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INTRODUCTION TO POLITICAL THEORY

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————— *Editorial Board* —————

Dr. Mangal Deo

Dr. Shakti Pradayani Rout

Dr. Sudhir Kumar Parida

————— *Content Writer* —————

Dr. Mangal Deo

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E-mail: ddceprinting@col.du.ac.in
politicalscience@col.du.ac.in

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Introduction to Political Theory

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WHAT IS POLITICAL THEORY AND WHAT IS ITS RELEVANCE?

Dr. Mangal Deo
School of Open Learning,
University of Delhi

STRUCTURE

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1.1 OBJECTIVE

- What is politics?
- The different conceptual approaches on viewing politics.



1.2 INTRODUCTION

The word theory refers to a body of logically collected and analysed body of knowledge. And Politics as we know is about many things including relationships among individuals and groups and classes and the state, and state institutions like the judiciary, bureaucracy etc. So one definition of Political Theory given by David Weld sees political theory as a network of concepts and generalisations about political life involving ideas, assumptions and statements about the nature, purpose and key features of government, state and society, and about the political capabilities of human beings'. Andrew Hacker defines it as 'a combination of a disinterested search for the principles of good state and good society on the one hand, and a disinterested search for knowledge of political and social reality on the other'.

1.3 WHAT IS POLITICAL THEORY?

A comprehensive definition has been given by Gould and Kolb who defined political theory as a 'sub-field of political science which includes:

- (i) political philosophy- a moral theory of politics and a historical study of political ideas,
- (ii) a scientific criterion,
- (iii) a linguistic analysis of political ideas,
- (iv) the discovery and systematic development of generalisations about political behaviour'.

We can conclude that political theory is concerned basically with the study of the phenomenon of the state both in philosophy as well as empirical terms. An attempt is made to provide explanations, descriptions and prescriptions regarding the state and political institutions. Also of course there is an underlying theme of studying the moral philosophical purpose. The thinker Weinstein had put it very succinctly when he had suggested that political theory is basically an activity, which involves posing questions, developing responses to those questions and creating imaginative perspectives on the public life of human beings. the questions that are asked are like what is the nature and purpose of the state and why should we prefer one form of state over another; how do we judge the ends, aims and methods of political organisation; what is and should be the relationship between the state and the individual. Through out history political theory has been answering these questions. It has been regarded as important because the fate of man is dependent on the kind of system of rulers and the ruled that is achieved and whether it leads to united action for the common good.



1.4 POLITICAL THEORY AND POLITICAL THOUGHT

Political theory is sometimes synonymously regarded with political thought but it is important to understand they don't necessarily mean the same thing. Political thought is a generalized term which comprises all thoughts, theories and values of a person or a group of persons or a community on state and questions related to the state. Any person expressing his views whether he is a professor, journalist, writer, novelist, poet etc and of course if he is a politician that has a bearing on our lives and that is about the state and governance and related questions then he is engaging in political thought. His thoughts may or may not comprise a theory if it is not a systematic logical hypothesis advanced to explain historical and political phenomenon related to political rule of the state and governance etc. Political thought thus is always of persons or groups while political theory is a self-contained and self-standing explanation or speculation or theory attempting to answer questions and explain history and the predict likely events in the future. Of course this theory is always some individual thinker's creation. Barker had commented that while political thought is the immanent philosophy of a whole age, political theory is the speculation of a particular thinker.

1.5 POLITICAL THEORY AND POLITICAL PHILOSOPHY

Philosophy is all thinking really on anything and everything in search of the truth and wisdom. When this search is on political topics we call it political philosophy. Hence it may not necessarily have a theory to propose and that is the distinction between political philosophy and political thought. So while political theory is a part of political philosophy mostly political philosophy is much wider and need not necessarily be comprised of any theories.

Thus we can say political philosophy is the study of fundamental questions about the state, government, politics, liberty, justice, property, rights, law and the enforcement of a legal code by authority etc: what they are, why (or even if) they are needed, what makes a government legitimate, what rights and freedoms it should protect and why, what form it should take and why, what the law is, and what duties citizens owe to a legitimate government, if any, and when it may be legitimately overthrown or not. We often refer "political philosophy" to mean a general view, or specific ethic, belief or attitude, about politics that does not necessarily belong to the whole technical discipline of philosophy.

Political philosophy is often not concerned with contemporary issues but with the more universal issues in the political life of man. But a political theorist is looking at contemporary political life mostly and while he is interested in explaining the nature and purpose of the state and general questions like that he is also looking to describe and understand the realities of political behaviour, the actual relations between state and citizens, and the role of power in



the society.

While studying political science one gets the feeling political theory has to be supplemented by political philosophy. Otherwise, it appears barren and irrelevant.

1.6 POLITICAL THEORY AND POLITICAL SCIENCE

Political Science is a comprehensive subject or field of study of which political theory is only a sub-field. Political Science includes everything: political thought, political theory, political philosophy, political ideology, institutional or structural framework, comparative politics, public administration, international law and organisation etc. Some thinkers have stressed on the science aspect of political science and they suggest when political science is studied as a science with scientific methods political theory to the extent it is a part of political philosophy cannot be regarded as political science because whereas there is no room for abstract intuitive conclusions or speculations in political science, political philosophy relies on exactly those un-exact methods. Political theory is neither pure thought, nor pure philosophy, nor pure science.

Some Basic Characteristic of Political Theory

1. A political theory is generally the creation of an individual thinker based on his moral and intellectual position and when propounding his theory he is looking to explain the events, phenomenon and the mysteries generally of mankind's political life. The theory may or may not be accepted as true but it always can be regarded as one more theory. Generally we find the political theory of an individual thinker is put forward in a classic work by the thinker like Plato did in his Republic or Rawls in A Theory of Justice.
2. A political theory attempts to provide explanations on questions relating to mankind, the societies he formed and history and historical events generally. It also suggests ways of resolving conflicts and sometimes even advocates revolutions. There are also often predictions made about the future.
3. Political theory thus is also sometimes not only providing explanations and predictions but also sometimes actively influencing and participating in historical events particularly when they propose political action of a particular kind and that line of action is widely adopted. The great positive liberal thinker Harold Laski had commented that the task of political theorists is not merely of description but also of prescription on what ought to be.
4. Political theory is also usually discipline based and though the subject of study remains the same the theorist might be a philosopher, historian, economist, theologian or a sociologist etc.



5. Political theories are often also the basis for a whole ideology. The liberal theories became the basis for liberalism and Marx's theory became the basis for Marxian socialist ideology. A political theorist proposed by a thinker is usually always reflecting the political ideology of the thinker too. That is also the reason why when there are conflicts between ideologies it leads to debates about the theories underlying those ideologies.

Issues in Political Theory

The issues that have held prominence in political theory have changed over time. Classical and early political theory was mainly concerned with the search for a morally perfect political order and focused on questions like the nature and purpose of the state, the basis on which political authority should be used and the problem of political disobedience. The rise of the modern nation state and changes in the economic structure and the industrial revolution gave rise to new priorities and the focus shifted to individualism and liberty of the individual and his relationship to society and the state. Issues like rights, duties, liberty, equality, and property became more important. Gradually it also became important to explain the inter-relation between one concept and the other such as liberty and equality or, justice and liberty or, equality and property. After the second world war a new kind of empirical political theory emerged which studied the political behaviour of man and believed in making theoretical conclusions on that basis. Also the behavioural scholars created new issues for study often borrowed from other disciplines. Some of these issues are political culture and legitimacy, political system, elites, groups, parties etc. In the last two decades a number of different issues have emerged like identity, gender, environmentalism, ecology and community etc. Also there has been a resurgence of value-based political theory with a new focus on the basic issues of freedom, equality and justice. The traditional twin ways of looking at issues - liberal and Marxist - therefore is also changing.

1.7 RELEVANCE OF POLITICAL THEORY

We humans as social beings live together and societies where we share the resources, jobs and rewards. We are also individuals needing some basic human rights. The process of organising state and society therefore becomes important to maximize harmony and prosperity and to allow the circumstances for individual self-realisation. So to facilitate the unity and integrity of human societies or the collective needs of society political theory becomes important it tries to study and find solutions to problems in this process. The relevance lies in evolving various approaches regarding the nature and purpose of the state, the basis of political authority and the best form of government to practice, relations between the state and the individual in the context of his basic rights. Apart from this political theory also seeks to establish the moral criterion for judging the ethical worth of a political state and to suggest alternative political arrangements and practices. To sum up in brief the relevance



of political theory lies in the following:

- (a) In providing an explanation and description of political phenomenon
- (b) helping select the political goals and actions for a community and
- (c) helps in providing the basis for making moral judgments.

Also it has to be remembered increasingly at least in contemporary times states face challenges of poverty, corruption, over-population and ethnic and racial tensions, environment pollution etc. This is not to mention international problems like conflicts etc. Political Theory seeks to study the present and future problems of political life of the society and to suggest solutions for dealing with those problems. David Held has commented that the task of the political theorist is very great in its complexity because in the absence of systematic study, there is a danger that politics will be left to the ignorant and self-seeking people who are in pursuit of power.

Thus if one has to systematically think about the nature and purpose of the state and the problems of government while looking at the socio-political reality and keeping in mind the ideals and political philosophy, then one has to take the route of theoretically studying the problem. Thus political theory is relevant. Also studying political theory at an individual level makes one aware of one's rights and duties and helps one understand and appreciate the socio-political realities and problems like poverty, violence, corruption etc. Political theory is also important because it can go forward basing itself on the theories and propose the means and directions for changing society to establish an ideal society. Marxist theory for instance is an example of a theory which not only proposes the direction but also goes so far as to advocate a revolution for establishing an egalitarian state. If the political theory is sound and it can be transmitted and communicated to people then it can become a very powerful force for the advancement of society and mankind.

The Important Schools of Political Theory

The most important schools of political thought that have lasted in importance and have stood the test of time so to say are as follows:

1. Classical Political Theory
2. Liberal political Theory
3. Marxist Political Theory
4. Empirical Scientific Political Theory
5. Contemporary Political Theory

Classical Political Theory

The political theories that emerged starting from the 6th century B.C. and evolved through



the Greeks, Romans and early European Christian thinkers and philosophers is referred to as Classical Political Theories. Among the Greeks, Plato and Aristotle are the two thinkers who are studied and who have great influence till today. Classical political theory was deeply dominated by philosophy and the whole focus was on taking a holistic gaze searching for the most general of truths. So, there was no clear distinction between philosophical, theological and political issues and political science or thought was not separately recognised as a discipline as such. Political theory was concerned with probing into issues, asking important questions and serving as a sort of conscience keeper of politics. The underlying quest was to arrive at the best possible form of government. The state and government were also viewed as a tool for realising the moral goals of man and society and for promoting the good. Thus, the state was to serve as some sort of promoter to foster high moral standards among the members of the community. There had some debate about whether the individual good should be the priority or the common good. The common good was required as more complete than the private good of the individual. The classical tradition also sought to search ways for an ideal state and a stable system. The main questions that the classical tradition was asked was what is the best form of government? and who should rule and why? Also, how should conflict situations be resolved.

Liberal Political Theory

With the historical period referred to as Renaissance and Reformation in Europe which was followed by the Industrial Revolution, the dominance of the classical tradition came to an end. This new philosophical wave was led by thinkers like Hobbes, Locke, Thomas, Jefferson, Thomas Paine, Jeremy Bentham, J.S. Mill, Herbert Spencer and a host of other writers. The main thrust of the liberal tradition was the individual's rights and the state was merely regarded as a contract between individuals to benefit from the conflict resolution mechanism that a system of rule of law provides. The main aim of the state in the liberal tradition is to help individuals realise their fundamental inalienable rights. In fact, the liberal thinkers went so far as to propose that when the basic contractual relationship between the individual and the state is violated, the individuals have not only the right but the responsibility to revolt and establish a new government. Social control is best secured by law. The new liberal theories also dismissed the idea of common good and an organic community and instead advocated that the government should govern as less as possible for individual rights to reign supreme and free him from political, social and economic restraints as far as possible.

Marxist Political Theory

The fundamental changes that industrial revolution brought about caused inequality and a large class of impoverished industrial workers emerged. The basic liberal position that supported total economic freedom was challenged by Karl Marx and Engels and their followers who in the later half of the nineteenth century proposed what they called 'scientific



socialism'. Socialism predated the theory of Marx but he gave it a strong theoretical foundation. Marx offered a new way of looking at the history up to that time and suggested that the task of knowledge is not just to understand the world but also to change the social life of mankind for the better. For that he suggested a revolutionary path. He suggested that to win the basics of life for their emancipation the working class has to takeover the means of production and the means of production should be controlled by the state. This takeover will need to happen via a revolution he suggested because the upper classes will use the power of the state to crush any attempts for liberation and emancipation of the lower classes. Marx saw societies that liberal capitalism helped create as fundamentally unequal as a consequence of property concentration with a few families of fortune. Hence he wanted to create a society where "man shall not be exploited by man" and where each individual will have the full opportunity to develop his or her personality and potential. He also was the first major thinker to stress on the historical exploitation of the female gender and the need for women's liberation. The most important themes of Marxist political theory are class division, class struggle, property relations, modes of production, state as an instrument of class domination and revolution by the proletariat. Marxism also suggests that rights, liberty, equality, justice and democracy in a capitalist liberal democracy are really only enjoyed by the rich and properties classes because the state is controlled by the upper classes who use the institutions of the state as a tool for class exploitation. He believed real liberty and equality can only be achieved in a classless and stateless society. Thus whereas Liberal theory provided the theoretical basis for a capitalist free market system, Marxist political theory provided the basis for the establishment of a socialist state through revolutionary action.

Empirical-Scientific Political Theory

In America a new kind of political theory was developed particularly in the post second world war period that suggested relying on the scientific method (instead of philosophical) and base theories upon facts (rather than on values). Political Scientists at the Chicago University (known as the Chicago School) such as Charles Merriam, Harold Lasswell, Gosnell, David Easton, Stuart Rice etc. focused on studying politics in the context of behaviour of individual human beings as members of a political community. The task of political theory according to this new school of thought is to formulate and systematize the concept of science of political behaviour in which emphasis is placed on empirical research than on political philosophy. The behavioural scientists suggested a political theorist should clarify and criticise systems of concepts which have empirical relevance to political behaviour.

Behavioural schools differed fundamentally from all the previous schools because they suggested that the job of political theory is only to explain political phenomenon and extrapolate from that and predict the future. It is not to make philosophical and moral judgements. It is not at all to advocate revolutionary action. Thus political theory is not to



question or propose who rules, should rule and why but rather who does rule and how? . Or in other words it should not question the basis of the state but should be happy with the status quo, stability, equilibrium and harmony in the society. It should focus attention on the study of political behaviour of man, group and institutions irrespective of their good or bad character. Practical political theory is not only concerned with the study of the state but also with the political process.

Contemporary Political Theory

Since the 1970 the sole focus of the empiricists and behavioural scholars on science, value-free politics and methods came under criticism and lost popularity because it failed to address pressing political and social issues. So there has been a revival of interest in political theory in USA, Europe and other parts of the world. Thinkers like John Rawls, Robert Nozick, Habermas etc made noteworthy contributions and took up basic issues like liberty, equality, justice etc again. Theory again regained the status of a legitimate form of knowledge and enquiry. Also on the question of what exactly is science there emerged many views that challenged the old notions. Further many scholars opined that social sciences throw up distinctive problems that cannot be grasped by scientific models. This is because perceptions and resulting actions of men vary and the same phenomenon can be viewed differently by different minds who may interpret the social issues differently. Hence it is difficult to do an objective scientific analysis of social issues and events with scientific rigor.

The publication of John Rawls 1970 book *A Theory of Justice* was important because he examined basic issues like rights, duties and obligations with great brilliance and offered a justification of civil disobedience, and with an original enquiry into intergenerational justice. Scholars like Peter Laslett, John Pocock, Quentin Skinner and John Dunn were called the 'new historians' of political thought. Juergen Habermas and the Frankfurt School gave important theories and Ronald Dworkin focused on the philosophy of law. David Held has opined that contemporary political theory has four distinct tasks: Philosophical: to focus on the fundamental philosophical positions of the normative and conceptual framework; Empirical: to empirically understand and explain the concepts; Historical: to examine the important concepts in the historical context; and Strategic: to assess the feasibility of moving from where we are to where we might like to be.

1.8 WHY STUDY HISTORY OF POLITICAL THOUGHT?

As has been mentioned above political thought concerns the state and its policies and decisions and activities. the various terms political science, political theory, political thought and political philosophy have not been used consistently in the same sense by scholars at all times. They have even been used as synonyms popularly. Political thought is the most general term of all these, which can be easily used to refer to the whole discipline easily and if we do



that then political science and political philosophy become specific sub-categories. Also political thought also accommodates ethics and moral philosophy, theology, role of politics in human development and the dignity of political activity.

On the question which is the best way of studying political thought, Gould and Thursby have opined that there are two ways to study political thought.

The first is to list the all the political thought considered to be classic such as Plato's Republic, Aristotle's Politics, Machiavelli's Prince, Hobbes' Leviathan, Locke's Two Treatises on Government, Hegel's Philosophy of Rights, Marx's The Communist Manifesto, Rawl's A Theory of Justice and to make a note of the constant questions and approaches in them like: What is the meaning of freedom and equality?, Why men should obey the government at all?, What are the ideals and goals of a state and what is the meaning of democracy? etc. The problem in this method one can't not easily decide what should be classified as a classic.

The second method is of general philosophical methodology and applying it to political matters which means picking the central concepts problems, methods, questions etc. from the classics and adding to that list important omissions if any. The items selected should then be arranged in an order from general principles to specific ones on the basis of importance. That way a coherent and comprehensive general account of political thought can be built.

The study of any social science is impossible without an understanding of the historical evolution of the subject. The political institutions and systems of political behaviour which we observe today are a result of evolution of centuries. A political theorist needs to study history to understand this evolution. He does not need to study the dates and colorful historical details of kings and princes and the battles they fought and the lives they led but rather the growth and changes in the economic structures, in technological capabilities and the impact that had and in political institutions and ways of governing. Social classes, political power and economic processes do not emerge overnight and cannot be understood by examining them in isolation in their contemporary settings. One needs to study the history of political thought to understand the evolving relationships between man, society and political authority and indeed the popular perceptions of those relationships through history. The study of the views and theories of past political thinkers enables one to go beyond the dominant contemporary political orthodoxies and draw intellectual resources from the past. A reflection on the thoughts of past thinkers provides a guideline to actual theorizing. Political theories thus emerge not from nowhere but is constructed by building, expanding and developing the vocabularies of the past author's texts. This also enables easy comparison and judgement between past and contemporary works.

Ideology has been inseparable from political thought and proceeding historically it has been possible to build theories that are supportive of a particular ideology. Of course history can be



both used and misused but it has been always used to buttress theoretical constructions. For instance the same history of Europe led Marx and Engel to support their arguments that the political history of mankind is a history of class struggle but the liberal thinkers saw it differently and some like Burke and Tocqueville glorified the past and saw it as an age of harmony, civility and ordered liberty.

Whatever the ideological pre-dispositions a study of the history political thought allows for evaluating the social and economic circumstances in which the political institutions arose and maintained themselves. Without a sense of history political theory cannot be constructed because it would then not take into account the full range of human social behaviour. Taking the historical route often throws up patterns and order for the theorist to discern.

Another reason to study the historical development of political thought is to examine if the political thoughts of a particular time influenced the actions of men and if so how. Some thinkers like Plato and Marx have argued that ideas and philosophical thoughts have little no effect on the conduct of men in power. But there are other thinkers who have argued that the history of political thought and the history of political action are quite related and the thoughts of thinkers do significantly influence actual political action.

The reverse - that is whether political thoughts are influenced by political events and historical circumstances is equally important and another reason for studying from the historical point of view. It has been argued for instance that the thoughts of Plato were influenced by a decline in the moral standards of the city-states and that of John Locke by the Glorious revolution and that of Marx by the economic inequality created by industrial capitalism. Thinkers are also men of their times and are influenced by the events and circumstances of their times. But the lasting value of their theories only is only there if it points out at some general truth which can transcend societies and classes and ethnic communities. For instance the political thoughts of Plato, Aristotle, J.S. Mill or Marx throw up principles, which often have universal value over time.

Social sciences like Political Sciences and Thought is meant to improve our understanding of the world and history is a part of social sciences. Historical view is essential to create theoretical constructions of human life and social phenomenon that transcends time. We need to ask though while studying a theory from the past (which inevitably drew on the historical circumstances present at the time the theory was proposed) what meaning has political thought in the contemporary world that we live in. In answering that question we are able to test the lasting validity of the theory. But it has to be realized ultimately the history of political thought is important because the central theme is timeless. Neal Wood while commenting on the importance of studying the classical texts of political thought has commented:

‘...these texts reflect and comment upon that nature of the Western state with all its blemishes



and deficiencies as well as benefits. Some of the texts call for radical recognition of state, others for its reform and in so doing grapple with fundamental social and political problems which we share with past. Whether we like it or not, these works have indelibly stamped our modern culture and the world today’.

1.9 SELF-ASSESSMENT QUESTIONS

1. What is political theory?
2. Discuss the relevance of political theory.
3. Why do we need to study political theory? Rajamandala theory. Do you think it is relevant in the contemporary times? Comment.

1.10 References

- Bhargava, R. Acharya, A. (2008) *Political theory an Introduction*. Perison Long Man New Delhi.
- Gaba, O.P. (2019) *An Introduction to Political Theory*, Mayur Paperback, Delhi.
- Kumar Sanjiv (2019) *Understanding Political Theory*, Orient Blackswan, New Delhi
- Jain, M.P. (2019) *Introduction to Political Theory*, Book age publication, New Delhi.
- Hampster-Monk, A History of Modern Political Thought



Unit-2

CONCEPTS: LIBERTY, EQUALITY, JUSTICE, RIGHTS

Dr. Mangal Deo

School of Open Learning,
University of Delhi

STRUCTURE

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2.1 OBJECTIVES

- Liberty-The aim of this section is to introduce the student with the concept of liberty, different notions, and types of liberty; to make the students to exercise liberty without restricting the liberty of others.
- Rawls views on Justice
- To discuss about Equality of Opportunity vs. Equality of outcome
- To discuss about Positive and Negative rights

2.2 INTRODUCTION LIBERTY

The term liberty means freedom. Freedom can be understood in different ways i.e. freedom of speech, freedom to move, freedom to practice profession of one's choice, freedom to practice and propagate religion of one's choice. In short freedom means absence of any kind of restrictions, where a person can do whatever he/she wishes to without any hindrance.

In order to understand freedom in a better way we can take some other examples like desire of bird in a cage to fly in the open air, desire of the prisoner to set himself free from the prison and lead a free life, desire of patient to go home who is admitted long time in a hospital for treatment. Freedom also implies non-interference in one's life in any form word or action. So we can say liberty has different meanings to different people. The term liberty is derived from the Latin word *liber*, which means "absence of restraints". In other words, liberty implies freedom to act without being subject to any restraint. Liberty signifies "a power or capacity of doing or enjoying something worth doing or enjoying."

According to Hobbes, 'By liberty is understood...absence of external impediments, which impediments may oft take part of man's power to do what he would do'. According to Hegel liberty consists of obedience of law. Rousseau said that liberty consists in the obedience of General will. J.S. Mill describes, 'The only freedom which deserves the name is that of pursuing our own good in our own way so long as we do not deprive others of theirs or impede their efforts to obtain it.'

Laski explains liberty as "Absence of restraints upon the existence of those social conditions which in modern civilization are a necessary guarantee of individual happiness".

2.2.1 Scope of Liberty

One of the major issue in liberty is adjustment of claims between individuals and society



(community). Here State is plays an important role because it is the instrument or agency for regulating their relations. If the claim of the individual is stretched to an extreme in utter disregard of the interest of society, liberty would be reduced to 'licence'. On the other, if liberty of the individual is increasingly restricted in the supposed interest of society, the result would be an unconditional submission to authority, hence the loss of liberty, it is therefore, essential to draw a distinction between liberty and licence on the one hand, and to fix the proper frontier between liberty and authority, on the other.

2.2.3 Liberty and Authority

Liberty of the individuals has to be restricted by a measure of equal liberty to be enjoyed by others. In other words, one man's liberty should not become an obstruction in the enjoyment of liberty of others. As liberty is demanded for a man as a 'rational being', it follows that liberty is meant to enable men to pursue 'rational objects' or 'ideal objects'. If they do so, each individual shall pursue his happiness in consonance with the happiness of society; and individual's good will become an integral part of the social good. In such a perfect state, no regulations would be necessary. But since, in the real world, individuals are not perfect-they are only capable of perfection-the regulation of liberty becomes necessary to safeguard liberty itself. Barker has further observed: Liberty within the State is thus a relative and regulated liberty: it is the common measure of liberty which is possible for all, as determined and defined (i) by the need of each to enjoy similar and equal liberty with others; (ii) by the need of all to enjoy the specific liberty of realizing specific capacities.

This view of relative and regulated liberty does not dismiss or dilute the essence of liberty. On the contrary it provides for a more substantive foundation thereof. As Barker has elucidated: A relative and regulated liberty, actually operative and enjoyed, is liberty greater in amount than absolute liberty could ever be – if indeed such liberty could ever exist, or ever amount to anything more than nothing at all.

Regulation of liberty implies the recognition of authority of the state over the individual. If the liberty of the individual cannot be permitted to be absolute, can we allow the authority of the state to become absolute? Thus, the conflict between liberty and authority is no less grave than the conflict between liberty and license. In other words, if we deny absolute liberty to the state because no state on earth is perfect. The conflict between liberty and authority has remained a burning issue in political theory. D.D. Raphael has illustrated: Most political theorists recognize that individual liberty and State authority conflict with each other, and that a balance has to be struck between them and the values they represent. Some, like Hobbes, are prepared to say that liberty must be severely limited to make way for the benefits of State authority. Other thinkers like J.S. Mill and Locke think that State authority should be markedly limited so as to leave as much room as possible for liberty.

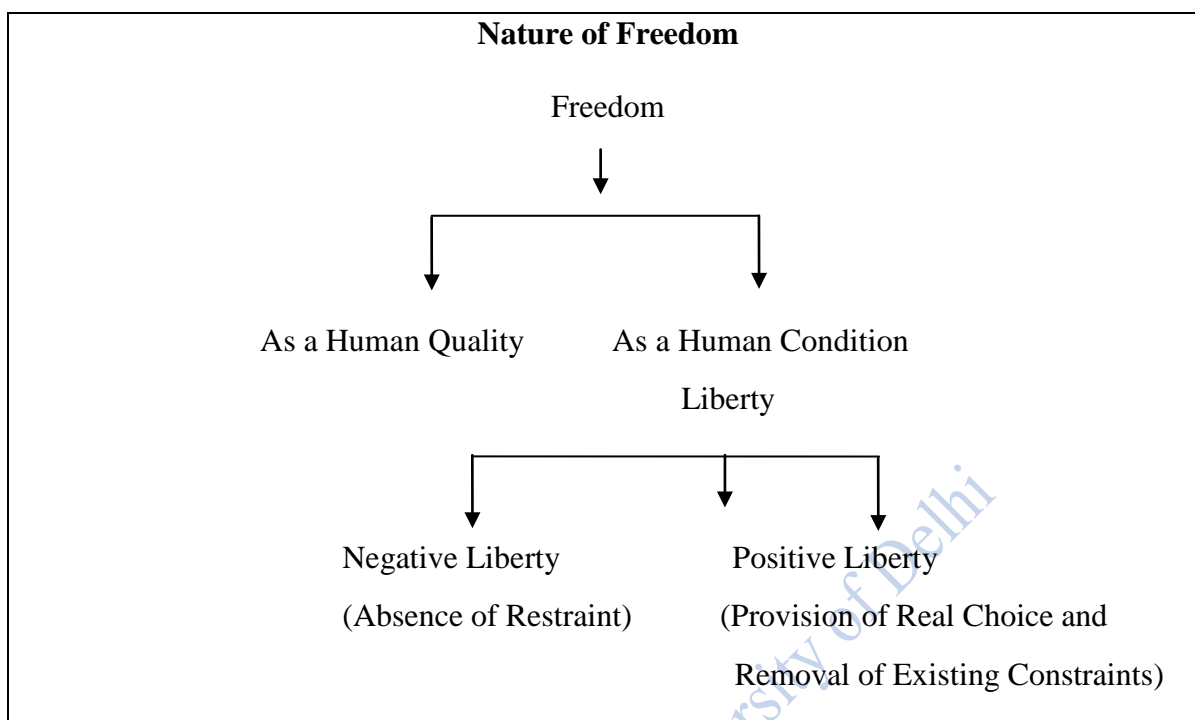
Whatever be the situation, limitations on the authority of the State have to be laid down to



make authority more meaningful with reference to its social purpose. A State may possess unlimited legal powers. For instance, the British Parliament is regarded as legally omnipotent. But in the real world, no State can afford to exercise unlimited powers. Raphael clearly stated that: no state has unlimited practical power to make any law that it pleases, even though it may possess unlimited legal powers. A legislature that has any sense and that wants to remain in office will pay more regard to political than to legal possibilities, to what it can effectively do than to what it may legally do.

As State makes, law; it has the power to enforce that law by coercion. In other words, the law is backed by sanctions; the state is free to use the methods of compulsion. However, compulsion comprises a physical weapon, not a moral weapon which would not only more effective, but more conducive to the justified if it is backed by moral support and legitimacy instead of mere force. Legitimacy denotes the support extended by the people to the state and its law out of their moral beliefs and values.

Legitimacy comes from the people. A State is legitimate if people believe that it is necessary for them and that its action is lawful and valuable to society. As long as its legitimacy is unquestioned, the State will rarely need to use force. But if its legitimacy is widely questioned, the State is in dangerous situation. A regime is in serious trouble if the people believe that its military is illegitimate, its police brutal, and its courts unfair. It may have power- the ability to get its orders obeyed despite widespread opposition-but it does not have authority of State or law would prove most effective only when most people accepted it on moral grounds. When most people recognize a moral obligation to obey law, they would be acting from a moral motive, and not under compulsion.



Source: O.P. Gauba, "Political Theory and Thought", p.5.4

Positive Liberty: During the latter half of the 19th century, a positive concept of liberty developed. We can find it in the writings of Rousseau, Kant, Hegel, T.H. Green, Bosanquet,

2.2.4 Various Notions of Liberty

Barker and Laski. Kant said that there are higher and lower selves in an individual. Freedom comes when an individual subjects him/herself to the dictates of universal reason. He refused to accept the free will concept and regarded man/woman as a rational and self-conscious creature. Laski, Hobhouse and MacIver were of the view that, "Liberty is good, but to be free to do undesirable things is to enjoy no liberty, but 'licence', and that is bad". John Locke and Adam Smith regarded every law as involving a decrease in liberty, whereas Green and Laski desired to reform society through the agency of laws. According to them, liberty does not mean "absence of restraints, it rather signifies "an opportunity" for you to do something which is worth doing. Laski explains, "by liberty I mean the eager maintenance of that atmosphere in which men have the opportunity to be their best selves"

Views of Laski

Laski says: "By liberty I mean the eager maintenance of that atmosphere in which men have the opportunity to be their best selves. Liberty, therefore, is a product of rights...Without rights there cannot be liberty because without rights people are subject to law unrelated to the needs of personality. Liberty therefore, is a positive thing. It does not merely mean absence



restraint". He criticized Mill's view of liberty, he maintained: "Liberty thus involves in its nature restraints, because the separate freedoms I use are not freedoms to destroy the freedoms of those with whom I live:" Laski give importance to the relationship of the individual's liberty with society. Personal liberty cannot be enjoyed in isolation from society. Laski states maintains that liberty should not be left at the mercy of the State because "...in this context can be called to account; and it should always be so called to account when it invades rights". Laski supports the positive concept of liberty, he is suspicious of governments and does not surrender liberty to the State. He says, "...governments may in fact invade liberty even while they claim to be acting in the common interest...Liberty, therefore, is not merely obedience to a rule" . Laski differs from the idealist view of liberty that liberty lays merely in obedience to the laws of the State.

Laski associates liberty with the availability of opportunities for the development of personality. He says, "...the freedoms I must possess to enjoy a liberty are those which, in their sum, will constitute the path through which my best self is capable of attainment...Freedoms are, therefore, opportunities which history has shown to be essential to the development of personality". Laski talks of three kinds of liberties- private, political, and economic-are essential to the development of the human personality. Private liberty is negative and it"...is thus that aspect of which the substance is mainly personal to a man's self. It is the opportunity to be fully himself in the private relations of life". Defining political liberty he says that it, "...means the power to be active in affairs of State. It means that I can let my mind play freely about the substance of public business". He mentions two conditions that are required for political liberty to be real. These are education and the provision of an honest and straightforward supply of news. "A people without news is, sooner or later, a people without the basis of freedom". Laski realized the importance of right to information which is being demanded by the fourth generation of rights. He defines Economic liberty as "...security and opportunity to find reasonable significance in the earning of one's daily bread...I must be safeguarded against the wants of tomorrow". In order to uphold economic liberty he pleads for democracy in industry. Laski describes about the nature of three kinds of liberties -Private liberty is mainly a negative thing, whereas political and economic liberties need some socio-economic conditions for their fulfilment, and are positive in nature. Positive and economic liberties are meaningless without the conditions required for their realization. The responsibility of creating these without the conditions required for their realization. The responsibility of creating these without the conditions lies with the government.

Laski mentions positive conditions required for the realization of liberty. They are as follows:-

1. The absence of Special Privileges: Freedom cannot exist in the presence of special privileges. The special privileges leads to frustration, the habit of creativeness is lost



due to this and people lose the ability to realize their own good. Laski says, that “...those who desire the good of all begin by abolition of special privileges...Special privilege is incompatible with freedom because the latter quality belongs to all alike in their character as human beings”. Thus liberty is possible only when equality is there.

2. The Presence of Rights: Liberty can only be enjoyed in the presence of rights. There cannot “...be liberty where the right of some depends upon the pleasure of others”. It is the duty of the state to maintain equal rights.
3. Responsible Government: The government must be responsible. Only a responsible government can create the socio-economic and political conditions required for the realization of rights and liberty.

Views of Macpherson

Macpherson call positive liberty as ‘developmental liberty’. He says, “...the division will be better marked if we change the name of positive liberty to developmental liberty”. Macpherson defines “positive liberty to act as a full human being. A man’s positive liberty is virtually the same as what I have called a man’s power in the developmental sense”. According to Macpherson liberty means availability of life and labour to each member of society. For this he suggests that the capitalist mode of production, based on private property, should be replaced by some other system. Liberty is not negative liberty because in such a case the liberty because in such case the liberty of one individual can destroy the liberty of another individual. He says, “...since each individual’s liberty must diminish or destroy another’s the only sensible way to measure individual’s liberty is to measure the aggregate net liberty of all the individuals in the society.” So the measurement of liberty is the total liberty. However, Macpherson does not accept the division between negative and positive liberty and maintains that negative liberty is absence of any extractive power.

Important Points of Positive Liberty

1. Liberty is not the absence of restraints, rather it is the presence of those socio-economic and political conditions without which it cannot be realized.
2. The object of liberty is the development of man as a social being.
3. Without proper opportunities and social conditions liberty cannot be realized.
4. Rights are necessary for liberty and it is related to justice, morality and equality.
5. The liberties of an individual must correspond with social welfare.
6. The duty of the State is to create positive conditions for the realization of liberty and for this the State can limit the liberties of some individuals. However, the government must be a responsible government. The State is not viewed as an enemy of personal liberty.



7. Liberty is social requirement of social man and it is not given to an asocial or anti-social beings.
8. Only in a welfare State can positive liberty exist.

Views of J.S. Mill (1806-73)

Mill supported the concept negative liberty together with the support for the support for the positive view of the State. Mill was writing in the later half of the 19th century when negative liberties was vehemently opposed. He was writing in the age when the "...extending suffrage conferred a measure of power on classes who had something to gain from the legal interference in daily affairs, and...it was accepted that State had a legitimate and positive part to play in promoting welfare". In this circumstances Mill opined that there may be a possibility of 'tyranny of the majority' and the liberty of the minorities may vanish. He says that the advent of democracy does not mean that the liberty of individual will be protected. Majorities may take away the liberties of the minorities. Therefore, the liberty of the individual should be protected against the interference of democratic States. He says: "The notion, that the people have no need to limit their power over themselves, might seem axiomatic... such phrases as 'self-government' and 'the power of the people over themselves', do not express the true state of the case. The 'people' who exercise the power are not always the same people with those over whom it is exercised; and the 'self – government' spoken of is not the government of each by himself, but of each by all the rest. The will of the people, moreover, practically means the will of the most numerous or the most active part of the people... precautions are as much needed against this as against any other abuse of power. The limitation, therefore, of the power of government over individuals loses none of its importance when the holders of powers are regularly accountable to the community...and in political speculations the tyranny of the majority is now generally included among the evils against which society is required to itself be a tyranny of the be on its guard". He maintained that even social collectivity or society may itself be a tyrant and may tyrannise over the separate individuals who compose it. Here lies the value and worth of Mill's individualism, and he is afraid of the restraints of both the democratic State and society, so far as the individual's liberty is concerned.

Negative Liberty: Negative liberty means, "absence of external restraints". The supporters of Negative liberty include John Locke, Adam Smith and Herbert Spencer. They were of the opinion that the sphere of State activity should be restricted to the narrowest possible limits. According to John Locke, the rights to life, liberty and property are the natural rights of man. The Legislature or the Executive cannot be allowed to impose restrictions on these rights. Adam Smith propounded the theory of "laissez faire", i.e. government should not interfere with business, finance or people's economic conditions. Herbert Spencer also upholds the same view.



J.S. Mill describes that man's actions are of two kinds, i.e. "self-regarding" and "other-regarding". The self-regarding actions have an effect only on the doer, whereas other regarding actions have an effect on other's existence. No individual can be granted absolute freedom regarding activities which have an effect on other's existence. For example, these acts affect other's freedom: obscene behaviour, talking nonsense under the influence of liquor and committing theft etc. Society would be justified in stopping others from doing such deeds. But there are other activities for which complete freedom must be granted to the people. The food and drinks one takes, the religion one follows and one choice of profession are private affairs of an individual. According to J.S. Mill, "over himself, over his own body and mind, the individual is sovereign".

Negative liberty indicates the "zone of non-intervention". According to F.A. Hayek, "the individual has some assured private sphere... with which others cannot interfere". According to them, "that government is the best which governs the least".

The supporters of Negative Liberty believe that:-

- (i) More the laws, less is the liberty available to the individuals;
- (ii) Freedoms of thought, speech, religion and property should never be restricted;
- (iii) 'Franchise' should be universal;
- (iv) The sphere of State activity should be very limited.

Views of Isaiah Berlin

According to Berlin: "Political liberty in this sense (negative) is simply the area within which a man can act unobstructed by others". The absence of coercion is the basis of liberty. He says: "You lack political liberty or freedom only if you are prevented from attaining a goal by human beings. He put forth that if a man/woman is free but unable to enjoy his/her freedom, the fault lies not in the concept of liberty but with man/woman. If a man/woman is free to purchase bread or have or tour of the world and is unable to do so because lack of money, it is his/her fault-he/she incapable of enjoying it. He says: "If my poverty were a kind of disease, which prevented me from buying bread or paying for the journey, or getting my case heard, as lameness prevents me from running, this inability would not naturally be described as a lack of freedom, least of all political freedom". Berlin supported the view propagated by Helvitius "The free man is a man who is not in irons, nor imprisoned in a jail, nor terrorized like a slave by the fear of punishment: it is not lack of freedom not to fly like an eagle or swim like a whale". Berlin says: "by being free in this sense (negative) I mean not being interfered with by others. The wider the area of non interference, the wider is my freedom".

Berlin further explains that there is no logical relationship between liberty and democracy as a man/woman may be left by a dictator than by a democratic government. He says: "Freedom in this sense (negative) is not, at any rate logically, connected with democracy or self-



government may provide a better guarantee of the preservation of civil liberty...But there is no necessary connection between individual liberty and democratic rule”.

Berlin is of the view that liberty is something different, and the socio-economic conditions necessary for the fulfilment of liberty are altogether different. He refuses to accept the relationship between liberty and the conditions required for the realization of liberty. He says: “Thus the distinction between freedom and conditions of freedom is not a mere pedantic distinction, for, if it is ignored the meaning and value of freedom of choice is apt to be downgraded. In their zeal to create social and economic conditions in which alone freedom is of genuine value, men tend to forget freedom itself”. He does not accept the relationship between liberty and justice, and liberty and equality. If there is poverty in the society and no coercion at all, there may be injustice or inequality in the society, but liberty is very much present there. So the absence of the necessary socio-economic conditions for the realization of liberty does not mean the absence of liberty itself. In brief we can say Berlin maintains liberty is the absence of any restraints or interference in the personal affairs of an individual.

Views of Milton Friedman

Friedman, a neo-liberal (libertarian), supports negative liberty and finds connection between liberty and capitalism. He is of the opinion that without capitalism there cannot be freedom in a society. According to him, political freedom means, “...the absence of coercion of a man by his fellowmen”. In the present century with competitive capitalism, which is based on free market has given way to regulated economy and State controlled capitalism. Friedman is pleading for a free capitalistic economy as a pre-condition for freedom. He favours negative State and the regulations of the economy by it are improper. In the earlier stage political freedom was demanded for the development of capitalism, but today Friedman is demanding free capitalism for the maintenance of the political freedom. He supports that competitive capitalism is necessary, though not sufficient, condition of political freedom and “...history suggests...that capitalism is a necessary condition for political freedom”. He considered socialism as the main enemy of personal initiative and political freedom because in such system economic and political powers are concentrated in one hand. He attacks the positive State and the positive view of liberty because state interference in economic matters is harmful to the economic liberty of individuals and economic development of society. By economic liberty he means availability of free capitalist market economy. He does not associate liberty with human values like justice and equality.

Friedman’s views are based on the assumption that free-market capitalism has got a capacity to survive, whereas the fact is that the great depression of 1929 and great financial meltdown of September 2008 in capitalist economies have proved beyond doubt that this assumption is baseless in the present century.

Important Points of Negative Liberty



- i) Liberty is a negative thing- the absence of restraints.
- ii) An individual is rational and only he/she knows what is his/her interest. For the development of his/her personality he/she needs certain liberties. They has a personal sphere of their own, distinct from that of the society.
- iii) Each individual should be given personal liberty with regard to their personal affairs and the society or the State must not interfere with it. Among these personal liberties, the liberties of thought and discussion, of association and assembly are the most important.
- iv) There is no conflict between the personal interest and social interest and by serving his own interests an individual also serves the social interest. Personal liberty is a precondition of social progress.
- v) Leaving a man free in his personal affairs will lead to personal and social development. Personal development is in harmony with social development.
- vi) Those actions of individual which influence the society can be controlled by the State through the laws. But this interference of the State should be minimal.
- vii) The laws of the State cannot take away personal liberty, but can only regulate it for overall social welfare.
- viii) Democratic government is not a sufficient guarantee of personal liberty as it may lead to tyranny of the majority or a collective mediocrity and may crush minorities.
- ix) There is a difference between liberty and necessary socio-economic conditions for the realization of liberty. Liberty may be against justice and equality and in a dictatorship of man may have more liberty than in a democracy.

Comparison of Negative and Positive Liberty	
Negative Liberty	Positive Liberty
1. Liberty without any restrictions	Liberty with reasonable restrictions
2. It gives more weight to the personal aspect and regards liberty as inherent in the personality of an individual.	It looks at in the social context and maintains that it is based on the socio-economic and political conditions of society.
3. It assumes that the State in an enemy of personal liberty.	It assigns responsibility of creating the positive conditions for the realization of liberty to the State.
4. It emphasizes the personal and political aspects of liberty.	It emphasis the social and economic aspects of liberty.



5. It does not associate it with rights, equality, morality and justice.	It regards liberty, equality and justice as mutually related.
6. It supports the State with the minimum functions.	It supports State with welfare functions.
7. It is based on the market concept of society-that is composed of atomized individuals having natural liberty	It emphasizes the social aspects of liberty.
8. Liberalism supported negative liberty	Socialism supported positive liberty and stood for the abolition of private property.

Source: M.P. Jain, "Introduction to Political Theory, p.128

Marxist Concept of Liberty

Marxist concept of freedom is different from the liberal-individualistic view. According to the Marxist thinkers, welfare policies might lessen the misery of the masses, but they do not change the exploitative character of Capitalism. Freedom is not possible only when means of production and distribution-land, factories, mines, banks, railways etc.-are all owned by society as a whole, i.e. State. There should be distributed as best possible amongst people as a whole. The Liberal democrats believed in people having a lot of economic freedom, the Marxist held that abolition of private property was necessary to ensure freedom and equality of opportunity.

Marxism analyses socio-economic and political problems and concepts on the basis of dialectical materialism. Personal freedom is not something abstract and asocial. During 18th and 19th centuries the liberal supporters of liberty based their concept of liberty on the alienated individual, and personal, political and religious liberty were demanded liberal writers were supporting the capitalist system, and on the other way were giving the slogans of liberty, equality and fraternity. The development of capitalism resulted in a society where oppression, exploitation, unemployment and starvation were dominant and liberty was not available to a vast majority. Marx and Engels criticized the inhumanity of the capitalist system and gave a new materialist interpretation of human essence, purpose and value. They interpreted rights, freedom and morality on a scientific basis and emphasized all round and harmonious development of man. All these ideas are known as 'Marxian Humanism' and are associated with Marx's philosophical anthropology or the theory of man. The Marxist concept of freedom is associated with concepts like self-realization, self-development, self-development, self-fulfilment, and self-creativity. Any fruitful discussion on Marxist



concept of freedom has to consider Marxian view of man in its multi-dimensional aspects and his relationship with self, nature and society. Marxist concept of freedom has been divided into the following parts:-

- (i) Critique of man and his freedom in bourgeois societies: Marx presented a sound and scientific criticism of the position of man and woman and his freedom in bourgeois societies. He explains that bourgeois revolution has politically emancipated people and their freedom can be achieved only by abolishing private property and establishing social ownership of the means of production. Marx borrowed the concept alienation from Hegel and Feuerbach gave an altogether humanity in the capitalist system. The system of private property separates man from their human essence. The inhuman power of private property separates man from his humanity and instead of real man what is found in such societies is a slave, a slave of his property (rich man) and a slave of his property and slave of his physical needs (poor man/woman). A worker such a society gets alienated from his/her labour, from nature and from their fellow beings and becomes an animal-like commodity in the capitalist market. Alienation is a rotten product of capitalist socio-economic and political system and it dehumanizes man/woman. Marx concludes that private property is the enemy of humanity, and freedom- a human quality- is not possible along with it.
- (ii) Views on human essence, purpose and value: The understanding of philosophical concept of man/woman is the first requirement for understanding any problem of man/woman. Marx scientifically analysed the then prevailing different views of people anthropological, spiritual, idealist, individualist, mechanical and materialist pointed out the weaknesses of these and then gave his own view. "The-Marxist social thought relied theoretically on the concept of man in the abstract, man in general. Divorced from all socio-political, economic, legal and other relation, and hence from political activity". Marx gave a different interpretation to man/woman as a creating social-being. Marx said, human essence"...is the totality of the social relations". He further said that: "The essence of the individual person' lies not in his beard, not in his blood, not in his abstract physical nature but in his social quality". Human beings are social animal and cannot be studied under isolation. Mere existence is not their existence in social nature. The purpose and values of man are closely associated with human existence. Non- Marxist ideologies have insisted that the purpose of man is abstract truth and virtue (idealism), personal happiness (individualism), achievement of salvation or spiritualism (religion), etc.
- (iii) The meaning of freedom: Freedom and necessity: Marxism does not regard absence of restraint as freedom, nor does not it accept that the personal and political freedoms are the highest ideals and other freedoms are based on these. It defines freedom by associating it with essence and purpose of man. Explaining the Marxian view of freedom, Huberman and Sweezy: "Freedom means living life to the fullest-the



economic ability to satisfy the needs of the body in regard to adequate food, clothing and shelter, plus effective opportunity to cultivate the mind, develop one's personality, and assert one's individuality. Similarly, Petrosyan says: "Marx's understanding of freedom implies activity aimed at creating real conditions for the free all-round development and flowering of man's individuality."

- (iv) Freedom and praxis (purposive social activity): Praxis means social activity of man. Marxism regards knowledge of objective law as the necessary condition for freedom, but this alone is not sufficient. Freedom can be achieved by revolutionary social activity (Praxis), based on the knowledge of objective laws of nature and society. Knowledge makes possible the mastery of man over nature and society, but without man's revolutionary social activity this knowledge is useless. Engels stresses that "Freedom, in the sense of the laws of nature and society not only come as a result of practical revolutionary activity based on such knowledge of the laws of historical development".
- (v) Freedom as a class concept: Marx describes that in a class divided society freedom will mean different things to different classes. For the owners of the property it will mean freedom of private property, of profits, of free contracts, of employing someone or removing them from their exploitation and bad working conditions. Freedom of one class becomes the bondage of another class. Thus, freedom does not have a universal character in a class divided society. Giving an example of Huberman and Sweezy "The shepherd drives the wolf from the sheep's throat, for which the sheep thanks the shepherd as his liberator, while the wolf denounces him for the same act, as the destroyer of the liberty...Plainly, the sheep and the wolf are not agreed upon the definition of the word liberty". Similarly Claudwell writes, "...bourgeois social relations alike give rise to these two extremes, the freedom of the idle bourgeois and the unfreedom of the proletarian worker...The bourgeois could not enjoy his idleness without the labour of the worker...thus the liberty of the few is in bourgeois social relations built on the unfreedom of the many".
- (vi) Freedom, where and How?: According to Marx freedom can be available in the free atmosphere of a free society. Free society will be a classless society in which everyone will be free from exploitation from his fellow beings. The wall of private property will not remain between man in the society and man can live in the society with his true essence, purpose and values. Freedom means multi-dimensional development of social man and a free socialist society provide ample opportunities for this. Here alienation between man and his nature, society and his labour will come to an end and man will not be dehumanized. There will not be a gap between his essence and existence. Marx says, "Communism" will lead to reintegration of his personality, to man to return to himself his own human essence or in other words, to the elimination of all form of all form of human alienation, to elimination of the



contradictions between essence and existence to the all round development of man as a person and individual”.

Evaluation and Main Points of Marxian Freedom

- The issue personal liberty is associated with Marxian humanism.
- Man's essence is the totality of social relations. In a class-divided society based on private property, man is alienated and his existence contradicts his essence. In such situation the question of freedom does not arise.
- Human freedom should be considered in the totality of social relations and with due reference to man's essence, purpose and values.
- Freedom means availability of conditions for self realization and self-realization and self-fulfilment. It mean's multi-dimensional development as a social being.
- There is nothing like will of man as there are certain objective laws of nature and society (necessity) which exist independently of human will and the free will of an individual is restricted by these laws.
- Man can realize freedom having scientific understanding of these objective laws. Thus, scientific knowledge is the necessary requirement of freedom.
- On the basis of scientific understanding, there should be revolutionary social activity (praxis) because without changing society and nature, freedom is not possible.
- In a class divided society the freedom of owners of property is built upon the unfreedom of the property less. So freedom in such a society has a class future.
- Freedom to all can only be available in a free society man gets free socio-economic conditions for free development of his personality.
- Communist society can be established by a socialist revolution and the struggle for socialist revolution is a struggle for freedom.

2.2.5 Various Dimensions of Liberty

- (i) **Civil Liberty:** It includes Protection of life, liberty and property; Domestic liberty (Right to privacy); Freedom of Speech and Assembly; Religious liberty; Freedom to form Union and Associations; Freedom of Movement etc.
- (ii) **Political Liberty:** It includes right to participate in decision making and right to choose one's own representative. Right to vote; Right to get elected to the Legislature and other Public bodies; The Right to organize Political parties, Right to criticize the government.
- (iii) **Economic Liberty:** It includes Right to Work and the Right to Rest and Leisure, Freedom to acquire, hold and dispose of property; Racial and National Liberty.

2.2.6 Safeguards to Liberty

Few measures to safeguard the rights and liberties of the people:-



- i) **Democratic Form of Government:** Dictatorship is characterized by ‘Command’ and ‘Coercion’. Democracy, on the other hand bestows upon each citizen the right to participate in decision-making processes, through their elected representatives.
- ii) **Safeguards afforded by a written constitution:** One of the objectives of the Constitution is to safeguard the rights of the citizens. Several rights have been guaranteed to citizens by the American and Indian Constitutions. Some Constitutions not only lay down the rights, but also provide the means to enforce them.
- iii) **Decentralization of powers:** The powers of the government have to be subjected to limitations. One method to preserve the liberty of people is to divide the legislative, executive and judicial powers among separate bodies or organs of the government. This is known as ‘Separation of Powers’. The powers have further to be divided between the Central Government and the State Governments. Such an arrangement is found in a federal government. At the same time, local-self government institutions need to be strengthened.
- iv) **Free and Impartial Judiciary:** Free and impartial judiciary is essential if we want to protect rights and liberties of our people. Moreover, judicial procedures need to be speedy and inexpensive. Indian Constitution provides Free Legal Aid under Article 39-A, Article 14 provides Equality before Law.
- v) **Rule of Law:** Rule of Law denotes the absence of arbitrary powers. It means the rule of law and not of men”. Law of the Land is Supreme and nobody is above the law, be it ruler or the subject both are under the law, nobody is above the law. According to Ivor Jennings, Rule of law implies a Constitutional Government as distinct from Dictatorship” or a Police State.
- vi) **Autonomy of Groups and Associations:** There are various groups and associations operating in the fields of education, business, trade, art, religion and science. The associations keep the government in touch with the trend of public opinion, so that it may shape its policies accordingly.
- vii) **Role of the Opposition:** The opposition keeps the government on its toes. It is as much the duty of the Opposition to criticize as it is of a government to government to govern. No government can totally ignore the opposition’s viewpoint. The parties provide a link between the people and the government.
- viii) **Independent Mass media:** The government should not have absolute control over the mass media, i.e. radio, television and the newspapers. Independence of the mass media strengthens freedoms of the masses.
- ix) **Egalitarianism:** It suggests that “all people are equal and deserve equal rights, opportunities and privileges”. Thus regardless of one’s race, religion, caste, or sex, all should have equal opportunities to develop their talents.
- x) **Enlightened Public Opinion:** An enlightened public opinion is the best guarantee of freedom and growth. There are various agencies which formulate the public opinion.



Newspapers, literary works, parties associations, voluntary organizations and the educational institutions are the most prominent among such agencies. Curbs on the freedom of press or intentional distortion of facts and news by the mass media act as a hindrance in the way of sound public opinion. Therefore, the citizens have to keep their eyes open. **Eternal Vigilance is the Price of Liberty.**

2.3 MEANING OF EQUALITY

The belief of equality is a major assumption of a self-governing society. Equality does not entail complete equality. Equality originates from *aequalis*, *aequus* and *aequalitas*. These are all old French or Latin words. These French/Latin words mean even, level and equal. In general term, equality means full equality of treatment and reward for all. It is needed as natural equality. It is thought that all men are born natural and free. Men are neither equal in respect of their physical features nor in respect of their mental capabilities. Some are stronger others weaker and some are more intelligent and capable than others. In common word, the meaning of equality is taken equally. It is considered opposite of disparity. Equality has been demanded in society since ancient times. Many theoretical and intellectual grounds have also been presented for this. In other words, equality means that all people in the society should have equal status and everyone should get equal privileges. But this is not completely real because not all people are equal. Man has been made equal by nature. Depending on anatomy, form, color, strength, intelligence, the variation found in individuals is found. Due to the fundamental distinctions given by nature, complete equality cannot be brought in a person. For example, in the same way that all the fingers of the hand cannot be equal, in the same way not all the people of the society can be equal. Equality does not mean that all individuals get equal property. The basis of property sharing is also physical and intellectual inequality. In the end, not every person can get the same property.

The real meaning of equality is that all people should get equal opportunity for their development and should not be differentiated on the basis of caste, birth, religion, sex, class, property race. The state should provide proper opportunities for the development of their intellect and personality without any discrimination. One should not be bound in the development of a person by qualification. Here equality has three Basic elements:

- a) Absence of special privileges in society.
- b) Presence of adequate and equal opportunities for development of all.
- c) Equal satisfaction of basic needs of all.

According to Laski, the most influential positive liberal thinker, set down the following conditions for equality:

1. End of special privileges in society



2. Adequate opportunities to all for developing the full potential of their personalities.
3. Access to social benefits for all with no restrictions on any ground like family position or wealth, heredity etc.
4. Absence of economic and social exploitation.

According to D.D Raphall, “The Right to Equality proper is a right of equal satisfaction of basic human needs, including the need to develop and use capacities which are specifically human.”

Therefore, as a whole, equality does not mean absolute equality in all spheres and to every person. It does not aim at identity of treatment as intellectual and physical capacity varies. It opposes inequitable treatment. It means complete and absolute equality at the bottom most level and then equal opportunity to develop one’s inner potentiality.

Characteristics of Equality:

- Equality does not stand for absolute equality. It accepts the presence of some natural dissimilarities.
- Equality stands for absence of all unnatural manmade inequalities and specially privileged classes in the society.
- Equality assumes the grant and guarantee of equal rights and freedoms to all the people.
- Equality infers the system of equal and adequate opportunities for all the people in society.
- Equality means equal satisfaction of basic needs of all the persons before the special needs’, and luxuries of some persons may be met.
- Equality supports an equitable and fair distribution of wealth and resources i.e. Minimum possible gap between the rich and poor.

Equality accepts the principle of protective discrimination for helping the weaker sections of society. In the Indian political system, right to equality has been given to all and yet there stands incorporated provisions for granting special protection facilities and reservations to persons belonging to scheduled castes, scheduled tribes, other backward classes, minorities, women, and children.

2.3.1 Development of Equality

Greek Philosophy

The problem of equality and inequality has figured in political thought since earliest times. We have two different tradition (a)Inequality which was supported by Plato and



Aristotal, (b) Equality which was supported by Pericles, Sophists, Antiphon and Stoics. **Aristotle** discovered that ‘inequality’ was a cause of rebellion in many a state. He defined justice as treating equals equally and unequals unequally. This was a typical statement in that it insisted on recognition and maintenance of existing inequalities in society—between master and slave, between rich and poor, between morally superior and morally inferior, and so on.

Whereas **Plato** classified men into a man of Gold , man of Silver , man of Iron. The Stoic philosophy gave the idea of universal brotherhood and citizenship based on natural law and reason. They opposed slavery and pleaded for natural equality among men. Therefore equality is force which binds together friends, cities and allies.

The Medieval Period

During the medieval period Christianity raised the voice for equality but soon it got converted into equality before God. During this period feudalism emerged in Europe and unequal rules of aristocracy developed. In fact feudalism was emerged a combination of legal and military customs in medieval Europe that flourished between 9th and 15th century broadly defined it was way of structuring society around relationship derived from the holding of land in exchange for service and labour. In fact during the medieval period social in equalities got legal recognition and legal privileges to the clergy and the nobility where accepted in society. The social inequality of caused where resources in given society are distributed only typically through norms of allocation that gender specific pattern non alliance of socially defined category.

The Renaissance

The Renaissance and the reformation played an important part in weakening and shaking the existing social and political system. Beside this the Renaissance influenced Gender inequalities in term of marriage, wealth, ownership and freedom of expression. The emerging middle class challenged the legal, social, and political privileged of the feudal order. In European history the middle class played the important role as an agent of change to transform society. It was patronised by rulers to encounter feudal lords who challenged their authority and rebels against them to empower the middle class ruler granted them charter or official rights to trade a broad and to take responsibility of the administration of cities with stabilities Municipalities.

Thus the Glorious Revolution of 1688 in England, the American declaration of Independence of 1776 and the French revolution of 1789 helped the cause of equality.

Nineteenth Century and twentieth Century

A demand for socio-economic equality from newly working class. As result of the industrial revolution economic disparities has increased and the demand for economic equality and



justice came from quarters. In fact the industrial and economic development of the industrial revolution brought significant social changes. Industrialisation resulted in an increase population phenomenon urban growing number of people move to urban centre in search of employment. Thus the movement of political equality also became stronger and adult franchise became the battle – cry of the democrats. It is noteworthy that until the 18th century, the notion of equality remained largely confined to the legal side. But the succession of capitalism has increased the scope of inequality even further. Initially Utopian socialists and later Angels and Marx raised the demand for economic equality. Subsequently, political equality was also demanded along with the demand for economic equality.

2.3.2 Types of Equality

1. Natural Equality

Though human differ in respect of their physical features, psychological traits, mental abilities and capacities, all humans are to be treated as equal humans. All are to be considered to avail all human rights and freedoms.

2. Social Equality

Social equality is referred as equal rights and opportunities for development for all classes of people without any discrimination such as civil rights, freedom of speech, property rights, and equal access to social goods and services. However, it also includes concepts of health equity, economic equality and other social securities. It also includes equal opportunities and obligations, and so involves the whole of society. Social equality requires the absence of legally enforced social class or caste boundaries and the absence of discrimination motivated by an inalienable part of a person's identity. For instance, sex, gender, race, age, sexual orientation, origin, caste or class, income or property, language, religion, convictions, opinions, health or disability must not result in unsatisfactory treatment under the law and should not reduce opportunities unreasonably.

Specifically, Social equality stands for:

- a) Absence of special privileges for any class or caste or religions group or an ethnic group.
- b) Prohibition of discrimination against any one on the basis of caste, colour, creed, religion, sex and place of birth.
- c) Free access to public places for all the people, i.e. no social segregation.
- d) Equality of opportunity for all people. It however accepts the concept of protective discrimination in favour of all weaker sections of society.

Contemporary theme of social equality is to eliminate gender inequality, to ensure equal status and opportunities to the women and to ensure equal rights of male and female children to live and develop.



3. Political Equality

It is referred as equal opportunities for participation of all in the political process. This involves the concept of grant of equal political rights for all the citizens with some uniform qualifications for everyone. All citizens must possess similar political rights, they should have similar voice in the working of the government and they should have equal opportunities to actively participate in the political life and affairs of the country. Political equality guarantees the enjoyment of similar political rights to all citizens. Universal adult franchise is a means to this end. Universal adult suffrage has been introduced in India. The same provision has been made in England, U.S.S.R., U.S.A., France and many other countries.

4. Economic Equality

Economic equality does not indicate that equal treatment or equal reward or equal wages for all. It denotes to fair and adequate opportunities to all for work and for earning of their livelihoods. It also means that primary needs of all should be fulfilled before the special needs of few are gratified. The gap between rich and poor should be lowest. There should be equitable distribution of wealth and resources in the society.

5. Legal Equality

Legal Equality is defined as equality before law, equal subjection of all to the same legal code and equal opportunity for all to secure legal protection of their rights and freedom. Equality before the law is the principle that each independent being must be treated equally by the law and that all are subject to the same laws of justice. Therefore, the law must guarantee that no individual or group of individuals be privileged or discriminated against by the government. Equal protection of law means that law provides equal opportunities to all those who are in similar circumstances or situations. This concept is slightly positive in connotation.

Formal Equality

Nowadays a term is frequently used and it is formal equality. The political scientists do not especially use this term but it is manifest from their analysis that the idea of formal equality is quite fresh in their minds. It is believed that formal equality is legal equality. The inner idea is that every citizen is a legal member of the state which is a legal association.

As a legal member of the legal association every person has certain claims to equality. There are two very important forms of legal or formal equality. One is equality before law and equal protection of law. We have already mentioned these two. What is to be noted here is that the legal member of the legal association (Barker calls a state a legal association) can legitimately claim that all the citizens (including him) must be treated equally by law and no discrimination is to be allowed.



There is another type of formal equality and it is equal protection of law. It is the primary function of law to give protection to all citizens and while doing this it makes no distinction between rank, position and wealth. Legal or formal equality, to speak the truth, constitutes the very core of rule of law. In this sense the formal equality comes to be associated with equality.

It has been pointed out by **Heywood** that the formal equality is basically negative because the state authority takes special care in regard to the distribution of opportunities. The objective shall always be not to allow awarding special privileges to few persons.

Naturally to attain this goal the state must impose restriction in one form or other upon the distributing machinery or the state must take policy to that extent. We have already noted that Laski has observed that equality means the absence of ‘special privileges.’

Formal or legal equality has received almost universal approval from conservatives, liberals and even socialists. It is absolutely irrational, unjustified and even bigotry to deprive some persons of their legitimate share in wealth, income and manifold privileges on the ground of accidental birth in poor families or in so called neglected religious groups.

Equality of opportunity

The rational behind this political ideal is that society is uneven, with privileges, standing and potential for success being heavily influenced by many different factors predetermined by birth. The political ideal places an individual in any given rung of social hierarchy as a result of their background. Equality of opportunity calls on a ‘fairness of outcome’ in society. The notion of equality of opportunity follows from the idea of formal equality and can be traced even in the writings of Plato who propose educational system that offers all children equal chance to realize their talents and social positions based upon merit and efforts. The concept of formal equality does not address the opportunities and chances available to the individual. Equality of opportunity is concerned with initial conditions available meaning it is not required that all runners must finish the race in line together because they left the starting point together rather it is the equal start to the race which legitimizes its unequal outcome. Thus the concept of equality of opportunity recognizes equal opportunities to become unequal. The concept advocates removal of obstacles that stand in the way of individual development aright that should surely be enjoyed by all citizens. The issue of debate is how to ensure equality of opportunity. Does this means providing equal welfare or ensuring equality of opportunity by removing effects of inequality in social and economic circumstances or talent of the individuals? Does rigorous application of equality of opportunity lead to State intervention in social and personal life? Let’s discuss different views to ensure substantive equality of opportunity. (In a factory setting, equality of opportunity is often seen as a procedural fairness along the lines of “if you assemble twice as many lamps, you’ll be paid double”. In this sense, the concept is in contrast to the concept of equality of outcome which might



require that all workers be paid similarly regardless of how many lamps they made).

According to **Rawls** formal equality of opportunity is not enough. It is important to incorporate intelligence and social position as part of the distributive criteria. The notion of Equality of opportunity does not compensate inequalities that arise due to factors that are arbitrary from moral point of view. Social economic circumstances and special talents of individuals are arbitrary from the moral point of view because they are the result of brute luck. John Rawls' second principle allows social and economic inequalities if they provide greatest benefits to the least advantaged member of the society and offices and position remain open to all under fair equality of opportunity. In the original position the device of the veil of ignorance is used to conceive people as equal. However even in the original position people behind veil of ignorance have a capacity for having a conception of good and sense of justice. In the original position equal participation takes place as they are equal part of the process designed to choose the principle of justice. Fair equality of opportunity is ensured and so is the principle that no one deserves his talents – the product of natural lottery.

Equality of Resources Luck Egalitarians

Luck egalitarian theory is based around the notion that individual is responsible for his choice but not for his unchosen circumstances. "People's fates are determined by their choices and their circumstances and this must remain argue luck egalitarians a fundamental insight when considering what constitute a just distribution. Ronald Dworkin, Richard Arneson, G.A. Cohen, Philippe V. Parjicare the thinkers who endorse the position termed as Luck Egalitarians by Elizabeth Anderson. Though there is disagreement among luck egalitarians as what should be equalized resources or opportunity for welfare. However the point on which Luck egalitarians are in agreement are inequalities are just if they are the result of voluntary made choices. People are responsible for their voluntarily made choices and not for their unchosen circumstances.

Ronald Dworkin's influential account of luck egalitarianism is based on equality of resources. In *Sovereign Virtue* Dworkin writes, "Equal concern is the sovereign virtue of political community—without it government is only tyranny –and when a nation's wealth is very unequally distributed, as the wealth of even very prosperous nation now is, then its equal concern is suspect. For the distribution of wealth is the product of a legal order :a citizen's wealth massively depends on which laws his community- has enacted – not only its laws governing ownership, theft, contract but its welfare laws, tax law, labour law, civil rights law, environment regulation law and laws of practically everything else.

Dworkin believe that the basic structure of society should be publicly justified to all citizens with special emphasis on two fundamental principles of ethical individualism...



The principle of Equal importance-----It is important from an objective point of view that human lives are successful rather than wasted, and this is equally important from an objective point of view, for each human life.

Principle of special responsibility---Though we must recognize the equal objective importance of the success of a human life, one person has a special and final responsibility for that success –the person whose life it is.

The principle of equal importance requires government to formulate laws and policies that are insensitive to the special particulars of individual. This means being insensitive to their economic background, gender, race and particular set of skill. The second principle of special responsibility requires government to make laws and policies as far as possible sensitive to the choices that people willingly make. Dworkin's theory of equality of resources is ambition sensitive and endowment insensitive. Unequal share of social goods is fair if it is result of intentional action of those concerned. This means an autonomous individual bear responsibility for the consequences of his actions. However inequality that are due to arbitrary social circumstances or natural endowments are unfair.

Moreover the benefits of equal resources may differ for different individuals. **Amartya Sen** imagines two persons A and B. Person A as a cripple gets half the utility that the pleasure In the real world income tax is a devise that is used to neutralize the effects of differential talents and handicaps. Wizard B does from a given level of income. Neither Rawls Difference Principle nor Dworkin's Equality of Resources takes this "utility disadvantage" for which it would be absurd to hold A responsible into account.

Luck egalitarians are also targeted for radical rejection of merit and personal identity. According to this approach we cannot recognize ourselves with our own achievements. Moreover the criterion of individual responsibility could turn out to be inhuman in its consequences because applying the principle of choice if a person is responsible for his misery then that person would be supposedly left alone with his misery. But in another situation when people are in terrible situation due to factors beyond control or brute luck the reasons proposed to help them are supposedly stigmatizing if based on pity. Moreover to decide such cases involvement of political institutions is required that means taking certain decisions for which some important relevant information need to be gathered about citizens which according to some may harm their private sphere.

Equality of Welfare

To assess the merit of laws or policies Utilitarian's adopt a welfarist metric and the right policy is that which promotes the greatest happiness of the greatest number. Equality of welfare requires that those whose welfare is restricted may receive extra resources so that the amount of welfare can be equalized but fails to accommodate the principle of special responsibility towards oneself for example if a person is born with a disease or handicap



he/she may have less welfare due to factors which are not in his control but what about those who need extra resources due to expensive way of life and taste and need extra Focus on resources to achieve the same level of welfare. Equality of welfare fails to distinguish between deserving and undeserving beneficiaries.

Equality is complex

Walzer argues for complex equality, the idea is different goods belong to different distributive spheres and each has its own distributive principles. For example unequal distribution of money is permissible if that inequality is the result of some fair mechanism, which is people's ability to make money and as long as money inequality does not influence the distribution of goods belonging to other spheres for example education or health. According to this view inequality justified by relevant reasons is not objectionable if it is not disturbing equality in other spheres.

According to the above mentioned discussion of various positions equality of opportunity seeks to correct for all unchosen disadvantages natural as well as social and difference of Achievement--- Equality of Welfare emphasizes on achievement, meaning the final satisfaction that people derive from different state of affairs.

Means of achievement-- Rawls and Dworkin's principle of primary goods and equality of resources represents shift towards means to achieve various state of affairs. Freedom to achieve---Amartya Sen's capability approach emphasize freedom to achieve desired state of affairs. Egalitarian Liberals emphasizes that liberty and equality are compatible political values. In society for just division of benefits and burdens of social cooperation both these values should be given due consideration. However there is no consensus about distributive outcome that best complement liberty and equality. Outcome reflect difference of choice. This means as long as people make informed choice and are aware of its consequences equality of opportunity amounts to equality of outcome. Difference of outcome is not inequality. For example A works longer hours than B thus earning more money while B works less and enjoy more leisure and earns enough to stay alive, in this example with respect to money outcome there is inequality but they will have equal outcome in terms of overall bundle of income plus leisure.

2.3.3 Equality of Opportunity vs. Equality of outcome

Equality of Opportunity vs. Equality of outcome

- Equality of opportunity is concerned principally with initial conditions and the removal of obstacles that stay in the way of personal development; equality of outcome is concerned with end results. Equality of outcome may refer to resources, level of welfare, social circumstances, material equality and also involves transfer of income or wealth or some other measure to promote equality of outcome.



- The equality of outcome whether in its moderate or radical sense usually argue that it is the most vital form of equality because equal legal and civil rights are of little benefit to citizen who do not possess secure jobs. Moreover the doctrine of equal opportunity is used to defend material inequalities by creating the myth that that they are the result of informed choice of the people.
- Equality of outcome is also a prerequisite for securing individual liberty. As far as individualism concerned a certain level of material prosperity is essential if people are to lead worthwhile and fulfilled lives.
- Rousseau recognized the danger of social inequality and argued “no citizen shall be rich enough to buy another and none so poor as to be forced to sell him” Material inequality may lead to enslavement of the poor and deprive them of both moral and intellectual autonomy.
- Criticizing equality of opportunity **R T Tawney** named it as the “Tadpole philosophy” where all start from the same position but are then left to the vagaries of the market, some succeed and many fail. Opportunity to rise could not be equalized in a society where the circumstances surrounding it from birth are themselves unequal. Social well being also depends upon cohesion and solidarity in society.
- Equality of outcome is criticized because it may lead to stagnation and injustice. Stagnation results from the fact that social levelling serves to cap aspirations and remove the incentive for enterprise and hard work. It may become the reason for injustice because injustice arise not only when equals are treated unequally but also when unequals are treated equally.
- Equality of outcome can be achieved by massive interference because people are different in their abilities and aspirations. Talent is penalized and equal result is achieved by process of leveling downwards.
- In a society mechanism to achieve equal outcome are filled with moral as well as practical problems. To achieve equality of Outcome State has to employ different ways to compel the transfer of resources.

Marxist Theory of Equality

Like his other political concepts, equality is also a part of his entire political philosophy which is primarily linked with the unmasking the real nature of capitalist system, its abolition and emancipation of working class. From the study of various aspects of society Marx concluded that there were number of inequalities in capitalist system.

For example, social, political, economic etc.; and these were due to the bourgeois structure. In any capitalist state there were inequalities between men and women, rich and poor, there were discriminations among various religious groups.

Even the inequalities were institutionalised by the capitalists. Theoretically the bourgeois



scholars and political scientists propagate for equality and strongly argue for formal or legal equality. Even the bourgeois constitutions (constitutions framed by the bourgeois scholars to meet the needs of a particular class) pontifically announce the inclusions of rights, liberties and equalities as parts of the constitution and also make provision for their protection.

How to Achieve Equality?

On the Jewish Question Marx dealt with several issues and one of these is equality. He had said that it was mere farce to think of emancipation of all exploited people through the declaration of equal civil rights and liberties. To Marx such declaration amounted to political emancipation.

But people's equal rights and privileges could never be obtained through the announcement of political emancipation. According to Marx it was merely partial emancipation. For achievement of all forms of equality (also of rights and liberties) human emancipation was necessary. By human emancipation he meant emancipation of all men and women from every type of bondage created and imposed by the capitalists. Emancipation only of the Jews could not achieve that ambitious objective.

So Marx on the Jewish Question ridiculed the emancipation only of the Jews. Marx believed that the institution of private property was the chief evil and it always acted for the creation of inequalities and differences among people. For this reason he recommended the abolition of private property through the seizure of political power. Prevalence of market economy was another factor for the growing menace of inequality and exploitation.

The weaker sections of the body politic were gradually being eliminated from the market because of money power exercised by the capitalists. Therefore, the abolition of capitalism was the first precondition for the attainment of universal political values such as equality, right and liberty, also justice.

Two Principles of Equality

A serious analysis of Marxist thought reveals that Marx had two types of equality in his mind. The two principles of equality are—"From each according to his abilities, to each according to the amount of work performed".

There is another principle: "Each according to his abilities, to each according to his needs". This principle indicates that each person in the society will perform his duties as far as his abilities permit him to do. That is, none will be asked to do any work beyond his capacity.

In the first stage of the post-revolutionary society, Marx claimed, this objective or principle could be achieved. Marxists did not treat this stage as the stage of just equality. It was apprehended that due to differences in ability and talent there might appear differences among men in many respects. Nevertheless, this principle might be regarded as the stepping stone to equality.



There is another principle delineated by Marxists: “From each according to his abilities, to each according to his needs”. Marxists (including Lenin) stressed this principle and held that only in a communist society this principle could be achieved. Under communism will there be equal treatment of unequal human beings with all their necessarily unequal needs”.

Affirmative actions

Affirmative action is the strategy to errand members of a disadvantaged group who currently suffer or historically have suffered from discrimination within a culture. Often, these people are deprived for historical reasons, such as oppression or bondage. The notion of “affirmative action” was first used in the United States in 1961, which included a provision that government contractors “take affirmative action to ensure that applicants are employed, and employees are treated during employment, without regard to their race, creed, colour, or national origin.”

In simple term, Affirmative action is anticipated to promote the opportunities of defined minority groups within a society to give them equal access to that of the majority population. Affirmative action denotes to the policies and laws that attempt to redress a situation of discrimination and promote equal opportunity. Affirmative action is also related to positive discrimination, which entails means to compensate or counter the effects of prejudices in terms of race, gender and / or disabilities.

Affirmative action in India

Reverse Discrimination: In the system of Affirmative action, the Majority of populace feel omitted and discriminated against as the allocation of jobs and positions in various fields is based on a quota system or reservations. In India, the government continues to reinforce reservations, and increases the quotas to gain vote bank, and the majority feel acutely sidelined. The system of reservation was meant to last for a decade or so, but it has become so established in the contemporary times, that the majority are naturally in disdain of it. The heated issue of Patidar Reservation Agitation in India is best example of reverse discrimination in India. Patels, as a prosperous caste in India are also highlighting themselves as ‘backward classes’. In doing so, they demand reservations in jobs and educational institutions the same way the disadvantaged OBCs are entitled to. With considerable quotas put aside for the marginalised, the majority has to bear the brunt of tightened and hence highly competitive vacancies and posts resulting in many meritorious candidates losing at academic and career opportunities. If Patels who belong to a commercial community fear the loss of their jobs or unavailability of jobs altogether, it speaks volumes on Reverse discrimination in India.

Brain Drain: It is major outcome of identity-based politics in India. Due to reservations, and quota based systems, the public feels challenged, destabilised and even rejected as selections in jobs and education are made on the criterion of Caste than Merit. Hence, the intellectuals



are forced to work abroad and the phenomenon of Brain Drain keeps draining India of its think tanks, learned scholars and intellectuals.

Against Constitution: If the constitution struggles for an democratic society with equal rights for everyone irrespective of caste, colour and creed, then the case of preferential treatment as evidenced in the policies of Affirmative Action may/will attack as a double standard. Because of this fact, in many countries Affirmative Action on the basis of race is deemed prohibited but in India such is not the case.

Creamy layer: It has been observed that there are economic divisions even in the impoverished classes such as OBCs. Mostly the well-off sections of the same community tend to seize the reservations while the poor remain poor and incapable to access the welfare schemes meant to rehabilitate them. In order to arrest such a practice, the concept of creamy layer was introduced in India according to which the upper and middle sections of OBCs are not eligible for reservations allowing the poor OBCs access to government's welfare programs. In this system, the sections belonging to low castes that have progressed in educational and job circles will not be entertained as marginalised and can compete with the majority without the helping hand of the reservations. Simultaneously, the poor castes can benefit from the quota system, and advance themselves to the level of not needing reservations in the long run.

There are critics who stated that affirmative actions are not good practices. Challengers of affirmative action such as George Sher consider that affirmative action diminishes the accomplishments of people who are chosen based on the social group to which they belong rather than their qualifications, thus rendering affirmative action counterproductive.

But affirmative action is intended to enhance the life of deprived people. Affirmative action is a set of measures approved by governments and public and private institutions such as political parties, educational establishments, corporations and companies to address a history of systemic discrimination and exclusion of particular social groups or to encourage the efforts of particular social groups in the interests of certain development goals. Affirmative action is expected to improve development indicators by reducing inequalities and facilitating the contribution of particular social groups to development.

2.4 MEANING AND CONCEPT OF JUSTICE

Defining justice is not easy like other concepts of politics theory because different philosophies of justice have been presented by different philosophers in different periods and social situations. Apart from this, the concept of justice has also changed with the change of time and circumstances. The word 'justice' is derived from the Latin words 'justitia' (to bind, to tie together) and jus (a bond or tie). Thus, in the concept of justice, various ideals and values are adjusted or coordinated. Since the time of the French Revolution, modern liberal



society recognizes freedom, equality and fraternity as the three highest values. These three ideals are essential to a just system of human relations. In the behavioural context, the relation of justice is the notion of the law of the state, which results in twin assumptions of law or justice. In other words, justice is also related to the interpretation of law and order and the rules of sentencing.

Justice is a flexible concept that can be adapted to any notion of public welfare. In a general sense, justice means duty-devotion or virtue. Justice is an essential part of any progressive civilization. As a dynamic civilization, the rights of the members of society have to be respected, the virtues have to be rewarded and the needs of the members have to be fulfilled. When society fails in the context of such actions, then critical situations arise. Through any organization, society or civilization, rights are respected, virtues are rewarded and needs are fulfilled.

Justice is an essential component for any civilized society, because if there is no justice system, then there will be a lot of chaos, insecurity in the state and the conditions of its 'Might is Right'. If we do not count justice as a virtue, then only two principles of justice remain, both of which are inherently distributional. These principles in justice are based on the distribution of the best elements of life. These principles allot rights, equal privileges and responsibilities in a particular society or all-world. The elements that are given priority by humans in the modern world are: Equality of income, security, respect and opportunity. According to the concept of justice, all the above elements focus on a single point, i.e. justice.

The principle of justice is concerned with the allocation of property, honor and opportunity in this world, not from the other worldly. This theory discusses the rules of this allocation, the rationality of various approaches related to it and its relative merits and demerits. Therefore, different ideologies are included in it. Principles of justice relate more to human interests, less to human reasoning.

The concept of justice is a difficult task to understand, as it is a complex concept. The meaning of justice is not limited only to law and legal processes, but in the modern era, the notion of justice has become very widespread and its representation has started to be expressed in various forms. Where the traditional approach to justice was concerned with the character of the person, the modern approach is concerned with social justice. Social justice mainly seeks to improve the social, economic and political condition of the deprived /weaker sections of the society, who have been deprived of basic amenities and opportunities of life for generations so that those classes join the mainstream of the nation and make their valuable contribution in nation building. Therefore, in today's era, the main problem of justice is that what should be the proper basis for sharing of goods, services, opportunities, benefits, power and honour among different classes or individuals within social life? In fact, in the modern era, the development of democratic institutions and values of life has increased the people's aspirations, the direct and indirect reflection of which is expressed in our modern



view of justice.

2.4.1 Development of the Concept of Justice

We have discussed above that defining justice is a difficult task. Despite this, prominent political thinkers and philosophers in various periods have continuously tried to give a definite definition to the word justice. Greek philosophers have considered the concept of justice to be related to social order. Although the concept of justice and the meaning of justice were different for nations with democratic and non-democratic governance, it was related to social order for both. Following are the views of various scholars regarding justice:–

Plato's Theory of Justice

The principle of justice has an important place in Plato's philosophy. The main focus of Plato's book 'The Republic' is the search for justice and to determine its location. The subtitle of Plato's work is 'Concerning Justice'. This shows how much importance Plato places on the principle of justice in his philosophy.

According to Plato, justice is a part of the proper state of the human soul and the nature of human nature. In the context of Plato's personal justice, it is believed that there are three main elements of the human soul - wisdom, courage and temperance. The harmony between the three qualities of a person's soul is justice. According to the primacy of these three elements, there should be three classes in the society - philosopher / ruling class (knowledge), soldiers/military class (emotion) and traders/productive class (appetite). According to Plato here, it is social justice by these three sections of society to perform their duties and not to interfere in the actions of others.

Thus, we can say that Plato's theory of justice is related to morality rather than legal principles. According to Plato, justice means that human beings should follow all their duties with honesty, which is necessary for the purposes of society. According to the merit of individuals, the duties and religions that society and the state prescribe for them, it is justice to follow them, justice is self-righteousness.

Aristotle's Principle of Justice

Aristotle is one of the main proponents of substantive justice. According to Aristotle, the basis of justice is the sense of equilibrium. Aristotle, the father of political science, in his work 'Ethics' has considered the principle of justice as important for the state. Aristotle believes that justice is concerned with the regulation of human relations. Aristotle divides justice into two parts: first is general justice and second is particular justice.

- A. General Justice:** According to Aristotle, general justice refers to social morality. Aristotle has used the term Righteousness for general justice. By general justice, he refers to all acts of goodness done to the neighbor. Aristotle considers all acts of



goodness, all virtues as general justice.

- B. Particular Justice:** Particular justice motivates man to behave fairly and equitably with other human beings. He takes this justice in the sense of proportional equality. This means that the person who should get what they want comes in this category. He has again divided the Particular justice into two parts.
- 1. Rectificatory Justice-** The main objective of Rectificatory justice is to regulate and regulate the reciprocal relations of citizens. It corrects the defects arising in the interpersonal relations of various members of the state. Rectificatory justice is also of two types:
 - Voluntary** - It does one person to another by various treaties and agreements. The court corrects these violations.
 - Involuntary-** When a citizen tries to harm or cause harm to another, the state hears the victim and punishes the guilty. Aristotle's Rectificatory justice re-establishes the harmony of the state, which deteriorates due to the wrong conduct of citizens.
 - 2. Distributive justice-** The distribution of the honor and wealth that gives every citizen his due place in the political community. This distribution is related to the distribution of posts, honors and awards to the citizens of the state.

Apart from this, Aristotle also indicated the existence of a universal law or natural law, which is beyond the law of any country or any era and its relation to the entire human race. This concept developed under the jurisprudence of Rome through the Stoic philosophy of ancient Greece. Subsequently in the medieval period, the Catholic Church accepted God as the source of natural law. To find out this man must use his rationality in which his divine power lies. In the early modern era, social contractualists linked the state of nature to natural law. In short, natural law was associated with the belief that common law can be considered an expression of justice only if it conforms to natural law.

Justice in the Modern Era

In the modern era, David Hume (1711–1776) strongly criticized the principle of natural rights and tried to replace them with the theory of utilitarianism. Then Jeremy Bentham (1748–1832), the pioneer of utilitarianism, expanded David Hume's ideological tradition by declaring that the principle of 'greatest happiness of the greatest number' is the principle of justice and injustice, fair and unfair is the criterion. John Stuart Mill (1806–1873), considering justice to be a major component of social utility, argued that, since human beings aspire to protect themselves, they accept moral rules that others may experience the same protection. Therefore, utility is the core of the concept of justice. In contemporary times, such a principle is being accepted in relation to justice, which has been determined around the



social, economic, political reality of life.

2.4.2 Dimensions of Justice

Legal Justice

Legal justice is concerned with the principles and procedures laid down by the law of a state. Such a system is called justice. In other words, legal justice relates to earlier decisions made or passed by laws, customs and human frameworks. Two facts are important in the legal context of justice: First, the creation of fair law and second, the availability of justice, according to law. Fair lawmaking means that laws made by the Legislature should be fair and logical. Let the law be equal and fair for all individuals. Equitable law making does not mean that the same law for every person (child and old). Law can also be unequal on justifiable grounds. For example, it is free for children under three years of age to travel by train. There is a provision for half fare from the age of three to twelve years, full fare from twelve to sixty years and special exemption in fare for senior citizens above sixty years of age.

This difference of fares is justifiable. Therefore, which law is fair or which law is not justified, it depends on the beliefs and moral outlook of a particular community. In other words, if a law is acceptable in one society, the law can also be rejected in the context of the social background of another society.

Another important aspect of legal justice is the availability of justice according to law. This idea is based on the principle of 'rule of law'. In society, it is only justice to treat individuals as equal before law and to use them lawfully.

Political Justice

Political justice means every person getting a stake in the state without any discrimination. In this context, the presence of adult suffrage, elected government, and civil rights are among the prerequisites for the establishment of political justice. The political dimension of justice relates to the actual policies through which political processes provide the ideals of justice. The constitution, parliament and courts are primarily concerned with the legal aspects of justice, but bureaucracy, political parties, interest groups and voluntary organizations give legal values of justice the form of functional political programs.

Social Justice

Social justice refers to a concept that seeks to prevent discrimination on the basis of birth, caste, religion, gender so that the national resources and wealth can be distributed equally. All courts are inclined to change their judicial approach from time to time to suit public needs. Our Supreme Court has taken a very conservative view in property disputes. On the other hand, his approach has been very correct in terms of protecting civil rights. At present, social justice is being interpreted in a broader sense, which includes all three social, economic and political justices.



Economic Justice

Economic justice means the end of economic exploitation, the proper distribution of material resources of the country and the use of it in the interests of more and more people. Liberal ideology emphasizes on the political and social aspects of justice, the same Marxists and socialists believe that economic justice cannot be imagined without abolishing the basis of rich and poor in society and class division of society. According to him, the basic objective of justice is to provide basic economic resources to all the people in the society, which can only be available in future in a classless communist social system.

2.4.3 Procedural Justice and Substantive Justice

What should be the nature of justice in social life? In this context, differences are found in the proponents of procedural justice and substantive justice under contemporary thinking. Procedural justice is basically formal or legal justice. Contemporary liberal thinkers believe in this method of justice. Proponents of this judicial system believe that the process or method of distribution of services, posts and goods etc. should be fair. Who gets what is not a matter of dispute. In other words, in this concept the process is emphasized, not the result. On the contrary, the supporters of substantial justice believe that the distribution of the above services, posts and goods etc. should be fair. Necessary adjustments should be made in its process to achieve this goal. Thus, procedural justice means formal or legal justice, and substantial justice means socio-economic justice. In procedural justice, where the emphasis is on competence, not on requirement, the same substantive justice emphasizes equality of opportunity while trying to meet the basic economic needs of the individual. A market economy or a capitalist economy is considered important in procedural justice. According to this, the market system automatically attracts the elements of production and creates conditions for their best use. Among the thinkers of procedural justice are Herbert Spencer (1820–1903), F.A. Hayek (1899–1992), Milton Friedman (1912–2006), and Robert Nozick (1938–2002). Besides, John Rawls (1921–2002) presented a detailed theory in the context of justice by combining procedural justice with the theory of social justice.

Procedural justice theory opposes any form of discrimination between human beings in society on the basis of caste, religion, colour, gender, region, language and culture etc. This principle accepts the equal dignity and equal importance of all human beings in society. From this point of view, it seems to be a progressive idea, but considering this important market economy and capitalist economy, it believes that in by making equal rules for all, all members of society can adjust their mutual relations in a lawful manner. And the government need not interfere in this process. In the context of this view, Herbert Spencer argues that the government should not help the differently-abled as well, but whoever is proven incapable of life struggle should be allowed to die. F.A. Hayek argues that the government should abandon the idea of controlling the market economy for the purpose of public welfare. Milton



Friedman believes that competitive capitalism supports the 'Free exchange economy'. Therefore, the government should take responsibility only for those functions which the market economy does not handle. The government's job is not to control the market economy, but it should not have anything to do with public welfare, social security and market regulation.

Robert Nozick in his book 'Anarchy, State and Utopia' (1974) explains his theory of justice. Nozick considers property rights to be the foremost human rights, arguing that the main function of the state is to protect property. According to him, the state does not have the right to acquire and redistribute the property of its citizens because they were originally its servants. Any property in society can be acquired only by 'production' and 'voluntary transfer'. Asymmetries that arise as a result of this process, attempts to convert them to the level of distribution would be unjust. Nozick holds that taxation can also be considered justifiable to the extent it is necessary to bear the expenses of a 'Minimal state'. In this context, they strongly oppose the welfare state.

Critics of procedural justice are of the view that the biggest mistake of this judicial system is that they have presented the concept of justice in the context of individualism, not in terms of human social beings. The position of different individuals in society is abnormal. Therefore, in an asymmetric society, the procedural form of justice proves inconsistent.

Unlike procedural justice, the idea of substantial justice or social justice is closely associated with Marxism and Socialism. He imagines a communist society in which the entire society has control over the means of production. Therefore, they support equal conditions for all, rather than equality of opportunity. They believe that open competition in economic life leads to such inequalities that the poor class is forced to act on the conditions set by the rich class. Even in political, social and cultural life, the poor have to face inferiority status. In short, it can be said that the goal of substantial justice is that the benefits of social development should not be confined in the hands of a select few, but it should be arranged to bring them to the weak, deprived and disadvantaged level in the society.

Global Justice

From the beginning of the modern era to the entire period of the 21st century, political thinkers who were interested in the concept of justice mainly considered only national issues and problems within the nation. That is, how the state should treat its citizens and what and how the citizens should interact. Justice among individuals between mutual sovereign states or across borders was a secondary subject, which he had left to theorists of international relations. After 1980, global justice became an important issue of contemporary political philosophy. The notion of global justice revolves primarily around three related issues of distributive justice, moral universality and major financial institutions. The issue of distributive justice relates to the equitable process on the current distribution of wealth,



prosperity and resources. If there is poverty in our country, is it the duty of the capitalists to help the poor or does the spirit of help stop coming to charity and charity or is it so important from moral point of view.

Also, will global politics and economic institutions like the United Nations, World Bank, International Monetary Fund, World Trade Organization, International Non-Governmental Organization, Multinational Corporations and International Courts be the best in achieving the ideal of global justice. Till now issues like freedom, equality, justice and rights were within the jurisdiction of nation-states within a certain land boundary. But the notion of globalization presents an open challenge to these traditional assumptions. The biggest question that arises today is whether the rich countries of the west should concentrate on the neglected sections, cultures, illusions of developing and underdeveloped countries or should restrict themselves only to the exploitation of natural and human resources.

How possible is the project of global justice internationally? This approach mainly consists of five approaches: Such as Nationalism, Realism, Particularism, Cosmopolitanism and the Social of States Tradition.

First: In nationalism, this feeling has been contained since the beginning, what would be the difference in moral duties inside and outside the nation, for example, only the residents of a particular state get the welfare benefits of that state, similarly helping the unhappy citizens of the state is the moral duty of the state. But the issue of distributive justice is only in the context of the residents within the country.

Second: Realists like Morgenthau, Kenneth waltz are of the opinion that there is no such notion as global justice. The states are the main actor in the present age, who always protects his interests. There is no obligation to help the poor, unless doing so helps to further a state's strategic aims.

Third: According to the Particularism, any kind of moral standards arise from mixed traditions. Because we all know that every society has its own norms and the residents living inside it are obliged to it. Communitarians believe that the slackening of state boundaries increases the pressure on unemployment, education, health, transport, housing. As a result, reactions such as separatism, fundamentalism and blocking of public welfare are becoming serious problems. At the same time, the sovereignty of the state also pose a threat. As a result, there may be a decrease in security and self-determination capability.

Forth: According to the Cosmopolitanism, morality is a universal truth. All people come under the concept of comprehensive justice on the basis of being a human being, not only because they are mutually related.

Fifth: In the Social of States Tradition, states go as a distinct individual entity who mutually agrees on their common interests and moral rules. Rawls, in his work 'The Law of Peoples'



(1999) extended the notion of global justice to his first book, *A Theory of Justice*. Under this, he said that such an arrangement will be chosen by the representatives of different countries, in which no one will know who they are representing. In other words, decisions will be made on the basis of ignorance. They support Kant's notion of international morality. In which the main duty of the states is to follow the treaties and stop the war. But this does not exactly mean redistribution of assets globally. We can also say that the notion of global justice is limited to the system of independent states (mutual allies). Which Rawls calls a 'realistic utopia'. Rawls believes that all individuals of world fraternity join the notion of justice by being human beings with each other, not by having the same race, religion or class. The main goal of Rawls's justice was to formulate a principle that could equally apply to the decent and non-decent (non-liberal and non-western). According to Rawls, liberals should respect people who may not give full political equality to their citizens, but must take their advice on certain policies and guarantee them rights like freedom, property and life. It is necessary to protect human rights by decent societies. Rawls then stresses on how to treat the non-decent. In such a situation, the main goal of foreign policy will be to bring the people of the burdened society into the mainstream of the society. Rawls does not consider inequality a problem internationally. Rawls considers global poverty eradication a collective duty of all countries. Therefore, Rawls confines himself to responsibilities under international law, human rights and international treaties in the context of global justice.

There are considerable misconceptions among people in this context whether global justice is a boon or a bane. Amartya Sen is of the opinion that one must think about its need while paying attention to its good and evils. In place of fair justice and more fair distribution of opportunities under global justice, a revised global system should be attempted. Amartya Sen discusses global redistribution justice by changing the contemporary ideology of globalization. Considering the relationship between poverty alleviation and human rights, Sen is of the view that economic progress cannot take place as long as it is not linked to civil liberties i.e. freedom of thought, expression and assembly.

The Human Development Report (1999) of the UNDP presents ideas in the context of achieving global justice. For example, there should be a global code of conduct for international corporations so that the laws related to environment and labour can be followed. New laws should be introduced for the World Trade Organization, including antimonopoly power so that they prevent multinational corporations from exercising their control over industries. Global central banks help poor countries in lending and regulate the financial market. Many NGOs are trying to improve the global economy, but this can only be possible if these institutions leave the dictatorial attitude and work at the democratic level. Similarly, those states that want to join the principles of distributive justice should be ready to sacrifice their sovereignty.

Thus, it can be said that in the process of globalization, justice has been pushed out of the



boundaries of nation-states to the boundaries of the international arena. The way in which the nation-states provide justice to their citizens, they should be encouraged, it is easy to be happy but the question of how to achieve global justice is very difficult. The main reason for this may also be that global justice requires social, economic and political reforms. Under which it is necessary to increase the share in developing international economic policy formulation of developing countries. Apart from the exchange of objects, there is a need for the exchange of intellectual thoughts. Like civil rights, their major issues are also global, such as human rights abuse, environmental degradation and AIDS etc. In fact, global justice is our common responsibility. In such a situation, if the nation-state renounces its sovereignty, there will surely be a possibility of allocation of goods.

2.5 RAWLS AND HIS CRITICS ON JUSTICE

Justice is one of the most important moral and political concepts. The word comes from the Latin *jus*, meaning right or law. The Oxford English Dictionary defines the “just” person as one who typically “does what is morally right” and is disposed to “giving everyone his or her due,” offering the word “fair” as a synonym. Quest for justice has been an important concern of political theory since ancient time. However, the meaning of justice has been understood differently during different times. In the ancient Greece for the sophist justice meant the interest of the stronger. Plato emphasized on the moral element in justice by saying that the justice meant performance of one's duty with all abilities and capacity toward the social whole. For Plato, justice is a virtue establishing rational order, with each part performing its appropriate role and not interfering with the proper functioning of other parts. Aristotle, on the other hand, held the view that justice meant equal share to the equal and unequal share to the unequal, it is distributing power and position proportional to the world or contribution of the individual. The modern idea of justice implies its legal, political and socio-economy dimensions. The legal dimension of justice assumes that law is the declared will of the state Constitution regulating activities of government. The political dimension of the justice implies political equality, universal franchise, full guarantee of the liberty, equality, and fraternity in that substantive aspect. It argues for the reallocation of both materials and moral advantages of social life.

The contemporary debate on the nature of justice focuses on the distinctive between procedural justice and substantive justice. The notion of procedural justice is closely related to the tradition of liberalism. According to this view point, the function of justice is to regulate the mutual of relation between individual and groups. Hence the quest for justice should aim at evolving reasonable rules which should be (upheld, impartation) to all categories. In contrast, the idea of substantive justice demand failure of essential conditions or space within which the individual can develop their own self. In other word, the resources



or opportunities should be provided to the unprivileged and this advantage section of society.

In modern time, significant part of political theory is directly or indirectly related to the problems of justice. This has given rise to diverse perspective in justice. Of these the following are particularly important:

- 1) Liberal perspective
- 2) Libertarian perspective
- 3) Marxist perspective
- 4) Democratic-socialist perspective
- 5) Feminist perspective
- 6) Subaltern perspective

1) Liberal Perspective

John Rawls is the prominent liberal thinker. He considered justice as the first virtue of social institution. The problem of justice, according to Rawls is in ensuring a just distribution of primary goods. Rawls revived the social contract tradition in his Kantian version the principle of justice is a product of end original agreement in the original position. The person in the original position is rational, capable of a conception of good and have a sense of justice the two principles that the parties choose in the original position can be stated as follows;

(1) Liberal principle

Each person is to have an equal right to the most extensive basic liberty, compatible with a similar liberty for theirs.

(2) Equality principle

Social and economic inequalities are to be arranged so that they are both:

- a) attached to the offices and position, open to all under conditions of fair equality of opportunity,
- b) beneficial to the least advantaged section of the society

2) Libertarian Theory of Justice

Libertarian perspective on justice is based on the ideal of liberty. It regards the right to property as an important ingredient of individual liberty. It is largely opposed to the idea of welfare state. Robert Nozick provides a powerful philosophical defence of the libertarian position of the minimal state. Nozick identifies three principles on which this entitlement would conform to justice.

(1) Initial acquisition

The method whereby an individual comes to appropriate some previously unowned



bits of the natural world. Those who come to settle in an uninhabited continent may legitimately acquire its land and natural resources on first come first served basis, as long as nobody is made worse off by their doing so.

(2) Voluntary transfer

It applies to all property whether acquired through initial acquisition or by mixing one's labour with the natural world, i.e. by means of one's talents, efforts, enterprise, etc. in a market situation.

(3) Rectification

This is precisely the area where the state of the international community will be justified to intervene in order to restore justice. Nozick concedes that the history of the world abounds with involuntary transfers as well as unjust acquisitions of natural sources.

3) Marxist Perspective

The Marxist perspective, Marxist claimed that liberal and libertarian failed to recognize the ultimate moral significant of the ideal of social equality, and its intimate linked with justice. The Marxist's are (vocal) about uneven distribution of income as an example of injustice. They believe it is only with the destruction of capitalism, private property, and bourgeois class that it is possible to construct a society based on social equality and realize justice. Capitalism generates inequalities of wealth and welfare because the markets and enterprise work to the advantage of the capitalists and property-owners and Marx explains this with reference to the labour theory of value. Capitalism dehumanizes the human being destroying his essence. With the abolition of private property and inauguration of common ownership, workers' exploitation ceases and society will be reconstructed to bring forth cooperation and fellow feeling.

In a communist society, because of the social ownership of the means of production, justice would mean equality of all and equality for all. It would mean absence of all discrimination, all exploitation and all oppression. It would mean work for all In accordance with their abilities as also fulfilment of all the needs of the entire person in return to what each are of them does.

4) Democratic Socialist Theory

While Marxism seeks to bring about socialism thought revolutionary method, democratic socialism prefers evolutionary or democratic method. Unlike the Marxist the democratic socialist find justice in a regulated, restricted, and controlled system of capitalism. They believed that the goals of democracy and socialism are inseparable each other. It seeks to modify Marxian socialism in some important details. Democratic socialists hold that socialism does not require wholesale socialization of the means of production and



distribution. Instead, if some essential means of production and distribution are placed under state ownership so as to ensure the supply of essential goods and services for the bulk of the population, this would be a substantial achievement in the direction of socialism. Democratic socialists insist that socialism should satisfy not only the material needs of the human being, but also should take care of the moral, intellectual and emotional need for proper development of each individual. They also advocate enquiring the individuals ensuring the freedom of thought and expression, freedom of religion and worship, freedom of movement, and other similar democratic freedoms.

Democratic socialism is opposed to all forms of dictatorship, even if it is a 'dictatorship of the proletariat' as expounded by the Marxian theory of socialism. Democratic socialism treats democratic structures – free competition for power among political parties, freedom of pressure groups, parliamentary institutions with an effective role for the opposition, etc. – as essential for achieving the ends of socialism. Among modern thinkers, Harold J. Laski (1893-1950) has made important contribution to the theory and practice of democratic socialism. Laski has, in fact, sought to combine the ends of socialism with the democratic method of liberalism. Democratic socialism seeks to provide for democratic rights and civil liberties as well as socio-economic rights of citizens.

5) Anarchist Perspective

Anarchist perspective on justice is based on the theory of anarchism. Anarchism holds that society should be organized without coercive power of the state. In its view government is intrinsically evil.

William Godwin (1756-1836), a British political theorist, is regarded to be the first modern defender of anarchism. He believed that a society of small producers united by cooperation, but without a state, would be conducive to political justice. Proudhon advanced a number of schemes for the organization of independent associations, decentralization of authority and circumspection of state authority. Mikhail Bakunin (1814-76) asserted that all political, social and religious institutions should be eliminated immediately, and in their place a free federation of independent associations should be created where all would have equal rights and equal privileges, including the right to secession. Mahatma Gandhi (1869-1948), an Indian philosopher and a champion of non-violence, observed that the state, as a coercive institution, is based on violence. Gandhi stood for a stateless society and contributed to the theory of anarchism in his own way.

2.5.1 Rawls Theory of Justice

In Theory of Justice (1971) is Rawls' attempt to formulate a philosophy of justice and a theoretical program for establishing political structures designed to preserve social justice and individual liberty. Rawls writes in reaction to the then predominant theory of utilitarianism, which posits that justice is defined by that which provides the greatest good for the greatest



number of people. In *A Theory of Justice*, Rawls begins with the statement that, “Justice is the first virtue of social institution,” meaning that a good society is one structured according to principles of justice. Rawls asserts that existing theories of justice, developed in the field of philosophy, are not adequate: “My guiding aim is to work out a theory of Justice that is a viable alternative to these doctrines which have long dominated our philosophical tradition.” He calls his theory -- aimed at formulating a conception of the basic structure of society in accordance with social justice -- justice as fairness.

Rawls’ theory of justice aims to constitute a system to ensure the fair distribution of primary social goods. “All social values-liberty and opportunity, income and wealth, and the bases of self-respect- are to be distributed equally unless an unequal distribution of any, or all, of these values is to everyone’s advantage”. The institutions established for the fair distribution of primary social goods are the subjects of justice.

Rawls proposes to develop a theory of justice by revising the social contract tradition of theorizing about justice associated with the 17th and 18th century writers John Locke, Jean-Jacques Rousseau, and Immanuel Kant. Rawls imagines a hypothetical situation to determine the principles of justice. Individuals are considered to be rational and capable of making rationalistic decisions as a priority. Rawls set forth to determine the essential principles of justice on which a good society may be based. To identify fairness, Rawls develops two important concepts: the *original position* and the *veil of ignorance*:

The *original position* is a hypothetical situation. Among the essential features of this situation is that no one knows his place in society, his class position or social status, nor does anyone know his fortune in the distribution of natural assets and abilities, his intelligence, strength, and the like. The parties do not know their conceptions of the good or their special psychological propensities.

Fairness is achieved through the *veil of ignorance*, an imagined device where the people choosing the basic structure of society (‘deliberators’) have morally arbitrary features hidden from them: since they have no knowledge of these features, any decision they make can’t be biased in their own favour.

The principles of justice are chosen behind a veil of ignorance. This ensures that no one is advantaged or disadvantaged in the choice of principles by the outcome of natural chance or the contingency of social circumstances. Since all are similarly situated and no one is able to design principles to favour his particular condition, the principles of justice are the result of a fair agreement or bargain. Since all are similarly situated and no one is able to design principles to favour his particular condition, the principles of justice are the result of a fair agreement or bargain.

Principles of Justice



Rawls elaborates his ideas of justice as fairness in his two principles:

1. Each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others.
2. Social and economic inequalities are to be arranged so that they are
 - (a) attached to positions and offices open to all under conditions of fair equality of opportunity (*Equal Opportunity*);
 - (b) to the greatest expected benefit of the least advantaged (*The Difference Principle*).

The “basic liberty” mentioned in principle 1 comprises most of the rights and liberties traditionally associated with liberalism and democracy: freedom of thought and conscience, freedom of association, the right to representative government, the right to form and join political parties, the right to personal property, and the rights and liberties necessary to secure the rule of law. Economic rights and liberties, such as freedom of contract or the right to own means of production, are not among the basic liberties as Rawls construes them. Basic liberties cannot be infringed under any circumstances, even if doing so would increase the aggregate welfare, improve economic efficiency, or augment the income of the poor.

Clause b of principle 2 provides that everyone has a fair and equal opportunity to compete for desirable public or private offices and positions. This entails that society must provide all citizens with the basic means necessary to participate in such competition, including appropriate education and health care.

Rawls do not overrule the possibility that these two primary principles will be in conflict with each other. To meet this difficulty Rawls proposes certain ‘Principles of Priority’. Such priority is ‘lexical’, i.e., the first has to be fully satisfied before the second is to be considered.

These principles have been arranged lexicographically which means that the first principle of justice takes priority over the second and the principle of fair equality of opportunity takes priority over the difference principle. This implies that the equality of basic liberties and rights, including the fair value of the political liberties, is not to be overridden by other considerations.

Clause a of principle 2 is known as the “difference principle”: it requires that any unequal distribution of wealth and income be such that those who are worst off are better off than they would be under any other distribution consistent with principle 1, including an equal distribution. (Rawls holds that some inequality of wealth and income is probably necessary in order to maintain high levels of productivity.)

The most important part of Rawls’s second principle of justice is the difference Principle. It mandates that beyond achieving fair equality of opportunity, a just society must be organised



so that any social and economical inequalities are to the greatest benefit of the least advantaged. Inequality is only permissible if it will benefit the least advantaged. The difference principle addresses the problem of inequalities due to talents, not by trying to equalise expectation across talent level directly, but by requiring that whatever benefit accrue to the more talented do so in a manner that maximally benefits the least advantaged.

Critical Assessment

Rawls' theory of justice has given rise to numerous debates in contemporary political philosophy. Some of the major criticisms are stated below:

Communitarian Critique

Communitarian critique is one of the most prominent critiques of Rawls' theory of justice. It is basically an attack on the universal aspect of Rawlsian idea of justice. Communitarians argue that in the original position, Rawls assumptions are based upon completely abstracted individuals. Abstracted individuals are those who are put outside their social, political and cultural context. Communitarians argue that any abstract individual can't make choices, and people in Rawls' theory are signing a contract.

Michael Walzer in his book 'Spheres of Justice' and Michael and J. Sandel in his book 'Liberalism and the Limits of Justice' give the counterargument to Rawls' hypothetical individualistic aspects. Walzer asks that since the Rawlsian veil of ignorance assumes individual out of their social context then how can those decisions be applied to real life situations in actual social contexts? People in real life take decisions on the basis of what they understand to be good. The idea of good, according to Walzer, could not be shaped on the basis of individual account. It is always shaped by the community and their beliefs and cultural and social practices. Thus any idea of good would be communal in character. Individuals are basically embedded in community. For example, a caste-based society defines justice on the basis of discrimination. In a caste based society, purity and pollution are decided by birth. Birth becomes the decisive factor in determination of access to water, land and resources. Thus Walzer argues that distribution of goods in a society is dependent upon the specific meaning those goods have, which are socially constructed and embedded in the community, its practices and its institutions.

Feminist Critique

Carole Pateman, Susan Moller Okin and Martha Nussbaum are feminist scholars who gave the feminist critique of the Rawlsian understanding of justice. Carole Pateman, in her book 'The Sexual Contract' starts with the criticism of all kinds of social contract theories, and argues that all social contract theories work on the repression of the sexual contract, though it is an integral aspect of contract theories. Turning specifically towards John Rawls, she points



directly at his “original position”. Rawls’ task is to find a picture of an original position that will confirm our intuition about the existing situation, which includes patriarchal relation of subordination. Pateman blames that Rawls did so successfully by remaining silent on the matter of sexual identities of the participants to the contract. Pateman blames that parties in the original position would have choices and reason but they are sexless people – they cannot know their sexes. This silence about the sexual contract in Rawls’ theory actually denies the conjugal relationship between man and woman, and denies the existence of rights to women against patriarchal domination. It gives priority only to political rights. Pateman argues that since all men and fathers who are the part of social contract come from the womb of women, the rights of women and the social rights should come prior to political rights.

Susan Moller Okin in her book ‘Justice, Gender and Family,’ gives a deeper analysis of the whole political philosophy of John Rawls than just his idea of original position. Okin argues that in the book “Political Liberalism” Rawls basically creates a divide between the public and the personal spheres. He limits any discussion about an idea of justice in the domain of public sphere. In ‘Political Liberalism,’ Rawls basically argues for a political conception of justice. It implies that Justice is only about the achievement of political rights in the public sphere. Okin criticises this aspects of Rawls’ overall political philosophy arguing that this actually denies justice in matter of inequalities within the family and the household. The denial of justice within the personal domain actually denies the political aspects of what is considered to be private and personal. It also subordinates the personal domain. Feminism, on the other hand, has shown to philosophy that the personal is political. Thus Rawlsian divide between personal and public goes against the basic philosophy of feminism, and by extension, equality and justice itself.

Martha Nussbaum, in her book ‘Women and Human Development: A Capability Approach,’ argues that the Rawlsian conception of justice could be made just if he would add the development of capabilities of women and children in his list of primary goods. Nussbaum criticises Rawls on three simple grounds:

First, Rawls includes family as a part of basic structure, but he also established the family as a voluntary institution analogous to the church and the university. Nussbaum argues that the family as an institution could not be compared with church and university. It’s a most basic institution of society and it has its pervasive influence on every other institution. It should therefore come prior to the church and university.

Secondly, Nussbaum critiques Rawls’ faith in the nuclear family. Rawls fails to acknowledge the parochial character of this. Nussbaum emphasises that in very large parts of world, like South Asia, the idea of extended family exists, with village groups, and different women collectives. Rawls gives no reasons why we should choose the nuclear family over any other form of family?



Libertarian Critique

A large portion of Robert Nozick's *Anarchy, The State and Utopia* (1974) is dedicated to refuting the theories of John Rawls. Specifically, Nozick takes issue with Rawls' conception of distributive justice with the former's entitlement theory. Nozick calls Rawls' distribution theory a patterned theory. To Nozick, no distribution is just and there should not be redistribution at all. Redistribution infringes individual's rights which, according to Nozick, trump all other considerations and subject matters.

Nozick, in general, contends that people are born with fundamental individual rights. These individual rights are paramount and that there is no need for a system to achieve moral equilibrium. He rejects all end-result theories, i.e. distributive theories such as Rawls theory of justice. Nozick rather adopts the 18th century philosopher Immanuel Kant's principle of "individual inviolability" that cannot be violated as a means to achieve particular ends, meaning the significance of each person's possessions of self-ownership is that people should not be used as resources or a means of achieving some end and this is exactly what Rawls proposes to do, Nozick criticizes. It is wrong to treat people as if they are merely of instrumental worth or to sacrifice one person for another. He claims that the rights of others determine constraints on our actions.

According to Nozick, the "classical liberal" view is that the right of people to control their bodies and actions is a property right, the right of self-ownership. He further argues for his entitlement theory where it is permissible for people to have and hold property on however an unequal basis provided it was acquired legitimately in the first place. Thus, if someone acquired a holding justly, any interference with his holdings i.e. via imposition of tax, would violate his rights. Nozick claims, a redistributive system invades that right making others "a part owner of you giving them a property right in you". Thus, a redistributive system institutes partial 'ownership by others of people and their actions and labour'. Consequently, he argues that taxation of labour income is "on a par with forced labour".

Robert Nozick is primarily concerned with the distribution of property, and argues that justice of any given distribution of income and wealth can be exhaustively covered by the repeated application of the three basic principles of justice in: acquisition, justice in transfer, and rectification when the first two principles have been transgressed: "the holdings of a person are just if he is entitled to them by the principles of justice in acquisition and transfer, or by the principle of rectification of injustice (as specified by the first two principles). If each person's holdings are just, then the total set (distribution) of holdings is just". These principles set out the entitlement theory of justice: people are entitled to holdings that are acquired via (repeated applications of) the principles of justice in acquisition and justice in transfer, or via rectification of transgression of those first two principles. Any inequalities of income and wealth that happen to arise as a result of legitimate acquisition and legitimate



transfer are a matter of complete irrelevance when it comes to determining the justice or otherwise of a given distribution – the only relevant question concerns whether the holdings were legitimately acquired and/or legitimately transferred (see pp. 150–153).

Marxist Critique

Marxists generally argue that any argument put forwarded about justice in capitalist system just aims to serve for the interest of dominant class. In other words, it is argued that since Marxism regard the notion of Justice as a product belonging to superstructure, any conceptualization and theorizing justice is entirely ideological and seeks nothing but legitimating social inequalities.

Rawls argues that a fair society can be constructed by means of two principles of Justice as Fairness, since these principles suggests a progressive tendency to equality transcending dichotomy of freedom and economic equality. Even though it can be argued that Rawls tries to alleviate economic inequalities in a society, his two principles do nothing but providing a permanent inequality among different groups where bourgeoisie class benefits. More importantly, what makes Rawls' Theory of Justice unjust is based on his argument that social and economic inequalities are a-priori and inevitable. That is, Rawls claims that economic and social inequalities are natural and a theory of justice should deal with to ease these inherent inequalities without swerving liberty.

The second or difference principle is another complicated proposition. Even though it is called by Rawls as an egalitarian principle, it also functions to justify inequality. After all, it is the standard justification for inequalities everywhere that they benefit for the least advantaged. Such a Rawlsian paradox stems from his exclusive emphasis on distribution rather than production, as well. As he regards the notion of free market as a crucial element of the basic structure of a just society (at least he does not strictly object it), his theory of Justice as Fairness implicitly or explicitly accepts class divisions.

2.6 INTRODUCTION OF RIGHT

Rights are commonly known as social claims that help a person prove their best development, etc. and help them to develop their personal identities. The state never confers rights, it only recognizes them, governments never confer rights, it only gives them protection. Rights arise from society, from specific social conditions, and that is why rights are always social. Rights means the rights of individuals, they only belong to individuals, they exist only for individuals, they are treated by them so that they can fully develop their personal identities. When we talk of the interrelation of the individual and the state, then two things emerge: **first**, what should the person get from the state - it is his right - **second**, what should the person do for the state – these are duties. In short, rights are the favourable conditions and opportunities a person receives under the state which helps him in self-development.



According to **Harald J. Laski**, “rights are the conditions of social life without which one cannot normally hope for complete self-development.”

According to Ernest Barker, “Rights are the result of the social system of justice upon which the state and its laws are based.” In fact, the right is the proof that the person’s dignity is not accepted in the state, in which any rights of the individual Are not exist. Nevertheless, certain classes in a state could be denied rights. For example, in the ancient Greek city states, only freemen had civil rights, and there were no rights for slaves, women, and foreigners. Clearly, such a system of rights is not based on a sense of justice. Apart from providing opportunities for full development of personality to the people, the authority also sets some important limits on the activities of the state. The Declaration of Independence made by the founders of the United States, stating that certain rights are non-transferable and the French Declaration of the Rights of Citizens and Men, are two effective political documents of the modern era. These documents accept the concept of rights as one such central concept. On the basis of which political organizations are built. It has been generally accepted that matters related to rights play a central role in the political life of a society. Historically, it is clear that the increasing interest in rights is not limited only to the 17th and 18th centuries but also to the human rights in the 19th century there is a revival of growing interest in the concept. Since 1960, the Civil Rights Movement adopted rights as a major pillar for the reconstruction of society. In recent contemporary debate issues related to women and disadvantaged minorities have come to the central stage. Even in our time, the question of the right to death by will of our own is hotly discussed. Similarly, in at present sexual minority - L.G.B.T. The issue of community rights has added a new dimension to the rights of minorities. Today on the central stage of the discussion of rights, there are discussions related to human rights. The discussion concerning rights has become so fascinating in the present society that the language of rights has become the most powerful language for moral change, not only in the present but also in the near future. In this unit, we will try to understand the various concepts of rights, under which special importance will be given to natural, moral and legal rights, as well as to highlight the relationship of rights and obligations in this unit. This unit also incorporates the concept of human rights, which remains a subject of debate in the contemporary world. The Comprehensive Declaration of Human Rights of the United Nations in 1948 ‘propounded a new notion of human rights which was virtually a product of Western countries but which has gradually spread to the countries of Asia and Africa and contemporary political discussion it remains a controversial subject.

2.6.1 Nature of Rights

The relationship between the individuals and the states 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. Rights are the sum total of those opportunities which



ensure enrichment of human personality. They are the basic condition of good life which are recognized by the state. According to **Laski**, 'Rights, in fact, are those conditions of social life without which no man can seek, in general, to be his best'. According to **Salmond**, 'a legal right ins an interest recognized and protected by the rule of law an interest to violation of which would be a legal wrong and respect for which is a legal duty.' **Bosanquet** defines it as 'a claim recognized by the society and enforced by the state.' (Homosexuality). According to **Barker**, the development of the capacities of the personality of the individual is the ultimate purpose of the state and the final political value. The law of the state is right and possesses the quality of rightness or justice by virtue of securing and guaranteeing to the greatest possible number of persons, the external conditions necessary for the greatest possible development of the capacities of the individual personality. These secured and guaranteed conditions are called by the name rights '.

On the basis of above definitions, we can draw certain general conclusions regarding the nature of rights.

Firstly, rights in their nature are the result and embodiment of the general system of right on which the state and its laws are based. Rights are a portion of right. Hence one cannot have the rights apart from the notion of right. One cannot have secured and guaranteed rights in the legal sense of the term apart from the law which is based upon the notion of rights. In short, the rights are the demands of the individual from the society which are secured by law and they are the conditions of the development of personality.

Secondly, regarding the sources of rights, the origin of rights is something in the individual himself. Rights flow from the inherent fact of individual's own moral personality and his social nature. In this sense, we can say that rights are natural or human. One cannot possess the rights unless they are secured and enforced by the state. In this sense rights have a source outside man, and the rights now flow from something more than one's personal nature. That is to say, the state is the immediate source of rights. Thus, rights are derived from two sources (I) from the individual personality and the quality of being a condition of its development, and (II) the state and its laws, and the quality of being secured and guaranteed by the action of law.

Thirdly, the concept of rights is essentially about human relationship in the society. Hence enjoyment of rights involves respectful observation of certain fundamental cannons of social welfare. The rights are never absolute and unlimited and are governed by the society's interest. They impose co moral responsibilities on every individual. While enjoying rights, man must be aware of the similar rights of others. Rights are given equally to all individuals in the society. Whereas privileges and prerogatives are limited to a particular group, class or section of the society, rights are given to all irrespective of birth, caste, creed, economic status, religion etc.



Fourthly, with the socio-economic development, new demands of individuals continue to come into existence which struggle for social recognition. Such demands when recognized by the state through its laws become rights.

And lastly while the rights are claimed universally, a great majority of rights are limited in time and space because they have a reality only in the context of a particular human society. For example, the rights possessed by the Indian people after independence did not exist before and may not be the same in the 21st century. Also the content of a particular right-say right to property-may differ from country to country.

2.6.2 Negative and Positive Rights

The concept of rights is a dynamic concept. With the development of social consciousness, rights are subjected to continual review and redefinition. It is interesting to note that rights are always demanded and even granted as the 'rights of man.' But their beneficiaries are usually those classes which articulate this demand because they formulate the demands of rights in a manner best suited and calculated to serve their own interests. However, with the spread of modern consciousness, the concept of rights has been modified in two important directions. It is now admitted that: (a) the advantages of rights should not be confined to a tiny class which is placed in a privileged position by virtue of its money and manipulative power; and that (b) rights should not be confined to delimiting the sphere of state activity and authority, but should also prescribe the functions and responsibility of the state so as to make them beneficial to the bulk of society. This trend indicates a shift of focus from negative to positive rights. Negative rights suggest the sphere where the state is not allowed to enter. They suggest the sphere of freedom of individual which shall not be encroached by the state. Positive rights, on the other hand, prescribe the responsibility of the state in securing rights of individuals. They require the state to take positive measures for the protection of the weaker and vulnerable sections or those placed in a vulnerable position. In fact, the negative and positive rights should be treated as parts of a continuum, not as distinct entities.

Broadly speaking, negative rights indicate as to which acts of the individual shall not be restricted by the state. Thus, 'freedom of thought and expression ' implies that the state shall not impose any restriction on individual's thought and expression. So, it comes in the category of negative rights. But if we say that the state shall provide universal education to promote its citizen's faculty of thought and expression, it will be described as their positive right. In short, positive rights indicate the responsibility of the state to improve the life of its citizens and to help them in their self-development. For example, right to medical care, right to work, right to legal aid, etc. also qualify as positive rights. A capitalist state gives precedence to negative rights while a socialist gives precedence to positive rights. A welfare state aims at combining negative rights with positive rights as far as feasible.

2.6.3 Justification of Rights



There are two major contemporary philosophical approaches to explain why the rights should be respected. These two approaches are broadly known as Deontological or the status-based rights and Consequentiality or the instrumental rights.

Status - theories hold that human beings have attributes that make respect for these rights appropriate. On the other hand, Instrumental theories hold that respect for particular rights is a means for bringing about some optimal distribution of interests. Status - theories belong to the tradition of natural rights theories. All natural rights theories agree that there are certain features that humans have by their nature, and which make respect for certain rights justified. The theories, however, differ over precisely which attributes of humans give rise to rights, i.e. whether it is rationality, free will, autonomy, or the ability to regulate one's life in accordance with one's chosen conception of the good life. Natural rights theorists agree that human reason can grasp the fact that it is appropriate to treat human beings with such attributes in certain ways, although they disagree on whether such facts are "self-evident." Natural rights theory reached its high point in the early modern era, in the works of Grotius, Hobbes and especially Locke. On the other hand, the Instrumental theories depict rights as instruments for achieving an optimal distribution of interests. For example, Rawls theory may define the optimal distribution as a fair one: i.e., the distribution that would be chosen from the perspective of an original position. Other contemporary normative theorists such as Ronald Dworkin, and Amartya Sen. have set out systems that give a central role to instrumental rights. On the whole, the two approaches differ sharply over the role of consequences in the justification of rights. Status theorists hold that rights should be respected because it is fitting to do so, and not because of the good consequences that will flow from doing so. For them right are not means for the promotion of good consequences. They are rather, in Nozick's phrase, side constraints on the pursuit of good consequences. The status theory does not allow any rights violation even for the sake of maximizing the non-violation of rights overall. By contrast, within an instrumental theory, good consequences are the justification for promulgating and enforcing rights.

2.7 THEORIES OF RIGHTS

There are numerous theories of rights which explain the nature, origin and meaning of rights. The theory of natural rights describes rights as nature; the idealistic theory, like the theory of legal rights, relates rights only with the state; the theory of legal rights recognises rights as legal; the historical theory of rights pronounces rights as products of traditions and customs; the social welfare theory of rights regards rights as social to be exercised in the interest of both the individual and the society.

The concept of rights emerged with the rise of modern state and out of the criticism of the old social and political order. Its tone was radical and in its ultimate employment was revolutionizing. Historically, the demand for the individual rights was made by the rising



commercial/middle class which was the product of industrial revolution. It became an accepted ideology of the American and French revolutions and was expressed in the Declaration of independence and the constitutional **Bill of Rights** in America and **Declaration of the Rights of Man** in France. Prominent liberal writers such as Locke, Rousseau, Bentham, J.S. Mill, T. H. Green and Harold Laski, Earnest Barker and a host of others have advocated the rights of the individuals on one ground or the other. In the post-war period, the concept of rights has been further expanded by John Rawls, Robert Nozick, Ronald Dworkin and many others.

Theory of Natural Rights

The principle of natural rights is first and foremost among the various theories related to the rights. John Locke, in his article *Second Treaties on Civil Government*, published in 1690, gave the most effective statement on natural rights. But before that the theory of natural rights had been presented by Thomas Hobbes. His ideas related to natural rights can be understood by her concept called 'natural state'. It refers to the state of human life in the absence of a systematic political institution and government - in other words, the natural state of a human being against artificial condition under a government. According to Hobbes, the natural right he called 'Jas naturalis'.

The natural rights theory propounded by Locke other liberal thinker, declared that all men are born with certain inherent right. Rights inhere in individual human being rather than in society or state. 'God gives them to his children just as he gives them arms, legs, eyes and ears.' Rights, according to this theory, were attributed to the individual as they are the intrinsic property of man. Whatever right are granted to a man as citizen of this or that state, his natural rights go with him where he goes. Natural rights were derived from natural law and were propagated by the social contract theorists like Hobbes, Locke and Rousseau. They assumed that man had certain natural rights before the origin of the state and he surrendered some of them to a superior authority i.e. civil society in order to safeguard the rest of them. Hobbes considered right to life as a natural right. Locke declared right to life, liberty and property as the natural rights. Rousseau has prioritized the rights of Freedom and Equality.

Contemporary political philosophies which continue to believe in the liberal tradition of natural rights include libertarianism, anarcho-capitalism and Objectivism, and include scholars like Ludwig von Mises, Friedrich Hayek, Ayn Rand, and Murray Rothbard. A libertarian view of inalienable rights is laid out in Morris and Linda Tannehill's 'The Market for Liberty', which claims that a man has a right to ownership over his life and, therefore, also his property, because he has invested time (i.e. part of his life) in it and thereby made it an extension of his life. However, if he initiates force against and to the detriment of another man, he alienates himself from the right to that part of his life which is required to pay his



debt: “Rights are not inalienable, but only the possessor of a right can alienate himself from that right - no one else can take a man’s rights from him.”

Critics of Natural Rights

The idea of natural rights was not accepted by the latter political philosophers.

- It was felt that if rights are attributed to the individual absolutely, we cannot resolve the conflict between man and society. For example, in a situation like famine, one man’s right to life could be violated by hoarding of food by another man’s right to property. That is if the two equally absolute rights conflict, there is no principle upon which this can be solved.
- The most obvious criticism of this theory was what is meant by natural. It is found that the word nature was used in a multi-dimensional sense such as: nature as a whole universe, nature as the non-human part of the universe. In short, the term ‘natural’ remained vague at the hands of various writers.
- There can be no rights without a law. Rights imply certain duties; they imply social relations on which duties can rest. As was pointed out by Green later on, every right must be justified in terms of ends which the community considers good and that which cannot be attained without rights.
- The theory assumed that one could have rights and obligations independent of society. This was an erroneous view because the question of rights emerges only in the society and in the context of social relationship.

Theory of Legal Right

According to this theory, there can be no right in proper sense of the term unless it is so recognized by the state. No rights are absolute, nor are any rights inherent in the nature of man as such.’ Rights are relative to the law of the land; hence they vary with time and space. Rights have no substance until they are guaranteed by the state.

Hobbes argued that the only fundamental right of the individual, viz. the right of ‘self-preservation’, is better maintained by the state than by the individual himself. Hence, man must depend on the state for the maintenance of his rights. He is free to do anything which is not restrained by the state. In other word, man can have no right against the state. Bentham rejected the theory of ‘natural rights’ which had been advanced by the early liberals. He describes the theory as metaphysical, as a ‘hodge-podge’ of confusion and absurdity, as ‘simple non-sense upon stilts’.

The legal basis of rights implies three things:

- (I) The state defines and lays down a bill of rights. Rights are not prior to the state but state is the source of rights,
- (II) The state lays down a legal framework which guarantees rights. It is the state which



enforces the enjoyment of rights,

- (III) As the law creates and sustains rights never the content of the law changes, the substance of rights also changes. The legal theory of rights implies that there is no right where there is no power to secure the object of rights.

Criticism of Legal Right

The legal theory of rights was also found deficient by the later writers in certain respects.

- The legal theory did not cover the whole range of rights. It explained the nature of only those rights which had been given legal recognition by the state. It was incomplete because it did not tell whether that which is guaranteed is actually rights or really needed recognition. The theory assumed that what is guaranteed by the state is right.
- The legal theory did not take into consideration the rights of multiple associations in the society. For example, as Laski said, men enjoy rights not merely as members of the state but also a member of the society. He believed that to limit the rights to a single source i.e. the state is to destroy the personality of the individual and not to preserve it.
- The state does not create rights but recognizes, maintains, protects and coordinates them. As Wild remarked, the rights exist whether they are recognized or not. Higher than law is our conception of right and wrong. Rights must have a foundation of right.
- If the state and its laws are accepted as the sole source of rights, then there is no right against the state. The liberal writers like Green and Laski recognized the need to resist the state in certain circumstances. As Laski put it, the obedience to the state is limited and conditional. It is obedience to rights and not might, to justice and not to authority. The material source of rights is the community's sense of justice and not law. Law is nothing but the concretization of the feeling of the community. The legal theory is partly correct in asserting that rights are no rights until they are secured by the state.

Theory of Moral Rights

This theory of rights is associated with idealist thinkers, though T. H. Green merged it with liberalism. Laski, like T. H. Green, erects his theory of rights on moral foundations. However, he is seriously concerned with the satisfaction of material needs of the masses. Laski is much ahead of Green in dealing with the maladies of the capitalist system. Thus, Laski holds that rights are not concessions granted by the state. On the contrary, they are superior to the state, because they provide for a standard to judge the state itself. The moral theory associated rights with the achievement of moral freedom of man as member of the society. According to this theory, every right is derived from one basic right - the right to personality. Whether it is right to life, liberty, property, education or health, they are all



rooted in and are governed by the development of the personality of the individual. Rights are powers which an individual claims from the society on a moral plane and are recognized and enforced by the state through its law. Legal rights may or may not embody moral rights, but the ideal is the empowering of all moral rights through law. Such rights vary from time to time and from place in accordance with the moral consciousness of the community. With the growth of moral consciousness, certain rights which were once regarded as natural lose value. Every right that an individual has is dependent on the social judgment of its compatibility with the general well - being.

2.7.1 Rights and Duties

It must be emphasised, however that right have corresponding duties as well as obligation. The two are correlated. Rights and duties of citizens are two sides of the same coin. The relationship between them is two fold. Firstly, society functions on the principles of reciprocity. My rights involve a duty, on the part of others to respect my rights and also a duty on my part to respect the similar rights of others. Society works on the principle of, “he who takes gives and he who gives takes”. Indeed, my enjoyment of a particular right has to be conceived in terms of the similar claims of other citizens. My right is integrally related to the right of my fellow human beings. The one cannot exist without the other. A society, in which people care less for their own duties and more for their rights, sooner or later, disintegrates. In their frantic effort for the vindication of their own rights at the expense of fellow human beings, society will be reduced to the status of a jungle in which ultimately the law of might will prevail. In order that everyone enjoys his or her rights it is necessary that we recognise our obligation towards others. We cannot say that we shall be free while others will be bound with their obligation. Such a position is quite untenable and inhuman.

Secondly, logic of rights and duties also implies that if we have certain claims against the state, it is also our responsibility to contribute something towards its enrichment by doing a socially useful work. The state creates those conditions in which we can realise ourselves. In return for this, it is our duty to take advantage of these conditions and give our best to it. The best way in which we can contribute to the social stock is by following duties towards our nation, in recognising our social responsibilities and unscrupulously respecting the similar rights of others. One does not contribute only by being a son of a prime minister or a poet but by being oneself. I may not succeed in my life, but if I have given sufficient indications of sincere efforts to make such contribution, as I am capable of, my job is done. It is a duty of every one of us that we must develop. Our personality so as to be able to contribute our best to society. A citizen should make available valuable judgement on the various issues confronting it. One must pay one's taxes to the state and must refrain from interfering with the similar rights of the other members of the society. So long as the state helps in fostering a



climate conducive to happiness of the individuals, the citizens must also help it in maintaining law and order and must honestly perform their public duties. They should leave no stone unturned for strengthening their own country and if need arise must be prepared to defend it at any cost. These obligations by being reciprocal in character do not impose restrictions on the rights of individuals; rather, they give them fuller and greater reality. To think that my rights can be separated from my duties is to be guilty of gross selfishness. It is only by performing a useful function in society that we contribute towards its enrichment. A state in which citizens care more about their rights and less about their duties remains in a precarious situation. It would lead first to anarchy and then to its disintegration. In order to preserve my right it is necessary that I must convince my fellow human beings that in granting such a right they would be enabling me to participate in the go of society. I must show, that so far as the society does not secure me this right, it derogates me from the status of a human being and my capacity to make my contribution to social welfare. It is only in the apprehension of the equation between individual's function and social well-being by the members of society that a true theory of rights can be constructed and society can be built on stable foundations.

2.8 DEBATE: HUMAN RIGHTS- UNIVERSALISM OR CULTURAL RELATIVISM

As we are aware, the Universal Declaration of Human Rights has been in existence since 1948 when it was adopted by the General Assembly of the United Nations, however, an important issue of the past twenty years has been the conflict between two rival ideologies of human rights popularly known as universalism and cultural relativism. Most contemporary readings on the topic of Human Rights include one or more chapters on cultural relativism. The bulk of the existing literature revolves around a description of western versus non-western philosophies and argues as to which approach better defines human rights. While the Universalism holds that more "primitive" cultures will eventually evolve to have the same system of law and rights as the Western cultures, the cultural relativists hold an opposite, but similarly rigid, viewpoint, that a traditional culture is unchangeable, that cultures have fundamental or essential "properties, particularly their values and beliefs. All questions about the origins or the universality of human rights become questions about their validity. That is to say, if human rights are western, they cannot be universal. Put differently, both the universalists and relativists agree that the key point at issue is whether human rights are essentially linked with western culture but they disagree about the answer.

Human Rights are Universal

The Universal Declaration contains three distinct sets or generations of human rights. The first set or generation, known as negative rights, consists of civil and political rights. These



include right to life, equality before laws, freedom of speech and religion, freedom of movement and assembly, as well as guarantees against discrimination, slavery and torture. The second set or generation of rights known as positive rights and include a number of social, economic and cultural rights such as right to an adequate standard of living, adequate standard for the health and well - being of himself and of his family, including food, clothing, housing and medical care and necessary social services”. In addition,” motherhood and childhood are entitled to special care and assistance “and everyone has the right to free education at the elementary level. A third set or generation of human rights involves collective set (also known as group rights) or community rights such as right to development among nations. They were the solidarity among nations and individuals and form a core value of the declaration. This set of rights is the least developed among the three types of human rights.

Now, the above rights are also called universal rights. The concept of universalism came into prominence after World War II. With the adoption of the Universal Declaration of Human Rights, countries all over the world discussed and negotiated values that would become the basis for human rights. The horrific consequences of World War II left a legacy that great harm could result in allowing individual countries or nations to define and pursue their own values (as was demonstrated by Hitler that German is the most superior race on this earth), a core concept of Human rights included in the Declaration is that those rights belong to everyone, no matter as to what status that person holds in society. This notion of universalism is the basis of human rights. Every individual has a claim to the enjoyment of human rights, wherever the individual may reside. For example, human rights include adequate health care and nutrition for everyone. And the governments have an obligation to provide a framework for ensuring the delivery of these rights even if local cultures consider the procurement of these items a matter for the individual. Human rights are internationally agreed values, stand or rules regulating the conduct of states of their own citizens and toward non-citizens. In the words of the Preamble of the Universal Declaration of Human Rights, these rights are a common standard of achievement for all peoples and all nations. These rules, which the member-states have imposed upon themselves, serve to restrict the freedom of states to act towards their entire population-citizen as well as non-citizen, men as well as women, whites and non-whites, believers and non- believers, married persons and the unmarried etc.

The Universalists argue that at least some moral judgments are universally valid. They generally hold that something like the catalogue of rights enunciated in the Universal Declaration of Human Rights (UDHR) and other international covenants and conventions are universally valid. The universality of human rights derives from claims or arguments held to transcend cultures Modern Universalist theories of human rights can be based on natural law justice, reaction to injustice, dignity and equality of respect and concern. Grounded on ideas



of universality, empowerment and human-centeredness, the concept of human rights is considered an appropriate and vitally necessary radical framework for altering international relations and politics, including changing notions of humanitarian intervention.

Now, the important point to remember here is that this universalistic theory of Human Rights is largely based on Western philosophy and the value it places on the individual. It is a product of Greek philosophy, Christianity and the Enlightenment thinkers which contended that one can use nature or reason to identify basic rights, inherent to every human, which pre-exist society.

Briefly, this doctrine can be stated as:

- (i) All human have rights by virtue of their humanity;
- (ii) A person's rights cannot be conditioned by gender or national or ethnic origin
- (iii) Human rights exist universally as the highest moral rights, so no rights can be subordinated to another person (e.g. a husband) or an institution (e.g. the state), also, it has been the practice of states to accept it, through ratification of international instruments. In other words, they are rights because they are natural or God - given or inherent to humanity. They are so fundamental that there should be no exception to their application.

Human Right and the Problem of Cultural Relativism

Since its inception that UDHR has been mired in controversy. There have been theoretical criticisms which include reactionary, communist, communitarian and pragmatist. Politically and ideologically motivated criticisms included socialist, Confucianist, African and religious fundamentalist as well as unaligned criticisms from developing countries. Such criticisms focus on the internal cohesion of the UDHR; problems with interpreting it because of few precise definitions; cultural relativism; globalization and recent changes on the world stage. These criticisms have raised important questions such as - whether human rights criteria deserve the authority they have acquired, whether their claim to universality are justified, or whether they are just another cunning exercise by western imperialism.

Cultural relativism is based on the idea that there is no objective or universal standards by which others can be judged. The debate between universalism and relativism is as old as the history of philosophy itself and its discussion of truth. Relativism was introduced, among others, by the Sophist Protagoras. He rejected objective truth by saying in so many words, later quoted by Plato: "The way things appear to me, in that way they exist for me and the way things appear to you, in that way they exist for you".

Relativism as linked to culture appeared late in the work of anthropologists who demonstrated empirically that there exist in the world many different cultures, each equally



worthy. However, international law has only recently begun to tackle the issue of cultural relativism, which first emerged after the publication of a book in 1971 by **Adda Bozeman** entitled **The Future of Law in a Multicultural World**. The central themes of the book were:

1. There exist profound differences between western legal theories and cultures and those of Africa, Asia, India and Islam.
2. In order to fully understand a culture, one must be a product of that culture.
3. Even if a culture were to borrow a concept from another culture, that concept's meaning would be filtered through the first culture's unique linguistic-conceptual culture,
4. There can be no universal meaning to a moral value.
5. A universal text on values is a futile exercise.

Similar, Polis and Schwab in their essay Human Rights: a Western Construct with Limited Applicability argued that the Western political philosophy upon which the Charter and the Universal Declaration of Human Rights are based provides only one particular interpretation of human rights, and that this Western perception may not be successfully applied to non-Western areas due to ideological and cultural differences.

Cultural relativism maintains that there is an irreducible diversity among cultures because each culture is a unique whole with parts so intertwined that none of them can be understood or evaluated without reference to the other parts and to the cultural whole, the so-called pattern of culture. Cultural relativism refers to a view that all cultures are equal and universal values become secondary when examining cultural norms. No outside value is superior to that of the local culture. If the local culture allows female genital mutilation, then the human right prohibiting cruel or degrading treatment shouldn't prevent the genital mutilation. If the culture accepts genital mutilation, then no outside principle should overrule the cultural norm. Relativists hold that "cultures manifest so wide and diverse a range of preferences, morality, motivations, and evaluations that no human rights principles can be said to be self-evident and recognized at all times and all places." There are no absolute values or principles by which any culture or society can be judged apart from those of the culture itself. This brand of cultural relativism must be distinguished from a more thoroughgoing moral relativism: cultural relativists typically do not deny truth or morality, but instead hold that while "for every culture some moral judgments are valid, no moral judgment is universally valid." Cultural relativism argues that each culture or society possesses its own rationality, coherence and set of values and it is in these terms only that one can properly interpret the organization, customs and beliefs (including ideas about human rights) of that culture or society. The cultural relativists typically maintain that there is a fundamental link between the cultural origins of a value or the principle and its validity for that culture.



Against the universalism that is the foundation of human rights; cultural relativism insists that cultural context determines pluralism in human rights, values and practices. Broader culturalism consists of the interrelated approaches of cultural essentialism (or reductionism), cultural determinism and cultural relativism. It turns culture-or cultures-into the trump card in any debate about human rights, or indeed world politics. It emphasizes the uniqueness and exclusivity of each culture. Thus, if human rights are not indigenous to a particular culture, their validity and applicability are in doubt. In Ann Maver's words, human rights are "alien and therefore incompatible" with non-Western cultural or religious traditions." The liberal doctrine of human rights does not speak the people's worldview. Cultural concerns are two sided- upholding one's cultures and traditions but also protection from cultural imperialism. Culture performs multiple roles: culture versus rights, rights to culture, rights as culture, and culture as a way of improving understanding and analysis of rights processes as situated social action.

2.9 SELF-ASSESSMENT QUESTIONS

1. What is the meaning of liberty. Explain the various notions of liberty?
2. What is the difference between positive and negative liberty?
3. Comment on the idea and concept of justice?
4. What do you understand by global justice?
5. Comment on what is the difference between Procedural justice and Substantive justice?
6. What is the difference between legal, political, social, economic justice?
7. Critically evaluate Rawls's theory of justice?
8. Analyse of the recent debates on the idea of right. Which of these view-points do you agree with and why?
9. Examine the idea of natural rights as advanced by John Locke.
10. Write a short not on 'Human Right.'
11. Trace the evolution right. Give an account of major critiques of natural rights theory.
12. Map out major debates on the question of "why should we obey the state"?
13. Make a short note on Human Rights and Cultural Relativism

2.10 SUGGESTED READINGS

- Acharya, Ashok, "Equality" in Rajeev Bhargava and Ashok Acharya ed. Political



- Theory An Introduction (New Delhi, Pearson Longman: 2008)
- Arneson, Richard J., “Equality” in Robert E. Goodin and Philip Pettit A Companion
- Contemporary Political Philosophy an Anthology (USA, Blackwell:1997)
- Menon, K. (2008) ‘Justice’, in Bhargava, R. and Acharya, A. (eds), Political Theory:
- An Introduction. New Delhi: Pearson Longman, pp. 74-86.
- Mill, J. S. (1991) On Liberty and Other Essays. ed. Jon Gray. Oxford: Oxford
- University Press.
- Berlin, I. (1969) ‘Two Concepts of Liberty’, in Four Essays on Liberty. England:
- Oxford University Press, pp. 118-172.
- Rawls, J. (1971) A Theory of Justice. Harvard: Harvard University Press.
- Miller, D. (2006) The Liberty Reader. Edinburgh: University of Edinburgh Press.
- Rawls, John (1971) A Theory of Justice Cambridge, MA: Harvard University Press.
- Rawls, John (2005) Political Liberalism: Expanded Edition Columbia University
- Press.
- Sandel, Michael (1998) Liberalism and the Limits of Justice Cambridge: Cambridge
- Talukdar, P.S. (2008) ‘Rights’, in Bhargava, R. and Acharya, A. (eds), Political
- Theory: An Introduction. New Delhi: Pearson Longman, pp. 88-104.
- Mckinnon, C. (2003) ‘Rights’, in Bellamy, Richard and Mason, Andrew (eds),
- Political Concepts. Manchester: Manchester University Press, pp. 16-27.
- Campbell, T. (2008) ‘Human Rights’, in McKinnon, C. (ed), Issues in Political
- Theory. New York: Oxford University Press, pp. 194-217.



DEBATES IN POLITICAL THEORY:
**A. PROTECTIVE DISCRIMINATION AND PRINCIPLES
OF FAIRNESS?**
**B. THE PUBLIC VS PRIVATE DEBATE: FEMINIST
PERSPECTIVE CENSORSHIP AND ITS LIMITS**

Dr. Mangal Deo
School of Open Learning,
University of Delhi

STRUCTURE

- 3.1 Objective
- 3.2 Protective discrimination: Theoretical Explorations
 - 3.2.1 Other Backward Classes where caste and class intersects
 - 3.2.2 Courts Stand in OBC reservation
 - 3.2.3 Women, caste and reservation
- 3.3 Rawl's : Principles of fairness?
- 3.4 The Public Vs Private Debate: Feminist Perspective
 - 3.4.1 Schools of Feminism
 - 3.4.2 Waves of Feminism
 - 3.4.3 Post Feminism
 - 3.4.4 Personal is Political
 - 3.4.5 Sex and Gender
- 3.5 The Public Vs Private Debate: Censorship and its limits
 - 3.5.1 Types and Elements of Censorship
 - 3.5.2 India and Censorship
 - 3.5.3 Censorship and Media
 - 3.5.4 Rule of Law, Freedom and Surveillance



3.6 Self-Assessment Questions

3.7 Suggested Readings

3.1 OBJECTIVE

- The aim of this chapter is to understand the implementation of Protective discrimination policy in India
- Indian case presents a unique case where disadvantaged among disadvantage group is considered.
- This phenomena is explored by understanding intersectionality of caste, class and gender
- There would be special focus on why reservations were extended to Other Backward Classes (OBC) and Dalit women

Protective discrimination is process to lessen inequality that is the result of certain ascribed identities in the society. Democratic countries all round the world have adopted some kind of Protective discrimination programme for groups that are at the bottom of the ladder due to structural inequality. In India one such identity is caste that had drawn constituent makers to take certain steps to redress this inequality. Over the period of time with strong mobilization all round the world, Protective discrimination programme was implemented for women also as they were seen invisible in all the spheres of life. The aim of this chapter is to understand the practise of Protective discrimination in India. This would be done but first trying to understand what is caste? Then we would see how Protective discrimination programme constitutional provisions that were inserted for removal of caste inequality. We would then discuss Protective discrimination programme in India with special focus on caste. Finally last section would discuss Protective discrimination programme for women with special focus on intersectionality between caste and gender.

3.2 PROTECTIVE DISCRIMINATION: THEORETICAL EXPLORATIONS

G S Ghurye (1932) while discussing Caste system in India tried to underline some characteristics of caste system which are as follows:

- (a) Hierarchy
- (b) Restrictions on inter-dining
- (c) Restrictions on inter-caste marriage
- (d) Restrictions in freedom of occupation



(e) Segmental division of society

B.R Ambedkar (1936) while agreeing with G.S Ghurye characteristics also pointed out this fact that caste system kills the unity and prevents nation to be built up. In order to prevent the menace of caste system to further infiltrate the new independent Indian Nation, Ambedkar had categorically crafted Article 15 of the Indian constitution that prohibits any kind of discrimination based on caste, religion, race, sex etc and this was re enforced through Article 38 that said that welfare of the people would be done by the state irrespective of religion, caste class etc. Despite making such forward looking law, makers of the Indian constitution saw that caste was rejuvenating itself. This was because caste system was used by politicians to further their ends on one hand and on the other it was enacted in the society through various ways. Bernard Cohn while tracing the history of Caste system in India points at British policy of use of census as a tool in dividing the society on basis of caste and religion by stratifying the caste system that was not prevalent then. M.N Srinivas (1956) while studying the nature of caste system in Independent India discovers 'sanskritization' process, where lower caste performs same rituals as upper caste do. This is done to uplift their status and it is promoted through discussions in print media, representative culture and thirdly use of English education. Rajni Kothari (1973) says that casteism in politics is no less than politicisation of caste. It is a system in which both the forces of caste and politics are brought nearer to each other. Specific purpose of organising public activity is through nature of interaction and differential organisation of caste system. Rajni Kothari has deciphered three ways where politics uses caste organisation. Firstly through secular aspect that is based on segregation principle of endogamy. This works on the principle of pollution and purity. Factionalism, caste cleavages, patterns of alignment and realignment has led to continuous social mobility. This secular tendency is seen through two ways first through governmental aspect and secondly through political aspect. Secular aspect is through education and regional variation. Brahmins responded to English education there was slow expansion of franchise. Since Brahmins were not powerful so vertical inter-caste ties provided an ongoing structure of political recruitment? Spread of new religious sects made different models of sequence for accession to power. Breaking through territorial restraint and widening of occupational forces. Secondly Integrative approach strengthened by caste system. In this wider loyalties are structured through prevailing differentiation and it involves competitive style of democratic politics by broadening ideological base. This involves segmentation and identification system in which leadership was forced to make concerns to local opinion. It involves not only distributive and conflictual aspects but also group actions and cohesions. This happens through fusion and aggregation and fission and segmentation. Interaction between caste and modern institutions distribution of economic benefits leads to caste consciousness and perceptions. Feeling of deprivation gave rise to ascendant caste. Bilateral struggle of power led to string of demands which gave rise to demands for benefits that exceeded availability of resources. Weakening of older identities created space for creation of



politicised values and gave rise to new changes. Consciousness is third aspect which was the result of sanskritization, westernization and secularization processes that has occurred through liberal education, patronage and slowly expanding franchise. Secular involvement has fostered new attitudes and offered new rewards. It has exposed caste and communal ties. Close identification with one caste alienates other caste. Political parties gain stability only by involving all major communities. Politicisation of caste leads to operation of competitive politics. It has drawn caste out of its apolitical context and given new status to caste system. There emerges dominant elite where different groups share common outlook. Caste takes new association in form of association of caste members, Creation of caste institutions and caste federation.

One direct result of interaction between caste and politics has been mapped by Rudolf and Rudolph (1987) who discussed about rise of bullock cart capitalist after green revolution was implemented in 1960's. These groups belonged to lower caste that rose to prominence and asserted themselves in Indian politics. This led to setting up of Mandal commission that ultimately created other backward classes who were erstwhile lower caste groups and who gave new direction to Indian politics. This was mapped by Christopher Jaffrelot (2003) when he saw rise of Other Backward Classes in North Indian states as India's Silent revolution.

3.2.1 Other Backward Classes where Caste and Class Intersects

While the policy of reservation for scheduled caste and tribes was implemented at the time framing of Indian constitution. This was not extended to other backward classes. This was due to contested power politics emerging at that time that failed to see them as disadvantaged group. The policy of reservation was extended to gain political benefits rather than actually trying to institutionalize equality for this category. Showing disdain towards caste structure, Nehru brought in category of 'Other backward classes'. However there was silence in the Constitution, on the definition of "classes". Only in Article 340, was there a reference to President having powers to appoint commission to identify 'socially and educationally backward classes'. With no entry point as to how to define this category it has led to a big debate and has ended up in recognizing "castes" as "classes". The semantic equivalence between "class" and "caste" goes against the meanings of these two words. One of the reasons for extending reservations to OBC'S was that it reflected in graded inequality rather than a sharp distinction between Scheduled Castes and caste Hindus.

The insight is gained through experience of first backward class commission that had used four main criteria to judge social backwardness which were a low status, lack of education, under representation in civil services and other governmental sectors (Jafrelot 2003: 549). This came down to belonging to lower caste. As a result first backward class commission recommended 2399 so called OBC caste which constituted 32 % of whole population as per 1931 census. However with a vision to make India modern, the first backward class commission report is shunned out. Political compulsions of the time again brought in this



question at the fore front. This was because Nehru's preferential policy towards class ignored the Indian reality of caste. Also other backwards classes reservation policy was being implemented in non-congress ruled states. With janta party coming to power second backward classes commission by name Mandal commission was set up. After this commission's recommendation, policy of preferential treatment was extended to other socially and educationally backward classes. However this was not an easy task as defining 'Other backward classes' was difficult. How should backwardness be measured? Who all should be included in this list? What will be the role of caste in its selection process? How will this case be similar to already existing policy for scheduled caste and tribes? The biggest challenge facing the commission was how to measure backwardness? Should it be based on relative deprivation experienced compared to the top or should it be based on average deprivation index thereby extending it to caste above scheduled caste and tribes. (Galanter 308) the inter-sectionality of caste and class figures out prominently when mandal commission chooses caste in connection to backwardness. This is done by seeing caste as social units whose backwardness will be measured and it proposes to use caste standing as measuring rod. This is done by complicated system based on eleven criteria's but these are weighted to emphasize traditional measures of low status (perceived in rank, manual labour and female participation in labour force). This understanding derives its inspiration from sociological understanding of poverty in India. Usually poverty is seen as group phenomena which are the result of their social backwardness stemming from inequitable status system. This was done as caste system in India had denied lower caste from gaining access to knowledge, political power and economy. This inequality got aggravated due to rapid progress in modernization the benefits of which were cornered by Upper caste. (Sheth 2000:257) The problem gets aggravated as there is no clear hierarchical listing of caste. The mandal commission had identified 3743 caste. In this case question arises whether caste can be merged with economic test? (Galanter 309). This is a problem as government has limited capacity to map the income status of individuals that would put this policy in danger. There was also this apprehension that major benefits of reservation would be cornered by more advance sections of backward communities thereby putting this policy in danger. This was somewhat minimized when Mandal commission brought in concept of 'creamy layer' in which this policy would not extend to 'socially advanced sections' of backward classes.

One of the important contributions in the field of assessing the role of reservations in political sphere has been that of Christophe Jaffrelot (2003). He calls the inclusion of new groups in political process as "silent revolution", as there has been transfer of political power from upper caste elites to subaltern groups in northern India, The proportion of OBC elected representatives went from 11% in 1984 to 25 % in 1996 whereas that of Upper caste elected officials fell from 47% to 35%. (Jaffrelot 2003: 310) However, he maintains that the constraints are clear and explicit: a) Upper castes have strong hold on power positions. b) There has been unevenness in the rise of low caste politics. For example, in states like UP



and Bihar it has been more successful than in Rajasthan. c) He argues that Liberalization opened new avenues and opportunities for upper caste, and decrease in government jobs, which has substantially reduced the scope for economic and social inclusion in true sense. d) Rise in lower castes is not linear or irreversible as there is no clear cut unity among caste parties or individuals. He finds that OBCs and SCs are often at odds, due to conflicting class interests, explicitly reflected in the struggle for power between Samajwadi Party (SP) and Bahujan Samaj Party (BSP) in UP.

3.2.2 Courts Stand in OBC reservation

The courts have also played significant role in determining whether caste could be used as class for analytical purposes, and deciding the targets of reservation policies. Firstly, in several cases, courts have endorsed the caste based definition of OBC. The Supreme Court in *Minor P. Rajendran vs. State of Madras* (1968) opined that: “A caste is also a class of citizens.” The word “class” is used very expansively here, meaning a number of persons possessing common attributes and hence grouped together. The court in *Rajendran* case also laid down specific conditions for considering any caste as Backward Class, like- if the case as a whole is socially and educationally backward. However, in *State of Andhra Pradesh vs. U. S. V. Balaram* case (1972), the Supreme Court bench of C. Vaidyalingam held that a caste may be “Backward Class” notwithstanding the presence in it of a “few individuals both socially and educationally above the general average.” In deciding whether caste can be the real test for backwardness, the court in *M. R. Balaji and State of Mysore* (1962) argued that though caste cannot be the “sole” criterion but it is relevant criterion or factor in determining backwardness. this judgment for some time reversed individual state measures in promoting the welfare of OBC’s through reservation policy as there definition on classes rested on caste factor only. Nonetheless the contentious clause was on percentage of reservation given to them that beached 50%. However courts never denied that backwardness of classes cannot constitute backward caste. What the courts suggested that policy to reach real target groups list of OBC should be revised regularly. It has also allowed for sub-classification within OBC category to ensure that the elites do not control and misuse the benefits, attached with the policy, and that the targeted groups actively get benefitted by asserting the ‘creamy layer’ classification. In *N. M. Thomas* case, the court forced the importance of creamy layer among OBCs, whereby those individuals whose family income fell above an agreed threshold, would be exempted from the benefits of reservation policy. In *Ashok Kumar Thakur*, the courts opined that, as the reservations for SCs and STs was based on multiple factors, and not just in terms of class or economic status, the concept of creamy layer could not be applied to them. Similarly, the courts held that reservations will not apply for Minority institutions and “super-speciality” or technical posts.

Thus we see that the implementation of Mandal commission in reservation policy has again caste into political arena. This was affirmed in *Indra sawhney vs Union of India* case when



Supreme Court judges had declared that ‘A caste can be and quite often in a social class in India’. It had also curtailed congress government’s initiatives in 1991 to implement reservation based on economic criteria only. (Jafrellot 2003: 311)

3.2.3 Women, Caste and Reservation

Political participation of women has been a simmering debate across globe. The demand for equal political rights was at the centre of the discourse which led to the rise of feminist movements in the west during nineteenth century. Historically, different kinds of arguments were developed in order to justify women’s exclusion from the political sphere. One of the assumptions was about *Nature vs. Culture* (John, 2005: 63-64) dichotomy that drew justification for women’s confinement to private sphere on the basis of their natural role in society. Politics being a public activity was considered to be the prerogative of men. Since men earned control of public sphere as soldiers and workers while women’s role was confined to private as mothers and educators, the sexual inequality was inbuilt in the logic of granting citizenship. (Pateman, 1988: 241) The result was that even though they gained equal political rights in terms of voting etc., it could not help them create space for themselves in representative institutions. Though procedural equality was ensured, it could not translate into substantive forms of democratic citizenship. It was reflected in women’s skewed presence in legislatures. This propelled debates about how to ensure women’s presence in politics which could translate in effective policies resulting in the demands for quotas. Within feminist struggles, it signified a progress from “*politics of ideology*” to “*politics of presence*”. Anne Phillips in her scholarly work *The Politics of Presence* argued that the issue now was about “*who*” is representing rather than “*what*” was being represented. Phillips maintained that the present form of democratic discourse did not deal with the forms of exclusion that many groups were facing in society, for example, the exclusion of women in politics. Based on the logic of experiential epistemology, she held that the experiences of these sections affect their life worlds and in order to take cognizance of their interests, their presence in representative bodies was imperative. It was argued that policies formulated for any group cannot be relevant if there was no representation of such groups during the deliberation of the policies (Phillips 1995:4)

Philips advocated a combination of “politics of presence” and “politics of ideas”, and gave four main reasons for the need of female representatives in response to such above mentioned claims. The first issue was about “symbolism”, whereby the formerly excluded groups could get a sense of being represented and hence considered as equals in true sense. This symbolic representation, according to Philips, was important regardless of the outcomes such inclusion could ensure. The second argument was that there was a need for formerly excluded groups to be a part of formulating the agenda and changing the existing norms to ensure that their interests could be included. The third argument was about the importance of “experience” in



policy making. If women issues were neglected, a women representative could argue more effectively argue for such considerations. Further, during debates on policies related to women issues, a women representative, based on her experiences and interests as a group member, would be in a better position to bring out a true picture on the issues. The final argument is about the need to break the pre-existing hegemonies in the representative bodies. This, according to Philips, could only be ensured by the presence of aggressive spokespersons from the formerly excluded groups in the public arena who were able to challenge the existing patterns of representation based on power hierarchies (Philips 1995:6)

Iris M. Young supported quotas for women based on the idea of difference among various groups. According to Young, democratic public should provide mechanisms for effective recognition and representation of distinct voices and perspectives of groups that are oppressed or disadvantaged. “If women gain access to political power, they will opt for politics and policies that promote social and gender equality, peace and sustainable development.” (Young 1990:184) Thus, quotas or other methods of ensuring high proportions of women in elected bodies could transform these institutions

Anne Phillips’ argument for quota considers women as belonging to a special category due to differences born out of natural conditions. Iris Marion Young on the other hand discusses about quotas for women or any other group that faces oppression based on the arguments about experiences of “exploitation, marginalization, powerlessness, cultural imperialism and violence.” (Young 1988:42) So her position on quotas is based more on the cultural aspects. While both Philips and Young demand quotas for different reasons, their notions try to produce women as homogeneous category.

It is this assumption of a universalized notion of women as a category that has invited severe criticism for both Anne Phillips and Iris Marion Young. It is argued that it seems to suggest that women are timeless subjects who are united by only a single term called “patriarchal oppression”. It also seems to signify that all women face same kind of oppression. Critics have questioned this homogenized sense of understanding women’s oppression. Feminist critics of different hues- Black, Postcolonial, and Dalit feminists have raised the following questions: a) how does the emergence of the interstices-the overlap and displacement of domains of difference-that inter subjective and collective experiences of nationness, community interest, or cultural values are negotiated. How are subjects formed “in-between”, or in excess of, the sum of the parts of difference (usually as race/class/gender, etc.)? How do strategies of representation or empowerment come to be formulated in the competing claims of communities? Despite shared histories of deprivation and discrimination, the exchange of values, meanings and priorities may not always be collaborative and dialogical, but may be profoundly antagonistic, conflictual and even incommensurable? These concerns are not captured by universalized notion of gender. However, regardless of the differences in the conception of citizenship and the questions of representation, there has been a consensus



regarding the necessity of quotas for women in political sphere. It is recognized as the best available mode to challenge oppression and raise consciousness about women's issues in society.

The other related question that arose in the discourse was about the proportion of reservation required to bring about significant visible change. It meant presence of "critical mass" in political representation that women needed for bringing qualitative women friendly legislations. The expression critical mass stems from nuclear physics and refers to a certain quantity that is needed to start an irreversible chain reaction that could change a process. The percentage usually mentioned as the turning point is 30%. These numbers were derived to a great extent from the researches of Rosabeth Moss Kanter and Dahleruph who worked on the critical number required for the effective performance of quota system. (Kanter 1977: 965) Lena Wängnerud attempted to summarize some of the empirical results made from studies on both descriptive and substantive representation with the conclusion that although the empirical results of women's representations were rather mixed, "female politicians contributed to strengthening the position of women's interests". (Waneguard 2000:67)

nation-state renounces its sovereignty, there will surely be a possibility of allocation of goods.

3.3 RAWL'S : PRINCIPLES OF FAIRNESS

Justice is one of the most important moral and political concepts. The word comes from the Latin jus, meaning right or law. The Oxford English Dictionary defines the "just" person as one who typically "does what is morally right" and is disposed to "giving everyone his or her due," offering the word "fair" as a synonym. Quest for justice has been an important concern of political theory since ancient time. However, the meaning of justice has been understood differently during different times. In the ancient Greece for the sophist justice meant the interest of the stronger. Plato emphasized on the moral element in justice by saying that the justice meant performance of one's duty with all abilities and capacity toward the social whole. For Plato, justice is a virtue establishing rational order, with each part performing its appropriate role and not interfering with the proper functioning of other parts. Aristotle, on the other hand, held the view that justice meant equal share to the equal and unequal share to the unequal, it is distributing power and position proportional to the world or contribution of the individual. The modern idea of justice implies its legal, political and socio-economy dimensions. The legal dimension of justice assumes that law is the declared will of the state Constitution regulating activities of government. The political dimension of the justice implies political equality, universal franchise, full guarantee of the liberty, equality, and fraternity in that substantive aspect. It argues for the reallocation of both materials and moral advantages of social life.



The contemporary debate on the nature of justice focuses on the distinctive between procedural justice and substantive justice. The notion of procedural justice is closely related to the tradition of liberalism. According to this view point, the function of justice is to regulate the mutual of relation between individual and groups. Hence the quest for justice should aim at evolving reasonable rules which should be (upheld, impartation) to all categories. In contrast, the idea of substantive justice demand failure of essential conditions or space within which the individual can develop their own self. In other word, the resources or opportunities should be provided to the unprivileged and this advantage section of society.

In modern time, significant part of political theory is directly or indirectly related to the problems of justice. This has given rise to diverse perspective in justice. Of these the following are particularly important:

1. Liberal perspective
2. Libertarian perspective
3. Marxist perspective
4. Democratic-socialist perspective
5. Feminist perspective

1. Liberal Perspective

John Rawls is the prominent liberal thinker. He considered justice as the first virtue of social institution. The problem of justice, according to Rawls is in ensuring a just distribution of primary goods. Rawls revived the social contract tradition in his Kantian version the principle of justice is a product of end original agreement in the original position. The person in the original position is rational, capable of a conception of good and have a sense of justice the two principles that the parties choose in the original position can be stated as follows;

(1) Liberal principle

Each person is to have an equal right to the most extensive basic liberty, compatible with a similar liberty for theirs.

(2) Equality principle

Social and economic inequalities are to be arranged so that they are both:

- c) attached to the offices and position, open to all under conditions of fair equality of opportunity,
- d) beneficial to the least advantaged section of the society

2. Libertarian Theory of Justice

Libertarian perspective on justice is based on the ideal of liberty. It regards the right to



properly as an important ingredient of individual liberty. It is largely opposed to the idea of welfare state. Robert Nozick provides a powerful philosophical defence of the libertarian position of the minimal state. Nozick identifies three principles on which this entitlement would conform to justice.

(1) Initial acquisition

The method whereby an individual comes to appropriate some previously unowned bits of the natural world. Those who come to settle in an uninhabited continent may legitimately acquire its land and natural resources on first come first served basis, as long as nobody is made worse off by their doing so.

(2) Voluntary transfer

It applies to all property whether acquired through initial acquisition or by mixing one's labour with the natural world, i.e. by means of one's talents, efforts, enterprise, etc. in a market situation.

(3) Rectification

This is precisely the area where the state of the international community will be justified to intervene in order to restore justice. Nozick concedes that the history of the world abounds with involuntary transfers as well as unjust acquisitions of natural sources.

3. Marxist Perspective

The Marxist perspective, Marxist claimed that liberal and libertarian failed to recognize the ultimate moral significant of the ideal of social equality, and its intimate linked with justice. The Marxist's are (vocal) about uneven distribution of income as an example of injustice. They believe it is only with the destruction of capitalism, private property, and bourgeois class that it is possible to construct a society based on social equality and realize justice. Capitalism generates inequalities of wealth and welfare because the markets and enterprise work to the advantage of the capitalists and property-owners and Marx explains this with reference to the labour theory of value. Capitalism dehumanizes the human being destroying his essence. With the abolition of private property and inauguration of common ownership, workers' exploitation ceases and society will be reconstructed to bring forth cooperation and fellow feeling.

In a communist society, because of the social ownership of the means of production, justice would mean equality of all and equality for all. It would mean absence of all discrimination, all exploitation and all oppression. It would mean work for all In accordance with their abilities as also fulfilment of all the needs of the entire person in return to what each are of



them does.

4. Democratic Socialist Theory

While Marxism seeks to bring about socialism through a revolutionary method, democratic socialism prefers an evolutionary or democratic method. Unlike the Marxists, democratic socialists find justice in a regulated, restricted, and controlled system of capitalism. They believe that the goals of democracy and socialism are inseparable from each other. It seeks to modify Marxian socialism in some important details. Democratic socialists hold that socialism does not require wholesale socialization of the means of production and distribution. Instead, if some essential means of production and distribution are placed under state ownership so as to ensure the supply of essential goods and services for the bulk of the population, this would be a substantial achievement in the direction of socialism. Democratic socialists insist that socialism should satisfy not only the material needs of the human being, but also should take care of the moral, intellectual and emotional need for proper development of each individual. They also advocate ensuring the individuals ensuring the freedom of thought and expression, freedom of religion and worship, freedom of movement, and other similar democratic freedoms.

Democratic socialism is opposed to all forms of dictatorship, even if it is a 'dictatorship of the proletariat' as expounded by the Marxian theory of socialism. Democratic socialism treats democratic structures – free competition for power among political parties, freedom of pressure groups, parliamentary institutions with an effective role for the opposition, etc. – as essential for achieving the ends of socialism. Among modern thinkers, Harold J. Laski (1893-1950) has made an important contribution to the theory and practice of democratic socialism. Laski has, in fact, sought to combine the ends of socialism with the democratic method of liberalism. Democratic socialism seeks to provide for democratic rights and civil liberties as well as socio-economic rights of citizens.

5. Anarchist Perspective

Anarchist perspective on justice is based on the theory of anarchism. Anarchism holds that society should be organized without coercive power of the state. In its view, government is intrinsically evil.

William Godwin (1756-1836), a British political theorist, is regarded to be the first modern defender of anarchism. He believed that a society of small producers united by cooperation, but without a state, would be conducive to political justice. Proudhon advanced a number of schemes for the organization of independent associations, decentralization of authority and circumspection of state authority. Mikhail Bakunin (1814-76) asserted that all political, social and religious institutions should be eliminated immediately, and in their place a free federation of independent associations should be created where all would have equal rights and equal privileges, including the right to secession. Mahatma Gandhi (1869-1948), an



Indian philosopher and a champion of non-violence, observed that the state, as a coercive institution, is based on violence. Gandhi stood for a stateless society and contributed to the theory of anarchism in his own way.

3.3.1 Rawls Theory of Justice

In *Theory of Justice* (1971) is Rawls' attempt to formulate a philosophy of justice and a theoretical program for establishing political structures designed to preserve social justice and individual liberty. Rawls writes in reaction to the then predominant theory of utilitarianism, which posits that justice is defined by that which provides the greatest good for the greatest number of people. In *A Theory of Justice*, Rawls begins with the statement that, "Justice is the first virtue of social institution," meaning that a good society is one structured according to principles of justice. Rawls asserts that existing theories of justice, developed in the field of philosophy, are not adequate: "My guiding aim is to work out a theory of Justice that is a viable alternative to these doctrines which have long dominated our philosophical tradition." He calls his theory -- aimed at formulating a conception of the basic structure of society in accordance with social justice -- justice as fairness.

Rawls' theory of justice aims to constitute a system to ensure the fair distribution of primary social goods. "All social values-liberty and opportunity, income and wealth, and the bases of self-respect- are to be distributed equally unless an unequal distribution of any, or all, of these values is to everyone's advantage". The institutions established for the fair distribution of primary social goods are the subjects of justice.

Rawls proposes to develop a theory of justice by revising the social contract tradition of theorizing about justice associated with the 17th and 18th century writers John Locke, Jean-Jacques Rousseau, and Immanuel Kant. Rawls imagines a hypothetical situation to determine the principles of justice. Individuals are considered to be rational and capable of making rationalistic decisions as a priori. Rawls set forth to determine the essential principles of justice on which a good society may be based. To identify fairness, Rawls develops two important concepts: the *original position* and the *veil of ignorance*:

The *original position* is a hypothetical situation. Among the essential features of this situation is that no one knows his place in society, his class position or social status, nor does anyone know his fortune in the distribution of natural assets and abilities, his intelligence, strength, and the like. The parties do not know their conceptions of the good or their special psychological propensities.

Fairness is achieved through the *veil of ignorance*, an imagined device where the people choosing the basic structure of society ('deliberators') have morally arbitrary features hidden



from them: since they have no knowledge of these features, any decision they make can't be biased in their own favour.

The principles of justice are chosen behind a veil of ignorance. This ensures that no one is advantaged or disadvantaged in the choice of principles by the outcome of natural chance or the contingency of social circumstances. Since all are similarly situated and no one is able to design principles to favour his particular condition, the principles of justice are the result of a fair agreement or bargain. Since all are similarly situated and no one is able to design principles to favour his particular condition, the principles of justice are the result of a fair agreement or bargain.

Principles of Justice

Rawls elaborates his ideas of justice as fairness in his two principles:

1. Each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others.
2. Social and economic inequalities are to be arranged so that they are
 - (a) attached to positions and offices open to all under conditions of fair equality of opportunity (*Equal Opportunity*);
 - (b) to the greatest expected benefit of the least advantaged (*The Difference Principle*).

The “basic liberty” mentioned in principle 1 comprises most of the rights and liberties traditionally associated with liberalism and democracy: freedom of thought and conscience, freedom of association, the right to representative government, the right to form and join political parties, the right to personal property, and the rights and liberties necessary to secure the rule of law. Economic rights and liberties, such as freedom of contract or the right to own means of production, are not among the basic liberties as Rawls construes them. Basic liberties cannot be infringed under any circumstances, even if doing so would increase the aggregate welfare, improve economic efficiency, or augment the income of the poor.

Clause b of principle 2 provides that everyone has a fair and equal opportunity to compete for desirable public or private offices and positions. This entails that society must provide all citizens with the basic means necessary to participate in such competition, including appropriate education and health care.

Rawls do not overrule the possibility that these two primary principles will be in conflict with each other. To meet this difficulty Rawls proposes certain ‘Principles of Priority’. Such priority is ‘lexical’, i.e., the first has to be fully satisfied before the second is to be considered.

These principles have been arranged lexicographically which means that the first principle of justice takes priority over the second and the principle of fair equality of opportunity takes



priority over the difference principle. This implies that the equality of basic liberties and rights, including the fair value of the political liberties, is not to be overridden by other considerations.

Clause a of principle 2 is known as the “difference principle”: it requires that any unequal distribution of wealth and income be such that those who are worst off are better off than they would be under any other distribution consistent with principle 1, including an equal distribution. (Rawls holds that some inequality of wealth and income is probably necessary in order to maintain high levels of productivity.)

The most important part of Rawls’s second principle of justice is the difference Principle. It mandates that beyond achieving fair equality of opportunity, a just society must be organised so that any social and economical inequalities are to the greatest benefit of the least advantaged. Inequality is only permissible if it will benefit the least advantaged. The difference principle addresses the problem of inequalities due to talents, not by trying to equalise expectation across talent level directly, but by requiring that whatever benefit accrue to the more talented do so in a manner that maximally benefits the least advantaged.

Critical Assessment

Rawls’ theory of justice has given rise to numerous debates in contemporary political philosophy. Some of the major criticisms are stated below:

Communitarian Critique

Communitarian critique is one of the most prominent critiques of Rawls’ theory of justice. It is basically an attack on the universal aspect of Rawlsian idea of justice. Communitarians argue that in the original position, Rawls assumptions are based upon completely abstracted individuals. Abstracted individuals are those who are put outside their social, political and cultural context. Communitarians argue that any abstract individual can’t make choices, and people in Rawls’ theory are signing a contract.

Michael Walzer in his book ‘Spheres of Justice’ and Michael and J. Sandel in his book ‘Liberalism and the Limits of Justice’ give the counterargument to Rawls’ hypothetical individualistic aspects. Walzer asks that since the Rawlsian veil of ignorance assumes individual out of their social context then how can those decisions be applied to real life situations in actual social contexts? People in real life take decisions on the basis of what they understand to be good. The idea of good, according to Walzer, could not be shaped on the basis of individual account. It is always shaped by the community and their beliefs and cultural and social practices. Thus any idea of good would be communal in character. Individuals are basically embedded in community. For example, a caste-based society defines justice on the basis of discrimination. In a caste based society, purity and pollution are decided by birth. Birth becomes the decisive factor in determination of access to water, land



and resources. Thus Walzer argues that distribution of goods in a society is dependent upon the specific meaning those goods have, which are socially constructed and embedded in the community, its practices and its institutions.

Feminist Critique

Carole Pateman, Susan Moller Okin and Martha Nussbaum are feminist scholars who gave the feminist critique of the Rawlsian understanding of justice. Carole Pateman, in her book 'The Sexual Contract' starts with the criticism of all kinds of social contract theories, and argues that all social contract theories work on the repression of the sexual contract, though it is an integral aspect of contract theories. Turning specifically towards John Rawls, she points directly at his "original position". Rawls' task is to find a picture of an original position that will confirm our intuition about the existing situation, which includes patriarchal relation of subordination. Pateman blames that Rawls did so successfully by remaining silent on the matter of sexual identities of the participants to the contract. Pateman blames that parties in the original position would have choices and reason but they are sexless people – they cannot know their sexes. This silence about the sexual contract in Rawls' theory actually denies the conjugal relationship between man and woman, and denies the existence of rights to women against patriarchal domination. It gives priority only to political rights. Pateman argues that since all men and fathers who are the part of social contract come from the womb of women, the rights of women and the social rights should come prior to political rights.

Susan Moller Okin in her book 'Justice, Gender and Family,' gives a deeper analysis of the whole political philosophy of John Rawls than just his idea of original position. Okin argues that in the book "Political Liberalism" Rawls basically creates a divide between the public and the personal spheres. He limits any discussion about an idea of justice in the domain of public sphere. In 'Political Liberalism,' Rawls basically argues for a political conception of justice. It implies that Justice is only about the achievement of political rights in the public sphere. Okin criticises this aspects of Rawls' overall political philosophy arguing that this actually denies justice in matter of inequalities within the family and the household. The denial of justice within the personal domain actually denies the political aspects of what is considered to be private and personal. It also subordinates the personal domain. Feminism, on the other hand, has shown to philosophy that the personal is political. Thus Rawlsian divide between personal and public goes against the basic philosophy of feminism, and by extension, equality and justice itself.

Martha Nussbaum, in her book 'Women and Human Development: A Capability Approach,' argues that the Rawlsian conception of justice could be made just if he would add the development of capabilities of women and children in his list of primary goods. Nussbaum criticises Rawls on three simple grounds:

First, Rawls includes family as a part of basic structure, but he also established the family as



a voluntary institution analogous to the church and the university. Nussbaum argues that the family as an institution could not be compared with church and university. It's a most basic institution of society and it has its pervasive influence on every other institution. It should therefore come prior to the church and university.

Secondly, Nussbaum critiques Rawls' faith in the nuclear family. Rawls fails to acknowledge the parochial character of this. Nussbaum emphasises that in very large parts of world, like South Asia, the idea of extended family exists, with village groups, and different women collectives. Rawls gives no reasons why we should choose the nuclear family over any other form of family?

Libertarian Critique

A large portion of Robert Nozick's *Anarchy, The State and Utopia* (1974) is dedicated to refuting the theories of John Rawls. Specifically, Nozick takes issue with Rawls' conception of distributive justice with the former's entitlement theory. Nozick calls Rawls' distribution theory a patterned theory. To Nozick, no distribution is just and there should not be redistribution at all. Redistribution infringes individual's rights which, according to Nozick, trump all other considerations and subject matters.

Nozick, in general, contends that people are born with fundamental individual rights. These individual rights are paramount and that there is no need for a system to achieve moral equilibrium. He rejects all end-result theories, i.e. distributive theories such as Rawls theory of justice. Nozick rather adopts the 18th century philosopher Immanuel Kant's principle of "individual inviolability" that cannot be violated as a means to achieve particular ends, meaning the significance of each person's possessions of self-ownership is that people should not be used as resources or a means of achieving some end and this is exactly what Rawls proposes to do, Nozick criticizes. It is wrong to treat people as if they are merely of instrumental worth or to sacrifice one person for another. He claims that the rights of others determine constraints on our actions.

According to Nozick, the "classical liberal" view is that the right of people to control their bodies and actions is a property right, the right of self-ownership. He further argues for his entitlement theory where it is permissible for people to have and hold property on however an unequal basis provided it was acquired legitimately in the first place. Thus, if someone acquired a holding justly, any interference with his holdings i.e. via imposition of tax, would violate his rights. Nozick claims, a redistributive system invades that right making others "a part owner of you giving them a property right in you". Thus, a redistributive system institutes partial 'ownership by others of people and their actions and labour'. Consequently, he argues that taxation of labour income is "on a par with forced labour".

Robert Nozick is primarily concerned with the distribution of property, and argues that justice



of any given distribution of income and wealth can be exhaustively covered by the repeated application of the three basic principles of justice in: acquisition, justice in transfer, and rectification when the first two principles have been transgressed: “the holdings of a person are just if he is entitled to them by the principles of justice in acquisition and transfer, or by the principle of rectification of injustice (as specified by the first two principles). If each person’s holdings are just, then the total set (distribution) of holdings is just” .These principles set out the entitlement theory of justice: people are entitled to holdings that are acquired via (repeated applications of) the principles of justice in acquisition and justice in transfer, or via rectification of transgression of those first two principles. Any inequalities of income and wealth that happen to arise as a result of legitimate acquisition and legitimate transfer are a matter of complete irrelevance when it comes to determining the justice or otherwise of a given distribution – the only relevant question concerns whether the holdings were legitimately acquired and/or legitimately transferred (see pp. 150–153).

Marxist Critique

Marxists generally argue that any argument put forwarded about justice in capitalist system just aims to serve for the interest of dominant class. In other words, it is argued that since Marxism regard the notion of Justice as a product belonging to superstructure, any conceptualization and theorizing justice is entirely ideological and seeks nothing but legitimating social inequalities.

Rawls argues that a fair society can be constructed by means of two principles of Justice as Fairness, since these principles suggests a progressive tendency to equality transcending dichotomy of freedom and economic equality. Even though it can be argued that Rawls tries to alleviate economic inequalities in a society, his two principles do nothing but providing a permanent inequality among different groups where bourgeoisie class benefits. More importantly, what makes Rawls’ Theory of Justice unjust is based on his argument that social and economic inequalities are a-priori and inevitable. That is, Rawls claims that economic and social inequalities are natural and a theory of justice should deal with to ease these inherent inequalities without swerving liberty.

The second or difference principle is another complicated proposition. Even though it is called by Rawls as an egalitarian principle, it also functions to justify inequality. After all, it is the standard justification for inequalities everywhere that they benefit for the least advantaged. Such a Rawlsian paradox stems from his exclusive emphasis on distribution rather than production, as well. As he regards the notion of free market as a crucial element of the basic structure of a just society (at least he does not strictly object it), his theory of Justice as Fairness implicitly or explicitly accepts class divisions.

over about the universality and homogeneity of truth.



3.4 FEMINIST PERSPECTIVE

How many political theorists do you come across while reading your political science text books? Probably very less number or sometimes no female at all, may be that is the reason some feminist claimed that the history of political theory is the history of male theorist. Not only political theory but most of the fields are male dominated and male managed. The term feminism first came in use during the period of 1890s. But the origin of modern feminism can only be traced back to late seventeenth century surely not in its present form. Initially feminist started in its liberal form and the first full expression of liberal feminism came in Mary Wollstonecraft's book "*Vindication of the Rights of Woman*" (1792). Here she claimed that like men, women are also rational beings, hence they should be entitled to the equal rights as per men. She challenged her contemporaries who excluded the women from enjoying the full citizenship rights. She argued that women have the same potential for rationality that men have and thus there is no reason why women should not enjoy the same status that men enjoy. Nurture, not nature, argued Wollstonecraft, is the cause of gender distinctions. Wollstonecraft criticized such appeals to the 'natural' differences between men and women.

Not only women like Wollstonecraft was concerned with the equal rights for men and women but some enlightened men like John Stuart Mill was also advocated for the same. In the "*Subjection of Women*" 1869 Mill came up with full scale analysis of women's situation and advantages to society of giving them full legal and political equality as per with men. He advocated this because he believes that what is now considered as the nature of women is completely spurious and a result of a forced suppression and fabricated incitement.

3.4.1 Schools of Feminism

Feminist movement as a whole was concerned with the women rights and advocated for equality of sexes Vis-a-Vis challenged male dominance. But did not prescribed a universalized single path, different feminist have advocated different roots for women cause. Broadly speaking there can be three varieties of Feminist traditions namely liberal, socialist and radical feminism.

Liberal feminism emphasizes upon the equal worth of all individuals whether male and female. The main focus is on achieving gender equality through political and legal reforms within the liberal democratic framework. Liberal feminism has a great admiration and belief for the respective laws, the political institutions and the education. As they are among the most relevant factors of human development, the major source of inequality is the denial of equal legal and political rights. Unlike other major brands of feminism, liberal feminism did not undermine the existing institutions of power in liberal democratic societies thus seems more inclusive and socially progressive. They also believed that men can be an



active participant in female struggle. As both are rational, they should be treating alike; both can complement each other in their fight. As some of men like JS Mill, have successfully done by advocating equal rights for women. The major feminist associated with this theory include Mary Wollstonecraft, Elizabeth Cady Stanton, John Stuart Mill, Helen Taylor, and Gina Krog, Gloria Steinem, Betty Friedan, Simone de Beauvoir, Rebecca Walker and many more. The primary concern for feminists is the liberation of women and liberal feminists believe that an enlightened version of liberalism can inspire a public philosophy that will help in counter the present social injustices.

Many feminists believe that liberalism is the source of the problem and not the solution. Liberal feminists initially wanted equal right as per men but treating men and women equally leads to two problems. This sameness approach denies the very particularities of male female difference. First while taking men as standard it undermines the idea of femaleness. A female and male are two different categories; women's identity cannot be compromised to attain an equality built on the male parameters. Secondly in the process of treating female and male as equals it fails to accept that women and men are actually different and so their problems. For example it is women who suffer the menstrual pain, carries the physical qualities to bear a child. Equal treatment here can be harmful to women and denied them of the maternity relief benefits and other such policies.

Socialist feminism focuses upon the interconnection between capitalism and patriarchy as both capitalist system of production and a gendered biased institutionalized system of patriarchy is collectively responsible for the women's condition. Between 1960s and 1970s this variant of feminism has spread widely. Socialist feminists believe that financial dependence over males is a major cause of women's oppression and discrimination. In capitalist system of production unequal ownership of wealth between women and men further give a boost to male domination. In this sense subjugation of women to men is a result of economic dependence. Gender equality can only be established by eliminating this economic and social structure. Women's liberation here is imperative to larger quest for economic, social and political justice. Some of main socialist feminist are Barbara Ehrenreich, Charlotte Perkins Gilman, Johanna Brenner, Silvia Federici, Clara Fraser, Donna Haraway, Emma Goldman and so on.

Though it did not repeat the mistake of liberal feminists who consider both men and women equal but they too were subject to certain criticism. Alexandra Kollontai criticized the feminists to neglect the poor working class women at the expense of upper-class bourgeois women who were still oppressing the poor working women. So, feminist movement is actually a movement for the so cold upper class women's dominance over the poor lower class women.

Radical feminism as its name suggests is a perspective which advocates for radical reordering of a male dominated society. The male dominated society is characterized



by the male supremacy in all social, economic and political sphere of life. Radical feminism advocated the elimination of male's supremacy and women's experiences should also be count along with other divisions like race, class, and sexual orientation. They proposed that the society is basically patriarchal based upon the women oppression by men. For this they wanted to abolish the patriarchy to liberate women from existing social norms and institutions. Janice Raymond, Andrea Dworkin, Catharine MacKinnon, Germaine Greer, John Stoltenberg, Monique Wittig, Mary Daly and Robin Morgan are some important radical feminist.

They collectively struggled against the sexual objectification of women; oppose the violence against women in form of rape and other such crimes. They are challenging the prescribed traditional gender role like limiting women to the household. Patriarchy is the fundamental reason of systematic oppression and marginalization of women, it make women other.

Besides having divergence of opinion about the gender discrimination, it's causes and the possible routes to improve the condition, there are certain points upon which all feminists agree. Three common points all feminist supporting are:

1. **Entrenchment of Gender**—Gender inequality is widespread in all societies in all times. All feminist are in one voice confirmed that the unequal bifurcation of individual roles on the bases of gender has been a major and common issue of concern as this gendered division lead to long term inequality in society. Assigning gender roles like private sphere for women (the household responsibility) and the public sphere to men (the breadwinner of household) is problematic to all feminists.
2. **Existence of Patriarchy**—Patriarchy literally means 'rule of father'. Normally it signifies towards a condition where all necessary and relevant decisions in a family are taken by the male member. Feminists have consensus over the existence of patriarchy in society. Kate Millett who wrote the "*Sexual Politics*" (1970) portrays patriarchy as a 'social constant' running through all the political, social and economic structures. It according to her is grounded in and operates from the family which works as a fertile ground for patriarchy. She has suggested a radical solution to patriarchal oppression, and the solution is the abolition of conventional family system along with consciousness-raising. Existence of patriarchy restricts women's reasoning and chances to participate in the decision making process, devoid them of the basic facilities in life.
3. **Need for Change**—All feminists believe that there is a deep need of change in the attitude and the manner hitherto society is running. Different path can be adopted for the betterment of the women. It can be through revolution the idea advocated by the revolutionary feminist or the through strengthening laws as the liberal feminist wanted. Shulamith Firestone in her best known work "*The Dialectic of Sex*" (1970) advocated an entirely different kind of solution to alter the status quo. Unlike socialist



feminist she believes that society cannot be structured through the process of production, but through the process of reproduction. She argued that women can only be emancipated by outdo their biological roles either by the use of modern technology like test tube babies or through other routes. This is more a kind of individual change she was talking about, but a collective change in the existing institutions, policies, values and practice is required.

3.4.2 Waves of Feminism

The present form of feminism did not develop gradually and overnight. It rather took a long period to systematize feminist thought. The period of its development can be seen in different waves.

First wave This wave of feminism was emerged in the 1840s and 1850s and closely associated with the women's suffrage movement. Feminists such as Mary Wollstonecraft Sylvia, John Stuart Mill, Emmeline, Christabel Pankhurst and Sojourner Truth have advocated for women rights in political and economic sphere. The major argument they presented to strengthen their claim over women rights was equality of sexes. So one group claimed that women were equal to men, other group argued that women were superior to the men. The major demand in this wave was women's interest cannot be sacrificed and not subject to any reductionism. Women should be able to vote and represent themselves and not politically dependent over their husbands or other male members of their family. The result was a partial success in building consciousness regarding women rights in Europe.

Second wave came in 1960s with more radical and sometimes revolutionary vigor. Women's Liberation Movement. It is associated with the resurgence of feminist activism, specifically the radical feminism, in 1960s and 1970s. Germaine Greer, Shulamith Firestone, Andrea Dworkin and Mar Daly are some key feminist in this wave. During this wave feminism, prime concern was male violence toward women particularly sexual violence. Major focus was on attacking this kind of violence, rejected the feminine norms like the sexual submissiveness and participation in beauty practices. Oppose those practices considered as common norm is society such as gendered distinction of work and do favor female solidarity and sisterhood.

A wide range of changes have taken place and many more laws have been initiated for the betterment of women but the radical and tragic change is still a far cry.

4.3.3 Post Feminism

It is characterized by the resistance towards the themes of second wave feminism by feminists like Katie Roiphe, Camille Paglia, Natasha Walter and Pat Califia. Feminists during this wave demanded that women must not see themselves as victims, rather consider



themselves as active agents. Sexuality should be thought as liberating and consensual sex should not be treated as a taboo. Feminism should focus on women's material equality rather than symbolic aspect of gender.

Throughout the different waves of feminism, the phrase 'personal is political' was used widely particularly in the second wave. The phrase was popularized by the Carol Hanisch through her article "*The Personal is Political*" in 1969. Let's discuss what it denotes.

3.4.4 Personal is Political

It means that unlike common belief personal is not so personal in fact it is very much political as what happens in household is a reflection of the political decisions. In "*Justice, Gender and the Family*" Susan Molar Okin argues that there are four major respects in which the personal is political. These are:

1. Power, a distinguishing feature of the political but private sphere is also a sphere of power. Power exists within the family, among the gender relations between husband and wife, sister and brother and so on. For example domestic violence is clear reflection of the use of power within family.
2. The domestic sphere itself is the result of the political decisions taken in other sphere. In that sense political sphere infiltrates private sphere. State interference in family matters and the institution of marriage reveals this infiltration. Marriages are sanctioned by the state; the state is the supreme authority to decide who can be marrying and whom you cannot marry. Every state has their own marriage criteria such as a particular age of marriage, guidelines about homosexual marriages and other such laws.
3. Domestic life is where most of individual's early socialization takes place. Private sphere creates the psychological conditions that can govern public life. The social construction (gender division of labor) and patriarchal surrounding (where key decisions are taken by the male member in family) work as an initial setup.
4. The division of labor within majority of families raises psychological and practical barriers against women in all other spheres. The household responsibilities cause women's underrepresentation in most relevant public institutions like government, judiciary and economy (Okin, 1989: 128–33).

The slogan 'the personal is political' shows how deeply entrenched sexual differences are in society and requires us to consider closely the role of the family perpetuating the social inequalities. Feminists reject the liberal idea that the family is part of a 'private' realm where principles of justice cannot be actualized. Okin advocated the creation of a genderless society through the changes in education curriculum and the institution of marriage. She actually brings out the practical significance of the feminist idea of 'the personal is political'. To



remove the difference between personal and political, difference of sex and gender must be abolished first.

3.4.5 Sex and Gender

Simone De Beauvoir in "*The Second Sex*" (1949) argued that women's sex is defined relative to maleness, a woman is a 'not-man'. Men on the other hand are defined independently of their sex and of women, as autonomous and rational beings. This imbalance resulted in the inequality between male and female. Women need civil liberties, economic independence, removal of passive femininity and sexual submission in order to achieve gender equality. Further women identity must be redefined independent and autonomous of the male.

Feminists have confirmed the fact that gender and sex are two different things and gender distinctions are socially constructed. It means that it is the result of political arrangements and is acquiescent to social and political analysis. Since the seventeenth century, some feminists have argued that the women's nature which is characterized as natural and universal is actually artificial and distorted, a product of constructed societal upbringing. In the words of Simone de Beauvoir, a French writer, 'One is not born but rather becomes a woman'. In the later period this statement starts formalized into the sex/gender distinction. As per this distinction, *sex* is about the biological characters of males and females, mainly those associated with reproduction. These differences are also seen in physical size and shape of men and women, the organs and functions of reproduction. It is distinct from the gender, which are socially constructed attributes of masculinity and femininity, and the social roles and arrangements prescribed by them like what should women do and what should men do. Gender refers to those differences that are imposed only by social norms such as girls should wear pink and boys should wear blue or the norm that women should be kind and emotional and men should be tough and rational.

Sex/Gender difference became quite relevant because constructed gender division forced women to sacrifice their careers for parenthood, do the majority of unpaid domestic work and are made vulnerable through the institution of marriage. These differences between men and women do not stem from biological differences but from unequal power relations between male and female. All feminists are united in their concern for liberating women and adopt diverse theoretical positions for identifying these injustices. In accordance with their findings they present different prescriptions of what needs to be done to create a more equal society.

But some feminists oppose the sex/gender distinction. They believe that biological categories of male and female are not as distinct as they seem. It is society, not the biology which makes these categories so significant.

Feminist political thought has been primarily concerned with at least two issues.

First, it analyses and explains the processes, institutions and practices through which women



have been subordinated to the men. The women have been marginalized through a set of constructed societal norms. Second, feminism is not limited to the analysis of the problem but it also tries formulated the most appropriate and effective ways to challenge this subordination and domination. Feminists have a firm belief that the gender is a political construct, normally based upon stereotyping of 'feminine' and 'masculine' idea about the gender behavior and their social roles.

To be a political theory as a 'feminist' theory it should be emphasizes upon the eliminating of oppression of women by men and also by women in all forms. Feminism should not be misunderstood as against the men as it is not against by but the male dominance over the women or for that matter any such domination either by men or women. It is characterized by its political stance and the attempt to advance the social role of women. They have highlighted the problem of unequal political relationship between the sexes, the supremacy of men in every sphere and the subjection of women in most the societies.

There is a famous saying of Karl Marx that 'the philosophers have only interpreted the world in various ways but the point is to change it'. The Feminism has not merely reinterpreted the contribution of major theorists and shed new light upon established concepts such as power, domination and equality, but also introduced a new sensitivity and language into political theory related to ideas such as connection, voice and difference. In "*Sex and Social Justice*" Martha Nussbaum defends a kind of feminism that has the following five features. First it should be internationalist not limited to a particular region or nation, second humanist humanity should be the highest consideration, third liberal means advocating equal rights for all, four the concern with the social shaping of preference and desire and finally the concern for sympathetic understanding.

3.5 THE PUBLIC VS PRIVATE DEBATE: CENSORSHIP AND ITS LIMITS

In case of India, the democratic set up of governance did not allow any larger scope for the government to exercise the power of censorship more commonly. The vibrant Indian civil society and the independent judiciary make s for a necessary check on the power of government. And if the executive power is widened to limit the scope for rights and freedom, the highest court has fundamental power and authority to intervene. In contrast to this, the party-state model of China does gives absolute power to the Communist Party of China (CPC) to exercise strict surveillance and censorship over its citizens. This is so regular and established in the Chinese system that many scholars refer to the Chinese state model as of being censorship state or Surveillance state. These are common words, which are often used, in the public discourse to refer Chinese political system.

3.5.1 Types and Elements of Censorship



In a democratic society secrecy and openness reflect conflicting values and freedom of thought in a political system. However, in case of censorship by the state or any kind of political establishment there are always efforts to control information in different contexts. Norms about the concealment of information and restrictions on communication are mostly present in different forms in Constitutional practice and in the running of government. For example, Britain's Official Secrets Act or the United States' Freedom of Information Act, are statutory laws with a character of secrecy and element of restricting information from the public domain.

One of the fundamental attribute of censorship involves Secrecy, which is the norm about the control of information, whether limiting access to it, destroying it, or prohibiting or shaping its' creation. Secrecy is a general and fundamental social process known to all societies. In preventing or restricting communication, the legally supported form of censorship discussed here involves secrecy. Press and broadcast organizations and the major newspapers and television networks have codes of ethics and voluntary standards. These agencies are often subject to censorship in various types by regimes in any of the democratic and authoritarian systems. The political system has a tendency to use state laws at times on different agencies, which are subject to control and regulation by the executive. Apart from secrecy censorship is also practiced in the name of populism and newly formed democratic states in the contemporary world. This can be seen in many third world countries and some democratic turned authoritarian states.

3.5.2 India and Censorship

In a democratic country like India there can be no scope for the exercise of any kind of censorship or surveillance by the state. The India constitution permits broad set of rights and protection against any kind of executive action, which violates the law and procedure. However, the development of democracy in the post independent era has does witnessed some steps and actions by the state which are often in the category of exercising censorship in India. Despite India's deeper democratic foundations, there have been instances when the government has tried to restrict freedom for the citizens. The infamous Emergency in 1970s is one such instance when we witness the use of extreme form of censorship and surveillance by the state in India. This was the time when in fear of public opposition and social upheavals the government of the day tried to suppress the freedom and rights for the citizens.

When we talk of censorship, it basically denotes the systematic repression or control of ideas and information, which is supposed to be circulated in an open society. A censorship is something, which goes against the basic principles of free flow of information. Any political system making way to this kind of process and practise is termed as establishing censorship. It is also interesting to understand that since the time of Greek republics to the contemporary modern form of Government, censorship has been used widely as a major tool to battle any unwanted criticism for the government.



Under Article 19 the right to freedom of speech and expression is guaranteed by our Constitution. In order to limit different form of public expression, which may cause some disruption to the executive interests and its authority, many states across the globe are bound to adhere to frequent use of censorship laws and regulations to consolidate their authority. In the government system, like India for instance it provides for a certain broad set of protection against censorship. In comparison to China, India is best placed in terms of rights protection globally.

3.5.3 Censorship and Media

A classic example of censorship in India is the institution of Central Board of Film Certification (CBFC). This comes under the authority of Ministry of Information and Broadcasting under Government of India. The Board is responsible to monitor and regulate anything, which is deemed offensive, or subjects considered being politically and socially untenable. While the board is one such institution for the exercise of censorships in the domain cinema and art in India. It needs to be understood that many times the activity and regulation of boards are subject to public criticism for the over exercise of censorship in India. The board has often become a contested point between the defenders of freedom and any executive authority.

In post independent India the Congress party has largely controlled the ruling establishment in the states and union level. The single party dominance by the Congress at most levels was largely present in the 1950s and 1960s. However, the step taken by the Congress government in the 1970s, which led to the declaration of Emergency in India, was another step, which led to new censorship in India. During this period the reaction of the print media to the imposition of emergency and new censorship laws in India became a matter of much criticism and debate among the civil society. This criticism can be divided into two phases.

1. The initial response was of sense of despair due to loss of freedom and choice.
2. After some time Press which was supposed to oppose the government became silent on executive criticism.

In the present age of Information and Technology, India has also passed and executed certain IT laws in order to better monitor and regulate this sector. However, there are also concerns raised due to some recent amendments in the IT laws of India. After the 2011 amendments to the Information Technology Act were issued in May 2011, the Indian government approached many IT corporations like Google and, Yahoo to pre-censor their web content, before they are brought into public domain. This was directed to monitor or filtering the information and content that was being produced by these platforms. According to the new rules, it was expected from these platforms to remove or disallow any content that was critical or objectionable in one way or the other. Especially sensitive dissemination of information was supposed to be restricted subject to public order, morality and health..



However, many leaders of these platforms and some public intellectuals do criticise these steps, which in their opinion was not fair and acceptable in the democratic setup. To them, these regulations are not aimed in monitoring the web content as desired by the executive action but are more designed to protect the criticism to the executive power. The amendments to the IT laws in India also led to the debate on the convergence of freedom, state power and censorship in India.

3.5.4 Rule of Law, Freedom and Surveillance

The rule of law is very much enshrined as a fundamental value in the concept of constitutionalism. The idea of limited government is key to constitutionalism and basically rests upon broad parameters of rule of law. It refers to the principle that law should 'rule', and 'supremacy of law', must be adhered at all levels of government. It must provide a legal framework for the governance at social, economic and political levels. The principle has found theoretical argument in ancient political writings. In the Greek political thought, Plato and Aristotle have discussed about rule of law. The conception of 'ideal state' in Plato's political thought is built around three key human virtues of wisdom, courage and appetite has also underscored its importance. He said, "Where the law is subject to some other authority and has none of its own, the collapse of state, in my view, is not far off; but if law is the master of the government and government is its slave, then the situation is full of promise and men enjoy all the blessings that the gods shower on the state". Similarly, Aristotle maintains that citizens must have good laws and must be habitual to adhere to them. His argument was that "law must govern". In his understanding of rule of law it represents a required habit of obedience and adherence. In the discipline of legal jurisprudence, contemporary legal positivists like Jeremy Bentham, John Austin and H.L.A. Hart share commonality with Greek political philosophers in understanding rule of law as a general habit of obedience on the part of a citizenry, a social fact of citizen acquiescence.

The rule of law owes much of its conceptual origin and advancement to the development of nation state model. The convergence between industrial revolution and renaissance period marked significant push for rule of law as a principle. This marked the end of medieval age theocracy and paved the way for emergence of modern nation state model with rule of law as its key foundational basis. The earlier theoretical exponents of rule of law include writings of John Locke. He emphasized that fundamental purpose of rule of law is to protect individual rights, which in Locke's view meant right to life, liberty and property. Later on A.V. Dicey, renowned British jurist and constitutional theorist popularized the principle of rule of law. In the view of Dicey rule of law embraces certain key characteristics. This includes that there must be punishment for breach of law, it requires 'equal subjection' to law, more commonly understood as equality before the law, with application of law at all times and circumstances and lastly, embodiment of individual rights in fundamental law of land. He discusses in detail



necessary mechanisms for rule of law to prevail at large. The basic parameters on which principle of rule of law has evolved for centuries serves to protect individual rights from the government abuse; at the same time, it ensures governance based on law and not of men. Such an idea was enshrined in German concept of Rechtsstaat, a state based on law, which came to be widely adopted throughout continental Europe and encouraged the development of codified and professional legal systems.

It is undeniable that rule of law stands one of the most important political ideal in contemporary world. Public intellectuals and scholars frequently invoke the concept in an attempt to justify or condemn state actions, political decisions, or whole legal systems. It has been used as a testing ground and parameter of governance in different countries. Despite this there exists wide disagreement among scholars on the conception of rule of law. The principle being intrinsic to liberal democratic model of governance is still much contested in west too.

The term is frequently criticized for having no determinate meaning. Waldron referred to it as an “essentially contested concept”. The similar expression was made by Olufemi Taiwo who said that, “it is very difficult to talk about rule of law; there are as many conceptions of rule of law as numbers of people defending it”. Accordingly, these observations have aroused in due course of evaluating the presence and level of rule law in a given society. There may be theoretical agreements but when it comes to application of this principle in testing different models of governance and their ability to protect individual rights difference of opinion emerge at large. There is also conflict of opinion on rule of law being a political ideal or moral value. Some argue that it is a value, albeit not a moral value, while others regards it as among the highest of political ideals.

3.6 QUESTIONS

- How do you understand relations between Censorship and Freedom?
- How censorship and surveillance restrict/challenge rule of law?
- Does China’s political system supports surveillance and state censorship?
- What are major types of methods/tactics used by state for censorship?
- How do understand debate on censorship in India?
- What is the difference between legal, political, social, economic justice?
- Critically evaluate Rawls’s theory of justice?
- What is feminism? Discuss different schools of feminism.
- Discuss the idea of feminism. Explain the different waves of feminism?
- Explain ‘the personal is political’ with reference to the understanding of Susan Molar Okin.



- Differentiate between sex and gender. Define how gender plays role in society?

3.7 REFERENCES

- Ball, T. (2004). History and the interpretation of texts. In G. F. Gaus, & C. Kukathas *Handbook of Political Theory* Sage Publications Ltd.
- Bennett, J. (2004) Postmodern Approaches to Political Theory, In G. F. Gaus, & C. Kukathas *Handbook of Political Theory* Sage Publications.
- Bryson, V. (1993). Feminism. In R. Eatwell and A. Wright, *Contemporary Political Ideologies* (pp. 192-215). Pinter Publishers
- Bryson V. (2002) Gender. In G. Blakeley and V. Bryson *Contemporary Political Concepts A Critical Introduction* Pluto Press
- Chambers C. (2008) Gender. In Catriona Mckinnon *Issues in Political Theory* Oxford University Press
- Farrelly, C. (2004) Feminism. In *Introduction to Contemporary Political Theory* Sage Publications.
- Gauba, O.P. (2009) *An Introduction to Political Theory Fifth Edition* Macmillan
- Heywood, A. (2004) *Political Theory An Introduction Third Edition*. Palgrave Macmillan
- Pateman, C. (1991). Feminist Critique of Public Private Dichotomy. In P. Pettit *Issues in Political Theory* Macmillan.