

PREFACE

With its grounding in the “guiding pillars of Access, Equity, Equality, Affordability and Accountability,” the New Education Policy (NEP 2020) envisions flexible curricular structures and creative combinations for studies across disciplines. Accordingly, the UGC has revised the CBCS with a new Curriculum and Credit Framework for Undergraduate Programmes (CCFUP) to further empower the flexible choice based credit system with a multidisciplinary approach and multiple/ lateral entry-exit options. It is held that this entire exercise shall leverage the potential of higher education in three-fold ways – learner’s personal enlightenment; her/his constructive public engagement; productive social contribution. Cumulatively therefore, all academic endeavours taken up under the NEP 2020 framework are aimed at synergising individual attainments towards the enhancement of our national goals.

In this epochal moment of a paradigmatic transformation in the higher education scenario, the role of an Open University is crucial, not just in terms of improving the Gross Enrolment Ratio (GER) but also in upholding the qualitative parameters. It is time to acknowledge that the implementation of the National Higher Education Qualifications Framework (NHEQF) National Credit Framework (NCrF) and its syncing with the National Skills Qualification Framework (NSQF) are best optimised in the arena of Open and Distance Learning that is truly seamless in its horizons. As one of the largest Open Universities in Eastern India that has been accredited with ‘A’ grade by NAAC in 2021, has ranked second among Open Universities in the NIRF in 2024, and attained the much required UGC 12B status, Netaji Subhas Open University is committed to both quantity and quality in its mission to spread higher education. It was therefore imperative upon us to embrace NEP 2020, bring in dynamic revisions to our Undergraduate syllabi, and formulate these Self Learning Materials anew. Our new offering is synchronised with the CCFUP in integrating domain specific knowledge with multidisciplinary fields, honing of skills that are relevant to each domain, enhancement of abilities, and of course deep-diving into Indian Knowledge Systems.

Self Learning Materials (SLM’s) are the mainstay of Student Support Services (SSS) of an Open University. It is with a futuristic thought that we now offer our learners the choice of print or e-slm’s. From our mandate of offering quality higher education in the mother tongue, and from the logistic viewpoint of balancing scholastic needs, we strive to bring out learning materials in Bengali and English. All our faculty members are constantly engaged in this academic exercise that combines subject specific academic research with educational pedagogy. We are privileged in that the expertise of academics across institutions on a national level also comes together to augment our own faculty strength in developing these learning materials. We look forward to proactive feedback from all stakeholders whose participatory zeal in the teaching-learning process based on these study materials will enable us to only get better. On the whole it has been a very challenging task, and I congratulate everyone in the preparation of these SLM’s.

I wish the venture all success.

Professor Indrajit Lahiri
Vice Chancellor

Netaji Subhas Open University
Four-Year Undergraduate Degree Programme
Under National Higher Education Qualifications Framework (NHEQF) &
Curriculum and Credit Framework for Undergraduate Programmes

Bachelor of Arts (Honours) in Political Science
Programme Code : NPS
Course Type : Discipline Specific Core (DSC)
Course Title : Key Concepts in Politics
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**Netaji Subhas
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Course Code : 6CC-PS-03

Course Title : Key Concepts in Politics

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MODULE – 1

Unit-1 □ Concept of Freedom

Structure

- 1.1 Objective
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 - 1.3.3 Montesquieu and Adam Smith on Freedom
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 - 1.3.8 Feminist Notion of Freedom
- 1.4 Safeguards of Liberty
- 1.5 Conclusion
- 1.6 Summing Up
- 1.7 Probable Questions
- 1.8 Further Reading

1.1 Objective

After studying this unit, the learner will be able to understand :

- the meaning and evolution of the term freedom.
- get a brief idea about the different conceptions of freedom and its critiques.

1.2 Introduction

Liberty and freedom are often used interchangeably though for many, freedom refers to a situation while liberty symbolizes a state of mind. Berlin declares that the two words 'mean the same' but clarifies that liberty tends to be used in legal and political contexts while the term freedom is used in philosophical sense.

A more appropriate difference is provided by Pitkin who being influenced by Arendt points out that while liberty implies protection from state interference, freedom generally means active involvement in politics. Freedom is a complex concept that contains within it two basic ideas, both independent and interdependent. One meaning of freedom is autonomy or rightful self-government. The other meaning is the overall ability to do or choose or achieve things that can be called ‘optionality’.

Freedom, may thus be defined as a quality of human being, as in only a human being as distinguished from other living beings, is capable of enjoying freedom. Freedom may also be defined as a quality of human being manifested in man’s capacity for obtaining scientific knowledge of laws of nature and applying them for the benefit of mankind. In other words, human being’s ability to gain scientific knowledge is the source of their freedom.

Freedom may also be perceived as a human condition marking man’s ability to fulfil his self-appointed goals and the state is not expected to interfere in this matter or should help in developing people’s ability by setting up a welfare state.

1.3 Meaning of Freedom

1.3.1 Rousseau’s Concept of Freedom

Notion of free will and freedom forms the bedrock of western political theory and society. One of the earliest conceptions of freedom defines it as obedience to a higher authority espoused by collectivist thinkers of both left and right. The earliest exponent of this view is Rousseau, for whom true freedom consists in obeying the general will that is devoid of particularistic and selfish elements and expressed in a democratic assembly of equals. A deviant is compelled to obey the law or ‘forced to be free’. An important prerequisite for his conception of freedom is a substantive measure of social and economic equality.

1.3.2 Locke’s Concept of Freedom

For the liberals, liberty is possible and worthwhile only within a framework of law. It is best elaborated in Locke’s famous phrase, “end of law is, not to abolish or restrain, but to preserve and enlarge freedom.”. Locke gave an economic dimension to liberty when he explained labour as the unquestioned property of the labourer and said that each person has the right to property by the virtue of his labour. He considered the relationship of individuals with the political authority as moral and deriving from God, who had created

them and to whom they owe the duty to preserve themselves, thus explicitly excluding the freedom to kill one self or others or enslave others. Locke reiterated that personal independence – the right to live with dignity and with reasonable economic comfort is a fundamental human right. He emphasized on consent as the basis of legitimate political authority, thereby specifying the limits of political power and the ambit of personal liberty in a liberal society. He portrayed the liberal state as a minimal and constitutional state, based on rule of law.

1.3.3 Montesquieu and Adam Smith on Freedom

Montesquieu underlined the importance of safeguards like the written constitution, separation of powers, checks and balances, precise legal procedures, clear specification of crimes and independence of judiciary for the preservation of liberty. Adam Smith linked freedom with opulence, regarding the two “as the greatest blessings” that human being can possess. He held that true freedom is possible through commerce. He considered dependency as degrading, thereby equating freedom with independence.

1.3.4 Hegel’s Concept of Freedom

For Hegel, the state is always infallible and only the state knows what is in individual's interest. The state is divine and therefore, the individuals have no rights outside the state or against the state. Freedom of the individual lies in the complete obedience of the laws of the state. State is a super organism in which no one has any individual preferences different from those of the state. Real freedom of the individual can be realised only in the state.

1.3.5 Socialist and Marxist Concept of Freedom

While the liberal view of freedom is essentially freedom from interference, the Marxist view drawing upon the philosophies of Spinoza, Rousseau, Kant and Hegel defines freedom as self-determination and as self-realization. It sees freedom as a removal of obstacles to human emancipation allowing the full flowering of the human powers. For the socialists, only when class divisions and wage labour based on private property leading to competitiveness and selfishness are abolished, a truly human society based on fellowship, love and cooperative instinct may be created. Only collective efforts can overcome such hurdles and freedom as self-determination, is collective in the sense, that there is an organized human effort over both nature and social conditions of production. To Marx and Engles, destruction of capitalism and creation of communist society embodies collective control, collective individuality and personal freedom.

Marxist concern with a wider and richer view of freedom leads the Marxists to underestimate the nature and extent of civil and economic freedom that the individuals enjoy in liberal – capitalistic societies. Marx had very little faith in mechanisms like constitution, rule of law or charter of rights. He dismissed these as a façade of bourgeois exploitation and did not acknowledge even in limited sense, the protection they lend to individual against arbitrary rule and physical harm. The Marxists therefore tend to forget that these civil freedoms were earned as a result of centuries of unremitting popular struggles.

Miliband, therefore, rightly pointed out that the task of Marxist politics should be to defend these freedoms; and to make possible their extension and enlargement by the removal of all sorts of obstacles. Socialists and Marxists of all shades regard economic freedom as primary and consider political and civil liberties to be possible only with the abolition of the class boundaries.

Many western socialists argue that political freedom is valuable and ought to be coalesced with welfare measures. The socialists believe it is not the state, but rather economic exploitation that presents challenge to individual's self-realisations and material sufficiency. They profess a more deterministic view of human nature than liberals and deny a direct co-relationship between choice and freedom.

1.3.6 Anarchist Notion of Freedom

The extreme left wing ideology, anarchism desires to do away with all forms of authority, whether that of a state, church or a parent, since authority and discipline, imposed from outside always curtail freedoms. Like the Marxists, the Anarchists too desire the abolition of state power after the destruction of capitalism and describe the post capitalist Anarchist society as being truly free. However, Anarchism remains untested in practice.

1.3.7 Libertarian Notion of Freedom

Libertarianism considers subjective freedom as the highest social and political value. It believes in freeing people not only from traditional political institutions but also from the constraints imposed by the importance they attach and the power that they attribute to ineffectual practices and institutions namely, religion, family and social customs. Libertarians demand maximization of the realm of individual freedom and minimization of the scope of public authority.

1.3.8 Feminist Notion of Freedom

The feminists on the other hand accepts the intrinsic link between freedom and equality.

The early liberal feminists like Wollstonecraft and Mary Astell used the idea of equality to demand recognition of women as human subjects with agency and intellect, an aspect which J.S.Mill later acknowledged. Contemporary feminism defines freedom as empowerment, requiring both negative liberty's absence of constraints and positive liberty's community assistance.

1.4 Safeguards of Liberty

To preserve personal liberty in modern democratic state system many safeguards have been adopted. These safeguards have been won after long struggles against authoritarian rules. They are as follows:

- 1) Rule of Law- Professor Dicey has described the rule of law as the best safeguard of liberty. It means supreme importance of law and equal treatment of all according to the prevailing law. All the people are subject equally to the law of the land and within the state all are entitled to enjoy equal freedom. Nobody is above the law. The Marxists however emphasise that in order for the Rule of Law to be successful, economic inequalities must not persist.
- 2) Written Constitution- To safeguard individual liberty a written constitution, enshrining clearly the laws of the land is necessary. It should embody the fundamental rights and duties of the citizens. It must also include the provision of resort to court if the government encroaches upon people's fundamental rights. It is expected that the democratically elected governments would strictly function according to the rules enshrined in the constitution.
- 3) Independent and Neutral Judiciary- To protect the citizen's liberty a fair, independent and neutral judiciary is must. Especially, in the federal set up, a neutral judiciary ensures harmonious functioning of the central and state governments as is manifested in the United States of America. The American Supreme court has the power to declare any law that contravenes the constitution as ultra vires or unconstitutional.
- 4) Responsible Government- A democratically elected government, presence of a strong opposition and regular elections ensures that the governments do not misuse powers. A strong opposition and its constant surveillance and criticisms can ensure the growth of public opinion not favourably disposed to the government in power.

In India, the imposition of emergency rule in 1975 by Mrs. Indira Gandhi and its criticism had subsequently led to the downfall of her government.

- 5) Separation of Powers- French philosopher Montesquieu, felt that separation of power was an important mechanism to safeguard individual liberty. Separation of Power implies that power of the three organs of the government, i.e., the legislature, executive and judiciary must be clearly demarcated and each organ should strictly function within the power assigned to it under the constitution. This mechanism was adopted in USA, France and Mexico. However, in practice it has been observed that complete separation is not feasible and many political scientists opine that it is not mandatory for safeguarding individual liberty.
- 6) Direct Democracy- As was evident in ancient Greece and in modern Switzerland, direct participation by the citizens in the affairs of the state like law making etc fosters individual liberty. In Switzerland, direct democracy is practiced through employment of methods as referendum, initiative and recall. However, in modern times, where countries have huge populations, direct democracy is not very practicable.
- 7) Alert Public- The more the citizens are conscious of their rights and are vigilant about the activities of the government the safer is their liberty. People must be collectively ready to fight for their freedoms. Indeed, the old saying remains true till date that 'eternal vigilance is the price of liberty'.
- 8) Decentralization of Power- Lord Acton had said, 'power corrupts and absolute power corrupts absolutely'. The more the power is concentrated in the hands of a government the more corrupt it becomes. Therefore, decentralization of power to the various tiers of government can act as a bulwark against corruption and encroachment of individual liberty.
- 9) Free Mass Media- Today we are witnessing the 'Information Society' or the 'Network Society'. The presence of internet has made possible wide circulation of information within a very short span of time. By mass media we mean the television, radio, newspapers and magazines along with the internet. The mass media is indeed the fourth pillar of democracy and can keep up constant surveillance on the governmental activities, thereby acting as a safeguard of individual liberty.
- 10) Civil Society- For Hegel, the civil society is the link between the family and the state. Gramsci reiterated its importance by saying that the civil society acted as

a sphere where hegemony is generated and internalised by the people thereby helping in the functioning of the state. Of late in modern democracies, civil societies act as a bulwark against the excesses of the state. At other times they aid in various functions of the state. The civil societies also act as a medium of educating the citizens about their democratic rights and duties.

1.5 Conclusion

It can be safely concluded, that as long as the more experienced, more learned, competent and prudent manage the common affairs for common good, men do not lose their freedom in obeying commands. However, in actual practice it is often observed that, the strong, selfish and shrewd persons acquire dominant position and special privileges in the society. As a result, the society gets divided between the exploiter and the exploited, the dominant and the dependent groups. The privileged classes want to maintain the status quo, as it benefits them.

Thus the privileged classes have always stood in defence of the status quo- or no change in the existing situation. It is only when the subjugated sections, become conscious of their oppression and rise in revolt against the dominant sections, demanding their freedom (economic, social and political) that the social change takes place. Freedom therefore has inspired many a revolution and has been a harbinger of social change.

1.6 Summing Up

- The terms liberty and freedom are often used inter- changeably.
- Freedom contains within it two basic ideas, one is autonomy or rightful self-government and the other is the ability to do or choose.
- Freedom may be defined as a human quality that seeks completion of human purposes by gaining mastery over nature.
- Freedom also means ability to fulfil one's self chosen goals
- For the liberals, freedom is only possible within the framework of laws and institutions. They prioritise political freedom above all other values.
- The Socialists and the Marxists accord supreme importance to economic freedom. They argue that without real economic freedom all other freedoms are meaningless.

They further opine that only with the complete breakdown of the capitalist mode of production and the abolition of the class system shall true economic liberty be possible for all.

- The Anarchists oppose all forms of authority that are externally imposed from above, be it parental, religious and state's authority as they feel it is antithetical to freedom.
- The Feminists uphold the intrinsic link between freedom and equality and demand recognition of women as human subjects with similar agency and intellect like men.
- Rule of law, written constitution, independent and neutral judiciary, and responsible government, separation of power, direct democracy, alert public opinion, decentralized power, free mass media and active civil society are the vital safeguards of individual liberty.

1.7 Probable Questions

Essay Type Questions :

- 1) Explore the idea of freedom as described by Hegel.
- 2) Elucidate on the Socialist and Marxist notion of freedom.
- 3) Describe the various safeguards of liberty.
- 4) Discuss the idea of freedom as explained by Rousseau.
- 5) Write a note on libertarian conception of freedom.
- 6) Can Locke be considered as a champion of Liberty? Explain.

Short Questions :

- 1) Define the idea of freedom.
- 2) Explain the concept of General Will.
- 3) What do you understand by the term Separation of Powers?

Objective Questions :

- 1) Who tagged freedom with social and economic equality?
- 2) Who talked about safeguards of liberty?
- 3) Mention one safeguard of liberty.
- 4) Who wrote, 'Justice in Political Philosophy' ?

1.8 Further Reading

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Unit-2 □ Negative Freedom

Structure

- 2.1 Objective
- 2.2 Introduction
- 2.3 Basic Features of Negative Freedom as Enunciated by the Liberals
- 2.4 Hobbes's Concept of Freedom
- 2.5 Locke, Bentham and Sidgwick's Conception of Freedom
- 2.6 J. S. Mill's Self-Regarding and Other Regarding Actions
- 2.7 Hayek's Concept of Freedom
- 2.8 Nozick's Concept of Freedom
- 2.9 Milton Friedman on freedom
- 2.10 Berlin's Exposition of Negative Freedom.
- 2.11 Conclusion
- 2.12 Summing Up
- 2.13 Probable Questions
- 2.14 Further Reading

2.1 Objective

After studying this unit, the learner will be able to understand :

- the meaning of the term negative freedom and how it is intricately linked with negative liberty.
- the idea of the evolution of negative freedom by studying the ideas propounded by scholars like Hobbes, Locke, Bentham, J.S. Mill and contemporary theorists like Isaiah Berlin, Robert Nozick, Milton Friedman.

2.2 Introduction

By negative liberty one usually understands the absence of restraints or absolute non-interference. Negative liberty is very closely associated with negative freedom. The question

is: what is the actual extent of the area or the realm, where an individual is absolutely free to do what he pleases, without any external interference? Perhaps, negative freedom is best understood in the words of Berlin, as he seeks answer to the question, 'Over what area am I master?' It basically rests on two basic premises;

- a) Each person knows his interests best. It is based upon the assumption that every individual is a rational agent capable of deliberations and making informed decisions.
- b) The state should not interfere unnecessarily in an individual's life, neither should it try to dictate ends and purposes to the individuals.

2.3 Basic features of Negative Freedom as Enunciated by the liberals

Liberal writers often use the term liberty and freedom interchangeably. For them, liberty is of supreme importance and they want all public policies to be solely guided by it. Of all forms of liberty, the liberals value the individual liberty above all. The essence of the liberal thought is perhaps best captured by the Atlantic Charter (1941) which contains the declaration of the 'Four Freedoms'. These are: freedom of speech, freedom of worship, freedom from fear and want. The first two freedoms embody the negative aspect of liberty, i.e., it prohibits or restricts the state from meddling in individual's life and preventing him from achieving life goals determined by him.

The concept of negative liberty or freedom starts on the basic premise that the individual is the best judge of his interests and most capable of choosing his life goals. It evolved as a consequence of long struggle against the tyrannical and unjust powers of the state. The individual had to put up a long fight to carve a private sphere for himself, both in the economic and political sphere. Hobbes, Locke, Montesquieu, Bentham, Henry Sidgwick, Herbert Spencer, J.S. Mill are all classical theorists of the concept of negative liberty.

In the contemporary times, the idea has again been brought to lime light by libertarian theorists like Hayek, Nozick and Milton Friedman.

2.4 Hobbes's Concept of Freedom

Hobbes defined freedom as private pursuit of the individual, i.e., within the framework conceded by the state authority, where an individual is free to pursue his own life goals chosen by him. Though Hobbes vested a lot of importance to law, he defined liberty as whatever the law permitted and to be operative in all the spheres where law is silent. Hobbes conceded that right to private beliefs or religion or conscience was beyond the realm of the state and

the person should be free to choose whom and in what way to worship. However, Hobbes's 'all powerful Leviathan' retains the power to command his subjects to perform ceremonies that are necessary for public worship.

2.5 Locke, Bentham and Sidgwick's Concept of Freedom

Locke too believed that an individual's right to life, liberty and property is very sacred, bestowed to him from the nature and the state has no right to interfere with these sacred rights, they were basically considered to be inviolable. The government according to Locke, is created for upholding and preserving these individual rights and is basically supposed to act as a trust. If the government fails to perform its duties, Locke conceded the right to resistance against it to the citizens.

Bentham emphasized on the importance of law, for the conditions created by the law made it possible for the individuals to enjoy civil and political liberty. Through the enactment of civil laws, a legislator bestowed the right to property on the individuals, prevented unnecessary interference, simplified judicial proceedings and encouraged healthy economic competitiveness. By enacting a proper criminal code, by maintaining a reasonable police force and courts, legislator ensured that the people are free from crimes. In the realm of constitutional law, the legislator protects the individual against misrule, abuse and arbitrary exercise of power. Bentham felt social utility could provide the necessary balance between freedom and restraint.

For Sidgwick, the value and sanctity of a contract is absolute. He argued that once an individual voluntarily enters a contract, the onus is on him to maintain it, even if it is inimical to his interests, as it demonstrates individual choice. It is also the duty of the state to enforce the contract, to ensure that it is honoured. Therefore, according to Sidgwick, a person's liberty may be considered to be the realm, where he is supreme to pursue his interests without pondering over its quality and consequences.

2.6 J.S. Mill's Self-Regarding and Other Regarding Actions

In J.S. Mill's writings we witness a transition from being a champion of negative liberty to that of positive liberty. He presented a very strong defence of individual liberty, manifested in the freedom of thought and expression in his classic book, *On Liberty* (1859). Mill strongly advocated a person's right to his freedom and brooked no interference from the

society. He wanted to accede the greatest amount of freedom for the pursuit of individual's creativities and wanted to keep free all channels of individual's avenues for self-development. To strike a harmonious balance between the individual and interests of the community, he came up with a novel concept of self-regarding and other regarding actions. Mill described as self-regarding action these activities which solely affect the individual himself, in which his freedom was absolute. The sphere, where he had supreme control over his own body and mind. By other regarding actions he meant those actions which impacted other individuals of the community. J.S.Mill realised that external coercion did more harm than good and as he judged individuals to be the best judge of their interests and perceived the individuals to be diverse in their needs and capacities, he felt complete freedom in the individual sphere was necessary for the full blossoming of their personality and development of their rational and deliberative capacities. However, he circumscribed individual's liberty by accepting reasonable interference on the part of the society to prevent harm to other people. Mill was such an ardent supporter of freedom of thought and expression that he believed that a person should also possess the right to express incorrect opinions through free exchange of ideas and dialogues. In this way the individuals could contribute to the great advances of the society.

The early liberals value liberty for the sake of efficient government, whereas for J.S. Mill, liberty is priceless for its intrinsic good. It helps in the development of moral, rational, capable persons and also helps in creating an efficient society. Mill got perturbed by witnessing the spirit of conformity prevalent in Victorian Britain and got apprehensive of tyranny and intolerance of the majority. He considered it to be a singular threat to individual liberty. He advocated absolute liberty of conscience, belief and expression as essential to human progress. He ardently believed that liberty and individuality was only possible in a free society. Mill extended liberty to only mature individuals and withheld it from children, invalids, mentally handicapped and barbarian societies.

Negative liberty had played an instrumental role in the development of capitalism in Europe. Its exponents were the liberal-individualists who emerged as the spokesperson of the newly emerging bourgeois class and sought to establish a laissez faire or free economy against the mercantile policies of the state. They demanded liberty in the form of freedom of contract, trade and enterprise along with the free play of the market forces, amenable to only the laws of demand and supply. The state was perceived as a necessary evil, tolerated as it protected the people and their property from the attacks of others. J. S. Mill had started his political journey as an advocate of laissez faire individualism and negative liberty but he was quick to comprehend the harm it unleashed as it paved the way for economic exploitation of the poor by the rich and he realised that state intervention was

necessary for the upliftment of these backward sections of society. Popper too defined freedom as non-interference and felt the aim of the public policy should be to absolve people of avoidable suffering rather than to promote happiness.

2.7 Hayek's Concept of Freedom

Friedrich Hayek, the Austrian –British economist, used the term liberty and freedom interchangeably and placed it above all other ideals. To Hayek, liberty was a negative concept as it implied the absence of all obstacles created by other men. He defined liberty as a state where man is not subject to coercion by the 'arbitrary will of another'. Hayek considered law and liberty to be consistent. He wanted individuals to be guaranteed equality under law, freedom from arbitrary arrests, right to own private property, accompanied by freedom of movement, freedom to select one's own profession etc. He did not support the idea of governmental interference under the pretext of increasing individual freedom nor did he support the idea of inner freedom, associated with the conceptions of positive liberty.

Hayek, pointed out in his book, *Constitution of Liberty*, that law, liberty and property are inseparable and gave a picture of liberal society that minimises coercion and deliberate interference and guarantees material benefits to its citizens through safety nets outside the market. Hayek explained that as the conception rests on the premise of law, therefore when people obey laws, in the sense of general abstract rules, they are not subject to other's will and are in fact free.

2.8 Nozick's Conception of Freedom

In his *Anarchy, State and Utopia*, Nozick follows Locke's method and claims that all individuals had inherited certain rights from the state of nature. People used to hire protective associations for safeguarding their property and with time, the most dominant among them emerged as the state. To Nozick, acquisition or transfer of property without force or fraud is just and he argues out that the state exists to protect the property rights of the individuals. He advocates for a minimal state that would not try to redistribute wealth among the citizens. Nozick felt that the people differ in their talents and efforts so it would not be just to interfere in properties acquired by them under the guise of removing social inequalities as it would kill initiative and the urge to progress.

2.9 Milton Friedman on Freedom

Milton Friedman, in his seminal work, *Capitalism and Freedom*, identified capitalism as a necessary condition of freedom. He defines freedom as the absence coercion on man by his fellow beings. He suggests that a 'free private enterprise. exchange economy' or 'competitive capitalism' is both direct components of freedom and a necessary though not sufficient condition of political freedom. His disdain for equality is amply manifested in his conception of freedom. He emphasizes that to enhance individual's freedom, the governments should only be allowed to handle those matters which the free market will not be able to handle. In Friedman's scheme of things, the state was only required to supplement the market society and nothing else.

2.10 Berlin's Exposition of Negative Freedom

Berlin defined negative liberty as the opportunity to act and not the action itself. He propounded an 'opportunity concept of freedom' which lays more importance on availability rather than exercise of opportunity. The main problem with this conception is its indifference to action. It does not distinguish between one's desire to write poetry and to kill himself. Berlin describes negative liberty as presence between alternatives. For Berlin, negative liberty has three characteristics. First, it implies freedom from interference with regard to one's capacity to choose and absence of restraints. Berlin is of the opinion that the individual is the best judge of his interests and must be free to pursue his desires without any interference from others. Negative liberty may be understood best by asking two pertinent questions, i.e., freedom from what and whom. Berlin described negative liberty as freedom from any form of interference. He felt that the concept of negative liberty is distinctively modern concept and its second distinct feature is its emphasis on autonomy. He opined that it is most amenable to the liberal concerns of diversity and toleration. Negative liberty also concerns itself with deliberative acts of omissions and interventions. Described as choice among options, 'unhindered by any form of obstacles, it is debatable as to what may be regarded as a hindrance. Berlin's third proposition with regard to negative liberty is of supreme significance for it emphasises that negative liberty is not incompatible with certain forms of autocracy nor is it intricately linked with the concept of democracy and self-government. Berlin aptly pointed that negative liberty or freedom to choose is an inalienable trait of a human being and essential for his self-development.

2.11 Conclusion

It can be thus concluded that the concept of negative liberty or freedom is an offshoot of liberal traditions, which firmly believes that individual is ultimately the best judge of his interests and therefore he should be left free to choose and pursue his life goals without unnecessary interference or hindrance from others. It emerged at a very important historical juncture, when the power was slipping away from the hands of feudal lords and industrial revolution was taking place in Europe marking the emergence of the bourgeois class. It was a time of massive social, political, scientific and religious transformations. Enthused by the happenings of renaissance, reformation, man basked in his new found confidence and learned to value the virtue of his new found freedom above all.

The concept of negative liberty thus evolved through the writings of great scholars like Hobbes, Locke, Montesquieu, Bentham and Sidgwick. They made a powerful plea for the individual's private space, where his decision would be supreme, both in the political and economic spheres. The two world wars and the great economic depression had tarnished its value. It witnessed further decline with the rise of Keynesian welfare state, however of late, popularized again through the writings of libertarian scholars like Hayek, Nozick and Friedman. There is again a renewed emphasis on individualism, negative liberty and demand for the curtailment of the state powers. The libertarians reiterate the supreme significance of human freedom and firmly believe that the man is best judge of his interests and should therefore be left free to pursue his chosen life goals. They profess a very limited role for the state and posit that government is best which interferes least except promoting and protecting property rights and commercial interests of the individual.

2.12 Summing Up

- Liberals use negative liberty and freedom interchangeably.
- Negative freedom emphasises absence of restraints or non-interference
- Hobbes, defined freedom as the private pursuit of the individual, which implies that each person can create his own conception of freedom.
- Locke emphasised that the right to life, liberty and property was derived from the state of nature and was sacred and inviolable. Governments were created to preserve these liberties of man.

- Central to Bentham's understanding of civil and political liberty is the security that the legislator secures through law, making it possible for the individual to enjoy liberty.
- For Sidgwick, a person's liberty is the realm where he is left supreme, without pondering over the quality of his actions.
- In J.S. Mill we find the most ardent defence of individual's freedom of thought and expression and his apprehension for the tyranny of the majority. In J.S.M.H. we witness a transformation from a defendant of negative liberty to a champion of positive liberty.
- For Hayek, freedom is the most important ideal and it is negative as it implies absence of particular obstacles and coercion by other men.
- Nozick is of the firm opinion that acquisition or transfer of property, without force or fraud is just and the state exists for the maintenance of the property rights of the individuals.
- Friedman identified the existence of competitive market society as a necessary condition for freedom.
- Berlin described negative liberty as the 'opportunity to act' rather than the action itself.

2.13 Probable Questions

Essay Type Questions :

- 1) Explain the transition of J.S. Mill from a theorist of negative liberty to a champion of positive liberty.
- 2) Can Nozick and Milton Friedman be regarded as proponent of Negative Liberty? Explain.
- 3) Explain the concept of Negative Liberty as put forward by Hayek.
- 4) Elaborate the idea of negative freedom as defined by Hobbes.
- 5) Explore Bentham's notion of negative liberty.
- 6) How does Berlin describe the nature of negative liberty?

Short Questions :

- 1) Elucidate the meaning of the term negative liberty.
- 2) Name a few proponents of negative liberty.
- 3) Name the author of the book "Two Concepts of Liberty" and briefly explain the idea proposed by him.

Objective Questions :

- 1) Name a proponent of negative liberty.
- 2) Name a book authored by Nozick.
- 3) Who wrote "Capitalism and Freedom"?
- 4) Who wrote "On Liberty"?

2.14 Further Reading

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Unit-3 □ Positive Freedom

Structure

- 3.1 Objective**
- 3.2 Introduction**
- 3.3 J.S.Mill's Conception of Positive Liberty**
- 3.4 Marxist Notion of Positive Liberty**
- 3.5 Mercuse's Concept of Positive Liberty**
- 3.6 C.B.Macpherson's Idea of Positive Freedom**
- 3.7 Amartya Sen's Concept of 'Freedom as Development'**
- 3.8 Conclusion**
- 3.9 Summing Up**
- 3.10 Probable Questions**
- 3.11 Further Reading**

3.1 Objective

By studying this Unit, the learner will be able to :

- grasp the idea of positive freedom by familiarizing them with the writings of positive freedom theorists as J.S.Mill, Marxists and the Neo Marxists.
- to be familiarised with the conception of freedom as development as enunciated by C.B.Macpherson and Amartya Sen.

3.2 Introduction

Positive liberty signifies the freedom 'to do' certain things and pursuing of rational goals and ends. It assumes that the individuals possess a higher self and a lower self. For positive liberty to blossom, the higher rational self should prevail over the lower self. Its essence is wonderfully captured in Berlin's words, "The positive sense of the word 'liberty' derives

from the wish on the part of the individual to be his own master...I wish above all, to be conscious of myself, as a thinking, willing, active being...”, bearing responsibility for his choices and able to explain them by reference to his own ideas and purposes. Therefore, it implies not only freedom from external interference but also the idea of self-mastery where the higher self is expected to be in command of the lower self. Unlike negative liberty, it is also amenable to the idea of directing the individual by the law or elite. It surmises that as long as the law directs the individuals to rational ends and goals it does not oppress them, it can act as an agent of liberation.

3.3 J. S. Mill’s concept of positive liberty

Positive freedom builds upon the idea of collective control over common life. It is acknowledged that it might involve certain degree of coercion, however it is justified by the larger social good expected to be gained. J.S.Mill compared the development of an individual to that of a plant and firmly believed that individuals like the plants must be allowed to develop independently of their own accord following their inner logic. J.S.Mill opined that personal growth must be innate, i.e., it must emanate from within the individual and must never be externally imposed. Though, the emphasis on non-interference portrayed Mill to be a negative liberty theorist, later he realised that it resulted in the suppression of the economically vulnerable classes and with time changed his stance. He later acknowledged that certain amount of external interference could be permitted if it resulted in cultivation of certain desirable faculties in man. He also believed in elite guidance as he felt the educated were better endowed to guide the rest. This opened the possibility of projecting him as a propagator of positive liberty too.

3.4 Marxist notion of positive liberty

The Marxists believe that common good can only be achieved by creating socio-economic conditions conducive to the enjoyment of freedom within the society. These conditions involve material means of satisfaction of wants and opportunity for self-development. The key to freedom lies in establishing a just system of production that shall ensure equitable distribution of goods for the satisfaction of everybody’s needs. The Marxists opine that the capitalist mode of production is not at all conducive to the conditions of human freedom. It is characterized by constraint or necessity. Necessity denotes conditions under which the life of man is governed by the laws of nature, which exist independently of man’s will. Engels aptly pointed out in his *Anti Duhring*, ‘...Freedom does not consist

in any dream of independence from natural laws, but in the knowledge of these laws...'. Engels further felt that it applied to both the external laws of nature and our internal laws. He thus wrote, 'Freedom, therefore consists in the control over ourselves and over our external nature...'. The Marxists came up with a scientific analysis of forces of production which revealed that only socialization of the means of production can help society to tide over the crisis created by inequality and various 'non freedoms'.

Marx, in his *Economic and Philosophic Manuscripts*, laid down the foundation of ethical basis of socialism and the humanist foundations of freedom. He was very critical of capitalism for its dehumanizing effects. He felt the capitalist system deformed the productive capacity in various ways. It transformed men into mere machines and made it emotionally impossible for him to relate to his family, friends, work, creation and nature. Only by replacing the unjust and dehumanizing capitalist mode of production, with the socialist system of production could the true conditions of freedom be achieved.

3.5 Mercuse's concept of positive liberty

Herbert Marcuse, a self-professed Marxist, gave a brilliant analysis of the problem of freedom as was being witnessed in the contemporary Western world. In his seminal work, *One Dimensional Man: Studies in the Ideology of Advanced Industrial Society*, Marcuse studied in depth the causes of alienation in the contemporary western society. He felt that capitalism alongside its monopolistic control of means of production and distribution was also manipulating the mass media (i.e. the television, radio, newspapers, magazines, movies etc) and creating senseless and unending desire for commodities that are really not required for men's inner development or true purposes of life. Consumer capitalism through its emphasis on swanky goods and by linking them with social prestige is in fact blinding man to the original causes of their discontent. It is creating an unbidden desire for trivial material things thereby dampening the urge for genuine freedom. The alienated human beings are actually unaware of their alienation. Marcuse felt, these slumbering and indifferent masses should first be awakened and made to comprehend their alienation before putting them back on the path to achieve actual freedom.

According to Marcuse, true emancipation means to free people from unnecessary social, political and legal restrictions that are considered to be degrading and unnecessary. The Neo Marxists point out that in modern times though the workers in the factories are legally free they are in reality bounded by the unjust market conditions. The Neo Marxists stresses on the mindless consumerism that capitalism has unleashed. It is manifested in situations where people might not have enough to eat but they are bent on buying costly mobile

phones or other electronic gadgets. All the shades of Marxists possess one common belief, that the overthrow of capitalism can only create the conditions of true freedom.

In the modern times there is much talk about the emancipation of women as throughout the world they are subject to many forms of legal, social and moral bondage. The subaltern groups, in the various parts of the world are too awaiting their emancipation. The Indian constitution has reserved seats in various government educational institutions and jobs as well as other political institutions for the adequate representation of these marginalised groups.

The idea of ‘freedom as development’ opposed to the libertarian view of freedom, contemplates a situation in which the disadvantaged sections of the society would be able to improve the quality of their lives by the means of their talents and efforts. It does not seek the mercy of the rich for the poor, but it wants to create avenues of self-development for the deprived sections, so that they can lead a life of dignity and self-esteem, while pursuing the course of their self-development. The idea of freedom as development finds best expression in the writings of two famous political theorists, C.B. Macpherson and Amartya Sen.

3.6 C. B. Macpherson’s Idea of Positive Freedom

C.B. Macpherson, a Canadian political philosopher, who does not claim to be a Marxist but is one of the most vocal critique of capitalism, opined that developmental power denotes a person’s ability to use his own capacities for the fulfilment of his self-appointed goals. In the capitalist society by possessing the material power, the rich can effectively buy the manual and intellectual capacities of the others for their self-benefit. So, the working class, who do not possess control over the means of production can only benefit if they win developmental power for themselves.

According to Macpherson, developmental power denotes the power of a person to develop his true human capacities. Examples of such capacities are capacity for rational deliberation, moral judgement and action, aesthetic and artistic activity and the capacity for materially productive labour. The concept of developmental power treats the individual as a ‘doer and a creator’. It signifies that a person should not face any constraints or impediments while developing his human capacities or self-determined goals.

Macpherson identified three impediments to the enhancement of a person’s developmental power: a) lack of adequate means of life; b) lack of access to the means of labour; c) lack of protection against invasion by others. Macpherson is of firm conviction, that these

problems cannot be solved within the framework of market society. He suggested that the solution to these problems can be found in a new system which would combine the protection of civil liberties with the socialist mode of production.

3.7 Amartya Sen's Concept of 'Freedom as Development'

Amartya Sen came up with the 'capabilities approach' to champion the cause of everybody's share in the process and fruits of development. This approach insists on allocation of various goods and other benefits according to differential human capabilities of its beneficiaries. Each person is to be given adequate additional resources to enable him to develop his capabilities so that he can lead a respectable social life. The impact of this approach has been so pervasive that it got reflected in the United Nations Development Programme, which adopted certain 'capability indicators' to gauge human development in various parameters.

Sen lamented that while the world is witnessing flourishing of wealth, improved life styles and the ideals of political liberty has gained wide recognition and acceptance complimented by the values of democracy and human rights, a vast section of the humanity is still immersed in the sea of deprivation and denied elementary freedom. They remained shackled in the chains of poverty, social deprivation, and political tyranny. The world is still held hostage to famines, widespread hunger, violation of human rights, degradation of environment and ill treatment of women. People struggle to get access to clean potable water, children are dying due to malnutrition, and high maternal mortality is still a social reality. Sen persuasively argued that freedom is the ultimate goal of all the social and economic arrangements and the most efficient means of realizing general welfare. Sen posited that the various social institutions like the market, political parties, legislatures, judiciary and media contribute to the development of man by enhancing his freedom and these are in turn sustained by the social values. Sen, tried to link values, institutions, development and freedom in an elaborate analytical framework. Development in this sense refers to the removal of various types of unfreedoms that leave people with little choice and opportunity of exercising their potential combined with the faculty of reason. Therefore, in Sen's view, political and cultural factors apart from the economic criteria comprise significant criteria of freedom. In short, Sen equated freedom with the notion of social justice.

3.8 Conclusion

Positive freedom or liberty is thus self-mastery, where the individual's higher self has full control over his lower self and man's transient irrational desires are subordinated to his genuinely rational desires. Positive freedom may also be defined as the condition, where the individual lacks the means of pursuing his self-appointed goals, and the state comes to play a positive role by helping him develop those capacities by providing means as education, employment, health care, means of recreation, cultural development and so on.

Positive freedom therefore includes the idea of collective control over common life. While it might involve a certain degree of coercion, it is usually justified by the larger good involved. However, many liberals, including Berlin has warned that the idea of positive liberty carries with it a danger of authoritarianism.

3.9 Summing Up

- Positive liberty or freedom involves the idea of collective control over common life.
- It implies self-mastery of an individual's higher self over his lower self.
- J.S.Mill compared the growth of individuals to that of plants emphasising on their growth from the inner logic.
- Marxists hold the creation of conducive socio-economic conditions as the key to the enjoyment of freedom by all, within the society.
- Marxists seek to replace the capitalist system by the socialist one in order to secure the conditions of freedom.
- Marcuse pointed out that capitalism exercised control not only on production and distribution but created mindless desires for commodities through the clever manipulation of the media.
- The Neo- Marxists point out to the mindless consumerism that the capitalism unleashes.
- Of late there is lot of deliberations and efforts going on to free the women and subaltern groups from socio-economic and legal bondage.

- The idea of freedom as development contemplates a situation where the disadvantaged sections of society would be able to improve their quality of life by means of their talents and efforts.
- C.B. Macpherson felt that the idea of freedom as development denotes a person's ability to use his own capacities for the fulfilment of his self-appointed goals.
- Amartya Sen came up with the capabilities approach to ensure everybody's share in the process and the fruits of development.
- Positive freedom accedes space to external intervention either through state intervention or elite guidance for the benefit of the entire society.
- According to Berlin, this space or opportunity for intervention carries with it the dangers of authoritarianism.

3.10 Probable Questions

Essay Type Questions :

- 1) Can J.S. Mill be regarded as a positive liberty theorist? Explain.
- 2) How is C.B. Macpherson's developmental power related to the notion of positive liberty?
- 3) Elucidate Marcuse's conception of Consumerism. How is it related to the notion of positive liberty?
- 4) Explain in your own words Amartya Sen's capability approach.
- 5) Examine Marxist concept of positive liberty.

Short Questions :

- 1) Whom do we classify as the Neo-Marxists?
- 2) What do you understand by 'means of production' ?
- 3) What is meant by 'positive liberty'?

Objective Questions :

- 1) Name an exponent of positive liberty.

- 2) Who wrote 'Economic and Philosophical Manuscripts'?
- 3) Who is the author of the book 'One Dimensional Man' : Studies in the Ideology of Advanced Industrial Society?
- 4) Whose conceptualised is "Freedom as Development"?

3.11 Further Reading

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Unit-4 □ Concept of Equality

Structure

- 4.1 Objective
- 4.2 Introduction
- 4.3 Liberal Notion of Equality
- 4.4 Stoics and Cicero on Equality
- 4.5 Ideas of Kant, Marx, Tawney on Equality
- 4.6 Idea of Formal Equality
- 4.7 Idea of Political Equality
- 4.8 Idea of Equality of Opportunity
- 4.9 Conclusion
- 4.10 Summing Up
- 4.11 Probable Questions
- 4.12 Further Reading

4.1 Objective

After going through this Unit, the learner will be able to :

- understand the short history of evolution of the term equality by studying the idea as propounded by the likes of Hobbes, Rousseau, Hume, Hart, Stoics, Cicero followed by the ideas of the Utilitarian's, Kantians and the Marxists.
- familiar with the different types of equality like the formal equality, political equality and equality of opportunity.

4.2 Introduction

Equality has occupied a pivotal position in the history of moral and political philosophy and Aristotle had warned rightly that it had been a cause of many a wars. According to Richard Henry Tawney, who was greatly influenced by Rousseau, felt that inequality was very easy and it was akin to floating with the tide, whereas, equality was much more difficult as it was like swimming against the tide. Sartori, described equality as a protest par

excellence, for it epitomised and stimulated revolt against fate and chance, against accidental disparity, which crystallised privilege and unjust power.

Equality is a very complex concept, implying on the one hand sameness and justice on the other. One should comprehend at the outset that demands for equality never embodies desire for absolute equality. In the demand for equality, there is a burning desire to undo the social and economic disparities that has been caused by unjust social arrangements, without disrespecting the natural differences in human capacities and talents. Sushila Ramaswamy pointed out, that the concern of most political theories is how to create equality while accepting the natural inequalities and to try and ensure equality without violating on infringing on liberty and individuality.

4.3 Liberal Notion of Equality

Ancient societies were very divided and unequal. It regarded some as more equal than the rest. Equality never implied sameness in various capacities or abilities, as manifested in intelligence, wealth, social status and power. The modern era with its emphasis on rationality makes people comprehend that man in reality differs little, it is the situation or the circumstances which creates the difference.

Despite the differences in human beings pertaining to their physical features and mental endowments, it is still claimed that ‘all are created equal’. This claim is elucidated by Hobbes who felt that in spite of the natural differences in physical powers and mental endowments, all were equal in their ability and also equal in being able to attain the ends they aspired for. He aptly pointed out, that even the weakest among men is capable of killing the strongest by the use of his cunning. Rousseau, on his *Discourses on the Origin of Inequality*, pointed out two types of inequalities observed in social life. One was natural inequality, created by nature that made some men stronger, intelligent, and benevolent than others. Apart from it was the conventional inequality, which was created by man himself, which was reflected in the differences of social wealth, prestige and glory. Recognition of this conventional man made inequalities provided for the scope to review the basis of social distinctions and to restructure social relations according to the new concepts of social justice. Rousseau’s thoughts inspired the *French Declaration of Rights of Man and Citizen* (1789) which claimed, “Men are born and remain free and equal in rights. Social distinctions can be based only upon public utility”.

4.4 Stoics and Cicero on Equality

Hume in the eighteenth century and Hart in the twentieth century reiterated similar sentiments as expressed by Hobbes. The Stoics and Cicero advanced a claim to equality on the basis of common human nature. The natural rights theorists advanced a case for equal rights on the basis of equal ability of all to understand their rights and obligations thereby mounting an attack on the paternalistic governments. The Utilitarian's observed that all human beings have equal capacity for experiencing pleasure and pain and therefore while calculating pleasure and pain each is to count for one and no one for more than one.

4.5 Ideas of Kant, Marx and Tawney on Equality

The Kantians defend the proposition of equal moral worth of each individual stressing on the need to treat each individual as ends in themselves and not as means only. They presume that being of equal moral worth, each individual is capable of formulating and adhering to moral laws. The Marxists accept equality on the basis of labour that each human being is capable of rendering and their power to reproduce their own species. Exponents of equality like Tawney, emphasised on the need of various social institutions to accentuate and reinforce the 'common humanity' that unites people.

4.6 Idea of Formal Equality

When applying the principle of equality to the various spheres of social life we come across various forms of equality. For instance, when all people are subject to similar rule, without any form of discrimination it is a manifestation of formal equality. For example, people forming a queue to buy movie tickets. They stand according to their turn. Nobody is differentiated on the basis of caste, class, gender, social class, ethnicity etc. It is essential to distinguish between formal and substantive equality. While formal equality implies absence of any form of discrimination in making things available to all, substantive equality reserves certain benefits for the weaker and deprived sections with lesser effort or at lesser cost. When the facilities of education, medical benefits, transportation and entertainment are open to all who can afford to pay for it, it is an example of formal equality. When the state pays scholarships to the needy students or provides free medical facilities and vaccines to the poor, it is an example of substantive equality. Broadly speaking, both legal as well as political equality comes within the purview of formal equality.

4.7 Idea of Political Equality

We shall now concentrate on political equality. It denotes equality of political rights of the citizens. It is manifested in the demand for equal rights for all to vote and select their own representatives and to be elected to various public offices. It therefore stresses that nobody shall be debarred from voting or holding public offices on the grounds of religion, race, caste, sex or place of birth etc. It further demands that there shall be no privileged classes and the rules would not bestow special favours to any particular class in the society. Political equality is based on the assumption that all men are rational being capable of making deliberations and informed choices irrespective of their physical and mental capabilities, educational qualifications etc. It also proceeds from the assumption that when equal political rights are extended to all individuals they will be able to attain general welfare and shall be able to prevail over the policy makers to make laws securing common good.

The demand for political equality originated along with legal equality and was undifferentiated in the beginning. D. D. Raphael pointed out that when the French revolutionaries were demanding equal rights they were in fact demanding political equality as they were demanding removal of special privileges confined to the wealthy and the propertied. Of late, political equality has come to encompass universalization of franchise, equal democratic rights of the citizens, equal freedom to hold and express political opinions without fear and favour along with equal right to form associations to influence political decisions.

In fact, the desire for political equality led to the establishment of democracy with its emphasis on equal human rights in the western world. However, only political equality seemed hollow and meaningless without being accompanied by socio-economic equality. It had been anticipated by Alexis de Tocqueville, who realised that only political equality without accompanying socio-economic equality would not be acceptable. He had predicted that the democratic revolution, would be followed by a second phase, marked by the struggle between haves and the have not's. Thus Tocqueville had anticipated the growth of socialist and Marxist theories, whose sole aim is to correct the prevailing socio-economic injustices and disparities.

4.8 Idea of Equality of Opportunity

Equality of opportunity is mostly associated with the liberal democratic tradition. It implies that access to important social institutions shall remain open to all on universalistic

grounds. It would be prudent to distinguish between equality of opportunity and that of outcome. Equality of outcome is the demand of hardcore egalitarians, since men differ not only in their family and social backgrounds, but also in terms of their talents and efforts. Equal distribution of rewards is bound to kill the incentive among the more meritorious. This would end up in lesser production and lower level of excellence, ultimately resulting in the impoverishment of the society. This line of argument compels people to favour 'equality of opportunity' to 'equality of outcome'.

The American and French revolution gave further impetus to the demand of a career open to talent. They favoured acquired status i.e., administrative and professional positions open to all with talent irrespective of their birth and family status, over ascribed status. Plato may be heralded as the earliest exponent of this theory, as he proposed meritocracy in the form of philosophic rule, which was to be realised through an educational system that was to provide equal chance to the talented children of all classes to achieve unequal social positions. The debate on equality of opportunity has also helped in the development of modern educational institutions and meritocracy that recruits and promotes people on the basis of their intelligence and talent regardless of their family connections and wealth.

O. P. Gauba argues that the principle of equality of opportunity may be applied in two distinct situations. A) a competitive situation and B) a non-competitive situation. In a competitive situation, equality of opportunity implies access to scarce good or prize. In a non-competitive situation, it implies equal access to essential goods and services depending on one's ability and effort. Success in any field, like law, medicine, academics is its example. In a competitive situation, all the competitors should be placed in identical or near identical situations. For example, all the sprinters have to undergo compulsory drug tests to ascertain they have not taken drugs and are therefore not gaining undue advantage. In a non-competitive situation, all participants should get a minimum support plus 'separate plus equal' facilities to prove their worth.

Advocates of equal opportunity argue that the government's task is to create equal opportunities for its citizens. It is up to the individual to decide, whether to use an opportunity or discard it. Equality of opportunity is not likely to result in equality of outcome. In short, equality of opportunity calls for creating conditions in which everyone has the same starting point or equal life chances. It seeks to reduce impact of inequalities attached to social, cultural and economic backgrounds of various persons but agrees to give them differential rewards according to their differential talents, skills and efforts. It also implies that those who had a poor start in life because of long standing social inequalities, to be given some special concession, such as waiver in educational fees, relaxation of age limits in case of competitive exams and promotions or reservation of seats or posts. It wants constructive and effective steps to be taken by the state to ensure educational and cultural development

of the marginalized sections of the society along with their economic upliftment. In this way, equality of opportunity calls for extending the process of ‘equalizing’ to the roots of our society.

4.9 Conclusion

Equality is one of the most prominent ideals of the present world. Liberty and equality together describe the conditions of human emancipation. Together they represent the voice of the oppressed. Equality is more of a prescriptive term than a descriptive one. It basically upholds the faith that since the physical, emotional and intellectual needs of all men are similar, hence all must be treated equally. It presupposes the equal moral worth of all individuals.

There are various dimensions of equality. The notion of formal equality treats everyone equally, irrespective of the differences in the people’s background. It implies application of similar rules to all persons, without any discrimination. Legal and political equality are its components.

Legal equality grants equal legal status to all irrespective of the differences in their birth, physical and mental capacities and other differences. Political equality grants every one the right to vote someone into public office and the right to compete for the office. Political equality has been achieved after a long struggle. At present there are no discriminations in respect of voting right in a democratic state based on gender, social back ground and property considerations.

Equality of opportunity is usually associated with the liberal democratic tradition. It implies in principle that access to important social institutions shall be open to all universally giving recognition to achievement and talent. It gained popularity during the American and French revolutions. It has helped in the growth of modern educational institutions based on meritocracy, as people are now recruited and promoted on the basis of their talent regardless of their family connections and wealth.

It is to be noted, however, that equality mostly means equality of condition and not that of outcome. Ironically, the more is the equality of condition the more is the inequality in outcome, exemplified by the existence of the richest families in the world. To change the scenario, the need of the hour is sweeping governmental policies and actions.

4.10 Summing Up

- Equality is a complex concept, encompassing two components. In one sense it implies sameness or identity and in another sense justice.
- It seeks to undo the large varieties of socio-economic disparities prevalent.
- Hobbes was of the opinion that all men were equal as even the weakest had the ability and the cunning to kill the strongest.
- Stoics and Cicero forwarded the case for equality on the basis of common human nature.
- The Utilitarian's believed that all human beings have equal capacity for experiencing pain and pleasure and so should be regarded as equals.
- The Kantians believed that all the individuals were of equal moral worth and therefore should be treated as ends in themselves.
- The Marxists too accept the equality of human essence that is manifested in labour and people's capacity to reproduce themselves.
- There are many dimensions of equality. Under formal equality all the people are treated equally, i.e., same rule is applied to all despite the differences in their back ground.
- Political equality has been won after prolonged struggle. It implies the right to vote someone into office and the right to stand for office oneself.
- Equality of opportunity is associated with the liberal democratic traditions.
- It implies that access to all important social institutions shall be open to all on universalistic ground on the basis of achievement and talent.

4.11 Probable Questions

Essay Type Questions :

- 1) Elaborate the idea of equality of opportunity.
- 2) Explain the various forms of equality in your own words as far as possible.
- 3) Does equality of opportunity guarantee equality of outcome? Explain.
- 4) Discuss the evolution of the idea of equality.
- 5) What do you understand by formal equality? Elaborate.
- 6) Explain the idea of political equality. Do you think it is a reality in today's world?

Short Questions :

- 1) Write a short note on the Stoic concept of equality.
- 2) Discuss, in brief, the theory of Natural Rights.
- 3) What do you understand by social justice?

Objective Questions :

- 1) Who wrote "Discourses on the Origin of Inequality"?
- 2) Who based equality on human nature?
- 3) Give an example of political equality.
- 4) Name one utilitarian philosopher.

4.12 Further Reading

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Unit-5 □ Egalitarianism

Structure

- 5.1 Objective**
- 5.2 Introduction**
- 5.3 Early liberal Concept of Equality**
- 5.4 Rousseau on Inequality**
- 5.5 The Early Socialist and Marxist Notion of Inequality**
- 5.6 Weber and Tawney's Conception of Inequality**
- 5.7 Rawlsian Paradigm**
- 5.8 Dworkin's Resource Egalitarianism**
- 5.9 Amartya Sen's Capability Approach**
- 5.10 Michael Walzer's Idea of Complex Equality**
- 5.11 Brief Outline of the Concept of Differential Treatment and Affirmative Action**
- 5.12 Conclusion**
- 5.13 Summing Up**
- 5.14 Probable Questions**
- 5.15 Further Reading**

5.1 Objective

By reading this Unit, the learner will be able to :

- be familiar with the notion of egalitarianism, a brief history of inequalities, to the ideals of the early Liberals, Rousseau and the early Socialists along with the Marxists.
- to be aware of the current debate on equality.
- to become familiar with Dworkin's idea of Resource Egalitarianism and Walzer's idea of complex equality.
- to understand the need for differential treatment.

5.2 Introduction

Egalitarianism is a political philosophy that favours equality of some sort: that people should be treated as equals in certain aspects. Egalitarianism presumes that all human beings are equal in their moral worth and it derives inspiration from the Christian notion that God loves all human being equally. Reduction of inequalities may be considered as the primary aim of equality. However, despite its attractions, uniformity cannot be the end of equality as it militates against what people deserve by way of differential talents, skills, occupations and efforts. Uniformity can at best be applied to procedures to ensure they are free.

The egalitarians stress that equality is sometimes required in order to be fair. For example, if there are benefits and burdens to distribute, then other things being equal, it is unfair to distribute them unequally. Secondly, the egalitarians hold that equality is necessary for self-respect. People may belong to different positions in society; however, that should not have a bearing on how they perceive each other. Thirdly, equality enjoins a duty to show respect to others. Showing equal respect implies recognizing that all people have capacities to deliberate for themselves and to engage in activities and relationships that are considered intrinsically valuable. Lastly, it is an important means to foster fraternity. Egalitarians argue that conditions of equality induce some measure of solidarity among the inhabitants of a society by removing systemic barriers to social intercourse thereby promoting greater social cohesion.

5.3 Early liberal Concept of Equality

Hobbes and Locke defend human equality as a foundational concept. Hobbes succinctly pointed out that human beings not only aspires for similar things but are equal in their capacities to achieve them. Locke believed that all individuals inherited equal natural rights from the state of nature, i.e., the right to life, liberty and estate. However, things changed with the introduction of money. Locke believed these rights to be inalienable.

Bernard Mandeville, Hume and Kant defend inequality on the ground that it produces talent and that leads to progress. Kant on the contrary upholds the equal moral worth of the individuals. Adam Smith accepted the deepening of social inequality as a consequence of capitalism; however, he ignores it as he is overwhelmed by the notion of economic growth and development. However, Smith recommended that the state maintain public works and public institutions, thus providing for a generous and compassionate government compatible with the competitive market economy.

Social Darwinism with its belief in the survival of the fittest encourages the inegalitarian tendency as it postulates that some individuals are inferior and offering any protection or compensation to them, weakens the society as a whole. Fascism and Nazism borrow heavily from social Darwinism to justify their policies of racial purification and extermination. Going back to the eighteenth and nineteenth centuries, a number of theorists wrote about the historical foundations of the human inequality, prominent among them were Rousseau, Ferguson and Miller.

5.4 Rousseau on Inequality

Rousseau attacked the modern society as highly unequal one. He pleaded for equality as a basic moral value and regarded natural equality and compassion as the bases of natural rights. To Rousseau, civilization, made possible by the discovery of metals and agriculture had a corrupting influence on the individuals. Rousseau was very critical of modern civilization as he felt it was a highly unequal one that reinforced not only natural inequalities but also artificial inequalities.

Rousseau pointed out two categories of inequalities. The first is the natural inequality between the young and the old, weak and strong, intelligent and the foolish. The second is the one that resulted from rewarding those who render special service to the community. Rousseau jeered at the idea that social inequalities were a reflection of natural inequalities of talents. Rousseau wanted all to enjoy equality of respect as human beings. He went beyond equality of opportunity and believed that certain benefits like basic education, medical care and legal services must be made equally available to all. Rousseau rejected wealth and power as principles of distribution.

In similar vein, Ferguson argued that specialization of professions degraded lower segments of commercial society and threatened to morally corrupt the upper echelons. Miller too was sceptical about the moral consequences of commerce.

5.5 The Early Socialist and Marxist Notion of Inequality

The early socialists argued for the abolition of property rights since all individuals have an equal right to wealth of the earth. They perceived private property as a source of inequality and the likes of Plato, Moore and Winstanley demanded its abolition and replacement by common ownership. St. Simon was an exception. He did not recognize equality as an ideal. He comprehended the hierarchic nature of the industrial-scientific

society and regarded the scientists and industrialists as persons of special excellence. He was against levelling and accepted differentiation in terms of distribution of material rewards as a feature of the new society thus anticipating contemporary arguments on just meritocracy.

Marx regarded inequality not as an outcome of personal defects or attributes like laziness or thrift but as a characteristic of the society as a whole. He too firmly believed that inequality arose with the institution of private property. Marx and Engels firmly believed that primitive societies were communal and the subsequent ones exploitative because of the rise of private property. Therefore, Marx and Engels envision the future communist society to be property less and thereby classless and equal.

5.6 Weber and Tawney's Conception of Inequality

Weber, presented an alternative to the Marxist view by accepting social stratification and hierarchy as functionally necessary and inevitable. He pointed out that the social classes do not arise from the underlying modes of production but from the distribution, consumption and the market. Weber recognized the existence of multiple classes. He did not agree that differences in power and prestige were a reflection of the differences in property and economic wealth. Neither did he accept that social inequality and conflict arose from the economic factors. He accepted inequality as a feature of all human societies as groups and individuals have been struggling for scarce resources from times immemorial.

Tawney was critical of both the capitalist and socialist ideals as he felt they lacked a moral basis. He believed that the claim of equality rested on the idea of common humanity and on equal moral worth of all the individuals. Common humanity never emphasised equal capacity or equal potential but put its faith that all the human beings shared a fundamental moral equality as under god they all suffered from equal limitations. Therefore, equality for Tawney denotes a basic value and not a distributive ideal. He proposed radical democratisation of society and dispersal of power. He further pointed out that greater dispersal of power was only possible through greater social and economic equality. Interestingly, he came up with the suggestion, that the talented should use their talent in the service of the working class, an idea that Rawls later integrated and developed in his theory of justice.

5.7 Rawlsian Paradigm

The Rawlsian paradigm has revived the quintessential debate on equality versus inequality,

in modern political theory. Rawls acknowledged that strict equality was inefficient and that inequality was an unavoidable truth of the society. The most innovative part of his theory was that he felt inequality was justified if it led to the elevation of the worst off. His effort was to justify the level of morally acceptable inequalities within the advanced affluent societies with a pragmatic approach to achieve tangible, substantive and long term equality. Through his famous ‘maxmin’ or the difference principle he aims not at the mere guarantee that the poor will remain above the social minimum, but rather advocates elevation of the life prospects of the least well off.

Rawls was significantly influenced by Kant and believed that all individual talents and aptitudes have a social origin. He believes that the liberal idea of equality of opportunity applied to people with extraordinary abilities, ignoring the ordinary. Through the second part of his second principle, he tried to uplift those disadvantaged by birth and social circumstances. His brilliant idea combined together the principles of growth and equality.

Nozick rejected Rawlsian argument that the better off would accept and cooperate to elevate the worst off. He was against the talented being taxed to sponsor the needy as he felt it would dampen individual efforts to achieve more success. Hayek reiterated the classical liberal formulation that inequalities due to inheritance, upbringing and education as permitted by the ideal of liberty was designed to benefit the society as a whole. Inequality, they believe is good in itself.

5.8 Dworkin’s Resource Egalitarianism

Dworkin distinguished between inequalities that were ‘endowment sensitive’ from those that were ‘ambition sensitive’. The former referred to the advantages that one enjoyed as a result of arbitrary distribution of resources while the latter related to those actions of a person that made him successful. Dworkin suggested a two stage process a) an ambition sensitive auction and b) an insurance scheme. He used a story to hammer in his point. He asked people to presume that they were ship wrecked and stranded in an island. Each person on the island was to be given hundred clam shells to bid for whatever they preferred (Auction). If all are given the exact same number of shells and they can bid for anything up for sale in the market then it represented a perfect competitive market. Some might buy agricultural land, others cattle to set up a dairy farm while some might buy a part of the beach to laze around. Each shall bid for different resources according to one’s preferences. If no one desires others bundle of goods then it can be presumed that the envy test has been met and people has been treated with equal consideration. Therefore, different resources are a reflection of their different ambitions.

The requirement of choice in the conception of resource egalitarianism has been met. However, all are not similarly endowed in the world. Some may be handicapped and required to spend her resources to meet her special needs. Dworkin thus pointed out that the people's fate in distribution scheme was also determined by their circumstances. So, he came up with the insurance scheme where people were expected to put aside twenty five to thirty clam shells for the disadvantaged. The insurance scheme in the real world is the reflection of progressive taxation. Taxing the rich more than the poor would enable the state to secure welfare of the disadvantaged. The resourcist conception of the state laid emphasis on the centrality of state responsibility towards remedying the unequal circumstances among people. By making this distinction, under Dworkin's scheme, there could be no unjust entitlements.

5.9 Amartya Sen's Capability Approach

Economist Amartya Sen asserted that distributional equality should concern itself with equalizing people's capabilities, instead of emphasising on resources or incomes. He said that the notion of wellbeing should be understood in terms of functions. He focused on capabilities, which is basically the ability to achieve a certain form of function. Sen stressed that policy makers should amass maximum information and try to equalize people's capabilities. Social policy should be attuned to human diversity.

5.10 Michael Walzer's Notion of Complex Equality

Lastly, Michael Walzer came forward with the idea of complex equality. In spite being an egalitarian, he finds himself ill at ease with intellectual enterprise involved in identifying the single most important metric of equality- be it welfare, resources or capability. He pointed out that egalitarians harp on the principles of distribution but ignore the meaning people attribute to goods. He said it is important to shift our attention from distribution to conception and creation of goods. People give meanings to goods, determined through their social values. The same goods have different meanings in different societies. He insisted that there could not be any universal set of basic goods that have that same value to all the people. Therefore, Walzer felt that Rawls was not grasping the problem correctly, when he was presenting a case for a set of primary goods to be fairly distributed across the societies. Walzer categorically stated that 'all distributions are just and unjust relative to the social meanings of goods at stake'. These meanings keep changing across time and space. For example, some societies value the domestic chores performed by women,

where as others value women venturing into the public sphere and performing professional jobs thereby helping to implement the family income.

Walzer stated that each sphere should have its own internal principles of distribution. Economists may be right when they impute certain measures of rationality and acquisitiveness to the behaviour of peoples in markets. However, it does not hold true in social domains like family. Parents are expected to be loving and altruistic, resources within families are not distributed as wages. Walzer further pointed out that spheres of market and political power were, for example, distinct. Each has its own norms for distributing goods. Walzer opined that there could be inequalities in various spheres, as the hard working could be rewarded more compared to the lazy. This inequality is acceptable with the caveat that hard work at times went unrewarded in some societies. What is unacceptable is that people who enjoy dominance in one sphere got disproportionately rewarded in the other. That would result in tyranny, which Walzer described as disregard of distinctness of spheres and principles internal to it and ways in which it multiplies inequality. Further dominance would result when people monopolise goods in one sphere and then use their monopoly to achieve unequal distribution of goods in other spheres.

Complex equality is opposite of tyranny. 'It establishes a set of relationships such that domination is impossible. In formal terms, complex equality means that no citizen's standing in one sphere or with regard to one social good can be undercut by his standing in some other sphere, with regard to some other good.' (Walzer).

5.11 Brief Outline of the Concept of Differential Treatment and Affirmative Action

The feminist political theory from its inception stressed on the need for equality between men and women and demanded justification for the differential treatment they received in legal and political spheres. The liberal and socialist feminism demand equal political rights and access to resources to women within the liberal capitalist state. The liberal feminists want to reform the traditional family and accord women dignity and self-respect. The socialists and the Marxist feminists propose the abolition of nuclear family along capitalism as they found it to be wasteful, inefficient and oppressive. They propose that women should be relieved of domestic chores by setting up communal kitchens and child rearing processes. The radical feminists note that even in case of gender neutral laws, women remain at a disadvantage. They want the attention to be drawn to the domestic spheres, where women are silently subjected to suffering. Of late there have been many other schools of feminism flourishing, like the postcolonial and the environmental schools of feminism. Though it is

acknowledged lately that women cannot be treated as a homogenous category but all agree to one basic premise that women want to be treated equally as men in all the spheres, despite the differences in their physical attributes.

Preferential treatment may be considered to be an important component of differential treatment. Thomson and Nagel defended the use of preferences on different grounds. In the American context, Thomson endorsed job reservation for women and African- Americans to redress their past exclusion, from educational institutions and work place. Preferential policies, according to her were a kind of justice. Nagel on the other hand argued that preferences might work as a kind of social good, without doing violence to justice. Institutions they believed could depart from standard meritocratic selection criteria because the whole system of tying economic reward to earn credentials was itself indefensible.

Justice and desert lay at the centre of subsequent arguments. Several theorists took to task Thomson's arguments that preferential hiring makes up for the past wrongs. They point out that it is not defensible as it often benefits the individuals of creamy layer, who are least likely to be harmed by past wrongs while burdening the innocents, in these cases they are talking about the younger male applicants. The critics argue instead of doing justice, preferential treatment violates rights, the right of an applicant to 'equal consideration' or the right of every one to 'equal opportunity'. Further they point out that it grossly neglects desert by delinking reward from a person's talents, choices and abilities. Defenders of preferences are also quick to enlist justice and desert in their cause. Marry Anne Warren for example argued that in the context of entrenched gender discrimination, gender preferences might improve the overall fairness of job selections. Justice and individual desert need not be violated. Similarly, James Rachels defends racial preferences to neutralize unearned privileges by the whites.

In India the question of differential treatment has taken the form of affirmative action. The question of reservation has created considerable controversy in recent times. A major argument in favour of reservation is the history of past deprivation and systematic discrimination. To undo the historic wrongs, reservations are made in the educational institutions and jobs for the hitherto marginalized sections of society. Of late it has come under criticism that that the rich and the socially favoured sections or the creamy layer, corner all the advantages rather than the poor. The controversy further centres on whether the benefit of reservation should have an individualistic economic basis or a collective one. There is a strong case against collective reservation as it may kill the desire to strive for excellence. Apart from it reservation also has a psychological dimension, that it grossly violates the principles of self-respect and human dignity.

5.12 Conclusion

The concept of equality lies at the heart of normative political theory. The history of political theory is replete with references to the ideal of equality. From its inception in the Greek civilization to the twenty first century it remains a burning issue evoking strongest human passions. Thinkers like Aristotle, Hobbes, Rousseau, Marx deserve special mention for playing decisive roles in shaping the basic concept of equality. Aristotle defended the concept of natural inequality, arguing that nature divided the people into two segments, the ruling and the ruled. The ruling category possessed rational, deliberative and authoritative faculties. Hobbes believed in natural equality between all human beings in the state of nature. He felt along with mental faculties' prudence was also equally bestowed. And Rousseau and Marx pointed out that the institution of private property, laws and labour created various inequalities. Later Marxists as Gramsci pointed out how by using hegemony, the ruling classes legitimately perpetuated the system of economic exploitation. The Marxists of all shades believe that the question of human emancipation is linked with freedom from economic inequalities. Tocqueville pointed out that equality as an ideal especially appealed to those who wished to escape servitude and dependence. In democracies he believed men preferred equality to liberty. However, he cautioned that single minded pursuit of equality may prove to be detrimental to the democracies.

Reduction of inequality may be considered to be the primary aim of equality. The invocation of the idea of uniformity does not help much, as it militates against individual talents and efforts. Uniformity to certain extent may be applied in procedures. Equality must be fair, and is necessary for the development of self-respect and is helpful in fostering fraternity. In contemporary political philosophy, a lot of debate revolves around 'equality of what'. It mainly concerns distributional equality. Scholars generally identify three metrics of equality; of welfare, resources and capabilities. The Utilitarians represent the school demanding equality of welfare. They argue distributional equality amounts to distribution of welfare. 'Resource egalitarianism' is identified with the views of John Rawls, Ronald Dworkin. The resourcist conception lays emphasis on the centrality of state responsibility towards remedying unequal circumstances by distribution of certain primary goods. Finally, Amartya Sen brought to attention the idea that distributional equality must concern itself with equalizing people's capabilities, instead of focusing on people's incomes and resources. He said we must focus on functions or capabilities, which is the actual freedom people enjoy. Sen felt social policies should therefore focus on increasing people's capabilities. Further he pointed out that social policy must be attuned to human diversity. The conception of equality is further enriched by the complex equality proposed by Michael Walzer, where he stressed

that people give different social meanings to goods they create and that distributions are just or unjust relative to the social meaning at stake. He pointed out that each distinct sphere should have its own principles of distribution and people dominant in one sphere must not be able to control the other spheres.

Politics of egalitarianism had been responsible for the genesis of the welfare state. However in the 1980's the ideal of egalitarianism suffered a setback with the rise of right wing governments in the West who believed in tax cuts and rolling back the frontiers of the state.

Another distinct feature of the contemporary world is the political struggles of the various identity groups, who were hitherto marginalized and deprived of the fruits of development, like the women across the world, the African Americans in U.S.A. the Dalits and the Adivasis and other tribal groups in India. The debate within the egalitarian school is witnessing a shift from 'equality of what?' to 'equality of whom?' It has spurred the demand for differential treatment and affirmative action for the various marginalized groups.

5.13 Summing Up

- Egalitarianism is a political philosophy that favours equality of some sort.
- Reduction of inequalities may be considered as the primary aim of equality.
- Equality helps to promote self-respect and fraternity.
- Hobbes and Locke defended equality as a foundational concept and stressed on certain inherent inalienable rights from the state of nature.
- Kant stressed on the equal moral worth of the individuals.
- Adam Smith accepted deepening social inequality as a consequence of capitalism.
- Fascism and Nazism borrowed heavily from Social Darwinism to justify their policies of racial purification and extermination.
- Rousseau indicated two kinds of inequalities; one natural which he felt was justified and social inequalities which had deepened with the rise of civilization and private property.
- For Ferguson, specialisation of profession degraded the lower segments of the commercial society.
- The socialists and Marxists identify the growth of private property and ownership of means of production as the cause of inequality.

- Weber presented an alternative to the Marxist model by accepting social stratification and hierarchy as functionally necessary and inevitable.
- Tawney perceived equality as a basic value and not as a distributive one.
- For Rawls inequality was justified when it led to the elevation of the worst off. He laid the foundation for differential treatment.
- Dworkin may be considered as a resource egalitarian, who believed in progressive taxation.
- Amartya Sen pointed out that notion of human wellbeing should be understood in terms capabilities.
- Michael Walzer has forwarded the idea of complex equality that says, people attach different meanings to social goods and each sphere should have its own norms of distribution. People's dominance in one sphere should not affect his standing in the other spheres.
- Of late the debate surrounding equality has shifted from 'equality of what' to 'equality of whom'. This has been inspired by the various kinds of identity politics.
- The need for differential treatment has given rise to preferential treatment and affirmative action in the Indian context.

5.14 Probable Questions

Essay Type questions :

- 1) What do you understand by resource egalitarianism? Briefly describe Dworkin's contribution to it.
- 2) Write an essay on Michael Walzer's idea of complex equality.
- 3) Elucidate Rousseau's conception of Equality.
- 4) Discuss the concept of equality as developed by Marx and his followers.
- 5) How has the Rawlsian paradigm reignited the debate on Equality?

Short Questions :

- 1) How did Hobbes defend the concept of equality?

- 2) Define Social Darwinism.
- 3) What do you understand by affirmative action?

Objective Questions :

- 1) Name one philosopher who influenced Rawls.
- 2) Whi is associated with 'Capability Approach'?
- 3) Who is the proponent of complex equality?
- 4) Which philosophers say that private property and private ownership in the means of production is the root cause of inequality?

5.15 Further Reading

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MODULE – 2

Unit-6 □ Concept of Justice

Structure

- 6.1 Objective**
- 6.2 Introduction**
- 6.3 The Meaning of Justice Through the Ages**
- 6.4 Greek Concept of Justice**
- 6.5 Roman and Mediaval Concept of Justice**
- 6.6 The Liberal Concept of Justice**
- 6.7 The Marxist Concept of Justice**
- 6.8 Alternative Views**
- 6.9 The Characteristic Features of Justice**
- 6.10 Conclusion**
- 6.11 Summing Up**
- 6.12 Probable Questions**
- 6.13 Further Reading**

6.1 Objective

After going through this unit, the learner will be familiar with :

- the meaning of justice.
- the interpretation of justice given by the great political thinkers in different ages of political history.
- the characteristic features of justice.
- and will be able to make a critical assessment of justice.

6.2 Introduction

Just society and just state are basic essentials for good living. It means justice is one of the fundamentals of human life and harmonious living. However, to understand justice is a complex process as human civilizations of all ages and continents offer varied meanings of justice. For instance, to someone, justice means giving others what they are due or entitled to. In modern society, on the other hand, justice is a distributional concept and it is concerned with distribution of scarce resources. If resources are abundant and people are benevolent, David Hume observes, “justice and injustice would be equally unknown among mankind”. Indeed, historical context and ideologies give justice complex and counteracting connotations. In other words, justice is a dynamic concept. Yet we need to know it because we need to live with it.

Primarily, justice is a moral concept but it also a political concept because without political will and institution it could not be delivered to all in a human society. In fact, the derivative meaning of justice is ‘to bind or to tie together’. ‘Jus’ also means ‘Tie’ or ‘Bond’ as well as right or law. So, the state plays a great role as right or law cannot be guaranteed without this powerful political institution. Similarly, the state cannot be a humane institution without justice. St. Augustine, like Plato and Aristotle, rightly enquired upon ‘justice removed, then, what are kingdoms but great bands of robbers?’ It is an age-old tradition that views justice as basic to the validation of political authority. The same tone was reflected in the writings of Manu, “Do not destroy Dharma, so that you may not be destroyed”. The main objective of this essay is therefore to understand this prime thing of human life, justice – its meaning, features, and different views of justice.

Justice is also required to synthesize different political values. Ernest Barker points out that all values like liberty, equality and fraternity are to be adjusted and readjusted with reference to contexts. As claims of one value may contradict others, adjustment is indispensable for harmonization of different values as well as different aspects of society. He opines that the primary function of justice is synthesis of liberty, equality and fraternity. It is ‘the union and adjusted whole of all political values which are staking a claim for recognition’. In this way, equal conditions for the development of personality of all can be ensured. So, justice is the great balancer, adjuster, reconciler and synthesizer of values. In fact, it goes beyond these values and balances each of them.

6.3 The Meaning of Justice Through the Ages

Justice is the basis of good state and it is also a pillar of ideal society. The ancient Indian scriptures gave utmost importance to justice. So, the king should favor and deliver justice to its subjects. In other words, 'Nayadharmā' or justice was the basis of human life in the Indian tradition. It is later reflected in the Gandhian concept of 'Ramarajya' and in Amartya Sen's idea of justice. Justice tries to reconcile the individual rights with the social good. It reconciles the claims of one person with another.

6.4 Greek Concept of Justice

However, the concept of justice takes different meanings in different historical context. Since the age of Plato (427 BC-347 BC) right up to the 21st century, it has been defined in various ways. Plato equates justice with discipline, judiciousness, self-control, bravery and loyalty. Yet, Plato was convinced, despite the individual views offered by Cephalus, Polemarchus and others, that Justice is the mother of all virtues and it will be achieved through dutifulness to one's own class functions. So, for Plato, justice is a virtue that can establish a rational order – each one should perform its appropriate role without meddling with the function of other parts. In Aristotle's opinion, justice denotes what is lawful and fair, that is, equitable distributions and the removal of what is inequitable. It is called corrective justice. For him Justice lies in incorporating concerns of equality, proportionality and maintenance of equilibrium in society.

6.5 Roman and Medieval Concept of Justice

Cicero observes, "Justice is intrinsic goods". It remains implicit in our values and cannot be detached from life and society. Carrying on the Greek tradition, Augustine argues 'justice is the constant and perpetual will to render to each his dues'. So, in delivering justice each person matters and all persons should be treated equally or with consistency. However, besides consistency, relevance is another important condition of justice: for relevant reasons a person may be treated differently rather than equally. To Aquinas, justice is that rational mean between opposite sorts of injustice, involving proportional distributions and reciprocal transactions.

6.6 The Liberal concept of Justice

With the advent of materialist tradition in the West, the meaning of justice acquires complex undertone – while going through a process of secularization, justice has been conceptualized with reference to the class interests of the dominant groups or ethnocentrism. For Hobbes, justice is a simulated virtue but is a necessity for civil society and it can be actualized through the function of the voluntary agreements of the social contract. The early utilitarian, like Hume argues that “public utility is the sole origin of justice.” So, to them protecting property is a noteworthy public utility service of justice. In consonance with the spirit of individualism, Kant observes that justice is a virtue by which people respect others’ freedom, autonomy, and dignity by not interfering with their voluntary actions, so long as those do not violate others’ rights. The liberal proponent like J.S. Mill again views justice in terms of social utilities that foster and protect human liberty.

What does remain implicit in these views is the insistence to judge justice in terms of legality. It branches out of monistic concept of sovereignty. Thinkers like Hobbes and Austin uphold the view that ‘law is the command of the sovereign’ and is the primary source of justice. So, Leviathan can never be unjust and it is the ‘creator of right and justice’. Bentham’s utilitarian stance never disregards this sovereign monitor of pain and pleasure. He, for instance, argues that morals should not be the basis of justice and so also the natural law. In fact, the liberal thinkers, of whom Bentham is one of the forefathers, applaud law or legality as the basis of justice. While the sovereign state controls everything through law, legality as well ensures individuality: liberty of man, free market and constricted state. Mill said justice is a collective name for the most important social utilities, which are conducive to fostering and protecting human liberty. Both idealism and liberalism evince justice by the instrument of law. Therefore, equality before the law and equal treatment by the law is the basis of just society. However, Laski thinks that law devoid of justice might tend to debar sociological and ethical consideration of justice. It is equally important that the socio-economic basis of justice cannot be undermined because actualization of justice is conditioned by these factors.

Rawls tries to mitigate the contradictions in his own way. He analyzes justice in terms of maximum equal liberty pertaining to basic rights and duties for all members of society. In his writings, justice involves fairness; so the basic question of distributive justice is how resources and opportunities are divided up among the members of society. However, Rawls’ conception of justice is deontological as it views priority of right over the good. The post-Rawlsian philosophers propose alternative conceptions of justice.

6.7 The Marxist concept of Justice

To Marx and Engels, justice can be ensured only through realization of economic and social equality. Legal justice, a mainstay of liberal justice, is not an accepted form of justice because justice in capitalist society reflects class relations and so also protects class contradiction and private property. So, justice is an integral part of the superstructure. Marx believes in substantive justice which is the basic condition of economic justice. As surplus value, which is actually appropriated by the capitalists, is a means of exploitation of the working class in capitalist society, economic justice can only be ensured by creation of classless society through proletarian revolution. However, in the socialist society, due to the existence of the state, justice cannot be ensured in the true sense of the term. According to Lenin ‘the first phase of communism, therefore, cannot yet provide justice and equality; difference, and unjust differences, in wealth will still persist, but exploitation of man by man will have become impossible because it will be impossible to seize the means of production’... In ‘Critique of the Gotha Programme’, Marx offers a principle of justice, ‘from each according to his ability, to each according to his needs’. So, Marx disregards merits or deserts, rights, entitlements, etc., as criteria for distribution of benefits and resources. Rather, needs or necessity should be the distributive principle. Hence, Marxian theory of justice stresses on the distributive nature of justice in its own way. In his words, justice entails “a fair distribution of proceeds of labour.” Thus, every member of the society without any discrimination while enjoying the benefits of society must bear the burdens within the society. Or else, Marx considered justice as a sham, a mask which facilitates capitalist exploitation. The emphasis on earnings rather than liberty exposes the inner contradictions between capitalist and socialist views of justice.

6.8 Alternative Views

There are others who prefer to recommend a pluralistic view of justice. The communitarians’ ideas of justice prefer the collective pursuit of virtue rather than the defense of individual rights as a principle of social order. Sandel maintains that rights and justice depend for their justification on the moral importance of the ends they serve. ‘Justice is not only about the right way to distribute things. It is also about the right way to value things’. On the other hand, to Michael Walzer, justice is a human construction, and it is doubtful that it can be made in only one way. The principles of justice are themselves pluralistic in form; that different social goods ought to be distributed for different reasons, in accordance with different procedures, by different agents; and that all these differences derive from different understandings of the social goods themselves.

There are other alternative conceptions of justice that challenge conventional liberal ideas of justice and even disregard the view that justice is anthropocentric. The first among them is the global or cosmopolitan theory of justice. It suggests that justice should not be applied to people within a specific sovereign boundary. So, it argues that application of justice must not be limited to one national boundary but it is to be extended beyond national boundaries. In fact, increasing interdependence or interrelations among the peoples or sovereign bodies require refurbishment of the idea of justice. Particularly, the North-South divide strengthens the argument for global justice.

Besides, a new futuristic study of justice could be found in the Green or ecological political thought. For a secured future of mankind, one must need to understand the justice-ecology interface. In other words, demand for applying justice for (a) living being other than human and (b) the nature as a whole is becoming a strong trend. The Green political thinkers in actuality are concerned with the application of justice to biodiversity.

Arnold Brecht tries to understand this multifaceted idea of justice with reference to the values people uphold from time to time. In his words, “One who changes from one conviction to the other will thenceforth have a different idea of justice”. For instance, an authoritarian thinks of leadership as an ultimate value, so following leaders is justice. For those who uphold equality as the highest value preserving equality is justice. This again is contradicted by libertarians who give liberty not equality as the highest value. Accordingly, to the hedonist, pursuing happiness of the greatest number is just; to some, majority will is just; to some others, duty not right is just. So, the idea of justice is basically dynamic and plural in meaning and content.

6.9 The Characteristic Features of Justice

Justice determines the way how individual people are treated. The questions of justice arise in circumstances where people put forth their claims to get freedom, education, opportunities, resources, and others. But these claims are potentially contradictory, so people can plead to justice to resolve such contradictions by determining what each person is properly entitled to have. So, justice is a form of claims which can be duly made against the agent dispensing justice. The agent might be a person or an institution. Further, justice is a matter of obligation for the dispensing agent to provide with what is due to the masses. It is a marker of justice that the obligations it creates should be enforceable. So, justice requires an agent whose determination alters the circumstances of its objects. Again, the agent might be an individual person, or it might be a group of people, or an institution such

as the state. There is a relationship between justice and the impartial and consistent application of rules. Justice is epitomized in the rule of law — as general rules impartially applied over time.

The features of Justice are the following :

1. The sources of justice are values and traditions of society. Not only that justice is a primary value and it has an enduring relation with other values like liberty and equality.
2. Justice is universal –it is related to all aspects of human behavior in society. It has an overarching value that synthesizes different aspects of human life.
3. Justice stands for mutual relationships of persons living in society. It is a principle of balancing or reconciling human relations in society in such a way as to enable each one to get his due rights, rewards and punishments.
4. Further, the function of justice is to harmonize individual interests with the interests of society.
5. Aim of justice is to provide equal rights, opportunities and facilities to all in a fair way.
6. Justice is a matter of each individual person being treated in the right and non-arbitrary way; there should be consistency in treatment – benefits or punishment. Accordingly, justice has to follow rules or apply laws to maintain consistency.
7. Application of justice further requires relevance. That is, justice requires equal treatment but if there are relevant reasons it may discriminate or be treated differently.
8. Again, treating differently for relevant reasons should be guided by the idea of proportion. For the sake of justice, reward and punishment is to be proportionate to work done.
9. Further, the nature of justice often evolves out of context – justice is contextual. Situation or circumstance must be taken into consideration to deliver justice.
10. Justice has several dimensions: social justice, economic justice, political justice and legal justice.

6.10 Conclusion

Justice is, therefore, an indispensable part of social life in general and human life in particular. Justice stands for rule of law, absence of arbitrariness and a system of equal rights, freedoms and opportunities for all in society. In other words, justice secures and protects rights of all in a fair way. It stands for harmony among all members of a society. Justice encourages bonding or joining or organizing people together into a right or fair order of relationships. This fair order in society again demands the regulation of selfish actions of people for securing a fair distribution, equal treatment of equals, and proportionate and just rewards for all. It tries to reconcile the interests of society and individual interests. Raphael rightly opines, “Justice protects the rights of the individual as well as the order of society.” These varied meanings of justice and polemics it engenders further reflect the inherent plurality of the concept of justice. The dearth of one universally agreed definition of justice points to the fact that the idea of justice is conditioned by context. Justice is a way of understanding of the world around individual – its structure and the way to restructure it with reference to context. However, this plurality again shows the values and extent of a concept in a democratic society. Justice is embodied in equal citizenship rights for all persons, economic and social equality, it brings up questions of distributive justice, how resources and opportunities are divided among everyone in society. It denotes appropriateness or fairness or proper balance. Just behavior or treatment or the administration of law or authority helps in maintaining this proper balance. Justice holds the people together by normal ties and rights. Above all, justice is a primary condition of good governance.

6.11 Summing Up

- Concept of justice has been widely debated throughout the ages.
- Greek political thinkers view justice as an ethical exercise.
- Plato treats justice as both a principle of moral conduct and an ideal social order.
- Aristotle advocates corrective or equity based justice.
- Roman political thinkers on the other hand, emphasize on the law of nature as the basis of justice.
- Augustine opines that justice is the continual will to render to each his dues. Aquinas describes justice as an intrinsic principle of good action related to the will of

proportional distribution and reciprocal transactions. With the advent of materialist approach in the study of politics and society.

- Utilitarians, like Hume, explains justice in terms of the greatest happiness of the greatest number.
- J.S.Mill views justice as an instrument for protecting and safeguarding human liberty. Justice has been also explained from the legalist perspective Hobbes, Bentham and Austin support the legal concept of sovereignty. They argue for the supremacy of the law emanating from the sovereign power.
- By rejecting the legal approach to justice, Laski argues that too much emphasis on judicial elements excludes ethical and sociological consideration.
- Rawls, giving emphasis on just distribution of primary goods in society, promotes the theory of distributive justice. Some political philosophers offer an alternative conception of justice.
- The Marxist school, led by Marx and Engels, observes that justice cannot be separated from the overall analysis of class relations and class antagonism in a given society. So, the distributive principle should be the economic basis.
- The Communitarians from the pluralistic point of view argue that justice should be analysed from the communitarian context and the notion of good is created by the community to which all individuals belong.
- The notion of justice in the twenty-first century has become global and cosmopolitan.
- It has also been extended to ecological issues. However, justice is a dynamic concept. In different ages people have added different values to the idea of justice.

6.12 Probable Questions

Essay Type Questions :

- 1) Write a note on the nature of justice.
- 2) Explain the Greek concept of justice
- 3) Prepare an essay on liberal views of justice
- 4) Discuss Marxist approach to justice.
- 5) Discuss the ecological concept of justice
- 6) Examine the alternative views (Communitarian, Cosmopolitan and Ecological) of justice.
- 7) Analyse Plato's view on justice.

Short Questions :

- 1) Define justice.
- 2) How does Plato define justice?
- 3) Mention Aristotle's view on justice.
- 4) How does Ernest Barker define justice?
- 5) What did justice mean in the middle ages?
- 6) Write down communitarian view on justice.
- 7) How would you define global justice?
- 8) Explain the evolving nature of justice as mentioned by Arnold Brecht.

Objective Questions :

- 1) "Justice is intrinsic goods"—Who said?
- 2) Name a proponent of the liberal concept of Justice.
- 3) Name a proponent of the Pluralistic view of Justice.
- 4) Who is the author of the book 'A Theory of Justice'?

6.13 Further Reading

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2. Kant, I., 1965. *The Metaphysical Elements of Justice Part I of the Metaphysics of Morals*, Bobbs-Merrill.
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Unit-7 □ Social Justice

Structure

7.1 Objective

7.2 Introduction

7.3 Meaning of Social Justice

7.4 Elements of Social Justice

7.5 Features of Social Justice

7.6 Conditions for Social Justice

7.7 Friedrich Hayek on Social Justice

7.8 Social Justice in India.

7.9. Conclusion

7.10 Summing Up

7.11 Probable Questions

7.12 Further Reading

7.1 Objective

After studying this unit, the learner will be able to :

- understand the meaning of social justice.
- recognize its various attributes.
- find out its relevance to our social conditions.

7.2 Introduction

The concept of social justice first surfaced in Western thought in the wake of the industrial revolution and the parallel development of the socialist doctrine. It emerged as an expression of protest against what was perceived as the capitalist exploitation of labor and as a focal point for the development of measures to improve the human condition. It

aimed to create more egalitarian societies and remedy for capitalistic exploitation of human labor. It intends to protect human rights and dignity, basic human equality and intellectual and moral freedom irrespective of gender, religion, birth, class, caste, colour etc. It shows that social justice originates from the principles of social equality.

It emerged as a revolutionary slogan embodying the ideals of progress and fraternity. Following the revolutions that shook Europe in the mid-1800s, social justice became a rallying point for progressive thinkers and political activists. Proudhon, identified justice with social justice and identified social justice with respect for human dignity. Tocqueville observed that democracy nurtures the enthusiasm for social justice. Truly, the emergence of liberal-capitalist ideas promotes the demand for social justice. By the mid-twentieth century, the concept of social justice had become central to the ideologies and programmes of virtually all the leftist and centrist political parties around the world, and few dared to oppose it directly. Marx, Weber, Barker – all believe that contract-based equality produces social justice. Social justice represented the essence and the *raison d'être* of the social democratic doctrine and left its mark in the decades following World War II.

7.3 Meaning of Social Justice

Social justice denotes justice or the redressal of injustices from a social perspective. Social justice works toward the realization of a world where all members of a society, regardless of background, have basic human rights and equal access to their community's wealth and resources. Social justice is an extensive form of justice. It relates to whether people have access to the things they need to live a safe and dignified life. Social justice refers to the conception of justice applied to our entire society; the idea of a "just" society is one in which individuals and groups receive fair treatment and a fair share of the benefits of society. Social justice can be ideally defined as: A set of ideas, values and social practices to ensure that all persons and groups enjoy economic security, can participate effectively in democratic decision-making, exercise mutual respect and caring for one another and live their lives in ways that protect and sustain the natural environment for future generations. Not only that, social justice is implemented in part through democratically enacted law, effective public policy and programs delivered by governments and international organizations at all levels and, in part, through groups, organizations and social movements at the local, regional, national and international levels.

These public institutions and activist groups endeavor to a) overcome social exclusion or oppression of individuals and groups, including that which is based on gender, social class, racial-ethnic identity, cultural practices, religious belief, sexual orientation or disability

and b) provide sufficient material resources to ensure an effective standard of living for all, through some combination of decent, well-paying jobs in the labor market; readily accessible and non-stigmatized income security programs that recognize the socially valuable and unpaid work in the family and community; and high quality public services.

7.4 Elements of Social Justice

Hobhouse summarizes the following elements of social justice:

(i) Institutions are not ends but means. Politics is subordinate to ethics. (ii) One of the principles of harmony is that common goods cannot be opposed to individual goods or individual set-up against the common goods. Right impiles duties. (iii) Moral freedom; (iv) Social and political freedom; (v) Equality; (vi) Personal justice; (vii) Equal payment for equal service; (viii) The assignment of property should be so conceived as to secure freedom for the individual and power for the community; (ix) Social and personal factors in wealth; (x) Individual organization; and (xi) Democracy.

A Report of the United Nations observes that economic justice is considered an important element of social justice. Economic justice, defined as the existence of opportunities for meaningful work and employment and the dispensation of fair rewards for the productive activities of individuals, will be treated here as an aspect of social justice. The customary distinction between economic justice and social justice is intellectually unsatisfactory, as it serves to legitimize the dichotomization of the economic and social spheres. This tendency can seriously limit the potential for the advancement of justice, particularly within organizations that exercise a normative function with regard to matters of development. Nonetheless, overall economic justice is hampered by the concentration of wealth and power that seems to accompany the dissemination of the capitalist ethos. In addition, while apparent progress has been made in achieving equality of rights, there have been notable setbacks in connection with the basic rights of individuals, who in some settings have been subjected to discrimination and even torture.

According to David Miller, social justice “is realistic attempt to bring the overall pattern of distribution in a society into line with principles of society.” He points out three important principles of social justice: a) social justice as distribution according to needs (for instance, Marx and Rawls), b) social justice as distribution according to rights/entitlements, (Nozick) and c) social justice as distribution according to merits/ deserts. The functionalists, on the other hand, put emphasis on the functional importance of works as criterion of distribution. So, rewards should be distributed in terms of uniqueness of performance of the persons

concerned. However, these rights/entitlements, deserts/merits and functional importance may shield unequal distribution of rewards and resources. It results in injustice.

7.5 Features of Social Justice

1. The normative criterion or principle is the basis for social justice. People generally speak about principles of justice, of moral foundations, etc., where something is deemed just or unjust if it agrees with or is against such principles.
2. Social justice is multidimensional, including at least three types of institutions or dimensions: economy, culture and politics, without any of them in particular being more basic on a universal scale than the others.
3. Social justice is flexible to diverse frameworks or political units, such as state-nation, or smaller units (due to decentralization processes) and larger units (due to globalization processes).
4. Keeping in mind the morals, process efficiency and results, social justice utilizes conservative and radical strategies to satisfy its demand.
5. Besides society, social justice takes nature or ecosystem into consideration as an equally fundamental scenario that offers moral and efficient limits to human action.
6. Social justice is defined historically and contextually on the basis of a democratic process, which, to the extent possible, is increasingly more participatory in its interpretation and implementation.
7. Earlier, social justice meant economic equality. Nowadays, this concept has gone much further than just the economic and egalitarian meaning. Social justice has now taken on the idea of preventing or reducing widespread wrongs provoked by machismo, racism, xenophobia and homophobia, among others.
8. The meanings of social justice are far reaching and indistinct and translating it into concrete practice is full of several challenges. For instance, political theorists, philosophers, and social workers alike have tried to explore what should be the “right relationship” between and among persons, communities, states, and nations.
9. Some students of social justice consider its meaning in terms of the tensions between individual liberty and common social good, arguing that social justice is promoted to the degree that we promote collective good without infringing upon basic individual freedoms. Some argue that social justice reflects a concept of fairness in

the assignment of fundamental rights and duties, economic opportunities, and social conditions.

10. Social justice entails not only approaches to societal choices regarding the distribution of goods and resources, but also consideration of the structuring of societal institutions to guarantee human rights and dignity and ensure opportunities for free and meaningful social participation.

7.6 Conditions for Social Justice

- a) Advancements in social justice require pressure from organized political forces.
- b) Social justice is not possible without strong and coherent redistributive policies conceived and implemented by public agencies.
- c) Social justice requires strong and coherent policies in a multitude of areas: Fiscal, monetary and other economic policies, as well as social policies, The well-being of citizens requires broad-based and sustainable economic growth, economic justice, the provision of employment opportunities, and more generally the existence of conditions for the optimal development of people as individuals and social beings.
- d) Social justice will only flourish if environmental preservation and sustainable development constitute an integral part of growth strategies now and in the future.
- e) The idea of social justice has too often been associated with an excessively benevolent perception of human nature and a naively optimistic belief in the capacity of good ideas and institutions to transform the world into a secure and agreeable place.
- f) Social justice is impossible unless it is fully understood that power comes with the obligation of service. In reflecting on the nature, legitimacy and use of power, consideration must be given to self-interest, enlightened self-interest, general interest and the common good. The essence of democracy resides in a shared understanding of these concepts.
- g) Justice and freedom share an uneasy relationship. There are problems achieving and maintaining a balance between individual freedom and social justice. The myriad difficulties and uneven progress notwithstanding continued pursuit of these ideals is essential.

7.7 Friedrich Hayek on Social Justice

In the opinion of the libertarians, trouble with “social justice” begins with the very meaning of the term. It is thought that everyone will recognize an instance of it when it appears. The concept of social justice has become a common part of the political lexicon in recent years, with political activists identifying it as a key goal of its social strategy.

A common criticism from the non-left is that social justice appears to have no stable or concrete meaning. Hayek points out that whole books and treatises have been written about social justice without ever offering a definition of it. This point features prominently in the critique articulated by Friedrich Hayek in *The Mirage of Social Justice*, in the second volume of his *Law, Legislation and Liberty*. Hayek struggles to find a clear definition of what people mean by the term. To the extent that social justice operates as a catch-all justification for any number of programs that range from extensive income redistribution and anti-discrimination policies, there is little doubt the phrase is used in a bewildering number of often contradictory and not especially coherent ways.

Secondly, the application of social justice requires a geographical, sociological, political and cultural framework within which relations between individuals and groups can be understood, assessed, and characterized as just or unjust. In modern times, this framework has been the nation-State. David Miller observes that social justice points to a set of social and political institutions that will ensure the just distribution of benefits and costs throughout society. So, it requires the state to become much more closely involved in distributive issues.

Thirdly, the libertarian theories reject obligations for equal and equitable distribution of resources contending instead that each individual is entitled to any and all resources that he or she has legally acquired. For them social justice is not only corrosive of personal freedom but also of the economic freedom that a market economy requires. They emphasize individual autonomy and the fundamental right and they seek to protect individual freedom from encroachment by others. Proponents of this school support minimal state responsibility for protecting the security of individuals pursuing their own separate interests. Hayek further observes that it is erroneous to talk about social justice as justice is basically a property of individual actions. However, social justice is concerned with distribution of resources like, money, property and others across a society resulting from actions and decisions of thousands of separate people. In this situation, it is difficult to say that this distribution is either just or unjust.

Fourthly, Hayek argues that if one tries to match the process of distribution of resources with the principle of distributive justice it would wipe out economic freedom. It is tantamount to killing the goose that lays the golden eggs.

Hayek can be countered on two points. In spite of his doubt over the issue of social distribution by a single agency, people are habituated with its own creation — the state like institution and rules – for distribution of social resources. It is seen again that people often obey the decisions relating to resource distribution of these political institutions elected or controlled by people. On the other hand, distribution of social resources should be under collective control in a democratic society.

7.8 Social Justice in India

In India, the idea of social justice became an important index to judge the performance of the post-independent state. The leading figure of the Constituent Assembly, B.R. Ambedkar viewed social justice as the vital prerequisite of democracy. The pillar of social justice is equality – human equality. Social inequality based on caste, class, religion, etc., make a fragmented India. Due to the relentless effort of Ambedkar, the Constitution of India for the sake of social justice, like abolition of untouchability. However, to some people, it is a clear violation of deserts/merits based principle of justice.

Ambedkar rejects Gandhian principle of social justice implied in the idea of SarvodayaSamaj because of three main reasons: (1) That it is based on the division of labour which forms the cornerstone of Varnashram Dharma; (2) That it regards the role of Daridra Narayan (God's grace to weaker sections) as an important one for maintaining of justice; and (3) That the theory of 'trusteeship' has been highlighted to redress the economic ills of society, which is just like making the cat to look after the milk or to give a lamb under the guardianship of a wolf .

Contrarily, Ambedkar views, social justice as: the unity and equality of all human beings, the equal worth of men and women, the respect for the weak and the lowly, the regard for human rights, benevolence, mutual love, sympathy, tolerance, and charity towards fellow being, human treatment in all cases, the dignity of all citizens, the abolition of caste-distinctions, education and property for all, goodwill and gentleness. In short, Ambedkar sought social transformation through the establishment of social democracy in which equality, fraternity and liberty would prevail in each and every spheres of life of all members of society.

P.B. Gajendragadkar, former Chief Justice of India, once observed, "The concept of social justice is (thus) a revolutionary concept which gives meaning and significance to the democratic way of life and makes the rule of law dynamic. It is this concept of social justice which creates in the minds of the masses of this country a sense of participation in the glory of India's political freedom" Not only that, He advises further, "Social justice must be

achieved by adopting necessary and reasonable measures with courage, wisdom, foresight, sense of balance and fair-play to all the interests concerned. That shortly stated, is the concept of social justice and its implications.”

In the modern context, those concerned with social justice see the general increase in income inequality as unjust, deplorable and alarming. It is argued that poverty reduction and overall improvements in the standard of living are attainable goals that would bring the world closer to social justice. Social justice may be broadly understood as the fair and compassionate distribution of the fruits of economic growth. However, there is little indication of any real ongoing commitment to address existing inequalities. In today’s world, the enormous gap in the distribution of wealth, income and public benefits is growing wider, reflecting a general trend that is morally unfair, politically unwise and economically unsound. Injustices at the international level have as well produced a parallel increase in inequality between affluent and poor countries.

7.9 Conclusion

There is no doubt that social justice is a contested concept and lacks precise connotation. Not only a definitional problem, its proper realization by the state is also a matter of great debate. In spite of these limitations, indispensability of social justice cannot be ignored. The concept of social justice is far more widened concept than any other concepts of justice. And its sensational presence in people’s mind shows that social justice is almost organically related to the life experiences of human beings. Jatava argues that “Social justice is so wide concept that it includes all other kinds of justice in its sphere. It gives a vivid depiction of the whole of human society. It is like a looking-glass wherein one can find the picture of a country or of a society. Its subject matter is a sort of study, which is related more to practice than theory. That is why social justice is different from the well-established social sciences and other studies of human life”. He further adds, “Nietzsche, like Manu, was an embodiment of social inequality and both of them upheld the interests of one class only, which was quite contradictory to the spirit of social justice.” To conclude, a reference of Brecht can be more appropriate as he talks of universality of human needs and so the universal of justice. He says: “the universal term justice responds to a universal human need of expression, not only in acquiescence with existing laws but also in criticizing them for lack of justice, and that this universal need relates to the feeling that has at least some elements in common. We have good reason for supposing, further, that these elements must be very important for human nature, since they are tied up with such passionate feeling”.

7.10 Summing Up

- Concept of Social justice emerged in Western thought in the wake of the industrial revolution and with the advent of socialist thought.
- Basic aim of social justice is to remove imbalances in the social, political and economic life of the people.
- Social justice can be defined as a set of ideas and values which ensure economic and political security of all the people.
- Social justice contains normative principle;
- It denotes threedimensions – economy, culture and politics;
- Social justice is flexible to diverse frameworks or political units;
- Social justice utilizes conservative and radical strategies to fulfill its demands;
- Social justice stresses on nature which limits human action;
- It is defined historically and contextually with a view to become more participatory;
- Social justice always seeks economic equality;
- The meanings of social justice is far reaching in the sense that it faces several challenges;
- It is often considered in terms of tensions persisting between individual liberty and common social good;
- Social justice advocates social institutions to guarantee human rights and dignity. Certain conditions are necessary for proper functioning of social justice.

7.11 Probable Questions

Essay Type Questions :

- 1) Write a note on the origin and meaning of social justice.
- 2) Describe the elements of social justice.
- 3) Analyse the features of social justice.
- 4) Explain Hayek's view on social justice.
- 5) Write an essay on social justice in India.
- 6) Write an evaluative note on social justice.
- 7) Discuss Hobhouse's view on elements of social justice.
- 8) Prepare a note on conditions for social justice.
- 9) Discuss Ambedkar's point of view on social justice in India.

Short Questions :

- 1) What is social justice?
- 2) What is the aim of social justice?
- 3) Explain the three principles of social justice.
- 4) Write a brief note on libertarian views of social justice.
- 5) Discuss Gajendragadkar's view on social justice.
- 6) How does Jatava define social justice?

Objective Questions :

- 1) Name one liberatarian proponent of justice.
- 2) Who wrote 'The Elements of Social Justice'?
- 3) 'The Pillar of Social Justice is Equality'—Who said?
- 4) Name a book authored by F.A. Hayek.

7.12 Further Reading

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Unit-8 □ Procedural Justice

Structure

- 8.1 Objective
- 8.2 Introduction
- 8.3 Meaning of Procedural Justice
- 8.4 The Features of the Procedural Justice
- 8.5 Robert Nozik's Theory of Entitlement Procedural justice
- 8.6 Critique of Procedural Theory Justice
- 8.7 Conclusion
- 8.8 Summing Up
- 8.9 Probable Questions
- 8.10 Further Reading

8.1 Objectives

After studying this unit, the learner will be able to :

- know the basic concepts of procedural justice.
- to explain the meaning of the concept of procedural justice and identify its key features.
- to understand Robert Nozik's Theory of Procedural justice and its limitations.

8.2 Introduction

Distribution of scarce resources is a universal phenomenon in all spheres and levels of social life. Distribution of such resources is again a problem affecting all levels of society. It is a standard practice to evaluate the process of distribution with reference to justice or fairness. Fairness is an important factor that affects feelings and actions of people as it has been linked to satisfaction with and acceptance of decisions and perceived legitimacy of the authority.

8.3 Meaning of Procedural Justice

The doctrine that justice is not fairness of outcome but fairness of procedure is called the procedural justice. So, the concept of justice as fairness also denotes “procedural fairness”. Procedural justice concerns the fairness and the transparency of the processes by which decisions are made. The notion that fair procedures are the best guarantee for fair outcomes is a popular one. In other words, the perceptions of fairness are driven not only by outcomes but also by the fairness and consistency of the processes used to reach those outcomes. In short, procedural justice is concerned with making and implementing decisions according to fair processes. Hence, it may be contrasted with distributive justice, which stresses on the fairness in the distribution of rights or resources.

Procedural justice has four pillars: 1) being fair in processes, 2) being transparent in actions, 3) providing opportunity for voice, and 4) being impartial in decision making. However, the four principles—or pillars are complimentary to one another. The process of decision making should have transparency and candidness; the decisions should be open and the reasoning behind decision making should be explained clearly when appropriate. Citizens want an opportunity not only to understand what is happening but also want their voice to be heard. No one likes to leave their future is being decided upon at another person’s whim; rather, people want voice or representation in decisions that may directly affect them. Further, the decision making is to be guided by impartiality for ensuring bias-free decision and outcome. Truly, justice of a procedure is largely a function of the justice of the outcomes that it tends to produce when applied. For instance, the procedures that produce a fair trial are justified because they produce outcomes in which the guilty are punished and the innocent are acquitted.

The idea of procedural justice could be traced back to ancient Roman law and in the modern times to the Lockean concept of social contract. Procedural justice opposes substantive justice because it is based on end-state principle. Here, the state stands for deliverance of justice. Contrarily, both Locke and Nozick give emphasis on private property to define justice. In legal terms, procedural justice is that of common-law court rather than equity. In economic terms, procedural justice is that of markets against states. In fact, procedural justice has certain organic relation with the functioning of the market economy. The supporters of this type of justice believe that unrestrained trade practice, that is, trade activities free of state control, are just and beneficial for society. It is antagonistic to utilitarian principles and other theories of justice that urge the government to adjust any type of social transactions. The principles of desert or need are inapplicable in such a framework. It is in actuality a variant of distributive justice. Procedural justice is concerned with the

perception of fairness in the use of processes, procedures and methods in making outcome decisions. In *Anarchy, State and Utopia* (1974), Robert Nozick has restored procedural justice, as against substantive or end-state principle of justice, with his entitlement theory of justice. So, procedural justice never supports the justice of a gospel wealth which, observes that a rich man should “give back to the community some of what he has taken”. Nozick responds that a millionaire has a natural right to his wealth if he acquires it without force or fraud. The state discriminates against those with better voluntary exchange outcomes in favor of those inferior voluntary exchange outcomes. Autonomy of individuals should always be respected. Only the individual person can reasonably decide what to do with his talents, abilities, and the products of his talents and abilities.

He gives stress on the historical theories of justice — a historical theory asks about the process by which the final outcome has arisen. The theory of procedural justice observes that each person has entitlements which are individual in character and never dependent on any abstract principle of distribution. So, the state should not interfere in matters of entitlements as it would mean grave injustice.

In his discourse on distributive justice, John Rawls reviews the concept of procedural justice. He classifies it into three types: perfect procedural justice, imperfect procedural justice and pure procedural justice. If a procedure ensures just outcome it is called perfect procedural justice; for instance, the person who cuts a cake to take the last slice himself (Rawls’ illustration). In case of imperfect procedural justice, the procedure followed is likely but not certain to produce the just result. In case of pure procedural justice, there is no independent way to evaluate the outcome, coin-tossing for example – one may call it just, it is only on the grounds that it has come about by following the relevant procedure. It shows therefore, that procedural justice is a normative judgment of the fairness of the process of decision-making.

8.4 The Features of the Procedural Justice

1. Procedural theory of justice is based on rights. The rights come from entitlement. This entitlement is characteristically individualistic and never depends on any abstract principle of distribution taking into account the society as a whole.
2. The state, therefore, has no authority to interfere in the matter of entitlement. Procedural theorists favour the concept of minimal state that has to maintain law and order, to take action against violence, to fight the foreign aggressors, to stop theft and fraud and to implement all sorts of contracts. They believe that greater

the functions of the state the greater are the infringement of rights of the individuals.

3. For a better and illuminating formulation of a theory of justice Procedural theory of justice has followed the historical principle rather than end-result principles. It says that the justness or unjustness of a distribution can be decided by the fact that whether it is historical or not. Historical principle means how does it come about? Past records will show to what extent a distribution is able to satisfy the requirements of justice.
4. Procedural theory of justice has an organic link with the workings of the market economy. It believes that only through free market resources could be used at its best. Otherwise it would be damaging for all.
5. It also rejects the principles of need or desert. The supporters of this theory observe that it is hardly possible to agree upon what constitutes needs or just desert.

8.5 Robert Nozick's Theory of Entitlement

The exposition of the theory of justice cannot be complete without reference to Nozick's entitlement theory because the theory of entitlement is a good example of procedural justice. However, it should be kept in mind that Nozick's libertarian perspective of justice comes out of critique of Rawls liberal theory of justice. In fact, his *Anarchy, State and Utopia* is the only discourse that has never been followed by any notable academic works in later days.

His entitlement implies three principles of justice:

- a) A person who acquires a holding in accordance with the principle of justice in acquisition is entitled to that holding.
- b) A person who acquires a holding in accordance with the principle of justice in transfer, from someone else entitled to that holding, is entitled to that holding. and
- c) No one is entitled to a holding except by applications of (1) and (2).

It shows that justice begins and ends with the ownership of property and the owner of property has the right to use it according to his or her own wish. This property can only be taken from its owner through just compensation. This notion property ownership is the legacy of Locke's theory of appropriation proposed in his *Second Treaties*. To Nozick, any attempt to redistribute property even through taxation, a form of forced labor and is unjust.

However, he suggests that acquisition of wealth or property should not be detrimental to the well-being of other people.

In Nozick's opinion, a distribution of resources is said to be just if everyone within its scope is entitled to what they now own, having acquired it by legitimate means. So, according to Nozick, justice is entirely a matter of the sequence of prior events that created it. So, his own theory is "historical" theory of justice. In his words, "the Entitlement theory of justice in distribution is historical; whether a distribution is just depends upon how it came about". Here, the original emphasis on a right to equality is transferred to a right to equal opportunity, based on values of individual liberty and property rights. He hopes that only within the minimal state individual liberty would be protected forever. He further promotes a system in which the role of the institutions of state is limited to the guardian of property. To be specific, the state should not do more than protect individuals from violence, theft and breach of contract.

So, some men might legitimately be the owners of large quantities of land and other properties, while others would have to offer labor for conveniences of those owners. If all competitors comply with the rules in the true sense of the term liberty of individuals will be safeguarded. This ultimately helps to develop a libertarian justification of large and unequal capitalist property rights and wage labor relations. Nozick indeed believes that all taxation for the purpose of redistribution is theft – it takes, by force, what belongs to one person in order to give it to another person. Indeed, Nozick's conception of justice begins and ends with the ownership of property.

8.6 Critique of Procedural Theory of Justice

1. Robert Nozick has given undue importance to the procedural aspect of justice. Through the entitlement of holding he has built up the entitlement theory. Entitlement of holding may be in the form of acquisition or transfer or rectification of injustice. These are all about cases of distribution but what about production? Procedural theory of justice unjustifiably does not make any distinction between production and distribution. Both production and distribution are closely connected and to ignore one will lead to an incomplete theory.
2. He was in favor of a minimal state which is equivalent to the night watchman state. It means that in any society the state has to play a minimal role. Nozick's theory does not make it clear what role the state will exactly play in establishing justice. Moreover, since Procedural theory of justice falls into the category of distributive

justice, the state, through its elaborate machinery, must ensure proper distribution of holding, and at the same time entitlement to holding. If legal and other problems arise on the way of acquisition or transfer or rectification of previous wrongs, who will take the responsibility of rectifying this or solving the problem? It remains unresolved in Nozick's theory of justice.

3. Nozick has taken it for granted that people will strictly adhere to Locke's proviso that enough will be left for the use of others and the situations of others will not worsen. This implies too much reliance on the rationality of holders or users of property. But we cannot say that all the property owners will resist them from acquiring property/holding beyond their necessity. If this happens in the real world, no doubt, there will be no necessity of state or enforcing authority. Even the Utopian socialists could not imagine such a situation.
4. It is unfortunate that Nozick has offered a theory of justice which he wanted to apply in a society plagued by class divisions. If a society is divided into two opposing classes, and if one class is economically dominant the comparatively weak class would definitely be deprived of justice. For a real theory of justice there shall exist equality in its various manifestations.
5. Nozick, in his thorough analysis, wants to draw the attention of his readers to the politics of liberalism. However, the liberal philosophy in spite of its many good aspects, its black spots and irritating aspects can not to be ignored. The consequences of liberal political philosophy prevailing in the USA, Britain, and other states is not unknown to all. So it can be said Nozick's theory of justice is meant for capitalism.
6. Justice can be divided into social, economic and political and all are connected with each other. Nozick's theory of justice speaks least about their interconnectedness. The liberal political philosophy, the main intellectual source Nozick, hardly pays attention to this interconnection.

8.7 Conclusion

So, fair treatment is termed "procedural justice" or the experience of fair processes in resolving disputes. Rejecting Rawls theory of justice, Nozick has proposed for a neo-liberal discourse on justice under the garb of procedural justice.

According to Nozick, a patterned conception of justice is interventionist in nature but he himself proposes for a very narrow and market-driven concept of justice. He again

thinks that rights, merits, skills and abilities of individuals have no relation with socio-economic order. Here, Nozick seems to be an advocate of existing inequality in society and awfully indifferent to mentally and physically unable people who cannot compete in the market for abilities, merit and skills. Nozick's ideas of justice may easily remind us of Spencer's crude state or of its proximity to social Darwinism. This further provides a philosophical basis from which one can develop libertarian justification of large and unequal capitalist property rights and exploitation of wage laborers.

8.8 Summing Up

- Procedural justice is concerned with the fairness and the transparent processes by which decisions are taken by the decision making body.
- It stresses on fair processes in making and implementing decisions.
- Procedural justice is based on four fundamental principles: (1) being fair in process, (2) giving citizen's voice (3) being neutral in decision making and (4) being transparent in actions. Procedural justice contradicts substantive justice as it is based on end state principle.
- In the economic field it emphasizes the free market economy.

8.9 Probable Questions

Essay Type Questions :

- 1) Write an essay on procedural justice.
- 2) Discuss the features of procedural justice.
- 3) Write a note on Nozick's theory of entitlement.
- 4) 'The Entitlement theory of justice in distribution is historical...' Discuss.
- 5) Make a critical estimate of procedural theory of justice.
- 6) 'Justice is entirely a matter of sequence of prior events'. Examine
- 7) Do you think property right is the main pillar of Nozick's theory of justice?

Short Questions :

- 1) What do you mean by procedural justice?

- 2) What are the four pillars of procedural justice?
- 3) What does Nozick mean by entitlement?
- 4) Write a short note on minimal state.

Objective Questions :

- 1) Who wrote, 'Anarchy, State and Utopia'?
- 2) Is it true to say that Rawls was influenced by Locke in his understanding of procedural justice?
- 3) Who talked about 'minimal state'?
- 4) Does procedural justice favour market economy?

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Unit-9 □ Distributive Justice

Structure

- 9.1 Objective
- 9.2 Introduction
- 9.3 Rawls on Justice
- 9.4 Characteristics of Rawlsian Justice
- 9.5 A Critique of Rawls
- 9.6 Conclusion
- 9.7 Summing Up
- 9.8 Probable Questions
- 9.9 Further Reading

9.1 Objective

After going through this unit, the learner will be able to :

- Identify and describe the Rawlsian theory of justice
- Realize inconsistencies in Rawlsian theory
- Make a critical evaluation of Rawl's Theory of justice

9.2 Introduction

In all human societies distribution of essential resources is a problematic issue. People often evaluate the distribution of scarce resources in terms of justice or fairness. A resource distribution or allocation process consists of an authority (persons or institution) and one or more recipients of allocated resources. The authority divides the resources through use of certain rules like equality, equity and need. Distributive justice is, therefore, concerned with the fair distribution of benefits and burdens, such as income, taxes, etc. The classical view of distributive justice was found in Aristotle's observation: 'equals should be treated equally and unequals unequally'. Or it would bring injustice. It would further mean 'equal

distribution of income among the equals only'. Almost a decade before John Rawls, C. J. Chapman in one of his articles, 'Justice and Fairness' (1963), tried to combine the idea of justice with three things – 'the economic rationality of man', 'consumer's sovereignty' and 'moral freedom of individual'. Similar attempt is made by Rawls through idea of fairness and rational choice in original position.

Rawls (1921-2002) is primarily concerned with defining the principles of justice that would regulate an ideal society, rather than with describing how justice may be restored in an unjust society. His justice as fairness theory argues for equal rights for all social beings and injustice towards any people is to be justified only when this injustice is required to prevent an even greater injustice. Further, Rawls's theory justifies an egalitarian society. It is indeed a liberal principle of justice that never prescribes discrimination of human beings in terms of race, class, income or any other factors.

9.3 Rawls on Justice

Rawls tries to develop a method through which acceptable principles of justice could be arrived at. He develops a contractarian theory of justice in the tradition of Locke and Rousseau. Like the contract theory, Rawls's justice veers around a central point that is, the institutional arrangement for a society. It is called 'transcendental institutionalism'. It bears two discrete characteristics: a) this approach concentrates on the idea of perfect justice and is least interested in the comparison of justice and injustice; and b) in the process of attaining perfection one should give attention to right institutions rather than to the specificity of emerging societies. Rawls is also indebted to the Kantian exposition of justice. Both original position and veil of ignorance – the conditions of Rawlsian justice – have certain proximity to Kant's interpretation of justice. For instance, the original position should be analyzed as a procedural explanation of Kantian conception of autonomy.

In his attempts to construct a theory of justice, Rawls makes an estimate of the efficacy of utilitarian mode of explanation of justice. To Rawls, equality of basic rights for all individuals should be the fundamental principle of justice – 'justice as fairness'. To the utilitarian thinkers, violation of rights of some individuals may be justified to secure the greatest amount of happiness for the greatest number of individuals. Rawls rather prioritizes the principle of equal rights for all, not for one particular group over another group, unless it would do grave injustice to individuals.

Rawls' 'Theory of Justice' is a product of crises of the Western world: on the one hand, uncertain future of liberal political theory and philosophy as well as behavioral and post-

behavioral debate and fuming debate over American imperialist design in Vietnam, unemployment, gender movements, civil rights movement, and social unrest due to black liberation movement on the other. A man of modest and witty mind, he tries to counter this challenge by offering a moral theory of justice. The question he is trying to answer in his 'A Theory of Justice' is 'What is the most appropriate moral conception of justice for a democratic society?' Accordingly, Rawls tries to combine liberal and socialist egalitarian views of justice in his unique ideas of justice: 'justice as fairness'. It means, "All social values – liberty and opportunity, income and wealth, and the bases of self-respect – are to be distributed equally unless an unequal distribution of any, or all, of these values is to everyone's advantage." However, he clarifies that justice and fairness are not the same.

Rawls constructs two basic principles of justice as fairness: (a) the equality principles: 'Each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others.' and (b) the difference principle: 'Social and economic inequalities are to be arranged so that they are both to the greatest benefit of the least advantaged and attached to positions and offices open to all under conditions of fair equality of opportunity.' In other words, the equality principle is concerned with citizens' equal rights to basic liberties such as the right to vote, freedom of conscience, etc. and the difference principle, on the other hand, deals with redistribution.

The first principle of justice (a) is 'the principle of greatest equal liberty'. Rawls further argues that this first principle is logically prior to the principle (b); so principle (a) must be satisfied before principle (b) to attain justice. It entails that any breach of basic rights should not be validated by arguing that such a breach may produce economic and social advantages. The second principle of justice (b) has two parts: the principle of fair equality of opportunity and the difference principle. To attain justice, fair equality of opportunity must be satisfied before the difference principle. So that, it cannot be infringed in order to produce economic and social advantages.

9.4 Characteristics of Rawlsian Justice

- Justice as fairness means certain principles that would result in just distribution in society. It is just as the procedure of distribution follows just principles.
- To make it workable, principles of liberty and equality should be coordinated as a basis to determine distribution of primary goods such as rights, liberties, income, wealth, opportunities, offices, welfare, etc.

- In order to get just principles, he assumes a situation of ‘original position’, like the state of nature in contract theory, in which people decide the principle of distribution. The purpose of the scheme of the original position is to set up a fair procedure so that all agreed principles will be just. In such situation men should not take advantage of social and natural circumstances for their own interests.
- In the ‘original position’ because men are not aware of their intelligence, skill or strength, social status or class and the principle of good.
- Under these circumstances, everyone acts behind the veil of ignorance to choose principles of justice. It is presupposed that the parties concerned do not know their place in society, their class position or social status, the economic, political and cultural conditions of their society, their idea of good and their fortune in the distribution of natural resources and capabilities, their intelligence and strength. Rawls assumes that people being rational decision makers will make rational choices and devise principles to achieve just distribution in society.
- Each individual in this situation will choose two principles: a) equality in assigning basic rights and duties to all and b) all social and economic inequalities would be so arranged that it results in compensating benefits for everyone including the least advantaged.

At this stage, it would now be rational to ask what measure, deserts or merit, skills, talent or abilities, is the right basis to distribute rewards to all. Rawls thinks none else but needs should be the right criteria for equal distribution of primary goods and highest benefits to the least advantaged of the society. Skills and talents are, to a great extent, the product of ‘naturally and socially acquired advantages’ – either of natural endowment or fortunate family and social circumstances. Hence, in Rawls’ opinion, it is illogical to reward an individual who due to his or her advantageous social or class position becomes skilled or capable person.

9.5 A Critique of Rawls

Rawls’s theory has been subjected to following criticisms.

- i) To the critics, his theory of justice is hardly contractarian because the choice of two principles in the ‘original position’, and under the ‘veil of ignorance’, is not a function of any contract. He draws the ‘difference principles’ or the ‘maximin’ rule to explain the justice. However, in an original position a person is ignorant

of his status and needs. So it is hardly possible for him to bargain for primary social goods like liberty and opportunity, etc. Further, his proposed concept of veil of ignorance tends to destroy the possibility of having a real contract argument that can provide a defense of his two principles.

- ii) Ronald Dworkin argues the Difference Principle fails to deliver justice, since its formulation in terms of primary goods fails to recognize that those who are very unlucky, such as the severely ill or disabled, may need considerably greater shares of primary goods than others in order to achieve a reasonable life. Dworkin also argued that just economic distributions should be more responsive than the Difference Principle to the consequences of people's choices.
- iii) Robert Nozick argues that Rawls' theory cannot protect the liberty of an individual which man needs to determine what he should do with what belongs to him. As a supporter of minimal state and free individuals, Nozick argues that the individuals are not made to serve collective interests against his personal interests. He believes that justice begins and ends with the ownership of property.
- iv) Radical thinkers like C.B. Macpherson opines that Rawls starts his concept of justice with the acknowledgement that class division in terms of income and wealth is inevitable. It would further result in reduction of individual liberty through creating inequality of power in society. To Macpherson, Rawls' postulation that distributive justice is possible even within a class based society is seriously flawed because the poor and downtrodden people hardly enjoy freedom or get justice in such society. Besides, Rawls theory of justice tends to be culture-centric and relevant only to liberal-democratic society. Rawls' predilection for market is clearly visible in the pages of his writings. He maintains, "The ideal scheme sketched makes considerable use of market arrangements. It is only in this way, I believe, that the problem of distribution can be handled as a case of pure procedural justice." Macpherson, therefore, calls him 'revisionist liberal'. Norman Daniel also retorts that Rawls, writes a book on 'a theory of liberal democratic justice'.
- v) The Marxist thinkers like Richard Miller and Milton Fisk criticize Rawls on many counts. The concept of 'original position' suggests that man does not have any social milieu. So, his likings or so to say predilection does not have any social root. Besides, Rawls, as a man of liberal capitalist tradition, believes in inevitability of inequalities and it would continue forever as it is unsolvable. Man's endeavor to create a social system devoid of inequalities finds no support in his writings. Yet he develops a model based on equality. Further, the base factor of his theory is individual rationality which is nothing but an offshoot of liberal ideology.

- vi) Rawls believes that the second principle of justice, that is, the principle of greatest equal liberty, fair equality of opportunity and the difference principle, may be realized through a constitutional democracy. However, this argument has certain critical defects. It allows a greater inequality in the distribution of wealth and property. As a result, equality of economic, political and social opportunity for all cannot be ensured at all. Besides, constitutional democracy may encourage concentration of political power in a few hands that will use it for personal gains. However, Rawls prescribes constitutional guarantee of equal rights of participation in the political system to rectify this defect.
- vii) Amartya Sen observes that Rawls' theory of justice can be criticised from two major angles. Rawls is too much dependent on institutional arrangements, which is called transcendental institutionalism. It is nothing but speculative or hypothetical: his original position, for example, cannot include the plurality of human society. In other words, the concept of justice should be based on the realities of social life. Secondly, Rawls' idea of liberty is dichotomous: while liberty cannot be reduced to mere facility, excessive stress on liberty neglects the basic realities of human life, like hunger. Thirdly, perfect justice is overemphasized in Rawls theory. Sen thinks, that justice can be ensured only through rectification of injustice. Schopenhauer remarks "[A] theory of justice that can serve as the basis of practical reasoning," he writes, "must include ways of judging how to reduce injustice and advance justice, rather than aiming only at the characterization of perfectly just societies." This is the only way of treating equals equally.
- viii) Communitarians like Walzer, Sandel, McIntyre and others argue that Rawls ignores the basic values of community life. He religiously upholds the individual only and his liberty. Sandel rejects this lopsidedness and observes that 'shared self-understanding and affection' is the primal basis of just society. The identity of the individual and his/her pursuits in life and his/her political self are embedded in community values.

9.6 Conclusion

In spite of these criticisms, one can not deny the positive aspects of Rawlsian theory. He

- Initiates a path-breaking analysis of justice that has become the guiding principle of the egalitarians schools. He is indeed a great proponent of new egalitarianism.
- Develops analytic political thought consisting of experiment in metaphysical thinking with scientific rigour, pragmatic thinking like 'overlapping consensus'.

- Introduces a method, 'reflective equilibrium', of judging subjective and objective views of justice in such a way that stage of equilibrium can be achieved.
- Proposes for an admixture of constitutional rules, democratic order and market economy to build a humane and compassionate society for the betterment of the worst-off.
- Tries to combine leftist and right-liberalist agenda for constructing a just welfare society.
- Emerges as a new humane face of liberalism against utilitarian and communist campaigns.

Simultaneously, Rawls is aware of the possibility of infringement of equal liberty by utilitarian principles of greatest good for greatest number. Principles of distributive justice are therefore best thought of as providing moral guidance for the political processes and structures that affect the distribution of benefits and burdens in societies, and this kind of moral guidance on distribution should be considered principles of distributive justice. It is as well an egalitarian theory of moral conduct that guides each and every individual in their mutual interaction.

In 'Justice as Fairness: A Restatement', Rawls provides two basic principles of social justice, modified from his earlier work: i) Each person has the same inalienable claim to a fully adequate scheme of equal basic liberties, which scheme is compatible with the same scheme of liberties for all; and ii) Social and economic inequalities are to satisfy two conditions: First, they are to be attached to offices and positions open to all under conditions of fair equality of opportunity, and second, they are to be to the greatest benefit of the least-advantaged members of society (the difference principle).

9.7 Summing Up

- Distributive justice concerns with a fair distribution of resources. This distribution of resources follows the principles of equality, equity and the needs of people.
- Rawls argues against any differentiation on the basis of race, class, income or any other factors.
- Rawls's theory of justice is premised upon the need for equality.
- The basic principles of 'justice as fairness' are (a) the equality principles: 'Each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others.' and (b) the difference principle: 'Social and economic inequalities are to be arranged so that they are both to the greatest benefit of the

least advantaged and attached to positions and offices open to all under conditions of fair equality of opportunity.' It ensures that any departure from the principle of equality brings maximum benefit to the least advantaged.

- Rawls sets out his theory by placing individuals abstracted from their social and economic contexts behind what he calls the 'veil of ignorance'. Individuals behind this veil are unaware of who they are and what their interests, skills and needs are. They would have no particular vision of what constitutes a good life but would be interested in maximizing their primary goods.

9.8 Probable Questions

Essay Type Questions :

- 1) Elaborate the characteristics of Rawlsian theory of justice.
- 2) Discuss the principles of justice as visualized by Rawls.
- 3) Write an evaluative essay on Rawls' Distributive Justice.
- 4) Do you find any relation between distributive justice and social contract?
- 5) 'Rawls' theory of justice is a product of crises of the Western world'. Explain.
- 6) Examine the views of Amartya Sen, Walzer and Sandel on Rawls' idea of Distributive Justice.

Short Questions :

- 1) Define Distributive Justice.
- 2) Write short note: a) Aristotle on Distributive Justice & b) Chapman on Distributive Justice
- 3) What does Rawls mean by Distributive Justice?
- 4) What is 'transcendental institutionalism'?
- 5) What do you mean by 'justice as fairness'?
- 6) Write a short note on 'original position'.
- 7) Write a short note on the 'veil of ignorance'.

Objective Questions :

- 1) Who is associated with the concept 'justice as fairness'?
- 2) Who wrote 'Idea of Justice'?
- 3) Name a Critic of Rawls's Theory of Justice.
- 4) Who coined the term 'veil of ignorance'?

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Unit-10 □ Global Justice

Structure

- 10.1 Objective
- 10.2 Introduction
- 10.3 Conceptualizing Global Justice
- 10.4 Global and International Justice
- 10.5 Cosmopolitanism and Global justice
- 10.6 John Rawls and Global Justice
- 10.7 Critique of Rawls's View
- 10.8 Evaluation of Global Justice
- 10.9 Conclusion
- 10.10 Summing Up
- 10.11 Probable Questions
- 10.12 Further Reading

10.1 Objectives

After studying this unit, the learner will be able to :

- define the concept of Global Justice.
- describe how the idea of Global Justice developed.
- differentiate between Global and International Justice.

10.2 Introduction

The word justice indeed has wide or unfathomable philosophical implications. In a state, people often talk about just society, just order, or, to be specific, just human beings and a way of living entwined with justice. In reality, justice here implies certain geographical delimitations as it centers on the sovereign boundary and its inhabitants. The study of just

world order implies an understanding of global justice. It is indeed an assiduous venture. However, the great men of all ages call for justice for the mankind and believe in cosmopolitanism – that is, all persons irrespective of any political boundary have moral values and all have moral obligations to each other.

10.3 Conceptualizing Global Justice

Global justice simply pins on just world order, which is in reality a very complicated process. Yet, it tries to promote justice for the whole of mankind and its ecology — a widening of the scope of justice to the global level. Although enlightened thinkers harp on global justice again and again, the state leaders and political theorists have left their slumber much later, from 1970s onwards, under pressure from different corners. More so, as the cry for a joint struggle of all is getting importance to create a just world. It endorses the moral value of the individual without considering their place of birth. Global justice concerns with the problems of global coexistence. In other words, global justice as an issue in political philosophy is concerned with the existing unfairness among the peoples of the world. For instance, global justice tries to show that violence and hunger are regularly meted out to the global poor of the so-called less developed countries. It further attempts to involve the citizens of the developed world to eradicate these problems as part of their moral commitment. Interestingly, the state leaders never treat individuals as morally equal, but the states have been regarded as the seat of morality.

Charles Beitz (1975) observes that at present the questions of justice should not be delimited to the national level only and it is morally improper as well. The global institutions can act like the state-units. In a globalized world, these institutions can make laws, policies, and agreements and can collect taxes as well. It lays bare the narrowness of the national states in the globalized era. Thomas Pogge (1989), a German philosopher, also argues that global inequalities among the peoples call for a global approach to justice that can effectively counter these inequalities. Christian Barry raises the issue of unfair global institutional order which enriches elites in both developing and developed countries and continues the oppression and misery of the majority. In his opinion, ‘A fairly broad consensus has emerged about the characteristics of a minimally decent world. Indeed, during the past century, moral norms protecting the freedoms of the weak and vulnerable have become increasingly potent, condemning practices such as genocide, colonialism, autocracy, slavery, sexual violence against women, and economic structures that avoidably lead to widespread destitution. It is also commonly held that our current world fails to meet these criteria. Even

after a period of unprecedented opulence, more than 800 million people lack adequate nutrition and access to basic health services, and there are some 110 million child laborers under the age of 12, more than half of whom work in hazardous conditions.’

Hence, when one starts to think of inequality and to raise questions of redistribution at the global level he/she is talking about global justice. In other ways, it is an attempt to extend the discussion of social justice, which has traditionally assumed a politically bounded society, to the international level. So, global justice necessitates an assessment of the benefits and burdens of the structural relations and institutional arrangements that constitute and govern globalization. Besides, it can be interpreted ‘as the way in which fundamental rights and duties are distributed globally and how the division of advantages and disadvantages from global ‘cooperation,’ ‘competition,’ ‘engagements,’ and ‘activities,’ ‘events’ and ‘conditions’ are determined’. There are diverse issues that tend to show the inevitability of global justice: global poverty, immigration (to affluent countries) and refugees, health, education, catastrophic anthropogenic climate change, unprecedented forms of terrorism and warfare, and yet critical dependence of the rich countries on the working class belonging to poor developing countries.

All these developments further raise a series of questions such as: ‘Is it ever permissible to engage in coercive military action for humanitarian purposes, such as to halt genocide or prevent large-scale violations of human rights? Can terrorism ever be justified? Should affluent developed countries open their borders more generously than they currently do to those from poor developing countries who would like to immigrate to them? Are our current global economic arrangements fair ones and if not, how should they be transformed? What responsibilities do we have to one another in a globalized, post-Westphalia world order? How should we allocate responsibilities for reducing global injustice in our world, such as in the case of distributing costs associated with addressing climate change?’

The issues of global justice have tried to estimate the place and value of nationalism as well: ‘Under what conditions should claims to national self-determination be granted substantial weight? When should self-determination yield to concern for protecting human rights? Are commitments to nationalism and global justice compatible? Is genuine democracy only possible at the state level or are there robust forms of democracy that are possible in a more globalized arena? How ideals of democracy are best incorporated into defensible global institutional arrangements? Is world justice possible without a world state?’ All these questions are fundamental to basic principles of global justice. Political philosophers and state leaders must address these problems to secure justice for the peoples of the world.

10.4 Global and International Justice

Global justice is sometimes equated with internationalism. However, one should make a distinction between global and international justice. The major point of difference between these two concepts involves clarifying the entities among which justice is sought. In international justice, the nation or state is taken as the primary unit of concern and the focal point is justice among these actors. Contrarily, the basic theme of global justice theorists is not to seek justice between states or nations but justice among human beings living in these states. Global justice inquiries take individual human beings as the primary unit of concern and try to give an account of what fairness among such agents involves. There are a range of actions that cut across states or involve different agents, relationships, and structures that might be invisible in an inquiry seeking justice among states exclusively. In the opinion of political theorists, 'many different kinds of interactions are not circumscribed by state membership and yet can importantly affect human beings' most fundamental interests, so asking the question about what individual human beings owe one another often uncovers significant neglected features of relationships and structures that are of normative concern. Global justice analyses are not precluded from yielding state-level obligations; indeed, they typically do. However, they consider a wider array of possible agents and organizations that might have duties as well.' One advantage of global justice inquiries is that none is forced to take states as a fixed constraint and so one can judge a range of relevant relationships, capacities and roles that also constitute our interactions and might be relevant to how he/she ought to conceptualize global responsibilities.

The continuous expansion of transnational actors, their rules and their systematic activities significantly influence the domestic life of the states. These developments explain the process of transition from international to global justice and the way for explanatory and moral theorizing. It is not only a terminological shift but it should be regarded as a sign of happenings across national borders unthinkable in the previous decades. It further points to the blurring of boundary of national and international realms. This on-going process again diminishes the traditional role of nation states as moral guardians of the inhabitants.

So, in such a situation the decisions taken by state leaders cannot simply be decisions of that state as it might have been formulated under guidance of outside influences and it would have a cross border effect in practice. At the same time the prospect and challenges of a policy can be both 'global' and 'local' and the solution it prescribes may reflect common values and being guided by different designs and dynamics. So, creating a just society requires dexterous maneuvering of variety of actors and intertwined issues like, private and public, markets and power.

On a different note, some scholars observe that global justice is both an aim and a concept including certain important legal elements within it. As an aim, it portrays a society in which political shortcomings and economic deficiencies tend to be overcome and greater justice, equality of opportunity and greater checks on power are upheld. So far as legal elements are concerned there should be a set of rules to uphold civil rights as well as maintenance of open markets and efficient sharing of resources including well-oiled infrastructures to interlink different layers of society. However, everything should be transparent and not beyond scrutiny.

10.5 Cosmopolitanism and Global Justice

Global justice has an umbilical link with cosmopolitanism. While nationalists believe in sovereignty of a nation and its people, cosmopolitans instead give emphasis on global citizenship. It suggests that the earthlings have moral responsibility to ensure the wellbeing of citizens of the world. Following the Greek tradition, the Stoicism, for example, cosmopolitans campaign for universal brotherhood and ‘citizenship of the world’. The peoples of this world are relatives to each other barring the nature of detachment standing in between them.

Cosmopolitanism thus sticks to the multicultural identity of individuals and it implies certain responsibilities as well. As a member of the global community, he/she has responsibility to other members of the same community – they are accountable to each other for creating a world, which would be habitable to all irrespective of creed, colour, class, caste and gender. So, they ‘believe that all individual human beings have equal moral worth and that the strength of our moral obligations to others is not importantly diminished by national border’. Obligations to the world community are no less important than local obligations. In other words, one should not disregard the distant brotherhood in the name of nationhood. Tagore was an ardent supporter of such cosmopolitan views. Martha Nussbaum, a renowned scholar of this age, claims that allegiance ‘to the worldwide community of human beings’ should be the primary allegiance for all.

10.6 John Rawls and Global Justice

John Rawls wrote ‘A Theory of Justice’ (1971) with reference to sovereign states. The international set-up consisting of state-units could not be a proper place for application of distributive justice. However, ‘The Law of Peoples’ (1999), written by Rawls, gives strong impetus to develop different approaches to global justice. Charles Beitz and Thomas

Pogee, for instance, observe that the reasoning of two Rawlsian principles, the difference principle and principle of fair equality and of opportunity, could easily be applied in a global context. Rawls disagrees and suggests that difference principle might be a better option for conceptualizing global justice.

Before delving into the Rawls' concept of global justice, the word 'people' needs clarification. Rawls gives an inclusive view of people. A 'people' denotes a group of persons with common culture, tradition, and history and world views. They have a State or may not have State but still possess an exclusive identity of their own. So, Rawls conceptualizes people in a much broader sense in his discussion of global justice. This is indeed a positive step to justice for all peoples. He again uses a specific term 'well-ordered' peoples to define the nature of peoples of the world: the liberal peoples and 'decent non-liberal people. By decency he means (a) the social system should be based on peace and it respects others; (b) it has a system of law and idea of justice that protect basic human rights for all : right to life, right to liberty, right to personal property and right to formal equality ('the similar cases be treated similarly'); (c) to the legal professionals, judges and associates, law is an embodiment of justice enriched with common good and (d) there must be 'decent consultation hierarchy', that is, the decent human beings must be committed to the law of peoples.

In accordance with this schema in mind, he tries to draw certain principles in The Law of Peoples and thinks all well-ordered peoples would follow it in their interactions. It certainly strengthens the base of global justice :

Eight Principles of Interactions

1. Peoples are free and independent, and their freedom and independence are to be respected by other peoples.
2. Peoples are to observe treaties and undertakings.
3. Peoples are equal and are parties to the agreements that bind them.
4. Peoples are to observe a duty of non-intervention.
5. Peoples have the right to self-defense but no right to instigate war for reasons other than self-defense.
6. Peoples are to honour human rights.
7. Peoples are to observe certain specified restrictions in the conduct of war.
8. Peoples have a duty to assist other people living under unfavorable conditions that prevent their having a just or decent political and social regime. (McKinon, 2009)

He also hopes that both liberals and decent non-liberals will use these principles for interactions on a global scale. He feels that three organizations are also required to confirm mutual relations and realization of global justice: organization to secure fair trade among peoples, organization to facilitate peoples to borrow from cooperative banks and organization to play the role of a confederation of peoples, like UNO.

For ensuring global justice in an unequal state-system, Rawls proposes the ‘duty of assistance’. There is no doubt that the state-units of this globe are uneven in terms of development: while one is developed and strong the others are less developed and weak. Rawls observes, “I believe that the causes of the wealth of a people and the forms it takes lie in their political culture and in the religious, philosophical, and moral traditions that support the basic structure of their political and social institutions, as well as in the industriousness and cooperative talents of its members, all supported by their political virtue.” So, to Rawls, it is as if a natural propensity found in some states but this ‘lack of political and cultural traditions, the human capital and know-how, and, often, the material and technological resources needed to be well-ordered.’ In such case, the well-ordered people should assist these “burdened societies” till their transformation into well-ordered societies. He further believes that the global difference principle cannot be applied across the states marked with different stages of development.

In spite of this deft presentation of justice in the global context, Rawls views his Law of Peoples as a ‘realistic utopia’ (Kazanistan) – it is not real but reflection of a variety of real life: agreements and disagreements, for instance. He applies the ‘original positions’ in two stages. At first, the concerned peoples should conclude fair terms of cooperation to control the basic structure of society. In the second stage, the representatives of liberal peoples under the veil of ignorance (having no knowledge of their territory and power) enact the foreign policy of their choice that tolerates states like ‘Kazakistan’.

10.7 Critique of Rawls's Views

‘The Law of Peoples’ is subject to certain criticisms. To the critics, Rawls’ view suffers from serious ignorance, wrong presumption and grave failure. In fact, the main shortcomings of the liberal ideology and its world view debilitate the base logic of Rawls. Besides, the discourse, since its inception, embedded in The Law of Peoples faces dithering and doubts on the part of Rawls himself. In his view, there is no such thing as international distributive justice.

The criticisms are :

- Rawls fails to understand the network of relationships among peoples, individuals and states in the world arena in its current dimensions. He thinks of states as independent units so they are qualified for the well-being of its people. In practice, states in this age are interdependent units and they influence each other by their deeds.
- Linking the levels of wealth and prosperity with the political culture and tradition, as Rawls does, cannot be a rationale to estimate the performance of states. The global economic order at present is controlled by powerful developed countries. It does naturally serve the interests of these wealthy states rather than the interests of the poverty-ridden states. The affluent states hardly do anything to remove the misery of poor developing countries.

Thomas Pogge elaborates this point to a great extent. In his opinion, International agreements and institutions often jeopardize the interests of poor states in general and global justice in particular. He identifies, for example, two international protocols, international borrowing privilege and international resource privilege, for dissection. Internationally recognized legitimate government, in spite of its corrupt and anti-democratic practices, can a) borrow money on behalf of the country and repay the debts as per rules and b) dispose of country's resources through internationally recognized means. However, these privileges are beneficial only to the rulers of wealthy developed states and the rulers and elites of the non-affluent states. In fact, an unhealthy nexus has developed between these two ruling sections consisting of state elites, foreign rulers and business corporations. In either way, it imposes unjust world order on the worst off and wealthy states are benefiting from such injustice.

- Rawls wrongly assumes that political communities are bounded and separate communities. In the present international system, nothing will be a closed system – policy of the states may be reconstructed by international factors. Significant collective problems do have repercussions in the global arena. Decisions and actions of one state or few states may affect state-units. Infectious diseases like Covid-19, AIDS, SARS are global problems, which need global cooperation.
- The system of global cooperation in reality ensures domination and coercion. The states now in a sense have become global or transnational in terms of trade, production, labor, environmental pollution, scarce resources, institutions, treaties, technologies, migration, cooperation, culture and so on. Forst opines, "For once one takes the history and concrete character of these multiple relations into account,

it is a euphemism to refer to them as ‘cooperation’ or ‘interdependence’ without further qualification, since such terms imply relations of reciprocity that are obviously absent. Rather, what emerges is a complex system of one-sided or largely coerced cooperation and dependency rather than interdependence. In other words, one sees a context of force and domination.” This system should be transformed into a system of fair cooperation for attaining global justice.

- Rawls’ notion of people is also criticized. He tries to understand people distinctively with reference to the boundaries of states. However, commonalities like shared history, ethnicity, culture and language may not match well with the state borders. National boundaries do not consist of single people and each individual may have multiple loyalties.
- There are other charges as well against Rawls’ reasoning. Rawls denies more socio-economic equality like ‘a higher standard of living’ for people. In his view, the representatives of people are rather interested in the justice of domestic institutions. Factually, global inequality has a negative effect on these domestic institutions. As a matter of fact, peoples claim for equality not only at the domestic level but also on the global level.
- It is, again, not very clear why decent hierarchical societies will be content with an abridged list of human rights offered by Rawls. The liberals also may want more rights than those included in the Eight Principles. Further, it is also not justified to create a politically neutral Law of Peoples that has been taken to be accepted by liberals and non-liberals.
- According to some scholars, like Kuper, Rawls in the process of argument for pluralism of states denies essential pluralism of individuals. In other words, he is less sensitive to individuals within states. So, his greater emphasis on the rights of states paves the way for unequal treatment of citizens.
- Rawls also supports tolerance to unjust regimes in his Law of Peoples in the name of stability. Contrarily, his scheme fails to support cooperative arrangements and relations between peoples. So, he stands far away from the salient reality of global society.
- Rawls is also indifferent to democratic rights. Amartya Sen observes that non-democratic regimes adversely affect the well-being and human rights of the ruled. Sen further advocates that democracy and rights are not parts of Western culture alone, these are found in the cultures and traditions non-Western hemisphere of the globe.

10.8 Evaluation of Global Justice

As an idea Global Justice raises controversy. To some theorists, justice cannot be applicable in the global realm. David Miller (2007) suggests that sovereign borders are more important than cosmopolitan global justice. He argues that due to national differences on conceptions of what is 'good' or 'right', the applicability of global justice can be questioned. Further, principles of justice require a common history and culture that is not possible in global context. For Thomas Nagel (2005) and Michael Blake (2001), in absence of the backing of powerful global institutions having power over individuals and states, discussions about global principles of justice is a futile exercise. Iris Marion Young (2011) considers cosmopolitanism and global justice as a Western-centric ideals that does not have any universal appeal indeed. Objections are again raised against the moral approach to global justice: a) the global institutional framework cannot be unjust because its participants have consented to and b) it cannot be wrong for the governments of the rich countries to draw and impose the present global order because their primary responsibility is to their own people, not to peoples of other countries.

However, these criticisms cannot diminish the importance of global justice. It has received significant attention from political philosophy in recent years due to the rise of globalization as well as the critical rise of poverty at the global level. Again, there are different conceptions of global justice like the causal and moral analysis of the global institutional order against the backdrop of its feasible and reachable alternatives. However, beyond these differences, global justice tries to analyze: how increasing incidence of violence and unbridled poverty, high rate of mortality and morbidity might be checked. In practice, these problems cannot be solved merely through better government behavior, internally and internationally, but more efficiently through global institutional reforms. Scholars observe, 'The importance of this global justice approach reaches well beyond philosophy. It is crucial for enabling ordinary citizens — in developed countries especially — to come to an adequate understanding of their moral situation and responsibilities. And it is very helpful also for pushing social scientists and development economists especially, to overcome their bias toward explanatory nationalism, their tendency to explain poverty and hunger exclusively in terms of causal factors that are domestic to the societies in which they occur.'

10.9 Conclusion

Elimination of global injustice is an essential condition for the realisation of justice within the state. A state that is subjected to unequal and exploitative international trade

and constrained by unjust policies of global institutions, can not institutionalize processes and institutions that deliver justice. If we concur with the view that democracy is based upon the assumption that all citizen possess equal moral worth, then persons whose moral status has been compromised by poverty illhealth and illiteracy, must approach the system as the bearer of a right that has been denied to them.

10.10 Summing Up

- Global justice draws the attention of political philosophers and theorists in the backdrop of increasing unfairness in the world in the second half of the 20th century.
- In fact, global issues like health, education, climate change, immigration, drug trafficking, terrorism, even the management of present pandemic force academics and political leaders to ponder over the inevitability of global justice.
- Global justice is often associated with international justice. But there are differences between the two concepts. In international justice the state is considered as the primary unit of concern in understanding justice, or to be specific, the just relations among the states. Global justice, however, gives emphasis on justice among human beings living in these state units.
- In his masterpiece, ‘A Theory of Justice’ John Rawls suggests that under controlled conditions rational human beings would choose basic principles of distributive justice.
- In ‘The Law of peoples’ Rawls promotes different approaches to global justice. Rawls mentions the following principles for strengthening the base of global justice:
 - 1) Freedom and independence are to be respected by other people.
 - 2) People are to observe treatise;
 - 3) People are equal;
 - 4) People should follow the principle of intervention;
 - 5) People have the right to self-defense;
 - 6) People are to honour human rights;
 - 7) People should follow some restrictions;
 - 8) People should assist other people.

10.11 Probable Questions

Essay Type Questions :

- 1) Write a note on the concept of Global Justice.
- 2) Examine Rawls' view on Global Justice.
- 3) Make a critical estimate of Rawls' view on Global Justice.
- 4) Evaluate the concept of Global Justice.
- 5) The issue of Global Justice raises serious questions. – What are the questions? State your views on these questions.
- 6) Make a distinction between Global Justice and International Justice.

Short Questions :

- 1) Define Global Justice.
- 2) "Global justice is both an aim and a concept"—Explain
- 3) How does Thomas Pogge define Global Justice?
- 4) Analyse the relation between Global Justice and Cosmopolitanism.
- 5) Explain Rawls's concept of 'duty of assistance'.

Objective Questions :

- 1) Who wrote 'The Law of Peoples' ?
- 2) Name a critic of 'The Law of Peoples'
- 3) Name a theorist who argues that justice cannot be applicable to global realm.
- 4) Who wrote "Inequality Reexamined"?

10.12 Further Reading

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MODULE – 3

Unit-11 □ Concept of Rights

Structure

11.1 Objective

11.2 Introduction

11.3 Meaning of Rights

11.4 Features of Rights

11.5 Historical Origin of Rights

11.6 Theories of Rights

11.6.1 Theory of Natural Rights

11.6.2 Utilitarianism

11.6.3 Idealist Theory of Rights

11.6.4 Theory of Moral-Legal Rights

11.6.5 Theory of Historical Rights

11.7 Conclusion

11.8 Summing Up

11.9 Probable Questions

11.10 Further Reading

11.1 Objective

This unit aims to make the learner familiar with :

- the history of the development of the concept of rights.
- the various theoretical formulations regarding rights.
- the limitations of the theories of rights.

11.2 Introduction

Rights are considered vital to any civilization as they are the established pillars of every culture, tradition and society. We have witnessed the world getting engaged in various kinds of social conflicts which are all rooted in the claiming of individual and collective rights. According to the Stanford Encyclopaedia of Philosophy, “rights structure the form of governments, the content of laws and the shape of morality as it is currently perceived”.

Every lawful government and its constitution is obligated to serve its citizens and bestow them with different kinds of rights. Politics plays an important role in developing or recognizing the above rights. Political orientation or belief is an important determinant factor in understanding the concept of Rights. Rights about particular issues or particular groups, are often areas of special concern and they become critical when they come in conflict with each other.

11.3 Meaning of Rights

In an organized society, the common purpose of living well brings individuals under a collective umbrella. This purpose is fulfilled only by the favourable conditions for the development of the personality of the human being. It is impossible to be good citizen in a society in which there is usually no opportunity to transform one's potentiality into reality. It is an indispensable prerequisite to have at least a few opportunities favourable to the realization of human personality. For example, it is not possible for a human being to develop his own personality without the freedom of expression. This recognition is essential to the wellbeing of the individual.

The idea of rights is not a static idea. It is a dynamic concept with. For example, at the beginning of the industrial expansion, free use of the property rights of the people was recognized. But with its inherent evil effect, the expansion of the capitalist industry created a situation in which it was no longer possible to protect this free right. Then, in the middle of the twentieth century, the right of property in all the countries was restricted. Due to such a constant flux of social life, it is not possible to compose a perpetual list of rights. It is possible to have rights only in those states where freedom and equality are present. Without freedom, it is not possible for people to protect their rights and interests. Only democratic system arising out of periodic elections and presence of alternative political parties can ensure human rights.

Thus rights are the sum total of these conditions which ensure development of individual personality. But rights in its proper sense are never rights unless they are recognised by the state.

Without equality, there will be discrimination. In that case the significance of the rights will be completely lost. Therefore, the level of entitlement is dependent on the nature of the political system. In a totalitarian state, where the distinction between the state and the administration is unclear and where there is hardly any political competition and bargaining, the right is left to the whims of the ruler. Such a state does not guarantee the real rights to its citizens. In a democratic state, the existence of alternative political parties, independent media, and democratic institutions such as the judiciary constitutional rights.

11.4 Features of Rights

Some of the important **features of rights** that can be discussed are:

1) Rights are the means of personality development :

The rights are all the conditions that a human being needs in order to enrich his personality. Rights are socially desirable conditions.

2) The concept of rights is socially dependent :

Since people enjoy rights as social beings, they are obliged to observe fundamental rules of social life. In the process of enjoying rights individual must be aware of similar rights of others.

3) Rights are not always a state centric :

Rights are an essential part of a person. What he will do for his survival depends entirely on himself.

4) Rights are a legal concept :

The main task of the state is to create conditions necessary for so that the development of individual personality.

Bosanquet says a right is a claim recognized by society and enforced by the state.

How citizens enjoy their rights depends entirely on state and state laws.

5) Right are dynamic in nature:

The concept of rights is not Fixed. Society is dynamic new issues are emerging. From this perspective rights have a tendency to grow. In the process of socio-economic development

individuals raise new demands and these demands when recognised by the state become rights. Right to work, right to leisure, right to strike etc. are such rights.

6) Rights are not absolute. Rights are correlative with duties.

11.5 Historical Origin of Rights

Though modern historians consider “Magna Carta” of 1215 as the historical beginning of human rights, but its real origin goes back to 539 B.C. when **Cyrus**, the great king of ancient Persia conquered the city of Babylon in order to free all slaves and asked them to choose their own religion and race. The idea of human rights quickly spread from Babylon to many nations especially in India, Greece and eventually Rome where the concept of natural law had significant influence.

The **Constitution of Medina (622 AD; Arabia)** contained a number of rights for the Muslim, Jewish, and other followers and “believers” of Medina.

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

The Magna Carta, or “Great Charter,” is arguably the most important historical development that led to the rule of constitutional law. In 1215, after King John of England violated a number of ancient laws and customs by which England was governed, his subjects forced him to sign the Magna Carta. Among them was the right of the church to be free from governmental interference, the rights of all free citizens to own and inherit property and to be protected from excessive taxes. It established the right of widows who own property to choose not to remarry, and established principles of due process and equality before the law. It also contained provisions forbidding bribery and official misconduct. The Magna Carta was a crucial defining moment in the fight to attain freedom.

Another breakthrough in the development of rights was the **Petition of Right**, adopted in 1628 by the English Parliament and sent to Charles I as a statement of civil liberties. It asserted four principles:

1. No taxes can be levied without consent of the Parliament.
2. No subject can be imprisoned without proper reason (reaffirmation of the right of habeas corpus).

3. No soldiers can be quartered in the dwelling house of the subjects.

4. Martial law can not be used in time of peace.

In 1789, the people of France brought about the abolition of the absolute monarchy and set the stage for the establishment of the first French Republic. The **Declaration of the Rights of Man and of the Citizen** was adopted by the National Constituent Assembly.

The Declaration decrees that all inhabitants are to be guaranteed the rights of “liberty, property, security, and resistance to oppression.” It viewed law as an “expression of the general will”, intended to promote equality of rights and to forbid “only actions harmful to the society.”

By 1948, the United Nation under the dynamic chairmanship of Eleanor Roosevelt, a human rights winner in her own right and the United States delegate to the commission in the UN, prepared the draft of the document that became the Universal Declaration of Human Rights. It was accepted by the United Nations on December 10, 1948. The Member States of the United Nations promised to work together to codify the declaration into a single document. As a result, many of these rights, in various forms, are part of the constitutional laws of democratic nations in the present day world.

11.6 Theories of Rights

There are compelling theories of rights offered by several theorists.

11.6.1 Theory of Natural Rights

Natural rights are natural claims as they come as gifts of nature and are not dependent on any authority. These rights were available to individuals in the state of nature. This theory is mainly linked with two thinkers Hobbes and Locke, who were supported by Spinoza, Jefferson and Blackstone. Later Rawls and Nozick employed this theory.

Though Hobbes started as an individualist where he was promoting individual rights, however, he ended up being absolutist in the sense that he advocated surrendering all these rights as a necessary condition for the establishment of government. It was Locke who strongly championed the natural rights by recognising individuals right to resistance if the authority fails to protect individual right to life, liberty property.

Two contemporary theorists Rawls and Nozick based their theory of rights on social contract and natural rights. For Rawls what is relevant for justice is the individual's means to pursue their own ends and to live whatever good life they choose for themselves. Nozick

believes that individual rights especially property rights is derived from the principle of natural right of self ownership.

11.6.2 Utilitarianism

According to the utilitarians, a just action relative to all other possible actions, maximises utility or “the good”. This is the utility principle. Utilitarianism is solely consequentialist; the justice or injustice of an action or state of affairs is determined exclusively by the consequences it brings about. If an action maximises utility, it is just. On this account, therefore, rights are purely instrumental. Utilitarian will honour a right if and only if it will lead to the maximisation of utility. This statement also indicates the limits of all rights. If the exercise of a particular will not maximise utility, the utilitarian is obligated to violate that person’s rights for the sake of utility.

11.6.3 Idealist Theory of Rights

The idealistic, theory defines a right as that ‘which is really necessary to the maintenance of material conditions essential to the development and perfection of human personality. In simple words, it means ‘that without rights no man can become the best that he is capable of becoming. Thus, it is the right and duty of every human being to develop his potentiality. Hence, a right is a claim based on the rational will of man, and, for this reason they are first recognized by the society and then translated into law by the state. Barker rightly says, “Human consciousness postulates liberty; liberty involves right; rights demand the state”. Thus, the idealistic theory looks at rights from a highly moral point of view. Rights are rooted in the mind of man. They are powers granted to him by the community in order that he with others may realize a common good of which his good is an intrinsic part.

11.6.4 Theory of Moral-Legal Rights

Along with natural rights, moral recognition is equally important. This gets reflected in the ideas of Kant, Laski and Barker. This theory is concerned not only with the source but also the content of rights. Legal rights are concerned only with the recognition of states, whereas the moral rights are concerned with moral content.

● Kantianism

Kant’s political philosophy is concerned with the reciprocal acknowledgment in one another’s valid claims to freedom of choice and action. Kant’s political morality is a morality of external legislation. Other’s valid freedom claims restricts one’s freedom of choice and action.

- **Laski's Theory of Rights:**

Laski describes rights as “those conditions of social life without which no man can seek, in general, to be himself at his best”. Laski calls rights as conditions of social life. Right is a social concept and deeply linked with social life. The essentiality of rights is established by the fact that individuals claim them for the development of their best self. He places rights, individuals and state on the same board in the sense that they cannot be separated from each other and there is no antagonism between them. Laski recommends the long-cherished view that the state has a very important role to play in the realisation and, before that, recognition of human rights. Mere recognition, moreover, is not sufficient for the exercise of rights. The state must, through law and institutions, implement the rights.

The most significant part of Laski's theory is the functional aspect of rights. It emphasizes on the relation between right and duty. He stated that Rights are correlative to functions. The functional theory emphasizes that an individual is entitled to claim rights only when he performs duty otherwise the claim or demand for right cannot be entertained.

- **Barker's Theory of Right:**

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

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

11.6.5 Theory of Historical Rights

Historical Rights are individual and collective rights based on traditions, customs, which are based on historical and evolutionary grounds. Thinkers like Burke, Maine and MacIver believe that laws have historical roots based on usages and customs. For example, Magna Carta, Bill of Rights etc have a historical ground and eventually became legal rights. According to this theory, it is history which is the basis of rights. Rights are crystallization of customs and usages which in course of time become rights.

11.7 Conclusion

Thus in conclusion we can say that the specific enumeration of rights has differed greatly in different periods of history. In many cases, the system of rights promulgated by one group has come into sharp and bitter conflict with that of other groups. In the political sphere, it has been seen that a political right in one area has been recognised whereas the same right has been denied in another place. There are constitutional provisions which enshrine some legal rights whereas there are no mention of such rights in another state.

Historically, we have witnessed many notions of rights as authoritarian and hierarchical, with different people granted different rights, and some having more rights than others.

In contrast to this, the modern conceptions of rights have emphasized liberty and equality as among the most important aspects of rights, as upheld by the American and French Revolutions.

11.8 Summing UP

- Rights exist only in society. These are the products of social living.
- Rights are claims of the individuals for their development in society.
- Rights are recognized by the society as common claims of all the people.
- Rights are rational and moral claims of the people.
- Rights are equally available to all the people.
- The contents of rights keep on changing with the passage of time.
- Rights are not absolute. There are restrictions deemed essential for maintaining public health, security, order and morality.
- Rights are inseparably related with duties. There is a close relationship between them “No Duties No Rights. No Rights, No Duties.” “If I have rights it is my duty to respect the rights of others in society”.
- Rights need enforcement and only then these can be really enjoyed by the people. Rights are protected and enforced by the laws of the state. It is the duty of a state to protect the rights of the people.

11.9 Probable Questions

Essay Type Questions :

- 1) Examine the historical origin of rights.
- 2) Explain the dominant theories of rights
- 3) Discuss the theory of natural rights.
- 4) How legal and moral rights theories differ from each other?
- 5) Write a short note on Barker's theory of rights
- 6) Write a short note on Laski's understanding of rights.

Short Questions :

- 1) Define Rights.
- 2) Mention two main features of rights
- 3) What is the utilitarian concept of rights.

Objective Questions :

- 1) In which year was 'Magna Carta' signed?
- 2) In which year was 'Petition of Right' adopted by the British parliament?
- 3) In which year was Universal Declaration of Human Rights declared by the UNO?
- 4) Name a utilitarian philosopher of Rights.

11.10 Further Reading

1. Gauba, O.P., *An Introduction to Political Theory*, Mayur Books, 2019
2. Bhargava, Rajeev & Acharya, Ashok, *Political Theory - An Introduction* (edited) Pearson, 2008
3. Ramaswamy, Sushila, *Political Theory — Ideas and Concepts*, PHI Learning Pvt Ltd, 2015
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5. Edmundson, William A., *An Introduction to Rights*, Cambridge University Press, 2012

Unit-12 □ Natural Rights, Moral Rights and Legal Rights

Structure

12.1 Objective

12.2 Introduction

12.3 Types of Rights

12.3.1 Natural Rights

12.3.2 Moral Rights

12.3.3 Legal Rights

12.3.3.1 Civil Rights

12.3.3.1A Right to life

12.3.3.1.B Right to Freedom

12.3.3.1.C Right to Education

12.3.3.1.D Property Rights

12.3.3.1.E Right to Contract

12.3.3.1.F Right to Religion

12.3.3.1.G Right to Freedom of Thought and Opinion

12.3.3.1.H Right to Freedom to Form Associations

12.3.3.1.I Right to Equality

12.3.3.1.J Economic Rights

12.3.3.2 Political Rights

12.4 Conclusion

12.5 Summing Up

12.6 Probable Questions

12.7 Further Reading

12.1 Objective

After studying this unit, the learner will be able to :

- know the meaning of Rights
- understand the various types of Rights

12.2 Introduction

Rights are considered fundamental to any civilization as they are the established pillars of every culture, tradition and society. We have witnessed the world getting engaged in various kinds of social conflicts which are all rooted in the claiming of individual and collective rights. There are various kinds of rights, some are backed by law whereas others are morally established. Broadly speaking there are three kinds of rights — Natural, Moral and Legal-which have been elaborately discussed in the following sections.

12.3 Types of Right

We shall now discuss the types of rights in detail.

12.3.1 Natural Rights

Natural rights are those that goes beyond the boundaries of beliefs, laws, customs, and not related to any particular culture, tradition or government. Consequently, they are universal and inalienable and are closely related to the concept of natural laws.

Many thinkers have faith in natural rights. They stated that people have inherent rights Natural rights are parts of human nature and reason. Supporters of this view maintain that an individual enters into society with certain basic rights and that no government can deny these rights.

Critics argue that the concept of natural rights is unreal. Rights are the products of social living. These rights can be enjoyed only in a society. Rights have behind them the recognition of society as common claims for development, and that is why the state protects these rights.

12.3.2 Moral Rights

The basis of moral rights is individual's ethical consciousness and conscience. They are claims based on the moral code of the society. However, the state does not guarantee the

enjoyment of these moral rights. Moral rights include parents claim to be looked after during old age by their sons and daughters.

12.3.3 Legal Rights

The rights that a citizen enjoys are privileges recognized and authorized by the state. Each state makes laws to remedy any violation of legal rights. For example, in a state every citizen has a legitimate right to freedom of speech expression.. If a citizen interferes with the privilege of another citizen, the state will take necessary steps to enforce the rights. Legal rights can be divided into Civil and Political rights:

12.3.3.1 Civil Rights : Civil rights are those rights which ensure, a decent civil life for the individual. These rights are essential to a civilized life. All these rights ensure mental and spiritual development of the people. In most states these rights are embodied in a constitutional document, and in almost all modern states there is a detailed mechanism to protect citizens from the possibility of violation of civil rights by individuals or administrations. Freedom of speech and expression, freedom of association, right to property, right to contract are some important civil rights. Civil rights are indispensable condition for the development of the individual self. These rights are universal possession of the citizen. Modern states guarantee these rights to all without any discrimination on the ground of caste, class, creed, religion or sex.

12.3.3.1.A Right to Life :

This right is the most basic claim in the sense that it is the basis of other rights. It is not possible to enjoy rights without life. The right to life is intimately linked to the right to protection from any attack inside or external aggression. Every civilized state has a very comprehensive system to protect each of its members. The right to use force to defend one self against an attack also falls within this right.

12.3.3.1.B Right to Freedom :

This right entitles every citizen to exercise his or her basic mental or physical ability without interruption or hindrance. This right includes freedom of speech and expression, assembly, association or union, movement, residence, to practice any occupation and freedom from arbitrary arrest.

12.3.3.1.C Right to Education :

At present, a comprehensive and universal education plan is needed to understand the modern political institutions that are built upon complex industrial civilization. Without this understanding, it is not possible for an individual to play his role as a citizen. The right to

education has been recognised as a fundamental right in every modern state. A right to free and compulsory primary education for all and an obligation to develop equitable access to secondary and higher education is necessary to create a free and open society.

12.3.3.1.D Property Rights :

This right refers to the free enjoyment of property and its use. This right also includes the right to gift property to someone or to donate it by will.

12.3.3.1.E Right to Contract :

According to this right, every citizen has the right to enter into an independent agreement with anyone else. This right is the basis of modern independent society. Under state laws both sides are bound by the terms of the contract.

12.3.3.1.F Right to Religion :

At present, in secular states, the right of every citizen to practice any rituals and ceremonies of his choice is a fundamental right of every citizen. The state maintains neutrality on all matters of religion and leaves it to the wishes and preferences of the individual.

12.3.3.1.G Right to Freedom of Thought and Opinion :

The right to think is the cornerstone of democracy. This fact has been proved by Socrates through his work and life experience. According to Professor Barry, this right is an essential prerequisite for mental and moral progress. This right is an indicator of the freedom of expression that once again sets the standard for freedom of speech and the media. Freedom of expression is essential for the development of human personality.

12.3.3.1.H Right to Freedom to Form Associations :

Modern society seems like a net network of various associations. Groups or associations are the focal point of contemporary society. In the present social situation, it is not possible for an isolated individual to protect himself from attacks of various types of socio-political situations. With a handful of strongly organized groups, he can procure the collective power necessary to ensure his own security and clearly declare his personal views and needs.

12.3.3.1. I Right to Equality :

All citizens are equal in the eyes of the law. This right prevents the state from discriminating between citizens on the basis of race, faith, caste, wealth or gender.

12.3.3.1.J Economic Rights :

The nineteenth-century eminent socialist thinker Louis Blanc is perhaps the first person to claim constitutional recognition for the right to work. Since then the movement for recognition of this right continued to gain momentum in every state. But even after passing of so many years, this right has not been recognised in most states.

12.3.3.2 Political Rights : All rights which guarantee citizens' participation in the exercise of the sovereign power of the state, are regarded as political rights. The right to vote and the right to form political associations are two important political rights. The people choose the government through the exercise of political rights. Political rights are the cornerstone of democratic governance.

Following are the basic political rights of citizen:

- Right to vote;
- The right to contest the election
- The right to public office and
- Right to form and join political associations

Positive Rights :

Positive rights are rights that oblige other people or the state to do something for perfect enjoyment of our rights. For example the right to health, basic subsistence etc. positive rights impose obligation to do something.

Negative Rights :

Negative rights are rights that indicate non-interference from the society at large. For example, right to life, liberty, property etc.

12.4 Conclusion

To summarize, rights are regarded as central to civilization, being observed as established pillars of society and culture. Natural rights are those that are not dependent on the laws or customs of any particular culture or government, and so are universal and inalienable. Natural rights cannot be repealed by human laws, though one can forfeit their enforcement through one's actions, such as by violating someone else's rights. On the other hand, legal rights are, clearly, rights that exist under the rules of legal systems or by virtue of decisions

of suitably authoritative bodies within them. Moral rights allow for the protection of the relationship between oneself and the work one has created. They are claims based on the moral code of society.

12.5 Summing Up

- Rights are regarded as central to civilization, being observed as pillars of society and culture.
- Natural rights are those that are independent of the beliefs, laws, customs and not related to any particular culture, tradition or government. Inevitably, they are universal and inalienable.
- Moral rights depend on awareness and consciences of the individual.
- There are various kinds of rights like civil, political etc.

12.6 Probable Questions

Essay Type Questions :

- 1) Examine the different kinds of Rights.
- 2) What are the different kinds of Civil Rights?
- 3) How are legal rights different from civil and political rights?
- 4) Indicate the difference between positive and negative rights.
- 5) Examine the importance of political rights.

Short Questions :

- 1) What are legal rights?
- 2) Explain the concept of civil rights.
- 3) What is meant by moral rights?

Objective Questions :

- 1) Mention one political right.
- 2) Name one negative right

- 3) Mention one positive right
- 4) Mention one civil right

12.7 Further Reading

1. Ray, Amal, Bhattacharya, Mohit, *Political Theory — Ideas and Institutions*, World Press, 1998
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Unit-13 □ Concept of Human Rights

Structure

- 13.1 Objective**
- 13.2 Introduction**
- 13.3 Meaning of Human Rights**
- 13.4 Features of Human Rights**
- 13.5 Evolution of Human Rights**
- 13.6 Theories of Human Rights**
- 13.7 Globalization and Human Rights**
- 13.8 Terrorism and Human Rights**
- 13.9 Human Rights of Women and Children**
- 13.10 Human Rights in India**
- 13.11 Conclusion**
- 13.12 Summing Up**
- 13.13 Probable Questions**
- 13.14 Further Reading**

13.1 Objective

After going through this unit, the learner will be able to understand :

- the meaning and basic features of human rights.
- the history of the evolution of this concept.
- various theories of human rights.
- the impact of globalisation and terrorism on human rights.
- the concept of human rights in India.

13.2 Introduction

It was once the case that rights were always associated with domestic legal and political systems. In the last half century a complex network of international law and practice has grown up around the idea that the individual possesses rights by virtue of being human. The philosophy of human rights addresses questions about the existence, content, nature and justification of human rights.

13.3 Meaning of Human Rights

Human rights refer to inherent, universal rights of human beings regardless of jurisdiction, ethnicity, nationality or sex. These are rights to which people are entitled by virtue of being human. The idea of human rights originated from the philosophical idea of natural rights. Human rights are universal in the sense that they belong to all humans. They are fundamental in the sense that they are inalienable.

13.4 Features of Human Rights

1. Human Rights are Inalienable: Human rights are inherent rights of the individuals irrespective of their caste, creed, religion, sex and nationality.
2. Human Rights are essential and necessary: Human rights are needed to ensure the moral, physical, social and spiritual welfare of an individual. Human rights are also essential as they provide suitable conditions for material and moral upliftment of the people.
3. Human Rights are associated with human dignity.
4. Human Rights are irrevocable: Human rights are irrevocable as they cannot be taken away by any power or authority because these rights originate with the social nature of man in the society. They belong to a person simply because he is a human being. As such human rights are moral rights.
5. Human Rights are essential for the fulfilment of purpose of life: The phrase “human right” is applied to those conditions which are essential for the fulfilment of this purpose.

6. **Human Rights are Universal:** Human rights are not the sole possession of any privileged class of people. Human rights are universal in nature, without exception. The values such as divinity, dignity and equality form the basis of these rights.
7. **Human Rights are never absolute:** Man is a social animal and he lives in a civic society, which always put certain limitations on the enjoyment of his rights and freedoms. Human rights as such are those limited powers or claims, which are contributory to the common good and which are recognized and guaranteed by the State, through its laws. As such each right has certain limitations.
8. **Human Rights are Dynamic:** Human rights are not stationary, they are dynamic. Human rights go on expanding with socio-economic, cultural and political developments.
9. **Human Rights limits state power:** Human rights imply that every individual has legitimate claims upon his or her society. So human rights limit the state's power. These may be in the form of negative restrictions on the powers of the State, preventing it from violating the inalienable freedoms of the individuals, or in the nature of demands on the State.

13.5 Evolution of Human Rights

The origin of thinking about human rights can be traced to two features of medieval political and intellectual life: the doctrine of natural law and the political practice of extracting charter of liberties. Natural law generates universal rights and duties, while a charter confers local and particular liberties.

Magna Carta came into effect in 1215 to protect human rights in England. Magna Carta still forms an important symbols of liberty today, often cited by politician and campaigners and is still held in great respect by the British and American legal communities.

France's autocratic monarchy collapsed during the French Revolution of 1789. The new French bourgeoisie wanted to constitute a representative legislature by drafting a constitution. In the Constituent Assembly a document was accepted which is known as Declaration of the Right of Man and Citizen.

The 1789 Declaration, together with the 1215 Magna Carta, the 1689 English Bill of Rights, the 1776 US Declaration of Independence and the 1789 US Bill of Rights, inspired in large part the 1945 UN Universal Declaration of Human Rights. The 1789 declaration stated that rights are 'natural, inalienable and sacred'. The declaration mentioned the

principle of popular sovereignty. It stated that all the citizens, being equal in the eyes of the law have equal access to all public dignities, places and employment according to their capacity and without distinction, other than that of their virtues and of their talents.

Philosophers such as Locke, Rousseau, Thomas Paine, John Stnart Mill expanded on the theme of universality of rights during the 17th, 18th and 19th centuries.

Mary Wollstonecraft in her book 'A Vindication of the Rights of Women' contributed a lot so far as women's rights are concerned.

The US Declaration of Independence of 1776 states that all men have the right to life, liberty and pursuit of happiness. On the basis of this declaration, American Bill of Rights was written. Following the American and French example of upholding human rights, other countries started adopting them in their respective countries, namely, Netherlands (1798), Sweden (1809), Spain (1812), Norway (1814), Belgium (1831), Siberia (1842) etc.

The development and spread of socialism in the nineteenth century made the human rights concept more pervasive.

In 1816-17, students from different universities in Germany were demanding freedom of expression and other freedoms. During that time, European women did not have voting rights. There was widespread discrimination between women and men. No European state recognized the right to form a trade union until the beginning of this century. Thus with the rise of human rights movement, workers in Britain and France started demanding the right to form trade unions. In 1834, the London Working Association was formed and acquired the right to unite. In 1838, the working class of England submitted a proposal demanding some benefits for them. This is known as the Chartist movement.

During the early twentieth century, International Labour Organization became prominent to protect workers from discrimination and adopted policies to protect and promote the rights of workers.

It was only after the Declaration Of International Human Rights that the human rights and civil rights movement gained popularity in various parts of the world. When the United States carried out the genocide in Vietnam in 1950s and 1960s, Amnesty International sent investigators to Vietnam to investigate. In addition to this organization, other Human Rights Organizations, such Asia Watch, Human Rights Watch are playing important role in protecting human rights.

13.6 Theories of Human Rights

Following are some of the theories of human rights.

- **Liberal theory of rights :** Locke's advocacy of rights to life, liberty and property of individuals form the basis of the first generation rights for the citizens.
- **Welfare theory of positive rights** proposes rights which are social and economic in nature, which are concerned with the welfare of the people. They belong to the second generation rights.
- **Cultural Relativist theory of rights and Multicultural theory of rights** recognises the cultural specificity of the different societies and groups and offer their protection. Eg: advocacy of Asian values against western values.
- **Communitarian theory of rights :** Theorists like Michael Sandel, Charles Taylor, Walzer have argued that each individual develops an identity as a member of the community. Communitarians refuse to recognise independent rights of the individual.
- **Feminist theory of rights :** Feminists by criticising the mainstream human rights discourse, argue that the women's rights per se has been ignored and not recognised in the human discourse doctrine. The discourse reflects male domination and there are not enough spaces for women's issues.
- **Marxian theory of rights :** It is a known fact that Marx neither formulated a theory of state nor of rights. He believed that natural theory of rights is based on private property ownership which invariably are the rights of the bourgeoisie. Marxists believe that in a class divided society, one class exploits the other through the instrument of state. As such, rights belong only to one class — the dominant class.

13.7 Globalization and Human Rights

Globalization has adversely affected the human rights situation in different parts of the world. IMF structural adjustment policies led to hunger and riots in many countries. Even when the developing countries managed to eke out some growth, the benefits went disproportionately to the rich while the poor at the bottom faced even greater poverty. Globalization is not working for many of the world's poor. For millions of people globalization has not worked. Many have seen their jobs destroyed and their lives become more insecure.

13.8 Terrorism and Human Rights

Terrorism is characterized, first and foremost, by the use of violence. Such violence includes hostage taking, hijacking, bombing and other indiscriminate attacks, usually targeting civilians. Such activities have endangered human rights everywhere. Most of the countries that are prime targets of terrorism have introduced restrictions on the civil rights of their citizen in the name of homeland security.

13.9 Human Rights of Women and Children

Human rights for women and children were first recognized at the International Human Rights Conference held in Vienna in 1993, The conference highlighted issues of violation of human rights within and outside the private domain. Subsequently, at the 5th International Women's Conference held in Beijing in 1996, it was decided that opportunities are needed to protect the future progress and empowerment of women, protection of the environment, protection of peace and harmony, the right to health and education.

Human rights are women's rights," declared the then U.S. first lady Hillary Clinton at the 1995 Beijing Platform for Action, which set an agenda for women's empowerment and identified 12 critical areas of concern, where urgent action was needed to ensure greater equality and opportunities for women and children. It also laid out concrete proposals for countries to bring about sustainable and irreversible change. She added that "Women must enjoy the right to participate fully in the social and political lives of their countries if we want freedom and democracy to thrive and endure."

The Beijing Declaration and Platform for Action, confirms that the protection of human rights, and the elimination of all forms of discrimination against women is the first responsibility of governments. This focus was also endorsed through the adoption of CEDAW (1979), the U.N. Security Council resolution on "Women, Peace & Security" passed in 2000, and most recently with the adoption of the Sustainable Development Goals in 2015, which includes a standalone goal of gender equality and empowerment of women and girls.

However, despite many conventions organized at the international and national level, the human rights of women have not been secured even today. Socio-economic discrimination against women exists everywhere.

In the Indian constitution, women and men have been given equal rights. The state has declared various schemes and made laws for the development and protection of women.

Gender discrimination is a major form of social inequality. Girl child is often considered as a burden on the family. This is because there is insufficient occupation for her, and dowry has to be given for her wedding. Foetal killing has been a crucial problem. A medical diagnostic process, called, amniocentesis, is misused by parents to select the sex of their child. This has resulted in the abortion of female fetuses. The misuse of this test has now resulted in banning of this test in India.

Despite the enactment of laws, abortion of female fetuses both in urban and rural areas continues.

There is a general disregard for the physical health and mental health of girls. The reason for this is gender discrimination. When the child is denied of proper nutrition and health care, the infant daughter grows up through neglect and apathy. As a result of this malnutrition, a huge number of mothers take high risk of life.

At present, rape, trafficking of women and doing business with the women are increasing steadily in society and various laws have been enacted to stop these incidents. But these have not yielded much result.

In this male dominated society, women have entered the workplace to establish themselves. But in the workplace, women often become victim of sexual harassment.

To eradicate socio-economic discrimination, strong administrative measures need to be taken and special emphasis should be laid on economic empowerment of the women.

The struggle to establish women's human rights is not an isolated struggle. This is not a struggle against men. It is the struggle against the socio-economic circumstances that allows the exploitation of vulnerable section of the society. Unless social discrimination is brought to an end, economic discrimination against women will continue. Only through the collective struggle of women and men, can all human rights be ensured.

13.10 Human Rights in India

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

In Indian constitution, the Fundamental Rights are defined as the basic human rights of all citizens. These rights are defined in Part III of the Constitution.

The demand for a declaration of fundamental rights arose from four factors :

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

Fundamental Rights included articles 14–32 are :

- Right to Equality
- Right to Freedom
- Right Against Exploitation
- Right to Freedom of Religion
- Cultural and Educational Rights
- Right to Constitutional Remedies

13.11 Conclusion

Globally the champions of human rights have most often been citizens, not government officials. In particular, *nongovernmental organizations (NGOs)* have played a cardinal role in focusing on human rights issues. For example, NGO activities following the 1995 United Nations Fourth World Conference on Women in Beijing, China, drew unprecedented attention to serious violations of the human rights of women. NGOs such as Amnesty International, the Antislavery Society, the International Commission of Jurists, the International Working Group on Indigenous Affairs, Human Rights Watch, Minnesota Advocates for Human Rights, and Survivors International monitor the actions of governments and put pressure on them to act according to human rights principles.

Leaders from various countries over time have taken initiatives to build human rights frameworks like Abraham Lincoln, Franklin Roosevelt, Lyndon B. Johnson and Jimmy 'Carter, Nelson Mandela and Havel. Eleanor Roosevelt, took the oath of presenting to the world a universal framework which would be a guide for nations for fighting against the violation of human rights. The Universal Declaration of Human Rights is the result of that outstanding effort.

13.12 Summing Up

- Thus Human rights are moral principles or norms that describe certain standards of human behaviour and are regularly protected by municipal and international law.
- They are commonly understood as inalienable fundamental rights and which are “inherent in all human beings”, regardless of their age, ethnic origin, location, language, religion, ethnicity, or any other status.
- They are applicable everywhere and at every time in the sense of being universal and they are equal in the sense of being the same for everyone.
- Many of the basic ideas that animated the human rights movement developed in the aftermath of the World War II, culminating in the adoption of the UDHR in Paris by the UN general Assembly in 1948.
- The true forerunner of human rights discourse was the concept of natural rights which appeared as part of the medieval tradition
- The modern human rights arguments emerged in the latter half of the 20th century, possibly as a reaction to slavery, torture, genocide and war crimes.

3.13 Probable Questions

Essay Type Questions :

- 1) What are the different theories of Human Rights?
- 2) Examine critically the history of the evolution of the idea of Human Rights.
- 3) Examine the impact of globalization and terrorism on Human Rights.
- 4) Discuss the basic features of Human Rights.
- 5) Why are women's issues an integral part of the Human Rights concept?

Short Questions :

- 1) Define Human Rights
- 2) Write any two features of Human Rights
- 3) Write short notes on the following:
 - a) 1215 Magna Carta,
 - b) The 1689 English Bill of Rights,
 - c) The 1945 UN Universal Declaration of Human Rights

Objective Questions :

- 1) In which year was the 'Declaration of Human Rights' made by the UNO?
- 2) Mention the name of two Human Rights organisations.
- 3) What is the full form of NGO?
- 4) In which year was the 5th International Women's Conference in Beijing held?

13.14 Further Reading

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Unit-14 □ Three Generations of Rights

Structure

14.1 Objective

14.2 Introduction

14.3 Vasak's Categorisation of Human Rights

14.4 Three Generations of Human Rights:

14.4.1 First Generation of Human Rights

14.4.1.A Civil Rights

14.4.1.B Political Rights

14.4.2 Second Generation Human Rights:

14.4.2.A Economic Rights

14.4.2.B Social Rights

14.4.3 Third Generation of Human Rights

14.4.4 Fourth Generation of Human Rights

14.5 Conclusion

14.6 Summing Up

14.7 Probable Questions

14.8 Further Reading

14.1 Objective

This unit seeks to familiarise the learner with

- the development of Human Rights through three generations as illustrated by Vasak and later by other thinkers.
- the emergence of fourth generation of Human Rights.

14.2 Introduction

Human rights have emerged over the years. For the purpose of study their development has been divided into three generations. For a long time, the notion of different “generations” of human rights has established itself in human rights literature and teaching.

The division of human rights into three generations was initially proposed in 1979 by the Czech jurist Karel Vasak at the International Institute of Human Rights in Strasbourg. His theories have primarily been rooted in European law.

14.3 Vasak's Categorisation of Human Rights

Vasak's divisions follow the three watchwords of the French Revolution — Liberty, Equality and Fraternity. The three generations are also reflected in the Charter of Fundamental Rights of the European Union and the Universal Declaration of Human Rights which includes rights that are thought of as second generation as well as first generation ones, but it does not make the distinction in itself.

It's been over four decades since Karel Vasak introduced the three generations of rights. Although subject to severe criticism since the outset, his division of rights into generations has offered scholars, activists, and pundits a useful tool to organize the human rights discourse. Even critics of the concept itself, like Philip Alston, Jack Donnelly, or Hurst Hannum cannot deny its existence. There are questions regarding the validity of Vasak's categorisation specially in the context of the end of the Cold War, the new challenges of democratization, new pressing problems like terrorism and migration etc.

The first generation has a long history, dating back to the Magna Carta of 1297, United States Bill of Rights of 1791 and the Declaration of Rights of Man and of the Citizen of 1789. This category includes following rights — the right to life, freedom of speech, freedom of religion, right to fair trial, equality before the law, and other civil and political rights.

The second generation rights was a product of the rapid industrialization and accompanying social and economic inequalities. In the wake of the emerging ideological confrontation after World War-II, the communist camp staunchly supported the economic, social, and cultural rights. These rights demand active state intervention. Hence, the first two generations of rights were included in the Universal Declaration of Human Rights (UN General Assembly 1948). While differentiating between the first and second generations of rights, Vasak contrasted the negative character of the former and the positive character of the latter. The third generation of human rights is the most recent and vague in content. Collective rights that belong to this group were mentioned in the Stockholm Declaration (UN General Assembly 1972), Rio Declaration (UN General Assembly 1992), and other international documents of declaratory character.

Thus, Vasak's differentiation between the three generations quite neatly fits into the three dichotomies based on the major approaches to human rights categorization: (1) negative (first generation) and positive (second and third generations), (2) individual (first and second generations) and collective (third generation), and (3) national (first and second generations) and international (third generation) liability as summarized in the following Table

Table: Dichotomies of Vasak's categorization

GENERATION	Negative/Positive Dichotomy		Individual/Collective Dichotomy		National/International Dichotomy	
	Negative	Positive	Individual	Collective	National	International
1st	x		x		x	
2nd		x	x		x	
3rd		x		x		x

Source: Karel Vasak, "Human Rights: A Thirty-Year Struggle: the Sustained Efforts to Give Force of Law to the Universal Declaration of Human Rights", *UNESCO Courier* 30:11, Paris: United Nations Educational, Scientific, and Cultural Organization, November 1977.

The rights of the "first generation" are the "classical" civil and political rights which have been formulated since the latter part of the 18th century, while rights of the "second generation" are linked to the economic, social and cultural rights. The first generation of human rights include, inter-alia, the prohibition of torture, justice-related rights (such as equality before the law, the presumption of innocence, fair trials, etc.), the right to the freedom of religion or belief, opinion, assembly and association, as well as the participation in the administration of public affairs and the right to vote.

14.4 Three Generations of Human Rights

Three generations of human rights are discussed below:

14.4.1 First Generation of Human Rights :

The Constitution of every state recognizes the rights that every person within the society enjoys in his or her fair, normal and disciplined way of living. Those rights are:

14.4.1.A Civil Rights

The rights that people enjoy in civil and social life and for the full development of the personalities are called municipal rights. Municipal rights are an essential part of the democratic system. Among these rights are the right to life, the right to freedom, the right to security, the right to communication, the right to property, freedom of thought and expression, the right to be freed against slavery and exploitation, the right to freely worship and preach, the right to travel freely the right against, unlawfull arrest and detention.

14.4.1.B Political Rights

Political rights provide opportunities for direct or indirect participation in state affairs. Particularly important among the political rights are the right to vote, the right to be elected, the right to express his political views freely, the right to have a fair trial in an independent and impartial court, the right to peacefully assemble and build an organization.

First-generation human rights, sometimes called “blue” rights, deal essentially with liberty and participation in political life. They are fundamentally civil and political rights in nature: They serve negatively to protect the individual from excesses of the state intervention. First-generation rights include, among other things, the right to life, equality before the law, freedom of speech, religion, property rights, voting rights etc. Some of these rights date back to the Magna Carta of 1215 and the Rights of Englishmen, which were included in the English Bill of Rights in 1689. A more full set of first-generation human rights were declared in France by the Declaration of the Rights of Man and of the Citizen in 1789, and by the US Bill of Right in 1791. They were given recognition in international law first by Articles 3 to 21 of the 1948 UDHR and later in the 1966 International Covenant on Civil and Political Rights.

14.4.2 Second Generation of Human Rights :

The second generation of human rights include economic rights, social rights and cultural rights. These rights are as follows:

14.4.2.A Economic Rights

The economic privileges of living in a democratic way through which people’s lives are made happy, comfortable and secure are considered as economic rights. These economic rights include the right to work, the right to choose a workplace voluntarily, the right to a free and fair environment for work, the right to equal and fair remuneration for work, the

right to organize workers union freely and to voluntarily participate in such unions, adequate food and clothing, the right to housing and the right to a decent living standard.

14.4.2.B Social Rights

The conditions that give opportunity to citizens to participate as members of society and establish their own identity are considered as social rights. These rights include the right to education, the right to health, the right to be married, the right to form a family, the right to social protection and assistance in the case of unemployment, legality, old age, illness etc.

Second-generation human rights are related to equality and began to be recognized by governments after World War II. They are fundamentally economic, social and cultural in nature. They guarantee different members of the citizenry equal conditions and treatment. Secondary rights would include rights to food, housing and health care, as well as social security and employment benefits. Like first-generation rights, they were also covered by the Universal Declaration of Human Rights, and further embodied in Articles 22 to 28 of the Universal Declaration, and the International Covenant.

In the United States of America, President Roosevelt proposed a Second Bill of Rights, covering much the same grounds, during his State of the Union Address on January 11, 1944. Today, many nations, states, or groups of nations have developed legally binding declarations guaranteeing comprehensive sets of human rights.

Some states have enacted some of these economic rights, e.g. the state of New York has enshrined the right to free education. These rights are sometimes referred to as “red” rights. They impose upon the government the duty to respect and promote and fulfil them, but this depends on the availability of resources. The duty is imposed on the state because it controls its own resources. The duty of government is to implement these positive rights.

14.4.3 Third Generation of Human Rights

The next significant evolution occurred with the advent of the “third generation” of human rights. These rights are nothing but group or collective rights, of society or peoples’ rights, which were articulated in the second half of the 20th century. The third generation of human rights include: (i) economic development; (ii) self-determination; (iii) prosperity and peace; (iv) benefit from economic growth; (v) social harmony; (v) a healthy environment and health; (vi) participation in cultural heritage; (vii) natural resources; (viii) inter-generational equity. The third generation of human rights are necessary for creating the appropriate conditions in society to provide first and second generation human rights.

Right to Development

The third-generation human rights are primarily related to the right to development, as a whole. The right to development was included in the UN General Assembly Resolution in 1986. Development rights are an integral part of human rights. Development here refers to the personal, political, social, economic and cultural development of the individual. The various components of development like the right to self-determination, the right to equality, regardless of gender, caste, creed, religion etc. contribute to the development and enjoyment of individual personality.

Categorizations of these three generations of human rights should not be merely an academic distinction but should be fused together by all countries of the world. These rights were rooted in postcolonial discourses. Unlike the first and second generation, these newer rights cannot be understood as a reaction to colonialism. The hallmark of third generation rights, in contrast with first generation civil and political rights and second generation social, economic, and cultural rights, is that they involve global problems that no state or region of the world can solve alone. For this reason, third generation rights are often referred to as rights of “fraternity” or “solidarity.”

Article 22 of the African Charter on Human and People’s Rights, signed in 1993, states that development rights are as important as other human rights. The first Vienna Conference was considered as an integral source of development of human rights. The primary responsibility of the states is to protect and promote the primary human rights of the community (eg food, education and health) and to maintain a decent standard of living. Thus, it can be said that development and human rights are intimately related to each other.

Third-generation human rights are those rights that go beyond the mere civil and social, as expressed in many progressive documents of international law, including the 1972 Stockholm Declaration, the 1992 Rio Declaration on Environment and Development etc. Also known as **Solidarity human rights**, they are rights that try to go beyond the framework of individual rights to focus on collective concepts, such as community or people. These “green” rights cover the following broad spectrum of rights:

- Group and collective rights
- Right to self determination
- Right to economic and social development
- Right to healthy environment

- Right to natural resources
- Right to communicate
- Right to sustainability
- Right to uphold cultural heritage

The African Charter on Human and Peoples' Rights ensures many of these rights.

14.4.4 Fourth Generation of Human Rights

Several analysts claim that a fourth generation of human rights is emerging, which would include rights that cannot be included in the third generation, first and second generation rights. These rights are related to technological development and information and communication technologies and cyberspace.

However, the content of it is not clear. They normally take some rights from the third generation and include them in the fourth, such as the right to a healthy environment. Some analysts believe that the fourth generation human rights are related to new technologies while others prefer to talk about digital rights, where a new range of rights would be found, such as:

- The right to exist digitally
- The right to digital reputation
- Right to digital identity

14.5 Conclusion

Maurice Cranston argued that scarcity means that supposed second-generation and third-generation rights are not really rights at all. If one person has a right, others have a duty to respect that right, but governments lack the resources necessary to fulfil the duties implied by citizens' supposed second- and third-generation rights.

Various scholars have argued that second- and third-generation human rights serve as an attempt to cloak political goals, which the majority may well agree. In their opinion, calling socio-economic goods "rights" inherently creates a related concept of duties, so that other citizens have to be coerced by the government to give things to other people in order to ensure these new rights.

Freedman also mentioned the need for rethinking the approach to the first- and second-generation rights as strictly negative and positive correspondingly. He argues that in the contemporary usage of the concept of human rights, demarcation between those positive and negative duties becomes increasingly blurred. Indeed, certain rights, like the right to a fair trial, fall to both categories since it simultaneously guarantees the individual right, and also requires the active state intervention for its practical implementation.

14.6 Summing Up

- Each generation of human rights evolved in response to specific threats. In the first wave, they were civil and political.
- In the second and third waves, they were economic, social, cultural and environmental.
- Today, fusion of material, biological and digital technologies raises existential questions about what it means to be human. The time is ripe for a fourth generation of human rights to emerge.

14.7 Probable Questions

Essay Type Questions :

- 1) What kinds of rights are envisioned under the three different generations of Human Rights? Illustrate with suitable examples.
- 2) What is the role of the state in securing the three generations of Human Rights?
- 3) Discuss the different types of rights enumerated in UDHR ?

Short Questions :

- 1) What are the different generations of Human Rights?
- 2) Give a brief outline of first generation Human Rights.
- 3) Mention the features of second generation Human Rights.
- 4) What is fourth generation of Human Rights?

Objective Questions :

- 1) Name the Jurist who introduced the theory of three-generation human rights?
- 2) Give an example of first generation human rights.
- 3) Give an example of third generation human rights.
- 4) Give an example of fourth generation human rights.

14.8 Further Reading

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Unit-15 □ Rights and Obligations

Structure

15.1 Objective

15.2 Introduction

15.3 Types of Duties or Obligations

15.4 Sources of Obligations

15.5 Historical Development of the Concept of Political Obligation

15.6 Basic Duties of Citizens

15.7 Reciprocity of Rights and Duties

15.8 Conclusion

15.9 Summing Up

15.10 Probable Questions

15.11 Further Reading

15.1 Objective

After studying this unit, the learner will be able to understand :

- the meaning of obligations.
- the different types of obligations.
- the sources of obligations.
- the basic duties of the citizens

15.2 Introduction

The state helps every citizen to develop his or her own personality through the assurance of protection of their rights. To exercise all these rights, it is essential for a citizen to perform certain duties towards the state. These rights and duties are interrelated. All these duties are clearly mentioned in each country's constitution. The democratic constitution of the United States has left the burden of determining these duties on the people.

Although much attention has been paid to ‘rights’ in recent years, some consideration is now being given to ‘duties’ (or, as it has become more usual to call them, ‘obligations’). The implicit assumption is that rights need to be balanced by duties. Historically, the left has been more anxious to stress rights; nowadays even the liberal left has focused on duties. In part this is a consequence of the development of the belief in ‘civil society’, the network of family, voluntary and informal groups and activities that underpin a decent society. This belief derives partly from a reaction to rampant individualism. Another source of this belief is the weaknesses of the former communist regimes of Eastern Europe, regimes in which there were no intermediate stages, no buffer, between the state and the individual.

15.3 Types of Duties or Obligations

As with rights, the terms duties and obligations cover a number of rather different concepts, which may be summarised as follows:

Moral Obligation

Moral obligations imply duties people ought to perform because in some sense they owe such actions to God, to any other person or may be to themselves. Thus there is a moral obligation to speak the truth, to help others in need, to refrain from adultery, and so on. These obligations are not enforceable by law. However, they often become the basis of legal obligations.

Legal Obligation

Legal obligations mean duties one has to perform because they are enforceable in the courts, such as paying one’s taxes and driving with a valid licence etc. Such obligations are closely linked to state sovereignty. Citizens and other individuals resident in the territory of a state are under an obligation to obey the laws of that state.

Civic Obligation

Civic obligations are actions we should perform as a tribute to the rights we enjoy as part of a political community. For example, right to vote falls under our civic obligation.

Social Obligation

Social obligations are an extension of civic obligations. They involve a broadly similar concept but have wider application. They include those obligations we owe to society that contribute to the general good. For example, upbringing one’s children, providing them

good education, livelihood, making them good citizens, introducing them into the culture of their society, and teaching them right and wrong etc. Such obligations can be discharged on a personal and an individual basis.

Coercive Obligation

Coercive Obligation arises due to coercion or force because of the absence of legitimate authority. However, in democratic set up the state also uses coercion for ensuring compliance of the individuals. Moral obligations are carried out mainly because of moral correctness, whereas coercive obligation comes out as a result of fear.

Political Obligation

This obligation denotes the relationship between the states and the individuals residing in a nation state. It is a relationship where the state provides a set of rights for its citizens and in return the citizens acknowledge the authority of the state. These individuals become citizens of the state.

15.4 Sources of Obligations

By and large, obligations have proved less contentious than rights. Many see obligations little more than pious aspirations with which no one would quarrel. There are few campaigns, violent or otherwise, in defence of an extension of obligations. This is not, however, to say that there are no areas of dispute.

The earliest basis for asserting the binding nature of obligation is the idea of contract which can be traced back to the biblical notion of the covenant of God with His people, who keep His laws in exchange for His protection.

Consequently, there emerged various social contract theories which emerged in the seventeenth century. Thomas Hobbes and John Locke sought to explain the origins of government by reference to a state of nature, a situation of chaos caused by the absence of established authority. Hobbes and Locke established the basis for government and the obligation of the citizen to obey. In such situations, they argued, human beings established a 'contract' between the governed and the governors. This formed the basis for both rights and obligations of both parties. Hobbes, in *Leviathan* (1651), argued that in order to escape the barbarism of the 'state of nature', human beings voluntarily surrendered their freedom to an authority, a government, which subsequently had absolute claims on their obedience. As long as such a government provided security for the people, they were obliged to support it. A less totalitarian interpretation of the social contract was that of

Locke. His state of nature was not one of instability and violence. In order to avoid such an unstable situation, in his *Two Treatises of Government* (1690), Locke argued that people entered into two contracts. The first was one in which individuals agreed to impose limits on themselves to form 'society'. The second was a contract between society and government by which government would be obeyed in exchange for its protection of natural rights. Both contracts form the basis of liberal ideas of politics and government.

Conservatives instead have suggested that every individual owes a natural loyalty to his society, in much the same way as he bears a loyalty to his own family. Society and the family are natural rather than artificially contrived institutions and can therefore rightly lay claim to a natural obligation.

A more pragmatic argument was extended by Bentham. A 'good' government will, in his words, pursue 'the greatest happiness of the greatest number'. This principle is called utilitarianism.

Questions necessarily arise. Are obligations to society the same as obligations to the state? If not, what if there is a clash between the two? If we equate 'state' with 'nation' then much conflict might well occur. For example, Germany defeated France in 1940. The French government surrendered and ordered its armed forces to cease hostilities. Some Frenchmen, such as Charles de Gaulle, felt this as a betrayal of the French nation by the French state. In his view this betrayal absolved him of all loyalty to the (admittedly legal) government of Marshal Philippe Pétain that emerged after the fall of France. Indeed, de Gaulle and his followers believed that they had not only the right to continue the war, but a positive obligation to do so.

Yet another question arises. Can the 'nation' be equated with 'society'? Or is there a global society that has an equal, if not superior, claim on loyalty? Other claimants to loyalty may also be considered: conscience, race, class, church, religious community, the environment, even the human race itself. All of these may, in certain circumstances, appear to have a greater claim than the state or nation.

Even if it is admitted that the state has valid claims to obedience (and Marxists and anarchists explicitly reject such claims), what is the nature of that obedience? Is it simply observing the law or does it go beyond that to a positive and enthusiastic support of the regime? Totalitarian states, like Nazi Germany, clearly demanded unconditional obedience to the state. Liberal theorists have argued that there are limits to the obligations which the state can impose on people. They have proposed specific constitutional arrangements to give effect to these limitations. Liberals assume that the state's role in society is very largely to safeguard natural or human rights.

A problem arises if the state does not, in fact, guarantee such rights. At what point does the bond of obedience dissolve? Is there a right of the citizens to rebel against, and even overthrow, such a government by force? This question has, of course, been of acute interest in the twentieth and early twenty-first centuries, but originally arose in the seventeenth and eighteenth centuries. Locke argued that there was such a right and the argument was made explicit in the American *Declaration of Independence* (1776), which boldly asserted that when government degenerated into despotism 'it is the right of the people to alter it, and to institute a new government'.

Even if it is accepted that there is such a right to revolt, difficult questions arise as to precisely what circumstances justify such a rebellion and whether there should be any constraints on the methods of the revolutionaries.

As early as the thirteenth century Thomas Aquinas had laid down certain conditions for justified rebellion that were subsequently absorbed into the writings of other theorists.

15.5 Historical Development of the Concept of Political Obligation

In the Greek Period, Political Obligation was grounded in the very nature of human life. Aristotle proclaimed that state is a creation of nature and man is a political animal. For him state is the highest level of social organisation where individuals attain self sufficiency, and good life justifies obedience to the state. This is what political obligation meant in this period. However, there were political strifes within the society, and Aristotle even spoke of revolutions for cyclical changes in the forms of government. In Greek political theory there was no difference between the society and the state.

In Rome Polybius and Cicero favoured the system of checks and balances within the state. Roman legal system, attempted to define the concept of political obligation. Power of the ruler was derived from law and every relationship within the state and sovereignty was determined by law.

Political obligation in the feudal Europe was hierarchical where the lords stood at the top and granted land and other privileges, the vassals and the barons in return used to provide military and political support. At the bottom, were the serfs who had nothing to receive but only to work and render services.

According to Laski and Barker, laws must be obeyed for the basic minimum of civilised existence, which cannot be unconditional. To command obedience, laws must satisfy the test of social justice.

During the post renaissance period, the concept of political obligation took varied strands.

Machiavelli in his 'The Prince' declared that the subjects are obliged to render all their allegiance. The idealists like Hegel recognise the state as the embodiment of reason and believed it to be the march of God on earth. As we don't disobey God, we should not disregard the state also.

Marxists believe that the state in a capitalist system is simply an exploitative instrument, so the individual has right to resist. Neo Marxian theorist, Gramsci suggested that the states in the capitalist system exercise hegemony. The ruling class through various cultural and educational institutions like family, school, church etc generates consent in favour of the capitalist system.

15.6 Basic Duties of Citizens

The main duties the citizens of the democratic countries have are :

A. Loyalty to the State :

This means that it is imperative for a citizen to stand by the state during times of danger. It is the duty of every citizen to help the state to protect its territorial sovereignty from foreign aggression and preserve internal peace and order.

B. Regulation :

In the representative democracy of the present era, the law is generally designed to protect the public welfare of the society. It is the duty of every citizen to obey the laws of his state.

C. Honestly Exercising Franchise and Holding Office :

The right to elect government in a democracy is vested with the people. Voting is therefore an essential component of the democratic system. The authority of the administration depends on the manner in which these rights are exercised.

D. Payment of Tax :

In the present century, state activity has really increased since the transformation of the "obedient state" into a "welfare state". At present, the government is obliged to provide various types of services. As a result, government spending has increased significantly. The enormous amount of money required to pay for the expenditure of the government in various sectors comes from taxes on the people and various goods.

15.7 Reciprocity of Rights and Duties

Man is social by nature. The physical and mental needs of human life motivate people to live a group life. It is through a united and collaborative effort he strives to meet all these needs. People are transformed into separate entities and companionable entities. Spontaneously, “groups” emerge to meet different needs of human life. Among these groups, the state occupies a pride of place. The development of all these groups reflect much needed unity in human life. Therefore, it can be said that the creation of a mutual relationship between rights and duties is one of the main reasons for the success of social life. To enjoy rights collectively one should be able to perform duties towards the collective whole.

The interrelationship between rights and duties can be explained from different perspectives. First, a citizen’s need is to exercise his rights in such a way that he can contribute something to the prosperity of society. For example, the right to education is recognized in almost all advanced democratic states. But in essence, this right obliges the citizen to practice high civic virtues in the absence of which democracy cannot be truly successful. Secondly, the reality of the interdependence also entails the responsibility of each citizen to respect the rights of other citizens. For example, a citizen of India has the right to freedom of movement. As a consequence, it is the duty of the citizen not to interfere with the rights of any other citizen. Without mutual respect for the rights of the citizens, the society will face a chaotic situation where all rights will become meaningless. Third, a citizen has an obligation to perform certain duties to the state. According to Barker, rights cannot be regarded as rights unless they originate immediately from the State. In fact, State is the immediate source of rights. A citizen is indebted to the state for granting certain essential privileges necessary for the development of his personality. Therefore, he is obliged to perform some necessary duties to the state. It is the duty of every citizen in a modern state to stand by the state in times of danger, obey the laws, pay taxes honestly, and, above all, actively participate in various state functions.

15.8 Conclusion

Thus, in conclusion we can say that membership of a state is compulsory, and no individual can have the opportunity to escape from this. However, the question naturally arises whether the individuals are always obligated to obey to the state and its commands. There comes the issue of political obligation and right to resistance. We have in the above

discussions seen the various grounds of obligation, starting from divine reason, legal binding, traditional norms, contractual nature etc. Whatever be the ground, being a decent citizen individuals are expected to obey the norms and laws of the state and the states are bound to serve the citizens, otherwise the citizens should have the right to resist and form a new government.

15.9 Summing Up

- Rights in some sense existed in the Middle Ages, although the idea of ‘human rights’ dates from the eighteenth century.
- Historically, there has been some debate on what exactly these rights consist of, while conservatives and socialists have, from different grounds, supported the liberal commitment to universal human rights.
- By the end of the nineteenth century it was widely agreed that a focus on ‘individual’ and ‘negative rights’ was inadequate to meet the social needs of the time.
- This led to the development of ‘group’ and ‘social’ rights.
- Obligations, or duties, to society and the state have received considerable attention in recent years, partly in an attempt to give them a sound philosophical underpinning and partly to establish what are the limits to the individual’s duty to the state.

15.10 Probable Questions

Essay Type Questions :

- 1) Discuss the different sources of political obligation.
- 2) Discuss the main bases of political obligation in a democracy.
- 3) Explain the basic duties of the citizens.
- 4) Explain the different types of obligations?
- 5) Is rebellion against the state justified? Give reasons for your answer.

Short Questions :

1. What is obligation?
2. Mention the basic duties of citizens.

Objective Questions :

- 1) Mention any one type of obligation.
- 2) Who wrote 'Leviathan'?
- 3) Who is the author of 'Two Treatises of Government'?
- 4) Name a book authored by Machiavelli.

15.11 Further Reading

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