governments long established should not be changed for light and transient causes; and accordingly all experience hath shown that mankind are more disposed to suffer, while evils are sufferable than to right themselves by abolishing the forms to which they are accustomed. **But when a long train of abuses and usurpations, pursuing invariably the same object, evinces a design to reduce them under absolute despotism, it is their right, it is their duty, to throw off such government, and to provide new guards for their***

future security. Such has been the patient sufferance of these colonies; and such is now the necessity which constrains them to alter their former systems of government.

WE, THEREFORE, the REPRESENTATIVES of the UNITED STATES OF AMERICA, in General Congress assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the name and by the authority of the good people of these colonies solemnly publish and declare, That these United Colonies are, and of right ought to be, FREE AND INDEPENDENT STATES; that they are absolved from all allegiance to the British crown and that all political connection between them and the state of Great Britain is, and ought to be, totally dissolved; and that, as free and independent states, they have full power to levy war, conclude peace, contract alliances, establish commerce, and do all other acts and things which independent states may of right do. And for the support of this declaration, with a firm reliance on the protection of Divine Providence, we mutually pledge to each other our Lives, our Fortunes, and our sacred Honor.”

Self-Evident Truths

The above excerpt includes the Preamble and conclusion of the Declaration which highlight the principles for which the American Revolutionary war was fought. The declaration begins with an expression-‘*self-evident truths*’ and it signifies the principles that there are certain rights which are inherently there in the understanding of human civilization at all points of time. In case of the Declaration, these self-evident truths were equality before law and certain unalienable rights such as life, liberty and pursuit of happiness. This phrase was included to declare that there are certain human rights that are inalienable as they emanate from natural law and some specific body of law.

Equality

The principle of “equality before law” was made the bedrock of the American society by this Declaration. The document mentions the concept of equality to enforce the idea of democracy in the United States in the sense that each individual had the right to participate in the lending legitimacy to the government. The Declaration sought to make way for a American government with the ‘consent of the governed’. It was nowhere said that equality of result as mentioned in the communist theory rather it ventured to establish a republic where there is equality of opportunity for all.

Life, Liberty and Pursuit of Happiness

The declaration clearly states that there are certain rights available to an individual such as the right to life, liberty and pursuit of happiness. The purpose behind this expression was to guarantee the right to determine its future to each individual. The declaration makes it an obligation for the government to secure the protection of these rights.

Self-Determination

The right of self-government has evolved from the American Declaration and today, is universally recognised as the right of self-determination. The Declaration was on the idea of freedom of the people to choose their government and remove it from power if it becomes an

instrument of their oppression. The idea of self-determination has been the inspiration of freedom struggles around the world.

5.4.2 The Bill of Rights

1st Freedom of speech, press, religion, peaceable assembly and to petition the government.

2nd Right for the people to keep and bear arms as well as to maintain a militia.

3rd Protection from quartering of troops.

4th Protection from unreasonable search and seizure

5th Due process, double jeopardy, self -incrimination, private property.

6th Trial by jury and other rights of the accused.

7th Civil trial by jury.

8th Prohibition of excessive bail, as well as cruel and excessive punishment.

9th Protection of rights not specifically enumerated in the Bill of Rights.

10th Power of states and people.

The Bill of Rights was adopted so as to guarantee certain fundamental rights to the people which were absent in the federal Constitution before. Another major purpose of the document was to curtail the power of the government in the exercise of its authority. The Bill of Rights was a result of the compromise between the federalists and the anti-federalists who differed on the issue of inclusion of fundamental rights.

Freedom of speech, press, religion, peaceable assembly, and to petition the government

The First amendment laid down the foundation of constitutional protection of human rights in the American Constitution. It is perhaps the most comprehensive statement of human rights in any constitution around the world. While the federal Constitution has gone through several amendments, the Bill of Rights, especially the first amendment is considered to be sacred in the political tradition of the United States. Therefore, a citizen enjoys the freedom of speech without any unreasonable interference from the government. Also, the first amendment prohibits the Congress from making any law with deference to a particular religion. Moreover, the first amendment guarantees the right of peaceful assembly and the right to petition the government. The rights that followed from the first amendment have become the cornerstone of American legal system and have been regarded as the model of a modern legal system.

Due process, double jeopardy, self-incrimination, private property

The Bill of Rights has drawn inspiration from the Magna Carta in the sense that the Fifth Amendment seeks to uphold the principles of natural justice and ensure fair trial for the people. This amendment is particularly important for fairness of judicial system in the United States.

Today, when countries around the world are still going through violent struggles to secure justice, the rights emanating from this amendment made sure that the American citizen had the right to secure justice for himself or herself.

5.5 SIGNIFICANCE

American Declaration of Independence

The American Declaration of Independence was a revolutionary milestone in history of mankind as it affirmed the idea of universality of human rights, calling them to be self-evident truths. It laid down fundamental principles which have been reiterated again and again in different forms and have been transformed into the constitutional structures and international instruments throughout the world. Like every other historical event, the adoption of the declaration has not been immune from criticism. It is said that the writers of the declaration were slave-owners themselves. However, such critiques have never been able to undermine the contribution of this document in the progress of humankind. The present international framework on human rights is a result of the progress made over time with events like the American Revolution. The Universal Declaration of Human Rights, 1948 has borrowed a great deal from the American Declaration as it was a landmark moment which carried forward the evolution of the concept of human rights.

Apart from being regarded as the basis of the present framework of international human rights, the Declaration of Independence has influenced democratic struggles around the world. The French Revolution was tremendously inspired by the ideals of the American Declaration. Interestingly, the French Revolution was also followed by a similar declaration called 'Declaration of the Rights of Man and of the Citizen'. It is evident from the outcome of the French Declaration of Rights of the Man that the idea of human rights was now a universal idea shared by the global community. It was a step forward in direction of creating an international instrument on human rights. The ever-continuing process of international human rights, which began with Magna Carta and then, the American Declaration and several other such documents, culminated in 1948 with Universal Declaration of Human Rights.

The Bill of Rights

The Bill of Rights holds a significant place in the history of the United States as it elaborated the ideals set forth by the American Declaration. The civil and political rights that emanated from the Bill of Rights were emulated by different nations in their legal system. However, the most profound contribution of the Bill of Rights was towards the Universal Declaration of Human Rights. It is clear from the Universal Declaration that there are several rights which first found mention in the Bill of Rights and were subsequently adopted universally. The Bill of Rights guaranteed constitutional protection to the fundamental rights in the American Constitution. The Bill of Rights is considered as a profound statement about a democratically elected government.

5.6 SUMMARY

HISTORICAL AND PHILOSOPHICAL PERSPECTIVES ON HUMAN RIGHTS

We have learnt in this module about two significant events in the history which contributed to the progress of human rights. It is evident from the above discussion that western articulation of human rights has had a great impact on the concept of human rights as we know today. The description about the two events clearly shows as to how the historic events in the west have shaped our understanding of human rights. The American Declaration of Independence can be certainly regarded as a watershed moment in the progress of the concept of human rights. The fact that ideals of equality continue to resonate in the modern era is a testimony the impact of the American Revolution. Also, the concept of human rights as a set of unalienable rights was first mentioned in the American Declaration. Hence, the notion of universality of human rights was strengthened with the adoption of the Declaration of Independence.

UNIT 6: GLOBAL RECOGNITION OF HUMAN RIGHTS: UDHR 1948

STRUCTURE

6.1 INTRODUCTION

6.2 OBJECTIVES

6.3 THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

6.3.1 PROVISIONS OF THE UNIVERSAL DECLARATION

6.3.2 SIGNIFICANCE OF THE UNIVERSAL DECLARATION

6.4 THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR)

6.4.1 PROVISIONS OF THE ICCPR

6.4.2 IMPLEMENTATION OF THE ICCPR

6.5 THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (ICESCR)

6.6 THE SIGNIFICANCE OF THE INTERNATIONAL BILL OF HUMAN RIGHTS

6.7 SUMMARY

6.8 TERMINAL QUESTIONS

6.9 END NOTES

6.10 SUGGESTED READINGS

6.11 SAQs

6.1 INTRODUCTION

Human rights has been one of the main areas of work to which the United Nations has consistently devoted its time and efforts. When the Second World War came to an end, fundamental human rights were perceived as a prerequisite for international peace and friendly relations among nations. The United Nations has been concerned with the universal respect for, and observance of, human rights since its inception in 1947. Its beginnings were pronounced in the UN Charter where the phrase ‘human rights and fundamental freedoms’ were repeatedly mentioned. The Charter also provided for the establishment of a subsidiary body under the Economic and Social Council for the promotion and protection of human rights. That subsidiary body came to be known as the Commission on Human Rights (now replaced by Human Rights Council). It is the Commission that took up the task of drafting a human rights document for the possible adoption by the General Assembly. Soon after, the Universal Declaration of Human Rights (UDHR) was adopted in 1948, which was intended to prevent the kind of atrocities that Nazis had committed during the Second World War. The UDHR championed almost all the fundamental rights of the individual; it was hailed as ‘the Magna Carta of Mankind’ by its chief architect, Eleanor Roosevelt.¹

The Universal Declaration of Human Rights did not create any binding obligations for the member states of the United Nations. Hence, the UN Commission on Human Rights immediately took up the task of drafting a binding international treaty of Human Rights. However, that proposed treaty was divided into two separate Covenants – International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR). Two Optional Protocols to ICCPR, one on individuals’ right to petition and the other on the abolition of death penalty, were adopted in 1966 and 1991 respectively. The drafting of the Covenants and the First Optional Protocol (to the ICCPR) took 18 years. They are the most comprehensive and basic human rights treaties ever prepared by the international community. They contain almost all the basic rights of the individual – civil, political, economic, social and cultural rights – and provide measures for their implementation. These five human rights instruments are known as the “International Bill of Human Rights”. This unit will also discuss the two bodies (Committees) that have been created as part of the monitoring framework of the two Covenants.²

6.2 OBJECTIVES

This Unit will help you to understand

- The importance of United Nations' contribution in the field of human rights; the provisions and significance of the Universal Declaration;
- The features, provisions and implementation of the two Covenants; and
- The similarities, differences and interdependence between the two Covenants;

6.3 THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

The Universal Declaration of Human Rights (UDHR) is a document that acts like a global road map for freedom and equality – protecting the rights of every individual, everywhere. It was the first time countries agreed on the freedoms and rights that deserve universal protection in order for every individual to live their lives freely, equally and in dignity. The UDHR was adopted by the newly established United Nations on 10 December 1948, in response to the “barbarous acts which [...] outraged the conscience of mankind” during the Second World War. Its adoption recognized human rights to be the foundation for freedom, justice and peace.³ Work on the UDHR began in 1946, with a drafting committee composed of representatives of a wide variety of countries, including the USA, Lebanon and China. The drafting committee was later enlarged to include representatives of Australia, Chile, France, the Soviet Union and the United Kingdom, allowing the document to benefit from contributions of states from all regions, and their diverse religious, political and cultural contexts. The UDHR was then discussed by all members of the UN Commission on Human Rights and finally adopted by the General Assembly in 1948. The Declaration outlines 30 rights and freedoms that belong to all of us and that nobody can take away from us. The rights that were included continue to form the basis for international human rights law.⁴

6.3.1 PROVISIONS OF THE UNIVERSAL DECLARATION

Preamble

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world, Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

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Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Whereas it is essential to promote the development of friendly relations between nations,
Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in cooperation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge. Now, therefore, The General Assembly, proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

Article 1

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 3

Everyone has the right to life, liberty and security of person.

Article 4

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No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 5

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 6

Everyone has the right to recognition everywhere as a person before the law.

Article 7

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 8

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 9

No one shall be subjected to arbitrary arrest, detention or exile.

Article 10

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him. **Article 11**

1. Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.
2. No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article 12

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 13

Everyone has the right to freedom of movement and residence within the borders of each State. Everyone has the right to leave any country, including his own, and to return to his country.

Article 14

Everyone has the right to seek and to enjoy in other countries asylum from persecution. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

Article 15

1. Everyone has the right to a nationality.
2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Article 16

1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.
2. Marriage shall be entered into only with the free and full consent of the intending spouses.
3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 17

1. Everyone has the right to own property alone as well as in association with others.
2. No one shall be arbitrarily deprived of his property.

Article 18

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 19

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20

1. Everyone has the right to freedom of peaceful assembly and association.
2. No one may be compelled to belong to an association.

Article 21

1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
2. Everyone has the right to equal access to public service in his country.

3. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Article 22

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality. **Article 23**

1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
2. Everyone, without any discrimination, has the right to equal pay for equal work.
3. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
4. Everyone has the right to form and to join trade unions for the protection of his interests.

Article 24

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay. **Article 25**

1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.
2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection. **Article 26**

1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.
2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

3. Parents have a prior right to choose the kind of education that shall be given to their children.

Article 27

1. Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.
2. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

Article 28

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

Article 29

1. Everyone has duties to the community in which alone the free and full development of his personality is possible.
2. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.
3. These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

Article 30

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

6.3.2 SIGNIFICANCE OF THE UNIVERSAL DECLARATION

The UDHR marked the first time that the rights of individuals were consolidated in one document. Pope John Paul II alluded to the UDHR as “*one of the highest expressions of the human conscience of our time*”. Robinson advances that the UDHR “*exerts a moral, political and legal influence far beyond the hopes of many of its drafters*”. Its birth disseminated a notion that HR apply to everyone, everywhere. The UDHR has been signed by copious States and according to Hurst, by virtue of its intercontinental approval; the UDHR has acquired the status of customary international law (CIL). This position is strong, but disintegrates when

considering the HR abuses that have occurred, which will be examined shortly. Principally, the UDHR has brought rights to the fore and attributed them with the status and respect they deserve. It is indeed, as Eleanor Roosevelt put it, the “*international Magna Carta for all mankind*”⁵

Since the Declaration’s adoption, there has still been war, famine and dictatorships. Does this dynamic therefore undermine the importance of the UDHR in protecting HR and thus, point to its failure? It can be opined that this is not the case. By virtue of mankind’s flawed state and its proclivity to subscribe to evil, the UDHR’s importance is unequivocal. As man is fallible, it would be erroneous to blame the UDHR when rights are violated. Man’s greed for power, which has ushered in dictatorships, is one of the many examples where man, by choice, ignores the right course of conduct. The UDHR is still important in protecting HR because it serves as a standard that mankind can aspire to. Furthermore, it can be suggested that the UDHR is a guiding force, in helping humanity “act towards one another in a spirit of brotherhood”⁶

6.4 THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR)

The ICCPR is a multilateral treaty adopted by the United Nations on December 16, 1966, and came into force on March 23, 1976. The Covenant commits parties to respect the civil and political rights of individuals, which includes, right to freedom of speech and expression, right to freedom of religion, Freedom of assembly, electoral rights, due process and a fair trial. As of 2019 the treaty has 173 parties and six signatories that are yet to ratify.⁷

The international human rights movement was strengthened when the United Nations General Assembly adopted the Universal Declaration of Human Rights in 1948, this combined with the ICCPR and the ICESCR form the International Bill of Human Rights. The major objective of these Covenants is to ensure that each person is guaranteed these rights without any discrimination.⁸

6.4.1 PROVISIONS OF THE ICCPR

Article 6 – Right to life.

Article 7 – Freedom from torture.

Article 8 – Right to not be enslaved.

Article 9 – Right to liberty and security of the person.

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Article 10 – Rights of detainees.

Article 11 – Right to not be imprisoned merely on the ground of inability to fulfil a contractual obligation.

Article 12 – Freedom of movement and choice of residence for lawful residents.

Article 13 – Rights of aliens.

Article 14 – Equality before the courts and tribunals. Right to a fair trial.

Article 15 – No one can be guilty of an act of a criminal offence which did not constitute a criminal offence.

Article 16 – Right to recognition as a person before the law.

Article 17 – Freedom from arbitrary or unlawful interference.

Article 18 – Right to freedom of thought, conscience and religion.

Article 19 – Right to hold opinions without interference.

Article 20 – Propaganda for war shall be prohibited by law.

Article 21 – Right of peaceful assembly.

Article 22 – Right to freedom of association with others.

Article 23 – Right to marry.

Article 24 – Children's rights

Article 25 – Right to political participation.

Article 26 – Equality before the law.

Article 27 – Minority protection.

6.4.2 IMPLEMENTATION OF THE ICCPR

In the process towards full implementation of ICCPR, efforts of State parties are supported by the monitoring body of ICCPR, the UN Human Rights Committee (HR Committee), which consists of 18 independent experts nominated and elected by State parties to ICCPR. As one of its main functions, the HR Committee reviews situation of implementation in State parties through constructive dialogue and give expert recommendations to the State concerned.⁹ In this

context and as the obligation under ICCPR, State parties are required to submit a report to the HR Committee, one year after the Covenant entered into force (15 months after the ratification), for the initial review by the Committee (ICCPR Article 40).² Thereafter State parties are requested to submit periodic reports at intervals specified by the HR Committee for the following cycles of review (between three and seven years). These State reports should detail the measures taken by the State concerned to implement the Covenant. Based on the information provided by the State party and other stakeholders as well as through interactive dialogue with the State representatives, the HR Committee will issue recommendations to the State concerned for effective implementation of the Covenant. Experience shows that many State parties have benefited from the expert advices from the HR Committee as well as assistance from other stakeholders at different levels.¹⁰

6.5 THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (ICESCR)

It is now clear that the ICCPR evolved from the initial provisions in the Universal Declaration. While the Western countries tirelessly championed for the protection and promotion of the civil-political rights, pressure was building from the Soviet bloc for the endorsement of socioeconomic rights on the same lines as the civil-political rights. The other part of the Universal Declaration (Articles 22-29) on the socio-economic-cultural rights was expanded to form the International Covenant on Economic, Social and Cultural Rights (ICESCR). The two Covenants were originally destined to be part of the same binding treaty but they were eventually bifurcated into two separate documents owing to differences in the nature of the two sets of rights, ideological positions, and the implementation mechanism envisaged for them. Like ICCPR, the General Assembly has adopted an Optional Protocol to the ICESCR in 2008 that makes individual communications procedure available for the non-fulfilment of socioeconomic and cultural rights. However, this optional procedure has not entered into force yet. With the adoption of the OP on individual communications, the distinction between ICCPR and ICESCR in terms of their primacy and implementation has become less relevant.¹¹

6.6 THE SIGNIFICANCE OF THE INTERNATIONAL BILL OF HUMAN RIGHTS

The late Secretary-General of the United Nations, U. Thant, stressed the importance of the adoption of the International Covenants, on 16 December 1966, by the following inspired words:

Today's decisions are the culmination and the outcome of sustained and complex preparatory work to which the United Nations has devoted itself since 1947. It was then decided that human rights and fundamental freedoms which had been referred to in general terms in the Charter and which were soon to be proclaimed "standards of achievement" in the Universal Declaration of Human Rights must be made the subject matter of legally binding obligations in international treaties... in the philosophy of the United Nations, respect for human rights is one of the main foundations of freedom, justice and peace in the world.... (Vijapur and Savitri, p. 139)

With the adoption of these Covenants in 1966 and other relevant instruments, it can be said that a solid legal foundation of human rights law has now been laid down for application at all levels of society: local, national and international. The International Covenants and the two Optional Protocols constitute a positive, effective and realistic step towards the international protection of the individual. Both the Covenants entered into force in early 1976 – almost a decade after their adoption. It was only these two Covenants that took so long to get the minimum ratifications required to become operational; this could be due to the nature of the obligations contained in them which were broad and intended to restrict the sanctity of state sovereignty. It is encouraging to note that more and more states are ratifying these Covenants in recent years. Until May 2010, the ICCPR has been ratified by 165 States and the ICESCR by 160 States, whereas the First and Second Optional Protocols have been ratified by 113 and 72 States respectively. India has ratified both the Covenants on 10 April 1979, but it has not ratified either of the Optional Protocols.¹⁴¹⁵

6.7 SUMMARY

In this Unit we have seen how the Universal Declaration of Human Rights became the starting point for UN action and treaty-making in the field of human rights. Since the Universal Declaration was not a binding treaty, many Covenants and Conventions were later adopted by the United Nations to give effect to the promotion and protection of human rights. The Universal Declaration also acts as an elucidation of and commitment towards the human rights

¹⁴ . Discuss the provisions and significance of the Universal Declaration of Human Rights.

¹⁵ . Bring out the fundamental differences between the UDHR and the Covenants.

provisions seen in the UN Charter. The Declaration has grown in stature and importance over a period of time and has been a philosophical cornerstone and anchor of the universal, regional and national action in the field of human rights.

As a logical step thereafter, the two Covenants have subsumed the essential provisions of the Universal Declaration and have set the ball of UN human rights treaties rolling. Both the Covenants have implementation procedures in the form of committees as we have seen above. The distinction in language and implementation of the two Covenants is no longer held to be tenable by the principle that both are interdependent and, in some sense, reinforcing in their essence. The Universal Declaration, the two Covenants together with their Optional Protocols is known as the International Bill of Human Rights.

6.8 TERMINAL QUESTIONS

3. Critically examine the implementation mechanisms of the UN Covenants on Human Rights.
4. Explain the interdependence between the ICCPR and ICESCR.
5. What is the importance of the International Bill of Human Rights?

6.9 END NOTES

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1. <https://egyankosh.ac.in/bitstream/123456789/63525/2/Unit-7.pdf> accessed on 15/08/2024.
 2. *Ibid.*
 3. <https://www.amnesty.org/en/what-we-do/universal-declaration-of-human-rights/>
 4. *Ibid.*
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 6. *Ibid.*
 7. <https://blog.ipleaders.in/critical-analysis-covenants-1966/> accessed on 17/08/2024.
 8. *Ibid.*
 9. <https://academy.ishr.ch/upload/resourcesandtools/CCPR%20Centre%20guide%20for%20ratification%20and%20implementationen.pdf> accessed on 17/08/2024.
 10. *Ibid.*
 11. *Ibid.*
 12. *Ibid.*
-

6.10 SUGGESTED READINGS

1. Hannum, Hurst., 'The Universal Declaration of Human Rights' in Rhona Smith and Christien van der Anker, ed., *Human Rights*, (Hodder Arnold, 2004), pp. 351-353. Freeman, Michael., *Human Rights – An Interdisciplinary Approach*, Polity: London, 2002
 2. Lauren, Paul Gordon., *The Evolution of International Human Rights: Visions Seen*, second edition, University of Pennsylvania Press, Philadelphia, PA, 2003
 3. Robinson, Mary., "The Universal Declaration of Human Rights: A Living Document", *Australian Journal of International Affairs*, vol. 52, no. 2, 1998.
 4. *UN Briefing Papers – Human Rights Today*, United Nations, New York, 1998
 5. Vijapur, Abdulrahim P, and K. Savitri., 'The International Bill of Human Rights', in Shashi Motilal and Bijayalaxmi Nanda, (eds.), *Understanding Social Inequality – Concerns of Human Rights, Gender and Environment*, Macmillan Publishers India Ltd., New Delhi, 2010, pp. 131-149.
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6.1SAQS

1. Which of the following rights is guaranteed under Article 19 of the UDHR?

- A. Right to work and to form trade unions
- B. Right to freedom of peaceful assembly
- C. Right to freedom of opinion and expression
- D. Right to seek asylum

2. According to Article 3 of the UDHR, which of the following is a human right? A.

Right to property

- B. Right to nationality
- C. Right to life, liberty and security of person
- D. Right to participate in cultural life

Answers:

1. C., 2. C.

UNIT 7: PHILOSOPHICAL BASIS OF HUMAN RIGHTS

STRUCTURE

7.1 INTRODUCTION

7.2 OBJECTIVES

7.3 HUMAN RIGHTS: EVOLUTION OF THE IDEA

7.3.1 HISTORICAL PERSPECTIVE

7.3.2 RELIGIOUS ANTECEDENTS

7.4 NEED FOR PHILOSOPHICAL FOUNDATIONS OF HUMAN RIGHTS

7.5 HUMAN RIGHTS: THEORETICAL AND PHILOSOPHICAL UNDERPINNINGS

7.6 HUMAN RIGHTS: DIFFERENT VIEWS

7.6.1 NATURAL RIGHTS PERSPECTIVE

7.6.2 SOCIOLOGICAL PERSPECTIVE

7.6.3 POSITIVIST APPROACH

7.6.4 LIBERTARIAN APPROACH

7.6.5 THE MARXIST VIEW

7.6.6 THE UTILITARIAN APPROACH

7.6.7 BRIDGING THE GAPS

7.7 SUMMARY

7.8 GLOSSARY

7.9 SAQ

7.1 INTRODUCTION

The subject of human rights has been discussed for a long time, and different parts of the world have been struggling to understand and accept the idea of human values and rights. Human history is replete with tales of cruel regimes, and practices such as prejudice, persecution, discrimination, exploitation, oppression, slavery, torture, and extermination. Yet the concept of human rights was not accepted as a universal idea, the need for the concept of human rights began to be understood after the Second World War. Since then, several international laws and agreements have been made to protect and develop these rights. The global human rights law body witnessed unprecedented growth and the concept began to gain acceptance worldwide.

The United Nations General Assembly has adopted more than 70 legally binding international agreements and 30 non-binding standards to strengthen human rights through the United Nations Charter. All these standards have been helpful in strengthening and regulating the international format of human rights. These mainly include the International Covenant on Civil and Political Rights (ICCPR), the Universal Declaration of Human Rights (UDHR), and the International Covenant on Social, Economic and Cultural Rights (ICESCR). These standards and agreements passed in international human rights conferences promoted human rights all over the world and provided a strong foundation.

Although some UN documents such as UDHR are not legally binding declarations, such agreements and declarations became the source of inspiration for other treaties and became the foundation stone for the universal acceptance of human rights.

After the universal development and acceptance of the concept of human rights, the search for its philosophical underpinnings was considered. This idea has been debated among philosophers, scholars, and policymakers for decades. The main question of this discussion is whether the search and understanding of the philosophical underpinnings of human rights is necessary for their universal acceptance. Or is their political and social acceptance sufficient? Also, human rights can be considered universal only when it is clear that those rights are not influenced by any particular religious, cultural and ideological stream. There are many ethnic groups in the world and there are different types of political systems like monarchy, dictatorship, democracy, communist rule etc. The protection and promotion of human rights is closely linked to the type of political system prevailing. Besides, there is a wide variety of cultural diversity in the world. Thus, how can the universality of a moral human rights principle

be established in diverse social backgrounds? These are some of the questions that we will study in this chapter.

There are different schools of thought and arguments on the origin and justification of human rights. Some thinkers argue that human rights are based on natural law, which means that they are inherent in human nature and can be understood through reason. This view supports the idea of universality of human rights which aims to protect the right of all human beings to live with equality and dignity. Other theorists hold that human rights are a social construct that evolved through historical and cultural processes, defining the human rights of different individuals differently according to the needs of their respective societies and the cultural processes and traditions associated with them.

These different views emphasize the point that the moral and political justification of human rights is very important to understand their effectiveness and relevance. From a moral perspective, these rights are based on human dignity and equality. From a political perspective, human rights are a means of protecting the weaker sections and establishing a balance of power in societies. However, socio-cultural diversity and political instability pose challenges in implementing them.

Thus, to keep human rights relevant and effective, it is important to keep human dignity and cultural diversity in mind. From this perspective, human rights are not just an idea but a practical tool for justice and equality in all societies.

7.2 OBJECTIVES:

After reading this unit, you will be able to understand the following:

- Meaning and evolution of the concept of human rights;
- Theoretical and philosophical underpinnings of human rights;
- Different approaches to human rights;
- Human rights from the Indian perspective.

7.3. HUMAN RIGHTS: EVOLUTION OF THE IDEA

HISTORICAL AND PHILOSOPHICAL PERSPECTIVES ON HUMAN RIGHTS

The history of human rights as a formal international concept is relatively recent, with systematic development beginning after the Second World War. Prior to this period, various treaties and agreements addressed humanitarian issues, but these were often fragmentary and lacked continuity. The major turning point came with the creation of the United Nations in 1945. The UN Charter initiated a more organized and widely recognized approach to human rights, leading to the development of international laws specifically focused on protecting these rights.

7.3.1 HISTORICAL PERSPECTIVE

The idea of human rights is not a modern idea; it has deep historical roots that extend across many civilizations over the centuries. Long before the formal recognition of human rights through international mechanisms, various cultures, and societies acknowledged the dignity and rights of individuals and made significant efforts to protect them. All of these early efforts were often influenced by philosophical, social, religious, and cultural traditions that emphasized the intrinsic worth of every individual. Understanding these historical roots is important to understand how human rights have evolved into the broad system we recognize today.

7.3. 2 RELIGIOUS ANTECEDENTS

The philosophical underpinnings of modern human rights can be traced back to religious teachings and ancient philosophical ideas. Understanding the sources of moral legitimacy is essential to this analysis. Several major religions, including Hinduism, Christianity, Islam, and Buddhism, have long promoted moral principles that align with the concept of human rights. These teachings often emphasize the unity of humankind and a connection to a higher power, commonly called God. Although these early contexts did not always emphasize individual autonomy or equality as we understand them today, they played an important role in shaping ideas of moral responsibility, community welfare, and the inherent dignity of each individual. These religious and philosophical antecedents provided a foundation for the development of modern human rights principles.

7.4 NEED FOR PHILOSOPHICAL FOUNDATIONS OF HUMAN RIGHTS

Human rights are an important part of international law and morality today, widely acknowledged and protected by numerous global treaties and agreements, especially under the

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United Nations. However, an important question remains: Is it necessary to explore the philosophical foundations of human rights?

Understanding the philosophical foundations of human rights is important to strengthen these rights and ensure that they are universally accepted. Human rights have evolved through various social movements, revolutions, and cultural contributions around the world. This collective effort has created a global agreement on the idea of human dignity supported by a mix of various philosophical ideas.

Sheshtack said the following behind the need to understand the philosophical foundations:

“How one understands the meaning of human rights will influence one's judgment on such issues which rights are regarded as universal, which should be given priority, which can be overruled by other interests, which call for international pressures, which can demand programs for implementation, and for which one will fight. What is meant by human rights? To speak of human rights requires a conception of what rights one possesses by virtue of being human. That does not mean human rights in the self-evident sense that those who have them are human, but rather, the rights that human beings have simply because they are human beings and independent of their varying social circumstances and degrees of merit.”¹

Jerome Sheshtack, a well-known scholar of human rights, emphasizes the importance of identifying these philosophical foundations. He believes that knowing the moral reasons behind human rights laws can lead to better respect and protection of these rights. In a world with so much cultural diversity, discussing these philosophical ideas can help bring different cultures together and promote a shared understanding of human rights.

The ongoing debate between universalism and cultural relativism highlights the need for these philosophical foundations. Universalists argue that major human rights treaties should apply to everyone, everywhere. Cultural relativists, on the other hand, believe that these treaties need to be adapted to fit different cultural contexts. This debate shows how important it is to explore the philosophical foundations of human rights, as it can help build consensus on how these rights should be implemented globally.

Philosophy may seem abstract, but it plays a key role in shaping our understanding of human rights. While some activists focus on practical actions, such as fighting injustice, philosophers and theorists think deeply about what human rights mean and why they matter. Bridging the gap between these two perspectives is essential to advancing human rights.

Jack Donnelly, another respected scholar, suggests that human rights may be rooted in various philosophical and religious traditions. Even though these traditions differ, they often agree on

the idea that human rights express their core values. Understanding these different foundations can help make human rights truly universal while overcoming cultural and social differences. In short, exploring the philosophical foundations of human rights is crucial to ensuring that these rights are universally accepted and effectively protected. This exploration provides a deeper ethical understanding of human rights.

7.5 HUMAN RIGHTS: THEORETICAL AND PHILOSOPHICAL UNDERPINNINGS

The idea of human rights has been shaped by many philosophers in history. Their ideas and theories have helped form the basis of what we now understand as human rights.

One of the earliest contributions came from the Stoic school founded by Zeno. The Stoics introduced the theory of natural law, which says that all people have certain rights simply because they are human. This idea gave rise to the concept of “universal brotherhood,” which is an important part of the idea of human rights.

In ancient Greece, philosophers like Plato and Aristotle also played a big role in developing the idea of human rights. They focused on the concepts of the common good and justice. They believed that true justice occurs when people do their part for the community. Aristotle specifically talked about how justice, virtue, and individual rights are important to a fair society. He also believed that states should focus on promoting peace and the general wellbeing rather than war or trade.

During the Middle Ages, thinkers such as Augustine spoke about natural law and natural rights, although their main goal was to support the authority of the church. However, his ideas still contributed to the growing discussion on human rights.

The Enlightenment was a period when the concept of human rights took a more secular, or non-religious, perspective. Philosophers such as Thomas Hobbes, John Locke, and JeanJacques Rousseau argued that the state had an obligation to protect the rights of individuals, such as the right to life, property, and equality under the law. Locke, in particular, believed that governments are legitimate only if they protect these fundamental rights. Rousseau further stated that the right to control actions belonged not to individuals, but to the entire community. His idea of the "general will" represents the collective power of people, created through their shared actions.

Jeremy Bentham, the founder of the Utilitarian school of thought, challenged the idea of natural rights, calling them impractical. J.S. Mill, another utilitarian, also criticized the idea of natural rights, but supported basic freedoms for individuals. Socialist thinkers contributed to the discussion by focusing on important issues such as healthcare, education, women's rights, restrictions on child labour, and the right to vote. They believed that addressing these social and economic issues is an important part of human rights. In more recent times, philosophers such as Robert Nozick, John Rawls, and Michael Oakeshott have questioned both liberal and socialist views on human rights, bringing new ideas and debates to the fore. The concept of human rights is based on several important ideas. The theory of natural law, which says that humans have inherent rights, is a central part of human rights philosophy. This idea is closely linked to the concepts of the common good and justice, which were important in ancient Greek thought. During the Enlightenment, the idea of natural rights became more prominent, with thinkers such as Hobbes, Locke, and Rousseau emphasizing the role of the state in protecting these rights. Hobbes's work laid the foundation for what we now call civil and political rights, while Locke's ideas about rights as limits on government power have greatly influenced modern thinking. Rousseau introduced the idea that the collective will of the people, or general will, should guide the actions of individuals.

In conclusion, the idea of human rights has evolved over time through the contributions of many philosophers. From the Stoics' idea of natural law to the Enlightenment's focus on natural rights and modern debates, the concept of human rights reflects ongoing discussions about justice, virtue, and individual rights.

7.6 HUMAN RIGHTS: DIFFERENT VIEWS

Human rights are seen as an idea or belief that is universal, but the idea has its critics. While most people agree that everyone should have certain rights and freedoms, there are many differences in how these rights are understood by societies or individuals. Various thinkers and ideologies have been presenting their views about what human rights are and how they should be implemented.

7.6.1 NATURAL RIGHTS PERSPECTIVE

The natural rights perspective on human rights is rooted in ancient Greek philosophy and became particularly influential in the 17th and 18th centuries. Natural rights theory states that

all human beings are born with certain rights. These rights are considered inherent, meaning that they are part of the human physical body from birth. According to this approach, these rights exist independently of society or the state; And are universal and neither made nor changed by any government, they cannot be changed. The role of the state is to protect these natural rights.

John Locke tried to define human rights and he said the following regarding the foundation and existence of the natural law of man in nature:

“In that state men and women were in a state of freedom, able to determine their actions, and also in a state of equality in the sense that no one was subjected to the will or authority of another. However, to end the hazards and inconveniences of the state of nature, men and women entered into a "social contract" by which they mutually agreed to form a community and set up a body politic. Still, in setting up that political authority, individuals retained the natural rights of life, liberty, and property. Government was obliged to protect the natural rights of its subjects, and if government neglected this obligation, it forfeited its validity and office.”²

7.6.2 SOCIOLOGICAL PERSPECTIVE

The sociological perspective on human rights focuses on balancing different interests within society, taking into account the prevailing moral, social and economic conditions. Each society has its own historical, cultural, and economic conditions, which influence the interpretation of human rights and their implementation. The sociological approach does not consider human rights limited only to legal and moral principles, but looks at them in the context of society's structure, traditions and collective consciousness. According to this view, human rights are the result of the interactions and interests of different social groups within society and these rights aim to achieve balance by considering the needs and interests of social groups.

According to this approach, it is important for human rights to be universal, but they cannot be applied in exactly the same way to every society. This approach emphasizes the importance of the specific needs of different societies and their social contexts. For example, in a society where economic inequality is high, priority may be given to social and economic rights, while in another society where caste, gender, or racial discrimination is more prevalent, priority may be given to rights to equality and non-discrimination. maybe more relevant. This suggests that human rights should be adapted to the specific circumstances of different societies, rather than applying them uniformly across all contexts.

This approach aims to ensure that human rights become a means of establishing a balance between all social groups, and not appear to be biased in favour of any one class or group. Therefore, rather than looking at human rights as mere individual freedoms, they should also be understood as a means of promoting social cohesion and equality. This approach teaches us that the interpretation and implementation of human rights require flexibility and sensitivity to context.

However, there are criticisms of this approach as well. As such, if social recognition is required to be effective for human rights, then the concept of natural rights being innate and indivisible becomes doubtful. Furthermore, the notion that human rights are absolute and universal is questionable because there are inequalities among individuals at various levels - socially, economically or politically. As a result, some flexibility in understanding and applying human rights is necessary to ensure that every person's rights are protected.

7.6.3 POSITIVIST APPROACH

The positivist approach, which gained prominence during the Enlightenment, sees human rights as deriving from the laws of the state. In other words, human rights exist because they are written into the legal system. The main argument here is that the existence and content of human rights depend on the laws made by the state.

Positivism provides a more solid basis for human rights than the abstract concept of natural rights because it links human rights to specific laws and legal principles. However, this approach also raises challenges, particularly when it comes to balancing national sovereignty with international human rights standards. The positivist approach insists that states have the ultimate authority to define and protect human rights within their borders, which may conflict with the idea of universal human rights.

7.6.4 THE LIBERTARIAN APPROACH

The libertarian approach criticizes the positivist approach by emphasizing individual liberty and moral rights. Thinkers such as Robert Nozick argue that a minimal state should exist primarily to protect these individual rights. According to Nozick, individuals in the state of nature come together to form a minimal state based on moral principles. Rawls states that justice is about fairly distributing rights, duties, benefits, and burdens among individuals in society. Hayek, another libertarian thinker, considers human freedom necessary for social order

and progress. He argues that too much government control can restrict individual freedom. For Hayek, the best way to protect human rights is through a limited government that allows for spontaneous order in society.

7.6.5 THE MARXIST VIEW

The Marxist approach looks at human rights from the prism of class struggle. In this approach, rights are seen as tools used by the ruling bourgeoisie to maintain its dominance in capitalist society. Marxists argue that true human rights can be achieved only in a classless society, where all individuals are equal in terms of social and economic conditions.

According to Marxism, human rights as currently understood serve the interests of the capitalist class and do not meet the needs of the working class. The Marxist approach states that an ideal socio-economic system free from class divisions is necessary for true human rights to be enjoyed by all.

7.6.6 THE UTILITARIAN APPROACH

The utilitarian approach, specifically classic utilitarianism, is a theory of morality that is based on the consequences of actions. It believes that any action is moral and appropriate only if it ensures maximum happiness or well-being for the maximum number of people. In the context of human rights, utilitarianism gives priority to the broader well-being and strives to achieve the highest levels of happiness and satisfaction in society. This approach has accepted the importance of human rights, but its limitations and challenges do not allow it to be completely effective.

The most prominent characteristic of utilitarianism is that it can be helpful in formulating social and economic policies, such as the improvement of health services, equitable distribution of resources, and availability of opportunities. The purpose of this approach is to ensure collective well-being, which is one of the fundamental objectives of human rights. However, the neglect of individual rights and autonomy emerges as a significant shortcoming in utilitarianism. This approach gives priority to the happiness of the majority and may ignore the rights of minorities. For example, utilitarianism may justify violating the rights of an individual if it benefits the majority.

In addition, utilitarianism also ignores questions of justice and equality. It prioritizes collective benefit rather than giving equal importance to the rights of all individuals. Another major flaw

is ignoring long-term consequences. Utilitarianism focuses too much on immediate benefits and happiness, due to which long-term moral and social impacts are not adequately evaluated.

The philosophical and theoretical foundations of human rights highlight the limitations of this approach. Human rights are not limited to social well-being; they attempt to guarantee the dignity and fundamental freedoms of each individual. To broaden this view, scholars such as Jack Donnelly have argued that the universality of human rights is now accepted globally. He believes that the current framework of international human rights laws promotes inclusivity through the contributions of non-Western societies. For example, the inclusion of social and economic rights in the Universal Declaration of Human Rights (UDHR) is a testament to this inclusivity.

In conclusion, utilitarianism provides a basis for enshrining human rights and ensuring maximum well-being in society, but its limitations prevent it from becoming a complete approach. Ignoring questions of individual rights and justice is the biggest challenge of the utilitarian approach. It is important to balance the shortcomings of utilitarianism by adopting a multidimensional understanding of human rights. Philosophical debates can continue, but they must be conducted in such a way that they do not hinder the development of the international human rights regime. Only by balancing this approach with other viewpoints can the true meaning and impact of human rights be ensured.

7.6.7 BRIDGING THE GAPS

Understanding human rights from a philosophical perspective is complex, as different viewpoints offer valid but sometimes conflicting views. Jack Donnelly, a leading scholar, argues that the focus must now shift from debating the philosophical underpinnings of human rights to recognizing their universal acceptance. He points out that today's international human rights framework, which includes contributions from non-Western societies, represents the most inclusive form of international law.

The Indian view on human rights is shaped by the country's rich philosophical, historical, and legal traditions. The basic objective of India's freedom struggle was to achieve complete independence from foreign rule, which aimed not only at national independence but also at the same time the independence of the people.

Looking at the religious and cultural aspects, India has always given importance to equality. Despite the presence of social divisions and inequalities, Mahatma Gandhi, Dr. B.R. Ambedkar and Jawaharlal Nehru worked tirelessly to overcome these obstacles. They, along with earlier reformers such as Raja Rammohan Roy and Swami Vivekananda, sought to create a society where every individual is respected and valued.

India, the land of Buddha and many other great thinkers has always promoted the idea that both men and women should have equal status in society. This belief is rooted in the understanding that true progress can only be achieved when everyone is treated equally. Gandhi's vision of an egalitarian society, Dr. Ambedkar's efforts for the upliftment of the Dalits, Nehru's dream of a socialist nation, and Azad's call for a secular society all point to the same goal: a society based on justice, equality, and fraternity.

However, achieving these ideals requires more than mere words; They need to be supported by strong institutions and security. That is why the Indian Constitution was carefully drafted to embody these values, making it a powerful document that upholds human rights. The Preamble of the Constitution sets out the moral foundation, while Parts III and IV provide the legal framework through fundamental rights and directive principles of state policy.

The Fundamental Rights in the Constitution are enforceable by law, while the Directive Principles guide the state in making policies that support social and economic rights. Although not enforceable by the courts, these principles combine with the Fundamental Rights to ensure that political rights receive social and economic support.

The Indian judiciary has played an important role in interpreting these rights, often adopting a liberal approach to meet the needs of society. Judicial activism has further strengthened the protection of individual rights. Additionally, the Human Rights Commission in India plays a key role in monitoring and promoting human rights across the country.

7.7 SUMMARY

The modern concept of human rights has gone through a long historical and philosophical journey to develop into a systematic principle, based on centuries of efforts to protect human dignity and equality. After World War II, the need for a global and systematic approach to human rights was felt and global acceptance of human rights gained momentum. Documents

like the UN Charter and the Universal Declaration of Human Rights (UDHR) proved to be milestones in establishing this idea. These rights not only ensure individual dignity and liberty, but also provide a moral and legal framework for maintaining peace, justice and equality in society. Various religions and civilizations have also supported these ideas, due to which this principle has emerged as a universal idea today.

Philosophical viewpoints have deeply influenced the nature and basis of human rights. The natural rights approach, supported by thinkers such as John Locke, holds that human rights are innate and universal, which only the state can protect. In contrast, the positivist approach argues that human rights come into existence only when they are defined and enforced by a legal system. The Marxist perspective links human rights to social class struggle and believes that true human rights are possible only in a classless society. The utilitarian approach assesses human rights in terms of the well-being of the majority of people, but overlooks individual freedom and autonomy. The libertarian approach emphasizes limited government and individual freedom, ensuring that a balance is maintained between rights and duties.

In the Indian context, the human rights perspective is inspired by rich historical and cultural traditions. India's freedom struggle gave importance not only to national independence but also to individual freedom. The Indian Constitution created a strong legal and moral framework of human rights through the fundamental rights and directive principles of state policy. Mahatma Gandhi promoted the principles of equality and nonviolence in society, while Dr. B.R. Ambedkar made important efforts to protect the rights of Dalits and deprived classes. The judiciary and human rights commissions have also played an important role in implementing these rights and protecting the rights of citizens.

In conclusion, human rights are not merely moral and legal principles, but practical tools to ensure justice, equality and human dignity in society. Debate on philosophical grounds is helpful in understanding the universality of human rights in depth. In the age of globalization, where social and cultural diversities are increasing, it is important to take these contexts into account to ensure effective implementation of human rights. This must ensure that human rights remain universal and relevant to protect the dignity and rights of every individual.

7.8 GLOSSARY

Philosophical and Historical Context

HISTORICAL AND PHILOSOPHICAL PERSPECTIVES ON HUMAN RIGHTS

- Focus on equality and freedom.
- Influential leaders: Gandhi, Ambedkar, Nehru, Azad, Raja Rammohun Roy, Swami Vivekananda.

Religious and Cultural Values

- Emphasis on social equality.
- Historical efforts to overcome social stratification.

Constitutional Framework

- Preamble: Ethical foundation of human rights.
- Part III: Fundamental Rights (enforceable by law).
- Part IV: Directive Principles of State Policy (guiding social and economic rights).

Judicial Role

- Liberal interpretation of rights.
- Judicial activism.
- Importance of Human Rights Commission.

7.10 END NOTES

1. Jerome J. Shestack, The Philosophic Foundations of Human Rights, Human Rights Quarterly, Vol. 20, No. 2 (May, 1998), pp. 201-234
2. John Locke, The Second Treatise of Government (1952)

7.10 SAQS

1. Short Answer Questions

- a) Why is the concept of universality important in the context of human rights?
- b) How does the positivist perspective define the source of human rights?

2. MCQs and answers

HISTORICAL AND PHILOSOPHICAL PERSPECTIVES ON HUMAN RIGHTS

1. Which philosopher introduced the concept of the "general will" in the context of human rights?

- A. Thomas Hobbes
- B. John Locke
- C. Jean-Jacques Rousseau
- D. Jeremy Bentham

2. According to the sociological perspective, what is the most important aspect in the implementation of human rights?

- A. Legal codification
- B. International treaties
- C. Balancing different social interests based on context
- D. Protecting only civil and political rights

3. Which of the following is a key criticism of the utilitarian approach to human rights?

- A. It focuses too much on legal frameworks
- B. It neglects individual rights and justice in favor of majority happiness
- C. It emphasizes cultural diversity over universality
- D. It promotes long-term consequences over immediate benefit

ANSWERS

- 1. C. Jean-Jacques Rousseau
- 2. C. Balancing different social interests based on context
- 3. B. It neglects individual rights and justice in favor of majority happiness

UNIT 8: LIBERAL AND MARXIAN PERSPECTIVES ON HUMAN RIGHTS

STRUCTURE

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8.6.1 MARX'S THEORY OF RIGHTS

8.6.1.1 MARX'S THEORY OF RIGHTS OF THE BOURGEOIS

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8.6.2 PROTECTION OF RIGHTS IN A COMMUNISTIC SOCIETY

8.6.2.1 FEATURES OF A SOCIALISTIC STATE

8.6.2.2 THE DIALECTICAL PROCESS AND CLASS STRUGGLE

8.6.3 PROTECTION OF RIGHTS IN A COMMUNISTIC FRAMEWORK

8.7 SUMMARY

8.8 GLOSSARY

8.9 SAQS

8.1. INTRODUCTION

In this unit, we will examine both the liberal and Marxist schools of thinking. The origin, nature, role, purpose, and functions of the state are issues that both schools address. Two philosophical traditions that have had a significant influence on political, sociological, and economic theories are liberal and Marxist. According to these perspectives, the state is an organization that reflects these philosophies. Some basic problems concerning the connection between man and the state: What should this relationship's actual nature be? What kind of interaction should exist between the state and civil society? What are the duties and obligations of the state, and how ought they to be performed? It also looks at the necessity of the state for man.

In the study of the state, philosophers such as Jean Bodin and Niccolo Machiavelli made significant contributions. New concepts on the state's public power and the dynamic between the ruled and the ruler were eloquently expressed by Thomas Hobbes. Machiavelli, regarded as the founder of contemporary political science, advocated for the pragmatic application of authority to preserve stability and authority within the state and disentangled politics from ethical and theological factors. Jean Bodin presented the notion of sovereignty, which supported the state's right to have the last say over its citizens. After the British Civil War, Thomas Hobbes argued for a strong, centralized state as part of the social contract idea to prevent chaos and instability. He claimed that in order to maintain security and order, people cede some of their liberties to the state, making the state an essential institution to mediate the interaction between the ruled and the rulers. Together, these philosophers established the framework for comprehending the state as a complex institution that is intricately entwined with both the economy and society, in addition to being a political entity.

According to the liberal perspective, the state is an organization that upholds democracy, private property, civil rights, and the rule of law. The idea holds that the state's primary duties are to protect citizens' liberties and maintain justice and order. Institutions like the family, property rights, and citizenship are regarded as fundamental to society within this perspective. The liberal perspective is criticized, meanwhile, for failing to acknowledge the state's responsibility for upholding systemic injustices and defending the interests of the dominant classes. Liberal perspectives acknowledge the need for the state to maintain social welfare and address market imperfections, but they also support minimal government involvement in economic affairs.

The Marxist perspective, on the other hand, regards the state as a tool of class-based exploitation. The economic foundation of civilization is connected to this exploitation. Marxists contend that the state exists to uphold the economic exploitation and inequality that are fundamental to the capitalist system and to safeguard the interests of the ruling class. The economic structure of society is reflected in the state and its actions, they contend. The state is a tool that upholds the dominating class's power rather than being an impartial entity. Marxist theory imagines a world without states and without class distinctions, challenging the legitimacy of the state as it currently exists. Despite their support for communism's elimination of the state, Marxists nevertheless recognize the state's crucial role in structuring society. The relationship between political authority and economic power is one of the main themes of thought on the state. The question of how resources should be distributed and how to strike a balance between market forces and state intervention illuminates social and political structures. The state is often seen as a powerful institution that can regulate economic activity, resolve disputes, and ensure equitable distribution of resources. However, both liberals and Marxists differ on the extent of state intervention. Liberals support minimal intervention and individual liberty, while Marxists advocate sweeping changes to redistribute power and resources. There is still disagreement over the nature, goals, and duties of the state despite decades of arguments and discussions. Different ideologies and the subject's intricacy are the causes of this dispute. This chapter explores the contentious and undeniable facets of the state and makes an effort to comprehend its operations from a liberal and Marxist standpoint. We can gain a better understanding of the relationship between power, economy, and social order as well as the evolving function of the state in contemporary countries by examining various points of view.

8.2. OBJECTIVES:

1. Recognize the emphasis liberalism places on equality, individual liberties, and minimal government interference in human rights.
2. Examine how Marxism views economic fairness and a classless society and its critique of liberal liberties.
3. Examine how liberalism and Marxism see the state's responsibility to uphold human rights.
4. Assess the advantages and disadvantages of Marxist and liberal perspectives on human rights.
5. Examine how political power, economic structures, and human rights are related.

8.3. THE LIBERAL PERSPECTIVE OF THE STATE

Individual freedom, equality before the law, and protection of private property are fundamental tenets of the liberal view of the state. This point of view was founded during the Enlightenment by intellectuals such as Adam Smith, Montesquieu, and John Locke. According to liberalism, the State is an essential institution that protects fundamental rights while ensuring the circumstances for individual autonomy. It presents the State as an impartial arbitrator entrusted with upholding order, settling disputes, and enforcing contracts without unduly infringing on individual liberty.

The liberal viewpoint is fundamentally centred on individual liberties and rights. Individual rights are more important than group interests, according to liberals. Protecting fundamental rights—such as freedom of expression, religion, organization, and property ownership—is the main responsibility of the state. This concept is consistent with the social contract theory of John Locke, according to which people accept the power of the state in return for the defence of their inherent rights. People can practice their liberties without worrying about repression thanks to such a system.

The support for minimal government is a defining characteristic of liberalism. Liberals contend that in order to protect individual liberty, the state should have limited authority. Governmental systems' checks and balances and the division of powers are regarded as crucial defences against despotism. The foundation of this idea is Montesquieu's emphasis on the separation of

powers among the legislative, executive, and judicial branches, which guarantees that no one body controls the government process.

The rule of law is an integral part of the liberal perspective. According to these principles, laws should be applied uniformly to all individuals, regardless of their status or position in society. The liberal state ensures fairness, accountability, and protection against arbitrary governance by abiding by the rule of law. This fosters a predictable and stable environment where individuals can freely exercise their rights.

Economic freedom is yet another essential aspect of the liberal State. Economic liberalism is influenced by Adam Smith's ideas and emphasizes the significance of free markets and minimal government intervention in economic matters. In this situation, the State's role is limited to creating and maintaining favourable conditions for trade, safeguarding property rights, and enforcing contracts. This approach is intended to promote innovation, competition, and economic growth.

The liberal perspective's commitment to human rights is of particular significance. Liberal States have been instrumental in promoting and upholding human rights on a global scale. Liberal values are reflected in the Universal Declaration of Human Rights (UDHR) of 1948, which asserts the inherent dignity and equality of all individuals. Liberalism states that the State is responsible for respecting, protecting, and fulfilling these rights, ensuring that citizens are able to live with dignity and freedom.

The liberal vision of the State is based on the fundamental importance of civil and political rights, such as freedom of expression, the right to vote, and protection against discrimination. These rights permit individuals to be actively involved in public life and hold governments accountable. However, liberalism acknowledges the necessity of balancing rights and responsibilities. By acting as a mediator, the State ensures that one individual's rights are not violated by others, thus maintaining social harmony.

The liberal perspective has faced criticism despite its many strengths. Critics argue that its emphasis on economic freedoms can sometimes lead to inequalities, due to its focus on economic liberties. If a liberal State prioritizes maintaining the status quo over addressing systemic issues, structural disparities may persist. Such critiques highlight the challenges of reconciling individual freedoms with broader social justice goals.

In summary, the liberal view of the State emphasizes its dual role as defender of individual liberties and enforcer of collective order. The liberal State aims to create a society where individuals can thrive while respecting others' rights by intertwining governance and human rights. Nevertheless, its focus on minimal intervention and economic freedoms still generates debates about its ability to tackle inequalities and advance social justice. To understand modern governance and its implications for human rights, individual autonomy, and societal development, it's essential to understand the liberal perspective.

8.3.1 THE LIBERAL TRADITION: MAIN CHARACTERISTICS

The liberal tradition emphasizes the power of human reason, the belief in progress, and the significance of establishing a connection between people and their governments. According to liberal thinkers, such as John Locke, people can shape their futures and avoid conflicts through cooperation and good governance. This tradition places a priority on non-state actors, such as businesses and organizations, as well as governments. Free trade and economic interdependence are emphasized to reduce the chances of war. Institutions such as the League of Nations were established to ensure fairness, justice, and peace.

8.3.1.1. CLASSICAL LIBERALISM

Individual freedom and rational thinking are the focus of classic liberalism, which was developed before World War II. John Locke asserted that governments must have the approval of the people they govern. Adam Smith believed that free markets were beneficial for society as a whole when individuals pursued their interests. Jeremy Bentham's concept of 'maximum happiness for the majority of people' influenced policies to reduce suffering. Classical liberal thinkers believed that the prevention of wars could be achieved through openness, democracy, and global cooperation. Woodrow Wilson's Fourteen Points were a reflection of these ideas and served as inspiration for the League of Nations. Classical liberalism laid the groundwork for modern liberal thought, even though the League ultimately failed.

8.3.1.2. LIBERAL APPROACH IN THE POST-WAR YEARS

Liberal theories evolved after World War II to address the complexities of global politics. These include the following approaches:

8.3.1.2.1 SOCIAL LIBERALISM

Sociological liberalism highlights the importance of connecting people and groups across different countries. Regular communication and cooperation between societies are emphasized by thinkers like Karl Deutsch and John Burton, who believe that conflicts are less likely to occur. The focus of this theory is on creating a global community where cross-border networks of individuals and groups collaborate to solve problems. Sharing ideas and cultural exchanges leads to building trust and understanding among people, which in turn decreases the chances of war. The importance of interactions between private citizens and organizations beyond just government-level negotiations is also emphasized by this approach.

8.3.1.2.2 FUNCTIONALISM

Functionalism emphasizes that cooperation in one field, including trade or transportation, can lead to collaboration in other fields. David Mitrany suggested that resolving practical, everyday issues collectively would motivate nations to collaborate more closely on larger political goals. For example, the creation of the European Union (EU) was a result of European nations working together to manage coal and steel industries after World War II. The economic cooperation's success showed that countries can establish stronger political alliances and secure lasting peace by sharing resources and responsibilities. Functionalism believes that problemsolving in specific fields is crucial for constructing broader international collaboration.

8.3.1.2.3 INTERDEPENDENCE LIBERALISM

Joseph Nye and Robert Keohane developed interdependence liberalism, which emphasizes the interdependence of nations and non-state actors. This approach describes how a web of mutual dependency is created as people, money, goods, and information move across national boundaries. Trade agreements, for instance, guarantee that nations profit economically by preventing disputes that may sever these connections. Additionally, interdependence liberalism contends that rather than vying for relative power, cooperation produces "absolute gains," which benefit all parties. This viewpoint emphasizes how crucial cooperation is in addressing global issues like climate change since no country can succeed alone.

8.3.1.2.4 REPUBLICAN LIBERALISM

Immanuel Kant's theory that democracies are less inclined to wage war on one another is the foundation of Republican liberalism. Democracies share principles including respect for human rights, freedom of expression, and peaceful conflict resolution, according to Michael Doyle's

democratic peace theory. Because of the costs of war, citizens, to whom democratic governments answer, generally oppose it. Democracies also tend to be economically interconnected, which encourages the maintenance of amicable relations. In order to lessen international conflicts and create a more stable international system, Republican liberalism advocates for the advancement of democracy everywhere.

8.4 THE FUNDAMENTALS OF LIBERAL THEORY OF RIGHTS

The development of democratic states and the extension of rights have been significantly influenced by the liberal idea of rights. It is typically interpreted in a political context, emphasizing the contributions of political philosophers and intellectuals who established the groundwork for contemporary democratic government. This chapter explores how rights have changed over time using four main themes:

- a) Classical Theories' Views on Liberty
- b) Individual Rights Recognition and Post-Classical Liberal Thought
- c) Contemporary Thought and the Struggle for Natural Rights
- d) Contemporary Thought and the Development of Democratic Rights

8.4.1. CLASSICAL THEORIES' VIEWS ON LIBERTY

Socrates, Plato, and Aristotle reinterpreted the word "Polis," which referred to the Greek citystate, and so began a critical investigation into the state and its rights. According to Plato, Socrates had a significant influence on political philosophy through his dialogues, despite leaving no written records behind. He argued for the moral need to follow social norms while challenging oppressive regimes and unfair laws. Socrates' acts demonstrated his dedication to justice and the improvement of laws to stop social inequities, even though he faced execution in Athens, a well-developed polity at the time.

In his book *Republic*, Plato criticized hurriedly drafted laws and emphasized the need for flexible legislation that could handle societal issues in the future. His writings promoted the idea of a state run by philosopher-kings who would uphold justice and reasoned rule. Building on these concepts in *Politics* and *Ethics*, Aristotle promoted government based on reasoned principles as opposed to individual authority. He promoted the stability offered by a strong middle class and cautioned against the concentration of power and economic inequities. The

foundation for comprehending the distribution of power within the state was established by Aristotle's emphasis on moderation and the welfare of the whole.

Machiavelli, during the Renaissance, broke away from the religious dominance of the medieval era, advocating for a pragmatic and secular approach to governance. He emphasized in *The Prince* the value of strategic government in preserving social stability. Machiavelli acknowledged the importance of religious devotion in fostering unity, but he also recognized that a great political state is built on the desire of the people. By emphasizing realism and flexibility in administration, his work served as a bridge between classical political theory and contemporary ideas of statecraft.

8.4.2 INDIVIDUAL RIGHTS RECOGNITION AND POST-CLASSICAL LIBERAL THOUGHT

Greco-Roman influences were incorporated into Western political theory as it developed after the fall of Athens and the time of Aristotle. Philosophies that recognized both individual rights and the well-being of the group, such as Epicureanism and Stoicism, started to highlight the idea of a "good life." Epicurus, for example, developed an early conception of social contracts by arguing that unspoken agreements between people were necessary to guard against damage and guarantee mutual gain.

These concepts were developed by Roman Stoics like Seneca, Epictetus, and Marcus Aurelius, who emphasized virtue, self-control, and fraternity among all people. They promoted the idea that everyone has innate dignity and reason, which provides a moral basis for the acceptance of natural rights. By highlighting the importance of justice, equality, and reason in state government, Roman jurists such as Gaius and Ulpian added to this conversation. Their writings offered a structure for enacting legislation that struck a balance between people's rights and the common welfare.

A link between ancient and contemporary political theories was established by the synthesis of these Greco-Roman concepts. They had a big impact on later advances in natural law theory, which highlighted justice and universal human rights as essential components of political structure. These post-classical viewpoints opened the door for contemporary liberal ideology by emphasizing the ongoing significance of balancing individual rights with social harmony.

8.4.3 CONTEMPORARY THOUGHT AND THE STRUGGLE FOR NATURAL RIGHTS

The modern period also referred to as the "Age of Enlightenment," saw revolutionary scientific advancements that shaped logical political conceptions. A fresh approach to government founded on logic and fact was sparked by the ideas of thinkers such as Copernicus, Galileo, and Newton. The fundamental conceptions of natural rights and social contracts were formulated by Thomas Hobbes, John Locke, and Jean-Jacques Rousseau.

In *Leviathan*, Hobbes characterized the "state of nature" as violent and conflict-ridden, requiring a social compact to create security and tranquility via a centralized government. He maintained that in order to avoid the chaos of the natural state, people would cede some liberties to a sovereign power in their quest for self-preservation. Security and order were given top priority in his system of government.

One of the most well-known liberals, Locke, stressed the importance of defending natural rights such as life, liberty, and property. Locke promoted a majority-will-based government operating within the parameters of a social compact in his *Two Treatises of Government*. His theories highlighted the value of a commonwealth in upholding justice and equity and had a major impact on the development of constitutional democracies.

In *The Social Contract*, Rousseau promoted collective sovereignty, where people actively participate in the legislative process, by emphasizing the idea of "general will." He advocated for humanistic and democratic ideals, imagining a society in which individual interests coincide with the welfare of the whole. The ideas of Rousseau placed a strong emphasis on people's inherent worth and their function in creating a peaceful society.

8.4.5 CONTEMPORARY THOUGHT AND THE DEVELOPMENT OF DEMOCRATIC RIGHTS

The ideas of liberty, equality, and justice were greatly expanded by liberal intellectuals such as John Stuart Mill, John Rawls, and Ronald Dworkin, who helped to shape contemporary democratic beliefs. John Stuart Mill supported the rights of children, freedom of speech, and individual liberty. He promoted social liberty as a defense against despotism and underlined the necessity of limiting state power to prevent authoritarianism. His ground-breaking book *On Liberty* offered a framework for striking a balance between society's interests and individual liberties.

John Rawls first proposed the theory of justice as fairness, emphasizing the function of social institutions in fostering reciprocity and equal opportunity. His ideas of the "original position"

and the "veil of ignorance" provide a way to imagine a society where justice is prioritized over arbitrary disparities.

Ronald Dworkin expanded liberal ideas by highlighting the morality of laws and equal opportunity. He argued for a balance between individual rights and group obligations, highlighting the significance of community norms and ideals outside of formal legal structures. Karl Marx and other critics exposed the shortcomings of liberal beliefs, even if they established the groundwork for welfare governments and just governance. Marx criticized liberalism for maintaining economic disparities and class divisions in capitalist democracies. His demands for economic fairness, a society without classes, and the elimination of private property are still crucial for tackling the inequalities made worse by contemporary capitalism structures. Marx's focus on the structural change of society still has an impact on discussions about social and economic justice today.

8.4.6 RECENT DEVELOPMENTS IN THE LIBERAL THEORY OF RIGHTS

Important historical and socio-political events including the French Revolution, colonial conflicts, and industrial revolutions have influenced the development of liberal ideology. Despite the tremendous advancements brought about by these events, which increased rights and liberties, inequalities in the distribution of rights around the world still exist. Systemic exploitation, gender-based discrimination, and socioeconomic disparities continue to be significant obstacles. The necessity to redefine and expand the scope of rights is underscored by crimes against vulnerable groups and changing concerns such as data privacy and property ownership in the digital age.

Aung San Suu Kyi and Mahatma Gandhi are two notable individuals who represent the continuous fight for democratic governance and equal rights. Gandhi's ideas of truth and nonviolence provide a timeless foundation for combating injustice and fostering peaceful coexistence. Marxian demands for reorganizing exploitative structures are consistent with his criticism of industrial capitalism. The universal applicability of liberal principles is further demonstrated by Aung San Suu Kyi's support for democracy in the face of oppressive governments. These individuals and their ideologies, which demonstrate a dynamic interaction between tradition and modernity, aid in the ongoing development of more inclusive and equal rights frameworks.

8.5. NEO-LIBERAL APPROACH

While addressing the realities of an anarchic and interconnected worldwide system, the NeoLiberal approach modifies classical liberal concepts. Neo-liberalism, which opposes neorealism, emphasizes the function of international organizations like the UN and trade associations in promoting collaboration even without a centralized global authority. Although nations function in anarchy, neo-liberals contend that they can cooperate through institutions, agreements, and conventions to accomplish common objectives and lessen conflict. Neoliberalism concentrates on the systems and institutions that either facilitate or obstruct collaboration, in contrast to classical liberalism, which stresses human nature.

Neo-liberalism acknowledges the significance of international organizations in preserving international standards and safeguarding individual liberties from the viewpoint of human rights. Institutions are essential for encouraging openness, fostering communication, and creating structures for mutual aid and group problem-solving. Global trade agreements, for instance, frequently contain clauses addressing labour rights and anti-discrimination laws, showing how economic cooperation may align with human rights objectives.

Critics counter that, especially in less developed nations, neo-liberalism's emphasis on economic expansion can occasionally eclipse social fairness and result in inequality. These objections draw attention to the necessity of applying neoliberal ideas in a way that is more equal and inclusive. Neo-liberalism is an essential framework for tackling global issues in a fair and sustainable way because it can successfully combine economic advancement and the defence of human rights by including systems to guarantee justice and accountability.

8.6. THE MARXIST PERSPECTIVE

Alongside liberalism, Marxism—one of the most revolutionary principles of the modern era—is a fundamental component of political philosophy. It provides a critical framework for comprehending society, the state, and history and is based on the writings of Karl Marx and Friedrich Engels, with additions from intellectuals like as Antonio Gramsci, Leon Trotsky, and Vladimir Lenin. Marxism's central idea is that the state is a manifestation of class relations and dominance. It developed from Marx's disjointed philosophical ideas, historical analysis, and journalistic articles rather than from a single idea. The state is a tool used by the economically dominant class to impose its interests and repress others, according to the Marxist viewpoint. It is not an unbiased organization; rather, it is a tool of alienation and class oppression that is

influenced by society's fundamental economic foundation. According to historical materialism, every mode of production creates distinct political organizations to protect the interests of the governing economic class. Marxists believe that the state is a temporary entity that only lasts as long as class conflicts continue. A communist society, a stateless and classless state where alienation is eliminated and true democracy rules, is the ultimate objective.

The "Dictatorship of the Proletariat," a transitional period between capitalism and communism, is a central idea in Marxist philosophy. This transitional state, in contrast to traditional dictatorship, gives the working class the authority to overthrow capitalist institutions and lay the groundwork for a society without classes. The ultimate goal of this democratic and revolutionary stage is to abolish state power altogether. Marx also criticized the state's alienating practices, which he believed were causing people to become estranged from their actual community relationships. Marx criticized the repressive and bureaucratic state in writings such as *The Eighteenth Brumaire of Louis Bonaparte* and argued that its overthrow was necessary for human liberation.

Although Marx did not offer a methodical examination of the state, Engels improved his ideas, and Lenin then modified them into workable revolutionary plans. Lenin emphasized the necessity of the state during the shift to communism and the role played by the revolutionary party in regaining and reorganizing state authority. This viewpoint has been criticized, nevertheless. Individual liberties could be undermined by authoritarianism or technocratic rule, according to anarchists and social democrats. Social democrats supported democratic methods of bringing about socialism as opposed to overthrowing it through revolution.

Despite these criticisms, the Marxist viewpoint is still widely used because it provides an explosive vision through which to examine social change, state power, and class relations. It sees the state as a transient institution that is necessary to lead society from capitalism to communism but that will eventually be abolished. Its capacity to adjust to shifting historical and social contexts and offer a framework for comprehending and combating power dynamics and inequality in modern society accounts for its ongoing relevance.

8.6.1. MARX'S THEORY OF RIGHTS

The philosopher and revolutionary theorist Karl Marx (1818–1883) is well known for his support of working-class rights and his critique of capitalism. His broader criticism of bourgeois society and his vision of a fair and just social structure serve as the foundation for his views on human rights. Marx, who was born in Trier, Germany, first studied law at the

University of Berlin before switching to philosophy as a result of Friedrich Hegel's dialectical approach. Marx's intellectual development, the French Revolution, socialist literature, and the brutal realities encountered by industrial workers were all influenced by his exposure to Hegelian philosophy.

8.6.1.1. MARX'S ANALYSIS OF THE RIGHTS OF THE BOURGEOIS

Marx disagreed with bourgeois society's interpretation of rights. He maintained that the interests of the dominant capitalist class are the main beneficiaries of these rights, which are protected by liberal constitutions. Property rights and other Bourgeois rights encourage individualism and keep people apart from their social and economic environments. Marx argues that by putting private property and competition ahead of the general benefit, these rights maintain current disparities.

8.6.1.2. MARX'S CRITIQUE OF BOURGEOIS RIGHTS

Marx disagreed with the way bourgeois society interpreted rights. He maintained that the governing capitalist class largely benefits from these rights, which are protected by liberal constitutions. Property rights and other bourgeois rights help people become more independent and apart from their social and economic surroundings. Marx argues that these rights uphold current disparities by giving private property and competition precedence over the good of the whole.

Marx explained how the state and its legal systems protect the interests of the bourgeoisie in his *Critique of Hegel's Philosophy of Right*. He believed that without economic equality, political rights like the ability to vote and the right to free speech were meaningless. Marx argues that in order to achieve true freedom, the fundamental economic systems that uphold exploitation and alienation must be changed.

8.6.1.3. HUMAN RIGHTS AND ALIENATION

The idea of alienation, which Marx saw to be fundamental to capitalist production, is a major issue in his writings. Employees feel cut off from their own humanity, their co-workers, their labour, and the results of their effort. Because Bourgeois rights do not question the capitalist system itself, they are unable to remedy this alienation, despite their emphasis on formal equality.

Marx envisioned a society free from the exploitative powers of capitalism, where people are able to reach their full potential. To achieve this, a classless society would need to be established, private property would have to be abolished, and the means of production would

have to be owned collectively. Rights would be tools for attaining true freedom and equality in this society rather than being merely theoretical formality.

8.6.1.4. MARX'S VISION OF EMANCIPATION

Marx believed that the fight for socialism and the fulfilment of human rights were inextricably linked. According to him, the working class, or proletariat, has a historical duty to topple capitalism and install a communist society. Class distinctions would vanish as a result of this radical change, which would also pave the way for genuine human liberation. Individual rights and the common good would coexist in this new society, guaranteeing that no one would be oppressed or exploited.

8.6.1.5. LEGACY AND RELEVANCE OF MARX'S THEORY OF RIGHTS

Marx's criticism of rights still has an impact on discussions about social justice and human rights today. His focus on economic justice has sparked campaigns for social equality, labour rights, and resource redistribution. Although he questions the effectiveness of liberal rights in resolving systemic injustices, his idea of a classless society provides a framework for imagining a society in which rights are really inclusive and universal.

Marx's dedication to his principles is evident in his personal life. He carried on with his political and academic endeavours in spite of his poverty and the deaths of his wife and children. His unwavering quest for justice and his criticism of social injustices are still potent examples of his ongoing impact on the fight for human rights.

Marx's theory pushes us to examine the structural and economic prerequisites for actual freedom and equality in addition to the boundaries of formal legal rights. The contemporary world's enduring problems of poverty, inequality, and exploitation can still be addressed with his principles.

8.6.2. PROTECTION OF RIGHTS IN A COMMUNISTIC SOCIETY

In order to promote equality, justice, and the common good, Karl Marx envisioned a communistic society based on the restoration and protection of the rights of the underprivileged. According to Marx, the capitalist system, which upholds the concentration of power and riches in the hands of a select few under the pretense of private property rights, is what this ideal state seeks to abolish. Marx proposes a socialist state that guarantees resource distribution and communal well-being in its stead.

8.6.2.1 FEATURES OF A SOCIALISTIC STATE

In order to create a fair and equal society, a communist society must undergo substantial structural changes. In their ground-breaking writings, Marx and Friedrich Engels described these shifts and suggested a number of actions to bring about this change:

1. **Abolition of Private Property:** To guarantee fair access and use, all private property ownership must end and land must be used for public purposes.
2. **Progressive Taxation:** To redistribute wealth and lessen economic inequality, a high progressive or graduated income tax system is put into place.
3. **Elimination of Inheritance Rights:** By doing away with inheritance rights, wealth concentration cannot continue to be concentrated among successive generations.
4. **State Control of Credit:** The state controls the banking and credit systems, and a national bank has a monopoly. This guarantees that funds are allocated for the good of the public rather than for personal gain.
5. **State Control of Transportation and Communication:** To guarantee fair access and guard against abuse by private organizations, all forms of transportation and communication are centralized under the state.
6. **State Ownership of Production:** The state owns the factories and production equipment, with an emphasis on reclaiming wasteland and enhancing farming methods in accordance with a shared strategy.
7. **Universal Labour Obligation:** With the creation of industrial armies, especially for agricultural activities, all people are equally obliged to work, guaranteeing shared responsibility in economic activities.
8. **Integration of agricultural and Industry:** By combining agricultural with manufacturing sectors and guaranteeing a fair population distribution among regions, the line between rural and urban areas is progressively eliminated.
9. **Free Public Education:** All people have access to free public education. In order to prepare people for meaningful engagement in society, child labour in factories is outlawed and education is combined with industrial output.

8.6.2.2. THE DIALECTICAL PROCESS AND CLASS STRUGGLE

Marx's idea of a communistic society is the product of a dialectical process motivated by class conflict rather than a simple change in policy. Conflict is an inevitable by-product of the capitalism system, which is defined by the bourgeoisie's exploitation of the proletariat, or working class. Marx argues that this conflict drives society toward revolutionary

transformation, which leads to the creation of a classless society in which the state serves as a tool for the common good rather than for oppression.

8.6.3. PROTECTION OF RIGHTS IN A COMMUNISTIC FRAMEWORK

Collective ownership and fair resource distribution are the cornerstones of rights protection in a communist society. Among its main characteristics are:

- **Economic Equality:** Communism eradicates the economic inequalities that underlie social inequality by centralizing production and outlawing private property.
- **Social Justice:** By guaranteeing that resources are distributed according to need, the system promotes a society in which privilege is subordinated to justice.
- **Universal Access:** All people have equal access to healthcare, education, and basic necessities, protecting their fundamental rights.
- **Labour-Based Empowerment:** Equal labour rights enable people to make significant contributions to society while guaranteeing that the rewards of their labour are distributed fairly.
- **Collaborative Decision-Making:** State ownership and centralized planning encourage decision-making procedures that put the welfare of the group ahead of personal gain.

8.7 SUMMARY

The liberal and Marxist schools of thought about the state, its foundation, role, and functions are examined in this chapter. To protect civil and political rights, the liberal viewpoint places a strong emphasis on individual liberties, equality before the law, and minimal government involvement. It sees the state as an impartial arbiter that preserves law and order, settles disputes, and guarantees the conditions necessary for individual liberty and the advancement of society. The Marxist perspective, on the other hand, contends that the state serves the interests of the ruling class within a capitalist system and criticizes it as a tool of class-based exploitation. In order to attain economic equality, collective wellbeing, and a society without states or classes, Marxism calls for the destruction of existing structures.

The chapter examines the various levels of state intervention suggested by these ideologies, the intricacies of governance, and the relationship between political and economic power. By contrasting various viewpoints, it sheds light on how the state's role in addressing equality, justice, and human rights changes throughout time.

8.8 GLOSSARY

Human Rights: As stressed in both liberal and Marxist discourses, human rights are the fundamental civil, political, social, and economic rights that every person possesses.

Liberalism: A political theory that supports private property, democracy, individual liberties, and little government intervention in domestic and business matters.

Means of Production: The physical and intangible resources (such as factories, equipment, and land) that are utilized to create commodities and services are known as means of production.

Progressive Taxation: Marx suggested progressive taxation as a way to lessen economic inequality; it is a system in which tax rates rise as income levels rise.

Proletariat: According to Marxist ideology, the proletariat is the working class that is taken advantage of by capitalist systems.

Alienation: In Marxist philosophy, the term "alienation" describes how workers in capitalism systems become estranged from their labor, the goods they produce, and their own humanity.

Bourgeoisie: According to Marxist theory, the bourgeoisie is the capitalist class that controls the means of production and takes advantage of the working class.

Capitalism: Capitalism is an economic system in which products and services are produced for profit and the means of production are privately held.

Class Struggle: A fundamental principle of Marxism, the class struggle refers to the struggle between various socioeconomic classes, especially the bourgeoisie and the proletariat.

Collective Ownership: A communist concept in which the means of production and resources are owned collectively as opposed to individually.

Communism: Democratic Republic: A system of governance that emphasizes group decision-making and was cited by Marx and Engels as a high point in the development of society.

Dictatorship of the Proletariat: According to Marxist theory, the Dictatorship of the Proletariat is a transitional period in which the working class takes over the government in order to overthrow capitalist institutions.

Economic Inequality: Economic inequality, which is frequently criticized by both liberal and Marxist schools, is the difference in wealth and income between individuals or groups within a community.

8.9 SAQS

1. Short Answer Questions

- a) How does liberalism balance individual freedoms with collective responsibilities?
- b) What is the ultimate goal of a Marxist society?

2. MCQs and answers

1. Which of the following best represents a key principle of liberalism as discussed in the text?

- A. Group interests must take priority over individual freedoms
- B. The state should centralize power to prevent social conflict
- C. Individual liberties must be protected, with limited government intervention
- D. Religious authority should guide governance and legislation

2. What is the primary focus of functionalism within liberal theory?

- A. Ensuring absolute power rests with the sovereign
- B. Promoting democratic peace through global cooperation
- C. Encouraging practical cooperation in specific areas to build broader political integration
- D. Protecting cultural traditions from globalization

3. According to Roman Stoics like Seneca and Marcus Aurelius, what provides the moral foundation for accepting natural rights?

- A. Divine command and religious doctrine
- B. Written laws created by the state
- C. Human dignity and reason
- D. Political alliances and treaties

Answers

1. C. Individual liberties must be protected, with limited government intervention
2. C. Encouraging practical cooperation in specific areas to build broader political integration
3. C. Human dignity and reason

UNIT 9: GANDHIAN AND DALIT PERSPECTIVE

STRUCTURE

9.1 INTRODUCTION

9.2 OBJECTIVES

9.3 GANDHI; A STRUGGLE FOR JUSTICE AND EQUALITY

9.4 IMPORTANCE OF RIGHTS IN GANDHI'S PHILOSOPHY

9.4.1 POLITICAL RIGHTS

9.4.2 GANDHI'S VIEWS ON RELIGIOUS RIGHTS

9.5 RIGHTS TO EDUCATION AND THE ECONOMY

9.5.1 RIGHTS TO EDUCATION

9.5.2 EDUCATIONLA RIGHTS

9.6 CONCLUSION

9.7 GANDHI'S DEPRESSED CLASSES PERSPECTIVES

9.7.1 DEFINITION OF DEPRESSED CLASSES

9.7.2 GANDHI AND DEPRESSED CLASSES

9.7.2.1 GANDHI'S VISION OF SOCIAL EQUALITY

9.7.2.2 EFFORTS TO ERADICATE UNTOUCHABILITY

9.1. INTRODUCTION:

Gandhiji's human rights philosophy is essential from both an Indian and international standpoint. He established the groundwork for a powerful movement against injustice, inequality, and exploitation while placing a high value on human life's rights and dignity. His ideas are greatly impacted by Western philosophers like Rousseau, Tolstoy, and John Locke as well as Indian tradition and philosophy. According to Gandhiji, everyone should be able to live their life in freedom and dignity. He provided an example of how to use "non-violence" and "satyagraha" to defend both individual and group rights. He believed that human rights extended beyond political freedom to include releasing all individuals from social injustice and exploitation.

Gandhiji spent his life working on a variety of human rights issues. He founded the 'Harijan Movement' to help the Dalit community get equal civic rights in society. He espoused the idea of equality in society and was adamantly against untouchability. He encouraged women to take part in the freedom struggle by highlighting their equality and rights. In addition, Gandhiji introduced the idea of "trusteeship" for economic equality, which holds that the property owner contributes to the well-being of the community. He advocated giving everyone equitable access to natural resources and putting an end to economic exploitation.

Gandhiji spearheaded a nonviolent campaign to overthrow the British Empire and establish an autonomous society free from exploitation. His movements sought to establish human rights, social fairness, and political freedom. He taught that rights and duty are complementary. Protecting the rights of others is impossible unless each individual fulfils his obligations. In his opinion, social fairness and balance cannot be achieved unless the most disadvantaged and exploited members of society are granted their rights.

Gandhiji's perspective on human rights is still relevant today, in addition to having a significant impact on Indian social reforms. The establishment of human rights, equality, and social transformation are all influenced by his ideas. For him, human rights are not just about rights; they are also closely related to obligations and responsibilities. His ideas and actions demonstrated the importance of respecting each person's rights and dignity in order to effect meaningful social change. Therefore, Gandhiji's perspective on human rights is a solid

foundation of moral and social principles that will occasionally continue to steer society in the correct direction.

9.2. OBJECTIVES:

- Study Gandhi's contribution to the Indian Independence Movement from a human rights perspective.
- Analyse satyagraha's influence on social justice and its role as a human rights ideology.
 - Describe the depressed classes and assess Gandhi's theories for their improvement.
- Acknowledge Gandhi's methods for dealing with the problems faced by the lower classes.
- Evaluate reactions to Gandhi's stance on social reform and the underprivileged classes.

9.3. GANDHI: A STRUGGLE FOR JUSTICE AND EQUALITY

Mahatma Gandhi's unwavering commitment to equality and justice is evident in every facet of his life. In addition to individual rights, he envisioned a society in which each person is treated with respect and dignity. He advocated for a social and moral revolution in addition to political liberation.

Truthfulness and non-violence were the cornerstones of his "Satyagraha" ideology, which was more than just a means of protest. Even now, this concept serves as inspiration for the global human rights movement.

9.4. IMPORTANCE OF RIGHTS IN GANDHI'S PHILOSOPHY:

Gandhi's "concept of rights" was the cornerstone of his philosophy. Every person has the right to use non-violent tactics to oppose oppression and injustice, according to his Satyagraha principle. Morality and conscience, he stressed, were more important than the ruler's or the state's unbridled power. Gandhi believed that rights were essential to a just society because they were closely linked to human dignity and self-respect.

HISTORICAL AND PHILOSOPHICAL PERSPECTIVES ON HUMAN RIGHTS

Gandhi held that people are guided towards justice by the voice of conscience, which he considered to be the voice of God. He remarked in 1919 that sometimes following one's conscience is essential, even if it means being away from one's loved ones, one's nation, or treasured belongings. He was adamant that the majority's opinion was worthless when it came to concerns of conscience. Because of his steadfast adherence to this conviction, he frequently opposed unfair laws and structures and argued that a person's moral judgement should take precedence over outside authority.

Gandhi regularly disregarded court rulings and called upon what he called a "court of conscience" in both South Africa and India. He believed that this was superior to all external tribunals and that moral principles rather than imposed legal frameworks were the source of true justice. He believed that everyone had the unalienable right to follow their conscience, even if it conflicted with the law or the authority of the state.

Gandhi argued that upholding human dignity required human rights, which were not limited to the legal or political spheres. He maintained that people had a moral right to object to any law, regulation, or order that went against divine moral principles. His support of nonviolent civil disobedience as a strategy for opposing injustice was based on this conviction.

Gandhi believed that restoring the rights of the oppressed was the only way to bring about justice and harmony in society. He maintained that a person could not grow morally or spiritually if they were denied their rights. Thus, his vision encompassed a wider framework of ethical obligation and social upliftment in addition to legal entitlements.

Gandhi vehemently disagreed with the Divine Right of Kings theory, which held that God gave kings their power. He promoted the notion that fairness and popular consent, not force or divine favour, should be the foundation of rule. He believed that service to the people, not control over them, was the foundation of great leadership.

His ideas impacted international campaigns for freedom and human rights in addition to motivating India's fight for independence. Gandhi's ideas served as a source of inspiration for leaders like Nelson Mandela and Martin Luther King Jr. who fought for equality and justice. His ideology is still relevant today, sending a strong message that the best ways to fight injustice are via truth and non-violence.

Gandhi's idea of liberation encompassed more than just political freedom from colonial control; he also envisioned a moral and social revolution. He aspired to create a society in which all people, regardless of caste, creed, or status, might live in dignity and respect for one another by eliminating social evils like untouchability and religious prejudice.

His philosophy of "holding onto truth," or satyagraha, was a way of life rather than merely a tactic for resistance. It enabled people to resist injustice without using violence since it was based on the principles of truth (satya) and non-violence (ahimsa). According to Gandhi, nonviolent resistance maintained moral superiority and forced oppressors to acknowledge and right their wrongs.

Gandhi's own experiences with discrimination influenced his views on equality and justice. His early experiences with racial discrimination in South Africa had a significant impact on his dedication to human rights. His forceful expulsion from a first-class rail compartment at Pietermaritzburg station, even though he had a valid ticket, was a watershed moment. As he waited in a chilly waiting room that night, he made the decision to live his life fighting injustice without resorting to violence.

His leadership in India later developed as a result of his activism in South Africa. In addition to fighting against unfair legislation and racial discrimination, he inspired the Indian people to demand their rights. His scholarly ability and commitment to justice were demonstrated by his opposition to the Natal legislature's attempts to deny Indians the right to vote. In support of Indian rights inside the British Empire, he cited democratic ideas and European intellectuals.

Gandhi directed campaigns like Quit India and Non-Cooperation in India, extending his fight for civil and political rights beyond South Africa. He believed that civil liberty and political freedom (Swaraj) were inextricably linked, stressing that genuine independence depended on having the ability to express oneself and take part in governance. He linked the campaign for Swaraj to the larger fight for human dignity and contested repressive legislation like the Rowlatt Act.

His understanding of rights extended beyond legal privileges; he believed that they were closely related to obligations. He held that people automatically protected their own rights as well as the rights of others by carrying out their obligations to society. Gandhi believed that honesty, non-violence, and selfless service were the paths to true freedom and rights. His viewpoint

distinguished him from many Western intellectuals who mainly considered rights in terms of legal protections.

Gandhi's teachings on justice and nonviolence continue to influence contemporary human rights campaigns. His life served as an example of the strength of moral conviction against oppression. He offered a comprehensive framework for creating a just and equitable society by highlighting the connections between rights and obligations. Those who strive to protect human dignity and peacefully oppose injustice are still motivated by his ideas.

9.4.1. POLITICAL RIGHTS

Gandhi listed the following political rights: the freedom from foreign domination, the right to vote, the right to participate in government, and the right to oppose, warn, and defy an unjust government. He was in favour of "universal adult suffrage exercised by a disciplined and politically conscious electorate". However, he also proposed certain qualifications for voters. According to him, the age of voters should be between 18 or 21 and 50 years. He assumed that when Congress came to power, most men and women aged 21 and above would get the right to vote. However, a statement of his in *Harijan* indicates that he would not object to a minimum age of 18 years. He fixed the maximum age limit at 50 years, as he believed that older persons were not effective voters. This idea was inspired by the Varnashrama system of the Vedas, which divided life into four stages—Brahmacharya, Grihastha, Vanaprastha and Sannyasa. However, he also suggested specific requirements for voters. In his opinion, voters should be between the ages of 18 and 21 and 50. The majority of men and women aged 21 and up would be granted the right to vote, he believed, once Congress took control. His statement in *Harijan*, however, suggests that he would not be against a minimum age of 18. He set a 50-year-old age limit because he thought older people were ineffective voters. An inspiration for this concept came from the Vedic Varnashrama system, which separated life into four stages: Brahmacharya, Grihastha, Vanaprastha, and Sannyasa. Gandhi believed that only citizens living in the householder stage or those approaching it should be given the right to vote.

Gandhi also called for a literacy test for voters necessary. He believed that in order to appreciate freedom in its broadest sense, literacy is essential. He maintained that the right to vote ought to be a privilege that requires a certain level of qualification. He asserts that illiteracy can be abolished in the near future if the government acts honestly towards the ignorant. In addition, Gandhi believed that "physical labour" was a prerequisite for voting in order to address the

issue of unemployment. He believes that only citizens who perform physical effort for the government should be granted the opportunity to vote. According to him, swaraj does not merely entail establishing a government with popular approval; it also requires the involvement of those who actively support the development of the country.

Gandhi advocated giving everyone the right to vote without regard to caste, colour, sex, religion, property, or place of birth. He did, however, defend the ability to choose not to vote and saw this as a privilege of the people rather than a responsibility. His Satyagraha in South Africa taught him that abstaining from voting may also be a powerful form of protest.

Additionally, he granted residents the ability to choose their own representatives and take part in their governance. He thought that, like people in other nations, Indians were naturally able to organise their national life and pick their government. Gandhi's ideas on governance were broader; he supported full involvement as opposed to tax-based restrictions on political rights. He advocated the notion that taxpayers ought to have the freedom to select their government since representatives were to represent the people's interests.

According to Gandhi, the first step towards attaining self-rule, or Swaraj, was emancipation from foreign domination. In order to secure this right, he spearheaded numerous Satyagraha actions and encouraged Indians to view their independence as a natural right. 'United Nations' and Britain's acceptance of India's right to independence was his goal. He urged citizens to display high political awareness because, according to him, "there is no place for cowards in a society which loves freedom."

In addition, Gandhi granted citizens the freedom to protest, provide warnings, and attempt to overthrow the government if necessary. "People have every right to complain about rights violations and to demand reform," he stated, defending Indians' rights in South Africa. He thought that citizens had the right to protest and agitate in addition to warning if the government become unjust. Gandhi also granted citizens the ability to overthrow the government if it still committed atrocities. He thought that if ministers were abusing their positions, they should be fired as part of the idea of responsible administration. He also believed that citizens had the innate right to engage in civil disobedience, but only after they had complied with all other state laws. Gandhi backed the American philosopher Henry David Thoreau's position that people had the right to rebel against an oppressive government.

Gandhi essentially granted people the unalienable right to establish their own government and alter it as needed. A balance between political rights and obligations served as the foundation for his strategy. Instead of only calling for rights, he urged citizens to fulfil their responsibilities. His theories were influential not only for the Indian liberation movement but also for global democratic and human rights movements. His philosophy, which is still applicable and exemplary today, was founded on fairness, nonviolence, and the dignity of all people.

9.4.2 GANDHI'S VIEWS ON RELIGIOUS RIGHTS:

Mahatma Gandhi was an unwavering supporter for religious liberty, holding that everyone should be free to select, follow, and propagate their religion without interference. He underlined that people should be allowed to follow their conscience without interference or pressure from others, and that religion was a personal affair. He saw religious prejudice and community hostility as grave dangers to human harmony and togetherness. He believed that tolerating and honouring other religions was both a moral obligation and a legal privilege.

Gandhi argued that religious differences shouldn't be a source of animosity because they are natural. He maintained that although people may refer to God by many names, such as Allah, Khuda, or Ishwar, they are all ultimately members of the same human race. He emphasized that different worship styles were not indicative of superiority or inferiority. He advised people to put their shared humanity first rather than arguing over religion. Since every person's spiritual journey was different, he believed that no one religion could become universal for everyone.

He was an unwavering advocate of religious freedom, arguing that neither society nor the government should impose restrictions on religious activities. He cautioned that this right would be useless if people were not free to follow their faith. Additionally, he supported the freedom to read and analyse religious writings because he thought that religion should not be mindlessly adhered to but rather studied and challenged. In order to comprehend the teachings of all religions and advance religious harmony, he personally studied Buddhism, Islam, Christianity, and Hinduism.

He strongly objected to forced conversions, even if he supported the right to convert. He considered that rather than being forced or duped, changing one's religion should be a conscious

and personal choice. He believed that the real foundation of religious unity was love, respect, and understanding. He thought that harmony amongst all religions would undoubtedly come from one community practicing compassion and tolerance.

Gandhi believed that a state that treated all religions equally and did not give preference to any one of them was genuinely secular. He envisioned India as a place where people of all faiths may live in harmony and dignity, practicing their faiths without fear or discrimination. He maintained that genuine faith must engender love, compassion, and unselfish devotion to others because he believed that religion should promote harmony rather than conflict.

9.5. RIGHTS TO EDUCATION AND THE ECONOMY:

9.5.1: RIGHTS TO EDUCATION

Mahatma Gandhi was adamant that a just society required economic justice. He underlined that property ownership, fair salaries, and the ability to work are all essential human rights. Gandhi was adamant that everyone had the right to work for a living and acknowledged that unemployment was a significant problem in India. He emphasised that people should only be able to claim their basic needs after making a physical contribution to the extent of their ability. He also called on the government to assume responsibility for giving all jobless people jobs so they can live respectably.

Gandhi believed that everyone should be allowed to pick their career path based on their aptitude and areas of interest. He thought that people shouldn't be made to work at tasks they didn't want to do and was against the state using any kind of forced labour. In his ideal system, there would be a variety of job options accessible, enabling people to select the one that best fit their needs. He thought it was improper for anyone who was physically capable of working to live off of charity without doing any labour. He even proposed that the government should stop giving away free food or cash assistance to people who refused to work even though they were physically healthy.

Gandhi also underlined the significance of equitable pay. An eight-hour workweek should be the norm, he insisted, so that employees have time to relax and care for their families. In his view, salaries ought to be fair and sufficient to cover necessities like clothing, food, and

housing. He maintained that everyone should be able to find work in a well-run state, and that workers' needs—rather than the type of labour they do—should decide compensation.

Gandhi was an advocate of property ownership and disposal as well. According to him, people ought to be free to own property and spend their income anyway they like. However, the owner should get just compensation if the State had to take possession of their property for the benefit of the public. Through his Satyagraha campaigns in South Africa, Ahmedabad, Bardoli, and Kheda, he battled for these economic rights.

Gandhi was not a complete opponent of the old varna (caste-based) system, even if he did advocate economic freedom. He thought that any person may continue in the family vocation if it suited their abilities because they all acquired some traits and capabilities from their forebears. But he made it clear that varna shouldn't be a barrier; instead, people should be allowed to select their career based on their aptitude and personal preferences rather than being compelled to pursue their family's line of work. His strategy was to combine democratic labour rights with established social structures.

9.5.2. EDUCATIONAL RIGHTS:

Gandhi believed that the cornerstone of a powerful and independent country was education. He felt that if the mass of people were still uneducated, democracy and self-rule (Swaraj) would be meaningless. As a result, he emphasised the need for the government to aggressively support literacy and education. But he also thought that rather than concentrating only on academic knowledge, education should be useful and applicable to people's daily life.

In order to do this, Gandhi put out the Wardha Scheme of Education in 1937, which mandated free and mandatory basic education for seven years. At first, he thought that education should be optional, but after learning about India's high percentage of illiteracy, he came around to the notion of making primary schooling mandatory. He said that everyone should have access to education, particularly those who are impoverished, and that the government should provide free basic education so that no child is denied an education because of their inability to pay.

Vocational training was one of the main components of his educational program. He thought it was important to teach kids practical skills that would enable them to become independent. He believed that education should help children grow intellectually, physically, and spiritually as well as prepare them for the problems of the actual world. His objective was for students to

have sufficient real-world knowledge to sustain themselves by the time they were fourteen years old.

Gandhi had a distinct strategy for higher education. Even while he thought higher education was essential he didn't think the state should pay for it all. Rather, he recommended that private companies should pay for vocational education for people who require specialised skills for particular industries. He maintained that only those who required higher education should be responsible for paying for it, and that institutions shouldn't be a financial burden on the state. His logic was simple: "He who needs expertise should also pay for its training."

Gandhi also supported women's rights to education. Although he recognised that women had distinct social and biological functions, he was a strong supporter of gender equality in education. He stressed the value of training in childcare, household management, and health education even as he urged students to pursue all areas of expertise. He felt that women should receive the proper education to enhance their innate skills because they were vital in forming families and communities.

Gandhi also firmly believed that underprivileged groups should have access to education. In order to raise historically underprivileged groups to the same level as the rest of society, he thought that they should receive extra attention in schools. He supported their right to maintain and advance their culture, language, and script. He sought to eliminate discrimination in educational access because he believed that education could be a means for social upliftment.

9.6 CONCLUSION:

Mahatma Gandhi thought that everyone should have access to civic, economic, religious, and educational rights in addition to political freedom. He advocated for freedom of expression, legal equality, universal suffrage, and religious tolerance because he believed that everyone should have access to justice and dignity.

In addition to advocating for free and beneficial education for all, particularly women and marginalized groups, his emphasis on economic rights ensured fair compensation and independence. Gandhi's nonviolent fight not only helped India achieve its independence but also ignited global human rights movements.

His legacy teaches that real freedom arises from striking a balance between rights and obligations, and his values of justice, honesty, and non-violence continue to be a compass in today's fight for social peace and equality.

9.7. GANDHI'S DEPRESSED CLASSES PERSPECTIVES:

In addition to serving as the political leader of the Indian independence movement, Mahatma Gandhi was a social reformer who devoted his life to eliminating the systemic injustices that pervaded Indian culture. The improvement of marginalized groups, such as the "Depressed Classes" or "Untouchables," was at the heart of his social philosophy. Gandhi's sensitivity to these classes dates back to his early years. The miseries these communities endured as a result of the sins and abuses of the caste system tore at his spirit. But rather than opposing Hinduism itself, he opposed its misunderstandings and discriminatory customs.

Gandhi believed that India could not achieve true "swaraj" (self-rule) unless the social and economic reform of the Depressed Classes was carried out. He emphasised that integrating these communities into the mainstream of society and ensuring their dignity and equality was not only a moral responsibility but also essential for national unity and progress. Gandhi opposed caste discrimination and tried to unite different sections of society to promote social harmony.

He proposed a number of solutions to the issues facing the oppressed classes, including equal treatment in society, education, and self-reliance. Gandhi's vision was connected to the larger objective of the freedom movement and went beyond social change alone. In addition to paving the path for these castes to be given their proper place in society, his thoughts and deeds were crucial to India's social and national renaissance. Gandhi stated unequivocally that the advancement of the entire country will not be complete unless the weakest segment of society is improved.

9.7.1. DEFINITION OF DEPRESSED CLASSES:

At the lowest layers of the Hindu caste system, the phrase "Depressed Classes" refers to marginalized groups of people who are frequently referred to as "untouchables," In addition to being excluded from the four major castes, these groups were also denied social and religious rights, including the ability to enter Hindu temples. Economically speaking, the majority of

members of the depressed classes were either landless labourers or worked in low-paying jobs like leatherwork, sweepers, etc.

In the past, caste was a fundamental part of Hindu society and was upheld in the name of scripture to preserve religious chastity and social hierarchy. By the end of the 19th century, the phrase "Depressed Classes" had gained popularity in the official setting. Organisations like "The Depressed Classes Mission Society of India" were established by social reformers like V. R. Shinde with the intention of raising awareness of these groups' predicament and promoting their rights.

Discrimination based on caste were to be eradicated, according to socio-religious reform organisations like the Brahmo Samaj, Arya Samaj, and Prarthana Samaj. In his book *Gulamgiri*, Jyotirao Phule attacked Brahmanism and revealed the abuse of the lower classes. Phule advocated for a "Bahujan Samaj" that would unite the disadvantaged classes and repudiate the idea of caste. Dr. Bhimrao Ambedkar fought for the rights of Dalits and questioned the religious underpinnings of the caste system after being influenced by Phule's theories.

In order to support the Dalit class's economic and educational advancement, the British government implemented policies like reservations and acknowledged them as a distinct category in the Indian census. Early in the 20th century, Dalits voiced their complaints about the upper castes' supremacy and started to demand representation in government positions, educational institutions, and legislative Organisations.

Although the British government was first hesitant to meddle in local socio-religious matters, their views began to shift at the turn of the 20th century. The downtrodden classes could be nominated to provincial legislatures under the Government of India Act of 1919. Through coordinated movements in several provinces, the Dalits rose up at this time to demand their rights and identity.

Caste-based prejudice and dominance were contested by Phule, Ambedkar, and reformers from various regions of India, like E.V. Ramaswamy Naicker, Narayana Guru, Bhagyareddy Varma, Achutananda, and others. Although it was not immediately on the agenda of mainstream political leaders, Dalit intellectuals worked for the empowerment of Dalits and the end of caste oppression.

The Dalits developed a greater understanding of their rights as a result of new values of freedom, equality, and justice that were influenced by Western education. These patterns indicated the crucial part that India's downtrodden classes played in the country's socioeconomic change and development. This fight against caste oppression demonstrated that unless the most marginalized groups in society are integrated into the mainstream, India's progress will not be complete.

9.7.2. GANDHI AND THE DEPRESSED CLASSES:

During the Indian freedom war, Mahatma Gandhi made social justice and the advancement of the underprivileged classes a top priority. Gandhi sought to end untouchability from his earliest days, in contrast to the majority of nationalist leaders who shied away from denouncing social injustices in public. He thought that in addition to being a social ill, untouchability hurt India's standing abroad.

Gandhi stated in a 1925 speech in Ranchi that "Untouchability has made Indians pariahs throughout the world." Gandhi believed that "swaraj" (self-rule) was founded on equality and social harmony in addition to political independence. He thought that until the oppressed classes were lifted up and untouchability was outlawed, India would never be able to attain true self-rule.

9.7.2.1. GANDHI'S VISION OF SOCIAL EQUALITY:

The goal of Gandhi's thought was to incorporate the underprivileged into Hindu society as a whole. He thought that the Indian liberation movement depended on social equality and the abolition of caste-based discrimination.

He said: "Swaraj to me is the freedom of the lowest man in our country... I am not only interested in freeing India from British rule but from injustice of any kind."

This perspective on Gandhi makes it evident that he aimed to establish a society in which all social strata were treated equally, not just political freedom.

9.7.2.2. EFFORTS TO ERADICATE UNTOUCHABILITY

Establishment of Satyagraha Ashram (1915): The Satyagraha Ashram was founded in Ahmedabad by Mahatma Gandhi in 1915. This ashram's primary goal was social reform, particularly the end of untouchability. Gandhi ji established regulations in this ashram to

eradicate prejudice based on caste and religion. Within the ashram, people from all castes were permitted to live, eat, and work together. This promoted the social ethos of equality and solidarity. Cleanliness, self-reliance, and khadi manufacture were encouraged in this ashram, which was founded on morality and self-reliance.

Harijan Movement (1932): Gandhiji popularized the term 'Harijan' (meaning 'children of God') in 1932. This term was chosen to dispel the unfavorable perceptions of untouchability. Gandhi ji also established the 'Harijan' journal to draw attention to the issues of the Dalit population, publishing ideas and recommendations to better their lot. He motivated society's elites to guarantee the Dalits' rights and treat them equally.

Untouchability Eradication Movement: Gandhi ji leads a major struggle against untouchability. He worked to allow Dalits to enter schools, public spaces, and temples. He characterized the abolition of untouchability as being as crucial to the Congress's political agenda as the liberation struggle and Hindu-Muslim cooperation. He wrote and held public gatherings in an effort to foster a sense of unity and fraternity in the community.

Gandhiji's Views and Varnashram: Despite his adamant opposition to caste-based inequality, Gandhiji did not entirely disapprove of the Varnashram system. Rather than viewing any caste as superior or inferior, he asserts that the Varnashram system was established in antiquity to preserve social and economic equilibrium. Untouchability must be abolished, he said, calling it a perverted version of the Varnashram system. But he also mentioned how society is structured according to karma and said he would be prepared to uphold the fundamental intent of the caste system, so long as it wasn't unfair.

Opposition to untouchability on religious grounds: Gandhiji was adamantly against untouchability being recognized as a religion. He cited Hindu texts to support his claim that there is no mention of treating someone as untouchable based only on their birth. He asserts that the true goal of religion is to uphold the values of equality, love, and service. He encouraged the upper caste to recognize untouchability as unfair and grant Dalits equal rights. Rather than openly criticizing religion, he chose to focus on altering the way society thinks.

Social reforms and changes in public life: Gandhiji tried to integrate social reforms into people's everyday lives rather than simply reserving them for theoretical concepts. He:

- encouraged cooperation between the harijans and the upper castes.

- started campaigns to gain access to temples and other places of worship for Harijan.
- a focus on maintaining cleanliness and elevating labour.

According to him, problems will not be solved by symbolic actions alone, but improvement in the conduct of people is necessary to bring about real change in society.

Respect for Dalit leaders: Gandhiji recognized Dalit leaders like Dr. Bhimrao Ambedkar as being morally and intellectually superior. He favored the notion that a person's social standing ought to be established by his merits and actions rather than by his birth. There were notable distinctions between Gandhiji and Ambedkar's opinions, nevertheless. Gandhiji sought to introduce reform inside Hinduism, whilst Ambedkar thought it was impossible. However, both leaders made important contributions to the advancement of Dalits.

Legacy of Gandhiji's efforts: Gandhi's actions brought caste-based inequality in Indian society to light and made proactive measures to promote social harmony. He advocated for the rights of the lower classes and worked to alter the higher castes' perspective. Gandhiji thought that the unity and independence of the Indian country depended on the promotion of equality in Hindu society, which would also strengthen the social fabric within the community.

Humanity, moral responsibility, and social justice served as the foundation for Mahatma Gandhi's treatment of Dalits and other oppressed groups. He made an effort to convey to the public that social equality and political freedom are both necessary for true freedom.

9.7.3. Gandhian plans and integration of Dalits:

Mahatma Gandhi, who noticed that it would be difficult to achieve independence without the participation of all classes in the Indian freedom struggle, placed a strong emphasis on raising awareness in society and teaching people equality in place of protection and legal provisions for the Dalit classes. He worked to let Dalits enter temples, schools, and public spaces.

9.7.3.1. Nagpur Session (1920) and Dalit Upliftment:

In December 1920, Gandhi stated during the Congress's annual session in Nagpur that "the non-cooperation movement will succeed only when people cooperate fully among themselves." He urged the eradication of caste prejudice in Hindu society and the advancement of Hindu-Muslim brotherhood. Gandhi also asked religious leaders to work with him to reform Hindu society and put an end to untouchability.

9.7.3.1. CONGRESS AND DALIT UPLIFTMENT EFFORT:

Later, a subcommittee of the Congress Working Committee was established with the goal of developing plans to enhance the lot of the Dalit classes across the nation. When Gandhi was president of the Congress in 1924, he passed a resolution during the Belgaum session requesting that the needs of the Dalits receive particular attention. In Travancore state, the Congress backed the Vaikom Satyagraha, which forbade Dalits from going near the temple. When Gandhi visited there in 1925, he appealed with the local government to let the Dalits roam the streets. In Indian history, this was the first significant Congress campaign for Dalit rights.

9.7.3.2. CIVIL DISOBEDIENCE MOVEMENT (1930) AND DALIT RIGHTS:

Gandhi advised Congress workers that the rights of the Dalit classes should not be disregarded when he started the Civil Disobedience Movement in 1930. Many Dalit leaders, however, were unhappy with Gandhi's policy and started requesting their rights directly from the British administration. Consequently, the British administration agreed to the Dalit demand for a distinct electorate.

9.7.3.3. POONA PACT (1932) AND OPPOSITION TO SEPARATE ELECTORATE

Gandhi thought that a separate electorate would divide Hindu society, thus he opposed it. At the Round Table Conference in London in 1932, he strongly disagreed with the proposal. Gandhi stated, "Separate electorate is not a means to improve the condition of the untouchables, but it will divide Hindu society." He declared that he would resist it by fasting until death. A further agreement known as the "Poona Pact" was made between Gandhi and Dr. Bhimrao Ambedkar. As a result, Dalits were permitted to reserve seats in the joint electorate rather than the separate electorate. Dalits were granted 151 seats in provincial legislatures under the Government of India Act, 1935.

9.7.3.4. HARIJAN SEVAK SANGH (1932) AND SOCIAL REFORM:

In 1932, Gandhi established the Harijan Sevak Sangh with the goal of implementing beneficial initiatives for the social and economic advancement of Dalits. To bring attention to the problems of the Dalit population, this organization started the "Harijan" journal. Gandhi thought that casteists needed to modify their minds in order to abolish untouchability. Gandhi spearheaded a campaign to allow Dalits to enter temples while travelling the nation in 1933

and 1934. According to D.R. Nagaraj, "Gandhi had realized that Dalits had no other social center except temples, so he gave priority to the temple entry movement."

9.7.3.5. RURAL DEVELOPMENT AND DALIT EMPOWERMENT:

Gandhi extended the Dalit cause and connected it to village development in the 1930s. Dalits will also gain from the general prosperity of villages, he wrote in the Harijan journal. He placed particular emphasis on the growth of the leather industry and other traditional professions.

9.7.3.6. DALIT EDUCATION AND SELF-RELIANCE:

Gandhi believed that Dalit children's education was crucial. He thought Dalit society could become equal to the upper castes through education. By taking on lowly tasks like toilet cleaning and khadi weaving, he attempted to uphold the dignity of labour.

9.8. SUMMARY:

In India, Mahatma Gandhi was a key figure in combating caste-based discrimination and promoting the advancement of the Dalits, or lower classes. His philosophy of human rights was based on truth (Satyagraha) and non-violence (Ahimsa), highlighting the fact that genuine freedom (Swaraj) could only be attained when all people, particularly the weaker ones, were treated with respect and dignity. Gandhi was adamantly against untouchability and favoured integrating Dalits into Hindu society as a whole over giving them their own distinct political identities.

Gandhi started a number of important initiatives to accomplish this. He started the Harijan Movement in 1932 and replaced the disparaging epithet "untouchable" with the title Harijan, which means "Children of God." In an effort to bring attention to Dalit issues, he also founded the weekly Harijan. His Temple Entry Movement (1933–34) aimed to provide Dalits entry to temples on the grounds that discrimination based on religion was incompatible with Hindu values. He founded the Harijan Sevak Sangh, a group devoted to social unity, economic growth, and Dalit education, in the same year. Gandhi opposed Dr. B.R. Ambedkar's demand for separate electorates for Dalits in the Poona Pact (1932), which sparked a significant controversy. Gandhi supported reserved seats in joint electorates because he believed that separate electorates would split Hindu society; this compromise was eventually incorporated into the Government of India Act (1935). Gandhi also encouraged Dalits to become

economically independent by providing them with vocational training and job possibilities in traditional crafts like weaving and tanning.

Gandhi was criticised by Dalit leaders and orthodox Hindus alike for his efforts. His emphasis on eliminating untouchability was resisted by orthodox Hindus who feared it would upend the caste system. Dr. Ambedkar, however, contended that untouchability was only a symptom of a more serious societal ill and chastised Gandhi for tackling it without opposing the caste system itself. Ambedkar thought that the caste system had to be abolished entirely in order to bring about real progress.

However, Gandhi's contributions brought Dalit issues into the public eye and had a big impact on India's social and political climate. His support established the groundwork for social justice and reservation policies after independence. His ideas of social inclusion and nonviolent resistance have inspired human rights movements all across the world, despite disagreements about his tactics.

9.9. GLOSSARY

Untouchability – A social practice in India that historically excluded certain castes from religious, social, and public places.

Dalit– A term referring to the lowest sections of society, historically called "Untouchables."

Harijan– A term introduced by Mahatma Gandhi in 1932, meaning "Children of God," used to dignify Dalits.

Satyagraha– A non-violent resistance movement developed by Gandhi, based on truth and moral force.

Vaikom Satyagraha – A movement in Travancore (Kerala) in 1924, supported by Gandhi, demanding the right of Dalits to walk on roads near temples.

Civil Disobedience Movement – A movement launched by Gandhi in 1930 against British colonial laws and oppression.

Poona Pact (1932) – An agreement between Gandhi and Dr. B.R. Ambedkar, replacing separate electorates for Dalits with reserved seats in joint electorates.

Harijan Sevak Sangh – An organization founded by Gandhi in 1932 for the social and economic upliftment of Dalits.

Round Table Conference – A series of meetings (1930-32) organized by the British government to discuss self-governance in India with Indian political leaders.

Varnashrama – The traditional Hindu social classification system dividing society into four varnas (Brahmins, Kshatriyas, Vaishyas, and Shudras).

Trusteeship – Gandhi's economic principle stating that property owners are custodians of wealth for the welfare of society, rather than absolute owners.

Ahimsa – The principle of non-violence, compassion, and love, which Gandhi adopted as a core value in his movements.

Swaraj – The Gandhian concept of self-rule, which included not only political independence but also social and economic justice.

Joint Electorate – A system introduced in the Poona Pact, where Dalits were given reserved seats in legislative bodies instead of separate electorates.

Village Reconstruction – Gandhi's plan for making Indian villages self-sufficient and uplifting Dalits through rural development.

Rights and Duties – Gandhi's belief that rights can only be secured if every individual fulfills their responsibilities.

Social Justice – The principle of ensuring equal rights and opportunities for all sections of society, which Gandhi strongly advocated.

Caste System – A traditional Indian social hierarchy based on birth, dividing society into different caste groups.

Cleanliness Campaign – Gandhi's movement promoting sanitation and dignity of labour, including toilet cleaning.

Gram Swaraj – Gandhi's vision of self-sufficient villages as the foundation of a strong nation, emphasizing rural economy and self-reliance.

9.10. SAQS

1. Short Answer Questions:

- a) What was Gandhi's view on untouchability?
- b) Why did Gandhi introduce the term 'Harijan'?
- c) How did Gandhi promote temple entry for Dalits?
- d) What economic rights did Gandhi advocate for the Depressed Classes?

2. MCQS and answers

1. Which text by Gandhi reflects his views on rights and duties?

- A. Hind Swaraj
- B. The Story of My Experiments with Truth
- C. Sarvodaya
- D. Satyagraha in South Africa

2. Gandhi's concept of human rights is deeply rooted in which of the following traditions?

- A. Western liberalism
- B. Ancient Indian moral and spiritual philosophy
- C. Marxist materialism
- D. All of the above

3. Gandhi presented his views on duties and rights in response to which global document or discourse?

- A. Universal Declaration of Human Rights (1948)
- B. British Government's White Paper on India
- C. Atlantic Charter (1941)
- D. Nehru Report (1928) **Answers**

1. A., 2. B., 3. C.

9.11. TERMINAL QUESTIONS:

- a) What was Gandhi's perspective on human rights, and how did he incorporate them into the Indian independence movement?

- b) Why did Gandhi believe that the upliftment of the Depressed Classes was essential for achieving Swaraj?
- c) How did the Harijan Sevak Sangh contribute to the social and economic development of Dalits?

9.12. MODEL QUESTIONS:

- a) How could Gandhi's concept of Trusteeship help reduce economic inequality?
- b) Should Dalits have been given separate electorates instead of reserved seats?
- c) Would the fight against untouchability have been more effective if Gandhi had directly challenged the caste system?
- d) Can non-violent movements still be effective in eliminating caste discrimination today?

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UNIT 10: CONCEPTUAL UNDERSTANDING OF RIGHTS AND DUTIES

STRUCTURE

10.1 INTRODUCTION

10.2 OBJECTIVES

10.3 RIGHTS: MEANING AND NATURE

10.3.1 SIGNIFICANCE OF DUTY

10.3.2 MEANING OF RIGHTS

10.3.3 NATURE OF RIGHTS

10.3.4 DEFINITION OF RIGHTS

10.3.5 ELEMENTS OF LEGAL RIGHT

10.3.6 CLASSIFICATION OF RIGHTS

10.4 DUTIES: MEANING AND NATURE

10.4.1 MEANING OF DUTIES

10.4.2 NATURE OF DUTIES

10.4.3 DEFINITION OF DUTIES

10.5 SUMMARY

10.6 TERMINAL QUESTIONS

10.7 SAQs

10.8 SUGGESTED READINGS

10.1 INTRODUCTION

Rights are rightly called social claims which help individuals attain their best selves and help them develop their personalities. If democracy is to be government of the people, it has to exist for them. Such a democratic government can best serve the people if it maintains a system of rights for its people. States never give rights, they only recognise them; governments never grant rights, they only protect them. Rights emanate from society, from peculiar social conditions, and, therefore, they are always social. Rights are individuals' rights, they belong to individuals, they exist for individuals; they are exercised by them so as to enable them to attain full development of their personalities.¹

Rights discourse has been one of the most prominent features of contemporary political philosophy and political agendas. It argues that persons, mainly as individuals, are the bearers of a body of claims, liberties and powers which the rest of the society has to acknowledge and public life should be based on such acknowledgement and support. Such an exaltation of rights has led to a deep unease regarding duties and obligations that are called for the maintenance and reproduction of a just and sane social order or for fostering and promoting an ideal society. The criticisms regarding privileging of rights in the constitution of a good society has brought to the fore the role of duties, denoting a shift in perspective, which, while seeing duties as complementary to rights, also construes duties as marking a space of their own. Such an endeavor has led to spelling out the role of duties much more clearly in recent literature.²

10.2 OBJECTIVES

In this unit, you will be reading about the concept of rights and duties. After going through this unit, you should be able to:

- ☐ Explain the meaning of rights and duties; and ☐
- Discuss their nature.

10.3 RIGHTS: MEANING AND NATURE

The relationship between the individual and the state has been an important question of political theory; one that has baffled, if not confused, political philosophers since ages. Political philosophers have debated as to who, whether the state or the individual is more important and who owes what to whom. There are philosophers, Plato for example, who believe that the state alone can give justice and that the job of the individual is to do his duties to the best of his/her abilities and capacities. We call these philosophers, the Idealists. There are others, John Locke for example, who hold the view that the state as a means exists for an end, and the end is the individual, meaning thereby that individual rights are sacrosanct and inviolable. That

individuals have rights is a phenomenon of modern age as it began in the 15-16 centuries' Europe. That these rights are guarantees against state absolutism and, therefore, they have their origin in society are things that became known in the modern age alone. Rights belong to individuals, and therefore, they are not of the state. Rights are individuals' rights, and, therefore, they are conditions necessary for their development. Rights are the product of our social nature, and as such, the result of our membership of society.³

10.3.1 MEANING OF RIGHTS

Rights are claims, social claims necessary for the development of human personality. They are not entitlements a person is possessed with. In ancient and medieval times, some people were entitled to enjoy privileges. But to these privileges nobody could give the name of rights. Rights are not privileges because they are not entitlements. There is a difference between rights and privileges; rights are our claims on others as are others' claims on us; Entitlements on the other hand are privileges granted to some and denied to others. Rights are universal in the sense that they are assured to all; privileges are not universal because they are possessed by few. Rights are given to all without any discrimination; privileges are given to some, the selected few. Rights are obtained as a matter of right; privileges as a matter of patronage. Rights emanate in democratic societies; privileges are features of undemocratic systems.⁴

10.2.2 NATURE OF RIGHTS

It is rather easy to identify as to what lies at the roots of rights on the basis of what has been hitherto discussed. The nature of rights is hidden in the very meaning of rights. Rights are not only claims; they are in the nature of claims. Rights are claims but all claims are not rights. Rights are those claims which are recognised as such by society. Without such recognition, rights are empty claims. Society is organised in character and an individual obviously cannot have any right apart from what the society concedes. To quote Hobbes: "Rights are what we may expect from others and others from us, and all genuine rights are conditions of social welfare. Thus, the rights anyone may claim are partly those which are necessary for the fulfilment of the function that society expects from him. They are conditioned by, correlative to, his social responsibilities." Rights are social; they are social in the sense that they emanate from society at any given point of time; they are social because they are never, and in fact, can never be, anti-social; they are social because they had not existed before the emergence of society; and they are social because they cannot be exercised against the common good perceived by society.⁵

Rights, as social claims, create condition necessary for the development of human personality. These conditions are created, they are made and provided. The state, distinct from society, creates and provides and makes these conditions. The stand by creating conditions, makes rights possible. It, therefore, lays down a ground where rights can be enjoyed. It is not the originator of rights, but is only the protector and defender of rights. It is not within the jurisdiction of the state to 'take' away the rights of the individual. If the state fails to maintain rights in the sense of conditions necessary for individuals' development, it forfeits its claim to

their allegiance. Rights are responses to society where they exist. The contents of rights are very largely dependent upon the custom and ethos of society at a particular time and place. As the society and its conditions change, so change the contents of rights. It is in this sense, that we say that rights are dynamic.

No list of rights which are universally applicable for all times to come can ever be formulated. Rights and powers have to be distinguished. Nature has bestowed every individual with a certain amount of power to satisfy his/her needs. Power is a physical force; it is sheer energy. On the basis of mere force, no system of rights can be established. If a person has power, it does not necessarily mean that he has a right. He/she have a right as a member of the society as a social being. An isolated person has no rights, what he/she has is energy, physical force, and process. As individuals, we have powers; as social beings, as members of society, we have rights. Likewise, as isolated individuals, we have no rights, and as social beings, we have no powers-no right to say or do or act the way we want.⁶

Rights are responses to what we do. They are in the nature of 'returns' or rewards. They are given to us after we have given something to society, to others. It is after 'owing' that we 'own'. Rights are not only the returns of our duties, but also they correspond to what we perform. Rights are the rewards given to us by others in response to the performance of our duties towards others. Rights are not absolute in character. The welfare of individuals as members of society lies in a compromise between their rights as individuals and the interest of the society to which they belong. A list of rights must acknowledge the fact that there cannot be such a thing as absolute as uncontrolled, for that would lead to anarchy and chaos in society.⁷

10.2.3 DEFINITION OF RIGHTS

The definition of legal rights have been propounded by several famous legal philosophers. Some definitions are as follows –

John Austin – According to Austin, “A party has a right when another or others are bound or obliged by law to do or forbear towards or in regard of him”. This definition was not widely accepted. It was stated by John Stuart Mill that the act referred by Austin should be in the interest of the person who can be said to have the right. He illustrated with an example by stating that when a prisoner is sentenced to death, the jailer is bound to execute him. Does this mean that the convict has the right to be hanged?

Rudolf Von Jhering – Jhering defined rights as “legally protected interests”. The law does not protect all such interests. The interests of men conflict with one another and the law, is the rule of justice and protects only certain interests.

John Salmond – Salmond defines right as an interest recognised and protected by a rule of justice. He says, for an interest to be regarded as a legal right, it should obtain not merely legal

protection but also recognition. The law protects cruelty against animals, and to some interest the interest of animals, but animals do not possess any legal rights.

Holland – Legal rights were defined by Holland as the “capacity residing in one man of controlling, with the assent and assistance of the state the actions of others.” He followed Austin’s definition.

Gray – He defined a legal right as “that power which a man has to make a person or persons do or refrain from doing a certain act or certain acts, so far as the power arises from society imposing a legal duty upon a person or persons.” He states that the “right is not the interest itself, it is the means to enjoy the interest secured.”

Jefferson's declaration that men are endowed by their creator with certain inalienable rights was one which indicated the naturalness of rights, i.e., men have rights because they are, by nature, human beings. That men (including women) have rights or that they should have rights is a fact no one would like to dispute. But this fact does not state anything more or less than that. There is no definition stated in this fact.

Wilde, in his definition of rights gives a casual treatment to the social claim aspect when he says: "A right is a reasonable claim to freedom in the exercise of certain activities."

Bosanquet and **Laski**, in their definitions of rights, include the position of society, state and man's personality, but they too ignore the important aspect of 'duty' as a part of 'rights'.

Bosanquet says: "A right is a claim recognized by society and enforced by the state".

According to Laski, "Rights are those conditions of social life without which no man can seek, in general, to be himself at his best."

Supreme Court of India – The Apex Court of India defined legal right in the case of *State of Rajasthan v. Union of India* [AIR (1977) SC 1361] as: “In strict sense, legal rights are correlatives of legal duties and are defined as interests whom the law protects by imposing corresponding duties on others. but in a generic sense, the word ‘right’ is used to mean an immunity from the legal power of another, immunity is exemption from the power of another in the same way as liberty is exemption from the right of another, Immunity, in short, is no subjection.”

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

10.2.5 ELEMENTS OF LEGAL RIGHT

According to Sir John Salmond, each legal right has 5 essential elements-

1. **The Person of Inherence** – It is also known as the subject of right. A legal right is always vested in a person who may be distinguished, as the owner of the right, the subject of it or the “person of inherence”. Thus, there cannot be a legal right without a subject or a person who owns it. The subject means the person in whom the right is vested or the holder of the right. There can be no right without a subject. A right without a subject or a person who owns it is inconceivable. The owner of the right, however, need not be certain or determinate. A right can be owned by the society, at large, is indeterminate.
2. **The Person of Incidence** – A legal right operates against a person who is under the obligation to obey or respect that right. He is the “person of incidence”. He is a person bound by the duty or the subject of the duty.
3. **Contents of the Right** – The act or omission which is obligatory on the person bound in favour of the person entitled. This is called the context or substance of right. It obliges

a person to act or forbear in favour of the person who is entitled to the right. It may also be known as the substance of the right

4. **Subject matter of Right** – It is something to which the act or omission relates, that is the thing over which a right is exercised. This may be called the object or subject-matter of the right. Some writers, although argue that there are certain rights which have no objects.
5. **Title of the Right** – Salmond has given the fifth element also, that is, “title”. He says that “every legal right has a title, that is to say, certain facts or events by reason of which the right has become vested in its owner”.

Hence, it can be observed every right involves a three-fold relation, in which it stands

1. It is a right against some person or persons.
2. It is a right to some act or omission of such person or persons.
3. It is a right over to something to which that act or omission relates

The terms of ‘person’, ‘act’, and ‘thing’ are connected with the term ‘Right.’

A popular illustration that was quoted by Salmond satisfies all the above mentioned elements of legal rights. It is as follows –

“If A buys, a piece of land from B, A is the subject or owner of the right so acquired. The persons bound by the correlative right are persons in general, for a right of this kind avails against all the world. The context of the right consists in non-interference with the purchaser’s exclusive use of the land. The object or subject-matter of the right is the land. And finally, the title of the right is the conveyance by which it was acquired from its former owner”

10.2.6 CLASSIFICATION OF RIGHTS

Salmond classifies different types of legal rights as under⁹-

Antecedent right and remedial right: A right exists independent of any other right is antecedent right whereas the right is created from the violation of rights will be remedial rights.

□ **Corporeal right and incorporeal right:** Corporeal rights are rights over physical property whereas incorporeal rights are rights over intellectual property.

□ **Fundamental right and legal right:** Fundamental rights are the rights guaranteed by the constitution whereas legal rights are guaranteed under statutory laws.

□ **Legal right and equitable right:** Legal rights are guaranteed underneath parliamentary law whereas equitable rights are guaranteed by equity law. Equity law is developed as the alternative form of common law.

□ **Perfect right and imperfect right:** Perfect rights seek perfect duty whereas imperfect rights seek conditional duty. Perfect rights have direct enforcement whereas imperfect rights have indirect enforcement.

□ **Personal right and proprietary right:** Personal rights are entitlement of person whereas proprietary rights means rights of owner of wealth and property. Personal rights may not have economic value but have dignity and reputation whereas proprietary rights have economic and monetary values.

□ **Positive right and negative right:** A positive rights are correlative of positive duty whereas negative rights have correlative of negative duty.

□ **Primary right and secondary right:** Primary rights are basic rights whereas secondary rights are sanctioning rights.

□ **Principal right and accessories right:** Principal rights are apparent and main rights whereas accessory rights are petty rights like servitude and lease etc.

□ **Right in rem and right in personam:** Right in rem is the right against the world whereas right in personam is the rights against specified person. Right in rem is final rights whereas right in personam is transitory rights. By nature, right in personam is contractual.

□ **Right in repropria and right in realiena:** Right in repropria refers to absolute rights whereas right in realiena refers to partial rights. Right in repropria includes physical and nonphysical right whereas right in realiena seeks lease, servitude and securities rights etc.

□ **Vested right and contingent right:** Vested rights are direct rights whereas contingent rights are conditional rights i.e. ownership of house is vested rights whereas collateral house is contingent rights of the owner.

10.3 DUTIES: MEANING AND NATURE

A duty is an obligatory act. It is something to do or abstain from doing in favour of another person. A man has a duty towards any matter that he is legally obligated to.

10.3.1 SIGNIFICANCE OF DUTY

It has been argued by several scholars that the rights discourse focuses much more and often exclusively, on individuals without drawing attention to cultures and communities which enable people to be claimants and bearers of such rights. This stream of thought stresses on duties and obligations to sustain culture and communities without which it would be impossible for people to make claims on and sustain a regime of rights.¹⁰

Sometimes, denial of certain rights may make people rise in revolt against a system which is by and large fair. Discourse on duty has drawn attention to the need to preserve a system which is overall fair and one cannot rebel against such an order. While rights discourse has seen itself as universally holding good, there have been currents of thought upholding the significance of reasonable, yet diverse, ways of life and ideals which qualify such a universal claim to different degrees. They have sought from their followers' commitment and duties to uphold ways of life and ideals distinctive to themselves. Given the deep pluralism in which societies are being caught today, we cannot ignore such duty based evocations present in our public life.¹¹

Thinkers, like Mahatma Gandhi, have felt that the rights discourse has been fed into the service of an unending chain of satisfactions and gratifications and this discourse has not been sensitive to authentically human pursuits, i.e., pursuit's characteristic of human beings qua human. It has led to wanton exploitation of earth's resources, breeding conflicts and violence closely bound up with such an endeavor. They have drawn attention to the need to foreground a conception of the human person and moral duties if we have to sustain civilized ways of life. At the same time, we cannot ignore that fascist and authoritarian orders have stressed on the duty to contend against liberal stress on rights and the Marxist pursuit of a non-exploitative and just social order. By stressing on duty they have attempted to install their interpretation on several cherished values and strivings, such as self-respect and culture.¹²

Given such a deployment of the understanding of duty, it necessarily makes this idea a deeply contested one susceptible to different pulls and pressures. It is also deeply caught in the contexts of analysis and frameworks and deployed to subserve different ends and purposes. It is, therefore, important to understand concepts and values that foreground duty. The concept of duty has to be understood in relation to other values and strivings. This is particularly important for us in India as duty is often associated with *dharma* and the latter is related to duties associated with *varna* and caste orders. Foregrounding duty without being sensitive to its associations may lead us to endorse uncritically social grading and ranking and the deep inequalities and subordination they endorse.¹³

10.3.2 MEANING OF DUTIES

A duty generally prescribes what we ought to do and what we ought not do. It is a reason for action. Duty specifies the terms that are binding on individuals and groups in their social practices. It has been suggested that our conscious practices can be seen as motivated by rightbased, duty-based or goal-based perspectives (Dworkin, 1978 and Weldon, 1984). While our practices might be governed by all these perspectives, one of them might be fundamental. A duty-based perspective appeals to duty and the reasons embedded therein to uphold and justify our practices. Duty-based propositions need not deny rights or satisfactions that the other two perspectives suggest, but they necessarily assert the priority of the former over the latter as in an argument of the kind below: "A citizen should vote and participate in shaping and forming public life. His civic and political rights must depend upon the extent to which he participates in public life. He cannot demand rewards and benefits from public life unless he has extended such support and participation"¹⁴

10.3.3 NATURE OF DUTIES

Duties follow rights. Every right or duty is accompanied by a legal covenant of obligation that ties two or more people together. One has to fulfill for the other, and the other person has the right to request that duty be fulfilled. Thus, for any obligation to exist, there must be an entity to whom it is owed; similarly, for a right to exist, there must be an entity that requests that the entity to whom it is owed perform the obligation; and for a violation to occur, there must be a person whose obligation has not been fulfilled, which means that his right to receive the due obligation has been denied. This is also referred to as a "bond of the law" or *vinculum Juris*. It is a connection that ties two people collectively legally.¹⁵

Rights and duties are matching entities in such an interpersonal connection. When someone has a right, it follows that they should be treated fairly by carrying out their associated obligations. The right to life entails a responsibility to respect the rights of others, which means not interfering with their lives. Therefore, in a democratic society, it is the reciprocal and corollary nature of obligations that uphold our rights and regulate how people interact with one another. Rights and duties are matching entities in such an interpersonal connection. When someone has a right, it follows that they should be treated fairly by carrying out their associated obligations. The right to life entails a responsibility to respect the rights of others, which means not interfering with their lives. Therefore, in a democratic society, it is the reciprocal and corollary nature of obligations that uphold our rights and regulate how people interact with one another.¹⁶

10.3.4 DEFINITION OF DUTIES

The term legal duty has been defined in the following ways –

According to Keeton, responsibility is an act of restraint that the state enforces about a right that belongs to another person and whose violation is bad. Every right entails a corresponding obligation, and vice versa.

Salmond argues that a duty is an action that must be performed, meaning that to do otherwise would be wrong. Wrongs and obligations are related. Duty is the opposite of a right and is synonymous with having to perform something. The reverse of this action would be improper. Every time a person is given a duty by the law, that person is also given the corresponding right, according to him.

Salmond held the view that no right can exist without an equal obligation to fulfil it. Every right or obligation entails a legal commitment that binds two or more people together. Therefore, there cannot be a duty unless there is a party to whom it is owed, a right unless there is a party against whom it is asserted, and there cannot be a wrong unless there is a party who is harmed, that is, a party whose rights have been violated. *Vinculum Juris*, which translates to "a bond of the law," is another name for this. It is a connection that ties two people collectively legally. Legal duty, according to Hibbert, is "the situation or a person whose acts are susceptible to being controlled by another with the consent and help of the state."

Prof. Dicey asserts that "a duty is a form of obligation. People follow it out of complacency, respect, empathy, terror, and logic. Additionally, as a result of moral, societal, and psychological influences. The State supports the majority of obligations. A fine or prison sentence is imposed for a duty violation"

According to Austin, there are two categories of duties:

Relative Duty: Such obligations have a corresponding right. Absolute duty: It has no corresponding right in and of itself.

According to Austin, a right must be vested in a specific individual and be upheld through legal action brought by that person against the offender.

Austin, therefore, presupposes that an ambiguous or indefinite entity, such as the society or the people, cannot acquire a right. The second presumption is that a sovereign can impose or modify rights as it sees fit. As a result, the sovereign is not permitted to hold such rights.

Austin listed four different categories of absolute duties:

Duties to God That Are Not Owed To Humans;

Duties to Unspecified Individuals or the General Public, Such As the Need to Behave Properly.

Self-Regarding Obligations, Such As the Obligation to Abstain From Alcohol or Suicide.

Responsibility to a State or Sovereign.

10.4 SUMMARY

The relationship between the individual and th

Rights are social claims necessary for the development of human personality. These belong to the individuals and they provide conditions without which they cannot seek to be themselves. They are social: given by society and secured by state. Even the state cannot take them away from individuals. They reflect a particular stage of development of society. As society changes, so do the character and content of rights. Rights are of numerous kinds. Those rights which are available to human beings include: right to life. Equality, security of person and property, freedom, education, work, freedom of religion, to vote, to hold public office. Liberal democratic societies lay more emphasis on the personal and the political rather than economic and social rights. Socialist societies advocate the opposite arrangement of rights. Laski, as a liberal leaning towards the Left, considers rights essential for individual development, but grants economic rights followed by social and political rights.

10.5 END NOTES

1. <https://egyankosh.ac.in/bitstream/123456789/53958/1/Unit-6.pdf> accessed on 22/08/2024. 2. Ibid
3. Id.
4. <https://egyankosh.ac.in/bitstream/123456789/23670/1/Unit-3.pdf> accessed on 22/08/2024.
5. <https://egyankosh.ac.in/bitstream/123456789/66935/1/Unit-11.pdf> accessed on 22/08/2024. 6. Ibid
7. Id.
8. <https://silpalwal.com/pdf/2ndsem/balb6/balb6thsem2.pdf> accessed on 22/08/2024.
9. Vide P.J. Fitzgerald, 1999, Salmond on Jurisprudence, (12th ed.), Bompay:N.M. Tripathi Private Limited, pp.243-245.
10. <https://egyankosh.ac.in/bitstream/123456789/23684/1/Unit-7.pdf> accessed on 22/08/2024. 11. Ibid
12. Id.
13. Id.
14. Id.
15. <https://www.legalserviceindia.com/legal/article-9797-concept-ofduties.html#:~:text=Duties%20follow%20rights, request%20that%20duty%20be%20fulfilled> accessed on 22/08/2024.
16. Ibid

10.6 TERMINAL QUESTIONS

1. Differentiate between rights and claims.
 2. What is the significance of legal rights?
 3. Define legal rights.
 4. What are the elements of a legal right?
-

10.7 SAQs

1. What is the main difference between rights and privileges?
 - a) Rights are for some people; privileges are for all.
 - b) Rights are given by the state; privileges come from society.
 - c) Rights are for all people; privileges are for some people.
 - d) Rights are temporary; privileges are permanent
2. Which of the following statements is correct?
 - a) Rights are the same as privileges.
 - b) Rights are claims recognized by society.
 - c) Rights are entitlements given by the government.
 - d) Rights are absolute and unlimited.
3. Who stated that “Rights are what we may expect from others and others from us, and all genuine rights are conditions of social welfare”?
 - a) John Austin
 - b) Rudolf Von Jhering
 - c) Thomas Hobbes
 - d) John Locke

1. C., 2. B., 3. C.

10.8 SUGGESTED READINGS

1. Bellamy, Richard and Mason, Andrew. (2003). Political Concepts. Manchester. Manchester University Press.
2. Vide P.J. Fitzgerald, 1999, Salmond on Jurisprudence, (12th ed.), Bompay: N.M. Tripathi Private Limited.
3. Laski, H. (1925). A Grammar of Politics. Oxon: Routledge.
4. Scruton, Roger. (2007). The Palgrave Macmillan Dictionary of Political Thought. Hampshire: Palgrave Mcmillan.

UNIT 11: CULTURAL THEORY OF RIGHTS

STRUCTURE

11.1 LEARNING OUTCOMES

11.2 INTRODUCTION

11.3 MULTICULTURAL CONCEPTIONS: COMMON VALUE SYSTEMS IN EARLY

THEORIES

11.4 RECENT THEORIES: EGALITARIAN NOTIONS

11.5 CRITIC ON POPULAR CULTURE

11.6 SUMMARY

11.7 END NOTES

11.8 REFERENCES

11.9 RESOURCES FOR FURTHER READING

11.10 SELF-ASSESSMENT QUESTIONS

11.11 END NOTES

11.1 LEARNING OUTCOMES

- This module introduces the reader with general features of cultural theory and also foundations of this theory in the early thinkers.
- This module also makes the reader to analyze the popular cultural theories in the present context.
-

11.2 INTRODUCTION

To understand cultural theory and its contribution to theory of human rights one has to know the term culture. “Culture is the heritage of learned symbolic behaviour that makes the humans human”¹.

Culture can be seen in many ways. Raymond Williams (1983, p. 90, cited. John, storey¹), defines culture in three ways: one, to refer it as a “general process of intellectual, spiritual and aesthetic development; found in the works of philosopher; artists and poets. Second one is to represent ‘a particular way of life; of people; a period or a group’ found through development of literacy, sports and religious development; youth sub cultures; of lived culture or practices. And, the third one is found in the signifying texts; works and practices of intellectual and artistic activities: Storey says that third type of definition may be thought as the first one that represents

poetry; art etc., But John Storey contends that the third definition would “allow us to speak of soap opera, pop music and comics”.

Culture can be in various forms in human societies. These are Cultural history found that from about 1890 onward the evolutionists supposed that all human societies follow the same course of development” and they suppressed the theories of doctrines of the social evolutionists who contend that different cultures are found in different contexts of time space to standardize human mind and uniform capacity for human invention.³ Cultural theory also involves “arguments about the relationship between culture and nature, culture and society (including material processes), the split between high and low culture, and the interplay between cultural tradition and cultural difference and diversity”⁴ From the history on anthropology we find that there are two main types of arguments behind all the cultural theories. One theory pre supposes a psychological unity among all mankind human beings faced with similar situations will react in the same way. On other hand there are theories which presume the existence of social facts outside the human control”. But sociological research studies on culture aim to find an “autonomous world of social truth by eliminating all human variable”.⁵ There are many theorists right from early sociologists like Montesquieu; Comte; Spencer; Marx; Durkheim; Simmel; Weber; Radcliffe-Brown, Malinowski and Parsons in the early times who are generally called as masters of sociology. Strauss, Habermas and Foucault are from the recent front. And it is in the thinking of recent social scientists like Williams and Thompson; Ellis and Wildavsky theories on popular culture and an extended theory of cultural theory is shaped⁶.

11.3 MULTICULTURAL CONCEPTIONS: COMMON VALUE SYSTEMS IN EARLY THEORIES

The aim of any social science is to study society as much as possible in all aspects and analyze these and to improve the society. For man is a social animal. The term “social” is inclusive many human aspects that are essential for man’s social life. In fact man does not and cannot live in isolation he as to depend on others for his physiological and for a complete wellbeing on others. Thus his social life is inclusive of material as well as intellectual relations with others which in turn help his other sides of social life namely, economical, political and legal aspects in a group; society or a state. Thus cultural theory is an inclusive theory of many thinkers; no theory is the end word on theory of culture. For society is an evolving human entity and it goes on. Hence as said above many sociologist starting from Montesquieu are dealt here. Summarily

the theories are in the following manner. Offermans (2010) details early theorists' perception on society based on culture and society. To Charles Baron De Montesquieu (1689-1755) who is called as the ancestor of sociology built his work on Aristotle's conception of state. Aristotle differentiated republican government form monarchical government and despotic forms. While monarchical government is based on honour; despotic on fear republican governments are based on the basis of virtue of organization. Montesquieu held that different groups of people have different requirements and different characteristics. Thus his theory is different from classical conception where they allowed only two types of government: primitive and modern. Auguste Comte (1798-1857) held that it is due lack of value consensus; presence of different values within one society competing ways of life result into. Different groups work differently: industrial groups that work on self-regulation, militant groups based on central regulatory authority etc., But Comte's attempt to raise consciousness; to evolve dynamic and changeable character of societies is through religion according to Comte. The chief function of religion is to regulate all these variables and leave one variable of life: hierarchism⁷.

Religion as a regulating Institution. ⁸

To Spencer heterogeneous societies are more adaptable than homogenous social structure⁹. To Karl Marx the class struggle between the two economic classes the proletariat and the capitalist classes will end to a classless less society and this leads to an egalitarian society when the proletariat class is free from false consciousness and realizes the merits of being united and resists the dynamics of capitalist class. In facts the dynamics of the capitalist class is only due to the economic power which in turn is accumulated due to the unpaid labour due to proletariat class. Emile Durkheim (1858-197) is another sociologist who developed theory on holism. To Durkheim "society is irreducible to individual behaviour and that even the more individualistic appearing acts are a function of the social unit."¹⁰ To Georg Simmel (1858-1918) society is a product of interactions of individuals. Like Durkheim Simmel contends that individual cannot go beyond collectivity and differently from the collectivity. However Durkheim sensed that there is an "urgency to find a midway between determinism and agency, an idea which was later adopted by Pierre Bourdieu and Anthony Giddens"¹¹. Talcott Parsons (1902-1979) hold a common value system however with two value systems: normative conformity nonnormative deviance. Sir Henry Maine is often credited with founding the study of Legal Anthropology through his book Ancient Law (1861), and although his evolutionary stance has been widely discredited within the discipline, his questions raised have shaped the subsequent discourse of the study. This ethno-centric evolutionary perspective was preeminent in early

Anthropological discourse on law, evident through terms applied such as ‘pre-law’ or ‘protolaw’ and applied by so-called armchair anthropologists. Malinowski a recent thinker through whom however, a turning point was presented in the 1926 publication of *Crime and Custom in Savage Society* by Malinowski based upon his time with the Trobriand Islanders. Through emphasizing the order present in acephalous societies, Malinowski proposed the cross-cultural examining of law through its established functions as opposed to a discrete entity. This has led to multiple researchers and ethnographies examining such aspects as order, dispute, conflict management, crime, sanctions, or formal regulation, in addition (and often antagonistically) to law-centred studies, with small-societal studies leading to insightful selfreflections and better understanding of the founding concept of law¹²

11.4 RECENT THEORIES: EGALITARIAN NOTIONS

A comparative theory on cross-cultural theories shows that there are two main styles of arguments. One, theories which suppose a psychological unity among all which holds that human beings faced with similar situations will react in the same way. The second types of theories presume that existence of social facts lying outside human control. Levi-Strauss (19082009) presumed that human characters are the same everywhere; Savage mind has the same mind as the civilized. He is one of the major contributors to theories on structuralism.

Structuralism aims at finding the underlying patterns of human thought in all forms of human activity¹³. Strauss search is on the uniform pattern of language of the whole culture and its general laws. He contends that beneath the vast heterogeneity of myths there can be discovered a vast heterogeneity of myths and homogeneous structure; general laws; varieties of parole; language and an operational value. He investigated many systems¹⁴. His love for humanity and environment is depicted in his word to National Public Radio on November 3,2009 in remembrance of his *All things Considered*:

“There is today a frightful disappearance of living species, be they are plants or animals. And it’s clear that the density of human beings has become so great, if I can say so, that they have to begin to poison themselves. And the world in which I am finishing my existence my existence is no longer a world that I like”.¹⁵

Strauss was in argument on the nature of freedom with Jean Paul Sartre an existentialist philosopher. Further Strauss was insisting on the social scientist to organize the real data in a simple and effective way so that it represents an uniform pattern of all studies on the culture. Strauss proposed universal laws.

Paul-Michael Foucault (1926-1984) is philosopher and social theorist. He is also called as poststructuralist and post-modernist. He addressed the relationship between power and knowledge. Foucault was in tune with the views of Strauss. Foucault was critical of ultranationalistic and anti-semitic views. Yet he protected some of the militant leftists from being arrested and tortured. Some students became a “Foucauldian tribe” and did collective research.

Foucault co-founded Group d’Information sur les Prisons (GIP) along with journalist JeanMarie Domenach investigated the poor conditions in Prisons and gave prisoners a voice in French society. He was highly critical of the penal system on that the prison converted petty into hardened delinquents. Through his work discipline and punishment in 1975 he examined the penal system as an evolution from corporal and capital punishment to penitentiary system that influenced the Europe and United States by the end of 18th century. Foucault was also an active anti-racist; protested against racist killings; killing of Arab migrant Dejellali Ben Ali . His campaign was formalized as the Committee for Defence of Rights of Immigrants.

Foucault’s response during Iranian Revolution and support Islamism was that he believed that “we must treat it with respect than with hostility” He also studied Zen Buddhism by staying in Japan in 1978. Foucault gave a cautious support for the Socialist party under the Government of Francois Mitterrand in 1981. Along with Pierre Bourdieu a sociologist condemned Mitterrand’s inaction in Liberation. He continued his support for solidarity in Poland¹⁶ .

Jurgen Habermas (1929-2007) was a German philosopher and a sociologist. He argued that legitimacy of the states must be based on the political rights of individual subjects. He was influenced by many sociologist and philosophers; psychologists and linguists. Philosophers Viz., Hegel, Kant, Marx Marcuse and sociologists like Durkheim, Mead, Weber and psychologists like Piaget and Kohlberg and linguistic philosophers like Wittgenstein, Austin and Strawson. Thus he could develop his views on society, rights and power and religion and other aspects drawing some insight from all the said personalities. He is popular for his theory of communicative reason or communicative rationality.

Habermas is popular for his views on modernity; his system is devoted to explore the possibility of reason and human capacity to pursue rational interest. His works namely The structural transformation of the public sphere: An Inquiry into a Category of Bourgeois society, a translation in 1989 details the history of development of the bourgeois public sphere from its origins. His speech on the Public role of religion in secular context in 2005 held the significance of separation of church and state from neutrality to intense secularism. He held that state should

not acknowledge ethnic, national or racial identity but enforce political and legal equality of all individuals.

Habermas' contribution to communicative rationality looks into interpersonal relations as linguistic communication but not as structure of the cosmos. His social theory advances the goals of human emancipation while maintaining inclusive universalistic framework.

Habermas' works contribution to society follows Kant's tradition and is humane and egalitarian in nature.

Furthermore Habermas a Marxist and held that there are two cultures: critical culture that represents the original culture. The other type is representational culture where only one party is active and the other passive. For example French revolution which was caused by representational culture. An example for lack of critical culture and domination of representational culture is the present day process of modernization according to Habermas. In his theory of Communicative Action (1981), based on Parson's theory he contends that in all aspects of everyday life the role of public sphere is missing; critical public including mass media turned into a passive consumer public. Instead of development done through "public-minded rational consensus", "public sphere" became a site of self-interested "contestation for resources of the state". Habermas held that democratic public life cannot develop where matters of public are not discussed by citizens¹⁷.

Further very recent thinker Petrakis and Kostis (2013)¹⁸ divides cultural background variables into two main groups:

1. The first group covers the variables that represent the "efficiency orientation" of the societies: performance orientation, future orientation, assertiveness, power distance and uncertainty avoidance.
2. The second covers the variables that represent the "social orientation" of societies, i.e., the attitudes and lifestyles of their members. These variables include gender egalitarianism, institutional collectivism, in-group collectivism and human orientation.

A new and promising approach to culture has recently been suggested by Rein Raud, who defines culture as the sum of resources available to human beings for making sense of their world and proposes a two-tiered approach, combining the study of texts (all reified meanings in circulation) and cultural practices (all repeatable actions that involve the production, dissemination or transmission of meanings), thus making it possible to re-link anthropological and sociological study of culture with the tradition of textual theory

11.5 CRITIC ON POPULAR CULTURE

Apart from above theories that suffice cultural theories for development of man, his rights, democratic state, there are some other theories in Raymond Williams' *The Long Revolution*, 1961 and E.P. Thompson in *The making of English Working Class*, 1963. Williams focus was on the culture as 'a whole way of life' and Thompson's focus was on that 'how groups handle the raw material of social and material existence. His thoughts opened new thinking about culture as against "narrow understanding of culture in a narrow literacy and aesthetic sense". Both Thompson and Williams dealt with the dimensions of culture in terms of collective process and meaningful ways of life¹⁹. To Williams the present culture can be identified with different moments: 'dominant'; 'emergent' and 'residual' due to cultural forces acting in the historical conditions of production and consumption (1990, cited.,)²⁰ In fact according to Williams the notion of culture in its general and modern sense came into English thinking in the period of the Industrial Revolution (Williams, in his *Culture and Society*, 1963, cited.)²¹ Storey sites two cultures of Britain: common culture that is shared by all and elite culture which is produced and consumed by elite till industrial revolution. But after industrialization and urbanization, Storey says that there was a panic generated due to the fear of French revolution "it would be imported to Britain". Yet political radicalism and trade unionism could not be destroyed but driven underground to influence the middle class (2003, cited.,)²². To define popular culture:

Popular culture is a site where the construction of everyday life may be examined. The point of doing this is not only academic – that is an attempt to understand a process or practice – it is also political, to examine the power relations that constitute this form of everyday life and thus reveal the configurations of interest its construction serves (Turner, 1996:6,cited.,)²³.

On this pop culture Thompson in his *The Making of the English working class* held:
"Industrialization and urbanization had redrawn the cultural map. No longer was there a shared common culture, with an additional culture of the powerful. Now for the first time in history, there was a separate culture of the subordinate classes of the urban and industrial centers. It was a culture of two main sources (i) a culture offered for profit by the new cultural entrepreneurs, and (ii) a culture made by and for the political agitation of radical artisans, the new born urban working class and middle-class reformer, all described so well by E.P.

Thompson..." (Storey, op.cit, p.17).

Further in the hands of Antonio Gramsci the role of culture opened a new opening to identify secured political and moral leadership and authority²⁴. Gramsci works helped to go beyond culturalist theories to reconstruct states.

Some of the key questions in Legal anthropology

Most anthropologists now agree that universal human rights have a useful place in today's world. Zechenter (1997) argues there are practices, such as Indian 'sati' (the burning of a widow on her husband's funeral pyre) that can be said to be wrong, despite justifications of tradition. This is because such practices are about much more than a culturally established world view, and frequently develop or revive as a result of socio-economic conditions and the balance of power within a community. As culture is not bounded and unchanging, there are multiple discourses and moral viewpoints within any community and among the various actors in such events (Merry 2003). Cultural relativists risk supporting, the most powerfully asserted position, at the expense of those who are subjugated under it.

More recent contributions to the question of universal human rights include analysis of their use in practice, and how global discourses are translated into local contexts (Merry 2003). Anthropologists such as Merry (2006) note how the legal framework of the UNDHR is not static but is actively used by communities around the globe to construct meaning. As much as the document is a product of western Enlightenment thinking, communities have the capacity to shape its meaning to suit their own agendas, incorporating its principles in ways that empower them to tackle their own local and national discontents.

Female genital cutting (FGC), also known as female circumcision or female genital mutilation remains a hotly debated, controversial issue contested particularly among legal anthropologists and human rights activists. Through her ethnography (1989) on the practice of pharonic circumcision among the Hofriyat of Sudan (1989) Boddy maintains that understanding local cultural norms is of crucial importance when considering intervention to prevent the practice. Human rights activists attempting to eradicate FGC using the legal framework of the Universal Declaration of Human Rights (UNDHR) as their justification, run the risk of imposing a set of ideological principles, alien to the culture attempting to be helped, potentially facing hostile reactions. Moreover, the UNDHR as a legal document, is contested by some as being restrictive in its prescription of what is and is not deemed a violation of a human right (Ross 2003) and overlooks local customary justifications which operate outside of an international legalistic framework (Ross 2003).

11.6 SUMMARY

We find that cultural theorists through their umpteen studies are trying to arrive at certain social facts as social laws. Whether it is a study on myths, religion or cult there is a uniform pattern in the society as we found in the early thinkers like Durkheim as well as Strauss a modern thinker. Despite the multicultural theoretical perception there is a vast impact of these theorists from Montesquieu to Habermas; there is an intense effort to see them as existential individuals but aimed to protect themselves under certain uniformly framed universal laws. Montesquieu puts it:

“Man is a physical being, is like other bodies, governed by invariable laws. As intelligent being, he incessantly transgresses the laws established by God, and changes those which he himself has established”²⁵

And we also come to know that as Strauss held the savage mind has the same qualities as the civilized mind at existential level but in search of egalitarian societies we need to further our research and practice to in a humane direction.

Furthermore one should look at the recent contributions and critic on popular culture in the lines of Marxist notions of state and individual; one needs to relate the critical views to the present globalized world.

11.7 END NOTES

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HISTORICAL AND PHILOSOPHICAL PERSPECTIVES ON HUMAN RIGHTS

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 2. John Storey, Cultural Theory of Popular Culture: an Introduction, fifth edition, available at https://uniteyouthdublin.files.wordpress.com/2015/01/john_storey_cultural_theory_and_popular_culturebookzz-org.pdf
 3. Edmund R. Leach, "The Comparative Method in Anthropology:" in David L. Sills(Ed.), International Encyclopedia of Social Sciences, Vol 1, London: The Macmillan Company &The Free Press, New York 1968/reprint 1972

11.9 SUGGESTED READING

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1. John Storey, Cultural Theory of Popular Culture: an Introduction, fifth edition
 2. David L. Sills (ed.) International Encyclopedia of Social Sciences

11.10 SELF-ASSESSMENT QUESTIONS

HISTORICAL AND PHILOSOPHICAL PERSPECTIVES ON HUMAN RIGHTS

1. Define culture and examine how cultural theory help to understand social laws and political hegemonies.
2. Examine the marked difference between theories of Durkheim, Weber and theories of Habermas and Williams.
3. What is your idea of popular culture?

UNIT 12: CLASSICAL AND MODERN THEORIES OF RIGHTS AND DUTIES

STRUCTURE

12.0 OBJECTIVES

12.1 INTRODUCTION

12.2 THEORIES OF RIGHTS

12.2.1 THE WILL THEORY OF LEGAL RIGHTS

12.2.2 THE INTEREST THEORY OF LEGAL RIGHTS

12.2.3 THEORY OF NATURAL RIGHTS

12.2.4 THEORY OF LEGAL RIGHTS

12.2.4 THE HISTORICAL THEORY OF RIGHTS

12.2.5 THE SOCIAL WELFARE THEORY OF RIGHTS

12.2.6 THE MARXIST THEORY OF RIGHTS

12.3 THEORIES OF DUTIES

12.3.1 CORRELATES OF COMMAND

12.3.2 DIVISION OF LEGAL DUTIES

12.3.3 ABSOLUTE DUTIES

12.3.4 GENERAL DUTIES

12.3.5 PARTICULAR DUTIES

12.3.6 FIRST PRINCIPLE OF LEGAL DUTIES

12.4 SUMMARY

12.5 END NOTES

12.6 TERMINAL QUESTIONS

12.7 SUGGESTED READINGS

12.8 SAQs

12.0 OBJECTIVES

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

12.1 INTRODUCTION

Rights and justice are interchangeably used in many respects, which are entitled by the person who can carry it. Justice administration is established for the protection of rights and continuity of duty. Jurisprudence deals with the issues of rights or duty. All legally permitted actions are rights whereas duty refers to no wrong. Respect to the right holder is the duty. There are human rights, fundamental rights, legal rights, and moral rights etc. Elements of Legal rights are subject of right, subject of duty, content of right, acts, and title. There are three theories of rights and duties as will theory, interest theory and state protection theory. Will theory accepts every person as sovereign in micro level, interest theory regards rights as legally protected interest and obligation and state protection theory assumes that all the rights are the concession granted by the state through law. Hence, legal rights can define as right in rem and right in personam, personal right and proprietary right, positive right and negative right, principal right and accessories right, perfect right and imperfect right, right in repropria and right in realiena, vested right and contingent right, legal right and equitable right, corporeal right and incorporeal right, antecedent right and remedial right, primary right and secondary right, fundamental right and legal right etc. Duty exists where right exists so the classification of legal duty is similar as legal rights. Stoics followed the concept of religion as humans have only duty but not of rights. Duguit also argues for same. For the Scandinavian Realist, rights, duties, obligation and justice are metaphysics; so they are meaningless. However, there are both right based approach and duty based approach accepted in contemporary society. Rights and duties are crucial part of legislation and case law. Ultimate purpose of law is either determining rights or duties. According to Hohfeld, rights and duties are classified into jural correlative, jural contradictory and jural opposite. There are vivid forms of rights i.e. claim/rights, liberty/privileges, power

and immunity whereas forms of duty varies as duty, no right, liability and disability etc. However, all the jurisprudence addresses the method of determining rights and duties of the people. For Dworkin, a right performs as a trump and for John Rawls it refers to liberty and distributive justice. Nevertheless, rights and duties are essential building blocks of legislation and case law to resolve dispute among various parties and essence of the law.¹

12.2 THEORIES OF RIGHTS

There are two main theories of legal rights: the will theory and the interest theory. Besides, these two, there are numerous theories of rights which explain the nature, origin and meaning of rights. The theory of natural rights describes rights as intrinsic to human nature; the theory of legal rights recognises rights as legal; the historical theory of rights pronounces rights as products of traditions and customs; the idealistic theory, like the theory of legal rights, relates rights only with the state; the social welfare theory of rights regards rights as social to be exercised in the interest of both individual and society. The development of rights, as have come to us had a modest beginning: civil rights with the contractualists; rights as the outcome of traditions, with the historicists, rights as ordained by law, with the jurists; political rights, with the democrats; social rights, with the sociologists and the pluralists; socio-economic rights, with the socialists and the Marxists; and human rights, with the advocates of the United Nations. This explanation oversimplifies what our rights are and how they came to us².

12.2.1 THE WILL THEORY OF LEGAL RIGHTS

The Will Theory states that right is an inherent attribute of the human will. It says that the purpose of the law is to allow the free expression of human will. This theory was advocated by scholars like Hegel, Kant, Hume and so on. The subject matter is derived from human will. Austin, Holland and Pollock define rights in terms of will. According to the famed English Jurist, John Locke “the basis of the right is the will of the individual.” Puchta defined the legal right a power over an object which by means of right can be subjected to the will of the person enjoying the right. This theory has been widely accepted by the jurists in Germany³.

Despite its wide acceptance, there were many scholars who disagreed with it. Some of the criticisms were from Duguit who is opposed to the “will” theory. According to him the basis of law is the objective fact of “social solidarity” and not the subjective will. The law is to protect

only those acts or rights which further “social solidarity”. He calls the theory of subjective right a mere metaphysical abstraction⁴.

12.2.2 THE INTEREST THEORY OF LEGAL RIGHTS

The Interest Theory was proposed by the German Jurist, Rudolf von Jhering. Jhering defined rights as legally protected interest. Jhering does not emphasize on the element of will in a legal right. He asserts that the basis of legal right is “interest” and “not will”. The main object of law is protection of human interests and to avert conflict between their individual interests. These interests are not created by the state, but they exist in the life of the community itself. Salmond supported it but mentioned that enforceability is also an essential element. He says, “Rights are concerned with interest, and indeed have been defined as interests protected by rules of right, that is by moral or legal rights.”⁵

12.2.3 THEORY OF NATURAL RIGHTS

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

human beings need to realise themselves. Laski realises the significance of rights when he says that rights 'are not natural in the sense that a permanent and unchanging catalogue of them can be compiled, rather they are natural in the sense that under the limitations of a civilised life, facts demand their recognition.'"⁶

12.2.4 THEORY OF LEGAL RIGHTS-

The theory of legal rights or the legal theory of rights connotes the same sense. The idealist theory of rights which seeks to place rights as the product of the state can be, more or less, seen as another name of the theory of legal rights. Among the advocates of such theories, the names of Laski, Bentham, Hegel and Austin can be mentioned. According to them, rights are granted by the state. The theory regards rights as a claim which the force of the state grants to the people. The essential features of these theories, then, are: (i) the state defines and lays down the bill of rights: rights are neither prior nor anterior to the state because it is the state which is the source of rights; (ii) the state lays down a legal framework which guarantees rights and that it is the state which enforces the enjoyment of rights; (iii) as the law creates and sustains rights, so when the content of law changes, the substance of rights also changes. Harold Laski (1893-1950), a theoretician of the English Labour Party and a political scientist in his own right, has his definite views on the system of rights as expounded in his *A Grammar of Politics* (first published in 1925 and then revised almost every second year). Laski's views on the nature of rights run as follows: (i) they are social conditions, given to the individual as a member of society

- (ii) they help promote individual personality, his best-self: 'those social conditions without which no man can seek to be his best self'
- (iii) they are social because they are never against social welfare; they were not there before the emergence of society
- (iv) the state only recognises and protects rights by maintaining them;
- (v) rights are never absolute; absolute rights are a contradiction in terms
- (vi) they are dynamic in nature in so far as their contents change according to place, time and conditions
- (vii) they go along with duties; in fact, duties are prior to rights; the exercise of rights implies the exercise of duties.

If Laski were to give rights to the individual, he would give them in this order: right to work, right to be paid adequate wages, right to reasonable hours of labour, right to education, right to choose one's governors, followed by other rights. Laski's argument is that without granting economic rights first, an individual cannot enjoy his political rights: political liberty is meaningless without economic equality: 'where there are great inequalities, the relationship

between men is that of the master and the slave'. Equally important, but lower in order is the right to education: education alone helps an individual exercise all the other rights properly. With the economic and social (education rights) at one's disposal, there is a greater likelihood of the individual exercising his political rights in right earnestness. Critiques opine that the state, indeed, defends and protects our rights; but it does not create them as the advocates of these theories make us believe. If we admit that rights are the creation of the state, we will have to accept the view that if the state can give us rights, it can take them away as well. Obviously, such an opinion would make the state absolute. In that case, we would have only those rights which the state would like to give us.⁷

12.2.5 THE HISTORICAL THEORY OF RIGHTS

The historical theory of rights, also called the prescriptive theory, regards the state as the product of a long historical process. It holds the view that rights grow from traditions and customs. The conservative Burke argued that the people have a right over anything that they exercise or enjoy uninterruptedly over a fairly long passage of time. So considered, every right is based on the force of long observance. As traditions and customs establish owing to their constant and continuous usage, they take the shape of rights. The theory has its origins in the 18th century in the writings of Edmund Burke and was adopted later by sociologists. The historical theory of rights is important in so far as it condemns the legal theory of rights. It is also important in so far as it denies the theory of natural rights. The state recognises, the advocates of historical theory argue, what (the rights included) comes to stay through long usage. The historical theory of rights suffers from its own limitations. It cannot be admitted that all our customs result in rights; the Sati system does not constitute a right nor does infanticide. All our rights do not have their origins in customs. Right to social security, for example, is not related to any custom.⁸

12.2.6 THE SOCIAL WELFARE THEORY OF RIGHTS- The social welfare theory of rights presumes that rights are the conditions of social welfare. The theory argues that the state should recognise only such rights which help promote social welfare. Among the modern advocates of social welfare theory, the name of Roscoe Pound and Chafee can be mentioned though Bentham can be said to be its advocate of the 18th century. The theory implies that rights are the creation of the society in as much as they are based on the consideration of common welfare: rights are the conditions of social good which means that claims not in conformity with the general welfare, and therefore, not Recognised by the community do not

become our rights. The social welfare theory of rights is also not without its faults. It dwells on the factor of social welfare, a term too vague to be precise. The Benthamite formula 'greatest good of the greatest number' is different to different people. The theory turns out to be the legal theory of rights if, in the end, the state is to decide what constitutes 'social welfare'. A critic like Wilde is of the view that "if rights are created by the consideration of social expediency, the individual is without an appeal and helplessly dependent upon its arbitrary will."¹⁰

12.2.7 THE MARXIST THEORY OF RIGHTS- The Marxist theory of rights is understood in terms of the economic system at a particular period of history. A particular socio-economic formation would have a particular system of rights. The state, being an instrument in the hands of the economically dominant class, is itself a class institution and the law which it formulates is also a class law. So considered, the feudal state, through feudal laws, protects the system of rights (privileges, for example) favouring the feudal system. Likewise, the capitalist state, through capitalistic laws, protects the system of rights favouring the capitalist system. According to Marx, the class which controls the economic structure of society also controls political power and it uses this power to protect and promote its own interests rather than the interests of all. In the socialist society which follows the capitalist society, the socialist state, through the proletarian laws, would protect and promote the interests/rights of the working class. As the socialist society, unlike the capitalist society, is a classless society, its state and laws protect the rights not of any particular class but of all the people living in the classless society. The Marxists say that the socialist state, as an instrument of social political and economic change, would seek to establish socialism which will be based on the principle of "from each to his ability to each according to his work", the system of rights for all would follow this pattern: economic rights (work, social security) first. Followed by social rights (education) and political rights (franchise rights). The Marxist theory of rights, like Marxism itself, suffers from its deterministic ideology, though its emphasis on non-exploitative socialist system is its characteristic feature. Neither the economic factor alone provides the basis of society nor the superstructure is the reflection of only the economic base; for non-economic forces also play their role in determining the superstructure.¹¹

12.3 THEORIES OF DUTIES

12.3.1 CORRELATES OF COMMAND

When a command has been issued, certain new relations follow from it. The person who gives the command expects that obedience will be paid to it. The person who receives the command has the alternative either of obedience or of suffering. Further, the nature and the extent of that suffering and the mode of its infliction become to both parties matters of immediate interest. Thus a person subject to a command is under a duty to obey. When he breaks that duty, he is under a liability. The character of that liability, the mode of its enforcement, and the party at whose suit it is enforced, vary according to circumstances. The general fact, however, remains. Command implies duty. Breach of duty implies liability. Liability, when enforced, implies sanction.

12.3.2 DIVISION OF LEGAL DUTIES

In the case then with which alone we are concerned, that is to say in the case of legal duties, the State is the commander. But who is the commandee? If we admit that he must be a person over whom the legislating State has or claims to have jurisdiction, the question still remains whether the command of the State extends to all its subjects or to particular classes of them or to some specific individual. The first case is that of general law, that is of duties imposed upon all, or, at all events, upon most persons indefinitely. The second case is that of exceptional or special legislation, that is legislation which imposes duties upon certain kinds or classes of persons, and not upon any persons outside the limits of such class. This division comprises the law of Conditions, or, as it has been sometimes though less happily called, the law of Status. Thus the law relating to merchant seamen or to licensed victuallers is important to seamen or to licensed victuallers respectively; but no person who [is not a seafaring man or a licensed victualler or a person having dealings with such men cares to become acquainted with it. In the third case this specialization is carried to its extreme length. The command applies to a particular person, and it may be to his legal representative, but to no one else. Thus, if a man by a properly executed deed undertake to pay another person a certain sum of money, the law imposes upon him and his executors or administrators the duty of fulfilling his engagement. To no other person, however, is any legal command given in the matter. If the engagement be bilateral and not unilateral, like consequences will follow. The two parties will be respectively liable to the extent of their several promises; but no other person is directly affected by the transaction. Thus legal duties attach either to all people or to some people, and these particular duties concern either certain classes of persons or merely the parties.

12.3.3 ABSOLUTE DUTIES

Absolute duties have hitherto received from jurists but little attention. Austin dismisses the subject in half a page, which unfortunately does not exhibit at their best the powers of that great thinker. His successors have contented themselves with merely repeating his observations. The only duties which he specially mentions as absolute are those which prohibit suicide and cruelty to the lower animals. He adds two other classes, where the duty is to be observed either towards indefinite persons or towards the sovereign. The latter case merely serves to give rise to a vigorous though purely verbal dispute as to the meaning of the word sovereign. The former case seems, and I say it with all reverence, to confound the distinction between absolute and general duties. This opinion derives some support from the fact that, in a footnote in which a few examples of absolute duties are enumerated, Austin includes among absolute duties libel, although this offence plainly correlates a third party. But absolute duties occupy a much more important place in our legal system than these scanty notices of them would lead us to suppose. They constitute in fact more than half* of our whole criminal law. Their importance has been obscured by two circumstances. In the first place, Austin's system was based upon the consideration of rights, and he was consequently embarrassed by a class of duties which did not correlate rights, and for which he could therefore find no fitting place. In the second place, in the minds of the administrators of the criminal law, the breach of the duty has practically smothered the duty itself. But whatever the cause may be, it is certain that absolute duties have never been examined in detail, and that, consequently, their true importance has not been appreciated.

12.3.4 GENERAL DUTIES

Relative duties are either general or particular; that is, they relate either to indeterminate persons or to determinate persons. Of general duties some relate to the persons or to the feelings of our neighbors; some to their families, or to their homes, or to their property; some to the exercise of their lawful enjoyments, or to the fulfilment of their expectations; while some require towards our neighbors and for their benefit the observance of veracity and of circumspection. I shall endeavor to state in general terms, and subject to the rules of exculpation, the operation of these duties. No person may, by way of violence insult or annoyance, touch even with his finger any other person. There is no question of degree in such matters; the slightest touch, or even an attempt to touch, is prohibited. No person may, by word or sign or writing, expose any other person to public aversion, contempt, or ridicule, or cause him any loss by attacks upon his reputation. In these cases the qualifications and the exceptions

to the rule are unusually numerous and important. But, subject thereto, the rule is peremptory. It extends too beyond defamation, and applies to insults and to threats. A like prohibition applies to blasphemy with intent to offend; not, indeed, in contravention of the maxim “Dis injuries dis cures” but because words of this description naturally shock and pain the persons to whom they are addressed. No person may in any way interfere with the wife or the children or the servants of any other person, or may directly or indirectly prevent, or try to prevent, his enjoyment of their society or of their services. Nor may any person enter without permission the dwelling of any other person when it is closed, and especially after dark. In this case, too, the prohibition is of the widest. Without the house master’s consent, not a latch of any unlocked door may be lifted, for “a man’s house is his castle and his surest refuge.” In like manner, no man may interfere even in the least degree with his neighbor’s property. He must not destroy, he must not injure, he must not take, and he must not touch “anything that is his.” No person may interrupt any enjoyment other than those I have already mentioned to which any other person is lawfully entitled, or disappoint any other person in his lawful expectations. Nor may any person by any act or any representation mislead any other person to his loss. Nor may he use his own property, or manage his own business, or govern his own conduct in such a manner as to cause other persons any unlawful harm or loss.

12.3.5 PARTICULAR DUTIES

The third great class of duties is that of relative particular duties, or, as they are called in Roman law, Obligations. They differ from absolute duties because they relate to some person for whose advantage they are imposed. They differ from general duties because the person to whom they so relate is not indefinite but is ascertained at the time when the duty takes effect. Thus their characteristic is that they operate only between the parties to them and do not bind any other persons. They arise either without the consent of these parties or with such consent. That is, as I have already explained, an obligation, like every other legal duty, arises by the command of the State, but this command may be given either directly or indirectly. It may be imposed either expressly by the State itself or by the agreement of the parties acting under the authority of the State. Accordingly, obligations are either Non-consensual or Consensual. Non-consensual obligations are usually called quasi-contracts. They are not contracts, and have nothing in common with contracts except the fact that in each of the two classes the duties are of the same kind. The prefix quasi is frequent in Roman law, and seems to have indicated merely an historical fact, namely, that the obligations to which the term was I prefixed were introduced

by the Praetor, and were not known I to the Jus Quiritium, or old common law of Rome. The force of the term seems to be that a certain class of obligations have a like legal effect to that which they would have had if the parties had entered into a recognized form of contract upon the subject-matter.

12.3.6 FIRST PRINCIPLE OF LEGAL DUTIES

The difference between duties imposed for the purposes of the State and duties imposed with the consent and for the convenience of individuals seems to suggest some important differences as to the foundation of law. Some writers deny that jurisprudence has any claim to scientific rank. In their view, law is a mere collection of rules more or less arbitrary which represent the current views of expediency. In such circumstances all that the jurist can usefully do is to arrange in some orderly and coherent fashion the heterogeneous mass. Others, on the contrary, hold that jurisprudence is the science of justice that as political economy is based upon the desire for wealth, so the sentiment of justice is the rock upon which is founded the science of law. A third class, dissatisfied with the preceding explanations, and exaggerating a newly discerned truth, look to custom as their initial force, and regard all jural phenomena as essentially historical. None of these views seems to me to be wholly correct; and yet, so far from being antagonistic, they are each of them partially true. It is idle to contend that justice is concerned in settling the limits of the close season for game or in prohibiting the issue of bills of exchange under twenty shillings. Neither is there any better foundation for the proposition that the doctrine of general average in the case of marine disasters or the doctrine that a trustee is not to profit by his trust is the result of some temporary convenience. Nor can we attribute to custom the Acts relating to public health or the series of judicial decisions which have within the last half-century established the law of domicile and the law of railways. Law is in truth a great function of national life. It is the result of many factors. Among these factors each of the forces I have mentioned—the sentiment of justice, the conviction of utility, the force of custom—holds a prominent place. If justice be not the basis of all our law, it is the basis of that great body of law which determines the reciprocal duties and rights of men in their mutual dealings. When rights are enjoyed, when obligations are accepted, justice is supreme. But justice has no place in determining the wants and the wishes of the State. These are matters of policy and discretion, constantly shifting, just as the wants and the wishes of individuals shift according to the circumstances of the case.

12.4 SUMMARY

Theories regarding rights reflect partial treatment about their meanings, origin and nature. The theory of natural rights is correct so long as it lays emphasis on the fact that rights are natural because they are in the nature of social claims. Likewise, the legal theory of rights speaks the truth in so far as it makes the state the guarantor of our rights.

12.5 END NOTES

1. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3369653 accessed on 28/08/2024.
 2. <https://egyankosh.ac.in/bitstream/123456789/23670/1/Unit-3.pdf> accessed on 28/08/2024.
 3. <https://silpalwal.com/pdf/2ndsem/ballb6/ballb6thsem2.pdf> accessed on 28/08/2024.
 4. *Ibid*
 5. *Ibid* 6. <https://egyankosh.ac.in/bitstream/123456789/23670/1/Unit-3.pdf> accessed on 28/08/2024.
 7. *Ibid* 8.
Ibid
 9. *Ibid*
 10. *Ibid*
 11. *Ibid*
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12.5 TERMINAL QUESTIONS

1. Discuss the natural theory of rights.
 2. How do the Marxists view the concept of right?
 3. What is will theory of legal rights?
 4. What is interest theory of legal rights?
 5. What are absolute duties?
 5. What are particular duties?
-

12.6 SUGGESTED READINGS

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 3. Theories of Rights, Jeremy Waldron (ed.), Oxford University Press (1985)
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12.7 SAQs

1. Which theory of legal rights defines rights as an inherent attribute of human will and emphasizes free expression of human will?

- a) Interest theory
- b) Will theory
- c) Historical theory
- d) Social welfare theory

2. According to the Interest Theory of legal rights, what is the basis of legal rights? a)

Human will

- b) Social traditions
- c) Legally protected interest
- d) State authority

3. Which theory regards rights as the product of state laws and asserts that rights are granted and enforced by the state?

- a) Natural rights theory
- b) Legal rights theory (Idealist theory)
- c) Marxist theory
- d) Social welfare theory

Answers

1. B. , 2. C., 3. B.

UNIT 13: SOCIOLOGICAL PERSPECTIVES ON RIGHTS

STRUCTURE

13.1 LEARNING OUTCOMES

13.2 INTRODUCTION

13.3 MAJOR SOCIOLOGICAL THEORIES ON HUMAN RIGHTS

13.3.1 STRUCTURAL FUNCTIONALISM

13.3.2 CONFLICT THEORY

13.3.3 SYMBOLIC INTERACTIONISM

13.4 SIGNIFICANCE OF SOCIOLOGICAL THEORY TODAY

13.5 SUMMARY

13.6 END NOTES

13.6 RESOURCES FOR FURTHER READING

13.8 SELF ASSESSMENT QUESTIONS

13.1 LEARNING OUTCOMES

- Sociology as a branch of knowledge had been evolved based on the scientific method as applied in the study of pure science. This module helps students to find out the how the origin and formation of human rights are well defined and reformulated along with research in the field of sociology
- By the end of doing with this module student will come to know theorizing human rights in a sociological perspective is a vast subject and that the scope of this subject is wide and a very relevant branch for the understanding and expansion of human rights.

13.2 INTRODUCTION TO SOCIOLOGY AND RIGHTS

Sociology is a branch of knowledge; studies societies. Man since his life in primitive life is not alone; lived in a family; in a group. We may call a society is not that where in a place lives only one individual; for formation of at least two or more persons are required. Thus family too is a society; a primary society. Sociology aims at study of societies in a scientific; logical and rational way. When we use the term science one has to apply this word to modern science that was supported by sense perception; experimental verification and inference. Until 18th century study of society was not given a scientific approach. In fact all branches also aimed at knowing about the ultimate reality; and with curiosity of creation and with many questions on life after death etc., All branches of knowledge like that we individually treat as Botany, Zoology, Physics, medicine, astronomy were treated as part of philosophy. It was only after inventions in science and technology, inventions of laws of electricity; dynamics; gravitation and Heliocentric theories and many scientific inventions that developed human lives; industrially and technologically. Philosophers hitherto believe in certain eternal laws to guide the world; super naturally; followed deductive logic – the method of arriving at truth from universal to particulars. Philosophers like Pythagoras, Socrates, Plato and Aristotle and others too in the ancient times studied and theorized about man and society but it is systematized only in the modern times with the influence of scientific developments. Francis Bacon's theory on inductive method of logic and, scientific reasoning made certain philosophers too to follow science and inductive method of logic. In this context in support of theories on universals that philosophers believe. That is to say that most Hence Auguste Comte (1798-1857) , a French philosopher wanted to study philosophy in a scientific way. Later he studied society to in a scientific way and arrive at certain valid truths on study by experimental method. Auguste Comte was called as father of sociology.

Sociology is a branch of knowledge is a science which took a major role in the area of social sciences studies human being's interactions with other; behaviours people; factors that determine human social, economic and political lives. Its objectives are to find out the ways to

bring good social psychology and societies meant for wellbeing of all. Research data collected by sociology is of good source for many social changes and developments too. Thus, applied branches namely, political sociology, economic sociology, sociology of law, Social psychology, social anthropology rural sociology and many other branches have taken momentum for the development of human societies. These specialized areas of sociology thus study people's economic, psychological, political behaviours and find out the reasons and methods to improve the society scientifically. Man has to live in his relation with others; cannot live in isolation. Hence his interactions with others should lead for good social life. Researches thus help to take policy suggestion in the major areas of health, education and other social aspects mainly. It is due to development in the area of sociology only many of the national and international initiatives have been translated as rights of women; child, industrial workers and many disadvantaged groups. Auguste Comte, Herbert Spencer, Emile Durkheim, Max Weber, Georg Simmel, Talcott Parsons, Malinowski, and Karl Marx, Robert Merton, Herbert Mead; are some major contributors. There are many sociologists in recent times Viz., Levi Strauss Michael Foucault; Jurgen Habermas and many others. Some of the social theories put forwarded by these sociologists are explained below.

13.3 MAJOR SOCIOLOGICAL THEORIES ON HUMAN RIGHTS:

As said above there were thinking of society even before sociology had been named as social science as we see it today. Hindu Vedas; Old Testament, Greek classics like Aristotle's Politics, Plato's Republic, all might contribute to sociological thinking¹. Sociological theories have been developed due to social, political, economic forces in the back drop of science and technology of 19th century. There are three major theories namely structural functionalism; conflict theory and symbolic Interactionism. Some sociologists propounded some thought provoking and significant theories. For example Emile Durkheim studies on the reasons and rate of suicides at macro level. His research on macro level collected helped to evolve the reasons were due to religious affiliations; different affiliations found different rates. Thus he found Protestants were more in number than Catholic communities.

13.3.1 STRUCTURAL FUNCTIONALISM

Society is a combination of various social groups associated in various organizations, establishments and committees; each group in such established association works as a whole works for each other. Individual for his personal and needs of his beloved joins a group. In fact family itself is a primary group of society. Structural functionalism is a theory that treats society as a whole and as a social system. Herbert Spencer, Emile Durkheim, Talcott Parsons; Alfred Radcliffe Brown, and Robert Merton are some sociologists to formulate this theory. Herbert Spencer (1820-1903) an English sociologist analyses society based on the measurement of like elements and unlike elements of society. It is the degree of integration and degree of disintegration that determines the strength and weakness of that particular group or society; the more the structural elements that are self-sufficient and identical the more the strength of the society. However, structural elements can be extended as educational institution, health institution etc., at larger level. Further each institution in its turn will have its own structural

components to integrate or disintegrate. Emile Durkheim (1820-1903) a French sociologist studies society in the area of goods and services – division of labour. Population density is the determinant to cause pressure and disintegrate as we understand in a general sense. Hence division of labour according Durkheim helps integrity and a Population density is the determinant to cause pressure and disintegrate as we understand in a general sense. Hence division of labour according Durkheim helps integrity and a moral density according to Durkheim. Auguste Comte too stressed on the “systematic character of society” and on the “role of social consensus”.²

Talcott Parsons (1902-1979) viewed society as functionally related structure; believed that the major function of state is provide goods and services required for survival of the system. At the same time, he identifies four major issues of social system: ‘goal attainment; adaptation; integration and tension management (Caplow, 171:185, cited Laluddin, 2016, p.13)³. As for instance Laluddin contends that in a factory management it is important to see that a good relation is maintained between employers and worker and to safeguard their needs and security are essential functions.

Alfred Radcliffe Brown (1881-1955) sensed the need for laws when all the members can do their functions together and also to make a society stable. For the Brown defined “function of any recurrent activity as the part it plays in social life as a whole, and thereby, the contribution it makes to structural continuity” (Radcliffe Brown, 1952, cited.,)⁴

Further Robert Merton (1910-2003)⁵ discusses of three functions in his theory on structural functionalism: manifest functions; latent functions and dysfunctions. While manifest functions are progress of person. For example, education functions for the child’s development that further makes him self-sufficient by enabling him a career. But in the process sometimes other activities too will be played by the student; extra-curricular activity or an activity that is not actually related with the major function. For example, finding a spouse in the process of education in school or college – such function is called latent function. Dysfunction according Merton is visible in non-performance of educational activity; drop out; lower grades and nonattainment of graduation etc., and, these are the areas where the institutions need to take care for the understanding of rights for all.

We can extend this theory on structural functionalism to any system or group including family lest quest and conflict for rights are inevitable. How conflict theory takes the other side of structuralism we will understand below through conflict theory.

13.3.2 CONFLICT THEORY

Laluddin⁷ held that conflict theory comes to us as against structural functionalist theory which “sees society as a well-integrated social system”. This theory deals with the dominant social, political and economic forces. Karl Marx, Saint Simon, Max Weber, Georg Simmel studied social systems in terms of conflicting forces. Conflict theory basically aims not only to find the forces that are bases for social disequilibrium but also makes use of the force of the deprived categories to wage a revolution in order to rebuild society with new social, political and

economic and also familial values. Social change is possible when conflict is rife and makes the deprived desperate at one point and questions the society in a collective way.

Whether Marx claimed himself as sociologist or not many political theorists and sociologists and even economist considered him as sociologist. Marxism is treated as scientific socialism. To Karl Marx (1818-1883) social inequality is rooted in mode of production and accumulation of capital/money/land or anything that has a value and that makes powerful is the determinant of political power too. All individuals will be categorized in to two classes according to Marx – Bourgeoisie or the socially dominant class or the proletariat class or the dependent class for its livelihood. Any labour is not justly paid according to Marx, this leaves a surplus value which becomes the profit for the employer and a loss/unpaid labour to the proletariat. Persistent loss makes the proletariat class weaker and weaker and stronger and stronger of the bourgeoisie. The conflicting theory based on the social class struggle ends up when all the proletariat classes unite and wage revolution against the bourgeoisie and takes the social and political power. Many a nation though initially did not agree for political power gained through democracies or tyrannies once gained will tend to be lost by any person; groups or nations. But over a period of time Marxian impact led nations to understand the humanistic aspect of laborer and tried to build welfare economies and welfare states; socialistic democracies.

Max Weber (1864-1920) too like Marx is a reformist and he believed in rationalization of legal systems; rules. Like Weber too saw the conflicting and competing forces in the society to cause inequality. Weber identified many other inequalities other than economic inequalities; inequalities between genders, races and other social statuses. According to Weber “understanding of political, economic and social worlds is to be done not only through the concept of conflict but also through using other concepts such as advantages, power, prestige and privileges” and “Weber was able to present a broader perspective of conflict theory”.⁸ Hence expansion of rights is a possible phenomenon through study of conflicts in terms of advantages and possession in a society.

Georg Simmel (1858-1918) recognized the significance internal solidarity and centralized power, to reduce tension and conflict.⁹ Simmel anticipated how “large-scale social structures like the money economy” can dominate individuals in his work namely *The Philosophy of Money*. However, Simmel also focused on small-scale issues like social interaction between people¹⁰.

13.3.3 SYMBOLIC INTERACTIONISM:

Symbolic Interactionism a social theory put forwarded by Charles H. Cooley (1864-1929), Herbert Mead (1863-1931) and William Issac Thomas (1863-1947) studies social phenomena both at social and psychological levels. These were interested to know “how an individual acquires personal and social characteristics”; also “self-identity”. Mead had worked further of these three. To him human mind itself is a social product¹¹. Some features of Symbolic Interactionism are:

- Symbolic Interactionism studies human responses.

- People's respond in a subjective way
- It is futile to evaluate one's behaviour in an objective way.
- It analyses social relations in a micro level
- It examines the role of communication as a unique phenomenon
- Social pattern is subject to negotiation
- Social patterns are expressed in symbolic patterns are
- People influence each other through their actions and it is an ongoing process
- How people assign values to things do not convey intrinsic value.
- Meaning and values are social products
- Meaning have permanent character; their implication may differ¹²

13.4 SIGNIFICANCE OF SOCIOLOGICAL THEORY TODAY:

Study of sociology has a significant relevance for the study of rights. While theory on structural functionalism helps to moral strength of the society and major organizations that help social integration, conflict theory on the other hand deals with disintegrated components and issues of a society. Further conflict theory helps to reconstruct the society on new social and political principles at larger level.

Structural functionalism as helps to see society not only as a social order, but a moral order to help each other, respect each other's rights. Educational institutions and religious institutions all support to help this moral and social consensus according to this theory.¹³ Studies in this area help societies to know the moral basis of rights; moral strength of institutions and help to educate and rectify the declining strength of societies. For example, studies on geriatric care and not only studies the status of aged people but also paves society where rights of elderly are secured. For example, Canada improved well-defined health care systems for elderly people.

Further conflict theory gained significance in the opened debates for women's rights against exploitation; abuse and harassment. As we understand from the conflict theories helped nations to revolt and to establish democracies and to protect rights of majority. Even today nations like Myanmar; Siberia are struggling to establish democracies. Not only in the third world nations we find discrimination in distribution of rights in the developed nations, quest for rights of women and colored people and rights of migrants are not satisfactory. This theory also helps through a branch called social psychology to resolve conflicts in an amicable way too. Some of the peace theories of Gandhi, Confucius; Lao-tzu; Dalai Lama and Ecumenical perspectives aim to resolve conflicts in a nonviolent way. For example, Gene Sharp a sociologist of our times and also one who was influenced by Gandhi founded Albert Einstein Institution in 1983 to establish democracy non-violently through his works like *Waging Nonviolent Struggle: 20th Century Potential* (2005) and *from dictatorship to democracy: A conceptual framework for liberation* (2002).

13.5 SUMMARY

Summarily, theory on structural functionalism impacts to integrity and solidarity; conflict theory impacts social changes perhaps through negotiation or at times through revolution and theory on symbolic Interactionism might help perspectives at individual level and help qualitative studies on society. No theory is comprehensive; we have to look each theory in its specialized way as well as in its relation with other aspects. And we also understand that the scope for sociological theory is vast

13.6 END NOTES

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11. Laluddin, op.cit., p.14.
12. Laluddin, op.cit., pp.14-16
13. Ibid., p.14..

13.6 SUGGESTED READING

1. Lydia Morris(ed.), *Rights: Sociological Perspective*, London and New York: Routledge, 2005
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13.7 SELF-ASSESSMENT QUESTIONS:

1. What is the relation between sociology and study of rights?
2. Do you think structural functionalism alone help understanding of rights?
3. Examine conflict theory of sociology in view of present-day conflicts.