

**SUBJECT PAPER: THEORY AND PRACTICE OF HUMAN RIGHTS**

**SUBJECT CODE: 18BPO51C**

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**CLASS: II M.A., POLITICAL SCIENCE**

**UNIT I**

**HUMAN RIGHTS: MEANING NATURE AND SCOPE OF THE STUDY**

Human beings are born equal in dignity and rights. These are moral claims which are inalienable and inherent in all individuals by virtue of their humanity alone, irrespective of caste, colour, creed, and place of birth, sex, cultural difference or any other consideration. These claims are articulated and formulated in what is today known as human rights. Human rights are sometimes referred to as fundamental rights, basic rights, inherent rights, natural rights and birth rights.

The Universal Declaration of Human Rights (UDHR), 1948, defines human rights as “rights derived from the inherent dignity of the human person.” Human rights when they are guaranteed by a written constitution are known as “Fundamental Rights” because a written constitution is the fundamental law of the state.

1. Human Rights are Inalienable
2. Human Rights are Essential and Necessary
3. Human Rights are in connection with human dignity
4. Human Rights are Irrevocable:
5. Human Rights are Necessary for the fulfillment of purpose of life
6. Human Rights are Universal
7. Human Rights are never absolute
8. Human Rights are Dynamic
9. Rights as limits to state power

The Magna Carta, 1215.

The Magna Carta, also known as the Great Charter, of 1215 is the most significant constitutional document of all human history. The main theme of it was protection against the arbitrary acts by the king. The 63 clauses of the Charter guaranteed basic civic and legal rights to citizens, and protected the barons from unjust taxes. The English Church too gained freedom from royal interferences. King John of England granted the Magna Carta to the English barons on 15th June 1215. The king was compelled to grant the Charter, because the barons refused to pay heavy taxes unless the king signed the Charter.

The English Bill of Rights, 1689.

The next source and avenue of the development of the philosophy of human rights is the English Bill of Rights, enacted on December 16, 1689, by the British Parliament. The British Parliament declared its supremacy over the Crown in clear terms. The English Bill of Rights declared that the king has no overriding authority. The Bill of Rights codified the customary laws, and clarified the rights and liberties of the citizens. It lays down the twin foundations, viz., the supremacy of the law, and the sovereignty of the nation, upon which, the English constitution rests.

American Declaration of Independence, 1776.

The first colonies to revolt against England were the thirteen States of America. These states declared their independence from their mother country on 4th July 1776. The declaration charges the king with tyranny and affirms the independence of the American colonies. The declaration of independence has great significance in the history of mankind as it justified the right to revolt against a government that no longer guaranteed the man's natural and inalienable rights.

The U.S. Bill of Rights, 1791.

The U.S. Constitution was enacted on 17th September 1787. The most conspicuous defect of the original constitution was the omission of a Bill of Rights concerning private rights and personal liberties

The French Declaration of the Rights of Man and of the Citizen, 1789

The fall of Bastille and the abolition of feudalism, serfdom and class privileges by the National Assembly ushered France into a new era. On 4th August 1789, the National Assembly proclaimed the Rights of Man and of the Citizens. The Rights were formulated in 17 Articles.

Declaration of International Rights of Man, 1929.

After World War I, questions about human rights and fundamental freedoms began to be raised. In 1929, the Institute of International Law adopted the Declaration of International rights of Man. The Declaration declared that fundamental rights of citizen, recognized and guaranteed by several domestic constitutions, especially those of the French and the U.S.A constitutions, were in reality meant not only for citizens of the states but for all men all over the world, without any consideration.

#### **HISTORICAL DEVELOPMENT SINCE 1945**

The UN Charter, 1945. The United Nations Charter was drafted, approved and unanimously adopted by all the delegates of the 51 states, who attended the United Nations Conference at San Francisco. The UN Charter contains provisions for the promotion and protection of human rights.

The Universal Declaration of Human Rights, 1948. The Universal Declaration of Human Rights was adopted by the General Assembly of the United Nations on 10th December, 1948. The Declaration consists of thirty Articles and covers civil, political, economic, social and cultural rights for all men,

women and children. The declaration however is not a legally binding document. It is an ideal for all mankind.

International Covenants on Human Rights The Universal Declaration of Human Rights, 1948 was not a legally binding document. It lacked enforcements. This deficiency was sought to be removed by the U.N. General Assembly by adopting in December, 1966, the two Covenants, viz,

1. International Covenant on Civil and Political Rights and
2. International Covenant on Economic, Social and Cultural Rights.

The two International Covenants, together with the Universal Declaration and the Optional Protocols, comprise the International Bill of Human Rights. The International Bill of Human Rights represents a milestone in the history of human rights. It is a modern Magna Carta of human rights.

### **HUMAN RIGHTS THEORIES**

The Will Theory and the Interest Theory.

There are two main theories of the function of rights: the will theory and the interest theory. Each theory presents itself as capturing an ordinary understanding of what rights do for those who hold them.

Will theorists maintain that a right makes the rightholder “a small scale sovereign” . More specifically, a will theorist asserts that the function of a right is to give its holder control over another’s duty. Your property right diagrammed in the figure above is a right, says the will theorist, because it contains a power to waive (or annul, or transfer) others’ duties. You are the “sovereign” of your computer, in that you may permit others to touch it or not at your discretion. Similarly a promisee is “sovereign” over the action of the promisor: a promisee has a right because she has the power to waive (or annul) the promisor’s duty to keep the promise. In Hohfeldian terms, will theorists assert that every right includes a Hohfeldian power over a claim. In colloquial terms, will theorists believe that all rights confer control over others’ duties to act in particular ways.

Interest theorists disagree. Interest theorists maintain that the function of a right is to further the right-holder’s interests. An owner has a right, according to the interest theorist, not because owners have choices, but because the ownership makes owners better off. A promisee has a right because promisees have some interest in the performance of the promise, or (alternatively) some interest in being able to form voluntary bonds with others. Your rights, the interest theorist says, are the Hohfeldian incidents you have that are good for you.

The contest between will-based and interest-based theories of the function of rights has been waged for hundreds of years. Influential will theorists include Kant, Savigny, Hart, Kelsen, Wellman, and Steiner. Important interest theorists include Bentham, Ihering, Austin, Lyons, MacCormick, Raz,

and Kramer. Each theory has stronger and weaker points as an account of what rights do for rightholders.

The will theory captures the powerful link between rights and normative control. To have a right is to have the ability to determine what others may and may not do, and so to exercise authority over a certain domain of affairs. The resonant connection between rights and authority (the authority to control what others may do) is for will theorists a matter of definition.

### **LIBERAL THEORIES**

With the proper institutions and diplomacy, Liberals believe that states can work together to maximize prosperity and minimize conflict. Liberalism is one of the main schools of international relations theory. Liberalism comes from the Latin liber meaning "free", referred originally to the philosophy of freedom.

Liberals espouse a wide array of views depending on their understanding of these principles, but they generally support free markets, free trade, limited government, individual rights (including civil rights and human rights), capitalism, democracy, secularism, gender equality, racial equality, internationalism,