

RIGHTS

“A state is known by the rights it maintains”, proclaimed Harold J Laski. The philosophy of rights is the best contribution of liberal theory to political science. The foundation of rights lies with the US Declaration of Independence (1776) and the French Declaration of the Rights of Man and of the Citizen (1789). Rights are termed as guarantees provided to individuals’ “against the arbitrary action of their state and the government”. However, this individualistic notion of rights which originated from the writings of Thomas Hobbes and John Locke soon got new iterations and today we are having multiple theories and understanding of rights.

Important Definitions

Harold J Laski – “Rights are those conditions of life, without which no man, in general, can seek to be at his best.

TH Green – Rights are powers necessary for the fulfilment of man’s vocation as a moral being.

JS Mill – If all mankind minus one were of one opinion, mankind would be no more justified in silencing that one person than he, if he had the power, would be in silencing mankind.

There are two broad categories of rights – Positive Rights and Negative Rights. Negative rights reflect the effect of the concept of negative liberty on the framework of rights. They are also known as exclusionary rights because they treat individuals as completely sovereign whereas positive rights insist on the need for state action/ state intervention to ensure the proper enjoyment of rights. Hence, examples of negative rights is inclusive of the right to free speech and expression and the right to carry guns in America, and examples of positive rights may comprise of right to free education and the right to equal pay for equal work etc.

Different Types of Rights

Natural Rights Theory includes intuition or reason which is naturally available in humans. Rights are not granted by the state but come from the very nature of the man. Humans enjoy liberty in the state of nature, therefore it should be ensured by the state. Thinkers are Thomas Hobbes, John Locke, and Thomas Paine.

Legal Theory of Rights include Law of the State determine the rights. Right can't be claimed and protected without the creation of the state. State has the power to protect the rights. Thinkers are John Salmond, John Austin, Holland, Herbert L.A. Hart, Pollack, and Jeremy Bentham.

Moral Theory of Rights include Moral and Ethical Standards of Society. Morality in human nature gives the sense of right and wrong. Morality should be the basis of human action and rights. TH Green – Rights come up from the moral character of the man. Thinkers are Immanuel Kant and TH Green.

Group Rights Theory

Group Rights or Collective Rights are rights held by a group rather than individually by each member. The basic idea behind Group Rights is to consider a homogenous group as one unit and accord rights of common interests to that group as a whole. For example, the right to Self Determination to a group (Nation), the right to protection of culture to a cultural group or the right to practice, propagate and profess their faith to a religious group.

However, Group Rights should not be mixed with the “Group Differentiated Rights” of thinker Will Kymlicka because “group differentiated rights are often limited to a particular group (mostly minorities) and therefore, don't extend to the length and breadth of the broader concept of group rights. The group differentiated rights may include the right of self government given to tribal communities under the sixth schedule of the Indian Constitution.

Human Rights and Three Generations of Rights

Giving focus to Hitler's atrocities against Jews during World War II, the concept of Human Rights took the center stage in global discussion. The United Nations Universal Declaration of Human Rights (1948) codified this discussion into an international pledge. Article 1 of the Universal Declaration of Human Rights (1948) held, “All human beings are born free and equal in dignity and rights...”, which makes it clear that these rights are essentially based on the concept of modern and secular natural rights. Human Rights represent the features of Equality, Universality, Inalienability, Permanence, and Individuality.

International Bill of Rights = Universal Declaration of Human Rights (1948) + International Covenant on Economic, Social and Cultural Rights (1966).

Three Generation of Rights – Karel Vasak

1. Civil and Political Rights (Blue Rights)
e.g. – Property Rights, Voting Rights etc.
2. Economic, Social and Cultural Rights (Red Rights)
e.g. – Right to Food, Right to Health, Right to Social Security etc.
3. Environment and Development Solidarity Rights (Green Rights) – also called as Soft Law e.g. Right to Healthy Environment, Right to Intergenerational Equity, and Group and Collective Rights etc.

Emerging Fourth Generation of Human Rights

For instance, the Right to Digital Self Determination, the Right to Net Neutrality, the Right to be Forgotten, and the Right to Privacy etc.

Rights as Trumps

The liberal egalitarian thinker Ronald Dworkin mentioned rights as the supreme ideals, and they are irreplaceable and cannot be overpowered by other rational arguments. As per Ronald Dworkin, no social norm or goal could precede rights. Rights are an inalienable and inseparable part of humanity and stand above all other non right objectives e.g. for instance social prestige or traditions.

Important Books and Authors

Leviathan (1651) – Thomas Hobbes

Two Treatises on Government (1690) – John Locke

A Grammar of Politics (1925) – Harold J. Laski

Taking Rights Seriously (1977) – Ronald Dworkin

The International Dimension of Human Rights (1982) – Karel Vasek

Rights of Man (1791) – Thomas Paine

Jurisprudence or The Theory of Law (1902) – John Salmond

The Province of Jurisprudence Determined (1832) – John Austin

The Metaphysics of Morals (1797) – Immanuel Kant

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Author: Darshita Neeraj

Senior Researcher,

Mudita Learning and Knowledge Private Limited

Email: info@muditabooks.com

Date of post: 07.07.2026

