

BLOCK 5 : MAJOR DEBATES

Political concepts are very rarely politically neutral and they are always contested as the opposing groups emphasise their own definitions and try to promote their own interpretations at the expense of others. Experts highlight that political concepts are essentially contestable and variations in their use showcase differences in empirical, theoretical and normative assumptions. Hence, a political concept can be understood from various perspectives. Political concepts not only describe political life, but also the areas of political disagreement. It is important to understand some major debates in political theory in order to develop analytical thinking. These debates prompt us to consider that there is no settled way of understanding concepts and new insights and challenges help in understanding new political debates. Unit 13 in this block is titled *Law and Civil Disobedience* and highlights when resistance is justified. Unit 14 is *Rights and Universality* and covers the debate on universality of human rights. Unit 15 is *Multiculturalism and Tolerance* focusing on accommodation of diversity in plural societies.

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UNIT 13: LAW AND CIVIL DISOBEDIENCE

(WHEN IS RESISTANCE JUSTIFIED?)*

Structure

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13.0 OBJECTIVES

In this unit, you will read about concepts of law and civil disobedience. After studying this unit, you should be able to:

- Explain the meaning law
- Know various concepts like obligation and consent
- Describe relationship between law, state and civil disobedience

13.1 INTRODUCTION

Law is a realm of duty and obligation. It demands actions as well as inaction from the citizens of a state. It requires individuals to follow orders of the authorities who may ask to pay taxes, to participate in the wars, to protect environment, to refrain from assaults, to follow traffic rules and so forth. Thus, a law puts certain bindings and obligations over individuals. However,

* Shalini Gupta, Assistant Professor, Jesus and Mary College, University of Delhi

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it's not uncertain that an individual may face a dilemma. The obligatory character of law may come in conflict with other important obligations like an obligation of a father towards his child with his duty as a soldier. Law may also clash with the moral principles or religious faith of a citizen. There may be a situation where citizens are compelled to question the legitimacy of a law or regard it as repressive in character like laws formulated by the authorities during colonial rule in India. The question is, what should one do in such a case of conflict? Or why one should obey the law and give up on his/her liberty? What does an individual get in return from the state, once s/he follows all the rules and regulations? Whether following orders is the only duty of a moral individual in a society? Is there any justification for not following orders? What are the lawful means to register one's dissent in a state?

The history of political thought is replete with attempts to provide a satisfactory answer of the questions raised above, from the time of Socrates to the present. These attempts have become increasingly complicated in recent years and the troublesome nature of law with obligation has made the study imperative. This unit tries to analyze the relationship between law and obedience and also searches the grey areas where the legitimacy of a law can be questioned. It also focuses on the means of dissent and the lawfulness of an attempted disobedience.

13.2 UNDERSTANDING THE MEANING OF LAW

The term law is used in various manners which makes the task of its definition difficult. Scholars have tried to understand its meaning in the realm of "What it is and/or what it should be?" In general, law is a set of rules imposed by a government and enforced by the courts with the aim to regulate the relationship between the state and its citizens on one hand, and among citizens on the other. This statement presupposes that law is a socio-political phenomenon with certain universal characteristics based on philosophical foundations. Plato took the widest possible view of law and defined it as "an embodiment of reason", whether in the individual or a community. He identified law with nature and "goodness" and suggested the end of law was to produce men who were "completely good". His views of legal law were intertwined with morality and even led him to assert that a bad law is no law. The definitions of law can be categorized under various schools of thought like the traditionalists, the realists, the marxist perspective and the feminist perspective.

13.2.1 The Traditionalists

Classical or traditionalist school is the oldest school of legal thought which finds its complete expression in formalism. It does not distinguish between law in reality and its ideal nature. To traditionalists, source of law is God's will, nature or moral philosophy and it is exogenous to politics, society or

human beings. Law is not the product of human decisions and institutions; rather can only be inherited and interpreted to decide its application in individual's life. Sir Edward Coke and Blackstone can be regarded as the stalwarts of this school of thought. Coke in his own words explains that "law is an act which requires long study and experience, before that a man can attain to the cognizance of it". He stresses the superiority of 'common law' over monarchy which eventually became a part of the English Constitution.

13.2.2 The Realists

Legal realism is a broad category inclusive of positive realist legal theories and normative realist legal theories. Positive realists view law as made by humans who have power to serve their objectives or solidify their authority. Normative realists, on the other hand, are Kantian in their perspective as they view the creation of law as a means to obtain social objectives. The first generation of realists belonged to the Sociological Jurisprudential School (SJS) and was represented by Holmes, Cardozo, Pound and H. L. A. Hart. Scholars of this school stressed the concept that law has certain social consequences and thus, it has to be regarded as an element of, or input to, policy. Professor Hart in his book *The Concept of Law* (1961), analyses the relationship between law, coercion and morality. He views law as "a system of rules, a union of primary and secondary rules" where laws that impose duties and obligations on individuals is categorized as "primary rules" and "secondary rules" in a legal system may include rules of recognition, change and adjudication. According to him, "Law is a command and there is no necessary connection between law and morals or law as it is (*lex lata*) and law as it ought to be (*de lege ferenda*)" (Hart 1994). In a similar pattern, Modern realists like Llewellyn, Landis and Posner treat law as policies itself i.e., an allocation of resources or a division of winners and losers by use of force. Thus, unlike Traditionalists, Realists perceive law as a product of human reason to fulfill their own objectives.

13.2.3 The Marxist School

The works of sociologists such as William Chambliss, Milton Mankoff, Frank Pearce, Mannheim, and Laureen Snider is remarkable to understand the concept of law from the Marxist perspective. The Marxist scholars view power as largely held by those who own and control the means of production. The superstructure reflects the relationship between "haves" and "have nots". As part of the superstructure, the state, the law and other agencies of social control serve the interest of the ruling class. Marxists argue that laws are not an expression of value consensus as suggested by traditionalists or normative realists, but a reflection of ruling-class ideology. Thus, they argue that a general commitment to laws by the members of society as a whole is an aspect of "false consciousness", since, in practice, laws benefit only the ruling minority. Marxists argue that laws were used in a capitalist state to protect property. As Mannheim explains, "the history of criminal legislation

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in England and many other countries shows that excessive prominence was given by the law to the protection of property". In a similar pattern, Snider notes that the capitalist state is often reluctant to pass laws which regulate large capitalist concerns and which might threaten their profitability and elucidates, "the state is reluctant to pass or enforce stringent laws against pollution, worker health and safety, or monopolies. Such measures frighten off the much sought-after investment and engender the equally dreaded loss of confidence".

Neo-Marxists are also critical of capitalist societies and the existence of unequal distribution of power and wealth within such societies. Ian Taylor, Paul Walton and Jock Young accept that the key to understand crime lies in the "material basis of society". Thus, it can be understood that both Marxist and Neo-Marxists are critical of the existing capitalist structure and view the objective, formulation and implementation of law exists only for the interests of the powerful "haves" or bourgeoisie of the society.

13.2.4 The Feminists

Feminist philosophy identifies law as a very important source for reaffirming patriarchy in society. The feminist critics argue that one of the primary purposes of law as traditionally understood is to promote stability and order in society. Since in society men have always remained at prominent and powerful position, they used law as an instrument to reinforce adherence to predominant male biased norms, representing them not only as the official values of a society, but even as natural, universal and inevitable. One of the major issues being discussed at the first national gathering of the American feminists held at Seneca Falls, New York in 1848 was the patriarchal nature of laws and the manner in which it is used to suppress women in the state. The Declaration of Sentiments and Resolutions pointed to the denial of the vote, divorce law "wholly regardless of the happiness of women" and marriage law that made a wife "civilly dead," among the "injuries and usurpations on the part of man toward woman, having in direct object the establishment of an absolute tyranny over her". Thus, the criticism of law became an important part of the early feminist movement, which succeeded in eradicating the most blatant examples of legal sexism.

In 1960's and 1970's many scholars focused on gender as their central theme of research with the feminist aim of "to question everything". The concept of "feminist jurisprudence" started gaining momentum. The phrase was first used by Ann Scales in her article "Toward a feminist jurisprudence" published in 1978. The feminist jurisprudence is a reaction to existing order where law is seen as a process for interpreting and perpetuating a universal, gender neutral concept of public morality. Feminist scholars argue that it fails to acknowledge and respond to the interests, fears, values and experiences of women in society and is not gender neutral, rather male biased in character. Thus, feminist philosophers view law as an instrument

of suppression and bias in the hands of males in society. However, liberal feminists also argued that law should be used to bring about gender equality in society. They argued that law can be used to ensure equal political and civic rights for women in society.

Thus, as we can understand from the above discussion, the question of what is law and what it should be has opened a Pandora’s Box with various scholars having divergent opinions. Although, it has also to be noted that law is an inevitable part of a cognizant society which makes it imperative to understand the various types as well as characteristics of a “good” law.

Check Your Progress Exercise 1

Note: i) Use the space given below for your answer.

ii) See the end of the unit for tips for your answer.

1) Explain the Marxist perspective on law.

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13.3 THE CONCEPT OF LAW, OBLIGATION AND CONSENT

The section above although provides an understanding of the meaning of law, still one question remains pertinent: why one should obey laws? Do we obey laws due to fear and/or obligation or our consent? If we obey laws by consent, what is the basis of this consent? This section will be focusing on these realms. Political Scientists while discussing the reasons for consent assert that apart from prudential and self-motivated reasons like to avoid punishment or social humiliation, it is the moral responsibility of the individuals to obey the laws of the state. There are various theories supporting the reasons for political obligation. They can be understood as explained below.

13.3.1 Divine Command

In the history of political thought, the concept of divine law and divine rule had always maintained its prominent position. Particularly in the medieval era, kings were regarded as representatives of God on earth, thus it was the duty of citizens to obey the laws which were regarded as divine commands. It can be explained from the text of Paul’s *Epistle to the Romans*, where he states, “For there is no authority except from God, and those that exist have

been instituted by God. Therefore he who resists the authorities resists what God has appointed, and those who resist will incur judgment”.

13.3.2 The Social Contract

The philosophers of Social Contract tradition argue that state was created by man to suit his particular purposes. The tradition developed in seventeenth century when Thomas Hobbes and John Locke used the theory to prove rather different ends. Both the philosophers explain, although differently, that there were certain inconveniences being faced by man in the ‘state of nature’ due to the absence of the existence of clear laws and authority. Thus, state was created when man agreed to enter into contract where all gave their consent to give up some amount of liberty for the establishment of an authority to maintain a peaceful society. Thus, it is the moral and political obligation of the individuals to obey laws.

13.3.3 Contemporary Theories of Political Obligation

Contemporary political philosophers elucidate that political obligation is acquired through some moral transaction between the citizen and his compatriots or between the citizen and the state. Its justification is sought on the basis of consent, gratitude, fair play, membership, or natural duty. Some philosophers advance a combination of two or more of these approaches, and others believe that a pluralistic theory is necessary. Although, the attempts to justify a general obligation to law can be understood from the following arguments:

13.3.4 Fairness

The principle of fairness applies to a political society where its members regard it as a cooperative enterprise. In this cooperative arrangement everyone participating gets certain benefits because of certain restrictions applied over all. Thus, to enjoy the benefits without submitting to the agreed restrictions will not be fair and will create imbalance in society. Although, the principle can be traced back to Socrates, its classic formulation can be traced into the arguments of H.L.A. Hart who states, “when a number of persons conduct any joint enterprise according to rules and thus restrict their liberty, those who have submitted to these restrictions when required have a right to a similar submission from those who have benefited by their submission”. This principle was subsequently adopted by John Rawls as well. Thus, “duty of fair play” becomes one of the most highlighted arguments to support the concept of political obligation.

13.3.5 Gratitude

The concept of gratitude in the debate on political obligation can be traced back to the noted work of Plato in his book *Crito*, but the modern day analysis can be found in the works of Simmons and A.D.M Walker. According to this argument, all the citizens owe a debt of gratitude to the state and its

machinery for the benefits that is provided by it. This debt is owed by the citizens, regardless of the fact, whether these benefits are accepted or merely received, and the debt is repaid through obedience to law.

13.3.6 Consent

The concept of political obligation is justified and grounded in the consent of the individuals governed. Leslie Green explains, “In Hobbes, Locke, Rousseau, and Kant we find many variations on the claim that our duties to law are determined by some form of individual agreement, whether express or tacit. Promises, contracts, oaths, and vows all fall into this general area. In its core meaning, consent of these sorts is not only voluntary, it is performative: it is given with the intention of changing the rights, duties, powers, or liabilities of another, and it succeeds in part because it is known to be done with that intention”.

Thus, the theories above try to provide an answer to the question “why do we obey the laws” in their own peculiar manner, but they do exhaust the existence of other possible answers. Political philosophers like Klosko, Dudley Knowles and Jonathan Wolff have explicitly focused over a pluralistic or multiple-principle approach to the concept of political obligation. They argue that there is no single answer to the multifaceted problem of political obligation and thus, the search for “why” continues in the study of law and politics.

Check Your Progress Exercise 2

Note: i) Use the space given below for your answer.

ii) See the end of the unit for tips for your answer.

1) What are the reasons behind political obligation?

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13.4 STATE AND RESISTANCE

With the development of state and its complex functions, many tools were required to maintain the peace and stability, and rule of law is one among them. We have already discussed that why law and its obedience are necessary, but

what if law formulation and/or is biased and not transparent in nature? What if law is repressive or unjust in character? Do the individuals have the right to resist? Right to resist has occupied an ambiguous position in the study of politics. Modern philosophers like John Locke regard right to resist as a “natural right” of the individuals whereas in practice, modern western states treat actual political acts of resistance as illegitimate, if not criminal in all cases. The traces of right to resist can be first found in the political and legal thought of Chinese Civilization. This doctrine further was reflected in the writings of Thomas Aquinas in the medieval period when law was regarded as the “Will of God”. Aquinas grants citizens a surprisingly wide ambit for resistance to tyrants but the condition is that such actions, even the most virtuous citizens, must be the final end of the citizen representing God’s will. Thus, for him, the source of law as well as resistance has to be divine in nature. The concept was popularized in the modern sense by scholars like Locke, Hobbes, Samuel Rutherford, Algernon Sidney, Thomas Jefferson and Paine, Thoreau and others. Resistance in the study of politics is an action to register one’s dissent against the government. Many times resistance, law breaking and civil disobedience are used as synonym. Since the focus of the study is civil disobedience, it has to be understood that these are different terms with different meanings.

13.5 UNDERSTANDING CIVIL DISOBEDIENCE

Civil disobedience is the non-violent way of registering dissent by breaking a law on moral grounds. The concept of civil disobedience is particularly important in a democratic society as it not only touches the moral limits of a majority rule, but also forces us to reflect on the justifications *for* majority rule. Political theorists in the pre-modern and early modern periods were more concerned with the right to rebel, but the fundamental question raised by civil disobedience in a modern society is how is it possible to have a general respect for the rule of law and yet gain legitimacy to break a specific law?

The term ‘civil disobedience’ was coined by Henry David Thoreau in his essay *The Relation of the Individual to the State* (1849) to describe his refusal to pay the state poll tax implemented by the American government to prosecute a war in Mexico and to enforce the Fugitive Slave Law. However, it is not difficult to trace it back to Socrates, religious figures like Christ or the in the philosophy of the religion of Buddhism and Jainism. In the contemporary world, it was popularised by Tolstoy, Martin Luther King and Mahatma Gandhi. The justification of civil disobedience at length has also got placed in the writings of John Rawls. Civil disobedience for Thoreau is not simply an act of law breaking; rather “conscience and duty” is the central aspect of the argument. His famous essay opens with the maxim, “That government is best which governs least”. He argues that the state came into existence to ensure individual freedom and using the example

of “The Mexican War”, he appeals, the moment it starts hindering the purpose for which it was instituted, it is the moral ‘duty’ of the individuals to resist the “unjust laws” in order to obey a “higher” law. In a similar way, Tolstoy also focuses on the ‘conscience’ while discussing civil disobedience which he variously calls “law of love” or the “law of non-resistance”. Unlike Thoreau, Tolstoy’s opposition to the state is not simply a matter of opposition to policies or elitism in politics. But, more consistently he rejects the state itself as an institutionalized mechanism of violence. Thus, Tolstoy was an anarchist who saw state as an evil institution, but he appeals “We ought to oppose evil by every righteous means in our power, but not by evil.” Tolstoy resists to evil state with the mechanism of civil disobedience or “law of love” which according to him, “is inherently capable of bringing desirable changes into the lives of its followers without the need of any external training or orientation”.

The concept of non-violent civil disobedience secures central position in the Gandhian philosophy. Gandhi was greatly influenced by his predecessors like Tolstoy and Thoreau. For him it is an active, strong and extreme form of “Satyagraha”. Mahatma Gandhi in his journal *Harijan* conceived it as a “substitute for violence or armed rebellion. It is a non-coercive method which any law-abiding citizen can adopt, provided he is saturated with the spirit of non-violence and is ready for utmost sacrifices”. Thus, for Mahatma Gandhi civil disobedience, which should be used as a last resort, is a complete, effective and bloodless substitute of armed revolt.

John Rawl’s discussion on civil disobedience in his book *A theory of Justice* (1972) goes to the heart of the moral basis of democracy. For Rawls, civil disobedience is an appeal to the “sense of justice” of majority in a democratic society. He explains that civil disobedience has a role only in a society where there is partial, rather than strict, compliance with principles of justice. He states, in a fully just society there would be no need for civil disobedience and in an unjust society there is no sense of justice which one can appeal to. For him, civil disobedience involves a judgment not between just and unjust laws, but between “different types of unjust laws” as there are various other legal means in a democratic society to register one’s dissent. He suggests civil disobedience is justified when a particular group, recurrently rather than occasionally, bears the burden of injustice. The coloured community in the southern states of the United States up until the civil rights legislation of the 1960’s is an obvious example.

13.5.1 Features of Civil Disobedience

Civil disobedience may be defined as “selective and public performance of actions (commissions or omissions) truly believed to be illegal for reasons which agent takes to be morally compelling”. There are certain peculiar characteristics of civil disobedience which can be understood as following:

(a) **Non-Violence:** Civil disobedience is often defined as non-violent in character. Other definitions allow an act to be included under the banner of civil disobedience if it involves violence which was not instigated by the

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protestors, but by opponents or the police, or was solely against property. However, in its classical sense, it has to be completely non-violent. Rawls states that violent acts are incompatible with civil disobedience as a mode of address. 'Indeed', says Rawls, 'any interference with the civil liberties of others tends to obscure the civilly disobedient quality of one's act'.

(b) **Conscientiousness:** One of the most highlighted feature of civil disobedience is that is based on the foundation of sincerity and moral conviction of its practitioner. As in Mahatma Gandhi's satyagrah, "moral purity" and "insistence on truth" is central to the concept. For Rawls, civil disobedience is needed only when the policy makers have not respected the "principles of justice". Thus, conscience, morality and justice are one of the most important aspects of civil disobedience.

(c) **Communication:** Practitioners of civil disobedience, generally have both forward-looking and backward-looking aims. They seek not only to convey their disavowal and condemnation of a certain law or policy, but also want to draw public attention and thereby to instigate a change in the law or policy. For example the "Pride Parade" by LGBTQ community is a peaceful way to present their dissent with the existing system. The mode of communication may vary in several ways; like it can be individual or collective, it may be direct or indirect and at the same time, it can be cooperative or uncooperative with the authorities. Generally, civil disobedience is collective but there are examples of individual acts of civil disobedience as well. The act of Mordecai Vanunu revealing Israel's secret possession of nuclear weapons or Irom Sharmila's fight against human rights violation in Manipur, India can be regarded as a notable example. Civil disobedience may be direct where the law broken is the law protested (For ex: Gandhi's Salt March and breaking the Salt Law) and it can be indirect where one law is broken in protest of another (For ex: nonpayment of taxes by Thoreau to register his dissent against Mexican war).

(d) **Publicity:** This feature is a mandatory condition according to Rawls for an act to be considered that of civil disobedience. He asserts that civil disobedience is a communicative act where the majority is being given "fair notice" of an unjust law. It also includes not only providing information through a covert action, rather it is an "appeal" or address to the majority. Thus, the civil disobedient is willing to accept the penalties for law breaking. The idea is to make the audience uncomfortable with the thought that whether they really want to punish a moral individual for resisting a draconian law. Apart from the above discussed features, Rawls also suggest that civil disobedience must take place within the "fidelity to law". The aim of civil disobedient is not to threaten the stability of the political system; rather it seeks to strengthen it by removing injustice, such that the system will be able to instill improvements. In this sense, the civil disobedient seem to demonstrate their faithfulness to the "higher" law.

13.5.2 When is Resistance Justified?

The sections discussed above clearly provide the relationship between law and civil disobedience. It has also tried to analyse various nuances related to the concepts of law and civil disobedience. Still the question remains looming whether civil disobedience is justified? The concept of civil disobedience still remains debatable as there are scholars who question the concept on the basis of its relevance (particularly in a democratic society), nature and high ideals. This section will try to understand these issues.

Civil disobedience is a controversial issue as it involves questioning the tenets of law, which is illegal in character. Critics argue the act of advocating rebellion and the justification of disobedience is in conflict with the concept of 'Rule of Law'. Critics base it on the twin arguments of Socrates to obey the laws, even unjust laws. Firstly, he argued that all the individual who are receiving the benefits from the state have a moral duty to reciprocate by following orders. An objection to this argument is given by Simmons who argues that public benefits are funded by taxes of the citizens and members of government are not doing any sacrifice, rather it's a job for which they are paid handsomely.

Secondly, he argued that if one does not accept the laws, the individual always has the option to emigrate. The continued "residence" in the state will be treated as tacit consent to the law of the land. This argument has been objected to as mere residence in the state cannot be regarded as agreement or consent to the unjust laws. At the same time the residents do not have the alternative to continued residence because emigration is very costly and as human beings, an individual is emotionally attached with his place of residence. So, the supposed consent to the law is not voluntary; rather, it is binding on the citizens.

Further, Dicey's concept of rule of law is based on three principles i.e. supremacy of law, same law and courts for all citizens and general principles of the Constitution are developed by judicial decisions. But civil disobedience is justified when any one or all these parameters are not met by the government. David Hume asserts that the obligation to follow the law is rooted in the value of government under law. Democratic laws may aim to provide rights and power to the individuals but these may prove, in reality, to be empty. The police may be hostile and the courts can be biased. Moreover, the majority may exhibit even in honest elections, a rigid disconcert, intolerable and biased attitudes towards the minority. In such a situation, nonviolent civil disobedience will not only provide voice to the oppressed but will also strengthen the values of true democracy. Another point of criticism is raised by Consequentialists who argue that disobeying laws may result in bad consequences like political instability or anarchy. An objection to this argument is civil disobedience is selective and conscientious in nature which will not have dire consequences. Indeed,

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in some circumstances disobeying the law has better consequences than obeying it. The Civil rights movement in America by Martin Luther King can be regarded as the most suitable example in this premise. The justification of civil disobedience is also questioned on the basis of moral duty of an individual to follow the laws. This argument has been opposed by underlying the difference between the legal aspect of law and morality of a law. There may be a situation when the law formulated is in direct conflict with the morality of the citizens. Ronald Dworkin explains if a law wrongly invades moral rights of an individual (Nazi laws against helping Jews or nineteenth-century American laws against helping fugitive slaves), they have a right to break that law. In such a situation, civil disobedience becomes an instrument to uphold the moral values in society.

Another harm usually identified with civil disobedience is that it may encourage general disrespect for law and work as a divisive force in the country. However, it has to be understood that in a situation when there is hopelessness and when the government refuses to listen to conventional forms of communication, civil disobedience without causing much harm, as it is non-violent in nature can be the best viable option for the citizens as well as the state. For example, the Chipko movement that began in 1973 for the protection of trees in India. Thus, civil disobedience rather than dividing the society may contribute towards a better dialogue, not only among citizens, but also between citizens and the state.

Civil disobedience and dissent also contribute to the democratic exchange of ideas and strengthen the concept of liberty. J.S. Mill in his essay, *On Liberty* believes in absolute liberty in case of freedom of thought and expression and argues “if all mankind, minus one were of one opinion, and only one person were of contrary opinion, mankind would no more be justified in silencing that one person, than he, if he had the power, would be justified in silencing mankind”. Thus, it can be argued that civil disobedience is the practical manifestation of absolute liberty in case of freedom of speech and expression. Rawls while providing justification to civil disobedience explains “Justified civil disobedience can serve to inhibit departures from justice and to correct departures when they occur; thus it can act as a stabilising force in society”. Civil disobedience movement by Nelson Mandela against the apartheid government in South Africa can be regarded as the most suitable example in this regard. This view of dissent and justified civil disobedience aligns with the perception that our responsibilities as citizens is not only to follow laws blindly, rather in certain conditions, our obligations are to resist unjust and unfair schemes which may include a duty to disobey the law. Thus, it can be argued that those who breach the law in justified civil disobedience demonstrate responsible citizenship or civic virtue rather than participating or invoking divisive politics.

John Rawls provides a Kantian justification to civil disobedience. He argues that the “constitutional validity of a law is insufficient to require

obedience and the injustice of a law is insufficient to justify disobedience". He defines civil disobedience as political in the sense that it is guided by public, political principles of justice acceptable to all the citizens and is not appealing to personal morality or religious doctrines that other citizens can reasonably reject. Rawls further suggests two main conditions for justifying the acts of civil disobedience. First, civil disobedience should be selective to instances of 'substantial and clear injustice' namely, violations of equal basic rights or equality of opportunity. The second condition justifying the civil disobedience acts is that all the legal means have already been exhausted, which means it should be treated as extreme and last resort. However, there are scholars who criticize Rawls for restricting the scope of civil disobedience to violations of the principles of equal basic liberties and equal opportunities. They argue that actions of civil disobedience are completely justified against other great evils like cruelty to animals, environmental destruction, military aggression, poverty etc.

Peter Singer gives a utilitarian justification of civil disobedience. He suggests that illegal acts are justified if they are the only and most effective way to prevent greater harm, as for a utilitarian, end justifies the means. For example, illegal act which is aimed towards environmental protection or is against animal cruelty. Thus, it can be suggested that civil disobedience is not against the democratic values of the state rather it's a means to bring about social change and is a voice of the minorities and downtrodden. Here, an observation made by Noam Chomsky in respect of civil disobedience and the Vietnam war is noteworthy, "what justifies an act of civil disobedience is an intolerable evil...A line must be drawn some-where. Beyond that line lies civil disobedience....The limits of civil disobedience must be determined by the extent of the evil one confronts and by considerations of tactical efficiency and moral principle".

Check Your Progress Exercise 3

Note: i) Use the space given below for your answer.

ii) See the end of the unit for tips for your answer.

1) Describe features of civil disobedience.

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13.6 LET US SUM UP

On a concluding note it can be said that civil disobedience and law are not contradictory to each other; rather are complimentary as both the concepts aim to establish a coherent, just and peaceful society. History has provided enough evidence that civil disobedience is efficient not only in providing political freedom, but also against exploitation, oppression, social injustice and social evils. The theory of civil disobedience helps in instilling the values of “rule of law” as it limits majoritarianism and becomes the voice of subaltern in a democracy. Thus, it can be said that civil disobedience helps human beings in retaining a degree of moral autonomy vis-à-vis the state.

13.7 REFERENCES

- Breidenbach and William Wccormick. (2015). Aquinas on Tyranny, Resistance, and the End of Politics, *Perspectives on Political Science*, 44:10–17.
- Cairns, Huntington. (1942). Plato’s theory of law, *Harvard Law Review*, 56 (3): 359-387.
- Commager, H. S.(1963). *Documents in American History*, New York: Appleton Century Crofts.
- Conahagan, Joane. (2000). Reassessing the Feminist Theoretical Project in law, *Journal of Law and Society*, 27 (3): 351-85.
- Dagger, Richard and Lefkowitz, David. (2014). Political Obligation, *The Stanford Encyclopedia of Philosophy*, [Online: web] Accessed 28th July, 2018 URL: = <<https://plato.stanford.edu/archives/fall2014/entries/political-obligation/>>.
- Gewirth (1970). Civil Disobedience, Law, And Morality: An Examination Of Justice Fortas ‘doctrine”, *The Monist*, 54 (4): 536-555.
- Green, Leslie. (2004). Law and Obligations”, in Jules L. Coleman, Kenneth Einar Himma, and Scott J. Shapiro (eds.) *Jurisprudence and Philosophy of Law*, New York: Oxford University Press.
- Hart, H. L. A. (1955). Are There Any Natural Rights?, *Philosophical Review*, 64: 175–91.
- Hart, H.L.A. (1994). *The Concept of Law*, Oxford: Clarendon Press.
- Hoffman and Graham. (2007). *Introduction to Political Theory*, New Delhi: Pearson Education.
- Klosko, G. (1988). Political Obligation and Gratitude, *Philosophy & Public Affairs* 18: 352-358.
- Leibman (1965). Civil Disobedience: A Threat to Our Law Society,

American Bar Association Journal, 51 (7): 645-647.

Law and Civil Disobedience

McNollgast (2005). *The Political Economy Of Law: Decision-Making By Judicial, Legislative, Executive And Administrative Agencies*, URL: https://siepr.stanford.edu/sites/default/files/publications/04-35_0.pdf

Milligan, Tony. (2013). *Civil Disobedience Protest, Justification, and the Law*, New York: Bloomsburry Publishing.

Minda, Garry. (1995). *Postmodern Legal Theories*, New York: NYC Press.

Smith, Paul. (2008). *Moral and Political Philosophy Key Issues, Concepts and Theories*, New York: Palgrave Macmillan.

Walker, A.D. (1987/88). Political Obligation and the Argument from Gratitude, *Philosophy & Public Affairs* 17: 191-211.

Walker, A.D. (1989). Obligations of Gratitude and Political Obligation, *Philosophy & Public Affairs* 18: 359-364.

13.8 ANSWERS TO CHECK YOUR PROGRESS EXERCISES

Check Your Progress Exercise 1

- 1) Your answer should highlight following points
 - Law is reflection of ruling-class ideology
 - Laws are used in a capitalist state to protect property

Check Your Progress Exercise 2

- 1) Your answer should highlight divine command, social contract, fairness, gratitude and consent

Check Your Progress Exercise 3

- 1) Your answer should highlight non-violence, conscientiousness, communication and publicity

UNIT 14: RIGHTS AND UNIVERSALITY (ARE HUMAN RIGHTS UNIVERSAL?)*

Structure

- 14.0 Objectives
- 14.1 Introduction
- 14.2 Concept of Human Rights
 - 14.2.1 Justifications for Human Rights
- 14.3 Historical Development
- 14.4 Nature of Human Rights
- 14.5 Types of Human Rights
 - 14.5.1 Civil and Political Rights
 - 14.5.2 Economic, Social and Cultural Rights
 - 14.5.3 Solidarity or Group Rights
- 14.6 Human Rights at International Level
- 14.7 Debate over Universality of Human Rights
- 14.8 Limitations of Human Rights
- 14.9 Let Us Sum Up
- 14.10 References
- 14.11 Answers to Check Your Progress Exercises

14.0 OBJECTIVES

This unit will introduce and explain the concept of human rights. After studying this unit, you should be able to:

- Explain the meaning of human rights
- Know various types and characteristics of human rights
- Analyze some of their limitations and shortcomings

14.1 INTRODUCTION

The idea of human rights is not new and its roots can be found even in the ancient times. The defence of human rights is visible from the Babylonian laws to Upanishads. They are norms which intend to protect all people from severe political, social, and legal abuses without any type of discrimination.

* Dr Raj Kumar Sharma, Consultant, Faculty of Political Science, IGNOU
Geetanjali Atri, Research Scholar, School of Social Sciences, JNU

Article 1 of the United Nations Declaration of Human Rights (UDHR) says all human beings are born free and equal in dignity and rights. Existence of human rights conveys that there are some universally applicable standards of justice and in this sense; they may compete with state sovereignty. Another important issue is whether human rights are truly universal, applicable to all individuals across diverse societies. In the succeeding paragraphs, all such important issues related to the concept of human rights are discussed in detail.

14.2 CONCEPT OF HUMAN RIGHTS

Human rights are the rights that belong to all individuals by virtue of their humanity which could potentially lead to establishment of a just society. They are capabilities and values which protect the interests of human beings around the world irrespective of distinctions like religion, race, sex, nationality, language etc. They are regarded as a secular and modern version of natural rights. *Susan Moller Okin* says human rights are claims to something of crucial importance to human life. *Scot Davidson* connects human rights with protection of human beings from government in certain areas of their lives and creation of those social conditions by the state in which individuals can attain their fullest potential. Under human rights, the individuals are the rights holders while government and society are the duty bearers. Here, the government and society are duty bound not to infringe upon the rights of individuals. In fact, government should ensure that human rights can be enjoyed by various individuals through domestic legislation. Human rights place human beings at the centre of domestic and international governance. Here, it is important to mention the relationship between human rights and human security. According to the UN Commission on Human Security, the concept of human security seeks to protect the vital core of all human lives in ways that enhance human freedoms and human fulfilment. The relationship between human security and human rights is complementary and interdependent. They mutually reinforce each other as human security identifies the rights at stake in a particular situation while human rights help in promotion of human security. The objectives of both, human rights and human security overlap. The threats like war and conflict which lead to human insecurity also hinder enjoyment of human rights. Hence, protecting and promotion of human rights is also the basis for promotion of human security.

14.2.1 Justifications for Human Rights

Human rights exist at both, international and national levels. Various treaties at international level have turned human rights into international law. At the national level, human rights exist through decisions of judiciary, legislations and customs. For ex, the US constitution prohibits slavery and servitude. One justification for human rights is that they are inherent to human beings as they are God-given. The US Declaration of Independence says that people have

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been endowed by their creator with natural rights to life, liberty and pursuit of happiness. Others believe that human rights are part of human morality based on reason and value. For ex, there is consensus that intentional murder of an innocent person should not be committed by anyone. The interest theory approach argues that the main function of human rights is to protect and promote necessary human interests. Its objective is to find biological and social prerequisites which allow human beings to lead a minimally good life. The universality of human rights is based on indispensable and some basic attributes for human welfare across all cultures, for ex, need for food. According to philosopher *John Finnis*, human rights are justifiable for their instrumental value to secure essential conditions for human well-being. On the other hand, the will theory approach argues that human rights are valid because of a single human attribute – the capacity for freedom. Its proponents argue that what is distinctive about human beings is the capacity for freedom and this should form the core of any set of rights.

A number of other justifications exist for human rights – dignity, fairness and equality etc. Yet another view highlights the political role of human rights. In his book, *The Law of Peoples (1999)*, *John Rawls* has discussed human rights from a political perspective. He argued that human rights are a special class of urgent rights which are universal and plural, like right to security, formal equality before law, personal property etc. Rawls has a limited concept of human rights and many fundamental freedoms were left out by him because he wanted a list that could be reasonable for all the countries and not just the liberal democracies. His idea of human rights sets limits on international toleration and any society that does not guarantee the list of rights given by Rawls crosses the limit of toleration. He has argued for economic sanctions and even military intervention against such a government. According to *Charles Beitz*, human rights are basic requirement of global justice and they are conditions that all societies should strive to achieve. Outside corrective interference is justified if a government did not fulfil human rights despite having means to do so. If a country lacks local resources to achieve human rights, other countries should assist it.

Check Your Progress Exercise 1

Note: i) Use the space given below for your answer.

ii) See the end of the unit for tips for your answer.

1) What do you understand by human rights?

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14.3 HISTORICAL DEVELOPMENT

The expression, human rights may be relatively new as it became popular after the Second World War. However, the foundations of modern discourse on human rights can be seen in the natural law tradition from antiquity. The origin of human rights can be traced to ancient Rome and Greece, where it was present in the ideas of Stoicism. Stoics believed that the human conduct should be in harmony with the law of nature and should be judged on this basis. Stoics believed that nature had given all individuals the capacity to reason and they have an obligation to treat one another with respect. They saw the slave and the slave owner as equals demonstrating equality of all human beings. According to *Ulpian*, a Roman jurist, all men were born free and equal as per the law of nature. *Cicero* and *Seneca* argued for universal community of world citizens. *Plato* had made one of the earliest attempts to have universal ethical standards by making a distinction between just and unjust, good and evil and truth and untruth. *Aristotle* also contributed to the natural law tradition as he examined the value of justice and virtue in the political community. In the medieval and the Greco-Roman times, natural law was mainly concerned with duties of man instead of his rights. *Aristotle* and *St. Thomas Aquinas* recognized the legitimacy of serfdom and slavery. By doing so, the most important idea behind human rights was excluded – liberty or freedom and equality. It was only after the Middle Ages that natural law was associated with natural rights. The idea of human rights as natural rights became a reality due to some social changes in Europe, beginning with decline of European feudalism from 13th century. It continued through Renaissance to the Treaty of Westphalia in 1648. In this period, there was resistance to religious intolerance, economic and political bondage while there was commitment to individual expression which shifted focus of natural law from duties to rights. This change was visible as Magna Carta (1215), the Petition of Right (1628) and the English Bill of Rights (1689) came into existence. Supported by political philosophers like *Hugo Grotius*, *Thomas Hobbes* and *John Locke*, natural rights were natural in the sense that they were God-given and therefore, were part of the human nature. They were not simply moral claims but were the basic conditions to lead a truly human existence. Grotius argued that natural law is independent of God and it cannot be changes or abrogated by the will of an omnipotent being. Natural law was the basis of his ideas on international law.

In the late 17th century, the era of enlightenment began in Europe, which emphasised rationality. The idea of rights of man was developed by enlightenment thinkers which were in sync with human rights and these rights constituted an autonomous sphere which belonged to the citizens.

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Feminists later expanded this idea to include rights of women as well. The enlightenment theorists highlighted that the power of kings should be limited and based on the consent of those who are governed. They also argued that the king should respect the rights of their subjects. *Thomas Hobbes* has mentioned pre-social man who lives in a state of nature with others. In the state of nature, one can do anything; even harm others as there are no laws to govern and the notion of justice is also absent. All men agree for a social contract to safeguard their self-preservation. They surrender their unlimited freedom to an absolute sovereign to fulfil their basic right to security. *John Locke*, in his work, *Two Treatises of Government* (1689), refuted the idea that a king has a divine right to rule. He argued that human beings have natural rights which should not be violated by the government. He basically defended three natural rights, right to life, liberty and property. He argued for a weak government that was subordinate to the law.

These ideas had a big impact on the Western world in the 17th and 18th century. Along with the Glorious Revolution in England, these ideas also inspired the US and French revolutions. The US Declaration of Independence (1776) declared life, liberty and the pursuit of happiness as inalienable rights. Similar sentiment was expressed by the French Declaration of the Rights of Man and of the Citizen (1789). These ideas became global in the 19th and the 20th century as attempts were made to have internationally acceptable standards, generally based on humanitarianism. One of the main ideas behind internationalization of human rights was that there will be no wars if all members of all societies were equally free, an idea expressed by enlightenment and German philosopher Immanuel Kant, who argued that free societies do not fight against each other. In this regard, a number of conventions were held to outlaw slavery at the international level while the Hague Convention (1907) and Geneva Convention (1926) laid down the rules to regulate the conduct of war. After the Second World War, the UN adopted the Universal Declaration of Human Rights (UDHR) in 1948. It was later supplemented by the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economics, Social and Cultural Rights (ICESCR) in 1966. They have acquired the status of customary international law. The UDHR in 1948 came exactly after 300 years of the Treaty of Westphalia. In these 300 years, state sovereignty was unchallenged in international politics, but human rights started an era where there have been tensions between state sovereignty and human rights.

Check Your Progress Exercise 2

Note: i) Use the space given below for your answer.

ii) See the end of the unit for tips for your answer.

1) Discuss John Locke's views on natural rights.

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14.4 NATURE OF HUMAN RIGHTS

Following are the characteristics of human rights.

First, human rights are fundamental which means nobody can remove entitlement of human beings to these rights. Human rights are not non-essential claims or goods, but they are fundamental in nature.

Second, these rights are indivisible as civic and political rights and economic, social and cultural rights are interrelated and carry equal importance without any hierarchy.

Third, human rights are universal in nature as they belong to human beings everywhere, irrespective of religion, language, race and other differences. Human rights are equally possessed by all human beings including the unborn in some circumstances as they are necessary to achieve social justice.

Fourth, there may be certain limitations on some of the rights of an individual because others too have similar rights. This connects rights to duties and they are not absolute.

Fifth, human rights are inalienable; the individual cannot lose these rights temporarily or permanently by bad conduct or by voluntarily giving them up.

Sixth, they are interdependent and interrelated. The fulfilment of one right often depends wholly or in part, upon the fulfilment of other rights. For ex, right to health could depend on right to education and information in some circumstances.

Lastly, the idea of human rights is not static but dynamic which change according to political, social and economic changes. One example is development of human rights for the people with special needs. Another example is debates around digital rights in the age of internet, which allow individuals to access internet and have rights like data protection and privacy.

14.5 TYPES OF HUMAN RIGHTS

There are three main types of human rights as given below.

14.5.1 Civil and Political Rights

These rights are also called first generation rights and are the earliest form of natural or human rights which were advocated by the English, the

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American and the French revolutions. These rights are based on the political philosophy of liberal individualism. That is why; these rights are more in negative terms (freedom from) than positive (right to). They can be enjoyed only if restrictions are placed on other individuals. However, all civil and political rights are not negative. For ex, the right to non-discrimination requires legislation and enforcement mechanisms from the state. Civil and political rights are mentioned in Articles 2-21 of the Universal Declaration of Human Rights including right to life, liberty and security of the person, freedom from slavery, torture, arbitrary arrest or detention etc.

14.5.2 Economic, Social and Cultural Rights

These rights are also called second generation rights and emphasize the socialist tradition, highlighting the social and class inequalities that arise out of the capitalist economy. They are mostly positive rights (right to), not negative rights (freedom from). These rights safeguard the exploitation of the working class and the colonial peoples from exploitation. They are highlighted in Articles 22-27 of the UDHR and cover right to social security, right to protection against unemployment and right to work. However, not all economic, social and cultural rights are positive. For ex, the right to free choice of employment does not require any affirmative action from the government. These rights are not free from criticism and many experts believe that maintenance of these rights requires material resources and political capabilities that are not possessed by many countries. Hence, they remain aspirations instead of entitlements. Also, too much of state intervention may hamper the efficiency of capitalist economies.

14.5.3 Solidarity or Group Rights

Another set of rights has emerged which is called solidarity or group or third generation rights. In contrast to separate individuals, these rights are held by social groups and have been shaped by the Global South perspective. They include rights like the right to political, economic, social and cultural self-determination, the right to economic and social development and the right to clean and healthy environment etc. Climate change problems pose a number of risks to human rights like right to life, health, food and housing. The consequences of climate change are already visible in a number of countries around the world. A human rights approach tries to look at the people whose lives are most affected by climate disasters. It also argues that human rights should be integrated in the policies that try to tackle climate change.

Critics of third generation rights argue that human rights focus on individuals and they will be weakened if individuals are seen in terms of group membership. Some experts believe that a fourth generation of human rights also exists that consists of women and intergenerational rights (rights of the future generations). Others believe these rights should be connected to information technology.

Note: i) Use the space given below for your answer.

ii) See the end of the unit for tips for your answer.

1) What are first generation rights?

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14.6 HUMAN RIGHTS AT INTERNATIONAL LEVEL

After establishment of the United Nations, efforts have been made to establish an international regime for promotion and safeguarding human rights through institutions, norms and treaties. Civil society actors are also involved in this process at domestic and international levels. The UN Universal Declaration of Human Rights is at the centre of the international regime on human rights. In 1945, the UN charter had urged universal respect and observation of human rights and fundamental freedoms of all individuals. However, it did not mention the specific human rights that were to be respected by various state governments. This shortcoming was overcome by the UDHR in 1948. The UDHR is not a legally binding treaty, but it is seen as a part of customary international law and it acts as a deterrent against violation of human rights by states. Two covenants were adopted in 1966; the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economics, Social and Cultural Rights (ICESCR). This made the UDHR a legally binding human rights law. The UDHR, along with these two covenants are generally called International Bill of Human Rights. The ICCPR recognises the inherent dignity of all individuals and attempts to promote conditions within states so that their citizens can enjoy civil and political rights. The ICESCR shows commitment to promote social progress and better standards of life. Some rights that are not part of UDHR find a mention in International Covenant on Economics, Social and Cultural Rights, for ex, right of all peoples to self-determination and the right of ethnic, religious and linguistic minorities to enjoy their culture, practice their religion and use their language. In cases where there is an overlap between the UDHR and ICESCR, the latter helps to interpret the former. There are a number of other core international human rights instruments that include the International Convention on the Elimination of All Forms of Racial Discrimination (1965), Convention on the Elimination

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of All Forms of Discrimination against Women (1979), Optional Protocol to the Convention against Torture (2002) and the Convention on the Rights of Persons with Disabilities (2006).

Putting more emphasis on implementation of human rights, the UN established the Office of the UN High Commissioner for Human Rights in 1993. Its mandate is to protect and promote human rights guaranteed by international law. The high commissioner has to protect and promote all civil, political, economic, social and cultural rights, to provide advisory services and financial and technical assistance in the area of human rights to the states that request for it and to promote and coordinate activities related to human rights in the UN system. The UN also established Human Rights Council in 2006 which replaced the UN Human Rights Commission in 2006 to address violations of human rights. It has no authority apart from making recommendations to the General Assembly which in turn, can only advise the UN Security Council. A number of non-governmental organisations also play a part for promotion and protection of human rights, for ex, Amnesty International, Human Rights Watch and Human Rights Action Centre. They promote human rights by direct assistance, collecting accurate information, campaigning and lobbying and by education and awareness. Action has been also taken at regional levels to promote human rights in Europe, Africa, West Asia, the Americas and South-east Asia. The UN members in 2005 recognised the principle of the responsibility to protect (R2P) under which states have a responsibility to protect their populations against human rights violations like genocide, war crimes and ethnic cleansing. If they fail to ensure this, the states forfeit their sovereignty and the international community is responsible to protect the victims. However, this principle has become controversial for its inconsistent use and allegations of ulterior motives of the countries that intervene in a human rights crisis.

Check Your Progress Exercise 4

Note: i) Use the space given below for your answer.

ii) See the end of the unit for tips for your answer.

1) What is the principle of responsibility to protect?

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14.7 DEBATE OVER UNIVERSALITY OF HUMAN RIGHTS

There is consensus in the Western countries that human rights are universal in nature. Even the UDHR states that all humans are free and equal with no distinction given to their race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. However, in the non-Western countries, there are views against the universality of human rights. Supporters of such views argue that human rights are not universal, but culturally relative and cannot override cultural differences that exist between various societies around the world. A single document cannot claim to represent all individuals in the world when their experiences are so different. There are five main arguments used by various supporters who argue that human rights are culturally relative. First, the individuals who were involved in the process of drafting the UDHR were cosmopolitans having international experiences and also had certain privileges in their societies. There is a difference in the way how cosmopolitans and ordinary people interpret human rights. Second, human rights reflect Western values that put more emphasis on the individual and ignore units like social groups and families. Third, the national governments resist international norms that are against local cultural and social values or their domestic political interests. During the Cold War, the Soviet Union and many non-Western countries gave more importance to the International Covenant on Economic, Social and Cultural Rights while the Western countries were in favour of the International Covenant on Civil and Political Rights. The Helsinki Accords were signed in 1975 between the Soviet and Western bloc countries to respect human rights and fundamental freedoms. Fourth, Some rights recognised by the UDHR, like marriage and religious freedom may be against cultural norms in some non-Western countries and the policymakers in these countries interpret certain rights as Western cultural impositions. Saudi Arabia had refused to adopt the UDHR in 1948, saying that certain freedoms (like rights of men and women to marry who they choose) were against Islamic principles. The Cairo Declaration on Human Rights in Islam (1990) said that rights and all moral principles are based on divine authority instead of human authority. Lastly, it is often argued that the developing countries often cannot afford human rights as the tasks of economic development and nation building are still unfinished in such countries. Hence, they argue that authoritarianism is more efficient in promoting economic growth and development. This is the main idea behind the case of Asian values which argue that economic growth in South-east Asia is attributable to values like obedience, respect for authority and order. The argument is that human rights can be sacrificed to attain economic prosperity. For these countries, the International Covenant on Economic, Social and Cultural Rights take precedence over the International Covenant on Civil and Political Rights.

The universalists, on the other hand, have countered the claims of cultural

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relativists. First, although the universalists agree that much of the world was not represented while the UDHR was formulated, however, they highlight representation from India, China, Chile, Cuba, Panama, Lebanon and Philippines to show that people from diverse cultures and backgrounds contributed while drafting the UDHR. Also, almost two-third of the endorsing votes for the UDHR came from the non-Western countries. Second, the UDHR is not totally based on individual rights. The UDHR highlights spirit of brotherhood, community and society as well. It also recognises that an individual is constituted and sustained by relationships with others. Third, the tension between universal and local realities is not always contradictory and allows different kinds of change to emerge in certain cases. Fourth, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights are like Siamese twins – inseparable and independent, sustaining and nourishing each other. Many of the civil and political rights protect groups while many of the social and economic rights protect individuals. Fifth, the culturally relative position is generally defended by authoritarian regimes to stay in power, but they do not hesitate to domestically crush their culture whenever it suits their interests. Rights are violated where there is coercion and violence. Such actions should be condemned irrespective of any traditional justification. So, the real culprit is not culture but coercion. Every religion advocates values of justice, compassion and truth etc. Former Secretary General of the UN, Kofi Annan had rightly said that the problem is not in faith, but with the faithful. Lastly, Nobel laureate Amartya Sen has highlighted there is a general agreement on policies that help economic development – openness to competition, the use of international markets, high level of literacy and school education, successful land reforms and public incentives for investment, export and industrialisation – none of them requires authoritarian government and none of them is incompatible with human rights. He has further argued that the so called Asian values often invoked to justify authoritarianism are not Asian in any sense as Asia is culturally diverse. He has highlighted that to achieve universal freedom of choice, capabilities like education are necessary. Cultural relativism will not be meaningful where it undermines the capabilities necessary to function.

Jack Donnelly says that there are four ways to approach the universal versus culturally relative human rights debate. First, through the radical cultural relativism perspective, culture is the only source of human rights. Second, the radical universalist perspective sees culture as irrelevant and there are values and rights which are relevant across time and space. Third, strong cultural relativism approach argues that rights are determined by culture, but universality of rights serves as a check on potential misuse of relativism. Fourth, the weak cultural relativism perspective says culture is an important source of rights, but allows relatively rare and strictly limited local variations and exceptions. Donnelly believes that weak cultural relativism is the best

way to reconcile the universal versus cultural relativism debate. Such an approach allows variations in form while emphasising the universal aspect. For ex, right to work requires to be recognised in all societies covering aspects like right to seek employment and right to be compensated for unemployment. However, the length and amount of unemployment could vary in different societies.

Check Your Progress Exercise 5

Note: i) Use the space given below for your answer.

ii) See the end of the unit for tips for your answer.

1) Discuss Amartya Sen’s critique of Asian values and cultural relativism.

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14.8 LIMITATIONS OF HUMAN RIGHTS

Despite their noble intentions, human rights have faced criticism as explained below.

First, universalist liberalism, which forms basis of human rights has been criticised by communitarians. They argue that individuals are not atomized and asocial; instead, they are embedded in the community which shapes their values and desires. Individual experiences cannot be separated from social context which gives them meaning. Post-modernists have criticised the enlightenment, which led to political tradition of liberalism. They argue that there are no universal values and objective truths and have emphasised fragmented and plural nature of reality.

Second, feminist critique highlights the androcentric nature of human rights, arguing that human rights reflect a masculine experience. Those who hold human rights in practice are men, not women. Gender equality and freedom from discrimination for women is given low priority in international arena. Susan Moller Okin says that respect for cultural practices should be subordinate to the requirement of women’s equality.

Third, cultural relativists portray universal nature of human rights as a form of cultural imperialism having ethnocentric tendencies. They argue that human rights are an instrument of Western political neo-colonialism.

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Fourth, the second generation rights have been criticised as their maintenance requires material resources and political capabilities that are not possessed by many countries. Hence, they remain aspirations instead of entitlements. Also, too much of state intervention may hamper the efficiency of capitalist economies. Critics of the third generation rights argue that human rights focus on individuals and they will be weakened if individuals are seen in terms of group membership.

14.9 LET US SUM UP

Human rights are the rights that belong to all individuals by virtue of their humanity. Protecting and promotion of human rights is also the basis for promotion of human security. Human rights are fundamental, indivisible, universal, dynamic, inalienable, interdependent and interrelated in nature. The universality of human rights is often questioned by some people in non-Western countries. Such position is generally defended by authoritarian regimes to stay in power, but they do not hesitate to domestically crush their culture whenever it suits their interests. Rights are violated where there is coercion and violence. Such actions should be condemned irrespective of any traditional justification. So, the real culprit is not culture, but coercion.

14.10 REFERENCES

- Bellamy, Richard and Mason, Andrew. (2003). *Political Concepts*. Manchester: Manchester University Press.
- Donnelly, Jack. (2006). *Human Rights*. In J S Dryzek, B Honig and A Phillips (eds) *The Oxford Handbook of Political Theory*. Oxford: OUP.
- Gudavarthy, Ajay. (2015). Human Rights. In B S Chimni and S Mallavarapu (eds.) *International Relations – Perspectives for the Global South*. Noida: Pearson.
- Heywood, Andrew. (2011). *Global Politics*. Hampshire: Palgrave Macmillan.
- Le, Nhina. (2016). Are Human Rights Universal or Culturally Relative?, *Peace Review*, 28:2, 203-211.
- Nickel, James. (2019). Human Rights, *Stanford Encyclopedia of Philosophy*, URL: <https://plato.stanford.edu/entries/rights-human/>.
- Tharoor, Shashi. (2009). Are Human Rights Universal. *World Policy Journal*, Volume XVI, No4, WINTER 1999/2000.
- Weston, Burns H. (2019). Human Rights. *Encyclopaedia Britannica*, URL: <https://www.britannica.com/topic/human-rights>.

14.11 ANSWERS TO CHECK YOUR PROGRESS EXERCISES

Check Your Progress Exercise 1

- 1) Your answer should highlight following points

- Rights that belong to all individuals by the virtue of their humanity
- Secular and modern version of natural rights
- Relationship between human rights and human security

Check Your Progress Exercise 2

- 1) Your answer should highlight following points
 - Natural rights should not be violated by the government
 - Defended three natural rights, right to life, liberty and property
 - Argued for a weak government that was subordinate to the law

Check Your Progress Exercise 3

- 1) Your answer should highlight following points
 - Earliest form of natural or human rights
 - Advocated by the English, American and French revolutions
 - Based on the political philosophy of liberal individualism
 - Are more in negative terms (freedom from) than positive (right to)

Check Your Progress Exercise 4

- 1) Your answer should highlight following points
 - Recognized by UN members in 2005
 - States have responsibility to protect their populations against human rights violations like genocide, war crimes and ethnic cleansing
 - If they fail to ensure this, the states forfeit their sovereignty
 - International community is responsible to protect the victims in such cases

Check Your Progress Exercise 5

- 1) Your answer should highlight following points
 - Asian values often invoked to justify authoritarianism
 - They are not Asian in any sense as Asia is culturally diverse
 - To achieve universal freedom of choice, capabilities are necessary
 - Cultural relativism will not be meaningful where it undermines the capabilities necessary to function

UNIT 15: MULTICULTURALISM AND TOLERANCE (HOW DO WE ACCOMMODATE DIVERSITY IN A PLURAL SOCIETY)*

Structure

- 15.0 Objectives
- 15.1 Introduction
- 15.2 Culture and Identity
- 15.3 Multiculturalism – Meaning and Concept
- 15.4 Models of Multiculturalism
 - 15.4.1 Liberal
 - 15.4.2 Pluralist
 - 15.4.2 Cosmopolitan
- 15.5 Second Wave of Writings
- 15.6 Limitations of Multiculturalism
- 15.7 Let Us Sum Up
- 15.8 References
- 15.9 Answers to Check Your Progress Exercises

15.0 OBJECTIVES

The aim of this unit is to familiarise you with the ideas of multiculturalism, tolerance and diversity. After studying this unit, you should be able to:

- Explain the meaning of multiculturalism
- Know various models of multiculturalism
- Describe second wave of writings on multiculturalism; and
- Analyze some of the limitations of multiculturalism

15.1 INTRODUCTION

Cultural diversity is posing a challenge to states around the world as various governments are facing demands from cultural minorities for recognition, protection and political autonomy etc within the territory of the state. There

* Dr Raj Kumar Sharma, Consultant, Faculty of Political Science, IGNOU

has been a rise of cultural diversity in various countries due to a number of factors – demise of communism in Eastern Europe leading to demands of nationalism, rise in attraction of communitarian thinking in the 1980s, increase in Muslim immigrants to Western Europe in the 1970s, emergence of indigenous peoples’ movements demanding correction of historical injustices meted out to them, increased political activism of religious conservatives in the US in the 1980s and migration of people due to war or seeking better economic opportunities. As a result, a number of questions have become unavoidable in political theory, from the role of state in dealing with such cultural diversity to limits of toleration, nature of citizenship and rights of women. These critical aspects have been explained in succeeding paragraphs.

15.2 CULTURE AND IDENTITY

Before discussing the concept of multiculturalism, it is important to know issues of culture and identity from which the idea of multiculturalism flows. In a macro sense, culture is the way of life for people, their values, beliefs and practices. There is difference between culture and nature. Culture is passed on from one generation to the other by learning rather than through biological inheritance. Culture, thus, encompasses tradition, religion, language, moral principles and social norms. Identity politics or the politics of difference is increasing recognition of cultural differences in a society. The concept of culture is central to multiculturalism. Different meanings have been attached to culture by different theorists and this in turn has shaped their ideas on multiculturalism. Identity is a sense of unique and separate selfhood and sees individuals embedded in a particular culture or social context. Identity may be multiple like gender, religion, ethnicity etc. Identity is equated with difference as awareness of difference further magnifies an individual’s sense of identity. This has led to politics of recognition, thereby meaning difference should be embraced. This reflects a shift from universalism to particularism. The post-colonial theories that were formulated after the Second World War became the basis of identity politics. They sought to challenge and even overturn the cultural dimension of imperial rule by establishing the legitimacy of non-western and even anti-western political traditions and ideas. *Edward Said* had developed a critique of Eurocentrism through his notion of Orientalism. He argued that western hegemony over the Orient had been maintained by stereotypical portrayal of non-western people to demean and belittle them. With the rise in international migration and globalization, there has been intensification of identity politics around the globe.

Check Your Progress Exercise 1

- Note:** i) Use the space given below for your answer.
ii) See the end of the unit for tips for your answer.

1) What do you understand by identity?

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15.3 MULTICULTURALISM – MEANING AND CONCEPT

Cultural diversity has been a feature of various societies for a long time. Different dialects and traditions existed in ancient Greece. In the Ottoman Empire, minorities like Christians and Jews existed apart from the Muslims who were in a majority. In the contemporary context, there are countries like India, Canada, the US, UK, New Zealand, France etc who have cultural diversity. Due to the factors mentioned in the introduction, cultural diversity has increased around the world and highly homogenous countries like Japan are becoming rare examples. Diversity can be of many types and some of the main types of diversity are:

(A) **Religious Diversity:** India is a good example of a country with diverse cultures. The religious groups often differentiate from each other through factors like dress code, public holidays, festivals and practices related to their celebration.

(B) **Diversity based on Location:** There may be groups who see themselves as distinct from others due to their specific geographical location. For ex, in the UK, Scots distinguish themselves from others due to their location in the north, although their culture is not significantly different from others.

(C) **Linguistic Diversity:** Language is another basis for the existence of diversity in a country. Some examples include Quebec in Canada, Uyghurs in China and Catalans in Spain.

(D) **Racial Diversity:** Existence of different physical features gives rise to diversity based on race. However, these differences should lead to a common identity which can differentiate that group from others. One example is Hutus and the Tutsis in Rwanda. It should be mentioned that race has a limited role in multicultural discourse.

Multiculturalism appeared in political theory in the 1970s and the 1980s when it was used to denote a shift in public policy away from assimilation of ethnic minorities and immigrants towards integration and acceptance of diverse cultures in countries like Canada and Australia. In the US, the debate on multiculturalism started in the 1980s in the context of how the education system should respond to cultural diversity. The term multiculturalism is

used to describe a society in which different cultures can coexist. It signifies attempts to balance diversity against cohesion. Multiculturalism not only recognises cultural diversity, but also advocates that such differences should be respected and publicly affirmed. It maintains respect for cultural differences and does not favour assimilation of minority culture into the dominant one. Instead of seeking a melting pot in which minority groups assimilate into the majority culture, multiculturalism uses metaphors like salad bowl or glorious mosaic where the minorities can maintain their distinctiveness. From the multiculturalism perspective, the public policy should not aim for standardization of cultural forms or any type of uniformity or homogeneity, but instead, heterogeneity should be maintained. There are differences among various thinkers on how this has to be achieved. Some argue that minority groups should be tolerated by leaving them free from state interference, also called as politics of indifference. Others argue that mere toleration of group differences falls short of treating the minority groups as equals and there is a need for recognition and positive accommodation of minority group practices through difference sensitive policies.

In his book, *The Multiculturalism of Fear* (2000), *Jacob T Levy* has divided the difference sensitive policies into eight categories. These eight categories are:

(A) **Exemptions from Generally Applicable Laws:** Exemptions are based on negative liberty pertaining to non-interference of state in certain matters as it could increase the burden on a certain group. For ex, religious exemptions can be extended to a minority group so that they can maintain their identity.

(B) **Assistance Rights:** Certain rights are extended to rectify disadvantage experienced by a certain group in comparison to the majority. This includes positive discrimination or affirmative action to help the minorities. Examples include funding for schools meant for minority languages.

(C) **Symbolic Claims:** This means that all the cultures are represented by the symbols of a country on the grounds of equality. Not including the symbols from minority cultures could be seen as lack of respect and unequal treatment towards them.

(D) **Recognition:** It is a demand to integrate a cultural practice or a specific law into the larger society. For ex, inclusion of the history of Indian and Pakistani immigrants in British history books shows the recognition of these two groups in British multicultural society.

(E) **Special Representation Rights:** They are intended to safeguard the groups which have been systematically marginalized in a bigger society. For ex, extra seats may be set aside for the minorities in the parliament of a diverse nation.

(F) **Self-Government:** The cultural minorities may claim certain degree of

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autonomy under demands for self-government. This is required so that they can develop and preserve their culture.

(G) **External Rules:** It involves restricting the freedom of other people to preserve a certain culture. For ex, outsiders have limited freedom of movement in the areas inhabited by Aborigines. Outsiders even do not have the rights to buy land in these areas.

(H) **Internal Rules:** These rules restrict an individual's behaviour within the group. For ex, if somebody disobeys rules of the group, he/she can be ostracised or excommunicated. There is difference of opinion whether such internal rules are compatible with liberal values or not. Will Kymlicka believes such rules undermine an individual's autonomy and hence, are incompatible with liberal values. In contrast, Chandran Kukathas argues that since liberals are committed to tolerance, such internal restrictions in certain groups should be tolerated.

Apart from the above mentioned categories, multiculturalism has been used as an overarching term to signify the political and moral claims of other marginalized groups like women, people with special abilities and LGBT (Lesbian, Gay, Bisexual and Transgender). Multiculturalism is not restricted to claims of culture and identity alone, as some critics have often pointed out. Instead, it is also a matter of political power and economic interest since it involves demands to rectify political and economic disadvantages suffered by people due to their membership of a marginalized group. It is pertinent to mention that multicultural policies are not primarily about redistributive justice (share in resource allocation), but they may accidentally refer to redistributive justice. Freedom from domination is one of the reasons why there is a need for multiculturalism, according to some experts. They argue that one can be unfree even if he/she is not experiencing any interference, for ex, a slave of a benevolent master. Here, special accommodation is not driven by a desire to protect valuable cultures or considerations of equality, but the desire to reduce domination. Some others who write with a post-colonial perspective give importance to historical background, as is the case with aboriginal sovereignty. They contend that history of state oppression of a group should be the main factor in deciding whether group rights should be extended or not to that particular group.

Check Your Progress Exercise 2

Note: i) Use the space given below for your answer.

ii) See the end of the unit for tips for your answer.

1) What is multiculturalism?

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15.4 MODELS OF MULTICULTURALISM

Ayelet Shachar gives two types of multiculturalism – strong and weak. Strong multiculturalism is centred on group identity and group rights and it gives rights to the group over its members. The central problem for strong multiculturalists is injustice among different groups. In contrast, weak multiculturalism focuses on intra-group complexities and accommodation. The main focus is on how to harmonise individual rights with group rights. According to *Andrew Heywood*, there are three main models of multiculturalism: liberal, pluralist and cosmopolitan.

(A) **Liberal Multiculturalism:** Commitment to freedom and toleration are two hallmarks of liberalism. Toleration is a willingness to allow existence and expression of rival views. Liberalism gives an individual the right to choose his/her beliefs, cultural practices and way of life. However, toleration extends to values, views and social practices that are compatible with autonomy and personal freedom. Practices such as forced marriages and female circumcision will not be endorsed by liberal multiculturalists as they are against individual freedom. *Will Kymlicka's* theory on liberal multiculturalism is one of the most important, as he combines the liberal values of equality and autonomy with the value of cultural membership. His views are expressed in his books, *Liberalism, Community and Culture* (1989) and *Multicultural Citizenship* (1995). According to Kymlicka, culture is important to individuals for two reasons. First, membership of a culture is an important condition of personal autonomy as they serve as 'contexts of choice' and provide meaningful options by which an individual frames his life and goals. Second, cultural membership is important in shaping self-identity of an individual. A person's self-respect is connected to the respect that is accorded by others to his/her culture. He further argues that since cultural minorities are disadvantaged in accessing their own culture compared to members of majority culture, minorities are entitled to special rights. He says that it is impossible for the state to be completely neutral and its involvement in the cultural character of the state is unavoidable. For ex, the public holidays that a government decides to observe would promote a certain culture and those who do not share the culture promoted by the state would be disadvantaged. True equality, according to him requires different treatment for different groups. Kymlicka has listed three types of minority rights or group differentiated rights. First, there are self-government rights which belong to the national minorities. Examples would include Native

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Americans and Maoris in New Zealand. Second are the polyethnic rights which help religious and ethnic minorities and have been developed through immigration to main their culture. For ex, legal exemptions could be extended to Jews and Muslims from animal slaughtering laws in a country. Third, there are special representation rights that try to rectify underrepresentation of minorities in public life, for ex, the affirmative action in the US. Kymlicka argues that multicultural citizenship and minority rights give minority groups external protections against outsiders. They do not aim to allow the groups to restrict the autonomy and rights of their own members. Kymlicka does not grant right to intervene to the liberal state in the illiberal groups who restrict the freedom of their own members.

(B) Pluralist Multiculturalism: This theory of cultural diversity is based on value pluralism, an idea that there are many values which are equally correct and fundamental although they may be in contradiction to each other. *Isaiah Berlin* is one of the main proponents of the idea of value pluralism. In this view, liberal views like personal freedom and democracy have no greater moral authority than their rival beliefs. This results in live and let live type of multiculturalism. However, Berlin was of the view that value pluralism can exist only within a society that respects individual freedom. Hence, he could not prove how liberal and illiberal cultures could coexist in the same society. *Bhikhu Parekh* has also given his views on pluralist multiculturalism. He argues that multiculturalism is neither a political doctrine nor a philosophical school. Instead, it is a perspective on the way of viewing human life. It has three central tenets. First, human beings are culturally embedded and they grow and live within a culturally structured world. Their thoughts are deeply shaped by culture and they can overcome some, but not all of its influences. Second, different cultures have different meanings of good life. Since each culture can develop limited range of human capabilities and can understand only a part of human existence as a whole, it requires other cultures to stretch its imagination and expand its intellectual boundaries. It also guards against any tendency towards absolutism in any culture. An individual's life is likely to be richer if that person has access to others and in an interdependent and modern world, culturally self-contained life is impossible. Third, every culture is internally plural, its different strands of thought are in continuous conversation and hence, its identity is fluid, open and plural. Various cultures grow by conscious and unconscious interaction with each other and each carries bits of the other within itself. Multiculturalism, according to Parekh, is a creative interplay between these three factors. He further argues that from a multicultural perspective, a society does not commit itself to a particular political doctrine or vision of good life. It also does not ask how much diversity to tolerate within the limits set by it as it forecloses its future development. Multiculturalism begins by accepting the desirability and reality of cultural diversity and structures its political life accordingly. It is a dialogically constituted society which wants to keep the continuous

dialogue and nurture an atmosphere where boundaries of prevailing forms of thought can be expanded to generate collectively acceptable policies and principles. Such a society does not give any priority to any cultural perspective, be it liberal or otherwise. There are certain institutional preconditions that are a prerequisite for dialogue like equal rights, freedom of expression, participatory public spaces, an accountable authority and empowered citizens. It also calls for political virtues like tolerance, concern, mutual respect, self-restraint, love for diversity, a mind open to new ideas and ability to live with unresolved differences. Such a society nurtures wide range of ideas and fosters the spirit of dialogue. By doing this, it draws a line against those who are too dogmatic or self-righteous to participate in its conversational culture and accept its outcome.

(C) Cosmopolitan Multiculturalism: It celebrates diversity as each culture can learn from the other and prospects for self-development are offered by a world of wider cultural opportunities and lifestyle choices. It endorses exploration of different cultural options from an individual's perspective. Cosmopolitan multiculturalism embraces the idea of multiple identity and hybridity. It is argued that irrespective of their different cultural origins, people share the same planet and are facing similar experiences and challenges. Hence, global consciousness and the idea of cosmopolitanism is a running thread in this type of multiculturalism.

Check Your Progress Exercise 3

- Note:** i) Use the space given below for your answer.
ii) See the end of the unit for tips for your answer.

1) What is the importance of culture according to Will Kymlicka?

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2) What are the three central tenets of a culture according to Bhikhu Parekh?

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15.5 SECOND WAVE OF WRITINGS

There have been two waves of writings on multiculturalism. The first wave discusses differences among various cultural groups and the debate is centred on relevance of difference-sensitive policies in a liberal context. Some liberals have defended these policies while others argue that they deviate from the core values of liberalism as they undermine the notion of equal individual rights and equal treatment. In the second wave, the writers are not concerned about justice among various groups but within groups. They analyze the policies that protect minority cultural rights and their impact on group members. Multicultural policies may give leaders of minority cultures power for decision making and institutionalising practices that persecute the internal minorities. Here, issues related to women and minority cultural groups like gay, lesbian and bisexuals can be discussed. Gay, lesbian and bisexual persons want to lead a life of dignity, freedom and access to welfare provisions. A variety of social controls and norms are exercised by the minority groups to marginalize them. They face hate speech, violence and psychological harassment.

Feminists have argued that most cultures in the world are patriarchal and gendered and group differentiated rights would reinforce and strengthen patriarchal practices. Polygamy and female genital mutilation are two such examples that go against women's rights. Some writers have even highlighted that there should be no cruelty against animals and group rights can put interests of animals at risk. Some cultural groups engage in animal slaughtering and exemptions to them from state laws on animal cruelty would continue violence against animals.

Check Your Progress Exercise 4

Note: i) Use the space given below for your answer.

ii) See the end of the unit for tips for your answer.

1) What is the difference between first and second wave of writings on multiculturalism?

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15.6 LIMITATIONS OF MULTICULTURALISM

A number of drawbacks of multiculturalism have been highlighted by many experts.

In contrast to the group differentiated notion of equality, Brian Barry has advocated universal notion of equality. He says that religious and cultural minorities should be ready to face the consequences of their practices and beliefs, in the same way as members of majority culture are held responsible for bearing the consequences of their beliefs. He argues that special accommodation is justified for the people with disabilities as any disability limits a person's opportunities compared to others who do not suffer from disability. In contrast, religion and culture do not affect whether someone has an opportunity, although they may impact one's desire to take any opportunity or not.

Some progressive theorists believe that multiculturalism fails to address the grievances of the disadvantaged sections of society. They say that the real problem of minorities is not lack of cultural recognition, but their lack of economic power and social status (issues of class). By focusing on cultural distinctiveness, multiculturalism divides the people who want social reform and reduction in poverty. This in turn, reduces support for welfare policies as the society is divided and forgets issues like poverty that could unite them.

According to Amartya Sen, multiculturalism is based on solitarist theory. He argues that multiculturalism leads to miniaturization of humanity as identity is associated with a single social group. It makes violence more likely as people identify with their own group and sometimes fail to recognize rights of other groups. Conservative and nationalist thinkers believe that multicultural societies are internally divided where violence and hostility are accepted facts of life. People generally are drawn to others with whom they share their identity and they would distrust someone who is different in some ways of life. Nationalists, therefore, would like to limit immigration and assimilate the minority cultures to strengthen national identity instead of particular identities.

Highlighting the problem of minorities within minorities, feminists argue that group differentiated rights are used by men to strengthen and perpetuate their power in a group and women are marginalized in such an environment. They also say that multiculturalism reinforces gender inequality in minority groups.

Check Your Progress Exercise 5

- Note:** i) Use the space given below for your answer.
ii) See the end of the unit for tips for your answer.

- 1) Discuss the feminist critique of multiculturalism.

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15.7 LET US SUM UP

Cultural diversity like religion, linguistic and racial continues to be a feature of many states around the world. In political theory, multiculturalism appeared in 1970s and 1980s in countries like Canada and Australia which tried to move away from policies focusing on assimilation of ethnic minorities and immigrants towards integration and acceptance of diverse cultures. Instead of seeking a melting pot in which all differences assimilate, multiculturalism stands for something like a salad bowl where the constituents retain their identity. It does not seek uniformity or standardization, but it tries to maintain heterogeneity. Multiculturalism stands for recognition and positive accommodation of minority group practices through difference sensitive policies like exemptions, assistance rights, external rules and internal rules. There are three main models of multiculturalism – liberal, pluralist and cosmopolitan. There are two waves of writings on multiculturalism. The first wave highlights issues between various groups while the second wave talks of internal problems within a group like subordination of women to men. The idea of multiculturalism has been criticised by many, but one should also keep in mind that multicultural citizenship stands for fairer terms of integration and not separation or division as highlighted by its critics. It also tries to increase participation of the groups that were previously oppressed.

15.8 REFERENCES

Barry, B. (2001). *Culture and equality: An Egalitarian Critique of Multiculturalism*. Cambridge: Polity Press.

Halev, Jeff Spinner. (2006). Multiculturalism and its Critics in John S Dryzek et al (eds) *The Oxford Handbook of Political Theory*. Oxford: Oxford University Press.

Heywood, Andrew. (2013). *Political Theory: An Introduction*. Palgrave Macmillan: New York.

Kukathas, Chandran. (2004). Nationalism and Multiculturalism in Gerald F Gaus and Chandran Kukathas (eds) *Handbook of Political Theory*. London:

Sage Publications Ltd.

Kymlicka, Will. (1989). *Liberalism, Community, and Culture*. Oxford: Oxford University Press.

Kymlicka, Will. (1995). *Multicultural Citizenship: A Liberal Theory of Minority Rights*. Oxford: Oxford University Press.

Levy, J. T. (2000). *The multiculturalism of fear*. Oxford: Oxford University Press.

Okin, Susan. (1998). Feminism and Multiculturalism: Some Tensions. *Ethics* **108** (4): 661–684.

Parekh, Bhikhu. (2000). *Rethinking Multiculturalism: Cultural Diversity and Political Theory*. Cambridge, MA: Harvard University Press.

Rodrigues, Luis Cordeiro. *Multiculturalism*. Internet Encyclopedia of Philosophy. URL: <https://www.iep.utm.edu/multicul/>

Seglow, Jonathan. (2003). Multiculturalism in Richard Bellamy and Andrew Mason (eds) *Political Concepts*. Manchester: Manchester University Press.

Scruton, Roger. (2007). *The Palgrave Macmillan Dictionary of Political Thought*. Hampshire: Palgrave Macmillan.

Song, Sarah. (2016). *Multiculturalism*. Stanford Encyclopedia of Philosophy. URL: <https://plato.stanford.edu/entries/multiculturalism/>

Vinod, M J and M Deshpande. (2013). *Contemporary Political Theory*. New Delhi: PHI Learning Private Ltd.

15.9 ANSWERS TO CHECK YOUR PROGRESS EXERCISES

Check Your Progress Exercise 1

- 1) Your answer should highlight following points
 - Identity is a sense of unique and separate selfhood
 - It sees individuals embedded in particular culture or social context
 - This leads to politics of recognition, thereby meaning difference should be embraced

Check Your Progress Exercise 2

- 1) Your answer should highlight following points
 - Multiculturalism not recognizes cultural diversity
 - Advocates that such differences should be respected and publicly affirmed

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- Does not aim for assimilation or uniformity
- Supports group differentiated rights

Check Your Progress Exercise 3

- 1) Your answer should highlight following points
 - Culture supports personal autonomy by providing a context of choices to individuals to shape their lives
 - Cultural membership is important in shaping self-identity of an individual
- 2) Your answer should highlight following points
 - Individuals are culturally embedded
 - Every culture requires another culture to stretch its intellectual boundaries to enrich itself
 - Every culture is fluid, open and plural

Check Your Progress Exercise 4

- 1) First wave of writings on multiculturalism, discusses differences among various cultural groups while the second wave is not concerned about justice among various groups but within groups

Check Your Progress Exercise 5

- 1) Your answer should highlight following points
 - Multiculturalism reinforces gender inequality in minority groups
 - group differentiated rights are used by men to strengthen and perpetuate their power in a group

SUGGESTED READINGS

- Barry, P. Norman. (1995). *An Introduction to Modern Political Theory*. The Macmillan Press: London.
- Bellamy, Richard and Mason, Andrew. (2003). *Political Concepts*. Manchester: Manchester University Press.
- Bhargava, R and Ashok Acharya. (ed). (2015). *Political Theory: An Introduction*. New Delhi: Pearson.
- Friedrich, Carl J. (1967). *An Introduction to Political Theory*. New York: Harper and Row.
- Gauss, G F and Kukathas C. (2004). *Handbook Of Political Theory*. London: Sage.
- Held, David (ed). (1991). *Political Theory Today*. Cambridge: Polity Press.
- Heywood, Andrew. (2007) *Politics*, Hampshire: Palgrave Macmillan.
- Heywood, Andrew. (2013). *Political Theory: An Introduction*. Palgrave Macmillan: New York.
- Jha, Shefali. (2010). *Western Political Thought*. Pearson: New Delhi.
- Kymlicka, Will. (1989). *Liberalism, Community, and Culture*. Oxford: Oxford University Press.
- Kymlicka, Will. (1995). *Multicultural Citizenship: A Liberal Theory of Minority Rights*. Oxford, OUP.
- Laski, H. (1925). *A Grammar of Politics*. Oxon: Routledge.
- Leyden, W. Von. (1985). *Aristotle on Equality and Justice*. Palgrave Macmillan.
- Miller, David. (1999). *Principles of Social Justice*. London: Harvard University Press.
- Nozick, Robert. (1981). *Anarchy, State and Utopia*. London: Basil Blackwell.
- Parekh, Bhikhu. (2000). *Rethinking Multiculturalism: Cultural Diversity and Political Theory*. Cambridge, MA: Harvard University Press.
- Pogge, T. (2008). *World Poverty and Human Rights*. Cambridge: Polity Press.
- Rawls, John. (1971). *A Theory of Justice*. Harvard: Harvard University Press.
- Scruton, Roger. (2007). *The Palgrave Macmillan Dictionary of Political Thought*. Hampshire: Palgrave Macmillan.

Sen, Amartya. (1992). *Inequality Reexamined*. Oxford: Oxford University Press.

Sen, Amartya (1999). *Development as Freedom*. Oxford: Oxford University Press.

Stewart, Robert M. (1986). *Readings in Social and Political Philosophy*. Oxford, OUP.

Swift, Adam. (2006). *Political Philosophy: A Beginners Guide for Students and Politicians*. Cambridge: Polity Press.

Vinod, M J and M Deshpande. (2013). *Contemporary Political Theory*. New Delhi: PHI Learning Private Ltd.



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