

**Block 2**  
**Concepts**



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UNIVERSITY

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## **BLOCK 2 CONCEPTS**

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Block 2 has four units that deal with values of liberty, equality, justice and rights in political science. **Unit 3** highlights the concept of liberty, one of the three ideals the French Revolution sought to achieve apart from equality and justice. Liberalism has an obvious emphasis on liberty and John Locke gave the negative view of liberty. The concept has come a long way since then with development of positive liberty in 20<sup>th</sup> century advocated through the writings of J S Mill, T H Green and others. A different interpretation was given by Isaih Berlin who tried to reconcile the negative and positive views of liberty. **Unit 4** covers the concept of equality which has been established in two forms in modern societies. The first is equality of democratic citizenship and the other is equality of condition. Equality of democratic citizenship is mainly associated with equal enjoyment of basic rights like right to vote, right to freedom etc. However, to compensate for social differences among various individuals, there is need for substantive equality so that there is equality of condition as well. **Unit 5** highlights ideas about justice, a normative concept that is integrally connected with liberty and equality. It can be distributive, procedural, harmonizing or social. All these aspects have been discussed in this unit with a separate discussion on ideas of John Rawls. **Unit 6** covers the concept of rights, its theories and also the idea of human rights.



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## UNIT 3 LIBERTY\*

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### Structure

- 3.0 Objectives
- 3.1 Introduction
- 3.2 The Meaning of Liberty
- 3.3 J.S.Mill's Notion of Liberty
- 3.4 Isaiah Berlin and the Two Concepts of Liberty
- 3.5 Marxist Critique and the Idea of Freedom
- 3.6 Other Contemporary Ideas on Liberty
- 3.7 Let Us Sum Up
- 3.8 References
- 3.9 Answers to Check Your Progress Exercises

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### 3.0 OBJECTIVES

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Liberty is considered a core concept and a fundamental democratic value in modern political and social theory. The notion of liberty emerged in the context of the formation of modern civil society and political authority. While the concept is intimately associated with liberal thought, liberals have looked at the notion in different ways. Marxists are critical of liberal notions of liberty and would refashion the concept on entirely different assumptions of individual and society. In this unit, we shall look at different perspectives on liberty, and try to know the meanings, justifications and limits of the notion. The unit has been divided into different sections, each dealing with a specific aspect of the notion.

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### 3.1 INTRODUCTION

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The idea of liberty as a core principle of liberal thought is most commonly understood as 'absence of restraints'. The notion of liberty emerged in the context of the establishment of new socio-economic and political relationships in modern Europe. At the basis of the notion was the idea of a rational individual, capable of taking reasoned decisions. The rational individual, it was thought, was capable of self-determination; in other words, capable of taking decisions which concerned his or her self. In order to develop his capacities, the individual required freedom from all kinds of social, political and economic constraints. Thus, the idea of liberty as absence of restraints, or a sphere of autonomy of the individual, developed. At the same time, however, the fact that within a social organization the individual is not alone and exists in relation with other individuals, required that an equal claim of other individuals to their spheres of autonomy should be recognized. In order that the respective claims of all individuals to autonomy can be realized with minimum conflict, it was imperative that a system of restraints and regulation was worked out and adhered to by everyone. The theories of *social contract* put forward by philosophers like Hobbes, Locke and Rousseau put forth the idea of liberty as absence of constraints. At the same time, they also

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\* Contributed by Dr. (Mrs.) Anupama Roy, Centre for Women's Development, Studies, New Delhi, adapted from Unit 19, EPS-11

proposed the framework within which individual freedom was to unfold. Thus, the idea of political community was based on a simultaneous recognition of the capacities and autonomy of individuals and the imperatives that all should be subjected to a common set of constraints on their liberty. Thus, it must be understood that liberty, which in common understanding means freedom, or absence of constraints and obstacles to individual action, and is considered a democratic ideal, has always been conceived as occurring within a *set* of specific constraints in social relationships. There are always limits to what is seen as acceptable forms of liberty in modern democratic societies. In the section which follows, we shall look at the meaning of liberty, focussing on its elements and the justifications for constraints on liberty.

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## 3.2 THE MEANING OF LIBERTY

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As mentioned in the introduction, liberty means freedom from, or absence of restraints. A person may be considered free or at liberty to do something when his or her actions and choices are not hindered or constrained by those of another. It is important to understand that constraints refer to impediments imposed by political and other authorities. Thus, imprisonment, bondage or slavery, subjection to laws, etc., may be seen as referring to conditions of unfreedom or absence of liberty. While states of unfreedom like imprisonment or subjection to laws may appear as constraints on liberty, we know that modern democratic social and political organisations are founded on legal and institutional structures, which aim at ensuring equal consideration of each individual's liberty. No society will, therefore, have an unlimited 'right to liberty'. Each society will have a set of restrictions on liberty, which are justified by the fact that people accept these restrictions as the best possible conditions in which liberty could be maximised.

The understanding of liberty as 'absence of restraints' or 'absence of external constraints' is generally described as negative. The negative nature of liberty appears in *two* different senses:

a) In the first, law is seen as the main obstacle to freedom. Hobbes, for instance, described freedom as the 'silence of the laws'. Such a view sees freedom as limited only by what others deliberately prevent individuals from doing. This understanding would, therefore, appear to imply a definite limit upon both *law* and government. Philosophers like John Locke have, however, pointed out that a commitment to liberty does not mean that the law should be abolished. Rather, it means that law should be restricted to the protection of one's liberty from encroachment by others. Locke suggested therefore, that law does not restrict liberty, it rather enlarges and defends it.

b) The second view sees liberty as 'freedom of choice'. *Milton Friedman*, for example, in his work, *Capitalism and Freedom* (1962) proposes that 'economic freedom' consists of freedom of choice in the marketplace – the freedom of consumer to choose what to buy, the freedom of the worker to choose his job or profession and the freedom of the producer to choose what to produce and whom to employ. 'To choose' implies that the individual can make unhindered and voluntary selection from a range of different options.

While talking about liberty, a distinction is often made between negative and positive notions of liberty i.e., between the idea of 'absence of external

constraints' and 'the existence of conditions which enable or facilitate'. In other words, the distinction between 'freedom to do' something and actually being able to do it. To be free or at liberty to do something is not to be restrained or prevented from doing it. While to be able to do is to have the capacity, financial or otherwise, to do something. For example, one may be free or unrestrained to take up any job, yet, one may not have the qualifications or the economic resources which may make one's candidature worthwhile. Political theorists often make this distinction between liberty as an absence of restraints and the conditions which make liberty worthwhile. A starving person who is legally free (not prevented from) to eat in an expensive restaurant, may in fact, enjoy *no* liberty on the basis of the legal freedom. The freedom to eat in this case will require some positive action by the state. It is this reasoning that has been used to justify social legislation designed to increase opportunities for individuals. By such positive action, the state is said to be not only decreasing inequality, but increasing liberty.

The negative conception of liberty is a characteristic of a strand of English political thought represented by *Jeremy Bentham*, *James Mill*, *John Stuart Mill*, *Henry Sidgwick*, *Herbert Spencer* and the classical and neo-classical economists who supported the claims of individuals to break free from unnecessary restraints of arbitrary government. The main political axiom of negative liberty was that 'everyone knows his own interest best' and that the state should not decide the individual's ends and purposes. Essential to the doctrine was the sanctity of the contract. Implicit in this assumption of sanctity was the understanding that the act of entering into a contract, even if the terms of the contract were restrictive of individual freedom, was an expression of liberty, of the exercise of individual choice. Thus, to this strand of thinkers, a person's liberty was a function of that area in which he was left alone and not related to the quality of action. The concept of negative liberty is best understood as a doctrine about the meaning of liberty. Although negative liberty is often condemned as the 'freedom to starve', this understanding is somewhat misleading. It does *not* necessarily put a prohibition on state intervention, but merely holds that this cannot be justified on the ground that it increases freedom, although arguments from the arena of inequality may be called into force for justification. However, the historical connection between negative liberty and the *laissez-faire* economics cannot be denied, and most of its advocates favoured a minimal state. The concept is neutral in the sense that it is compatible with a wide range of politics, and describes a condition of liberty without indicating whether it is good or not.

Criticisms of the negative notion of liberty have come from modern liberals, social democrats and socialists. The liberals in the nineteenth century, primarily *T. H. Green* and to some extent *J. S. Mill*, developed some of the earliest critiques of negative freedom. They felt that capitalism had done away with feudal hierarchies and legal restrictions (especially of economic pursuits), but it had also subjected large masses of people to poverty, unemployment and disease. Such circumstances were seen as hindering liberty as much as legal restraints and social controls. One of the first liberals to embrace the positive notion of liberty was T. H. Green (1836-82), who defined freedom as the ability of people 'to make the most and best of themselves'. This freedom consisting not merely of being left alone, but in having the power to act, shifting attention thereby to the opportunities available to each individual. The concept of positive liberty has been at the basis of the Welfare State. The idea has acted as the moving

force behind social welfare provisions taken up by states, combining thereby freedom with equality.

In the section, which follows, Mill’s notion of liberty will be taken up for study. Mill appears to endorse a negative conception of freedom, or the individual’s sovereign control over his/her body and mind. In the ultimate analysis, however, Mill’s notion of ‘individuality’ brought him closer to a positive notion of liberty.

**Check Your Progress 1**

**Note:** i) Use the space given below for your answer.

ii) See the end of the unit for tips for your answer.

1) Distinguish between positive and negative conceptions of liberty.

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**3.3 J.S. MILL’S NOTION OF LIBERTY**

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J. S. Mill’s *On Liberty* was influential in the academic debates in the 1960s. Mill’s work is seen as an exposition of the negative concept of liberty. At the basis of Mill’s arguments for individual freedom lay a strong sense of contempt for custom, and for legal rules and norms which could not be rationally justified. It is also sometimes argued that for Mill any free action, no matter how immoral, had some element of virtue in it, by the fact that it was freely performed. While Mill considered restraint on individual’s actions evil, he did not consider restraints to be entirely unjustifiable. He felt, however, that within the society there was always a presumption in favour of liberty. Any constraints on liberty, therefore, had to be justified by those who applied them.

For Mill, the purpose of liberty was to encourage the attainment of ‘individuality’. Individuality refers to the distinctive and unique character of each human individual, and freedom means the realisation of this individuality, i.e., personal growth or self determination. It was the property of individuality in human beings that made them active rather than passive, and critical of existing modes of social behaviour, enabling them to refuse to accept conventions unless they were found reasonable. Freedom in Mill’s framework, therefore, appears not simply as the absence of restraints but the deliberate cultivation of certain desirable attitudes. It is because of this that Mill is often seen as gravitating towards a positive conception of liberty. Mill’s conception of freedom is also rooted in the notion of choice. This is evident from his belief that a person who lets others ‘choose his plan of life for him’ does not display the faculty of ‘individuality’ or self-determination. The only faculty he or she seemed to possess was the ‘ape-like’ faculty of ‘imitation’. On the other hand, a person ‘who chooses to plan for himself, employs all his faculties’. In order to realise one’s individuality, and attain thereby the condition of freedom, it was essential that individuals resist forces or norms and customs which hindered self-determination. Mill, however,

was also of the view that very *few* individuals possessed the capacity to resist and make free choices. The rest were content to submit to ‘ape-like imitation’, existing thereby in a state of ‘unfreedom’. Mill’s conception of liberty can be seen for this reason as elitist, since individuality could be enjoyed only by a minority and not the masses at large.

Mill, as other liberals, emphasised a demarcation of the boundaries between the individual and society. While talking about reasonable or justifiable restrictions on individual liberty, Mill distinguished between self-regarding and other-regarding actions, i.e., actions, which affected the individual only, and actions which affected the society at large. Any restriction or interference with an individual could be justified only to prevent harm to others. Over actions that affected only himself, the individual was sovereign. Such an understanding of legal and societal constraints conveys the idea of a society in which the relationship between individual and society is not ‘paternal’, i.e., the individual being the best judge of his interests, law and society could not intervene to promote a person’s ‘best interests’. Similarly, the idea that an act can be constrained only if it harmed others, rules out the idea that some acts are intrinsically immoral and therefore, must be punished irrespective of whether they affect anyone else. Further, Mill’s framework rules out ‘utilitarianism’, as enunciated by Bentham, which would justify interference if it maximized the general interest. Yet, the demarcation between the individual and the society is not strict in Mill in the sense that all acts do affect others in some way, and Mill believed that his principle did not preach a moral indifference towards the self-regarding behaviour of others, and felt that it was permissible to use persuasion to discourage immoral behaviour. Also, Mill strongly believed in the instrumental value of liberty in the promotion of social goods. This is especially true of his arguments for the complete liberty of thought, discussion and expression and the right to assembly and association. Mill felt that all restrictions on free discussion should be removed because truth would emerge from a free competition of ideas. It may be pointed out that in today’s catalogue of liberties, freedom of expression is valued perhaps more than economic liberty as a democratic ideal.

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### **3.4 ISAIAH BERLIN AND THE TWO CONCEPTS OF LIBERTY**

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In his now classic, *Two Concepts of Liberty* (first published in 1958) Isaiah Berlin tries to reconcile the negative and positive notions of liberty, i.e., the notion of liberty as the absence of restraints with the various views pertaining to its operation within the social context. For Berlin, the ‘negative’ notion of liberty can be understood by addressing the following question: ‘What is the area within which the subject – a person or group of persons – is or should be left to do or be what he is able to be, without interference by other persons?’. On the other hand, the positive sense is concerned with the answer to the question: ‘what, or who, is the source of control or interference that can determine someone to do, or be, this rather than that?’.

Positive liberty, on the other hand, does not interpret freedom as simply being left alone but as ‘self-mastery’. The theory involves a special theory of the self.

The personality is divided into a higher and a lower self. The higher self is the source of an individual's genuine and rational long-term goals, while the lower self caters to his irrational desires which are short-lived and of transient nature. A person is free to the extent that his higher self, is in command of his lower self. Thus, a person might be free in the sense of not being restrained by external forces, but remains a slave to irrational appetites; as a drug addict, an alcoholic or a compulsive gambler might be said to be unfree. The main feature of this concept is its openly evaluative nature, its use is specifically tied to ways of life held to be desirable. The idea of positive liberty involves a special interpretation of the self and assumes not just that there is a realm of activity towards which the individual ought to direct herself/himself.

The notion suggests that the individual is being liberated when he or she is directed towards it. Critics of Berlin's notion of positive liberty feel that a belief in positive liberty may involve the idea that all other values, equality, rights, justice etc., are subordinate to the supreme value of higher liberty. Also, the idea that the higher purposes of the individual are equivalent to those of collectivities such as classes, nations and race, may lead to the espousal of totalitarian ideologies.

**Check Your Progress 2**

**Note:** i) Use the space given below for your answer.

ii) See the end of the unit for tips for your answer.

1) Discuss J S Mill's views on liberty.

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### **3.5 MARXIST CRITIQUE AND THE IDEA OF FREEDOM**

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The Marxist concept of freedom is different from the liberal views, which have been discussed above. The main points of difference emerge from the Marxist understanding of the individual and society, the relationship between the individual and society, and the Marxist critique of capitalist society. While the liberal view is based on the centrality of the individual and his freedom of choice, the Marxists would see the notion of liberty based on the liberal notion of individual and society as conditions of unfreedom. For Marxists, the individual is not separated from other individuals in society by boundaries of autonomous spaces for the free exercise of choice. They are rather bound together in mutual dependence. The notion of individuality is likewise transformed into a notion of rich individuality, which emphasises the social embeddedness of the individual,



the idea that individuals can reach a state of creative excellence and develop their capacities only in a society which seeks the development of all its members. For the Marxists, therefore, freedom lies in the development of creative individuality, and cannot be achieved in a capitalist society where individuals are separated by boundaries of self-interest and where they can only imagine themselves to be free when in reality they are bound by structures of exploitation. It is only in a society, which is free from the selfish promotion of private interests that a state of freedom can exist. Freedom, thus, cannot be achieved in a capitalist society.

These views have been articulated in Friedrich Engel's *Anti-Duhring* and Karl Marx's *Economic and Philosophic Manuscripts of 1844*. Engels discusses the notion of freedom as a state of transition from necessity to freedom. The state of necessity is defined by a situation in which the individual is subjected to another's will. Engels points out that man has the capacity to identify and understand the forces, which condition and determine his life. Man has, thus, obtained scientific knowledge about the laws of nature, which determine his existence and also learnt how to live with these laws in the best possible way. Ironically, man has not been able to break free from the bondage of the forces of production, which have historically kept him under subjection, or in other words, confined him to the realm of necessity. In order to reach a state of freedom, man not only has to have knowledge of human history, but also the capacity to change it. It is only with the help of scientific socialism that man can hope to leave the realm of necessity and enter the realm of freedom. Freedom is a significant component of the idea of communist society laid down by Marx and Engels in *Communist Manifesto*. It was only in a communist society where there will be no class exploitation that freedom will be achieved.

In his work, *Manuscripts*, Karl Marx avers that the capitalist society is dehumanizing. It not only alienates the individual from his true self, it separates him from the creative influences of society. Marx proposes that it is only by transforming those conditions in which alienation takes place, can freedom be restored. Thus, it was only in a communist society where the means of production were socially owned, and each member of society worked in cooperation with the other for the development of all, that true freedom could be achieved. Thus, in Marx's framework, freedom is seen in a positive sense, denoting self-fulfillment and self-realisation, or the realisation of one's true nature. Marx described the true realm of freedom as 'the development of freedom for its own sake'. This potential could be realised, Marx believed, only by the experience of creative labour, working together with others to satisfy our needs. Under this framework, Robinson Crusoe, who enjoyed the greatest possible measure of negative freedom, since no one else on his island could check or constrain him, was a stunted and therefore unfree individual, deprived of the social relationships through which human beings achieve fulfilment. This notion of freedom is clearly reflected in Marx's conception of 'alienation'. Under capitalism, labour is reduced to a mere commodity controlled and shaped by de-personalised market forces. In Marx's view, capitalist workers suffer from alienation in that they are separated from their own true nature: they are alienated from the product of their labour, alienated from the process of labour itself, alienated from their fellow human beings, and, finally alienated from their 'true' selves. Freedom is, therefore, linked to personal fulfilment which only unalienated labour can bring about.

**Check Your Progress 3**

**Note:** i) Use the space given below for your answer.

ii) See the end of the unit for tips for your answer.

1) Discuss the Marxist critique of liberty.

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**3.6 OTHER CONTEMPORARY IDEAS ON LIBERTY**

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Apart from Berlin whose work is perhaps the most significant among the contemporary works on liberty, there are other thinkers who have discussed the idea of liberty elaborating upon the ideas expressed by thinkers on both sides of the ideological divide. *Milton Friedman*, like Mill and Berlin was a liberal who in his work *Capitalism and Freedom* developed a notion of liberty as a significant aspect of capitalist society. The freedom of exchange was an essential aspect of liberty. To promote this freedom, Friedman required the state to give up its concern for welfare and social security and devote itself to maintaining law and order, protecting property rights, implementing contracts etc. For Friedman, not only was liberty essential for free and voluntary exchange among individuals, it was only within a capitalist society that this freedom could be achieved. Moreover, it was economic freedom that provided the opportune and essential condition for political liberty.

In his work, *The Constitution of Liberty* (1960), *F. A. Hayek* has propounded a theory of liberty, which emphasises the negative role of the state. For Hayek, a state of liberty is achieved when the individual is not subject to the arbitrary will of another individual. Hayek calls this individual freedom and distinguishes it from other forms of freedom, establishing at the same time the primacy and independence of individual liberty from other forms of freedom, including political freedom. Hayek recommends that the original meaning of liberty as the ‘absence of restraints’ should be preserved. The enlargement of state intervention in the name of freedom would mean the demise of real liberty which consists in the freedom of individual from restraints.

Another group of thinkers evidently influenced by the Marxist notion of freedom emphasised that liberty as practiced in modern capitalist societies breeds loneliness. *Eric Fromm* (1900-1980) explained that in modern societies, aloofness was brought about owing to the separation of the individual from his creative capacities and social relations. This separation generated physical and moral aloofness in the individual affecting his mental well-being. It was only through creative and collective work that the individual could restore himself to society. *Herbert Marcuse* in his work *One Dimensional Man: Studies in the Ideology of Advanced Industrial Society* (1968), also explored the nature of alienation in

capitalist societies. Marcuse asserts that the creative multidimensional capacities of the individual get thwarted in capitalist societies. Man is able to express himself only as a consumer constantly engaged in the satisfaction of his physical needs.

**Check Your Progress 4**

**Note:** i) Use the space given below for your answer.

ii) See the end of the unit for tips for your answer.

1) Discuss some of the contemporary ideas on liberty.

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**3.7 LET US SUM UP**

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The idea of liberty is at the core of liberal thought, which places the rational individual at its center and draws a boundary between the individual and his/her sphere of autonomy, the state and society. Liberty in its common understanding means an ‘absence of constraints’. In other words, it signifies a condition in which an individual who is capable of taking reasoned decisions pertaining to his/her own affairs is free to take any action without and restraints from outside, including state and society. At the same time, however, the notion of liberty, evolved at the same time as the idea of a political community and political authority. This simultaneous evolution has meant an equal recognition of the liberties of all individuals and the understanding that reasonable restrictions on individual liberty could be justified on the grounds that they provided the conditions in which individual liberty could be enjoyed without conflict. The idea of liberty as the absence of restraints is associated with a ‘negative’ notion of liberty. A ‘positive’ notion of liberty was articulated by thinkers like T.H.Green who took into account the conditions, which enabled an individual to be actually free. Thus, liberty as a positive notion consisted in having the power to act, and the opportunities which enabled action. The idea of the welfare state was premised on this idea which required the state to take positive steps to provide the conditions within which individuals could actually be free to act and develop themselves. While philosophers like J.S.Mill and Isaiah Berlin attempted to reconcile the two notions, Marxists felt that freedom could not be experienced in a capitalist society. A capitalist society, they emphasized separates an individual from his/her social contexts and from his/her own nature. Liberty as can be seen, has been understood differently by different strands of thought. It remains, however, a fundamental concept in democratic thought.

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**3.8 REFERENCES**

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### **3.9 ANSWERS TO CHECK YOUR PROGRESS EXERCISES**

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#### **Check Your Progress 1**

1) Highlight following points:

- Negative liberty means absence of external constraints.
- Positive liberty means existence of conditions which enable or facilitate better development

#### **Check Your Progress 2**

1) Highlight following points:

- Mill highlighted negative concept of liberty.
- Opposed restriction on individual liberty.
- Distinction between self-regarding and other-regarding actions.

#### **Check Your Progress 3**

1) Highlight Following points:

- Unlike liberals, Marxists see mutual dependence between individuals and society.
- Capitalism alienates individuals from their true self and creative influences of society.
- Freedom can be restored in a communist society only.
- Example of Robinson Crusoe.

#### **Check Your Progress 4**

1) Highlight ideas of Milton Friedman, F A Hayek, Eric Fromm and Herbert Marcuse.

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## UNIT 4 EQUALITY\*

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### Structure

- 4.0 Objectives
- 4.1 Introduction
- 4.2 Different Types of Equality
  - 4.2.1 Formal Equality
  - 4.2.2 Equality of Opportunity
  - 4.2.3 Equality of Outcomes
- 4.3 Some Basic Principles of Equality
- 4.4 Some Arguments against Equality
- 4.5 Liberal Justification of Inequality
- 4.6 Equality and Feminism
- 4.7 Equality and Liberty
- 4.8 Let Us Sum Up
- 4.9 References
- 4.10 Answers to Check Your Progress Exercises

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### 4.0 OBJECTIVES

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The main objective of this unit is to understand the meaning of equality and address some of the important theoretical issues connected with this concept. As you go through this unit, you should be able to:

- Explain the concept of equality;
- Discuss some of the basic principles of equality;
- Explain formal equality, equality of opportunity and equality of outcomes;
- Examine some of the anti-egalitarian positions;
- Discuss the liberal justification of inequality and finally; and
- Evaluate the relationship between equality and liberty.

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### 4.1 INTRODUCTION

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The idea of equality seems to be the central concern of modern politics and political thought. Hierarchy in society based on birth was accepted as natural. For a very long time, this is no longer the case. In fact, modern political thinking starts from the assumption that all human beings are equal. The *French Revolution* in 1789 and the *American Civil War* remain two very historically significant landmarks in the articulation of the idea of democracy, equality and freedom. Medieval hierarchies were challenged by one, and the other drew attention to inequalities based on race. However, the acceptance of the idea of equality was not easy. Writing in 1931, *R.H. Tawney* lamented what he described as the ‘Religion of Inequality’ in British society. What seems to have bothered him

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\* Contributed by Prof. Krishna Menon, Ambedkar University of Delhi, Delhi, adapted from Unit 18, EPS-11

was not just the existence of inequalities in society, but its acceptance as natural and inevitable. In the post-second world war period, many changes have taken place and the idea of equality has gained a much wider currency. The upsurge in the colonized world added another significant dimension to the debate on equality, as has the women's movement.

In today's context, we could say that equality has been accepted as a very important principle of organizing human life; however, intense battles rage about where and how should equality be applied? A much more contentious field is the application of the principle of equality to the distribution of wealth and income in society. In this context, it would be useful to mention that in recent years there has been a serious resurgence of anti-egalitarian thinking reinforced by the growing popularity of that school of political economy which argues that egalitarian measures stifle market efficiency and in the long run, make everyone worse off. Egalitarians are, thus, required to sharpen their arguments in response to a new set of challenges; they usually set to do this by establishing clearly the fact that they are not demanding absolute equality and hence, uniformity is not a part of their scheme at all. On the contrary, what they seek to preserve, is variety.

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## 4.2 DIFFERENT TYPES OF EQUALITY

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### 4.2.1 Formal Equality

*John Locke*, the English philosopher remains one of the most eloquent defenders of the idea of equality based on the natural equality of men. (Needless to add that in Locke's scheme of affairs, women did not feature at all!) Kant reinforced this position further by talking about universality and equality as a consequence of this universal humanity. Thus, formal equality came to imply that by virtue of their common humanity, all individuals should be treated equally.

The most important expression of this idea is the principle of legal equality or equality before the law. All individuals should be treated equally by the law irrespective of their caste, race, colour, gender, religion, social background and so on. While this was a welcome step in the fight against special privileges based on race, gender, social background and other similar criterion, it remained a very limited notion on its own. This principle ignores the fact that handicaps imposed by caste, gender or social background could be so overwhelming that individuals would not be able to benefit from the formal equality that the law bestows upon all individuals.

In this context, it would be appropriate to note that it was this inadequacy that led Marx to examine this question in his essay 'On the Jewish Question'. He contended that formal equality while being a significant step forward could not bring about human emancipation. While the market did free people from the barriers imposed by social rank and other similar categories, it did nevertheless create differences based on *class* that were upheld by the existence of private property. This implied that individuals had starkly different market values and hence, Marxists describe formal equality in this context as market equality, which is little more than a façade to disguise the deeply unequal nature of society.

Today, egalitarians have moved away from the notion that all human beings are created equally and hence, must have equal rights; this is so because of the fact

that in most of the important aspects, human beings are not equal. Therefore, today, the word equality is used more in a prescriptive rather than a descriptive sense; those policies would be backed that promote the ideal of equality without having to depend upon some descriptive properties of human beings.

**Check Your Progress 1**

**Note:** i) Use the space given below for your answer.

ii) See the end of the unit for tips for your answer.

1) What was it that disturbed R.H. Tawney about the British society?

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2) What is the basic philosophy guiding the principle of formal equality?

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**4.2.2 Equality of Opportunity**

Understood very simply, equality of opportunity means the removal of all obstacles that prevent personal self-development. It means that careers should be open to talent and promotions should be based on abilities. Status, family connections, social background and other similar factors must not be allowed to intervene.

Equality of opportunity is an extremely attractive idea that is concerned with what is described as the starting point in life. The implication is that equality requires that all individuals begin from a level playing field. However, the consequences of this need not be egalitarian at all. Precisely because everyone started equally, unequal outcomes are acceptable and legitimized. This inequality would then be explained in terms of differing natural talents, ability to work hard or even luck.

Constructed like this, it seems that equality of opportunity provides an equal opportunity to compete in a system that remains hierarchical. If so, then it does not appear to be a substantially egalitarian principle. Equality of opportunity, thus, points to an inegalitarian society, albeit based on the exalted ideal of *merit*. This idea rests itself on the distinction between nature and convention, the argument being that distinctions that emerge on the basis of different natural qualities like talents, skills, hard work and so on are morally defensible. However, differences that emerge out of conventions or socially created differences like

poverty, homelessness are not. The fact, however, is that it is a specific societal predilection that makes a natural distinction like beauty or intelligence a relevant ground for making distinctions in society. Thus, we see that the distinction between nature and convention is not as clear-cut as egalitarians imply.

Equality of opportunity is institutionalized through the acceptance of keeping careers open to talents, providing fair equal opportunity, and the many variations on the principle of positive discrimination. All of these work to make the system of inequality seem reasonable and acceptable. The underlying assumption is that so long as the competition has been fair, advantage itself is beyond criticism. There is no doubt that a system such as this would create people, who concentrate only on their talents and individual attributes. This robs them of any feeling of community with their people, because they can only think in terms of competing. Perhaps, the only community this can create is a community of the successful on the one hand, and a community of the *unsuccessful* on the other which blames itself for its supposed failure. Yet another problem with equality of opportunity is that it seeks to create an artificial disjunction between the successes and failures of one generation and the next.

Thus, it is seen that the liberal position on equality is based on equality of opportunity. This advocacy is contrary to any substantive idea of equality because these are opportunities which lead to unequal outcomes. This principle is, thus, unconcerned with the outcomes and is interested only in the procedure. This is entirely in keeping with the liberal idea that individuals are the basic unit of society and society must make it possible for individuals to satisfy their own interests.

Does this mean that egalitarians would ignore equality of opportunity? The answer is clearly no. However, they would work with a wider definition of equality of opportunity that would give everyone the means to develop their capacities in a satisfying and fulfilling way. An egalitarian society would not deny to some people the genuine opportunity to develop their capacities. The genuine egalitarian use of this opportunity would be to lead a worthwhile life. Since it is not possible to ensure that each individual leads a worthwhile life, what egalitarians would try for would be the creation of social conditions that give the opportunity to all individuals to lead worthwhile lives.

**Check Your Progress 2**

- Note:** i) Use the space given below for your answer.  
ii) See the end of the unit for tips for your answer.

1) What is equality of opportunity?

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### 4.2.3 Equality of Outcomes

Yet another articulation of the idea of equality would be in terms of the equality of outcomes, moving away from the starting point in life to look at the outcome. *Marx*, for instance, was of the opinion that any right to equality circumscribed by a bourgeois economy can only be partial. He, thus, argued for absolute social equality, possible only if private property was abolished. Defenders of equality of outcome believe that the guarantee of all other equalities would be inadequate so long as equality of outcome is not ensured.

Critics of equality of outcome point out that such a pursuit would only lead to stagnation, injustice and worse of all, tyranny. *Hayek*, for instance, has argued that people being very different have different aspirations and goals and any system that treats them equally actually results in inequality. The drive for equality, it is argued, is at the cost of individual liberty. It is argued that the imposition of socialist egalitarian measures undermines the dignity and self-respect of the individual and the inherent paternalism accompanying such measures denies the ability of the individual to be a rational chooser.

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## 4.3 SOME BASIC PRINCIPLES OF EQUALITY

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Egalitarians do not believe that everybody is same or should be the same. It is not a simple mathematical idea. It would help us to put down some of the core principles that egalitarians would be committed to. The first commitment is to the idea that every individual has a right to the satisfaction of his or her basic needs and a society characterised by wide disparities in the standard of living is not acceptable to them. They are committed to a society where living conditions are not just bearable, but are capable of providing a satisfying and fulfilling life to all.

Another significant principle is that of equal respect, which implies opposition to any form of degrading treatment or circumstances; ideally, a society based on fellow feeling. An egalitarian position would oppose huge differences in income and wealth not only between individuals, but even between nations. It would also involve democratic control of the economy and the workplace, apart from the possibility of dignified, interesting and safe work for everyone. Political equality, needless to add, is not just the right to vote or to stand for any public office, but a wide network of civil rights and a democratic participation in all aspects of life so that individuals are enabled to control and shape their lives in a more significant way.

Sexual, racial, ethnic and religious equality are some of the other components of the complex idea of equality. Needless to add that one cannot aim at a totally exhaustive list of equalities, and in that lies the reforming potential of the concept of equality.

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## 4.4 SOME ARGUMENTS AGAINST EQUALITY

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Equality, it is argued, is a concept that is untenable in reality because society and social processes are likened to a competition in which not everyone can end up being a winner. We have already noted such objections earlier in the context of our discussion on equality of outcomes. What one could say in response is

that this objection emerges out of a specific construction of the nature of society and the individual.

In recent times, the names of *Hayek*, *Friedman* and *Nozick* are associated with the position that holds egalitarianism as a threat to freedom. Nozick is particularly critical of liberals like John Rawls and Dworkin for their commitment to welfare provisions in order to enlarge equality of opportunity. In response to those who say that inequality in society undermines self-respect, libertarians like Nozick argue that on the contrary, it is egalitarianism that robs people of their self-respect. Nozick claims that inegalitarian societies show more respect for individuals by acknowledging the distinctiveness of each individual and the difference between individuals. Since an egalitarian society would be bereft of any differences based on power, rank, income or social status, there would be no basis for self-esteem, because self-esteem is based on criteria that differentiate people.

A very strong objection comes from those who believe that any attempt to establish equality results in the strengthening of the state and thereby, weakens individual freedom. This is at the heart of the well known question in western political theory of the relationship between equality and liberty which we will address a little later.

**Check Your Progress 3**

**Note:** i) Use the space given below for your answer.

ii) See the end of the unit for tips for your answer.

1) Explain how according to Nozick an egalitarian society robs people of their self-respect.

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**4.5 LIBERAL JUSTIFICATION OF INEQUALITY**

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Liberals reject sex, race, or class as the relevant criteria for treating people differently, but they do believe that it is just and fair if inequalities are earned and deserved by virtue of their different *desert* or merit. Thus, liberal theory holds stubbornly that so long as inequality can be justified on the basis of rewards or desert for special qualities and abilities or special contribution to society, it is acceptable. One cannot help note here that what is meritorious, special or a contribution to the society are all circumscribed by the specificities of the society in question. Moreover, it is very difficult to isolate the worth of an individual's contribution, and if one takes back after contributing, then is one really contributing anything at all? This whole position seems to contradict the basic liberal position that all individuals have equal worth and respect and reduces people to a bundle of talents and abilities. In recent times, however, modern

liberals such as *Rawls* and *Dworkin* have rejected merit and desert as a criteria for justifying inequality. Instead, they advocate an equality of consideration based on the equal moral worth of all individuals, irrespective of their differing individual talents or skills. They base this equality on the idea that all human beings are equally endowed with the ability to make choices and formulate life plans. Rawls, for instance, rejects as morally arbitrary the distribution of rewards according to ability or effort, for differences in abilities and skills he contends, are simply facts of nature and no one is to gain or suffer because of the presence or an absence of these skills or abilities. Hence, he advocates the treatment of these natural abilities as a social asset so that the ‘basic structure of society can be arranged so that these contingencies work to the good of the least fortunate’.

The so called Difference Principle that Rawls enunciates, is to his mind, the best principle for ensuring that natural assets do not lead to unfair advantages. The Justice principle requires that social and economic inequalities should be so arranged that they are both a) to the greatest benefit of the least advantaged and b) attached to offices and positions open to all under conditions of fair equality of opportunity. This, thus, unlike the traditional liberal rights is a much wider understanding of equality. Unequal rewards are justified not on the basis of differing abilities, but as *incentives* so that they benefit the least advantaged. Dworkin also expresses displeasure with the traditional liberal ideas on equality and accepts the need for some redistribution and welfare policies.

*Macpherson* has criticised Rawlsian equality on the grounds that it assumes the inevitability of institutionalized inequalities between classes. In doing this, Rawls ignores the fact that class based inequalities create unequal power relationships among individuals of different classes and would thus, impinge on other aspects of equality.

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## 4.6 EQUALITY AND FEMINISM

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Feminists try to look at the issue of equality through the gender lens. An important book in this respect is *Susan Okin's Justice, Gender and the Family* (1980). It has been argued that equal opportunities legislation or redistributive justice through the extension of equality principles to different areas, in essence, cannot create equality as these rules and principles operate in an environment which is already contaminated by the inequality between the *sexes*: an inequality brought about by social practices. Many of these practices are not directly discriminatory toward women, but their overall effect is to reinforce inequality and give it a veneer of legitimacy. Thus, although the law may not formally differentiate between the sexes, it is the case that women tend to get segregated into particular occupations and married women who have careers are especially disadvantaged in a gender-biased society.

Feminists point out that the position of women's substantive inequality – their weak voice in familial decision making, their duty of child rearing and the subsequent withdrawal from the labour market – has nothing to do with natural and spontaneous operation of choices, but because roles are socially constructed. However, at the same time, it would perhaps be resented even by the feminists, if the state is involved, especially in family life, for eradicating gender differentiation. It is, perhaps, easier, to be aware of gender inequality and to locate into the social practices and the socially structured roles, but it is difficult

to go for a remedial measure. Unless the women themselves become aware of their inequality, of their subordinate role in family, and come forward to re-orient the social constructions, nothing concrete with respect to gender equality can be achieved.

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## 4.7 EQUALITY AND LIBERTY

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It is often claimed that liberty and equality are anti-thetical, and that this conflict therefore is irreconcilable. *De Tocqueville* saw equality as posing a likely danger to liberty, fearing as he did mass conformity and the tyranny of the majority. Friedman, Nozick and Hayek are some of the more recent names associated with this position. What such a position does is to deliberately pose a contradiction between liberty and equality by suggesting that attempts to establish equality immediately imply coercion and loss of liberty. They imply that since individuals are different in terms of their skills and abilities, differences in their lives are bound to exist, and thus there is bound to be a natural tendency towards inequality. Any attempt to correct this will have to be accompanied by authoritarian suppression and hence, loss of liberty. Here, there is a deliberate attempt to equate equality with uniformity; an egalitarian society is not a uniform society. It would be a society where every individual given her or his individual and differing talents could enjoy an equally worthwhile and satisfying life. Those who argue that equality and liberty are irreconcilable begin with a specific understanding of liberty; what has been described as the 'negative conception' of liberty. In fact, they contend that the positive concept of liberty is not liberty at all, but something masquerading as liberty. The negative picture of liberty sees liberty as the absence of deliberate interference in an individual's life. On the contrary, egalitarians see freedom as the availability and the ability to make choices that are meaningful and effective. Such an understanding of liberty would immediately link it to the issues of access to structures of social and institutional power, fulfilment of material and economic requirements, and of course, the possession of education and knowledge.

Therefore, egalitarians hold that equality in terms of social power, economic wealth and education is essential to ensure that everyone has an equally worthwhile and satisfying life. In doing this, egalitarians are pursuing equality stifled by social and institutional structures of power. Liberty is seriously hampered by the wide disparities of wealth. Education, by opening our minds and educating us with various skills is undoubtedly a liberating factor. Therefore, any inequality in access to any of these elements would, it can be argued, limit the individual's ability to lead a meaningful and satisfying life, which to the egalitarians is the essence of the idea of liberty. Egalitarians are arguing that human beings do not become free simply by being left alone. They argue that power, wealth and education are the basic sources of liberty and a society that cannot ensure equality in these aspects cannot be a free society. Thus, we see that liberty and equality far from being anti-thetical are actually not just compatible, but dependent on one other. Most of the twentieth century was a time when equality barely stood in need of justification. It was seen as the central principle around which nations and societies were to organise themselves. However, towards the close of this century, there is a serious intellectual as well as a political attempt to present equality as morally undesirable. The inviolable nature of the right to property and the essentially plural nature of society, the anti-egalitarians claim, would be severely threatened by a pursuit of equality.

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## 4.8 LET US SUM UP

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In this unit, we tried to examine what the concept of equality means. It is particularly significant given the fact that we live in a society that is battling against various kinds of inequalities. Equality in its most restricted sense is formal equality, which subscribes to the notion of universal humanity of all human beings. Equality of opportunity, which we saw, can be used to ultimately justify inequality. Equality of outcomes stretches the meaning of the term equality. We also took stock of the modern liberal defense of equality and how it justifies inequality, only if it works to the maximum advantage of the worst off in society. We also took note of the feminist critique of equality. Finally, we examined the debate about the relationship between equality and liberty, and saw that a negative conception of liberty makes the two concepts appear conflictual.

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## 4.9 REFERENCES

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## 4.10 ANSWERS TO CHECK YOUR PROGRESS EXERCISES

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### Check Your Progress 1

- 1) Existence of inequality in British society and its acceptance as natural and inevitable.
- 2) By virtue of their common humanity, all individuals should be treated equal irrespective of differences.

### Check Your Progress 2

- 1) Removal of all obstacles that prevent self-development.

### Check Your Progress 3

- 1) Since an egalitarian society would be bereft of any differences, there would be no basis for self-esteem as it is based on criteria that differentiate people from one another.

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## UNIT 5 JUSTICE\*

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### Structure

- 5.0 Objectives
- 5.1 Introduction
- 5.2 Meaning of Justice
  - 5.2.1 Justice and Law
  - 5.2.2 Justice and Discrimination
- 5.3 Distributive Justice
  - 5.3.1 Distributive Justice and Economic Justice
- 5.4 Social Justice
  - 5.4.1 Predominance of the Interest of the Community
  - 5.4.2 Reforms or Social Change
  - 5.4.3 Pound's Illustration of Social Justice
  - 5.4.4 Criticism of Social Justice
- 5.5 Procedural Justice
- 5.6 John Rawls's Theory of Justice
- 5.7 Justice: A Term of Synthesis
- 5.8 Let Us Sum Up
- 5.9 References
- 5.10 Answers to Check Your Progress Exercises

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### 5.0 OBJECTIVES

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This unit discusses the concept of justice, one of the most basic and important concepts in political science in general, and political theory in particular. After studying this unit, you should be able to:

- Define the concept of justice;
- Distinguish between the various aspects of justice;
- Identify and describe the different theories of justice; and
- Describe the relationship between liberty, equality, law and justice.

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### 5.1 INTRODUCTION

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By now, you all must be familiar with concepts like law, rights, liberty and equality. A prior study of these concepts will help in understanding the concept of justice. The element of justice, in fact, connects the above mentioned themes. In this unit, we shall first try to understand the meaning of the concept in its different aspects. Then, we shall study the different theories of justice. We shall also try to bring out the relationship between justice on one hand and law, liberty and equality on the other. Justice is one of the important aims of the state. One of the earliest treaties on politics, Plato's *Republic* was an attempt to construct a just state. Justice was its central concept. Therefore, a correct understanding of this concept will help in evaluating different political systems, their policies and

the ideologies on which they are based. Thus, justice is the reconciler and synthesizer of political values and as said by Aristotle it is ‘what answers to the whole of goodness’.

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## 5.2 MEANING OF JUSTICE

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Any discussion of the concept of justice has to take into account its multi-dimensional character. The answer to ‘what is justice’ can only be given by indicating guidelines (values) along which men have thought of justice and will continue to do so. It changes with the passage of time. Thus, what was justice in the past may be injustice in the present and vice-versa. Thus, there have been the ‘egalitarian’ perception of justice where the highest place is accorded to the value of equality; the ‘libertarian’ perception in which liberty is the ultimate value; the Divine view in which justice is the execution of God’s will, the ‘hedonist’ makes ‘the greatest good of the greatest number’ the criterion of justice; to the ‘harmonizer’ justice is the harmonizing of different elements and values to produce a satisfactory balance. Some identify justice with ‘duty’ or with maintenance of peace and order; others view it as an elitist function. Thus, justice concerns the rights of the individual as well as the social ordering of society. It is legal and moral at the same time. In short, it is an ethical concept.

### 5.2.1 Justice and Law

The Roman lawyers integrated the ideas of ‘natural justice’ with the positive law of the state. As such, the civil law and the law of nations are in conformity with the law of nature. This, however, is an abstract phase of jurisprudence. In fact, justice lies in the enforcement of the positive law. Both law and justice seek to sustain social order. *John Austin* is the main advocate, who tells that the law has to function as an instrument of justice, on one hand, and function as an instrument to suppress mischief, on the other. Legally, the administration of justice can be criticised as unjust if it fails to meet the standards of fairness required by the procedures of the legal system, viz. the accused should be informed of the charges levelled against him; he should be given a reasonable opportunity to defend himself etc; while morally, a law can be called unjust if it fails to meet the moral ideas of justice. Morality, however, goes beyond justice.

The symbol of justice is often portrayed as blindfolded because it is supposed to be impartial. There should be no discrimination between two extremes – rich or poor, high or low. Therefore, impartiality becomes a precondition to justice. Does it mean then that justice does not require discrimination at all?

### 5.2.2 Justice and Discrimination

Plato and Aristotle argued for a different interpretation of justice, “proportionate equality” with the idea of “righteousness”. The philosophical interpretation of justice takes an empirical direction in the hands of Aristotle who says: “Injustice arises when equals are treated unequally”. This means that if in a democracy there is discrimination on the basis of *sex*, it would mean treating the equals, unequally. Also, it would be unfair to pit a heavy-weight wrestler against a lightweight one. Thus, justice requires discrimination on the basis of differences, which is relevant to the functions performed. Plato’s theory of justice too implied that the life of people should conform to the rule of functional specialization.

Here, justice becomes another name for the principal of ‘proper stations’; i.e. a man should practice one thing only to which his nature is best adapted. This has both individual and social aspects. The highest good of both the individual and the society is conserved, if we take it for granted that there is nothing better for a man than to do a work that he is best fitted to do, there is equally nothing better for the society than to see that each should be filling the station to which he is best entitled by virtue of the special element of his personality. For this, the three elements of reason, spirit and appetite have been highlighted for the individual and the state, to keep their proper bounds.

Also, normally the law does not interfere in instances of discriminatory treatment in private life. But if it causes social harm, the state would be justified in interfering in it, like in instances of untouchability, where some groups are denied human rights. Therefore, a law against it would be just. Also, the separate facilities accorded cannot be truly equal. It is because of this that Babasaheb Dr. B R Ambedkar demanded the right of entry to temples for Scheduled Castes and opposed separate temples, schools or hostels for them.

### Check Your Progress 1

**Note:** i) Use the space given below for your answer.

ii) See the end of the unit for tips for your answer.

1) What is justice?

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2) How does discrimination fit in the concept of justice?

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## 5.3 DISTRIBUTIVE JUSTICE

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The idea of Aristotle came to lay down the foundation of what is called the doctrine of distributive justice. The essential implication of Aristotle’s explanation is that justice is either ‘distributive’ or ‘corrective’; the former requires equal distribution among the equals and the latter applying wherein remedy for a wrong is provided. The principle that *Marx* puts forward for distributive justice in the post- revolutionary socialist society is ‘from each according to his ability to each according to his work. The idea of distributive justice is reflected in the work of some recent political economists. In this context, reference to the work



of *J.W. Chapmen* deserves merit, who seeks to integrate the idea of justice with his principles of ‘economic rationality of man’ and ‘consumer’s sovereignty’ coupled with the individual claim of ‘moral freedom’. To him, the first principle of justice appears to be the distribution of benefits, which maximise benefits in accordance with the principle of consumer’s sovereignty. The second principle is that a system is unjust, if the material well being of a few is purchased at the expense of many. It implies that justice requires that no one shall gain at the expense of another.

### 5.3.1 Distributive Justice and Economic Justice

Distributive justice subjects to the condition of general welfare. It demands that the state of national economy be reshaped in a way that the benefits are made available to the common man. In this way, the idea of economic justice comes to imply a socialistic pattern of society. The first task of economic justice is to provide employment, food, shelter and clothing to every able-bodied citizen. In regard to this area of satisfying the primary and basic needs of all, it has been correctly said that freedom is meaningless if it prevents the achievement of economic justice. Thus, the liberals believe that economic justice can be attained in society if the state provides welfare services and there is a progressive system of taxation; a fair return for work provision of social security like old age pension, gratuity and provident fund. However, the Marxist view of justice has its origins in the area of economics. According to Marx, the positive law of the state is imposed on its members by the authority of the class, which controls the means of production. Law is determined by the economic interest of the ruling class. When private property is abolished and the working class controls the means of production, then the laws are bound to reflect the interest of the working class. Therefore, the content of justice depends upon the *class* controlling the means of production. When the state withers away, as contemplated by the communists, there will be justice without an economic origin. Modern liberals have since long given up the doctrine of economic laissez-faire. Redistributive justice (of which Aristotle spoke) is an integral part of ‘revisionist liberalism’ as advocated by *J.W. Chapmen*, John Rawls and Arthur Okun. These writers advocate “redistributive justice” with its implication of state intervention in the economy in the interest of justice and freedom for all.

#### Check Your Progress 2

**Note:** i) Use the space given below for your answer.

ii) See the end of the unit for tips for your answer.

1) What is distributive justice?

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## 5.4 SOCIAL JUSTICE

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Social justice relates to the balance between an individual's rights and social control ensuring the fulfilment of the legitimate expectations of the individual under existing laws and to ensure him benefits and protection against any encroachment on his rights. Let us examine the term, 'social justice' in terms of the following aspects of justice, viz. one, the notion of the predominance of the interest of the community and two, the notion of 'reform', or social change.

### 5.4.1 Predominance of the Interest of the Community

With the decline of the laissez-faire doctrine, a new awareness has developed that the rights of an individual should be reasonably restricted in the interests of the community because the ends of social justice require the reconciliation of individual rights with that of community interest. It also presumes that in the event of a conflict between the two, the community interest must prevail over individual concerns. Social justice is, thus, closely linked with the idea of what constitutes public good or community interest. Today with the penetration of democracy into the social and economic spheres, community interest has come to encompass not only the political (fair treatment in political matters) but also the social (non-discrimination in social areas) and economic (fair distribution of income and wealth) spheres. Thus, social justice ranges from the protection of minority political rights to the abolition of untouchability and the eradication of poverty. As such, in the backward countries of the world, the idea of social justice enjoins upon the state to make concerted efforts for the improvement of the downtrodden and weaker sections of the community.

### 5.4.2 Reforms or Social Change

Social justice is used to denote organization of society on the basis of ideas of fairness and equality current at the time. It seeks a revision of social order so as to have a more equitable society. Men through the ages have sought changes in social order, just as much as they have also sought to preserve a given social order. Social justice stands for reformatory justice, for revision of the social order and a redistribution of rights to suit current ideas of fairness. When Aristotle spoke of 'distributive justice' he had reformatory or what Raphael calls "prosthetic" justice in mind, because their aim was to modify the status quo. A hundred years ago, justice did not require governments to take care of the unemployed. Charity was supposed to do that. Due to the operation of notions of "reformatory" or "prosthetic" justice, today, it is considered the state's duty to take care of the unemployed and provide them employment.

### 5.4.3 Pound's Illustration of Social Justice

The affirmation of the idea of social justice is very well contained in the interpretation of *Dean Roscoe Pound* who presents a six-fold illustration of social interest and lays down eight juristic postulates to ensure social justice. Thus, the idea of social justice promotes the welfare of the people by securing a just social order.

### 5.4.4 Criticism of Social Justice

Theories of social justice are criticised on three grounds. Firstly, demands for social justice, by implication, enlarge the activities of the state. The state, then, will have to decide, “who gets, what, when and how.” Where the officers of the state develop vested interests, such subjective determination is not likely to serve the ends of social justice. Secondly, policies of social justice and their implementation require curtailment of liberty. How much of liberty should be sacrificed for how great/small social justice becomes a problem difficult to solve. Lastly, it is difficult to *assess* which are the basic needs that have to be satisfied to fulfil the criteria of social justice and which justify departure from equality.

However, when the Indian Constitution announces reservation of seats in legislature, educational institutions and public employment, it strictly speaking, entails departure from equality. Various justifications are offered for these policies in terms of justice. Firstly, that such treatment compensates for hundred years of deprivations. Secondly, that these measures are necessary for realising ultimate equality to bring the traditionally disadvantaged on an equal footing with society and thirdly, that justice can be done only if the state comes forward with preferential policies to help them gain social respect, economic viability and political status.

#### Check Your Progress 3

**Note:** i) Use the space given below for your answer.

ii) See the end of the unit for tips for your answer.

1) What is social justice?

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## 5.5 PROCEDURAL JUSTICE

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A more narrow view of justice is what is known as procedural justice. In this sense, the term is used not so much to prescribe redistribution of wealth or values as to the rules and procedures applied to individual actions. Essentially, it seeks to eliminate arbitrariness in human actions and supports the rule of law. This conception deals with individuals and not collectivities. In this view, not sticking to rules and procedures, jumping the queue or giving unfair advantage to some in competition would be unjust. The procedural theorists (for example *Hayek*) believe that imposing criteria for redistribution of wealth would lead to totalitarianism and an unjustified sacrifice of liberty. It involves constant intervention by the state to maintain the pattern required by equality. They feel that *even* if the state follows a policy of welfare, this has little to do with justice.

Critics of procedural theory of justice argue that mere following of rules does not ensure a just result. The rules formed in a social context are weighed in

favour of some groups. Therefore, a free competition may not always be a fair competition. Secondly, a free market relationship can be equally coercive for individuals who lack economic power; for them the liberty of a free market would be meaningless.

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## 5.6 JOHN RAWLS'S THEORY OF JUSTICE

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Different political theories offer different pictures of what would be a really just social order. Two of these theories are, the Utilitarian Theory, and John Rawls's Theory of Justice as Fairness. Utilitarian theory asserts that the social order in which the largest number of people can have the highest satisfaction of their utility is just. But from its very early days, critics have found great difficulties with utilitarianism. In this backdrop, Rawls's theory has offered, an alternative to utilitarianism. Rawls's book, *A Theory of Justice* gives a final interpretation of the concept. To discuss Rawls's theory of justice, his method of approaching moral problems must be mentioned first, which is in the contractarian tradition of social philosophy. But at the same time, Rawls's method entails that the conclusions of moral reasoning be always checked and readjusted against intuitive moral notions and this contrasts with others in the contractarian tradition, who maintain that the rules of justice are those that would be agreed to in a hypothetical setting. Rawls places men behind the 'veil of ignorance' in a hypothetical original position where individuals are deprived of the basic knowledge of their wants, interests, skills, abilities and of the things that generate conflicts in actual societies. But they will have what Rawls calls 'a sense of justice'.

Under these circumstances, Rawls argues, people will agree to accept *two* principles of justice in the lexical order. First, is the equality principle where each person is to have an equal right to the most extensive liberty compatible with a similar liberty to others. Here, equal liberties can be concretised as the familiar rights of liberal democratic regimes. They include the equal right to political participation, freedom of expression, religious liberty, equality before the law and so on. The second principle is called the difference principle where Rawls argues that inequalities can only be justified, if it benefits the least advantaged. John Rawls's concept of justice has two aspects to it. Firstly, it postulates a "constitutional democracy"; that is, government of laws and one, which is restrained, responsible and accountable. Secondly, it believes in the regulation of the free economy "in a certain way". "If law and government", writes Rawls, "act effectively to keep market competitive, resources fully employed, property and wealth widely distributed over time, and to maintain the appropriate social minimum, then if there is equality of opportunity underwritten by education for all, the resulting distribution will be just".

The "redistributionists" have their critics too. Thus, *Mare F. Plattner* makes two arguments against the above view of justice. Firstly, he believes that although equality is a cherished value, it may not be possible to have it at the expense of efficiency. According to Plattner, this problem of equality versus increased wealth lands Rawls into an inconsistency. Thus, on the one hand, Rawls "absolutely refuses to allow that those who make a greater economic contribution deserve greater economic rewards". Yet his "difference principle" (which specifies that "social and economic inequalities are to be arranged so that they are to the greatest benefit of the least advantaged") nonetheless affirms that it is just to grant them greater economic rewards insofar as these serve as incentives to

increase their contribution in ways that ultimately benefit the disadvantaged. The second argument Plattner makes is that the redistributionists want to refuse to the individual the reward of his “honest industry “and instead, considers all produce as the “common asset” of society as a whole. And this Plattner wants us to believe, undermines the “moral foundations of private property and therewith of liberal society”.

**Check Your Progress 4**

**Note:** i) Use the space given below for your answer.

ii) See the end of the unit for tips for your answer.

1) Discuss the second principle of John Rawls’s theory of justice.

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**5.7 JUSTICE: A TERM OF SYNTHESIS**

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Perhaps, the best approach to justice is to view it as a term of synthesis. The problem of justice is one of conciliation. The function of justice is the conciliation of different liberties (political, social and economic) with each other; the different equalities (political, social and economic) with each other as well as the task of conciliating liberty in general, in all its forms, with equality in general, in all its forms. In brief, justice means the synthesis of conflicting values and holding these together in some state of equilibrium. Many eminent writers have chosen to take sides in the liberty versus equality tussle. *Lord Acton* had, many years ago, made the memorable pronouncement that “the passion for equality made vain the hope of freedom” (he was speaking in the context of the French revolution). The champions of “liberty alone” like *W. E. Lecky* in his book *Democracy and Liberty* claim that, “Equality is only attained by a stringent repression of natural development”.

Actually, liberty and equality both matter; as *Carritt* puts it, they involve one another. Freedom has a better content if there is equality. And, at the same time it is freedom that enables men to demand equality. Give men liberty and they are sooner, rather than later, going to ask for equality. The interlinking between liberty and equality can be brought out in many ways. Take the case of freedom of speech and vote, both of which can be vitiated by a grossly uneven distribution of wealth. The wealthy are in a better position not only to *contest* but also to *propagate*. The wealthy have easier access to the propaganda apparatus. *Harold Laski’s* words still ring true: “Every attempt of an individual to assert his liberty in a society of unequal will be challenged by the powerful”. In short, we find that political liberty and economic democracy have to go hand in hand. And if we examine several political values, we find though apparently they may appear mutually contradictory, on closer examination, they will be found to be complementary and interlinked. In any case, it is the function of justice to

synthesize or reconcile the various and often-conflicting values. Justice is the final principle, which controls the distribution of various rights, political, social and economic in the interests of liberty as well as equality. Such a concept of justice grows historically as a process of development of social thought. In this sense, it is a growing concept reflecting social reality and aspiration.

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## 5.8 LET US SUM UP

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What we have seen so far leaves an impression that justice is essentially a normative concept having its place in various spheres like religion, ethics and law though its ramifications cover social, political and economic spheres. Impartiality is a necessary condition of justice. Impartiality does not mean treating everyone equally without discrimination. One interpretation is to treat equals equally and unequals unequally. But chiefly discrimination has to be on relevant criteria. Justice requires discrimination of values on a just basis. Social justice emphasises the needs of the people. It also calls for preferential policies in the Indian social context. As against this, procedural justice requires the rule of law and elimination of arbitrariness. In Rawls's theory of justice, individuals have to make a choice of social order. They would naturally prefer an egalitarian society. His theory grants equal basic liberties for all. Inequalities should be attached to offices open to all. They should benefit the disadvantaged section the most.

In the end, however, instead of delving deep into the debate over the perplexing connotations of justice, it shall be worthwhile to say that it is the connecting bond of all-important political values. For instance, there can be no liberty if the norm of equality is violated and there can be no equality if there is no justice. Obviously, justice is integrally connected with the norms of liberty and equality. Likewise, we may say that there can be no liberty if there is no right, and there is no protection of rights, if there is no well organized system of law to ensure the administration of justice. Obviously, once again, the idea of justice is essentially bound up with the concepts of rights and law. The most important point to be taken note of at this stage is that not only the idea of justice is integrally connected with the norms of law, liberty, equality and rights, but that it constitutes the essential link. Justice in this sense is the reconciler and synthesizer of political values. *Daniel Webster* was perfectly right when he said that justice "is the chiefest interest of man".

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## 5.10 ANSWERS TO CHECK YOUR PROGRESS EXERCISES

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### Check Your Progress 1

- 1) Your answer should highlight egalitarian, libertarian, divine and hedonist views about justice.
- 2) Highlight that justice requires discrimination on the basis of differences.

### Check Your Progress 2

- 1) Your answer should highlight the following points:
  - Distributive justice argues for general welfare.
  - Economic benefits should reach common man.
  - Liberal and Marxist views.

### Check Your Progress 3

- 1) Your answer should highlight the following points:
  - Social justice argues for balance between an individual's rights and social control.
  - State should protect the interests of the marginalised sections.

### Check Your Progress 4

- 1) The second principle, also called the difference principle argues that inequalities can be justified only if they benefit the least advantaged sections of society.

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## **UNIT 6 RIGHTS\***

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### **Structure**

- 6.0 Objectives
- 6.1 Introduction
- 6.2 Rights: Meaning and Nature
  - 6.2.1 Meaning of Rights
  - 6.2.2 Nature of Rights
  - 6.2.3 Various Rights
- 6.3 Theories of Rights
  - 6.3.1 Theory of Natural Rights
  - 6.3.2 Theory of Legal Rights
  - 6.3.3 The Historical Theory of Rights
  - 6.3.4 The Social Welfare Theory of Rights
  - 6.3.5 The Marxist Theory of Rights
- 6.4 Human Rights
- 6.5 Let Us Sum Up
- 6.6 References
- 6.7 Answers to Check Your Progress Exercises

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### **6.0 OBJECTIVES**

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In this unit, you will be reading about the concept of rights and the theoretical framework associated with them. After going through this unit, you should be able to:

- Explain the meaning of rights;
- Discuss their nature; and
- Enumerate the main theories associated with rights.

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### **6.1 INTRODUCTION**

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Rights are rightly called social claims which help individuals attain their best selves and help them develop their personalities. If democracy is to be government of the people, it has to exist for them. Such a democratic government can best serve the people if it maintains a system of rights for its people. States never give rights, they only recognise them; governments never grant rights, they only protect them. Rights emanate from society, from peculiar social conditions, and, therefore, they are always social. Rights are individuals' rights; they belong to individuals; they exist for individuals; they are exercised by them so as to enable them to attain full development of their personalities.

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### **6.2 RIGHTS: MEANING AND NATURE**

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The relationship between the individual and the state has been an important question of political theory; one that has baffled, if not confused, political



philosophers since ages. Political philosophers have debated as to who, whether the state or the individual is more important and who owes what to whom. There are philosophers, Plato for example, who believe that the state alone can give justice and that the job of the individual is to do his duties to the best of his/her abilities and capacities. We call these philosophers, the Idealists. There are others, John Locke for example, who hold the view that the state as a means exists for an end, and the end is the individual, meaning thereby that individual rights are sacrosanct and inviolable. That individuals have rights is a phenomenon of modern age as it began in the 15<sup>th</sup>-16<sup>th</sup> centuries' Europe. That these rights are guarantees against state absolutism and, therefore, they have their origin in society are things that became known in the modern age alone. Rights belong to individuals, and therefore, they are not of the state. Rights are individuals' rights, and, therefore, they are conditions necessary for their development. Rights are the product of our social nature, and as such, the result of our membership of society.

### 6.2.1 Meaning of Rights

Rights are claims, social claims necessary for the development of human personality. They are not entitlements a person is possessed with. In ancient and medieval times, some people were entitled to enjoy privileges. But to these privileges nobody could give the name of rights. Rights are not privileges because they are not entitlements. There is a difference between rights and privileges; rights are our claims on others as are others' claims on us; Entitlements on the other hand are privileges granted to some and denied to others. Rights are universal in the sense that they are assured to all; privileges are not universal because they are possessed by few. Rights are given to all without any discrimination; privileges are given to some, the selected few. Rights are obtained as a matter of right; privileges as a matter of patronage. Rights emanate in democratic societies; privileges are features of undemocratic systems. Jefferson's declaration that men are endowed by their creator with certain inalienable rights was one which indicated the naturalness of rights, i.e., men have rights because they are, by nature, human beings. That men (including women) have rights or that they should have rights is a fact no one would like to dispute. But this fact does not state anything more or less than that. There is no definition stated in this fact. Holland defines rights as "one man's capacity of influencing the act of others, not by his own strength but by the strength of society." His definition describes rights, as a man's activities blessed by society which means that Holland is describing rights only as a social claim. That there are other aspects of rights in a definition of rights has not been given due place. Wilde, in his definition of rights gives a casual treatment to the social claim aspect when he says: "A right is a reasonable claim to freedom in the exercise of certain activities." Bosanquet and Laski, in their definitions of rights, include the position of society, state and man's personality, but they too ignore the important aspect of 'duty' as a part of 'rights'. Bosanquet says: "A right is a claim recognized by society and enforced by the state". According to Laski, "Rights are those conditions of social life without which no man can seek, in general, to be himself at his best."

A working definition of rights should involve certain aspects. Among these, the social claim aspect is one which means that rights originate in society and, therefore, there are no rights prior to society, above society and against society. Another aspect of rights is 'the development of personality' aspect which means

that rights belong to the individual and they are an important ingredient which help promote one's personality – this aspect includes the individual's right to oppose the government if the latter's action is contrary to the individual's personality. The definition of rights, furthermore, must include the state's role in the framework of rights. This aspect lays emphasis on the fact that the state does not grant rights, it only maintains them. Laski said that a state is known by the rights it maintains. Rights are rights because they are politically recognised. Rights are socially sanctioned claims in so far as they are preceded by duties an individual has as a member of society. Duties came before rights and not after them. It is, in this sense that duties are prior to rights and it is what makes rights limited in their nature and in their exercise. There are no absolute rights: absolute rights are a contradiction in terms. The distinction between rights as 'liberties' and rights as 'claims' has become a matter of importance to social and political theory, as Raphael rightly asserts.

### 6.2.2 Nature of Rights

It is rather easy to identify as to what lies at the roots of rights on the basis of what has been hitherto discussed. The nature of rights is hidden in the very meaning of rights. Rights are not only claims; they are in the nature of claims. Rights are claims but all claims are not rights. Rights are those claims which are recognised as such by society. Without such recognition, rights are empty claims. Society is organised in character and an individual obviously cannot have any right apart from what the society concedes. To quote Hobhouse: "Rights are what we may expect from others and others from us, and all genuine rights are conditions of social welfare. Thus, the rights anyone may claim are partly those which are necessary for the fulfilment of the function that society expects from him. They are conditioned by, correlative to, his social responsibilities." Rights are social; they are social in the sense that they emanate from society at any given point of time; they are social because they are never, and in fact, can never be, anti-social; they are social because they had not existed before the emergence of society; and they are social because they cannot be exercised against the common good perceived by society.

Rights, as social claims, create conditions necessary for the development of human personality. These conditions are created; they are made and they are provided. The state, distinct from society, creates and provides and makes these conditions. The state, by creating conditions, makes rights possible. It, therefore, lays down a ground where rights can be enjoyed. It is not the originator of rights, but is only the protector and defender of rights. It is not within the jurisdiction of the state to 'take' away the rights of the individual. If the state fails to maintain rights in the sense of conditions necessary for individuals' development, it forfeits its claim to their allegiance. Rights are responses to society where they exist. The contents of rights are very largely dependent upon the custom and ethos of society at a particular time and place. As the society and its conditions change, so change the contents of rights. It is in this sense, that we say that rights are dynamic. No list of rights which are universally applicable for all times to come can ever be formulated. Rights and powers have to be distinguished. Nature has bestowed every individual with a certain amount of power to satisfy his/her needs. Power is a physical force; it is sheer energy. On the basis of mere force, no system of rights can be established. If a person has power, it does not necessarily mean that he has a right. He/ she have a right as a

member of the society – as a social being. An isolated person has no rights; what he/she has is energy, physical force, and process. As individuals, we have powers; as social beings, i.e. as members of society, we have rights. Likewise, as isolated individuals, we have no rights, and as social beings, we have no powers – no right to say or do or act the way we want.

Rights are responses to what we do. They are in the nature of ‘returns’ or ‘rewards’. They are given to us after we have given something to society, to others. It is after ‘owing’ that we ‘own’. Rights are not only the returns of our duties, but also they correspond to what we perform. Rights are the rewards given to us by others in response to the performance of our duties towards others. Rights are not absolute in character. The welfare of individuals as members of society lies in a compromise between their rights as individuals and the interest of the society to which they belong. A list of rights must acknowledge the fact that there cannot be such a thing as absolute as uncontrolled, for that would lead to anarchy and chaos in society.

### 6.2.3 Various Rights

Rights are the essential conditions of human personality. The development of human personality depends on the system of rights available to individuals. Different state systems recognise different rights: rights available to Americans would be different from those available to Indians. A liberal-democratic society would give primacy to different rights than a socialist society. That is why we have a classification of rights: moral, legal, civil, political, economic and social. Rights incorporated in the constitution of the land are called fundamental rights. Rights, being basic conditions necessary for the development of human personality, have to be made available to individuals of all the states. The UN Declaration of Human Rights serves as an inspiration and as an agenda for the states to recognise and maintain, for their respective people.

A general framework of major rights available to the people can be, briefly, summed up as under:

Right to life is a basic right without which all other rights are meaningless. This right means that the state guarantees the protection of life, protection against any injury: even suicide is considered a crime. Right to equality has numerous aspects: equality before law, equal protection of law, prohibition of any sort of discrimination: social, economic or political. Protective discrimination as enshrined in the Constitution of India is an integral part of the right to equality. Right to freedom, like right to equality, has several aspects: freedom of speech, of press, of assembly, of association, of movement, of residence, of adopting a vocation. That these freedoms are to be exercised within reasonable restrictions has been the characteristic feature of this right granted to the Indians by the constitution. Right to freedom of religion, conscience, faith is another right available to individuals. Right to education is another important right without which the development of man’s personality becomes impossible. An uneducated man cannot lead a meaningful life. Illiteracy, being a social curse, should be removed. The state should take up the responsibility of promoting education. Certain economic rights include the right to work, right to social security and rest and leisure. Without work and without material security, an individual is unable to enjoy the fruits of other rights. Right to property, too, is an economic

right which means the right to possess and inherit property. It is regarded as an important right in liberal-democracies. There are political rights of individuals. It is these rights which make individuals full-fledged citizens. Among these, the right to franchise, to contest elections, to hold public office, to form political parties are some which need mention.

The Constitution of India provides a list of rights to its citizens. These are called the fundamental rights and these include: right to equality, right to freedom, right against exploitation, right to freedom of religion, cultural and educational rights and right to constitutional remedies – the last one is an important right in so far as this right ensures guarantees for all the other rights. The liberal-democratic systems ensure the primacy of political rights over social rights and of social rights over the economic. The order is reverse in socialist societies: economic rights first and then social and political rights.

**Check Your Progress 1**

**Note:** i) Use the space given below for your answer.

ii) See the end of the unit for tips for your answer.

1) Differentiate between rights and claims.

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### **6.3 THEORIES OF RIGHTS**

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There are numerous theories of rights which explain the nature, origin and meaning of rights. The theory of natural rights describes rights as intrinsic to human nature; the theory of legal rights recognises rights as legal; the historical theory of rights pronounces rights as products of traditions and customs; the idealistic theory, like the theory of legal rights, relates rights only with the state; the social welfare theory of rights regards rights as social to be exercised in the interest of both individual and society. The development of rights, as have come to us had a modest beginning: civil rights with the contractualists; rights as the outcome of traditions, with the historicists, rights as ordained by law, with the jurists; political rights, with the democrats; social rights, with the sociologists and the pluralists; socio-economic rights, with the socialists and the Marxists; and human rights, with the advocates of the United Nations. This explanation oversimplifies what our rights are and how they came to us.

### 6.3.1 Theory of Natural Rights

The theory of natural rights has been advocated mainly by Thomas Hobbes (*Leviathan*, 1651), John Locke (*Two Treatises on Government*, 1690) and J.J. Rousseau (*The Social Contract*, 1762). These contractualists, after having provided the social contract theory, hold the view that there were natural rights possessed by men in the state of nature and that these rights were attributed to individuals as if they were the essential properties of men as men. The contractualists, therefore, declared that the rights are inalienable, imprescriptible and indefeasible. The theory of natural rights is criticised on many grounds. Rights cannot be natural simply because they were the possessions of men in the state of nature. There can never be rights before the emergence of society: the notion of pre-society rights is a contradiction in terms. If at all there was anything in the state of nature, they were mere physical energies, and not rights. Rights presuppose the existence of some authority to protect them. In the state of nature where no state existed, how could one imagine rights in the absence of a state: who would defend people's rights in the state of nature? The contractualists have no answer. To say that natural rights existed in the state of nature is to make them absolute or beyond the control of society. For Bentham, the doctrine of natural rights was 'a rhetorical non-sense upon stilts.' Laski also rejects the whole idea of natural rights. Rights, as natural rights, are based on the false assumption that we can have rights and duties independently of society. Burke had pointed out, rather eloquently, when he said that we cannot enjoy the rights of civil and uncivil state at the same time: the more perfect the natural rights are in the abstract, the more difficult it is to recognise them in practice. Rights are natural, in the sense that they are the conditions which human beings need to realise themselves. Laski realises the significance of rights when he says that rights 'are not natural in the sense that a permanent and unchanging catalogue of them can be compiled, rather they are natural in the sense that under the limitations of a civilised life, facts demand their recognition.'

### 6.3.2 Theory of Legal Rights

The theory of legal rights or the legal theory of rights connotes the same sense. The idealist theory of rights which seeks to place rights as the product of the state can be, more or less, seen as another name of the theory of legal rights. Among the advocates of such theories, the names of Laski, Bentham, Hegel and Austin can be mentioned. According to them, rights are granted by the state. The theory regards rights as a claim which the force of the state grants to the people. The essential features of these theories, then, are: (i) the state defines and lays down the bill of rights: rights are neither prior nor anterior to the state because it is the state which is the source of rights; (ii) the state lays down a legal framework which guarantees rights and that it is the state which enforces the enjoyment of rights; (iii) as the law creates and sustains rights, so when the content of law changes, the substance of rights also changes. Harold Laski (1893-1950), a theoretician of the English Labour Party and a political scientist in his own right, has his definite views on the system of rights as expounded in his *A Grammar of Politics* (first published in 1925 and then revised almost every second year). Laski's views on the nature of rights run as follows: (i) they are social conditions, given to the individual as a member of society (ii) they help promote individual personality, his best-self: 'those social conditions without which no man can seek to be his best self' (iii) they are social because they are

never against social welfare; they were not there before the emergence of society (iv) the state only recognises and protects rights by maintaining them; (v) rights are never absolute; absolute rights are a contradiction in terms (vi) they are dynamic in nature in so far as their contents change according to place, time and conditions (vii) they go along with duties; in fact, duties are prior to rights; the exercise of rights implies the exercise of duties. If Laski were to give rights to the individual, he would give them in this order: right to work, right to be paid adequate wages, right to reasonable hours of labour, right to education, right to choose one's governors, followed by other rights. Laski's argument is that without granting economic rights first, an individual cannot enjoy his political rights: political liberty is meaningless without economic equality: 'where there are great inequalities, the relationship between men is that of the master and the slave'. Equally important, but lower in order is the right to education: education alone helps an individual exercise all the other rights properly. With the economic and social (education rights) at one's disposal, there is a greater likelihood of the individual exercising his political rights in right earnestness. Critics opine that the state, indeed, defends and protects our rights; but it does not create them as the advocates of these theories make us believe. If we admit that rights are the creation of the state, we will have to accept the view that if the state can give us rights, it can take them away as well. Obviously, such an opinion would make the state absolute. In that case, we would have only those rights which the state would like to give us.

### 6.3.3 The Historical Theory of Rights

The historical theory of rights, also called the prescriptive theory, regards the state as the product of a long historical process. It holds the view that rights grow from traditions and customs. The conservative Burke argued that the people have a right over anything that they exercise or enjoy uninterruptedly over a fairly long passage of time. So considered, every right is based on the force of long observance. As traditions and customs stabilise owing to their constant and continuous usage, they take the shape of rights. The theory has its origins in the 18th century in the writings of Edmund Burke and was adopted later by sociologists. The historical theory of rights is important in so far as it condemns the legal theory of rights. It is also important in so far as it denies the theory of natural rights. The state recognises, the advocates of historical theory argue, what (the rights included) comes to stay through long usage. The historical theory of rights suffers from its own limitations. It cannot be admitted that all our customs result in rights: the Sati system does not constitute a right nor does infanticide. All our rights do not have their origins in customs. Right to social security, for example, is *not* related to any custom.

### 6.3.4 The Social Welfare Theory of Rights

The social welfare theory of rights presumes that rights are the conditions of social welfare. The theory argues that the state should recognise only such rights which help promote social welfare. Among the modern advocates of social welfare theory, the name of Roscoe Pound and Chafee can be mentioned though Bentham can be said to be its advocate of the 18th century. The theory implies that rights are the creation of the society in as much as they are based on the consideration of common welfare: rights are the conditions of social good which means that claims not in conformity with the general welfare, and therefore, not

recognised by the community do not become our rights. The social welfare theory of rights is also not without its faults. It dwells on the factor of social welfare, a term too vague to be precise. The Benthamite formula ‘greatest good of the greatest number’ is different to different people. The theory turns out to be the legal theory of rights if, in the end, the state is to decide what constitutes ‘social welfare’. A critic like Wilde is of the view that ‘if rights are created by the consideration of social expediency, the individual is without an appeal and helplessly dependent upon its arbitrary will.’

### 6.3.5 The Marxist Theory of Rights

The Marxist theory of rights is understood in terms of the economic system at a particular period of history. A particular socio-economic formation would have a particular system of rights. The state, being an instrument in the hands of the economically dominant class, is itself a class institution and the law which it formulates is also a class law. So considered, the feudal state, through feudal laws, protects the system of rights (privileges, for example) favouring the feudal system. Likewise, the capitalist state, through capitalistic laws, protects the system of rights favouring the capitalist system. According to Marx, the class which controls the economic structure of society also controls political power and it uses this power to protect and promote its own interests rather than the interests of all. In the socialist society which follows the capitalist society, the socialist state, through the proletarian laws, would protect and promote the interests/rights of the working class. As the socialist society, unlike the capitalist society, is a classless society, its state and laws protect the rights not of any particular class but of all the people living in the classless society. The Marxists say that the socialist state, as an instrument of social political and economic change, would seek to establish socialism which will be based on the principle of ‘from each to his ability to each according to his work’, the system of rights for all would follow this pattern: economic rights (work, social security) first, followed by social rights (education) and political rights (franchise rights). The Marxist theory of rights, like Marxism itself, suffers from its deterministic ideology, though its emphasis on non-exploitative socialist system is its characteristic feature. Neither the economic factor alone provides the basis of society nor the superstructure is the reflection of only the economic base; for non-economic forces also play their role in determining the superstructure.

#### Check Your Progress 2

**Note:** i) Use the space given below for your answer.

ii) See the end of the unit for tips for your answer.

1) Discuss the natural theory of rights.

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2) How do the Marxists view the concept of rights?

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## 6.4 HUMAN RIGHTS

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S. Ramphal has very rightly stated that human rights were not born of men but they were born with them. They are not as much a result of the efforts of the United Nations as emanations from basic human dignity. They are human rights because they are with human beings as human beings. Human rights may generally be defined as those rights which are inherent to our nature and without which we cannot live as human beings. They are essential because they help us to use and develop our faculties, talents and intelligence. They base themselves on mankind’s increasing demand for a life in which the inherent dignity and worth of each human being will receive not only protection, but also respect as well.

Human rights lie at the root of all organisations. They permeate the entire UN charter. In the Preamble of the UN Charter, there is a determination to affirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and the nations, large and small. There is a reference to the promotion of universal respect for Human Rights in the Charter’s Articles 13, 55, 62, 68, and 76. The Commission on Human Rights, working under the UN Economic and Social Council, after spending about two and a half years under the chairmanship of Roosevelt drafted what is known as the Universal Declaration of Human Rights. When the UN General Assembly approved this Declaration on December 10, 1948, the day came to be celebrated as the Human Rights Day. Among the 30 articles that are a part of the Declaration of Human Rights, there is a list of traditional rights from articles 3 to 15. These rights include: right to life, liberty, to security, freedom from arbitrary arrest, to a fair trial, to equal protection of law, freedom of movement, to nationality, to seek asylum etc. There are other important rights contained in articles 16 to 21. These include: equal rights to men and women, to marry, to form the family, to property, to basic freedom such as those of thought and expression, right to peaceful assembly and association as well as a share in the government of one’s own country. There are economic rights enshrined in articles 22 to 27. These include: right to work, protection against unemployment, just remuneration, right to form trade unions, right to have rest and leisure, to adequate standard of living, education and of participation in the cultural life of the country. Articles 28, 29, 30 ensure social/international order, duties towards the community wherein alone the free and full development of man’s personality is possible and the guarantees of these rights respectively. The Universal Declaration of Human Rights is the first segment of the International Bill of Human Rights. It is followed by the International Covenant on Economic, Cultural and Social Rights, the International Covenant on Civil and Political Rights and the Optional Protocol – all adopted in 1966.



**Check Your Progress 3**

**Note:** i) Use the space given below for your answer.

ii) See the end of the unit for tips for your answer.

1) What are Laski’s views on the concept of rights?

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2) What are the various rights included in the UN Declaration on Human Rights?

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**6.5 LET US SUM UP**

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Rights are social claims necessary for the development of human personality. These belong to the individuals and they provide conditions without which they cannot seek to be themselves. They are social: given by society and secured by state. Even the state cannot take them away from individuals. They reflect a particular stage of development of society. As society changes, so do the character and content of rights. Theories regarding rights reflect partial treatment about their meanings, origin and nature. The theory of natural rights is correct so long as it lays emphasis on the fact that rights are natural because they are in the nature of social claims. Likewise, the legal theory of rights speaks the truth in so far as it makes the state the guarantor of our rights. Rights are of numerous kinds. Those rights which are available to human beings include: right to life, equality, security of person and property, freedom, education, work, freedom of religion, to vote, to hold public office. Liberal democratic societies lay more emphasis on the personal and the political rather than economic and social rights. Socialist societies advocate the opposite arrangement of rights. Laski, as a liberal leaning towards the Left, considers rights essential for individual development, but grants economic rights followed by social and political rights. The UN Declaration of Human Rights provides for a list of basic rights available to human beings as human beings.

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## 6.7 ANSWERS TO CHECK YOUR PROGRESS EXERCISES

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### Check Your Progress 1

- 1) Your answer should elaborate that all claims are not rights.

### Check Your Progress 2

- 1) Your answer should highlight that all rights inherent to human beings are natural rights.
- 2) Highlight that rights are a class phenomenon and socio-economic rights have primacy over the political.

### Check Your Progress 3

- 1) Your answer should list and describe rights as given in Laski's '*A Grammar of Politics*'.
- 2) See the UN Declaration.