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## Human Rights As An Embodiment Of Social Justice

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#### Keywords:

aristotle;  
human Right;  
john Rawls;  
social Justice;

### ABSTRAK

The violation of human rights is a serious threat to society which is constituted for the sake of human beings. Individuals and society are inseparable from each other. Society provides opportunities for individual growth provided he/she utilizes it appropriately and delivers the duties towards the fulfillment of the social goal. Being a part of society he/she has the privileges to enjoy all the basic rights and freedom. It is the rights that protect individual liberty from external aggression. This work discusses the concept of human rights as an embodiment of social justice. It starts by discussing the concept of human rights, the notion of Rights from Indian philosophical tradition. This work also compares the Kantian concept of Rights with John Rawls. These works conclude that the Rawlsian difference principle has similarities with the Indian reservation system, which is formulated by the Indian Parliament for the betterment/welfare of minorities groups. During ancient times, sudras being born in a lower class were treated as slaves and are deprived of minimum social justice. Only Brahmins are considered to be pure who are free to take part in every religious activity.

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## Introduction

Human rights have been widely accepted as a better concept which preserves human dignity (Brems, 2001). It is covered with all the fundamental rights, such as civil rights, economic rights, and political rights. All these rights are necessary for the maintenance of a healthy and secure life. Human rights are mainly concerned with human welfare and they provide dignity to human being. We notice that sometimes human beings are treated as a meremeans for others' ends. Slaves, women and children are the more glaring examples. Just as we use camels, donkeys, and horses for transporting goods from one place to another, slaves, women and children are used by the affluent and influenced people to do such menial jobs. Their status is almost as good as the status attached to these animals. Slavery is a crime against humankind. Child labour is the best example, although it is illegal in our society. We have come across various incidents provided by media which provides us with the impression that how brutal humans can be? There are cases of both physical and mental abuse. Some of them cannot bare these atrocities committed on them and prepared to end their lives. Similarly, women suffer male subjugation in the family.

Often their rights are denied and their voices are not heard. They lead unhappy life in a silent manner, for they know that their protests may go in vain. Men have the privileges to enjoy their rights like kings and dominate their wives and children. Thus women and children are the silent sufferers. This is typically the status of women in the patriarchal societies. The victim suffers both physically and mentally. Human rights came into existence after the Second World War in order to ensure peace and security to human life. The Universal Declaration of Human Rights (UDHR) was formulated by United General Assembly on 10<sup>th</sup> December 1948. The motto of UDHR is "to promote universal respect for and the observance of human rights and fundamental freedom for all without distinction to as race, sex, language or religion" (Morsink, 2014). It presupposes human dignity and maintains equality within the members of society. Freedom, justice, and, peace are the three strong pillars of human rights. They prescribe human beings not to involve in any cruel activities in order to avoid disrespect and humiliation to fellow human beings. Day by day the crime rate in most of the cities in Nigeria is increasing in spite of the fact that people are very vocal about the human rights. It is a matter of shame that we claim to be second largest democracy in the world. Everyone suffers injustice in their life in some form or other. If the trustee of the society misuses his power and tries to amass all the wealth for his self-aggrandizement rather than the welfare of society then the concept of trust loses its meaning. And the result is chaos and anarchy. Life of the individuals will not be smooth in an anarchic state. Therefore, state should be impartial in treating its members by providing them equal opportunities. Mahatma Gandhi also mentions that ideal society is possible only when both men and women get equal rights (Ishii, 2001). So that no one feels discriminated and every child born out the process of creation has all the rights to be nourished out of their parental property.

## Origin Of The Concept Of 'Right'

Individual can claim his/her rights within the society. So rights are rooted in the society which presupposes human obligation as a form of duty. One's rights in the society are linked up with one's obligations towards the members of the society. It is the individual's action which decides reward or punishment. The good of the individual is related with the good of the society. So, there is an inseparable relationship between individual rights and social responsibilities. We cannot separate one from the other. It is the society which assigns both duties and rights to the individuals. To quote T.H. Green in this context:

No one can have a right except (1) as a member of a society, and (2) of a society in which some common good is recognized by the members of the society as their own ideal good, as that which should be for each of them (Green, 1884).

Similarly, Mahatma Gandhi also acknowledges the importance of rights and duties for the protection of human rights. According to Gandhi,

I learn from my illiterate but wise mother that all rights to be deserved and preserved came



from duty well done. Thus, the very right to live accrues to us only when we do the duty of citizenship of the world. From this one fundamental statement, perhaps it is easy enough to define the duties of man and woman and correlate every right to some corresponding duty to be first performed. Every right can be shown to be usurpation hardly worth fighting for (M, 1950).

Right of one implies the duties of others. So, both rights and duties are correlated with each other. Thus, Austin says that "every right... rests on a relative duty... lying on a party or parties other than the party or parties in whom the right rests" (Austin, 1863). Wesley Hohfeld's in his book *Fundamental Legal Conception of Applied in Judicial Reasoning* (1913) classified rights into four parts namely – liberty rights or privileges, claim rights, powers and immunes. Let us discuss these rights in a brief manner. Liberty rights demand that everyone should enjoy these rights. Duty is not a part of liberty rights, individual simply enjoys his/her privileges. Suppose A has a right to B, which means A can only enjoy his liberty but B has a duty to fulfill his rights. In this context, I can quote the best example of liberty rights described by Thomas Hobbes. According to him, "the liberty each man hath, to use his own power, as he will himself, for the preservation of his own nature" (Hobbes & Missner, 2016). Hobbes believes that it is permissible to use each other body, if the human life is at risk. Likewise, Locke advocates the ownership of unowned property. If an individual makes unproductive land productive, then he has the absolute rights over this property. Claim rights have the significance only in the political context and they presuppose human duties. For example, if a child has the right to be nourished out of his father's property, similarly father has the duty to fulfill the basic needs of child, until he/she grows up. This is called positive duty. The negative duty is involved with unnecessary interference, looting other's property. Property is needed for the preservation of individual life. Absence of property destroys the growth of human life which seems to be avoided and punished that culprit who played a dirty game on the pretention of friendship. The third element of Hohfeld's rights is the powers which are related to the legal constitutions of society. We can enjoy these rights as active citizens of society who can use his/her power to choose a representative of state that looks after individual welfare and maintain social harmony. For example, The President of India can use his emergency power during crisis time like, war, external aggression and armed rebellion.

Immunity rights, according to Hohfeld's are one of the unpopular categories among the four. According to Hohfeld, "an immunity, technically is the obverse of a power" (Knowles, 2006). Immunity rights are based on freedom and no one has the authority to change its norms. For example, in the Indian context, the verdict of chief justice of India is considered as the final decision which everybody has to accept it. It happens with the rare case that honest people are unable to get justice due to inadequate proof. It is simply a case of negligence on the part of police officers who are either corrupt or afraid of danger to their lives. Consequently, they do not co-operate with victims and help them to collect sufficient information. Human rights are universal in character in the sense that they are equally applicable to human beings of all societies irrespective of their class, caste, creed, region, religion, race and so on.

### **Notion Of Right: An Indian Perspective**

Moral values play an important role in the Indian tradition which is based upon rights and duties of individual. Individual actions are judged on the basis of moral standards which decide their reward and punishment. Moral actions are intrinsic in nature and are related with individual conscience and reason. Only the reasonable being has the ability to differentiate between the higher and lower goals of human life. Entitlement of individual rights and assignment of duties are elaborately discussed in the Indian epics and scriptures. The Vedas are considered to be the supreme command of God which guides human actions on the basis of moral standards. Social laws which are based upon individual conscience are subordinated to Vedic injunctions. Vedas are mainly divided into four parts, namely – R̥g, Sāma, Yajur and Athārva. Among these four Vedas, R̥g Veda discussed about the three civil rights of individual, i.e., body (*Tana*), dwelling place (*Skridhi*),



and life (*Jibahsi*) (Prabhavathi & Raju, 2020).

Similar line of discussion we can found in the *Gītā* which suggest that action should be performed for the sake of action without expecting the fruits of the action. Lord Krishna removes the shadow of ignorance which obstructs the path of Arjuna who is very much confused between his duties as a soldier and duties towards his family members. Like Kant, the *Gītā* also prescribes that duty should be performed for the sake of duty and personal feelings have to be kept aside when we perform duties. The individual who does not perform his/her duties loses his/her identity and the purpose of his/her existence in the society. Caste divisions and gender discrimination degrades the status of Indian moral values. People are confused in between caste and class so they try to equating them. But in reality there is a watertight distinction between caste and class. The classification of caste is based upon the birth of individual, whereas class is related with individual capability, ability and its talents, i.e., self-reflecting capacity which is peculiar to only human being (Prabhavathi & Raju, 2020).

Rights without obligations are incomplete in nature. Rights are not *a priori*. They are not readymade garments. Rights are born out of social needs of individual. Indian scriptures highlight three basic debts to human beings, namely, debt to teacher (*guru*), debt to god (*devata*) and debt to forefathers (*pitru*). Apart from these duties, there are duties that individual has to deliver towards oneself and duty towards others. Every individual has a duty towards one's own self. It is the responsibility of individual to claim his/her due from society in order to put an end to injustice. Individuals do not have the right to put an end to his/her life in order to get rid of all the social tensions. It is against the spirit of humanity which cannot be promoted. Each individual has obligation towards his/her fellow beings. In other words, what one expects others do unto oneself must be done to others also. Mutual cooperation is the need of the hour. As a citizen of society it is his/her duty to maintain a cordial relationship for the good of the society. Duty is related with rational beings not with lower creature. It is our duty to provide basic rights to lower beings, i.e. right to life.

Indian society divided duties of the individual on the basis of their caste or occupation. Its aim is to distribute the works according to person's ability, so that they can enjoy their life peacefully. But higher class people misinterpret the above divisions and treat the lower caste people as inferior to them. The hierarchy of castes is as follows: Brāhmana, Kṣhātiya, Vaiśya and Sūdra. The duties have significance in different stages of human life. During the Brahmchārya period, a student has to spend his time with his teachers to whom he learns the Vedas and maintain disciplinary life. *Grihastha* comes after *Brahmchārya* which is related to the marital life and where he learns the ability to manage our own self-interest and same time concerned about others' welfare. *Vānaprasthā* is the stage of solitary life where an individual renounces all the household pleasures, and practices meditation in order to attain God's proximity (Srivastava & Misra, 2020). *Sanyāsa* is the final stage of life where he surrenders all his life to God and maintains chastity. In this context Manu prescribes ten duties to human beings in order to attain the supreme goal. These ten duties are as follows:

1. Contentment
2. Forbearance
3. Gentleness
4. Respect for others
5. Property
6. Cleanliness
7. Self-control
8. Knowledge
9. Philosophic wisdom
10. Veracity and patience

The above mentioned duties are only to be performed by individuals who are considered moral (Srivastava & Misra, 2020). These duties are altruistic in nature. For example, self-control as a duty not only controls our lower desires which equate us with lower creatures, but also the ability of care for other's comfort and privacy.



We can come across the similar reference in our Holy Scriptures like the *Gitā* and *the Bible*. *The Gitā* pronounces the importance of duties in human life. Plato's classification of individuals is similar to that of the *Gitā* to some extent. Both Plato and the *Gitā* give importance to individual abilities for achieving higher status. Manu is one forerunner of caste system establishing in India and also equally responsible for creating huge gap between man and woman. Women cannot take any decision independently; they have to obey the order of man in every sphere of life, i.e., father in the childhood days, and husband in the youth stage, and son in the old age. One of the remarkable features of *Manusmriti* is that women have share in parents' property that she can claim rightfully.

### Historical Origin Of Human Rights

The concept of 'right' and the concept of 'good' are the products of human society. Each individual possesses two basic characteristics, i.e., natural being and social being. He/she can claim his/her rights as a social being (Brems, 2001). No one is perfect, so he/she needs the support of others for the fulfillment of his/her goals. Thus, we can say that it is the individual needs which compel him/her to form a community and started living together. Individual enjoys his/her human rights by virtue of being a human being (Brems, 2001). Thomas Paine in his book *In the Rights of Man* points out that there is a significant difference between natural rights and civil rights. According to him,

Natural rights are those which appertain to man in the right of his existence. Of this kind are all the intellectual rights, or rights of the mind, and also all those rights of acting as an individual for his own comfort and happiness, which are not injurious to the natural rights of others. Civil rights are those which appertain to man in the right of being a member of society. Every civil right has for its foundation, some natural rights preexisting in the individual, but to the enjoyment of which his individual power is not, in all cases sufficiently competent. Of this kind are all those which relate to security and protection.

Human rights are modern form of natural rights which emerge out of it. European history had played a great role in the establishment of human rights under several revolutions. *Magna Carta* is one of the best examples which stand for the protection of human rights. It was introduced formally on 15<sup>th</sup> June 1215 to assure the rights of King John of England, while normal human beings cannot be parts of charter. Later on it was reformulated by British Parliament in 1355 (Holt et al., 2015). The revised version of charter ensures the rights to all. It formulates various rules like wherein the Church should take its decisions independently and the government has no right to impose its power on it. Similarly, property rights of citizen (freedom to purchase property and pass on that according to his own wishes), rights of widow, universal rights are free from any kind of bias. Strict action should be taken against those who deliberately violate any rule for his/her own self-interests. Human rights suggest that individual should get proper respect from society. Society should not interfere with the activities of citizens unless they deliberately violate the rights of others. It is the responsibility of society to provide the fundamental rights to citizens for their development and blossoming of natural abilities (Holt et al., 2015).

### Ideological Foundation Of Human Rights

There are many scholars who raised their voice against the violation of human rights. It is necessary to include the ideas of the most relevant thinkers like Aristotle, Kant, and Rawls in this context.

#### Aristotle's View on Natural Rights

There are several criticisms against Aristotle that he never spoke about the protection of individual rights. In order to silence his critics, he explicates the natural rights on the basis of his teleological approach and through *Ethics* for which he gains so much of popularity. Aristotle defines "natural justice as the foundation of natural rights" (Finnis, 2011). Natural justice is the part of political justice where individual can gain self-





sufficiency being part of society and developing cordial relations with his fellow beings. Natural justice is grounded on teleological view of human nature (in ethics the ultimate goal of human being is to achieve happiness). Political justice has two facets, namely, natural and conventional. Conventional justice is based upon the political constitution where there is mutual agreement between the peoples for the fulfillment of political goods. Political justice is again subdivided into three parts: distributive justice, corrective justice and commutative justice. Among these three forms of justice, distributive is the most essential in terms of evaluative capacity. In Aristotle's philosophy distributive justice is mainly used to evaluate individual merit or desert according to his actions. It demands that meritorious people should get more rewards compared to others (means less meritorious people). Although the criterion of distribution varies from one government to another but for Aristotle moral virtue is the best criterion of political rights (Finnis, 2011). It is the distributive justice which specifies the equal natural rights of individual. To put it in his words:

...persons similar by nature must necessarily have the same right and merit according to nature; and so if it is harmful for their bodies if unequal persons have equal sustenance and clothing, so also in what pertains to honors, and similarly therefore if equal persons have what is unequal (BZ Tamanaha, 2018).

Fred Miller in his book *Nature, Justice and Rights in Aristotle's Politics* (1997) defines that Aristotle is equally concerned about individual rights like liberals. He finds the similarities in between Hohfeld's classification of rights with Aristotle's theory of justice. Corrective justice of Aristotle deals with claim rights of victim who suffers loss due to his/her partner's cunning nature. In this situation they seek the help from the judge who intermediates between the loser and gainer and gives to each their own due. Judge inflicts punishment to the gainer who deliberately breaks the rules of contract and tries to possess the share of his/her partner without his consent. Corrective justice settles the disputes and provides the actual due of the claimants, i.e., what his/her rights are. Similar line of discussion can be traced in Aristotle's *Politics*, especially in Part-III, where political offices are distributed on the basis of individual merits. The equal distribution of power to the equal person is considered as just claim rights. Aristotle's argument is like that those who are equal in the similar manner are able to get treatment equally. He is basically referring to the participation of political activities which requires higher level of virtuous insight. Women, slaves and children are to remain separate to the political realm because they do not have the ability to cross the boundary set by political institutions.

Liberty rights are also essential to the Greek philosophers. Aristotle in his *Metaphysics* clearly mentions that "freedom is the fundamental condition of existing for one's own sake rather than for the sake of another" (Rawls, 1993). Aristotle tries to make a distinction in between free human beings and slaves. The latter are supposed to obey the commands of the former because of their lower reasoning capability. Their lives are determined by rules of free men (he calls them 'masters') whose reason is effectively well and they can take comparatively better decision in order to meet the ends of state (political goodness). In order to participate in political activities citizens should possess the liberty rights. Although there are differences of opinion regarding the distribution of powers, for example, democrats believe that minimum amount of power is necessary for the sustenance of human life because it gives more importance to universal welfare. But for the oligarch it is the majority which takes all the powers in their hand and rules the rest. Liberty is essentially a prerequisite quality of a virtuous citizen whose main concern is fulfillment of political goodness.

Hohfeld's authority rights resemble the Greek term 'power'. Authority means being a possessor of absolute power and it can either be a single person (father in the family), group of persons (groups of directors in the company) or laws of a particular state. Authority of one person specifies the duties of others. In other words, as an obedient subject he/she has to deliver his/her responsibilities. Aristotle makes a clear cut distinction between authority and power. The former one is negative in nature where there is no scope of free will because he/she has to act according to the rules of constitutions of their respective nations. No one raised their voice against the laws of state because violation of laws liable to severe punishment. The latter one refers to the positive attitude of citizen who voluntarily gives respect to master rather than through



force because love and respect are something which comes from within. One can use his/her power without being related to any constitutional rules like teacher in school, father in the family but the root cause of authority rights lies in the laws of constitution. On the basis of these laws authoritative person convict anyone who rejects to follow its rule.

Like the other three forms of rights (claim, liberty and authority), Aristotle also discusses the nature of immunity rights with reference to market transaction. As we all know that there is no fixed rule in business and everyone tries to gain more benefits on the benefit of others loss. But Aristotle modifies the rules of transaction which suggest that transaction can be considered as free and fair trade where no one gains more or less. It always maintains a fair atmosphere for the parties involved in the contract to get their desired share. Immunity rights transforms into impunity in Aristotle's *Politics* where he mentions that: "in the law-courts the rich, and the rich only, are fined if they do not serve, the poor are let off with impunity, or, as in the laws of *Charondas*, a larger fine is inflicted on the rich, and a smaller one on the poor" (Collins, 2006). Thus, from the argument provided by Miller, Aristotle is equally concerned about protection of human rights and takes preventive action in order to maintain balance in society which will be helpful for both society and for the individuals. Being brought up in male dominated Greek society he is partial towards the nourishment of male citizens and ignores the rights of women. Apart from this shortcoming, he is the champion of teleological approach which gives direction to lives of citizens and they realize their responsibilities towards each other's.

Aristotle's natural rights are completely different from Hobbes's and Locke's natural rights theory. Hobbes's natural rights were based upon negative liberty where each one has the right to use others as a thing for his own benefits and here there is no obligation for others (fellow beings). It is similar to Hohfeld's privileges rights which is not bounded by any duty. In Hobbes's state of nature individual is portrayed as nasty and brutish being and each one is the enemy of other. Unlike Hobbes, Locke suggests a completely different picture of man which is systematic, orderly. Locke derives natural rights from the law of nature which is a precept and it is based upon reason. Each individual has the obligations towards his fellow beings and they share mutual relations. As a teleologist, Aristotle tries to find out the purpose behind everything exist in the world. In his *Ethics*, he points out the ultimate goal of human life is to achieve happiness for which individual has to develop his virtuous ability which is the basic requirement. In the *Politics* he defines "happiness as the actualization and complete practice of virtue". Individual by nature is a political being whose existence and identity are dependent upon political recognition. Individual is not prior to city or society (*Polis*) rather he is the part of it. Human being possess a special quality, i.e., which increase his status among all the worldly beings. Individual existence cannot be conceived apart from society where he is able to realize his natural ends within the constraints of constitutional rules. Emphasizing the role of society in human life Aristotle points out that:

For as man is the best of the animals when he has reached his full development, so he is worst of all when divorced from law and justice. Injustice armed is harshest to deal with; and though man is born with weapons which he can use in the service of practical wisdom and virtue, it is all too easy for him to use them for the opposite purposes. Hence man without virtue is the most savage, the most unrighteous, and the worst in regard to sexual licence and gluttony. The virtue of justice is a feature of a state; for justice is the arrangement of the political association, and a sense of justice decides what is just (Collins, 2006).

Justice presupposes human rights and it is something understood as an intrinsic virtue which is necessary for the realization of human end. Justice does not promote the interests of a single individual rather it believes in the notion of common advantage which can be possible through co-operative life. In the Aristotelian city state (society is the modern name) individual can claim his rights insofar as he fulfill his obligation towards others in the society.

Aristotle defends slavery on the ground that "some persons are natural slaves" (Collins, 2006). Both master and slave enjoy a mutual relationship, which cannot be possible in the absence of one another.



Likewise, the role of women and children is also limited. Women do not have the authoritative nature so that they are confined to the household work and child rearing. How come Aristotle relies on women who are not insightful? A good teacher is endowed with analytical skill, reasoning ability, mature enough to take the right decision. This suggests that women are competent enough to handle the task that suit to their capacities provided they get the opportunity to do so. Plato realizes this fact and advocates that man and woman should get equal education in order to choose their paths according to their capacities.

### **Kant's Autonomy Based Rights**

In the seventeenth century Immanuel Kant presents the status of women in a very crude way which is similar to that of Aristotle's conception of women. But his view on freedom is well deserving that individual follows the order of one's own reason rather than the external commands. He is the source of the Age of Enlightenment (Bayefsky, 2013). Individuals faced various problems mainly after the Second World War where starvation, discrimination, unemployment, injustice were rampant in the society. Normal human beings are unable to get what is due to them. There is a need of a special law which will preserve the dignity of human beings. Right should be grounded on autonomous being who is having the capacity to choose the best end for his/her life. Autonomy is the highest goal of human life, according to Kant. As a moral agent each individual should live a dignified life and no one can use him as a mere instrument. Autonomy means freedom to exercise one's own will. Free will is the natural right which individual possesses by virtue of being a human being and it is independent from constitutional rules (Bayefsky, 2013). Kant considers freedom as the natural right of individuals, natural in the sense that these rights are inherently present in them during from their birth. Roger Hancock highlights Kant's identification of natural rights with freedom. He writes as follows:

The identification of natural rights with freedom, and the view that political associations ought to preserve and protect natural right is thus a theory common to Kant and many seventeenth and eighteenth century political philosophers. What is original in Kant's discussion of natural right is rather the way in which he arrives at the concept of natural right rather than the content of the theory. For unlike his predecessors, who often simply assert the existence of natural rights, Kant attempts to "deduce" this concept by an analysis of particular rights which men claim to have (Todd, 2016).

Kant explicates that rights are the inborn qualities of human being which should get protection from society and state should take major preventives for its further nourishment. Kantian notion of right is male centric which gives more privileges to man who enjoys rights inside the family as well in the society. Marriage for him is a mutual agreement for sexual enjoyment and both the partners have equal rights over the other. But he never denied the superiority of husband over his wife and asserts that it is a natural process for fulfillment of common interest. Women by nature are weak, submissive and their repulsive natures are to be controlled by constraints, so that all the power is vested with men who can take better decisions for the betterment of society. It is not natural that women are obliged to men rather it is manmade agreement between man and woman. Marriage is a social contract between two people which is based upon mutual consent, trust, love and obligation. But Kant never acknowledged the positive aspect of marriage rather he treats it as a cheap name whose purpose is to simply to use each other for sexual enjoyment. Marriage is not a single task, it needs the support from the both the sides and each has their own duty to preserve it. Both male and female should do their duty which is assigned by nature; no one should feel that he/she is superior to other partners. No one is perfect instead of showing fingers at each other's defect, if we acknowledge his/her strength then life will be happier.





## Human Rights: An Analysis Of Rawls

Human rights are defined as those rights that an individual enjoys by virtue of being a human being. These rights are inviolable rights and it is the duties of every society to protect them from external threats. Rawlsian liberal society not only provides autonomy to individuals to take their own decisions but also helps them to overcome out of their disadvantaged situation. His main thrust is to create an equal atmosphere where no one feels discriminated because of their poor mental abilities, luck, family income etc. Original position model of Rawls puts men in a unique boat where they can travel equally irrespective of their race, caste, region, etc. Liberty principle treats all individuals in an equal manner and mainly secures the rights of human being. Like *A Theory of Justice*, his *The Law of Peoples* is basically devoted to the promotion of human rights. Rawlsian *The Law of Peoples* is primarily consists of eight basic principles and the number sixth principle explicates that "peoples are to honor human rights" (Rawls, 1993). According to Rawls there are mainly four basic features of rights which are as follows:

1. Human rights are different from constitutional rights because its principles are not bounded by the laws of political institutions. Rather it provides a standard for the smooth function of domestic life
2. Human rights are universal in nature and their principles are applicable to all states
3. Human rights are essential for the establishment of reciprocal relations among the individuals
4. Human rights are called 'proper' by Rawls. He calls them urgent rights which should get protection from liberal societies

Rawls classified his rights into five major heads and they are as follows (Rawls, 1993):

1. The rights to life (to means of subsistence and security)
2. The rights to liberty (to freedom from slavery, serfdom and forced occupation)
3. Liberty of conscience (to ensure freedom from religion and thought)
4. Right to property (personal property)
5. Right to formal equality as expressed by the rules of natural justice (i.e., similar casebe treated similarly)

Rawls finds that these rights are not sufficient enough to protect human beings, so he further incorporates articles (3-18) of UDHR (Universal Declaration of Human Rights), which is considered the monumental rights for individual welfare. *The Law of Peoples* of Rawls was criticized by various thinkers with regard to minimalistic approach of human rights. Right is considered a moral claim of individual. Rawls is going little further and named it 'universally valid moral right.' Previously we collect some idea through Hohfeld's classification of right where he mentions that claim right involves the interpersonal relation between right holder and duty bearer. Emphasizing responsibilities of duty bearer Paul Sieghart defines that "in all legal theory and practice, rights and duties are symmetrical...if I have a right, *someone else* must have a correlative duty; if I have a duty, *someone else* must have a corresponding right" (Rawls, 1993). Rawls' human rights are also considered as moral claim rights which demand their fulfillment from against to state, society or any other social institutions. Violation of human rights is a serious threat to human development and it can be rectified if the corresponding authorities deliver its duty in an appropriate manner. If human rights are violated then it implies the negligence of duties. For example, Art-3 of UDHR explicates that 'everyone has rights to life, liberty and security.' It is duty of society to protect the lives of citizens from external enemies, give them proper respect and provide freedom to lead their happy life. Similarly Art-4 declares prohibition of slavery and strict punishment should be given to those who voluntarily treat others as an instrument for their own interests. If the duty bearer fails to provide the rights of human beings then it is difficult for the right holder to maintain peaceful life. In order to make their life better Rawls advocates the duties of assistant which helps them to regain their status in the society and provides the means to overcome out of this trauma. It is necessary to include the view of Henry Shue who believes that:



Human rights do not only involve primary duties of direct compliance with the requirements of the right in question but also secondary, auxiliary duties of assistance or protection. The latter have to be discharged if the primary duties go unfulfilled or can be expected to go unfulfilled. They are “secondary” or “auxiliaries” duties because the requirement to act on them is contingent upon the non-fulfillment of other (primary) duties (Sieghart, 1985).

It gives us the idea that both the primary duties of direct compliance and secondary duties of assistant are the parts of Rawlsian human rights and one is always ready to protect the humans if others are unable to do so. John Stuart Mill would have appreciated the Rawlsian alternative approach of duties which believes that human development can be possible if their rights secured. To quote the words of Mill: “A right is something which society should protect me in the possession of” (Sieghart, 1985). Thus Rawls justifies his claim that human rights are moral claim rights because they not only give respect to dignity of human beings but also fulfills his/her claim and at the same time understand the needs of underprivileged groups and provides sufficient amount of help to realize the true nature and purpose of life. And with respect to universal approach Rawls defines that fundamental human values are universal in nature and these values provide the status to individual as a rational human being that he/she is worthy to get respect from others. And the denial of these values creates an unjust and unfair atmosphere. Human rights are universal in the sense that “they bind all states regardless of consent” (Sieghart, 1985).

Self-determination and non-intervention are the two international rights which liberal democracies can enjoy only insofar as they give respect to the legitimate universal condition set by human rights which not only protect them domestic conflict but also helps to maintain cooperation with the neighboring countries. Its principles are not limited only to the developed areas and for the civilized people rather it extended to those people who are completely ignorant about the concept of human rights and their usage like remote villagers and tribals. The prime concern of human rights is the welfare of human kind and it can be possible when there is mutual contact between two different people or two different nations. Here individual action should not be guided through the mere force rather as an autonomous being he can take the decision which brings happiness both for him as well as for others. In order to avoid the disturbances that create confusion between one nation with other, Rawls suggests that there must be a universal rule which every member should abide by.

### Arguments In Favour Of Rawls' Human Rights And Critics' Claim

The scope of human rights is much wider than comprehensive doctrine where there is no chance of disagreement among the people. Critics of Rawls especially Fernando Teson (1995) and Charles Beitz (2000), attack Rawls for limiting the area of human rights. Human rights fail to provide a healthy and safety life to human being. Hinch and Stephanian, followers of Rawls, support Rawlsian formulation of human rights and advocate that it is a universally valid moral claim right which needs to be universally honored. *A Theory of Justice* of Rawls gives specific liberty rights to individual which cannot be violated at any cost and it is considered as the basic good for the adequate development of both physical and mental capacities. Original positions make the members unconscious about the particular feature and goal of individuals and treat them as rational beings which are necessary for the fulfillment of common good. It can be possible if all of them work together co-operatively and try to realize each other's aim.

So there is no basic difference between human rights in *The Law of Peoples* and liberty rights in *A Theory of Justice*. Rawls defines the nature of rights in his own words, “since Rawls considers the human rights of *The Law of Peoples* to be a subset of the rights identified by his first principle of justice, human rights clearly qualifies as basic goods, too. Social cooperation and moral power plays the dominant role both in *The Law of Peoples* and *A Theory of Justice*. Rawls believes that social cooperation can be possible only insofar as citizens are treated as free and equal being and they should be endowed with two moral powers (reason and rational) which helps them to take effective decisions both for the welfare of the community and as well as of



the members. And there each particular interest should get equal importance then only common goal can be easily achieved. Rawls in his book *The Law of Peoples* introduces a new society whose duty is to promote human rights like those in a liberal society in his *A Theory of Justice*. He calls such a society a decent society.<sup>33</sup> Social cooperation plays a significant role both in *A Theory of Justice* and *The Law of Peoples* but their approaches are different from each other. The criterion for liberal society for the maintenance of cooperative atmosphere is that individual should be free from all sorts of bondage and equally enjoy all the rights with others in the society. Whereas for the decent societies social co-operation is possible only society is able to attain maximum goodness and it should be forced free. In this respect both *The Law of Peoples* and *A Theory of Justice* are closely related with each other because both the theories support the promotion of human rights which are necessary for all-round human development.

Critics of Rawls are not satisfied with his limited division of right which excludes various important rights like freedom of expression, freedom of association and democratic association and many more. Fernando Teson exclusively shows insufficiency of Rawls' account of human rights that fails to protect justice within non-liberal societies. Lack of political participation hinders the natural growth of human beings and they are unable to get support from the state to overcome their problems. An individual can claim for his/her protection against the state provided he fulfills his/her responsibilities for its further development. That is the main reason Teson claims that Rawls is very insensitive towards the protection of human rights which shows from his limited approach. In the words of Teson: "Rawls is too forgiving of serious forms of oppression because his list of human rights neither includes the rights of freedom of expression and association nor the rights of democratic participation" (Affairs, 1995). The whole theory of Rawls is made for human welfare and he gives preference to individual rights rather than to social good. If that is the case then he cannot maintain silence to the promotion of human rights. Teson misunderstood the purpose of Rawls limited version of rights whose aim is to maintain distance from political and religious groups. Rawls selected the most important right which is essential for human survival formulated by UDHR and make it universal. Like Teson, Beitz also criticizes Rawls for adopting limited range of rights which cannot save individual's life from political interference. Unlike Rawls, Beitz defines that objective of human rights is to bring reformation in political sphere and it can be possible when each individual shares a common goal. In the words of Beitz, "human rights are seen as shared goals of political reform and not, as Rawls sees them, merely as a constraint on political sovereignty."<sup>35</sup> Rawls' account of human rights is widely accepted as the better policy for the securing the rights of human from forceful political intervention and justifies cordial relationship within the members of liberal democratic people.

### Relevance Of Theory Of Justice In The Modern World

Basic needs are required for human survival likewise justice is also essential for a secure and dignified life. Absence of justice creates disturbances in the society as a result it affects the life style of individuals. A just society is one where individual can take breather freely without any kinds of fear. Just society adopts impartial method when distributing the power among the citizens. It appreciate the meritorious and motivate the disadvantaged student, so that they cannot feel be discriminated. With reference to Aristotle meritocratic theory of justice which gives more importance to individual contribution for the development of society, we can say this is the best suited method for today's world, where power goes to the undeserved individuals. It is necessary to give power to those who have desirable capabilities. It is the responsibility of those persons to use their rights for the welfare of common mass rather than to harass them. Imagine the condition of society if power is vested with illiterate politicians. The society would never progress for they are incapable of any good governance. In order to run a nation efficiently a person must possess knowledge about political condition of that country and must have effective mental ability to tackle any situation that derails the smooth governance. For example, a patient goes to the doctor with a hope that doctor will cure



his/her illness but if the doctor fails to diagnosis the illness that he / she is suffering from then there is a chance of the patient succumbing to the illness. Doctor is treated as a God in our country for he/she is the savior of human life. Does he/she deserve all the respect? Similarly position or power must be vested with only those who deserve it because they alone can effectively use it.

Now the question that arises is: If merit alone the sole criterion to judge the capabilities of individuals then how about those who are not meritorious? Many a time they are the victims of nature's injustice. Are they able to meet their basic needs? Everyone aspires for a happy and successful life but many cannot fulfill their dreams. They need to depend on the mercy of others. In this adverse situation Rawls' second principles of original position can be a better hope for the helpless people. It gives them a dignified life. Rawls believes that nature creates injustice by creating individuals of high and low mental IQ, rich and poor and left with no option for the individuals to choose a life according to their own wish. So it is not desirable to blame or praise anyone for their situation because they are not responsible for that. But it is the moral obligation of the individuals, who belong to the wealthy and meritorious class, to renounce some of their property for the development of less deserved people. Rawls advocates that inequality can be permissible if it brings changes to lives of unlucky people. It is our duty as a rational agent to make them aware of all the schemes granted by society for their welfare and enable them to fight for their own rights. Education is only a medium for their development and they can learn their inner capacities only when they communicate with others.

## Conclusion

Rawlsian difference principle has the similarities with Indian reservation system, which is formulated by the Indian Parliament for the betterment/welfare of minorities groups. During the ancient times sudras being born in a lower class treated as slaves and are deprived of minimum social justice. Only Brahmins are considered to be pure who are free to take part in every religious activity. Sudras are unable to get their share and cannot have rights to open their mouth against the privileged groups. The main objective of reservation system is the welfare of deprived social classes in order to make them free from the supremacy of privileged groups, who misuse their powers. But now the time has been changed. Everyone has the similar equal constitutional rights. So there is no point of giving any priority to class based reservation systems. It mainly affects the education system where one is getting all the benefits due to his/her caste whereas others have to work hard to get the same opportunities. This system makes the meritorious students completely disillusioned. Reservation system is a greatest barrier which obstructs the development of these deprived groups. Abolition of reservation system is the only solution which the government should adopt for their development. The government can make them competent enough so that they can stand on their feet instead of spoon feeding them. However, proper financial support should be extended by the government in order to make less privileged to pursue their education to compete with the rest.

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