
UNITS 1

RIGHTS¹

Structure

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1.0 OBJECTIVES

The objectives of the Unit are as follows:

- To understand various elements of right
- To analyse the nature of rights.
- To understand its relationship with duties

1.1 INTRODUCTION

¹ Dr. Jeremiah A.V. Dumai, Former ICPR Post-Doctoral Fellow, Department of Philosophy, University of Delhi.

This unit will examine the nature of rights. Right is what is due of a person. It is a normative social bond between a person and other entities. These other entities could be a person or persons or even an institution. The fact that I have a right entitles me to certain forms of treatment towards me by others. Sometimes it may so happen that I may have a right, but I may not enjoy it. For instance, I may have a right to cast vote, but this right may have been deprived of me by a local politician who does not want me to vote for a rival candidate. Despite being prevented from exercising my right, I continue to possess the right. If I enjoy my rights, justice prevails; if I fail to enjoy my rights, justice is denied. In contemporary discourse on social justice, enjoying of rights by an agent or otherwise is considered to be the determining factor for whether justice prevails in a given society or not. If each individual enjoys his or her rights, justice prevails; if rights are denied to an agent, injustice prevails. Thus, justice enjoins that each individual enjoys his or her rights.

Rights are of different kinds. Categorisation of rights may be framed as legal rights vis-a-vis moral rights; negative rights vis-a-vis positive rights; objective rights vis-a-vis subjective rights etc. Depending on the kind, the nature of rights differs.

Rights also engender duties, while duties do not necessarily engender rights. Given that rights elicit duties that prescribe how others must act or restrain from acting, discourse on rights is an important aspect of ethics.

We can define rights in the following manner; Rights are what are due of a person. It is about entitlements. Having a right to something or some state of affair can be framed as having an entitlement to enjoying that thing or that state of affair.

1.2 KINDS OF RIGHTS

1.2.1 Legal Right vis-a-vis Moral right

The most common kind of right today is the type laid out in the Constitution of the state. Each state provides rights to the citizens through its Constitution. For example, the Constitution of India provides Indian citizens different types of rights. For instances, the right to equality, the right against exploitation, right to freedom of religion etc. are different types of rights guaranteed to citizens by the Indian Constitution. Similar types of rights are

guaranteed to each citizen by the state. This type of right ensures liberty for the citizens by restricting other citizens and even institutions from infringing on the liberty of the citizens. Provision of such rights enshrined in the Constitution allow citizens to explore and pursue happiness and contentment for one's life. These types of rights are known as Constitutional rights or legal rights. Violation of legal right of citizen invites penalisation from the state. Citizens can also pursue the state to come in and protect their rights whenever the rights are violated or undermined by another person or institution.

Besides legal rights, there are also moral rights that an individual possesses. Legal rights and moral rights often converge. For example, the right to life (the right not to be murdered) is a moral right that every individual possesses. However, this right is also protected legally. Thus, this right is a moral as well as a legal right. However, there have been instances when moral and legal rights do not converge. In Nazi Germany under Hitler, Jewish children were banned from attending public schools. This meant that the Jewish children were not given the legal right to attend public schools. The fact that Jewish children were not given legal right to attend public school did not mean that they lose their moral right to attend public school. Even when the unjust legal system deprived the Jewish children of legal rights, the Jewish children retained their moral right to access public schooling. This instance illustrates that moral rights subsist even in the absence of legal rights, and the two are not necessarily the same.

1.2.2 Positive Rights vis-a-vis Negative Rights

Positive rights are the types that oblige others to act (towards the right bearer). These rights are also known as entitlements as these are the type of rights that someone must honour an agent with. As a case in point, Sonia has a *positive right to X* against A if and only if A is obliged to act to Sonia in some way regarding X. For example, a child under five is entitled to receive polio vaccine in India. This right obliges the government machinery to provide polio vaccine to this child. To put into perspective, Sonia – who is under five – has a positive right to polio vaccine, and this right claim is against the government machinery and the government machinery has an obligation to provide polio vaccine to Sonia. This is because the government has a law/policy that mandates children below five to receive free polio vaccine. This kind of law that confers positive rights on citizens is called a positive law. In

case, the government refuses to provide polio vaccine to Sonia, it would amount to violating the (positive) right of Sonia. Positive rights thus elicit obligation on the part of other entity to act and honour the right of the right bearer. Positive rights are thus synonymous with positive legal rights.

Negative rights are the types that oblige others not to act (towards the right bearer). I have a right to eat cabbage or carrot that grow in my garden. Other people have obligation not to prohibit me from plucking such vegetable from my garden. Similarly, I have the right to drive my car or to wear my shirt. The liberty that I possess ought not to be restrained by people around me. This negative right is in a way the liberty right that I possess to do this or that and which oblige others not to stop me from doing this or that.

Objective right vis-a-vis Subjective right: William Edmundson says that “the objective sense of ‘right’ is that kind of proposition which is expressed by the formula “it is right that p ”, where p stands for a proposition describing an actual or possible fact” (Edmundson, 2004: p. 7). One may illustrate objective right through examples such as “it is right that promises are kept” or “it is right that parents do not abuse their children”. Objective right thus evaluates the moral status of the state of affairs. Subjective right, however, expresses the relationship between an agent and a state of affair. The standard expression of subjective right goes like this: “X has a right to a thing or to do something’ – where X stands for an individual person, or perhaps a group of individuals (Edmundson, p. 8). One may illustrate subjective right through examples such as “I have a right to wear the shoes I own” or “I have a right to cast vote”. Edmundson goes further to differentiate between objective right and subjective right this way. When someone steals the pair of shoes I own, the thief has violated the objective right which says – it is right that one does not steal (or, thou shall not steal). This kind of proposition, however, does not mention about the state of affair between me (the owner of the shoes) and the shoes. The matter is taken care of when subjective right appears in the picture. Now, with subjective right coming in the picture, one can say “I have a right to wear the shoes I own (but because it is stolen I cannot wear it now).” The thief has thus violated my right, besides violating the impersonal proposition that says “it is right not to steal”.

Check your progress I

Note: a) Use the space provided for your answer.

b) Check your answers with those provided at the end of the unit.

1. Can there be legal rights that are morally wrong? Explain with illustration.

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2. What are the differences between negative rights and positive rights?

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1.3 NATURAL RIGHTS AND HUMAN RIGHTS

Natural right correlates with natural law. Natural law bestows natural right on an individual. “Locke, for example, gave as the fundamental law of nature that 'no-one ought to harm another in his Life, Health, Liberty, or Possessions” (Jones, 1994: p. 75). Natural law was thus conceived to be given by God, and this law bestows natural right on each human person. This natural right that each person possesses also obligates other individuals to honour the natural right of the right-bearer. Thus “each individual had a natural right to his life, liberty and property, and each individual had a natural duty not to harm the life, liberty or property of others.” (p. 76).

Human rights are rights that a person possesses by virtue of being human. Hence, human rights are considered to be inalienable and are therefore inherent in a person. They are universal, and thus their applicability is valid throughout the world. Human rights are thus moral rights that a person possesses.

Human rights that have been considered as moral rights came to be legislated by many nation-states in the twentieth century. With the adoption of Universal Declaration of Human Rights (UDHR) by United Nations General Assembly in 1948, human rights formally became a matter of international concerns. The fundamental rights provided by the Indian Constitution has many shared features with the rights enshrined in the articles of UDHR. Right to equal treatment before the law, right to freedom of expression, right to freedom of religion, right against exploitation etc. are some of the values of fundamental rights of the Indian Constitution that has commonality with articles of UDHR.

Check your progress II

Note: a) Use the space provided for your answer.

b) Check your answers with those provided at the end of the unit.

1. What is the difference between natural rights and human rights?

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1.4 ANIMAL RIGHTS

The question whether animal has right in itself has been a matter of debate. There is no question that animals like the tiger have been given protection by different institutions and therefore killing a tiger may carry penalty. Given that tiger or cheetah may be an endangered species, many governments have declared them to be protected. This implies that protected animal has acquired rights, and therefore harming them would be violating their rights. But what about other animals that may have not been given legal protection by the government or other institution? Do they have rights at all?

To answer this question, one needs to ask whether animals have moral status at all? If animal has moral status, it would be reasonable to conclude that animals have moral rights of certain sorts. To make the case, David DeGrazia explains –Kicking a dog for fun is generally

considered to be wrong. The reason why it is wrong could be different for different people. One may say that kicking the dog harms the pet owner's property. Here, the reason for kicking the dog being wrong is because it harms the dog's owner's property. This kind of justification does not attribute the wrongness of the action for injuring the dog; it is rather a human-centric justification. Hence, it does not say anything about the moral status of the dog. Another person may say harming the dog is a cruel act, and cruelty is a vice; after all, vice makes a person more likely to harm other people in the long run. This way of reasoning also falls back on human for the wrongness of the action. Now, if a third person comes along and says that kicking a dog is wrong in itself because dogs have their own interest, and kicking the dog harms its own interest, this way of justifying underscores that dogs have moral status in their own right and this ought to be respected. Since kicking a dog and causing it great pain just for fun is wrong, it is plausible to say that dog as an animal has moral status. Such reasoning informs that animals too have rights of certain sorts (David, 2002: Section on "Moral Status").

Check your progress III

Note: a) Use the space provided for your answer.

b) Check your answers with those provided at the end of the unit.

1. Justify animal rights.

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1.5 RIGHTS AND DUTIES

Rights engender duties. If X has a right against Y, then Y has a duty towards X. The fact that I have a right to cast vote generates a duty on the election commission to provide opportunity to me to cast vote, which is a positive duty because it obligates the election commission to do certain things; my right to cast vote also generates a duty on other people not to prevent

me from exercising my franchise, which is a negative duty because it prevents others from obstructing me from casting my vote.

On the flip side, the fact that I have a duty to act does not always obtain rights. I have a duty not to throw litter on a river. But this does not mean that the river has a right not to be littered. (I have a duty to provide food for my child, and my child has a right to ask food from her parents. However, a river cannot claim that it has a right not to be littered though humans have a duty not to litter it.) It may so happen that a river might be given legal protection by a government or an international organisation and therefore it might have acquired a right. Such a right may then impose certain kind of duty on others. However, in the absence of such a protection, rivers would have no right. Yet, our duty towards the river persists.

Check your progress IV

Note: a) Use the space provided for your answer.

b) Check your answers with those provided at the end of the unit.

1. Do duties necessarily imply rights and vice versa? Elaborate.

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1.6 CRITICISMS AND JUSTIFICATIONS

The idea of rights has been criticised from various perspective. This section will underline some of the arguments raised against rights based arguments in addressing questions of right and wrong.

One of the criticisms against the language of rights is that it promotes possessive individualism. Explaining what the critics say, Nicholas Wolterstorff writes that the critics of rights-talk believe that the language of rights has been employed “for the purpose of *me* claiming *my* possession, *you* claiming *your* possessions, *him* claiming *his* possessions” and so on (Wolterstorff, 2008. p. 3). This kind of claim appears to undermine the aspect of duty

that each person owes to the other; it places focus on the entitlement that is due of one while giving inadequate importance to the obligation that one must give to other. Rights-talk also fails to give adequate importance to our collective life, critics argue. Possessive individualism directs the whole of life's purpose to the self, and fails to appreciate the bright side of cooperative living.

The language of rights has also been criticised by people located in certain social and cultural conditions. They argue that rights-talk is primarily a western product and therefore such discourse does not suit their social condition. Likewise, there has been reluctance to adopt human rights because of its western origin.

In defence, proponents of rights-talk provide arguments to justify discourse on rights. Wolterstorff argues that rights-talk is necessary to make sense of the moral order, and without such a language our vocabulary of right and wrong is poorer. He provides argument for his case to this effect: If X fails to perform her moral duty towards Y, X is guilty. But if it is a case where Y's right is violated, then Y has been wronged; Y is a victim. Now X may go to a holy river and bathe to get herself absolved of her moral failure or go to a priest and confess of her moral failure for the forgiveness of her moral failure. But that does not address the violation of Y's right; Y continues to remain being wronged due to X's moral failure. This way of framing the moral order demonstrates that if the language of right is removed from the picture, Y will not be able to say that he is wronged or that he is now a victim; we would only be left with X's moral failure. However, without the Y's perspective of the moral dimension, our language of right and wrong would not be complete. Hence, taking away the language of rights would render our moral discourse incomplete. (Wolterstorff, pp. 8-10).

Commenting on the applicability of the notion of human rights globally, James Griffin argues to this effect. So many people from the West have got attracted to eastern religion and have embraced it. These people looked at these religions and got attracted by these religions; they were not attracted to these religions because they could find western religious and metaphysical counterparts in these religions. These people did not consider eastern origin as a barrier to their embracing them. Similarly, even if human rights are of western origin, if the idea is attractive and reasonable, those from the east should not consider western origin as, in itself, a barrier that cannot be overcome (Griffin, 2008. p. 137).

In recent times with the adoption of UDHR by different nation-states, the reluctance to adopt the concept of human rights has been on a decline. The brutality and the horror unleashed by WW II has awoken the conscience of so many people to strive for a world order that is less brutal and less violent. In the light of such a quest, more and more people have come to believe that adoption and the respect for human rights is one way to address the predicament that war and the chaos that it engenders.

Check your progress V

Note: a) Use the space provided for your answer.

b) Check your answers with those provided at the end of the unit.

1. Without the language of rights, can the moral dimension of guilty and victim be adequately expressed? Discuss.

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2. Even if the idea of human rights is of western origin, how do non-western societies appropriate them for their own society?

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1.7 LET US SUM UP

The idea of rights is an important feature of discourse on ethics and/or justice. Rights can be categorised in different ways. In contemporary social and political conditions, rights are being embedded in the basic framework of the Constitution. Thus, legal rights have emerged as the most crucial and common aspect of rights. Another feature of rights that is gaining wider acceptance is human rights. With the declaration of the Universal Declaration of

Human Rights by the United Nations, today virtually every nation-state has incorporated features of this declaration in the Constitution and policies.

Despite such acceptance of legal rights or human rights, there are certain features of rights that continue to remain debated. For example, there are voices that say that unborn foetus, dead persons, animals, monuments etc. do not have real rights. However, there are those who argue that such entities also have rights. The status of the unborn generation is another crucial question that continues to be debated in the context of climate change.

The concept of rights will continue to engage our attention even in the coming years as the world faces new challenges due to emerging technology and threats from climate change.

1.8 KEY WORDS

Positive law: This is the kind of laws that are enacted by a state or society. Positive law engenders positive right.

Natural law: It is a system of law derived from the values that are believed to be intrinsic to human nature which can be deduced and applied independent of the positive law. Natural law engenders natural right.

1.9 FURTHER READINGS AND REFERENCES

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1.10 ANSWERS TO CHECK YOUR PROGRESS

Check your progress I

1. There can be an occasion when certain legal rights granted to certain group of people may be morally wrong. For example, under the Nazi regime in Germany Jewish children were banned from public schooling. This gave the right to the public school to refuse admission to Jewish children. Though such refusal is legally okay as it was sanctioned by the government of the day, from the moral point of view such discrimination was wrong.

2. Positive rights are entitlements that a person has, and which impose duty on other people to act in such a way that the right bearer enjoys his or her right. Negative rights are the liberty rights that a person has which imposes restriction on other people from restricting the action of the right bearer. For example, I have a (negative) right to fence my garden and others are restricted from restricting me in fencing my garden.

Check your progress II

1. Natural right correlates to natural law, and natural law is generally rooted in theology. The Stoics' understanding of natural law was not rooted in theology. However, over centuries that changed as the medieval thinkers grounded the idea of natural rights in theology. Human rights, on the other hand, are derived from the personhood that each individual possesses. It may be grounded in the dignity, autonomy, capability or the worth imputed by a divine source. One may or may not be rooted in theology to accept human rights.

Check your progress III

1. It would appear to be wrong to kick a stray dog just for fun. A stray dog has no owner and it would cause no loss to anyone as such. However, it is not for the sake of harming any person that kicking a dog for fun appears to be wrong. It is wrong for the sake of the dog itself. This wrongness of kicking a dog for fun is so because dogs have a moral status. The moral status of the dog – or rather animals – elicits right for the dog, or rather animal in general.

Check your progress IV

1. There are certain types of duties that necessarily do not engender rights. The fact that I have a duty to do something for, say, Mohan, does not necessarily mean that Mohan has a right to my doing it. I have a duty not to disfigure a mountain for its own sake. It is not necessarily because the mountain has a utility for certain people or for the generation not born yet; for the sake of the mountain itself I have a duty not to unnecessarily harm it. Such a duty does not necessarily imply right.

However, rights engender some kind of duties. When an entity has a right, the right of the entity obligates others to honour the rights of the right-bearer.

Check your progress V

1. The right due to a person is the way other people around her are supposed to act towards her or refrain from acting towards her. The right to life is a person's right, and this right protects her from being harmed by other people around her; this right restrains other people from shooting at her, beating her etc. If a robber shoots with a gun at her and injures her, her right to life is violated. The robber is guilty and she is a victim. If the language of right is removed from the moral discourse, she would not be in a position to state that her right to life is violated and that she is now a victim of gun violence.

In moral discourse, there are actions that are morally right or morally wrong. Similarly, the agent who performs the action is morally right or morally wrong depending on his or her action.

2. With the proclamation of the Universal Declaration of Human Rights, human rights have now been appropriated by most nation-states. Societies value the concept of human rights as they envision and appreciate the contribution that human rights discourse could do for their respective society. The West has appropriated good and valuable things from the East, while the East has also appropriated good and valuable thing from the West. This exchange of ideas and values have made non-western countries appreciate and value the idea of human rights even if it is non-western in its origin.