

CLASS: I M.A., POLITICAL SCIENCE

SUBJECT: HUMAN RIGHTS THEORIES, INSTITUTIONS AND CHALLENGES

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UNIT-I

UNIT I THEORIES OF HUMAN RIGHTS

THEORY OF NATURAL RIGHTS

Natural Rights are rights which are born when human life is born. Humans are the creators of nature. The existence of natural rights is inevitable, inherent and inalienable. It is a natural right of a man regardless of its gender, caste, color, or creed. This right brings into existence the most common concept in the law that all men are equal before the eyes of the law and no one can be treated unfairly in any circumstance. John Locke advocated this theory affirming that natural rights were gifted rights to humans which cannot be abolished or taken away by the State. He also believed that humans are intelligent enough to make decisions as per their conscious. Such rights can be asserted anywhere. Any oppression or discrimination faced is a direct assault on the rights of humans.

Though the expression 'human rights' had its origin in international law, which is not older than the World War II, the concept of an individual having certain basic, inalienable rights as against a sovereign State had its origin in the doctrines of natural law and natural rights. Thomas Hobbes (1588 – 1679), John Locke (1632 – 1704) and Jean-Jacques Rousseau (1712 – 1778) are the three main thinkers who developed the Natural Rights theory.

Thomas Hobbes was the first champion of the theory of 'natural rights'. In his celebrated book, 'Leviathan', he advocated that no individual could ever be deprived of the right to life, which

he enjoyed in the state of nature. He asserted that all human beings are equal, without any consideration.

John Locke developed the idea further in his book, 'Two Treatises Government.' He argued that every human being has a natural right to life, personal liberty, and property, and that no governmental authority has power to deprive individuals of these rights because they had enjoyed them even before the creation of the civil or political society.

Rousseau is regarded as the greatest master of natural law school. In his celebrated book, 'The Social Contract', Rousseau states that "All men are born free but everywhere they are in chains."

Rousseau proclaimed that men are bestowed with inalienable rights of liberty, equality and fraternity. These concepts became the basis for the French Declaration of the Rights of Man and of the Citizen.

Paine an American revolutionary thinker developed the doctrine of natural rights without linking it to the social contract theory. He held that rights are natural, because they were bestowed upon man by God himself. These rights exist independently of the legal code of any country.

THEORY OF LEGAL RIGHTS

This theory is opposed to the natural rights theory. Legal Right comes into existence when the State recognizes it. Once the State acknowledges the existence of a right, only then it can enforce it. The State must enforce such rights to protect the interests of the people. The theory is that the State is a better agency to regulate human rights than humans itself. This theory faced a lot of criticism because it ignored the natural rights and accepted the rights created by the State only. Jeremy Bentham and Austin advocated this theory. However, Rights cannot be restricted to the extent created by the State only as this may lead to tyranny of laws. A reference to primitive laws and customs cannot be ignored.

Legal rights are, clearly, rights which exist under the rules of legal systems or by virtue of decisions of suitably authoritative bodies within them. They raise a number of different philosophical issues.

(1) Whether legal rights are conceptually related to other types of rights, principally moral rights;

(2) What the analysis of the concept of a legal right is;

(3) What kinds of entities can be legal right-holders;

(4) Whether there any kinds of rights which are exclusive to, or at least have much greater importance in, legal systems, as opposed to morality;

(5) What rights legal systems ought to create or recognise.

Issue (5) is primarily one of moral and political philosophy, and is not different in general principle from the issue of what duties, permissions, powers, etc, legal systems ought to create or recognise.

THEORY OF SOCIAL RIGHTS

The Social Welfare Theory is also known as the Social Expediency Theory. The advocates for a utilitarian system such as Bentham and Mill firmly believe in the concept of 'the greatest happiness of the greatest number'. This principle forms the groundwork on the basis of which a State must take social measures. The utility can be determined by means of reason and experience. The laws, customs and traditions should be socially desirable. The importance of utility in such customary laws was determined by reason and experience. Social theory is considered to be essential to eliminate social injustice as it believes that sacrificing individual rights for the welfare of the others is a noble deed.

THEORY OF ECONOMIC RIGHTS

This theory highlights the structure of a country along with its functioning. The advocate of this theory, Karl Marx, justifies economic theory on the basis that State is an agency that holds

the tool to control the interests and safeguards the rights of the people in a society. It is important for this theory to exist because it helps mold the legal duties of people depending upon the distribution of economic power. Economic structure gives a strong foundation to the political structure. He believes that a classless society is required for the rights to flourish, where everyone is equal and there is no existence of exploitation of rights.

EVOLUTIONARY THEORY OF RIGHTS

The theory which explains and is now accepted as a convincing origin of the state, is the Historical or Evolutionary theory. It explains the state is the product of growth, a slow and steady evolution extending over a long period of time and ultimately shaping itself into the complex structure of a modern state. This theory is more scientific.

The state is neither the handiwork of God, nor the result of superior physical force, nor the creation of evolution or convention, nor a mere expansion of the family. The state is not a mere artificial mechanical creation but an institution of natural growth or historical evolution says professor Garner.

There were a number of factors which helped the evolution of the state. They were kinship, religion, war, migration economic activities and political consciousness. The important factors which contributed to the growth of the state are

1. Kinship
2. Religion
3. Property and defence
4. Force
5. Political consciousness

Kinship

Kinship is the most important and was based upon blood relationship and kinship was the first strongest bond of unity. Family constituted the first link in the process of the evolution of the state with

the expansion of the family arose new families and the multiplication of families led to the formation of clans and tribes. Kinship was the only factor which bound the people together.

According to Professor Mac Iver, the magic of names 'reinforced the sense of kinship, as the course of generations enlarged the group. The blood bond of sonship changed imperceptibly into the social bond of the wider brotherhood. The authority of the father passes into the power of the chief once more under the aegis of kinship new forms arise which transcend it. Kinship creates society and society at length creates the state'.

Religion

Religion provided the bond of unity in early society. It also affected all walks of life. The worship of a common ancestor and common gods created a sense of social solidarity. There was fear in the hearts of men as far as religion was concerned. Even today we see religious practices, affairs and faith in uniting people. In the early days a number of races are united by religion and unity was essential for the creation of state.

Force

Force also played an important part in the evolution of the state. It was the use of physical force that was responsible for the growth of kingdoms and empires.

Property and Defence

Property and defence played a vital role in the evolution of state in ancient times particularly among the people who were nomads and wagabonds and tribals. Prof. Laski has referred to the necessity of acquiring property by the members of society and protecting the property acquired with reference to the population mentioned above.

This led to making adjustments in the social system and relationship between the members of different groups. The need to protect property ultimately compelled the ancient people to establish the state.

Political consciousness

The last is political consciousness arising from the fundamental needs of life for protection and order. When the people settle down on a definite territory in pursuit of their subsistence and a desire to secure it from encroachment by others. The need for regulating things and persons is felt imminently and this is the essence of political consciousness.

It follows that many factors helped the growth of the state. No single factor alone was responsible for its origin. Sometimes all and sometimes many of them help the process by which uncivilized society was transformed into a state. Of all the theories which seek to explain the origin of the states, the evolutionary theory is the most satisfactory. It should be noted that no theory pin-points the time at which the state originated as a consequence of many factors working in union at different times.

RIGHT OF DIGNITY

Dignity is the right of a person to be valued and respected for their own sake, and to be treated ethically. It is of significance in morality, ethics, law and politics as an extension of the Enlightenment-era concepts of inherent, inalienable rights. The term may also be used to describe personal conduct, as in "behaving with dignity".

The original meaning of the word "dignity" established that someone deserved respect because of their status. In the Universal Declaration of Human Rights, that concept was turned on its head. Article 1 states: "All human beings are born free and equal in dignity and rights."

'Dignity' is a key human rights buzzword. It's something we all have, and which means we merit certain rights. But what exactly is it? It all began several decades ago with the Universal Declaration of Human Rights, which proclaims in Article 1 that: All human beings are born free and equal in dignity and rights.

After Second World War International community concentrated on Human dignity as a core element for protection of human beings. The conceptual dimensions of human dignity were established in 1948 as the foundational concept of the UDHR. The preamble of UDHR says,

‘where as recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world’. Human dignity mentioned at the outset of the Article 1 of the Universal Declaration of Human Rights 1948, which is the most important document in the world. The Universal Declaration of Human Rights provides the preliminary work out for protecting and development of right to life with human dignity in the various constitutional laws of various countries in the world. Every person has inalienable right to live with dignified life without discrimination. They are entitled to claim equal respect from the state as well as from other persons. It is one of primary duties of each state to protect fundamental rights to the human dignity and implement welfare schemes in order to improve the dignified life of the citizens.

The term human dignity protected the civil, political, religious and social rights of individual. “Human dignity means a state of worthy of honour, respect, equal status and it is inherent connected mentally with human life irrespective of caste, creed, sex, colour, status, of the person”. Human dignity is attached with the family, caste, community and society. Every society having its own norms with pride of dignity, they maintain their dignity, respect and status as per customary practices. Being a human it should treat equal in dignity irrespective of gender. Human dignity is the foundational concept of the worldwide human rights system of Government. The importance of human dignity is laid in The UN Charter, Universal Declaration of Human Rights and other several international covenants as also in the Constitution of India, which mentions ‘dignity of the individual’ as a most important value in its Preamble.