
UNIT 3 RIGHTS

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3.1 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 the individuals; they exist for the individuals; they are exercised by them so as to enable them to attain the full development of their personalities.

3.2 RIGHTS: MEANING AND NATURE

The relationship between the individuals and the states 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 the individuals have rights is a phenomenon of modern age as it began in the 15th-16th 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 the 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 products of our social nature, and as such, the result of our membership of the society.

3.2.1 Rights, Claims and Powers

Rights are indeed claims, but every claim is not a right. A claim is not a right if it is not recognised; it is not a right if it is not enforced. Claims which are not recognised are empty claims; claims not enforced are powerless claims. Claims become rights when they are recognised by society; they become rights when they are maintained and enforced by the state.

Rights are not merely claims, they are social claims. They are not claims, but they are in the nature of claims. What this means is that claims which are social in nature, alone are rights. Rights as social claims presuppose the existence of the society. There are no rights (i.e. social claims) where there is no society. To talk about natural rights in the state of nature, as the advocates of the social contract theory claimed, is only a misnomer. Rights as social claims are rights because they are social; exist in the society, because society exists and because society alone grants them and society grants them to those who are its members. Rights are social claims given to the individuals as members of the society and are in the form of rewards as a response to the duties the individuals have performed. Rights are social because their claims stand to strengthen the society, and accordingly, rights are never against society. There are no anti-social rights.

Rights as social claims have to have another requisite. They are to be maintained, enforced and protected. It is here that the institution of the state has a definite role to play. It is society and not the state, that rewards individuals after their having performed their duties, with their rights. The state maintains the framework of rights in the society by providing them to one and all; the state protects individuals' rights in their interests and for them against encroachments by executive authorities, other individuals and/or groups of individuals.

Rights are social claims; they are not powers. 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 has 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, i.e. 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.

Our existence as members of society alone ensures us rights. Rights are rights when they are recognized by others as such. They are, then, the powers recognized as being socially necessary for the individuals. To quote Hobhouse: "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 fulfillment of the function that society expects from him. They are conditioned by, correlative to, his social responsibilities."

Rights arise from the individuals as members of the society. They arise from the recognition that there is an ultimate good which may be reached by the development of the powers inherent in every individual.

Rights are social claims of the individuals eventually recognised and lawfully maintained. Apart from society, there are no claims which individuals can ask for. Apart from the state, there are no individuals' rights whose protection can ever be expected. Society gives us rights and the state protects them.

3.2.2 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.

Different definitions of rights touch but a partial aspect of what rights are. Jefferson's declaration that the 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. Holland defines rights as "one man's capacity of influencing the act of others, not by his own strength but by the strength of the society." His definition describes rights, as a man's activities blessed by the society which means that Holland is describing rights only as a social claim. That there are other aspects of rights in a definition of rights has not been given due place. 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 positions of society, and 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."

A working definition of rights should involve certain aspects. Among these, the *social claim* aspect is one which means that rights originate in the society and, therefore, there are no rights prior to the 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 after 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 matter of importance to social and political theory, as Raphael rightly asserts.

3.2.3 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 the 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.

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 can not be exercised against the common good perceived by the society.

Rights, as social claims, create conditions necessary for the development of human personality. These conditions are created; they are made and they are provided. The state, distinct from society, creates and provides and makes these conditions. The state, 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 the 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 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 the 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 the 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.

3.3 THEORIES OF RIGHTS

There are numerous theories of rights which explain the nature, origin and meaning of rights. The theory of natural rights describes rights as 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 the individual and the 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; human rights, with the advocates of the United Nations. This explanation oversimplifies what our rights are and how they came to us.

3.3.1 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 contractualists, 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 contractualists, therefore, declared that the rights are inalienable, imprescriptable 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 can one imagine rights in the absence of a state: who would defend people's rights in the state of nature? The contractualists 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 false assumptions 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, and not that there are natural rights, 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.'

3.3.2 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 Bentham, Hegel and Austin can be mentioned. According to them, rights are granted by the state, regarding 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.

The theories which point out rights having originated from the state are criticised in numerous ways. The state, indeed, defends and protects our rights; it does not create them as the advocates of these theories make us believe. If we admit that the 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.

3.3.3 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, while throwing his weight to the prescriptive theory, 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 stabilise 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 the 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 the historical theory of rights argue, what (the rights including) 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.

3.3.4 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 as help promote social welfare. Among the modern advocates of the 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.'

3.3.5 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 the capitalistic laws, protects the system of rights favouring the capitalist system. To secure rights for all in a class society, the Marxists argue, is not the object of the class state; rather its aim is to protect and promote the interests of the class wielding economic power. 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, as the Marxian framework suggests, 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 and 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.

3.4 FRAMEWORK OF RIGHTS

Rights are the essential conditions of human personality. The development of human personality depends on the system of rights available to the individuals. Different state systems recognise different rights: rights available to the Americans would be different from those available to the Indians. A liberal-democratic society would give primacy to different rights than a socialist society. That is why we have a classification of rights: moral and legal; legal into civil, political, economic and social. Rights incorporated in the constitution of the land are called fundamental rights.

Rights, being basic conditions necessary for the development of human personality, have to be made available to the individuals of all the states. The UN Declaration of Human Rights serves as an inspiration and as agenda for the states to recognise and maintain, for their respective people.

3.4.1 Rights of the People

A general framework of the major rights available to the people can be, briefly, summed up as under:

Right to life is a basic right without which all other rights are meaningless. This right means that the state guarantees the protection of life, protection against any injury: even suicide is considered a crime.

Right to equality has numerous aspects: equality before law, equal protection of law, prohibition of any sort of discrimination: social, economic or political. Protective discrimination as enshrined in the Constitution of India, is an integral part of the right to equality.

Right to freedom, like right to equality, has several aspects: freedom of speech, of press, of assembly, of association, of movement, of residence, of adopting a vocation. That these freedoms are to be exercised within reasonable restrictions has been the characteristic feature of this right granted to the Indians by the constitution.

Right to freedom of religion, conscience, faith is another right available to the individuals. Religion is a matter of faith and the voice of one's conscience and as such is given to the citizens in the present day states. This right does not curtail secularism in so far as religion is accepted as something personal and religion and public life are not allowed to intermix.

Right to education is another important right without which the development of man's personality becomes impossible. An uneducated man cannot lead a meaningful life. Illiteracy, being a social curse, should be reduced/removed. The state should take up the responsibility of promoting education.

Certain economic rights include the right to work, right to social security and rest and leisure. With work and without material security, an individual is unable to enjoy the fruits of other rights. Right to property, too, is an economic right which means the right to possess and inherit property. It is regarded as an important right in liberal-democracies.

There are political rights of the individuals. It is these rights which make individuals full-fledged citizens. Among these, the right to franchise, to contest elections, to hold public office, to form political parties are some which need mention.

The Constitution of India provides a list of rights to its citizens. These are called the fundamental rights and these include: right to equality, right to freedom, right against exploitation, right to freedom of religion, cultural and educational rights and right to constitutional remedies – the last one is an important right in so far as this right ensures guarantees for all the other rights.

The liberal-democratic systems ensure the primacy of political rights over social rights, and of social rights over the economic. The order is reverse in socialist societies: economic rights, social rights and political rights. For a liberal democrat, right to freedom is more important than the right to equality; right to property is more important than the right to work; economic security is more important than economic equality. Economic rights, in such societies are reduced to the right to protection of property, to workable equality within the framework of private property system, not to be exploited by the employer, to unemployment allowance. In socialistic societies, right to work precedes the right to education; right to education precedes the right to hold independent opinion.

3.4.2 Laski's Theory of Rights

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 the 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 these 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 the right earnestness.

3.4.3 Theory of Human Rights

S. Ramphal has very rightly stated that human rights were not born of men but they were born with them. They are not as much a result of the efforts of the United Nations as emanations from basic human dignity. They are human rights because they are with human beings as human beings.

Human rights may generally be defined as those rights which are inherent to our nature and without which we cannot live as human beings. They are essential because they help us to use and develop our faculties, talents and intelligence. They base themselves on mankind's increasing demand for a life in which the inherent dignity and worth of each human being will receive not only protection, but also respect as well.

Human rights lie at the root of all organisations. They permeate the entire UN charter. In the Preamble of the UN Charter, there is a determination to affirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and the nations, large and small. There is a reference to the promotion of universal respect for Human Rights in the Charter's Articles 13, 55, 62, 68, 76.

The Commission on Human Rights, working under the UN Economic and Social Council, after spending about two and a half years under the chairmanship of Roosevelt drafted what is known as the Universal Declaration of Human Rights. When the UN General Assembly approved this Declaration on December 10, 1948, the day came to be celebrated as the Human Rights Day.

Among the 30 articles that are a part of the Declaration of Human Rights, there is a list of traditional rights from articles 3 to 15. These rights include: right to life, liberty, to security, freedom from arbitrary arrest, to a fair trial, to equal protection of law, freedom of movement, to nationality, to seek asylum etc.

There are other important rights contained in articles 16 to 21. These include: equal rights to men and women, to marry, to form the family, to property, to basic freedom such as those of thought and expression, right to peaceful assembly and association as well as a share in the government of one's own country.

There are economic rights enshrined in articles from 22 to 27. These include: right to work, protection against unemployment, just remuneration, right to form trade unions, right to have rest and leisure, to adequate standard of living, education and of participation in the cultural life of the country.

Articles 28, 29, 30 ensure social/international order, duties towards the community wherein alone the free and full development of man's personality is possible and the guarantees of these rights respectively.

The Universal Declaration of Human Rights is the first segment of the International Bill of Human Rights. It is followed by the International Covenant on Economic, Cultural and Social Rights, the International Covenant on Civil and Political Rights and the Optional Protocol – all adopted in 1966.

3.5 SUMMARY

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 the society and secured by the state. Even the state cannot take them away from the individuals. They reflect a particular stage of the development of society. As the society changes, so do the character and content of rights. 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.

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. The liberal democratic societies lay more emphasis on personal and political rather than economic and social rights. The 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.

The UN Declaration of Human Rights provides for a list of basic rights available to human beings as human beings.

3.6 EXERCISES

1. What do you mean by 'rights'? Distinguish between rights, power, claims and entitlements.
2. Briefly describe the various theories of rights.
3. Mention the rights available to modern citizens.
4. Discuss Harold Laski's theory of rights.
5. Write a detailed essay on the UN Declaration of Human Rights.