Rights

Syllabus

Rights include *meaning and theories*, *different kinds of rights*, and the *concept of human rights*.

Rights — The Idea of Human Dignity and State Power

Rights are not just abstract concepts in political science. They **define the relationship between the individual and the state**. They are our **safeguard against the arbitrary use of power**.

Think of it this way: without rights, the individual is powerless before the state. Rights are what make sure the state does not become a **Leviathan** that swallows liberty.

Who Denies Rights?

Now, some thinkers — like **Hobbes, Hegel, and even Rousseau** — imagined strong states but gave little room for **rights against the state**. And here's the golden line to remember:

Any theory that denies humans rights against the state is no theory of rights at all.

That's because **benefits** given by the state automatically — say, roads, police, or security — do not count as rights. **Rights come into the picture only when authority is sought to be limited.**

Negative Rights

- These are **protection shields**.
- They **restrict the state** from interfering in your liberty.
- Example: **Freedom of Speech and Expression (f.o.s.e.)** — the state cannot arbitrarily silence you.

Positive Rights

- These are not shields, but **demands**.
- They ask the state to take a **positive role** in uplifting weaker and vulnerable groups.
- Example: the **right to education** — the state must actively provide schools, teachers, and resources.

A Continuum

And here's the beauty: **positive and negative rights are not separate islands** — they form a **continuum**.

Take **universal education**. It's a **positive right** because the state must provide it. But it also promotes **freedom of speech and expression (f.o.s.e.)**, a **negative right**, because without education, freedom of expression is hollow.

So, rights are interconnected — each enriching the other.

The Essence

Rights are the grammar of freedom. They **limit the authority of the state** while also ensuring it plays a **positive role for justice and equality**. Without rights, power is absolute. With rights, power becomes accountable.

Theory of Natural Rights

"Let's talk about the **theory of natural rights**—one of the most powerful and controversial ideas in political thought.

Early **liberals** argued something revolutionary: that the **source of rights is not the state** but the human being himself—rooted in **moral intuition** and **reason**. This was a way of saying, *'Governments don't grant rights—they merely recognize them.'*

Now, two important dimensions emerge here:

1. Social Contract

- **Hobbes** said: people give an **unconditional surrender** to the sovereign. Rights then become irrelevant because absolute authority creates **political obligation**.
- **Rousseau** argued: once we enter **civil society**, rights lose their individual meaning because we act through the **general will**.
- But **Locke** stood apart: he said man surrendered only a few rights for social order but retained **inalienable rights**—life, liberty, and property. This became the foundation of **liberal constitutionalism**.

2. Teleological View

Here comes **Thomas Paine**. He warned that a **permanent social contract** could become a **clog on the wheel of progress**. Each generation, he said, should be free to **think and act for itself**. Isn't that a remarkably modern idea?

Evaluation

These ideas had electrifying consequences:

- They directly inspired the **American Declaration of Independence (1776)** and the **French Declaration of the Rights of Man (1789)**.
- And yet, there is a **problem**: natural rights are ambiguous. Claimed as **eternal and immutable**, but in reality, they were **shaped by the values of the time**. For example, some said **men are naturally superior to women**; Aristotle even declared **slavery is natural**!

That's why modern states and international organizations now root rights not in abstract 'nature,' but in the principle of **human dignity**—which is inalienable, non-negotiable, and cannot be exchanged for any other benefit.

So, the **theory of natural rights** is both inspiring and flawed: inspiring because it birthed revolutions, flawed because its 'eternal truths' were often biased by context. But without it, we would never have arrived at the **modern human rights movement**."

Theory of Moral Rights

"What makes a right real? Is it a law written in the Constitution, or is it something deeper—something that comes from our shared sense of what is right and wrong?"

That's where the **Theory of Moral Rights** comes in.

Core Idea: Rights are not gifts of the **state**, nor mere legal codes. They emerge from the **moral consciousness of the community**—what society, at its best, accepts as *good for human beings*.

T.H. Green's contribution:
He argued that rights are not legal entitlements handed down by authority, but **recognition** of our inherent moral worth. The source is man's **inherent moral propensity**, not the state. He looked at **ideal rights**, not just legal rights.

So, for Green, if a society truly believes education is a moral good, then education becomes a **right**, even if no law has been written yet.

Evaluation and later debates:

- **Ronald Dworkin** (in *Taking Rights Seriously*) went further: rights are so fundamental that they **"trump" other considerations** like efficiency or welfare. For example, even if banning free speech makes society more "efficient," it can't override the right to expression.
- **Pragmatists**, however, were not so idealistic. They saw rights as tools to ensure **justice and efficiency**, but didn't treat them as inviolable.
    - The weakness: Moral rights can feel

hypothetical. What's "moral" to one society may be immoral to another. For **moral relativists**, there is no single universal moral code across all societies and times. For instance, some societies once accepted slavery as "moral," others did not.

The Essence:

The **theory of moral rights** reminds us that rights are not just legal commands—they express society's **collective conscience**. But it also shows the danger: if morality itself shifts, rights may lose universality.

That's why modern human rights frameworks prefer grounding rights in **human dignity**—to escape the trap of cultural or temporal relativism.

Theory of Legal Rights

"Do you really have rights before the state exists? Or do rights only exist when the state writes them into law?"

That's the **Theory of Legal Rights**.

Core Idea:

According to this theory, **all rights depend on the state**.

No state = no rights.

The state **declares law**, and that law **guarantees and enforces rights**.

Since laws change with time, rights too are **not fixed, eternal, or universal**.

Hobbes:

- Before the state, man only had the **right of self-preservation**.
- You could do anything not restrained by others, but you had **no rights against the state** itself once it came into being.

Jeremy Bentham (the strongest champion):

- He completely **rejected natural rights**.
- Called them *"metaphors derived from another metaphor."*
- For him, **rights are creatures of law**—they exist only as **guarantees by the state**.

Ernest Barker's refinement:

- He spoke of the **dilemma of rights**.
- Ideally, rights should come from **two sources**:
  - **Individual personality** (because individuals have dignity and worth)
  - **State/law** (because only law gives them enforceability).
- If rights come from only one source (say just the state), they are **quasi-rights**—incomplete.

Bridging the gulf:

So, how do we connect **ideal rights** (from moral consciousness of society) and **legal rights** (granted by law)?

The answer is: **state responsibility**.

When society recognises an ideal right, the state must give it **legal sanction**.

Example: The **Right to Information (RTI)**.

- For long, transparency was seen as a *moral demand* of democracy.
- Once the state passed the RTI Act, it became a **legal right**, enforceable in court.

The Essence:

The **theory of legal rights** gives us clarity: rights are **real** only when backed by law.

But it also reminds us that to make rights meaningful, there must be a **bridge**—from society's **moral conscience** to the state's **legal sanction**.

Historical Theory of Rights

"Do you think rights are born suddenly, written in

some book, or do they grow slowly out of the life of a people?"

That's exactly what the **Historical Theory of Rights** says.

Core Idea:

- Rights are the **product of a long historical process**.
- They differ **from state to state, time to time**, depending on the **historical development of society**.
- The main source? **Customs**—practices stabilised over generations.

Edmund Burke:

- The great critic of the **French Revolution's "abstract rights of man."**
- He said: don't imagine some universal, fixed, rational rights that apply everywhere.
- Instead, glorify the **English Revolution**, which respected **customary rights** built over time.
- He resurrected the **Magna Carta (1215)** as a symbol of historically evolved rights.

Evaluation / Criticism:

Now, here comes the catch.

- This theory lacks a **criteria to ensure justice**.
- If we blindly follow customs, we may end up perpetuating **oppression**.
  Example: **Slavery, sati, polygamy**—all were "customs" at one time.
- So, historical rights can also **legitimize injustice**.

The Essence:

The Historical Theory reminds us: rights don't emerge in vacuum; they are **rooted in culture, traditions, and history**. But unless we test these customs against the yardstick of **justice and morality**, rights can become a **mask for exploitation**.

Social Welfare Theory of Rights

Core Idea:

This theory is rooted in **Utilitarianism**.

- Rights are defined not by nature, not by customs, not by abstract ideals—
- but by one clear, rational principle: **"the greatest happiness of the greatest number."**

So, a right is valid **if and only if** it serves the **welfare of society as a whole**.

Key Contributions:

- It **eliminates** subjective, ambiguous, dogmatic, and static notions of rights.
- No "mystical natural rights," no "rigid historical customs."
- Instead, it asks: *Does this right promote happiness, security, welfare?*

Think of **Jeremy Bentham** and **J.S. Mill**—the champions of this view.

Example to feel it:

- Right to education? Valid, because it increases knowledge, opportunities, happiness.
- Right to property? Valid only if it benefits the larger community, not just a few landlords.

The Big Problem:

Here's the challenge: **Who defines social welfare?**

- What if the majority decides something that crushes a minority?
- What if "happiness" is measured in purely material terms, ignoring dignity?

This is the **practical dilemma** of the theory.

The Essence:

The **Social Welfare Theory of Rights** gives us a **dynamic, pragmatic, society-oriented** view.

- But unless we carefully define what "welfare" means, it can slide into **majoritarianism** or short-term populism.

Social-Democratic Perspective

Core Idea:

This perspective is like a **bridge**:

- On one side, **liberty** (protecting the individual).
- On the other, **social justice** (serving the community).
  It insists: you cannot have one without the other.

Liberty Dimension:

- **Every state is known by the rights it maintains.**
- Rights are **not concessions**, not gifts from the ruler.
- They are **essential conditions for development of man**.
- Rights are **superior to states** → they set the **standard to judge states**.
- If rights are denied → **allegiance to the state is sacrificed**.

In short: *without liberty, the state loses its moral claim over citizens.*

Social Justice Dimension:

- But liberty alone is not enough.
- Rights come **with duties**.
- You may have rights **against the state**, but **not against the community**—because the community represents the **common good**.
- Individuals must **subordinate self-interest** to contribute to society.
- Rights exist so that man can contribute to the **social good**.

This makes **duty implicit in every right**.

Role of State and Individual:

- **State's duty** → to protect rights, ensure justice.
- **Individual's duty** → to exercise rights responsibly, for social good.
- If the **state fails in its duty**, then—yes—**individuals can resist**.

The Essence:

The **Social-Democratic Perspective** gives us a balanced, practical vision:

- Rights are **standards to judge the state**, not state-given favors.
- Rights are inseparable from **duties and community good**.
- True liberty exists only when tied with **social justice**.

Marxist Perspective

The Core Claim:

Marxists argue: **Rights are not neutral.**
They are **class instruments**, designed to serve the **interests of a particular class**—the ruling class.

Rights are secured by **law**, and law itself belongs to the **superstructure**—which simply reflects the economic base of society.

So, when you hear "freedom of trade, speech, expression," Marxists ask: *Freedom for whom?*

Liberal Rights = Illusion of Equality

- **Freedom of trade**? Helps the capitalist, not the worker.
- **Freedom of speech & expression**? Sure, but who owns the media, the press, the platforms?
- For the **working class**, these rights provide **no substantive advantage** as long as society is divided into classes.

Rights here are a **mask of exploitation**—they look universal, but they are tilted toward the bourgeoisie.

No Contradiction between Man & Society

Marxists reject the liberal notion that individual and society are always in tension.

- For them, **man is a social being**.
- Rights should not be about protecting individuals *from* society but helping individuals develop *through* society.

Lenin's View – Transitional Stage

Lenin was practical:

- In a **transitional socialist state**, you may still need **bourgeois rights** like:
  - right to work,
  - minimum wage,
  - rest, etc.
- But these are only **temporary**—tools to manage inequality while society shifts.

In Communism – Higher Stage

Here comes the **radical vision**:

- In communism, society moves to the principle:

  "From each according to his ability, to each according to his needs."

- At this stage, class distinctions vanish.
- Rights, as we know them, **fade away**, because **no contradictions remain**.

The Essence:

- Rights are **class-based**, not universal.
- They serve the **bourgeoisie** in capitalist society.
- In socialism, they may exist temporarily.
- In communism, they become unnecessary, replaced by **human need as the standard of justice**.

Modern Relevance

1. Theory of Natural Rights

- **Relevance:** Modern human rights discourse (e.g., UN Declaration of Human Rights, 1948) rests on the idea that individuals possess certain inalienable rights by virtue of being human.
- **Example:** Right to life and dignity under Article 21 of the Indian Constitution; global campaigns against torture and slavery.
- **Insight:** It continues to shape moral legitimacy of rights beyond legal boundaries.

Two Dimensions:

- **Social Contract Dimension:** Influences democratic constitutions where citizens exchange obedience for protection of rights (e.g., Indian Constitution's Fundamental Rights).
- **Teleological Dimension:** Used in debates on justice and welfare policies, ensuring rights serve higher human purposes like dignity, equality, and freedom.

2. Theory of Moral Rights

- **Relevance:** Provides a moral compass where legal frameworks are inadequate.
- **Example:** Environmental rights (right to clean air, safe climate) are often claimed morally before they are legally codified.
- **Insight:** Grounds civil society activism and NGO campaigns.

3. Theory of Legal Rights

- **Relevance:** Strong in modern constitutional democracies where codification ensures enforceability.
- **Example:** Fundamental Rights in India are legally justiciable; Right to Privacy (Puttaswamy case, 2017).
- **Insight:** Reflects rule of law, protecting rights not as abstract ideals but enforceable entitlements.

4. Historical Theory of Rights

- **Relevance:** Explains evolution of rights with social struggles—workers' rights, women's suffrage, civil rights movements.
- **Example:** LGBTQ+ rights recognition in India (Navtej Johar case, 2018) reflects ongoing historical evolution.
- **Insight:** Rights are not static; they expand with changing social consciousness.

5. Social Welfare Theory of Rights

- **Relevance:** Modern welfare states justify rights in terms of public good and collective well-being.
- **Example:** Directive Principles of State Policy (education, health, social security) in India.
    - **Insight:** Basis for socio-economic rights like Right to Education (2009) and Right to Food (NFSA, 2013).

6. Social-Democratic Perspective

- **Relevance:** Advocates balance between civil liberties and socio-economic justice.
- **Example:** Scandinavian welfare models; Indian emphasis on equality + liberty (Preamble).
- **Insight:** Provides a middle path between liberal individualism and socialist collectivism.

7. Marxist Perspective

- **Relevance:** Critiques rights as tools of bourgeois order but remains influential in labor rights, critiques of neoliberalism, and inequality debates.
- **Example:** Demand for universal healthcare, minimum wages, and critiques of corporate exploitation.
- **Insight:** Shapes policies on redistribution, social justice, and rights of marginalized workers.

Overall Insight:

- These theories are not mutually exclusive; modern constitutions and rights discourses integrate them.
- For instance, **India's rights framework** embodies **natural rights (inalienable dignity)**, **legal rights (justiciable enforcement)**, **historical rights (expanding scope)**, and **welfare/social-democratic commitments (DPSPs, welfare schemes)**.

PYQ

1. Assess the significance of right to property in political theory. 2020, 15
2. Discuss the doctrine of 'rights as trumps'. 2019, 15
3. What do you understand by three generations of Human Rights ? 2018, 20
4. Comment on: Idea of Natural Rights. 2015, 10
5. Explain as to why Jeremy Bentham dismisses the theory of natural right as nonsense upon stilts. 2009, 20