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# UNIT 1 HISTORICAL AND PHILOSOPHICAL PERSPECTIVE

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## 1.1 INTRODUCTION

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The 50<sup>th</sup> anniversary of the Universal Declaration of Human Rights has marked the human rights discourse with a plethora of publications both of the western and non-western scholars. Many of these publications highlight the nature and extent of “progress” made in championing and protecting human rights throughout the world. It is important to note that such ‘a progress’ as claimed has not been uniform all over the world. There are cases where human rights have been either neglected or denied to the common man by the ruling power. In many cases, one may notice that such rights are denied because of the vested interests of the dominating groups. Naturally, it is necessary to understand the notion of human rights both from theoretical perspective and operational methods.

### Aims and Objectives

After reading this Unit, you would be able to understand

- The meaning and evolution of the concept of Human Rights;
- The theoretical and philosophical foundations of Human Rights;
- Different perspectives of Human Rights;
- Human Rights from the Indian perspective.

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## 1.2 HUMAN RIGHTS: EVOLUTION OF THE IDEA

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It is true that human rights as an international phenomenon is of comparatively recent origin. Although a number of treaties or international agreements affecting humanitarian issues before the Second World War is noticeable, it is only with the coming into force of the United Nations Charter in 1945, the systematic human rights protection within the international system has been formalised. A look into the historical perspective would

suggest that even before the process of institutionalisation through international mechanism, attempts were made to provide democratic legitimacy to the notion of human rights at different levels.

### **Religious Antecedents**

The philosophical foundation of the modern and secular understanding of human rights may be traced to the religions humanism, stoicism and the natural rights theorists. Most religious texts of the world incorporate moral and humanistic principles, often phrased in terms of duties. Essentially the core area of such religious teachings was a sense of brotherhood. It has been taught that all humankind should be viewed as a unity and all are integrally linked up with that Almighty or God.

It is clear that the concept of human rights may be traced to religious texts of different religions of the world. But this does not mean that the reference of rights of man was exclusively for ensuring the human life of human beings. Rather in many cases, these references were made to justify, legitimise and endure the particular order of social and religious nature.

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## **1.3 HUMAN RIGHTS: THEORETICAL AND PHILOSOPHICAL FOUNDATION**

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Philosophically viewed, the concept of human rights has been enriched by the contribution of many thinkers. Zero, the founder of the Stoic School of thought, propounded the theory of Natural Law which begins with the assertion that all human beings have natural rights. From this concept, they developed the notion of “Universal brotherhood” which is considered to be the foundation of the idea of human rights.

Reference to Greek Political ideas would reveal that both Plato and Aristotle developed their philosophical construction around two issues: common good and justice. Absolute justice can be achieved when an individual can perform the duties assigned to him in harmony with common good. Like Plato, Aristotle also laid emphasis on the concepts of justice, virtue and rights.

Medieval thinkers like Augustine had also emphasised the concept of human rights by highlighting the notions of natural law and natural rights although the primary aim was to safeguard the supremacy of the church. The age of Enlightenment tried to attach secular nature to entire discourse on human rights. Hobbes explained the nature of the state in secular perspective. Similarly, Locke and Rousseau assigned to the state or the political authority the duty to protect individual’s right to property and equality before the law.

The notion of human rights was explained from a different perspective by Jeremy Bentham, the father of the Utilitarian School of thought. He rejected the idea of natural rights as singly non-sense and impractical. J.S. Mill also discarded the metaphysical concept of natural rights and school for fundamental freedom of man. The socialist view of human rights puts emphasis on some fundamental and core issues of human being as the right to health care and education, emancipation of women, the prohibition of child labour, universal voting rights and the like.

Contemporary philosophers like Robert Nozick, John Rawls, Michael Oakshott and others, while emphasizing the issue of human rights, have challenged both the liberal and the socialist visions of rights. Philosophically viewed, the notion of human rights, in a

general way, revolves round a number of principles. The first and foremost of them is the theory of natural law under which human beings were supposed to have natural rights.

Closely following this, comes the concept of common good and justice which actually formed the foundation of ancient Greek philosophy. The concepts of justice, virtue and rights of the individuals formed the backbone of the theory of human rights in the Greek political philosophy. It is found in Aristotle's *Politics* how the concepts like justice, virtue and rights change in accordance with different kinds of constitutions and circumstances. Aristotle advocated that rather than focusing on business, war or enslavement, states and laws should aim at encouraging leisure, peace and common good.

During the age of Enlightenment, the human rights discourse developed a new method of understanding and realisation through the notion of natural rights. In fact, Thomas Hobbes, while attempting to provide his political ideas, laid emphasis on the role of the state in terms of secular concepts. The entire philosophical and theoretical formulation by Hobbes aimed at protecting individual rights to life and security. Similarly Locke and Rousseau constructed the entire theory for securing individuals' natural rights to political representation, property and equality before the law. Others like Hugo Grotius, Abbe Charlesde, Saint-Pierre, Thomas Pains, and Immanuel Kant further developed the concept by giving an international dimension to it. It has been rightly observed by R.M. Ishay: "But despite Hobbes' minimal standard of what constitutes basic rights, he, by basing sovereignty on natural rights, leading to what was later called the first generation of civil and political rights."

On the other hand, to Locke, governments are legitimate only in so far as they preserve fundamental rights acquired in the state of Nature. These include the right to life, liberty and property. According to Michael Freedom, the modern conception of rights as moral constraints on governmental action which require institutional realisation thus owes much to Locke.

Rousseau went a step further by asserting that the right to control individual action belongs not to any individual or group of individuals but to the whole community. His idea of General Will symbolises the power of the people in general which has been created by the people themselves through their collective action.

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## **1.4 HUMAN RIGHTS: DIFFERENT PERSPECTIVES**

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Commentators like Weissbrodt and Vasak have categorically stated that human rights have become 'a universal ideology'. But this proposition is also subject to criticism. Though there is virtually no disagreement among the scholars on the desirability of entitlements and empowerments of human beings, there are wide disagreements among them on the nature, extent, typology and dimension of human rights. All these issues are normative in nature and consequently these have been viewed and explained by the scholars from different subjective standpoints. Naturally, the central points of human rights have been analysed from a good number of ideological and philosophical perspectives.

### **Natural Rights Perspective**

The natural rights paradigm of human rights views human rights from a somewhat abstract and metaphysical perspective. A product of Greek philosophy, the theory flourished in the seventeenth and eighteenth centuries as an antidote to the Divine Right of Kings. The

theory suggests that human beings are entitled to enjoy certain rights with which they are born.

It implies that human beings possess these rights which are essential parts of them, dependent of and logically prior to, their status as members of the civil society or the state. Thus, the society or the state can neither create them nor modify them. They are universal and hence, valid for all. The authority of the state is justified as legitimate only because, and so long as, it protects the natural rights of man.

A close look at the natural rights theory reveals some essential elements of the theory that require further elaboration. In the first place, the theory holds that human beings are born with the natural rights and as such, they are part of their initial equipment in the same way as their bodies are. Hence, these natural rights are thought to be innate and inalienable. Secondly, natural rights are pre-social. They are not the product of any social or political system. Rather, the society and polity came into being to ensure the recognition and enforcement of those natural rights. Thirdly, natural rights are thought to be absolute and hence cannot be negotiated, compromised or diminished. Finally, natural rights theory assumes that natural rights are universal.

It has been pointed out that such a notion of natural rights suffers from a good number of flaws. If social recognition is a necessary condition for the existence of human rights and if recognition means acceptance by morally and intellectually conscious and knowledgeable people, then, it is bound to be imposed on recognition by the privileged and thus influential section of the society over the disadvantaged, passive rest. That the privileged influential brought the idea of civil and political human rights does not mean that the disadvantaged, passive majority did not recognise the need for the second generation human rights – the social and economic rights of man. Similarly, the point that arranged protection of human rights is also necessary with social recognition leaves one into another dilemma onto how human rights are to be protected. Few questions are asked in this connection:

- a) Will it be possible to ensure universality in the process of protection?
- b) Will not the protection of human rights amount to violation of human rights for the sake of protection?
- c) Who is going to assume the responsibility for the protection?

Such questions are, however, very complex in nature and not a single answer can be given for these questions. Even the natural rights theorists like Hobbes, Locke and Rousseau could not offer specific answers to these questions.

Again, closely following this, the issue of inalienability of human rights also figures in the whole discourse on the subject. If the very existence of a right is questioned in the event of the absence of social recognition and protection and if recognition as well as protection is conditioned by a particular brand of socio-ideological order, a right cannot remain inalienable in the true sense.

The assumption on which the natural rights paradigm rests is not without limitation. By the very logic of human beings being social animals, pre-sociality of human rights is a misnomer. It is only in some form of society that rights acquire their true meaning. A right, in order to exist, requires recognition and protection and since the recognition and

protection are to come from the society, a right may justifiably be said to be the product of social interactions.

As regards the absoluteness of human rights in the natural rights paradigm, it again seems to be contradictory in nature. There may be clashes among different competing rights and the realisation of one may be attained at the expense of the other. So it is universally accepted that rights, for the sake of its enjoyment of all, should not and cannot be absolute. Even the notion of universality is not free from its limitation; not all the persons are equal in every respect – social, economic, political or even physical. So it is expected that some amount of flexibility should be there in the concept, idea and extent of rights so that people belonging to all segments of the society can enjoy human rights.

In the ultimate analysis, it is held that the natural rights paradigm suffers from some ideological preferences and seeks to defend and justify a socio-political order that is bound to exhibit contradictions both at the theoretical and operational levels.

### **Positivist Perspective**

Under the influence of the “Enlightenment” of the eighteenth century, the positivist paradigm conceives of human rights as the ‘derivative’ of the laws of the state. The core of the argument of this paradigm is that the existence and content of human rights are derived from and hence, dependent on, the positive law of the state. The Benthamite ideas centre round the issue that human existence is dominated by pleasure and pain and that human conditions may be improved by increasing pleasure and diminishing pain. Bentham’s utilitarianism, therefore, takes a majoritarian approach to human rights.

A close look at the positivist paradigm suggests that its legal backing enables the individuals to point to concrete norms and principles that allow them to vindicate their rights. Thus, the positivist paradigm appears to be an improvement upon the abstract and moral natural rights paradigm.

### **Libertarian Perspective**

Libertarian explanations of human rights strongly criticise the positivist-utilitarian paradigm and notable scholars in this group are Robert Nozick, R. Dworkin, John Rawls, Friedrich Hayek. In the opinion of Nozick, a group of men and women, in a state of nature, come together to form a minimal state. The minimal state is based on certain moral precepts and the role of the minimal state is limited to the enforcement of moral rights of the individuals. John Rawls argues that justice is a way of distributing rights, duties, benefits and burdens among individuals within a society. In his formulation, he starts with the familiar social contract theory in which all persons are in equal position of equality as regards the distribution of freedom and power. But he admits that each person is under the spell of a ‘veil of ignorance’ about his or her own personal qualities or attributes.

In Hayek’s theory, human freedom is regarded as pre-condition for order, virtue and progress of the society. To him, human freedom has been reduced by an activist state that has emerged under the ‘grab of deceptive popular constitutional government’. Hayek’s answer to the protection of the spheres of individual freedom is a ‘limited state’ based on spontaneous order in the society.

### **Marxist Perspective**

The Marxist perspective looks at the issue of human rights from a different angle: the

foundations of class and class-conflict. Under this construction, rights are viewed simply to be bourgeois concepts and as such, a product of bourgeois capitalist society, designed to protect the interests of the bourgeois class.

In the Marxist paradigm, the essence of an individual is that of a social being using his abilities to satisfy his needs. The true potential of human rights can be realised only in a class-less situation. The Marxist paradigm, by adopting the materialistic interpretation of social development, seems to provide a scientific and logical explanation as to how rights could be enjoyed in a perfect socio-economic order.

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## **1.5 HUMAN RIGHTS: THE INDIAN PERSPECTIVE**

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The Indian perspective of human rights calls for a greater and detailed discussion of the subject from the philosophical, historical and legal-constitutional framework. It will not be an exaggeration if one concludes that the basic ethos and spirit of the Indian freedom struggle movement had been directed towards the total emancipation of the nation which was under the subjugation of the foreign domination. In that way, the ultimate goal of our freedom struggle movement was to achieve independence of the country and through such attainment freedom of the people in general way.

A look into the religious aspect of the concept, one may notice that the country or for that matter, the attitude and value preferences of the people of this country, cutting across religious and other sentiments, always stood for equality of the individual in eyes of social recognition. One may point out that because of social stratification and strong regimentation, a section of the people did not have access to 'social equality' which is considered to be the founding-stone of the notion of human rights. It is equally true that such a differentiation was strongly objected to by the makers of modern India. Such social evils were sought to be removed through relentless struggle for social reconstruction by leaders like Mahatma Gandhi, Dr. B. R. Ambedkar, Jawaharlal Nehru, Maulana Abul Kalam Azad and many others.

Even going back, one recalls the contributions by Raja Rammohun Roy, Swami Vivekananda, Swami Dayananda and others. Such efforts establish the fact that the society in India had always been in a 'search' for a condition where 'people' would find a place of honour, dignity and value.

A land of Lord Buddha, Kabir and many other great souls, India always stood for equal position of men and women in the society because she believes that unless all persons are placed on an equal footing, society cannot make any progress, worth the name. The notions of progress and development in the Indian context have been all-inclusive and comprehensive in nature. Gandhi's call for an egalitarian society, Dr. Ambedkar's life-long struggle for the advancement of the down-trodden people, Nehru's vision of a socialist society or Azad's call for a secular face of the Indian society – all aimed at one particular objective: creation of society based on justice, equality and fraternity.

But mere theoretical and philosophical pronouncements will not be sufficient in a vast complex society as India is. That is why, it is felt and correctly so, that there should be proper institutionalisation and protection of such noble values relating to human dignity. That is why, the fundamental document of the country, i.e. the Constitution has been very carefully drafted so as to give these ideals a legal and constitutional sanction. In fact, the Constitution of India can be regarded as the finest piece of document which upholds the basic tenets of human rights, discussed so far.

The Constitution of India provides the ethical foundations of human rights in the Preamble while the legal expressions of these are in Parts III and IV of the Constitution. The ideals that are sought to be achieved for the fullest development of citizens are found in the Preamble that states in precise and lucid terms that the Constitution of India aims to secure to all its citizens justice, social, economic and political, liberty of thought, expression, belief, faith and worship; equality of status and opportunity and to promote among all fraternity assuring the dignity of the individual.

In line with the ethical foundations and under the influence of the ideals of the French Revolution that found their formal recognition in the Universal Declaration of Human Rights, the Constitution of India, as the fundamental and supreme law of the land, guarantees human rights to all its citizens without discrimination on any ground and these have been detailed out in Part III, dealing with Fundamental Rights and Part IV, dealing with Directive Principles of State Policy. It is true that the Fundamental Rights are justiciable, while the Directive Principles are not; but these two sets of rights are to be viewed in an integrated manner as political rights need to be supported by economic and social rights. An analysis of many important judicial pronouncements in India will show that the judiciary, in many leading cases, has taken a very liberal position in interpreting these rights for the sake of the greater need of the society. Moreover, with the emergence of the notion of judicial activism, the Indian judiciary is also taking very important position in establishing individual rights in many instances. The Human Rights Commission, as a principal organisation to oversee this issue, is also playing a very important role in this regard.

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## 1.5 SUMMARY

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Thus viewed, the notion of human rights occupies a central position in the whole discourse on man-state relationship. Opinions differed on the nature, extent and quantum of rights to be enjoyed by persons living in a particular political order. Since all these perspectives' underlying objective is to justify and legitimise a particular brand of socio-economic and political order, the entire human rights discourse has virtually been a dependent variable to the preferred order. The discussion on human rights has been all the more relevant in the context of globalisation with its thrust towards creating a new global order. It is held that globalisation is driven by the latest stage of capitalism wherein accumulation is taking place on global scale and that, in addition to accumulation of capital, there is the accumulation of power in other forms, e.g. knowledge, military-capability and regulatory capacity. So in the context of new emerging global order, the discussion and debate on human rights become much more relevant.

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## 1.6 TERMINAL QUESTIONS

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1. Make a critical review on the evolution of human rights.
2. What are the theoretical/philosophical bases of the concept of human rights?
3. Bring out the essential features of Natural Rights perspective of the notion of human rights.
4. On what ground does the libertarian should criticise the positivist – utilitarian concept of human rights?

5. Write short notes on the following:

- Rousseau's concept of General Will in relation to the concept of human rights.
- Bentham's Hedonism and individual rights.
- Marxian idea of a class-less society.

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## SUGGESTED READINGS

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Green, T.H., *Lectures on the Principles of Political Obligation*, Longmans, London, 1941.

Gupta, Vijay K., "Judicial Activism and State Accountability in Human Rights Violations" in Gupta, Vijay K., (ed.), *Perspectives on Human Rights*, Vikas Publishing House, New Delhi, 1996.

Gupta, Vijay K., *Perspectives on Human Rights*, Vikas Publishing House, New Delhi, 1996.

Lukes, Steven., "Five Fables About Human Rights" in Stephen Shute and Susan Hurley (eds.), *On Human Rights*, Basic Books, Oxford, 1993.

MacCormick, N., *Legal Rights and Social Democracy*, Oxford University Press, Oxford, 1982.

Macpherson, C.B., *The Political Theory of Possessive Individualism, Hobbes to Locke*, Oxford University Press, Oxford, 1964.

Macpherson, C.B., "Natural Rights in Hobbes and Locke" in D.D. Raphael (ed.), *Political Theory and the Rights of Man*, Macmillan, London, 1967.

McCloskey, H.J., "Respect for Human Moral Rights Versus Maximising Good", in R.G. Frey (ed.), *Utility and Rights*, Blackwell, Oxford, 1985.

McDougal, Mires S., Lasswell, H.D. and Chen, L.C., *Human Rights and World Public Order*, Yale University Press, West Haven, 1980.

Mill, John Stuart., *On Liberty*, Oxford, London, 1963.

Nickel, J.W., *Making Sense of Human Rights*, University of California Press, Berkeley, 1987.

Nozick, Robert., *Anarchy, State and Utopia*, Basil Blackwell, Oxford, 1974.

Oakeshott, Michael., *Rationalism in Politics*, Methuen, London, 1962.

Paine, Thomas., *Rights of Man*, Penguin, Harmondsworth, 1969.

Pollis, A, and P. Schwab., "Human Rights: A Western Construct with Limited Applicability" in A. Pollis and P. Schwab., (eds.), *Human Rights: Cultural and Ideological Perspectives*, Praeger, New York, 1979.

Rawls, John., *A Theory of Justice*, The Belknap Press of Harvard University Press, Cambridge, 1971.



Richter, M., *The Politics of Conscience: T.H. Green and his Age*, Weidenfeld and Nicolson, London, 1964.

Rorty, Richard., “*Human Rights, Rationality and Sentimentality*” in Stephen Shut and Susan Hurley (eds.), *On Human Rights: Oxford Amnesty Lectures*, Basic Books, Oxford, 1993.

Vasak, K., “*Toward a Specific International Human Rights Law*”, in K. Vasak, Vol.2.

Vincent, J.R., *Human Rights and International Relations*, Cambridge: Cambridge University Press, 1986. Also Stammers, Neil., *A Critique of Social Approaches to Human Rights*” in *Human Rights Quarterly*, 17.3.1995.