

Theories of Rights

The rights of ordinary citizens is a part of liberal discourse. In medieval times, it was the rights of the king. However in modern times we started talking about rights of man, given to man by nature, whereas rights of king are the delegated rights. Govt have only those rights which are transferred to them by people.

Theory of Rights is based on the value of individualism. It views man as a rational person who knows what is his best interest.

The theory of rights limits the scope of society and state.

Theories of Rights

& the strongest

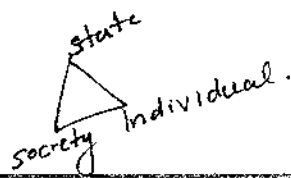
- Oldest theory of rights is 'Theory of Natural Rights'

According to Locke, man enjoyed rights in the state of nature. Man has a reason to understand the due process of law. Man has not transferred right to life, liberty & property. These are property of man & state can't take away these rights.

- Legal theory of Rights

- Bentham

Bentham is influenced by Hobbes. According to Bentham, Rights are the creatures of law properly called. For him, natural rights are nonsense upon stilts. Natural right is a



metaphor which emerges from another metaphor, i.e., natural law. & natural right is a terrorist language.

Historical theory of Rights

- Views of rightists or conservatives

For them rights are product of customs & traditions.

This theory is advocated by Edmund Burke.

According to him the real source of rights is customs & traditions. He considers natural rights as metaphysical abstractions.

Marxist theory of rights

In communism there is no concept of right. Man is alienated in capitalism from a society. So man requires rights. Alienation ends in communism. Man does not need any rights against society.

Theory of human rights

- Explain the concept of human rights and the relationship betⁿ human rights & natural rights.
- What are different debates^{/controversies} related to theory of human rights?
- What is multicultural perspective view of human rights?
- What is difference betⁿ pluralism & multiculturalism?
- What are criticisms of multiculturalism?

Origin of Human Rights.

Human rights is a post WWII phenomenon.

It originated in the context of Hitler's atrocities on Jews. Uptill WWII, legal theory of Rights was prominent. Uptill WWII, we do not see any significant growth of internationalism.

The Westphalian-Westphalian notion of state sovereignty remained the sacred principle, not to be violated by international community.

However later on, it was realised that in certain situations it becomes moral responsibility of international community to intervene in the domestic affairs of the state to protect the

basic minimum rights. The universal declaration of Human Rights (UDHR) is the 1st recognition of Human Rights by international community.

UDHR along with covenants / treaties

- on civil and political rights

- on social, economic & cultural rights.

form the International Bill of Rights.

The doctrine of 'Responsibility to Protect' has following elements.

- The first responsibility to protect the citizens is of state.

- Sovereignty of state is responsibility of the state.

- In case a state fails to protect or itself becomes a source of exploitation then it becomes the responsibility of international community.

- Any action of international community has to be based on consensus & through United Nations.

Use of force is to be treated as last option. Use of force has to be proportionate.

Human rights : used as an excuse of ^{external} intervention.
HR : packet of chips. more or less

- It also talks about responsible protection, means ensuring accountability of those who execute the directives

Theories of Human Rights

The first theory of Human Rights is

The theory of Natural Rights.

- The theory of Natural Rights suggests that human beings have right prior to state. These are fundamental rights. They are fundamental to human existence. These are rights which human beings possess just for the simple reason that they are humans. If these rights are not available, it is not possible to lead the life as humans. Human existence is different from animal existence. Later on human rights also came to be justified on the principle of human dignity supported by Immanuel Kant. There has been an evolution in the content of human rights. Today it has become a very big package that includes all rights.

Human Rights are classified into 3 generations of rights

- Civil & Political Rights Rights of 1st world
- Social & Economic Rights 2nd world
- Cultural & Developmental Rights. 3rd world.

Controversies associated with Human Rights.

- On definition of human

- Whether terrorists to be included in the category of humans or not

- When human life begins?

Whether human life begins inside the womb of the mother or after the birth. There is a debate on the issue between the feminists who support the right to abortion and catholic church.

- Human Rights limit state but states are expected to protect the Human Rights.

- There is no agreement on the minimum Human Rights which are to be available to all people.

- The way human rights doctrines have been misused has resulted into a situation where almost all humanitarian interventions become controversial.

- There has been a lack of uniformity in the application of principles.

23/9/14

Criticisms of Human Rights Theory

At present, there is a strong perception that Human Rights theories have liberal origin and character. Any attempt to enforce Human Rights is being viewed as the agenda of West either to establish the supremacy of western values or to attempt a regime change. Strongest advocacy for Human Rights in the world either comes from western govt or western countries based civil society networks and advocacy groups. Though liberalism can't claim monopoly over Human Rights, but other schools of thought have not given as much significance to Human Rights as liberals. Liberalism gives primacy to individual & his rights. The other alternative perspectives in the western world like socialism, Fascism do not give primacy to rights. Individualism has not been a value in non-western world.

In almost all nonwestern societies, community & culture dominate individual choices. Against liberal advocacy of Human Rights where they emphasize on the necessity of having agreement on some basic minimum rights, we see different responses from non-western world. In one way, advocacy of Human Rights also contributed to the rise of fundamentalism as it creates insecurity w.r.t. native culture. Another response has been emphasis on 'Cultural Relativism'. Former PM of Malaysia Mahathir Mohammed against universal notions of Human Rights suggested 'Asian values'. Asian values differ from western values.

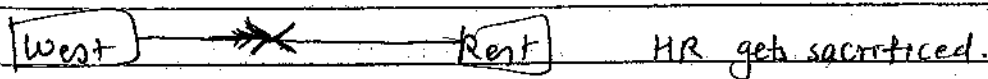
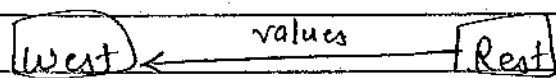
And any attempts to impose western values may not be suitable for these societies. Such scholars propose communitarian approach, guided democracy as more suitable. They view attempts of the west as cultural imperialism. Cultural imperialism becomes a basis for clash of civilizations.

Multiculturalism as an alternative

Context of the theory

Theory opposes universalist notion of Human Rights. The so called universalist concept of Human Rights is actually liberal perspective of Human Rights. Non-western societies are not ready to accept western values. Maybe these values are not suitable for non western world. However advocacy groups of western countries are continuously trying to impose these values.

Multicultural perspective to Human Rights (HR) is against universalist notion of Human Rights. However if we do not take HR from universalist perspective we destroy the idea of HR itself.



instead of imposing, develop consent.

unity in diversity,

What is multiculturalism?

Multiculturalism recognizes cultural diversity.

It not only recognises but also respects & aims at preservation of diversity. For supporters

of multiculturalism, respect for diversity is

the best approach to maintain peace & order

in present times specially in those societies

where there is too much of ethnic diversity.

Pandit Nehru can be considered as one of

the earliest exponent of multiculturalism.

Rather than seeking unity in uniformity he

preferred unity in diversity. Indian constitution

which recognises special rights of minorities

to preserve their language & culture is one

of the earliest documents recognising

multicultural approach. In India, we have

not gone for imposition of uniform civil

code from the very beginning, rather

permitted different communities to follow

their laws based on culture or religion in

personal sphere. Multiculturalism is suitable

for heterogeneous societies like India. Multiculturalism

has been given increasing recognition in the

west in contemporary times as ethnic diversity

is increasing because of increased rate of

migration as a result of globalisation.

Multiculturalism aims to give protection to

- immigrants, minorities, indigenous people

(tribal societies), marginalised communities (transgender, ^{homosexual} ~~sexual~~)

Multiculturalism can be a better approach

for integration rather than forced assimilation.

Canada in west is the first country to adopt

India: unity in diversity.
Melting pot approach.

Unity in diversity.
Diversity in unity.

multiculturalism. Canada adopted multiculturalism as an act in 1988, followed by Australia.

One of the prominent thinkers supporting multicultural perspective is Will Kymlicka.

He has suggested that Govt should recognise

3 set of rights to cultural communities

- self governance rights: This is to be adopted if an ethnic community is concentrated in a specific geographical area.

- Polyethnic rights: Recognition of cultural rights.

- Special Representation rights: Special representation in assemblies.

Bhiku Parekh

He suggests that we have to retain liberal values of human dignity along with toleration for different cultural traditions.

Criticism of multicultural approach to Human Rights.

Amartya Sen

He does not find multiculturalism as conducive for multiethnic societies. By adopting multicultural approach societies continue to be fractured, conflict ridden, provide basis for radicalisation, extremism & later on clash of civilizations.

Susan Moller Okin

Book: Is multiculturalism bad for women?

In most of the societies & cultural traditions as exist she finds legitimization for exploitation of women.

Hence it is necessary to create some ^{minimum} universal norms to be available to women to all societies and cultures.

Uniform Civil Code in India ?

- In India different communities can have their laws based on their particular religion, culture, etc. in personal sphere which means marriage, divorce, inheritance, adoption.
- Art 44 of Indian Constitution suggests that state shall endeavour to introduce uniform civil code. It means state has to take special efforts to introduce uniform civil code. Special efforts means state has to create an enabling environment & it is not going to be an easy task. Enabling environment can't be top-down approach. It has to be based on generating consent.

- Meaning of UCC & emergence of the concept

This idea has emerged in west in 17th century in Europe. It is reflection of European concept of secular state. State is permitted to intervene in the personal sphere, in the sphere of religion. State is to be considered as sovereign over and above the church. UCC was the need of that time for small European states to consolidate nationalism & strengthen sovereignty of the state.

Relevance of UCC in Indian situations.

It is suggested that there is no need for India imitate west, an outdated doctrine

of 17th century. Rather west has to adopt multicultural perspective. It has to give recognition to different cultural & religious practices to avoid clash of civilizations. The attempt of French govt to ban wearing of burqa / veil may not be in the long term interest. UCC as found in western countries was neither feasible at the time of writing of the constitution nor at present time considering size, diversity & unfriendly neighbourhood.

It is a myth that a state in India has completely left the personal laws of minorities untouched.

Essence of UCC has been existing in letters as far as Hindus, Jains, Sikhs & Buddhists are concerned. As far as Muslims, Christians, Jews & Parsis are concerned we can't say that there has been no state intervention. Ex: In Muslim personal laws & its interpretation, there are numerous judgements of the judiciary including the Supreme Court of India w.r.t. maintenance rights of muslim women. SC's interpretation in Latifi case are applicable. Muslim women has option of going for any of the remedies they can avail. the benefit of section 125 as well as section 127 of Cr.P.C. (all) (particular)

Theories on which multiculturalism is based.

Conservatism / Conservative theory of rights

According to which rights are derived from culture, not independent of culture.

Communitarian approach

Mind is never a 'tabula rasa'. Our conception of right & wrong is always shaped by our community. There can never be any original position.

Orientalism : - Edward Said

Edward Said points towards the ideological or political interpretation of non-western cultures, religions & societies as a part of project of colonialism.

Orientalists have not done justice in understanding non-western societies. He recognises the problem which existed in the east. East followed oral tradition. The tradition of writing has not been prevalent.

Hence when colonial masters tried to understand non-western way of life they had no resource available to guide them. They evaluated our institutions from their value system & most of the time it has been misinterpretation. Another problem is people in orient have gained consciousness of their identity from these works. They themselves lack the understanding of their own culture. This is the reason why western culture has a hegemony status.

Compare pluralism with multiculturalism

- Pluralism belongs to liberalism. Pluralism means toleration for different viewpoints, value system, etc.
- Multiculturalism is not simply toleration but respect for diversity. (preserve the difference).

multi — special cultural rights along with other rights.

Indian Constitution reflects both pluralism & multiculturalism.

VCC x Equality

stretching pluralism too much.

Pluralism & Liberalism

multi

respect to individuality

man creation of culture

everybody same right

multi-special rights to minorities.

USA

India

- Pluralism belongs Multiculturalism belongs to communitarianism.
 - Pluralism tolerates diversity but ultimate aim is dissolution of diversity & emergence of uniformity
 - Multiculturalism respects & preserve diversity
 - Pluralists believe that there should be some minimum agreement on values of civil & political life.
 - Multiculturalists would prefer to give self governance rights & recognition of polyethnic rights
 - Pluralism also has different traditions.
- Isaiah Berlin has proposed cultural pluralism.
- He does not believe that liberalism represents superior value system and other values cannot claim the respect. He suggests to adopt value pluralism, adopt respect for different ways of life. Cultural pluralism comes nearest to multiculturalism.