

# RIGHTS

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- Right is evolved in modern age with the rise of **individualism** and **liberalism**. Greek age is known for **duty** of individual **not for right** and **medieval age** incorporated right of a few which was in fact a **privilege** of a few.
- **Glorious Revolution** (1688) and **French Revolution** (1789) is result of demand of right.
- Hohfeld describe right in the following way:-
- **(a) Claim right**:- Which create duty for other. For example person has a right not to be attacked.
- **(b) Liberty or privilege right**:- Which imposes no specific duties.
- **(c) Immunity**:- Elderly or exempted from the recruitment in the army.

- **(d)Power:-** It is an ability to change people's claim right and duties. For example an officer of the law could fine or demand to see license of a speeding driver placing him under a **liability**. An owner of a house is free to give property to anyone.
- **DWORKIN'S RIGHT**
- **Dworkin (Taking Right Seriously)** also believed in moral right and right is related to right holder and others. Right holders is an example of **strong right** and others denote **weak sense of right**.
- Dworkin believes that not all goods are interest generate rights. Claim of individual is considered as a **political trump**. Individual cannot deny the right for obtaining **collective goal**.
- **Claim right** refers the duty of other person to act in a certain way. Therefore the interest of **right holder** is protected due to duty of other.

- His theory identifies only two moral rights as inalienable- as being, in fact, natural rights-namely, the **right of citizens to be treated equally** and their **right to have their human dignity respected**.
- This claim is not based on any general philosophy of politics and it is clearly not rooted in historical experience and tradition. It has to be regarded, therefore, as a **speculative claim** based upon **reason**.
- Another aspect of Dworkin's theory is its **extreme individualism**. When he writes about the **right to express political dissent**, he argues that it is wrong for the law to ban speakers at demonstrations from **incitement to violence** in the ground that arguments based on considerations of **general utility** or **public interest** should not be used to restrict the **individual rights to demonstrators and speakers**.

# THEORIES OF RIGHTS

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- **NATURAL RIGHTS**
- Propounded by the father of liberalism, **John Locke**.
- Locke believed in the **primacy** of individual and being an individualist and liberal, Locke said that **individual comes first**, therefore rights are **natural** which comes before the existence of the state and government.
- Locke said that, natural rights are like the **Divine rights** and therefore, neither state nor government gives us natural rights, but natural rights are our **birth rights**.
- Natural rights are in fact, the **moral rights** which means it was not available for the individuals by any legal documents, like **constitution** or **state law** etc.

- Therefore, natural rights are **integral** or **intrinsic** part of human of human personality like **organs of our body**.
- Locke says that natural rights incorporates the right to **life, liberty and property (the state)** is the most important right and **life and liberty** are the two important component of right to life.
- **James Tully** said that the most important property for Locke is **mind** and **body** of individual.
- Locke is a liberal and individualist and therefore for Locke, **ownership over himself** is the most important right.
- Locke's concept of natural rights impacted the founding fathers of the American constitution. **Thomas Paine** wrote **Rights of Man** and defended natural rights.
- **Jefferson** and **Madison** were highly influenced by Locke and **fundamental rights in US constitution** is the legal translation of **natural rights** propounded by Locke.

# NATURAL RIGHT AND HUMAN RIGHT

- Natural rights are in fact **moral right**. Natural right of Locke is not historical. **T.H. Green** says that natural rights are natural because it is **essential for development of personality**. Term natural does not denote the right existed before society or state.
- Green says that right is **moral claim recognize by society and protected by state**.
- **Human right** is also **moral** which indicate that is should be available for the people. Human right and natural rights are same. **Recognition of human right is new**. Origin of human right is as old as the concept of natural right.
- Human rights are universal rights recognized by **United Nations General Assembly on 10<sup>th</sup> December 1948**.

# CRITICISM OF NATURAL RIGHTS

- (1) **BENTHAM'S CRITICISM**

- He says that natural right is **philosophically absurd**. Natural rights are derived form **natural law** which is a **divine law**. It is **abstract** and **hypothetical**.
- **Bentham** believe in **utilitarianism** and says that right are essential due to **source of pleasure**.
- Bentham believes in **legal concept** of rights. He says that natural rights are meaningless due to practical reasons too. For **Locke** right comes **before** the existence of society and state and Bentham says that it is **nonsense upon stilts**. If right comes before state then individual will be exempted from **duty** which is **impractical**.
- Rights are derived form state and laws are enacted by state that is meaning of **legal right**.

- **(2) CRITICISM OF MARX**

- Marx says **On The Jewish Question** (1844) that natural rights are a right for capitalist class. It is a right of **egoist** and **acquisitive** individual. Proletariat are not citizens. Therefore, they don't enjoy the right.

- **(3) CRITICISM OF ADMUND BURKE**

- **Admund Burke** is a **conservative** who believes that right comes from **customs** and **traditions** of society.
- Society is not like a **machine of Coffee** which can be made by the **social contract** among individuals.
- **Locke** projected individual as an **atom** but individual is member of a communitarian society. On the name of natural rights Locke **destroyed** the present structure of society.

# IMPORTANCE OF NATURAL RIGHTS

- **US Declaration of Independence** (4<sup>TH</sup> July 1776) is influenced by the idea of Locke. Declaration says that- we hold these truth to be self evident that all men are created equal that they endowed their creator with certain **inalienable rights** and these are **life, liberty and pursuit of happiness**.
- **US constitution** is first written constitution which includes the part of **fundamental rights**. Natural right are translated into **legal and political** rights. It is visible impact of Locke.
- Lockian natural right are not historical it is **philosophical and moral**. And present human right begins from the idea of Locke. **Natural right is synonymous of human rights**.

# SOCIAL ECONOMIC RIGHTS

- With the advancement of liberal state in a welfare state, legal political rights transformed into social economic rights.
- **Green** says that social economic rights are essential for the moral development of individual.
- **Laski** in his book **Grammar of Politics** says that freedom of speech and expression is meaningless without the availability of basic education and health care. Contemporary liberal thinker **John Rawls** and **Amartya Sen** are in favour of social economic rights.
- Socialist scholars also supported social economic rights and the communist state like China more emphasize over social economic rights.

# RECENT DEBATE ON RIGHT

- Rights can be divided in **three generation rights**:-
- **(a) Civil political legal rights**:- Civil rights include right to life, liberty. Legal rights refers equality before law.
- **(b) Social economic rights**:- Majority community should not discriminate with minority. Social rights refers lack of discrimination on the basis of caste, sex and religion. Economic rights includes basic facility of health, insurance and employment.
- **(c) Cultural feminist and environmental rights**:- It is also a group right.
- The recent debate of rights is not related to the dispute between **liberalism and Marxism**. It is associated with **communitarian, multiculturalist and the feminist perspective**.

# COMMUNITARIAN RIGHTS

- Communitarian do not advocate for **individual** right. They emphasize over the right **community** or **group**. **Communitarians** said that liberal **politics of right** should be abandoned and there is need to accept the politics of **common good**.
- **Michael Walzer** said that searching for universal theory of right is misguided.
- **Michael Sandel** wrote in his book **Liberalism and Limits of Justice** and criticized liberal view of individual as **meta ethical**.
- Communitarians says that right can be **derived from the community** rather than neglecting and ignoring the community.

# MULTICULTURALIST

- Multiculturalist are in favour for **minority rights** and **group specific rights**. They said that liberals are victims of **difference blindness**.
- Kymlicka says that **group differentiated rights** are necessary for preserving culture and differences of minorities.
- Multiculturalist reject the concept of equal treatment or the notion **universal citizenship**.
- **Bhikhu Parekh** said that group rights or cultural rights are important for preserving their **collective identity**.
- Multiculturalist pointed out the **biasness** of liberal democratic state towards the minorities.

# FEMINIST

- Feminist are also expressing their grievances against **liberalism** which does not recognize discrimination based on gender.
- **Susan Moller Okin** wrote **Justice Gender and Family** (1989) and she criticized **Rawlsian** concept of justice which ignore justice within the family.
- For Okin society is **gender structured** society or patriarchal society where women are occupying secondary position.
- Merrian Young spoke about the **differentiated citizenship**. She rejected the **universal citizenship** which refers:-
  - (1)Equal participation in public life.
  - (2)Focus on common good.
  - (3)Equal treatment.
- However she said that different social group have different **needs, cultures, histories and experiences**.

- **MORAL ISSUE OF INTERNATIONAL POLITICS  
(HUMAN RIGHTS)**

- Human Rights are universal moral rights. According to **Macfarlane**, there are 5 distinguishing features: **universality, individuality, paramountacy, practicability and enforceability.**
- Universality implies that these rights belong to all people. These are individualistic, for it accepts the notions of free individual, human dignity and individual moral choice. They are paramount for a denial of these rights is an affront to justice.
- **Practicability** suggests the **feasibility** of attaining these rights. These rights are enforceable by the state through its elaborate legal and constitutional machinery.

# PHILOSOPHICAL OR MORAL JUSTIFICATION OF HUMAN RIGHTS

- **(1) HUMAN DIGNITY**
- The rights that people possess have often been argued to be grounded in the basic dignity of the human person.
- **(2) REASON**
- More commonly, liberal approaches stress human characteristics, rather than divine ones.
- **(3) AUTONOMY**
- The self-directed or self-authored life is considered to be the human ideal.
- **(4) EQUALITY**
- The idea of political equality can mean the right to equal treatment, or the right to treatment as an equal.

- **(5) NEEDS**
- All human beings have certain basic needs- the most obvious ones being to do with security and subsistence.
- **(6) CAPABILITIES**
- This neo-Aristotelian approach focuses on what people are capable of being and doing: it is oriented towards human potential and fulfillment.
- **(7) CONSENSUS**
- This pragmatic approach is reluctant to be too specific about a particular grounding or foundation of human rights.

# TYPES OF HUMAN RIGHTS

- Human rights can be divided in the following manner:
- **(a) Liberty rights:** First generation rights.
- **(b) Welfare rights:** Second generation rights.
- **(c) Group rights:** Solidarity rights, Available for all people belonging to developing countries. Cultural rights are also part of Group rights. It is also known as third generation rights.
- **Post-Modernist Rights (LGBTIQ Rights):** Many people's human rights are violated because of their sexual identities. Lesbian, Gay, Bisexual, Transgender, Intersex, and Queer (LGBTIQ) people frequently endure harassment, discrimination, abuse, and degrading treatment; many are denied full rights of citizenship and are subjected to arrest and criminal punishment; some endure torture and murder. This denial, driven by prejudice and fear, often manifests itself in the criminalisations of certain sexual behaviours.

# UNIVERSAL OR RELATIVE

- Liberals project human rights as universal concept. Therefore equally applicable for all but **Maurice Cranston** is opposing the universality of human rights and he said that same set of social economic right can't be granted everywhere.
- Apart from that **communitarians, feminist, multiculturalist** are critical about universal application human rights.
- Liberal theory is developed in the following **social and cultural** context:-
  - (1)**Atomistic society.**
  - (2)**Secularism or secular tendency.**
  - (3)**Scientific temperament.**
- Social and cultural condition is not same in every part of the world. Therefore, we can't understand human being without context.