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## Rights: Meaning and theories; different kinds of rights; concept of Human Rights

A right is described as an entitlement or justified claim to a certain kind of positive and negative treatment from others, to support from others or non-interference from others. In other words, a right is something to which every individual in the community is morally permitted, and for which that community is entitled to disrespect or compulsorily remove anything that stands in the way of even a single individual getting it. Rights belong to individuals, and no organisation has any rights not directly derived from those of its members as individuals; and, just as an individual's rights cannot extend to where they will intrude on another individual's rights, similarly the rights of any organisation whatever must yield to those of a single individual, whether inside or outside the organisation. Rights are those important conditions of social life without which no person can generally realize his best self. These are the essential conditions for health of both the individual and his society. It is only when people get and enjoy rights that they can develop their personalities and contributes their best services to the society.

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In simple words, rights are the common claims of people which every cultured society recognizes as essential claims for their development, and which are therefore enforced by the state.

1. According to Laski, "Rights are those conditions of social life without which no man can seek in general, to be himself at his best."
2. T. H. Green explained that "Rights are powers necessary for the fulfilment of man's vocation as a moral being."
3. Beni Prasad stated that "Rights are nothing more nor less than those social conditions which are necessary or favourable to the development of personality"

Other moral theorists like Isaiah Berlin defines rights in terms of positive liberties and negative freedoms. A positive right is an entitlement to; A right to free expression, for instance, entitles one to voice opinions publicly. A negative right is a freedom from; Freedom of person is a right to be free of bodily interference. Most rights are both positive and negative.

### Main features of Rights:

1. Rights exist only in society. These are the products of social living.
2. Rights are claims of the individuals for their development in society.
3. Rights are recognized by the society as common claims of all the people.
4. Rights are rational and moral claims that the people make on their society.
5. Since rights are here only in society, these cannot be exercised against the society.
6. Rights are to be exercised by the people for their development which really means their development in society by the promotion of social good. Rights can never be exercised against social good.
7. Rights are equally available to all the people.
8. The contents of rights keep on changing with the passage of time.
9. Rights are not absolute. These always bear limitations deemed essential for

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10. Rights are inseparably related with duties. There is a close relationship between them “No Duties No Rights. No Rights No Duties.” “If I have rights it is my duty to respect the rights of others in society”.
11. Rights need enforcement and only then these can be really used by the people. These are protected and enforced by the laws of the state. It is the duty of a state to protect the rights of the people.

Theories of rights:

There are compelling theories of rights offered by several theorists.

Utilitarianism:

For the utilitarian, the just action is that which, relative to all other possible actions, maximises utility or “the good” (defining “the good” is the subject of philosophical conjecture and beyond our scope here). This is the utility principle. Utilitarianism is solely consequentialist; the justice or injustice of an action or state of affairs is determined exclusively by the consequences it brings about. If an action maximises utility, it is just. On this account, therefore, rights are purely instrumental. It is also worth noting that many in the utilitarian tradition have expressed hostility to the notion of rights of any sort. Utilitarian will honour a right if and only if it will lead to the maximisation of utility. This statement also indicates the limits of all rights. If the exercise of a particular will not maximise utility, the utilitarian is obligated to violate that person's rights for the sake of utility. The point at which the letter of the right defeats the purpose (i.e. the point at which the exercise of a particular right will not maximise utility) is the point at which society may justly curtail that right.

Rights are limited by the utility principle. If the exercise of a right maximises the good, the right ought to hold. If it fails to do so, the right may be justly abridged.

Challengers of the utilitarian account of rights argue that in some cases it extends rights too far and in other cases it restricts rights unjustly.

Kantianism (Deontology):

Kant proposes that the essence of morality is captured by what has been called the Categorical Imperative. In below paraphrase, this reads:

Act only on those rules of action that you could be universal laws.

The Categorical Imperative is a rule for testing rules of conduct. It will exclude as immoral any rule of conduct that implies that one person may do something but another, in relevantly similar circumstances, may not. In other words, it demands consistency. What's all right for me is all right for you if our relevant circumstances are similar. If I may throw my toxic waste into the river to save money for myself, then you may do so likewise. But of course I would not want you to do that, so it would be wrong for me.

This is relevant to human rights, because we think of human rights as universally applicable to human beings. And Kant says that what is morally permissible applies to all rational beings. It is also relevant that this test tends to endorse rules of action that protect our most basic interests, just the sorts of things that rights protect.

Kantianism is an explicitly non-consequentialist ethic. Kant believed that the consequences of our actions are often determined by contextual factors beyond the control of the individual. Honour and blame are only coherent concepts where the subject is responsible for what they have done. In all appeals to consequences, the locus of responsibility must necessarily be displaced to a broad array of factors, only one part of which is the agency of the individual in question. Moral responsibility for consequence, therefore, is incoherent. Ethics must be a matter of intentions, these being the only things we can evaluate without extrinsic influence. The right action therefore is that which is done in conformity with our moral duty, regardless of consequence.

In the Groundwork for the Metaphysics of Morals, Kant argued that one ought to “act only according to that maxim whereby one can, at the same time, will that it should become a universal law.” In other words, our own conduct is only ever just if we can in all conscience will that every other person acted the same way. In the same work, he also professed that one should “Treat humanity, never merely as a means to an end, but always at the same time as an end.” Similarly, our conduct is only just if, in acting,

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we do not use any other person as a tool to achieve our own objectives. In common way, our moral duty is to only act where our actions satisfy the two tests outlined - universalizability and the ends/means requirement.

**Laski's Theory of Rights:** Harold Laski, an influential figure and creative writer of political science, who authored about 20 books, has expounded the theory of rights and it is in many respects a classic representation. He describes rights as "those conditions of social life without which no man can seek, in general, to be himself at his best". Laski calls rights as conditions of social life. Rights are social concept and deeply linked with social life. The essentiality of rights is established by the fact that individuals claim them for the development of their best self. He places rights, individuals and state on the same board in the sense that they cannot be separated from each other and there is no antagonism between them. Laski recommends the long-cherished view that the state has a very important role to play in the realisation and, before that, recognition of human rights. On legal theories of rights, Laski examines the legal theory of state. The central principle of the legal theory of rights is that they completely depend upon the institutions and recognition of state. An individual cannot claim rights if those are not recognised by the state. Mere recognition, moreover, is not sufficient for the exercise of rights. The state must, through law and institutions, implement the rights.

The most significant part of Laski's theory is functional aspect of rights. It emphasizes on the relation between right and duty. He stated that Rights are correlative to functions. The functional theory emphasizes that an individual is entitled to claim rights only when he performs duty otherwise the claim or demand for right cannot be entertained. This definitely opposes widely known theory of legal theory of rights. But today, rights are recognised and protected mainly on political considerations.

**Barker's Theory of Right:** Barker's view is not theoretically dissimilar from that of Laski. Both are liberal philosophers, but Barker has a clear bias to idealism. The main purpose of every political organisation called state is to see that the personality of the individual gets ample scope for development. It is the duty of the state to guarantee and secure the conditions essential for that objective. These secured and guaranteed conditions are called rights. Individual's personality cannot develop automatically or under most adverse or antagonistic environment. Development of personality requires favourable conditions and these are to be guaranteed by the state through the enactment of law.

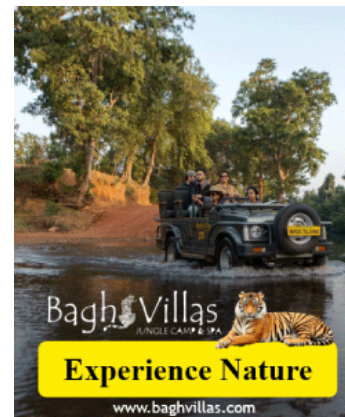
Barker also discusses the moral aspect of rights. He says, that law of the state helps me to secure rights. But rights are claims and the origin is the individual himself. The individual is a moral person and it is his determination that he will develop his moral personality through the rights. His purpose is not to inflict any harm upon the society. The implication of moral being is,- he releases his best efforts for the general welfare of society.

## Types of Rights:

### 1. Natural Rights:

Many researchers have faith in natural rights. They stated that people inherit several rights from nature. Before they came to live in society and state, they used to live in a state of nature. In it, they appreciated certain natural rights, like the right to life, right to liberty and right to property. Natural rights are parts of human nature and reason. Political theory maintains that an individual enters into society with certain basic rights and that no government can deny these rights.

In classical political philosophy "natural right" denotes to the objective rightness of the right things, whether the virtue of a soul, the correctness of an action, or the excellence of a regime. Aristotle stated in Politics (1323a29-33) that no one would call a man happy who was completely lacking in courage, temperance, justice, or wisdom. A man who was easily terrified, unable to restrain any impulse toward food or drink, willing to ruin his friends for a trifle, and generally senseless could not possibly lead a good life. Even though chance may occasionally prevent good actions from having their normal consequences, so that sometimes cowards fare better than brave men, courage is still objectively better than cowardice. The virtues and actions that contribute to the good life, and the activities intrinsic to the good life, are naturally right.



The modern idea of natural rights grew out of the ancient and medieval doctrines of natural law, but for other scholars, the concept of natural rights is unreal. Rights are the products of social living. These can be used only in a society. Rights have behind them the recognition of society as common claims for development, and that is why the state protects these rights. John Locke (1632–1704), the most influential political philosophers of the modern period, argued that people have rights, such as the right to life, liberty, and property that have a foundation independent of the laws of any particular society. Locke claimed that men are naturally free and equal as part of the justification for understanding legitimate political government as the result of a social contract where people in the state of nature conditionally transfer some of their rights to the government in order to better ensure the stable, comfortable enjoyment of their lives, liberty, and property. Since governments exist by the consent of the people in order to protect the rights of the people and promote the public good, governments that fail to do so can be resisted and replaced with new governments.

## 2. Moral Rights:

Moral Rights are based on human consciousness. They are supported by moral force of human mind. These are based on human sense of goodness and justice. These are not assisted by the force of law. Sense of goodness and public opinion are the sanctions behind moral rights.

If any person disrupts any moral right, no legal action can be taken against him. The state does not enforce these rights. Its courts do not recognize these rights. Moral Rights include rules of good conduct, courtesy and of moral behaviour. These stand for moral perfection of the people.

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

## Legal Rights:

Legal rights are those rights which are accepted and enforced by the state. Any defilement of any legal right is punished by law. Law courts of the state enforce legal rights. These rights can be enforced against individuals and also against the government. In this way, legal rights are different from moral rights. Legal rights are equally available to all the citizens. All citizens follow legal rights without any discrimination. They can go to the courts for getting their legal rights enforced.

Legal Rights are of three types:

### 1. Civil Rights:

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

### 2. Political Rights:

Political rights are those rights by virtue of which inhabitants get a share in the political process. These allow them to take an active part in the political process. These rights include right to vote, right to get elected, right to hold public office and right to criticise and oppose the government. Political rights are really available to the people in a democratic state.

### 3. Economic Rights:

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

## Human and Legal Rights:

There is some difference between moral or human rights and legal rights. Legal rights require for their justification an existing system of law. Legal rights are, roughly, what the law says they are, at least insofar as the law is enforced. Legal rights gain their force first of all through legislation or decree by a legally authorized authority. Those who support adoption of laws establishing legal rights often appeal to a notion of human rights. Laws against theft might appeal to notions of a moral right to own property. But human or moral rights must gain their validity through some other source other than legal rights, since people can appeal to human or moral rights to criticize the law or advocate changes in the law (or legal rights), and people could not do this if moral rights were based upon the law.

## Contractual Rights:

Contractual rights originated from the practice of promise-keeping. They apply to particular individuals to whom contractual promises have been made. Contractual rights ascend from specific acts of contract making. They normally come into being when the contract is made, and they reflect the contractual duty that another party has acquired at the same time. As a result of a contract, party A has a contractual duty, say, to deliver some good or service to party B, who has a contractual right to the good or service. Contractual rights may be upheld by the law, and in that sense can rest upon legal rights, but it is possible to conceive of contracts made outside of a legal framework and to rest purely upon moral principles. However, such contracts are less secure than contracts made within a legal framework, for obvious reasons. There are numerous examples of contractual rights such as:

- Rights to purchase a particular product or service
- Rights to be sell a product or service
- Rights to be the only seller or buyer
- Rights to delivery and timely payment
- Rights to refunds or repairs
- Various rights according to the specific intentions of each party

## Concept of Human Rights:

Human rights are those moral rights that are morally important and basic, and that are held by every human being because they are possessed in virtue of the universal moral status of human beings. Human rights are one of the significant aspects of human political reality. It is the moral rights of highest order. Human Rights are evolved out of self-respect. It is intrinsic to all humans without any discrimination of race, sex, nationality, ethnicity, language, religion and colour etc. It received new shape when human beings began to think themselves. Each and every human beings are entitled to these rights without any discrimination. Human rights comprise of civil and political rights, such as the right to life, liberty and freedom of expression; and social, cultural and economic rights including the right to participate in culture, the right to food, and the right to work and receive an education.

Human rights are protected and supported by international and national laws and treaties. The UDHR was the first international document that spelled out the “basic civil, political, economic, social and cultural rights that all human beings should enjoy.” The declaration was ratified without opposition by the UN General Assembly on December 10, 1948. Under human rights treaties, governments have the prime responsibility for proto shield and promote human rights. However, governments are not solely responsible for ensuring human rights. The UDHR states:

“Every individual and every organ of society shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance.”

In theoretical review, many theorists expressed their views about human rights. S. Kim construed that human rights are "claims and demands essential to the protection of human life and the enhancement of human dignity, and should therefore enjoy full social and political sanctions". According to Subhash C Kashyap, human rights are those “fundamental rights to which every man inhabiting any part of the world should be deemed entitled by virtue of having been born a human being”. Milne opined that “human rights are simply what every human beings owes to every other human being

are norms which are definite, high priority universal and existing and valid independently of recognition or implementation in the customs or legal system of particular country.

The Protection of Human Rights Act 1993 describes” Human Rights mean rights relating to life liberty, equality and dignity of the individuals guaranteed by the constitution or embodied in the International Covenants and enforceable by courts in India.”

The United Nation Centre of Human Rights defines Human Rights as “those rights which are inherent in our nature and without which we cannot live as human beings”

The Universal Declaration of Human Rights which adopted on 1948, states human rights as “rights derived from the inherent dignity of human person”

Historical origin of human rights: Records indicated that Though modern historians traced “Magna Carta” of 1521 as the historical beginning of human rights, but its real origin goes back to 539 B.C. when Cyrus, the great (king of ancient Persia) conquered the city of Babylon, he freed all slaves to return home and declared people to choose their own religion and even maintained racial equality. The idea of human rights quickly spread from Babylon to many nations especially India, Greece and eventually Rome where the concept of natural law arose in observation of the fact that people tended to follow certain unwritten laws in due course of life. There the concept of “natural law” arose, in observation of the fact that people tended to follow certain unwritten laws in the course of life, and Roman law was based on rational ideas derived from the nature of things.

Documents asserting individual rights, such as the Magna Carta (1215), the Petition of Right (1628), the US Constitution (1787), the French Declaration of the Rights of Man and of the Citizen (1789), and the US Bill of Rights (1791) are the written precursors to many of today’s human rights documents.

The Magna Carta, or “Great Charter,” was debatably the most important early influence on the extensive historical process that led to the rule of constitutional law today in the English-speaking world. In 1215, after King John of England violated a number of ancient laws and customs by which England had been governed, his subjects forced him to sign the Magna Carta, which enumerates what later came to be thought of as human rights. Among them was the right of the church to be free from governmental interference, the rights of all free citizens to own and inherit property and to be protected from excessive taxes. It established the right of widows who owned property to choose not to remarry, and established principles of due process and equality before the law. It also contained provisions forbidding bribery and official misconduct. The Magna Carta was a crucial defining moment in the fight to establish freedom.

Another breakthrough in the development of human rights was the Petition of Right, produced in 1628 by the English Parliament and sent to Charles I as a statement of civil liberties. Rejection by Parliament to finance the king’s unpopular foreign policy had caused his government to exact forced loans and to quarter troops in subjects’ houses as an economy measure. Arbitrary arrest and imprisonment for opposing these policies had produced in Parliament a violent hostility to Charles and to George Villiers, the Duke of Buckingham. The Petition of Right, introduced by Sir Edward Coke, was based upon earlier statutes and charters and asserted four principles:

1. No taxes may be levied without consent of Parliament.
2. No subject may be imprisoned without cause shown (reaffirmation of the right of habeas corpus).
3. No soldiers may be quartered upon the citizenry.
4. Martial law may not be used in time of peace.

In 1789, the people of France brought about the abolishment of the absolute kingdom and set the stage for the establishment of the first French Republic. Sometime later, the storming of the Bastille, and barely three weeks after the abolition of feudalism, the Declaration of the Rights of Man and of the Citizen (French: La Déclaration des Droits de l’Homme et du Citoyen) was espoused by the National Constituent Assembly as the first step toward writing a constitution for the Republic of France.

The Declaration decrees that all inhabitants are to be guaranteed the rights of “liberty, property, security, and resistance to oppression.” It discusses that the need

only those borders which assure other members of the society the enjoyment of these same rights.” Therefore, the Declaration sees law as an “expression of the general will”, intended to promote this equality of rights and to forbid “only actions harmful to the society.”

In 1864, sixteen European countries and several American states attended a conference in Geneva, at the invitation of the Swiss Federal Council, on the initiative of the Geneva Committee. The diplomatic conference was held to adopt a convention for the treatment of wounded soldiers in combat. The main ideologies laid down in the Convention and maintained by the later Geneva Conventions provided for the obligation to extend care without discrimination to wounded and sick military personnel and respect for and marking of medical personnel transports and equipment with the distinctive sign of the red cross on a white background.

By 1948, the United Nation’s new Human Rights Commission had attracted global attention. Under the dynamic headship of Eleanor Roosevelt, President Franklin Roosevelt’s widow, a human rights winner in her own right and the United States delegate to the UN, the Commission set out to draft the document that became the Universal Declaration of Human Rights. Roosevelt, credited with its motivation, referred to the Declaration as the international Magna Carta for all mankind. It was accepted by the United Nations on December 10, 1948. In its prelude and in Article 1, the Declaration unequivocally proclaims the inherent rights of all human beings: “Disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people. All human beings are born free and equal in dignity and rights.”

The Member States of the United Nations promised to work together to encourage the thirty Articles of human rights that, for the first time in history, had been assembled and codified into a single document. As a result, many of these rights, in various forms, are part of the constitutional laws of democratic nations in present situation.

In nut shell, The written inventor to the modern human rights documents are the English Bill of Rights (1689), the American Declaration of Independence (1776), the French Declaration of the Rights of Man and Citizen (1789), the first Ten Amendments of the Constitution of the United States (Bill of Rights 1791) and the Universal Declaration of Human Rights of UN (1948).

Human rights is the basic rights and freedom of all human, it include the right to life, liberty, freedom of thought, expression and equality before the law. It is unified, interdependent and indivisible.

Rights agree to duties in three ways:

1. Individual duties of forbearance (non-interference)
2. Institutional duties of assistance
3. Individual duties of assistance

If we consider the right to property, conceived primarily as the right not to have one's personal property taken without one's consent. This implies that

- a. Other individuals have a duty to forbear from taking a person's possessions without his or her consent.
- b. Institutions, such as governments, should establish and enforce laws against theft and should do so in all neighbourhoods where theft is a possibility.
- c. Officials in the government have an individual duty, as officials, to support such laws and or enforce them.

The individual duties of assistance are performed in several ways: If the government were lax in this area, citizens might have a positive duty to pressure government to pass an appropriate law if one were missing or to enforce already existing laws.

Beyond that, individual citizens who are aware of persons with sticky fingers, as it were, have an obligation, where it could be done at reasonable cost to themselves, to thwart acts of theft.

Many theories have been developed to explain human rights. According to Dr. Justice Durga Das Basu, “Human rights are those minimal rights, which every individual must

human family' irrespective of any consideration. The philosopher John Finnis argues that human rights are reasonable on the grounds of their instrumental value in creating the necessary conditions for human well-being.

The Universal Declaration of Human Rights (UDHR), 1948, stated that human rights as "rights derived from the inherent dignity of the human person." Human rights when they are guaranteed by a written constitution are known as "Fundamental Rights" because a written constitution is the fundamental law of the state.

### Characteristics of human rights:

1. Human Rights are Inalienable: Human rights are deliberated on an individual due to the very nature of his existence. They are innate in all individuals irrespective of their caste, creed, religion, sex and nationality. Human rights are conferred to an individual even after his death. The different rituals in different religions bear testimony to this fact.
2. Human Rights are essential and necessary: Human rights are needed to maintain the moral, physical, social and spiritual welfare of an individual. Human rights are also essential as they provide suitable conditions for material and moral upliftment of the people.
3. Human Rights are associated with human dignity: To treat another individual with dignity regardless of the fact that the person is a male or female, rich or poor is concerned with human dignity.
4. Human Rights are Irrevocable: Human rights are irrevocable as they cannot be taken away by any power or authority because these rights originate with the social nature of man in the society of human beings and they belong to a person simply because he is a human being. As such human rights have similarities to moral rights.
5. Human Rights are essential for the fulfilment of purpose of life: Human life has a purpose. The phrase "human right" is applied to those conditions which are essential for the fulfilment of this purpose. No government has the power to curtail or take away the rights which are sacrosanct, inviolable and immutable.
6. Human Rights are Universal: Human rights are not a domination of any privileged class of people. Human rights are universal in nature, without consideration and without exception. The values such as divinity, dignity and equality which form the basis of these rights are inherent in human nature.
7. Human Rights are never absolute: Man is a social animal and he lives in a civic society, which always put certain limitations on the enjoyment of his rights and freedoms. Human rights as such are those limited powers or claims, which are contributory to the common good and which are recognized and guaranteed by the State, through its laws to the individuals. As such each right has certain limitations.
8. Human Rights are Dynamic: Human rights are not stationary, they are dynamic. Human rights go on expanding with socio-economic and political developments within the State. Judges have to construe laws in such ways as are in tune with the changed social values.
9. Rights as limits to state power: Human rights infer that every individual has legitimate claims upon his or her society for certain freedom and benefits. So human rights limit the state's power. These may be in the form of negative restrictions, on the powers of the State, from violating the inalienable freedoms of the individuals, or in the nature of demands on the State, i.e. positive obligations of the State.

### Principles of human rights:

- Universality
- Inviolable
- Inalienable
- Indivisible
- Interdependent
- Inter-related
- Universality
- Inviolable



- Inalienable

- Indivisible

- Interdependent

- Inter-related

- Equality

- Non-discriminatory

## Positive Rights:

Positive rights, initially proposed in 1979 by the Czech jurist Karel Vasak, may include other civil and political rights such as police protection of person and property and the right to counsel, as well as economic, social and cultural rights such as food, housing, public education, employment, national security, military, health care, social security, internet access, and a minimum standard of living.

## Negative Rights:

Negative rights are an absolute right whose slightest violation breaks this right. Right not be tortured. Duty bearer has to refrain.

Distinctions between Negative and Positive Rights:

Many writers distinguish between negative rights and positive rights.

Negative rights would correspond to duties of forbearance: If X has a negative right to V, then others have a non-interference duty in relation to X's enjoyment of V.

Positive rights would correspond to duties of assistance: If X has a positive right to V, then others (perhaps government) have a (positive) duty to provide X with V.

It can also be used to defend securing for human beings what they need in order to functional as rational beings.

## Categories of Rights:

Human rights can be grouped into following categories:

- Civil Human Rights

- Political Human Rights

- Economic Human Rights

- Social and Cultural Human Rights

- Development Oriented Human Rights

1. In the era of the seventeenth, eighteenth and nineteenth centuries, the civil and political rights, were strengthened which assured civil and political liberties. The Civil and Political Human Rights are collectively known as 'Liberty Oriented Human Rights' because they provide, protect and guarantee individual liberty to an individual against the State and its agencies. Liberty rights also referred to as Blue Rights are the First Generation of Human Rights.

2. In the twentieth century, economic, social and cultural rights and the rights of minorities as well developed. The intent of these rights to promote the economic and social security through economic and social upliftment of the weaker sections of the society. These rights are essential for dignity of personhood as well as for the full and free development of human personality in all possible directions. These rights guarantee a minimum of economic welfare of the masses and their basic material needs, recognized by the society as essential to cultured living.

The economic, social and cultural rights, including the rights of the minorities are together called the "Security Oriented Human Rights" because these rights jointly provide and guarantee the essential security in the life of an individual. In the absence of these rights, the very existence of human beings would be in danger. These are also known as the "Second Generation of Human Rights". They are also called as Red Rights or also as positive rights. These rights along with the Civil and Political Rights were declared by the Universal Declaration of Human Rights and later were recognized by the Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights in December 1966.

3. The Development Oriented Human Rights were originated in the late twentieth century. These rights empower an individual to partake in the process of overall development and include environmental rights that enable an individual to enjoy the absolutely resources of nature, such as air, water, food and natural resources, free from pollution and contamination. These are known as the Third Generation of Human Rights or Green Rights. They are also called as Solidarity Rights, because their implementation depends upon international cooperation.

Solidarity rights have immense importance in developing countries, because these countries want the creation of an international order that will guarantee to them the right to development, the right to disaster relief assistance, the right to peace and the right to good government.

Brian Orend, a Canadian philosopher, in his Human Rights: Concept and Context, develops this idea in the direction of human rights as follows: To respect human beings as an end is to respect their interests in being protected against grievous harm.

Orend lists five vital needs that, he claims, are common to all human beings. If these needs were not met at a basic level, we could not function as rational beings. They are security, subsistence, freedom, equality, and recognition. It would be interesting to compare this list with Martha Nussbaum's list of basic capabilities in her account of the things to which human rights entitle us.

## Human rights in India:

Human rights are vital for all round development of individuals. The Constitution of India makes provisions for basic rights also known as Fundamental Rights for its citizens as well as for aliens. The Supreme Court of India is the guarantor of the rights according to the Constitution. The court takes into account fundamental duties while interpreting the constitutional right. In Indian constitution, Rights are classified mainly in three broad categories: (a) Civil (b) Political (c) Economic and Social. Fundamental Rights in India recognize certain civil rights. Certain Political and Economic and Social rights are recognized by other provisions in the Constitution. The Supreme Court of India recognizes Fundamental Right as “natural right”

In Indian constitution, the Fundamental Rights are defined as the basic human rights of all citizens. These rights are defined in Part III of the Constitution regardless of race, place of birth, religion, caste, creed or sex.

Guha quoted that “The demand for a declaration of fundamental rights arose from four factors:

- Lack of civil liberty in India during the British rule.
- Deplorable social conditions, particularly affecting the untouchables and women.
- Existence of different religious, linguistic, and ethnic groups encouraged and exploited by the Britishers.
- Exploitation of the tenants by the landlords.

## Fundamental Rights includes:-

### Right to Equality:

The Right to Equality is one of the chief guarantees of the Constitution of India. Articles 14–18 of Constitution highlights the right to equality. It refers to the equality in the eyes of law irrespective of caste, race, and religion, place of birth or sex. When appraising Indian constitutional law, it can be stated that Article 14 guarantees equality before law as well as equal protection of the law to not only citizen of India but also to all the people within the territory of India. This includes the equal subjection of all persons to the authority of law, as well as equal treatment of persons in similar circumstances. The State cannot refuse this right. But no persons or group of persons can demand for any special treatment or any special privilege.

**Article 15** forbids discrimination on the basis of religion, race, caste, sex, place of birth, or any of them. This right applies only to inhabitants of India and can be enforced against the State as well as private individuals, individuals, regarding free access to places of public entertainment or places of public resort maintained partly or wholly out of State funds. The State has the right to make special treatment for women, children and for the development of backward class, scheduled caste or scheduled tribe people.

**Article 16** promises equality of opportunity in matters of public employment. It prevents the State from discriminating against anyone in respect of employment on the grounds of religion, race, caste, sex, descent, and place of birth or place of residence. However, the State may provide special reservation to the people of backward classes, scheduled castes or scheduled tribes for the upliftment of the weaker sections as well as for a person professing that particular religion in case of religious institution.

**Article 17** abolishes the practice of untouchability. It has been declared an offence punishable by law. The Protection of Civil Rights Act, 1955 has been enacted by the Parliament which states punishments for not allowing a person to enter the place of worship and from taking water from a well or tank.

**Article 18** prohibits the State from granting any titles other than military or academic distinctions, distinctions, and even the citizens of India cannot accept titles from a foreign state. Thus, Indian aristocratic titles and titles of nobility given by the British have been abolished.

## Right to Freedom:

The Right to Freedom is mentioned in Articles 19–22, with the view of guaranteeing individual rights. But some of the rights are subject to security of the State, friendly relation with foreign countries, public order, decency or morality and for which certain restrictions may be imposed by the State on individual liberty under specified condition.

**Article 19** assures the citizens of India the following six fundamental freedoms subject to certain restrictions:

- Freedom of Speech and Expression
- Freedom of Assembly
- Freedom of form Associations
- Freedom of Movement
- Freedom of Residence and Settlement
- Freedom of Profession, Occupation, Trade and Business.

**Article 20** provides protection from conviction for offences in certain respects, respects, including the rights against ex post facto laws, double danger and freedom from self-incrimination.

**Article 21** averts the encroachment /protection of life or personal liberty by the State. No person shall be deprived of his life or personal liberty except according to procedure established by law.

**Article 22** offers specific rights to arrested and detained persons, i.e., the rights to be informed of the grounds of arrest, arrest, consult a lawyer of one's own choice, be produced before a magistrate within 24 hours of the arrest, and the freedom not to be detained beyond that period without an order of the magistrate. Article 22 also provides that when a person is detained under any law of preventive detention, the State can detain such person without trial for only three months, months, and any detention for a longer period must be authorised by an Advisory Board. The person being detained, has the right to be informed about the grounds of detention, and be permitted to make a representation against it, at the earliest opportunity.

Right against Exploitation: The Right against Exploitation, contained in Articles 23–24, lays down certain provisions to prevent exploitation of the weaker sections of the society by individuals or the State. Child labour and Begar is forbidden under the Right against Exploitation.

**Article 23** prohibits human trafficking and forced labour or any act of compelling a person to work without wages where he was legally entitled not to work or to receive remuneration for it. Any contravention leads to an offence. However, it permits the State to impose compulsory service for public purposes, including conscription and community service. The Bonded Labour system (Abolition) Act, 1976, has been enacted by Parliament to give effect to this Article.

**Article 24** prohibits the employment of children below the age of 14 years in factories, mines and other hazardous jobs. Parliament has enacted the Child Labour (Prohibition (Prohibition and Regulation) Regulation) Act, 1986, providing regulations for the abolition of, and penalties for employing, child labour, as well as provisions for rehabilitation of former child labourers. The Employment of Children Act, 1938 was the first act to prevent Child Labour.

## Right to Freedom of Religion:

The Right to Freedom of Religion, enclosed in **Articles 25–28**, provides religious freedom to all citizens and ensures a secular state in India. According to the Constitution, there is no official State religion, and the State is required to treat all religions impartially and neutrally.

**Article 25** promises all persons the freedom of conscience and the right to preach, practice and propagate any religion of their choice. This right is, however, subject to public order, morality and health, and the power of the State to take measures for social welfare and reform. The right in this article shall not affect the operation of any existing law or prevent the State from making new law.

**Article 26** guarantees all religious denominations or any sections, subject to public order, morality and health; to manage their own affairs in matters of religion, religion, set up or manage institutions of their own for charitable or religious purposes, and own, acquire and manage property in accordance with law. These provisions do not derogate/deviate from the State's power to acquire property belonging to a religious denomination.

**Article 27** guarantees freedom for payment of taxes. No person can be compelled to pay taxes for the promotion or maintenance of any particular religion or religious institution.

**Article 28** forbids religious instruction in a wholly State-funded educational institution, and educational institutions receiving aid from the State cannot compel any of their members to receive religious instruction or attend religious worship without their consent or their guardian's consent in case of minor.

Cultural and Educational Rights: The Cultural and Educational rights stated in Articles 29 and 30, are measures to protect the rights of cultural, cultural, linguistic and religious minorities, by enabling them to conserve their heritage and protecting them against discrimination.

**Article 29** grants any section of citizens having a distinct language, script culture of its own, and the right to conserve and develop the same, and thus defences the rights or interest of minorities by preventing the State from imposing any external culture on them. It also prohibits discrimination against any citizen for admission into any educational institutions maintained or aided by the State, on the basis of religion, race, caste, language or any of them. Nonetheless, this is subject to reservation by the State for socially and educationally backward classes, as well as reservation of up to 50 percent of seats in any educational institution run by a minority community for citizens belonging to that community.

**Article 30** promises the right of minorities to set up and administer educational institutions of their choice in order to preserve and develop their own culture, and prohibits the State, while granting aid, from discriminating against any institution on the basis of the fact that it is administered or managed by a religious or cultural minority.

## Right to constitutional remedies:

The Right to Constitutional Remedies is covered in Article 32. It empowers inhabitants to approach the Supreme Court of India to seek enforcement, enforcement, or protection against infringement, of their Fundamental Rights. Article 32 provides a guaranteed remedy for enforcement of all the other Fundamental Rights, and the Supreme Court is designated as the protector of these rights by the Constitution. The Supreme Court has been empowered to issue writs, namely habeas corpus, mandamus, prohibition, and quo warrant, for the enforcement of the Fundamental Rights, while the High Courts have been empowered under Article 226 - which is not a Fundamental Right in itself.

India was a signatory to the Universal Declaration of Human Rights.

**Table:** Civil and Political Rights in the Universal Declaration of Human Rights and in the Indian Constitution:

| Sl No. | Name of Rights                                   | Universal Declaration | Indian Constitution |
|--------|--------------------------------------------------|-----------------------|---------------------|
| 1      | Equality before law                              | Article 7             | Article 14          |
| 2      | Prohibition of discrimination                    | Article 7             | Article 15(1)       |
| 3      | Equality of opportunity                          | Article 21 (2)        | Article 16(1)       |
| 4      | Freedom of speech and expression                 | Article 19            | Article 19(1)a      |
| 5      | Freedom of peaceful assembly                     | Article 20(1)         | Article 19(1)b      |
| 6      | Right to form associations or unions             | Article 23(4)         | Article 19(1)c      |
| 7      | Freedom of movement within the border            | Article 13(1)         | Article 19(1)d      |
| 8      | Protection in respect of conviction for offences | Article 11(2)         | Article 20(1)       |
| 9      | Protection of life and personal liberty          | Article 3             | Article 21          |
| 10     | Protection of slavery and forced labour          | Article 4             | Article 23          |
| 11     | Freedom of conscience and religion               | Article 18            | Article 25(1)       |
| 12     | Remedy for enforcement of rights                 | Article 8             | Article 32          |
| 13     | Right against arbitrary arrest and detention     | Article 9             | Article 22          |
| 14     | Right to social security                         | Article 22            | Article 29(1)       |

It is also revealed that most of the economic, social and cultural rights proclaimed in the universal Declaration of Human Rights have been incorporated in part IV of the Indian Constitution.

**Table:** Economic, Social and Cultural Rights in the Universal Declaration of Human Rights and in the Indian Constitution:

| Sl No. | Universal declaration of rights                          | Article in the universal declaration | Article in the Indian constitution |
|--------|----------------------------------------------------------|--------------------------------------|------------------------------------|
| 1      | Right to work, to just and favourable conditions of work | Article 23(1)                        | Article 41                         |
| 2      | Right to equal pay for equal work                        | Article 23(2)                        | Article 39(d)                      |
| 3      | Right to education                                       | Article 26(1)                        | Article 21(A), 41, 45, & 51(A)k    |
| 4      | Right to just and favourable remuneration                | Article 23(3)                        | Article 43                         |
| 5      | Right to rest and leisure                                | Article 24                           | Article 43                         |

|   |                                                                           |               |                            |
|---|---------------------------------------------------------------------------|---------------|----------------------------|
| 6 | Right of everyone to a standard of living adequate for him and his family | Article 25(1) | Article 39(a) & Article 47 |
| 7 | Right to a proper social order                                            | Article 28    | Article 38                 |

The Supreme Court of India recognises these fundamental rights as 'Natural Rights' or 'Human Rights'. The Judiciary in India plays a significant role in protecting human rights. In Indian constitution, human rights are implied as civil liberties and democratic rights (Asish Kumar Das, 2007).

To summarize, rights are regarded as central to civilization, being observed as established pillars of society and culture. Traditionally, Rights are moral laws specifying what a person should be free to do, and they come from God. In other way, rights are political laws specifying what a person is free to do, and they are created by governments. Third category describe that rights are moral laws specifying what a person should be free to do, and they are inherent in man's nature. The concept of human right is described as rights are moral principles or norms, which describe certain standards of human behaviour and are regularly protected as legal rights in municipal and international law. These are moral claims which are unchallengeable and inherent in all human beings by virtue of the member of the humanity alone. Today these claims are articulated and formulated and called as human rights. It can be supposed that human rights reproduce the minimum standards essential for people to live with self-respect. Human rights give people the freedom to choose how they live, how they express themselves, and what kind of government they want to support, among many other things. Human rights also assure people the means necessary to satisfy their basic needs, such as food, housing, and education.

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