

MODULE - I

1

RIGHTS

Unit Structure

- 1.0 Objectives
- 1.1 Meaning and Nature of Rights
- 1.2 Theories of Rights
- 1.3 Problems in the idea of rights-group based vs. individual rights
- 1.4 Civil, political, socio-economic and cultural rights, human rights
- 1.5 Summary/ conclusion
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1.0 OBJECTIVES

Aim of this unit is to acquaint you with the meaning, nature theories and problems associated with the concept of rights. You will reasonably will able to distinguish the difference between the individual rights and the group based rights after reading this unit. After studying this unit you will be to:

- Explain meaning and nature of rights with relevant examples
- Elucidate various theories and debates associated with rights
- Illustrate and expound the classification of rights

1.1 MEANING AND NATURE OF RIGHTS

Introduction: The concept of rights primarily refers to an entitlement to act or be treated in a particular way. The notion of rights is a pioneering principle in the process of establishment of a just polity. Although it would be wrong to suggest that the doctrine of rights is universally accepted, most modern political thinkers have nevertheless been prepared to express their ideas in terms of rights or entitlements. The concept of rights is, in that sense, politically less contentious than, the concepts like equality liberty or justice. However, there is no agreement among scholars about the grounds upon which these rights are based, who should possess them, and which ones they should have.

Political theorists, philosophers, and jurists continue to examine the origin, nature, and scope of the concept of right, with the promise of a definitive set of answers always in question. And yet, few concepts are as important to the promotion of a just society as the principle that human beings do possess rights.

1.1.1 Meaning of Rights:

Rights can be described as claims of individuals, groups or classes that are made against either the society or the state. In other words right is a claim of an individual recognized by the society and the state. In simple words, rights are the common claims of people which every civilized society recognizes as essential claims for their development, and which are therefore enforced by the state. Rights can be claimed on various grounds such as inherent human personality, natural basis, legal basis, social basis etc.

Generally society or communities acknowledge certain claims made by individual and groups, which are recognized by the state. State gives sanctions to these claims either wholly or selectively. It is also possible that certain rights are introduced by the state itself and did not arise from a given society or community. One of the most popular implications of rights is that it serves the purpose of providing conditions for liberty and development of capacities of personality of individuals. For example freedom of expression and speech constitute liberty of a person to express his or her views, ideas or feelings. However to secure this liberty of each individual, some safeguard is required and rights provide this safeguard. Laski therefore says that “without rights there cannot be liberty and that every state is known by the rights it maintains”. In a nutshell meaning of rights may be summarized in a following way

a) Claims of the Individual: rights are claims made by individual. It is important to note that all these claims cannot be recognized as rights. These claims should be selfless claims or something which have universal application. In other words they should be disinterested desires and should stand the test of rationality and public service. Individual’s personal claims entrenched in selfish motives cannot be considered for social recognition.

b) Community recognition: in order to get transformed into rights, the claims should receive recognition of the community. For example an individual’s claim that none should take his life receives social recognition as every individual desires the same. Recognition of the claim of this type ultimately leads to the creation of right to life. Similarly an individual’s claim that none should take away his property creates in him a sense that he should not take away the property of others. When this claim gets social recognition, it becomes right to property. Claims thus recognized are translated into rights and it is such recognition that constitutes them rights.

c) Political recognition: rights are just abstract claims unless and until they are accepted and protected by the state. The state translates the socially recognized claims or moral rights into terms of law and thereby accords the legal recognition. The state therefore acts like a coercive agency to prevent the operation of the selfish will of the individuals.

1.1.2 Definition of Rights:

- **Oxford English dictionary:** It defines right as the standard of permitted and forbidden action within a certain sphere.
- **Allen** defines Right as the legally guaranteed power to realize an interest.
- **Merriam–Webster dictionary** It defines rights as something to which one has a just claim, such as the power or privilege to which one is justly entitled.
- **T.H.Green** defines rights in his Lectures on the Principles of Political Obligations as ‘a power of acting for his own ends...secured to an individual by the community on the supposition that it contributes to the good of the community.
- **Hobhouse** he defines rights as the system of harmonized liberties.
- **Ernest Barker** he defines rights as external conditions necessary for the greatest possible development of the capacities of the personality.
- **Harold Laski** he defines rights as those conditions of social life without which no man can seek, in general, to be his best.
- **R.N. Gilchrist** Rights arise from individuals as members of society and from the recognition that for society there is ultimate good which may be reached by the development of the powers inherent in every individual.

1.2 THEORIES OF RIGHTS

There is wide range of arguments which tries to inquire different contours of the concept of rights. Following are some of the theoretical arguments and explanations of rights:

1.2.1 Theory of Natural Rights:

Theory of natural rights emphasise that certain rights are so essential to any personal life that they should be called as natural. Natural rights are the earliest known grounds for claim of individual rights. These rights are claims because they are considered to be ordained by nature and therefore product of law of nature. Natural right theory is closely connected with the notion of natural law. The concept of natural rights originated in ancient Rome and came from the discovery that men of all races and countries living under Roman rule have some common rules of life. This body of principles common to all men, the Romans called “Natural Law”.

a) Contractual ground of natural rights: Social contractualists have made a very valuable contribution in eulogising the importance of natural rights theory. They hypothetically constructed the state of nature and visualised the existence of rights in it and described it as natural rights. The social contractualist thus claims that, individuals enjoyed some basic rights even before the emergence and development of the state.

The contractual ground entails that individual enjoyed natural right in hypothetical state of nature. The same rights are carried forward in the civil society as a result of social contract between the ruler and the ruled. The social contractualist described these rights as inalienable and inseparable in nature and cannot be taken away from the individual. They are inalienable because they are inherent and existed prior to society and state. The natural rights according to social contractualist are imprescriptible¹ as they are not prescribed and sanctioned by sovereign authority.

b) Teleological view of natural rights: Teleology is explanation of some phenomenon by giving importance to its purpose or ends it serves. This view looks at the final purpose served by the rights. The teleological viewpoint seeks to correlate the rights of an individual with the purpose of human life. These rights do not depend on any institutional arrangements, but stem from the very nature of man and serve the purpose of life. for example Thomas Paine in his book Rights of Man enquired the theory of natural rights on teleological basis. Similarly T.H.Green's theory of natural rights is also based on teleological view of rights.

c) Current debate on natural rights: John Rawls and Robert Nozick: John Rawls (Theory of Justice) and Robert Nozick (Anarchy, State and Utopia) are contemporary theorists who have propounded their theories of rights of individual and justice on basis of social contract and natural rights respectively. Rawls has used the idea of deriving rights from social contract to present his views of an egalitarian social order. Robert Nozick has developed the concept of prior and inalienable individual rights drawing inspiration from John Locke's inviolable property rights. He says that individual rights have priority over other principles such as equality. Based on inviolable property rights, Nozick seeks to develop an entitlement theory of people's natural assets.

d) Nature regulates the activities of men: According to this theory, nature or God alone regulates the wisdom and the activities of men. The kings being the divine origin, as representatives of God, the rules framed by them were considered divine in nature. But in the age of enlightenment (or Age of Reason) of the eighteenth century a number of Western advocates like, Hobbes, Locke, Hugo Grotius, Rousseau, Samuel Pufendorf, etc. challenged the origin of divine concept to natural law.

e) Based on reason and fairness: A natural right is nothing but, rights based on just, fair and reasonable conduct. This means, the individuals unite themselves to form political societies through mutual consent, and agree to form a government of their own. It will enable them to lead their life through common rules and regulations framed by either them or their representatives. At the same time, they accept a set of legal and moral

duties to be observed or bound by them in the exercise of their rights in order to live in peace and security without any violence.

f) Belief in its inalienability: Thomas Hobbes and John Locke have discussed natural or inalienable rights on the basis of rights prevailing in the state of nature. Thomas Paine and Thomas Hill Green have argued for natural rights on the basis of inherent moral claim of individual. In either case, naturally available rights or rights available to human moral claim are inalienable. Some of the commonly discussed natural rights are right to life and security, liberty, property and resistance to oppression. The American declaration of independence-1776, the French declaration rights of Man and Citizens 1789 and the UN Universal Declaration of Human Rights 1948 all acknowledge natural rights as inalienable in nature.

1.2.2 Historical Theory:

This theory of rights believes that rights are the product of history. The rights have their origin in customs which once found practical social utility and passed on from one generation to another ultimately having been recognized as inherent claims or rights.

a. Evolution of laws is based on customs:

The historical rights theory argues that the laws have evolved on the basis of customs and traditions. This theory holds the view that rights are the product of a long historical process and grow out of customs. Therefore the essential sanction behind a right is, for this reason, is tradition or custom. Law of today is nothing but the crystallisation of age old customs into the form of legal sanctions that the state enforces with coercive power at its command.

This theory stands against the rights, which lead to radical or revolutionary rearrangement of social and political structures. Philosophers like Edmund Burke, Henry Maine, sociologies R.M.MacIver, jurist J.W.Burgess have wholeheartedly supported the historical theory of rights.

b. Importance of prescriptive institutions:

Edmund Burke is known as an ardent advocate of historical theory of rights. His doctrine of prescriptive institutions solemnly asserts the importance of historical theory of rights. According to him political institutions form a vast and complicated system of prescriptive rights and customs and that these customary practices grow out of the past and adapt themselves with the present without any break in the continuity.

To substantiate his argument Burke gives example of French revolution and criticised it as injudicious exercise in the direction of a struggle for liberty, equality and fraternity. On the contrary he glorified the glorious English revolution which sought to reassert the customary rights that Englishmen had enjoyed from very early days and which had found expression in documents like Magna Carta, Petition of Right and various other documents of constitutional importance.

c. Evaluation of historical theory:

The historical theory of rights in a nutshell finds origin of rights in the primitive customs. It does not however mean that the origin of all rights can be traced in customs and traditions. Had this been so, all repressive and unjust practises would have been in existence even today. When rights are rigidly tied to customs alone, we altogether ignore the dynamic nature of society and accordingly, the changing contents of rights.

1.2.3 Legal Theory:

Legal theory of rights gives a legalist or law based position on origin of rights. It traces origin of rights in the form of enhanced laws that have legal or positive authority behind them. According to this theory rights are neither absolute nor ordained by nature, but are created and maintained by the state. This theory maintains that since the state is the only source of all rights, there can be no rights without or against the state. 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.

Rights are creations of the law of the state- According to this theory rights are not created by nature or absolute in nature but they are created by state. That means state is the sole creator or source of rights. It provides all those conditions which aims to protect rights of common man. Such an affirmation regards rights as the creation of the political community.

a. Contribution of Jeremy Bentham: legal theory of rights finds its emphatic manifestation in the works of Jeremy Bentham. He criticised natural rights theory as A rhetorical nonsense upon stilts and proposed that rights are the creature of law and or organised society. He argues that rights are the creatures of law and they are properly therefore referred as rights.

b. Legal rights exist under the rules of legal systems:

Legal rights are those rights which exist under the rules of legal systems or by virtue of decisions of suitably authoritative bodies within them. According to positivists, legal rights are essentially those interests which have been legally recognized and protected. John Austin made a distinction between legal rights and other types of rights such as Natural rights or Moral rights. By legal rights, he meant rights which are creatures of law, strictly or simply so called. He said that other kind of rights are not armed with legal sanction and cannot be enforced judicially. On the other hand, Salmond said that a legal right is an interest recognized and protected by rule of law and violation of such an interest would be a legal wrong.

c. Legal rights are recognized and protected by a rule of justice:

Salmond argues that legal right is an interest recognized and protected by a rule of justice. The word 'interest' implies any interest, respect for which is a duty and disregard of which is a wrong. This contention has two essential elements, legal recognition and legal protection. Both these

elements should simultaneously and concurrently be present in an interest for its transformation as a legal right.

d. Characteristics of legal rights: According to Salmond, there are five important characteristics of a Legal Right

- It is vested in a person who may be distinguished as the owner of the right, the subject of it, the person entitled, or the person of inherence.
- It avails against a person, upon whom, lies the correlative duty. He may be distinguished as the person bound, or as the subject of duty, or as the person of incidence.
- It obliges the person bound to an act or omission in favour of the person entitled. This may be termed the content of the right.
- The act or omission relates to something (in the widest sense of that word), which may be termed the object or subject matter of the right.
- Every legal right has a title, that is to say, certain facts or events by reason of which the right has become vested in its owner.

1.2.4 Idealist Theory:

Idealist theory of rights differs greatly from the natural theory or legal theory of rights. The Idealistic Theory of Rights is also known as the Personality Theory. According to this theory, rights are the external conditions essential to man's internal and real development. It advocates that without rights no man can become the best self and achieve his fullest development.

a) Perfection of human personality: Perfection of human personality is the end to which all rights are directed and subordinated. In other words, right to personality is man's fundamental right and all other rights are derived from it. For example, the right to life, the right to liberty, the right to property, and all other similarly important rights are to be judged by their contribution towards the development of human personality. If I abuse any of these rights and retard my self-development, society is within its competence to deprive me of that right.

b) Maintenance of material condition: the adherents of this theory believes that rights have a very important role to play in an individual's life. Rights are those necessary conditions which can be used to maintain basic material condition essential for the existence and perfection of human personality. As Kruausse has said that rights constitutes the organic whole of the outward conditions necessary to the rational life. It means that without rights no man can achieve his fullest development and become his best self.

c) Rational will of man: idealistic theory is based on a the rational will of man and for this reason, first recognized by the society and then translated into law by the state. Its best presentation is contained in the philosophy of

T.H.Green who says that human consciousness thinks of the goodness of the self as well as of other human beings.

1.3 PROBLEMS IN THE IDEA OF RIGHTS: GROUP BASED VS. INDIVIDUAL RIGHTS

Group Rights and Individual Rights:

Individual rights mean those rights that belong to an individual and are mainly political, economic, or legal in nature. The provision of rights helps people to enjoy their life and liberty without any external interference of any sort which also includes the state. Individual rights can be further discussed in positive and negative way. Positive rights encourage a person to discharge the right according to law and the negative rights prohibit any act that is not permitted by law. On the other hand group rights are those rights that are enjoyed by a group and as well as the individual. For example, the rights of disabled persons are considered as group

Rights that mean it promote the rights of the disabled as a group. At the same time, an individual disabled person also could claim the rights independently of the group. From the above brief discussion, a right may be defined as something that one possess to exercise either naturally, legally, or socially with a moral/legal duty to act without violating the right of others.

1.3.1 Group rights:

A group right is a right which is enjoyed by a group collectively rather than individually. However it does not mean that an individual does not have any say in the group rights, but the important feature of group right is that it can be enjoyed collectively by individuals as well as by a group.

There are different viewpoints about group rights. Scholars, academicians and thinkers have not positively welcomed the notion of group rights. Those who advocate the concept of human rights tend to criticize the notion of group rights. They are of the opinion that groups cannot have rights; they maintain that groups can have rights only if they function as individuals. The main argument of scholars is that group rights and individual rights are incompatible. There is a general belief that group rights are false claims and they are trivial in nature.

But despite of such type of criticism, group rights have so far proved to be very relevant especially during the turbulent period of human rights violation of various marginal groups. According to Leslie R. Shapard² Group rights are possible and can be consistent with individual rights. Leslie maintains that the recognition of group rights is consistent with all theories of human rights.

² "GROUP RIGHTS ", Public Affairs Quarterly Volume 4, Number 3, July 1990.

Basic features of group rights:

- **They are possessed by a group:** A group right is a right that are possessed by a group rather than by its members. It stands against the notion of a right held by an individual person in a given society. Best example of a group right is right is the right of self-determination of a nation. If we accept the right to determination then it is clear that this right is enjoyed by a nation or people as a group. It can theoretically be theoretically argued that a single individual can also have a right of self-determination along with the entire people.
- **Group right held by groups in capacity as a group:** the most important feature of group right is that these rights are collectively held by a group in capacity as a group and not as an individual. Duties that are generated by the group right are duties actually owed to the group as a whole and not to its member's individually.
- **It should not be confused with "group differentiated rights":** Differentiated rights are those rights that can be enjoyed on the basis of an individual's membership in a particular social or cultural group. A group right should not confuse with a "group-differentiated" right. That term 'differentiated rights' has been coined by Will Kymlicka (1995) to describe a right that is accorded to a particular group but not to the larger society within which the group exists. But group rights are not particular in nature but it cater to the aspirations of the whole community rather than a small community.
- **Group rights can be legal or moral or both :** Group rights can be legal or moral or both. For example in a particular political system if a community enjoys certain rights or if a group enjoys certain rights, then those rights will be legal rights. A justifiable legal system may create moral conditions wherein people can be claimant to both legal and moral rights. In the course of time those legal rights may get developed into moral rights. Similarly, once a group has been accorded legal rights, we might think that, in at least some cases, violations of its legal rights wrong it morally as well as legally. A group may therefore be credited with legally-dependent moral rights.
- **Group rights and human rights:** United nations through various of its covenants have given pristine recognition to human rights. The greatest advocacy of human rights has come from United Nations; many of its Covenants ascribe to all "peoples" the right of self-determination, the right freely to dispose of their natural wealth and resources, and the right not to be deprived of their means of subsistence. If one surmises the key component of first, second and third generation of human rights, then one can say that all these aim at the development of peace, along with a healthy environment, communication, humanitarian assistance, and a share in the common heritage of mankind.

1.3.2 Individual rights:

Individual rights are very crucial rights for the protection of the aspirations and assertion of individual in a democratic system. These rights are required by each individual to pursue their lives and goals. It is important to note that the individual rights should be enjoyed without interference from other individuals or the government. The rights to life, liberty, or property or even right to freedom of expression are some of the examples of individual rights.

What are individual rights:

Individual rights are those rights that are indispensable and are regarded as so vital that they guarantee legitimate protection from any external interference. Indian constitution offers a wide range of individual rights in form of fundamental rights and all these rights are justifiable in nature. It not only protects individual from the state abuse but also from all external forces and also safeguards their dignity.

Basic features of Individual rights:

- **Protects individual from infringement of freedom:** individual rights offer protection to individual from all type of encroachments and unexpected external invasion in personal domain. It offers both moral protection and legal safeguard against the debilitating forces which may try to put individual existence into disarray. Individual Rights signify that all such onslaughts are morally and legally forbidden and intolerable. It is for this reason the individual rights are described as legal-moral protective hedge against unwanted intrusion. If others try to intrude it then it can be termed as unnecessary trespassing into the individuals domain.
- **Individual enjoys authority over his own spheres of actions:** Individual rights allow people to take course of action as per their own individual sphere of liberty. They enjoy fullest authority over their own domain and they rightfully exercise control over it. As John Locke put it in Two Treatises of Government, rights allow individuals “to order their actions and dispose of their possessions and persons, as they think fit ... without asking leave, or depending upon the will of any other man.” In other words the significant feature of individual right is that it divide the world in a very simple way that is, the world of persons—into “mine and yours.
- **It ensures individual dignity and self-ownership:** individual rights brings individual at the centre of human life and designate him as the source and foundation of creativity, activity, and society. These rights views that only individuals can think, love, pursue projects, act and are capable of choice, in the sense of anticipating the outcomes of alternative courses of action and weighing the consequences.
- **Affirmation of personal and property rights:** it means individual rights warrant the moral and legal ownership of resources which can be

either tangible or intangible. In today's world the right to property also can be owned by the provision of patents and copyrights. This right protect individual in the private pursuit of their own preferred ends. They protect each individual's freedom to pursue his own conception of the good against all individuals and groups.

1.4 CLASSIFICATION OF RIGHTS

1) Civil Rights: Civil rights, guarantees social opportunities and equal protection under the law, regardless of race, religion, or other personal characteristics. Examples of civil rights include the right to a fair trial, the right to government services, the right to a public education, and the right to use public facilities. Civil rights are an essential component of democracy; when individuals are being denied opportunities to participate in political society, they are being denied their civil rights. In contrast to civil liberties, which are freedoms that are secured by placing restraints on government, civil rights are secured by positive government action, often in the form of legislation.

2) Political Rights: Political rights are those rights which relates to political affairs of the state. Right to contest elections, right to vote, right to participate in political campaign or assume political positions are some of the important political rights. They ensure one's ability to participate in the political life of the society and state without discrimination or repression. It also includes the right to address individually or collectively petitions to the government embodying their grievances. In a nutshell political rights are those rights by virtue of which citizens get a share in the political process.

3) Economic Rights: These rights relate to an individual's vocation and his engagement in a gainful employment so as to solve the problem of, clothing and shelter. In simple words economic rights are those rights which provide economic security to the people. These enable all citizens to make proper use of their civil and political rights. The basic needs of every person are related to his food, clothing, shelter, medical treatment etc. Without the fulfillment of these no person can really enjoy his civil and political rights. It is therefore essential, that every person must get the right to work, right to adequate wages, right to leisure and rest, and right to social security in case of illness, physical disability and old age.

4) Social Rights: Social rights include the rights to social security, protection of the family, an adequate standard of living, including freedom from hunger, access to clean water, adequate housing, and protection of property, and mental and physical health. Social rights refer to those rights that protect the necessities of life or that provide for the foundations of an adequate quality of life. In other words social rights may be defined as claims against the state to have certain basic social and economic needs of life satisfied.

5) Cultural Rights: Cultural Rights are rights related to art and culture, both understood in a large sense. The objective of these rights is to guarantee that people and communities have an access to culture and can participate in the culture of their election. Cultural rights are human rights that aim at assuring the enjoyment of culture and its components in conditions of equality, human dignity and non-discrimination. They are rights related to themes such as language; cultural and artistic production; participation in cultural life; cultural heritage; intellectual property rights; author's rights; minorities and access to culture, among others.

6) Group rights: Group Rights means rights that are enjoyed by a group and as well as individually. For example, the rights of disabled persons are considered as group rights. They promote the rights of the disabled as a group. At the same time, an individual disabled person also could claim the rights independently of the group.

1.5 SUMMARY

The concept of rights is the basic concept in the study of political theory. It is the basic principle in the process of establishing a just society. The provision of rights fulfills the legitimate expectation of the common people and ensures them the safeguard which helps them to attain their fullest development.

1.5 UNIT END QUESTIONS

1. Give meaning of rights and examine the theory of natural rights.
2. Define rights and discuss basic features of historical theory of rights.
3. Describe how legal theory of rights elucidates the legalist perspective of rights.
4. Evaluate in detail the problems in the idea of rights with reference to group based vs. Individual rights.
5. Give basic classification of rights.

1.7 REFERENCES

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EQUALITY

Unit Structure

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2.0 OBJECTIVE

- To understand the concept of equality from historical to modern era.
- To understands the different between Equality of treatments and treatment as equals

2.1 INTRODUCTION

Historically speaking ‘equality’ is one of the most basic concepts in social sciences that cover social, moral, political and philosophical grounds. Not only this, it is also one of the most confusing concepts as well. It is reflected in other concepts like liberty, justice, rights and property, etc. This concept has been in discussion since time immemorial, growing in each era. Under Marxism, it acquired economic content. Now in 20th and 21st century Feminism and Environmentalism, it has acquired new dimensions.

It is first responsibility to give a clear definition of equality. According to the Stanford Encyclopedia of Philosophy, it means correspondence between a group of different objects, persons, processes or circumstances that have same qualities in at least one respect, but not all respects. Equality must be distinguished from ‘identity’, which refers to one and the same object corresponding to itself in all its features. Thus, to say that men are equal is not to say that they are identical. Equality implies similarity rather than ‘sameness’.

Like Liberty and fraternity, even equality was brought forward into discussion by the French Revolution, 1789. Those days, this idea meant the voice of the oppressed, of the helpless as well as voice against the injustices.

On other plane, equality is essentially a progressive concept as it talks about and recommends equal treatment for all, equal opportunities for all and absence of special privileges, so essential for a modern society. It also means no birth-related privileges and all are equal in the eyes of the law. This idea has inspired radical socio-economic changes all over the world, more so in America and European societies. Thanks to this concept, ‘citizenship’ issue has assumed enormous importance in modern world as citizenship ensures equality to all citizens.

2.2 THE IDEA OF EQUALITY

When we discuss equality, we also have to reckon with its other side, inequality. These ideas have been part of political thought and discussion since many centuries. It is necessary to note that the concept of equality is a ‘relative’ concept and is not a constant concept. Equality is measured in the context of the prevailing inequalities. The history of human societies is full of inequalities. We find them mentioned and discussed in the works of Plato and Aristotle. Aristotle’s ‘Politics’ discussed society divided into ‘citizens’ and ‘slaves’. In a similar vein, the ancient Hindu scriptures divided society into four varnas. The story of medieval times is no different. In the medieval times too, special privileges were given to the ruling classes, the nobles, the kings and the queens. Not only this, the philosophers of that era vehemently justified such inequalities as ‘natural consequence’. Grounds like gender, race, wealth, military strength, etc. were used to justify the unequal treatment to people.

It must be understood at the outset that it is not just a ‘legal concept’. It is to be extended to political, social, cultural and economic spheres too. As was observed by R H Tawney in his famous work ‘Equality’ published in 1938, ‘If liberty means...every individual shall be free, according to his opportunities, to indulge without limit his appetite...it is clearly incompatible, not only with economic and social, but with civil and political, equality, which also prevent the strong exploiting to the full the advantages of their strength... But freedom for the pike is death for the

minnows. It is possible that equality is contrasted, not with liberty, but only with a particular interpretation of it’.

It is equally interesting to note the contradiction prevailing in modern societies even today. While all societies have accepted the principle of equality, in developed as well as developing societies, inequality prevails. The status of African-Americans in USA as well as the status of Dalits in Indian society is good examples of this contradiction.

2.2.1 Equality, a Modern Idea:

As noted above, though it has been in discussion since centuries, it has acquired a new dynamism in modern times. Now it has been hailed as an idea for social change. Traditionally inequality was taken for granted and was justified too. On the other hand, modern thinkers, with the advantage of scientific discoveries, started questioning the ideological premises of inequality. Under these modern challenges, the idea of inequality was defeated ideologically. The first solid attack came from French philosopher J J Rousseau who in 1755 wrote ‘Discourse on the Origin of Inequality’. He was the first scholar to distinguish between ‘natural inequality’ and ‘conventional inequality’. Natural inequalities like height, body strength, etc. are justified but not the conventional inequalities which essentially man-made. Here Rousseau mentioned wealth, privileges, etc. While the ‘natural inequalities’ are accepted by almost all societies, the ‘conventional inequalities’ were not accepted. After Rousseau book came the French Declaration of Independence in 1799, which reinforced the idea of equality.

Since then, the history of this idea of Equality has been quite encouraging though full of struggles. The most important philosopher of 20th century John Rawls wrote ‘Equality’ in 1971 in which he observed ‘it is when men, or some of them, see...some inequalities as unjust and alterable that equality as an idea becomes a potent force in political life...Before an inequality can become the object of criticism and regarded as unjust it would seem to be necessary condition that it should be alterable...But by no means all alterable inequalities are thought to be unjust for, making due allowance for the variety of standpoints as to what constitutes injustice, there are some inequalities which are accepted as socially useful, not to say beneficial.’

2.2.2 Struggle for equality:

As noted above, inequality has been integral part of human history. But on the other hand, struggles for equality has also been part of same history. We have noted that the Greek philosophers like Plato had supported inequality, slavery, etc. But in the same Western Political Thought, we also find scholars like Zeno who had founded Stoic School and equally vehemently supported equality among men. This school further argued that humanity does not tolerate inequalities. Consequently, all men are equal. During the days of Roman Empire, the issue of citizenship was of enormous importance. For Plato, the citizenship should be birth-based and

be given to few slave-owners. But by 212 AD, the then Roman Emperor Caracalla gave citizenship to all inhabitants of Roman Empire.

Next is to understand the struggle for equality and here we find that from the fifth century to the fourteenth century, there were many struggles to gain equality in all walks of life. During this era, the struggle was against serfdom, social gradations, etc. Then came the next stage which lasted from the fifteenth century to seventeenth century. During these two hundred years, struggle was against big land-lords, religious dogma and intolerance. During Renaissance and Reformation, there were sharp and intellectual attacks on inequality. The revolutions in UK of 1649 and 1688 and USA of 1778 had calls for equality among men.

Then arrived 20th century, the most important century for struggle for equality. The Russian Revolution, 1917, Indian Freedom struggle, 1947 was expressions of demand and struggle for equality. Finally came the Universal Declaration of Human Rights, 1948 [10th December every year is celebrated as International Human Rights Day all over the world].

2.3 EQUALITY: MULTI-DIMENSIONAL CONCEPT

As a concept, equality has many dimensions and each dimension assumed importance during different stages of human history. Today it is accepted that equality has following dimensions:

- Legal Equality
- Political Equality
- Economic Equality
- Social Equality

Each of these dimensions needs to be studied carefully.

2.3.1 Legal Equality:

When liberalism was the dominant philosophy, it sought equal enjoyment of basic rights of life, liberty and property. It was dead against legal privileges and demanded its abolition. In reality, it meant two issues: firstly, rule of law and secondly, equality before law.

Further it must be understood that ‘rule of law’ means laws made in society will be applicable to one and all. Nobody would be above law. Then comes equality before law. It can further be fine-tuned into [1] equality before law and [2] equal protection of law.

Here both these sub-themes are of paramount importance.

Historically laws made by Kings were NOT applicable to law. These laws were for the people, not for law-maker who is King/Monarch. In modern times, law-makers/legislatures are also subjected to law. Even the law-

makers have to abide by the laws made by them. It means equality of rights and duties to be enjoyed by one and all.

Similarly, 'equal protection of law' entails equal protection to one and all, without fear or favor. However, it does not mean 'absolute equality'. It also means that no discrimination on caste, creed, language, religion, gender, etc. At the same time, what needs to be understood is that law, in some special cases, can make 'rational discrimination'. Take the case of our Constitution. It talks of equality and yet provide for reservation for SC/ST/OBC, which can appear discriminatory. Actually, this falls under 'rational discriminations', and hence is justified.

2.3.2 Political Equality:

History of human society informs us that 'few' have always rule the 'many'. Those days, such inequality was justified on many grounds like knowledge, birth, money, colour of skin, race, elite, etc.

With passage of time, these were questioned, challenged and in due course gave way to modern democracy where 'one head-one vote' is the rule. Now this has become the basic principle of political equality. The 20th century political philosopher Prof Herold Laski had commented that political equality means the authority which exerts power must be governed by rules of democratic governance. This was well accepted.

However, in modern times, realization is dawning that it is not that simple and there are complications inherent here. Modern governments have become highly complex machines where the real power is with bureaucrats and technocrats. These are the institutions over which ordinary people have no control. Neither are they accountable to people. This reality puts tons and tons of constraints on ordinary citizens. And yet, the basic reality still prevails which is about equality of people in the eyes of the law and equality about the right to governance.

2.3.3 Economic Equality:

This is the unique gift of twentieth century political thought and more so the Russian Revolution, 1917. It brought into discussion the economic aspect of equality. Post-Industrial Revolution, the gap between the rich and the poor widened immensely. Now the discussion is not only about 'equality of opportunity' but also about using another equally significant rule of distribution and it is about equality of satisfaction about of basic needs.

Over a period of time, this dimension of equality too underwent significant changes. For early Liberal thinkers, economic equality had limited scope. It covered only equality of choosing one's own trade or vocation irrespective of caste, religion, language, etc. In due course, this was found to be insufficient. Now economic equality concerns with apportionment of goods. For this to become reality, concepts like minimum wages,

unemployment allowance, free public schooling, free public health services, etc. are needed.

2.3.4 Social Equality:

This is also new dimension of concept of equality. It covers equality of opportunity for every person for the development of his personality. In Indian context, it means abolition of caste system. It dreams of creating a just society where there shall be no discrimination of the grounds of caste, creed, religion, language, race, etc. Even in 21st century, the Dalits in India face caste-related violence and discrimination while African-American in USA had to start 'Black lives Matter' movement. In May 2020, George Floyd [age: 46], an African-American was killed in broad day light by white Police officers.

Then there is the issue of gender equality. It is proved today that despite physical and psychological differences between male and female, there is no evidence that women are inferior to men in intelligence, business acumen, etc. This is precisely why in many parts of the world; 'equal pay for equal work' is an accepted principle. Women empowerment should not only be in law, it must also change the age-old equations in marital relations.

It is surprising to note that 'education' is the field where discrimination between male and female prevails the most. Even in advanced countries like USA and US, higher education can be afforded only by the rich class. Such elitism further enhances the social gap. Hence the final aim should be to create an 'unratified society'.

2.4 HOW TO ACHIEVE EQUALITY?

Research analysis tells us that societies all over the world are unequal. Whether we take feudal era or we take capitalistic era, the issue of inequality was always present. If during feudalism, birth-related privileges prevailed, during capitalism, property-related privileges prevail. Consequently, human history is full of struggles to gain equality. However, there is a conceptual debate that needs to be addressed at this stage. It is noticed that there is paradoxical relationship between personal liberty and social equality.

Learning to live with this contradiction, many advanced democracies have achieved 'equality of opportunities' and have also managed to achieve to a large extent 'equality of conditions'. But they have a long way to achieve 'equality of results'. One can notice the gradual development of universal provision for basic education, health and social security. These did achieve 'equality of conditions'. Similarly in production process, many achievements need to be listed, for example, minimum wages, limited working hours, legal protection to working class, etc.

In addition to benefits listed above, the modern industrial societies offer some unique features like high level of mobility which in turn makes the traditional rules non-implementable. Take the case of patriarchy. With times, many women have joined workforce which in turn has diluted patriarchal authority. Similarly with migration came rise of nuclear family. This has drastically changed the status of women in modern society. This has led to emergence of modern egalitarianism.

This is why modern societies offer a picture full of contradictions. On one hand, we find many inequalities. On the other hand, there are trends which show us the prevalence of equality. One finds more and more awareness of justice, a necessary feature of all social relations. The supporters of inequality have a hard time defending their positions. Similarly, democracies offer institutional control over a set of injustices and inequalities. Then there are social movements like Medha Patkar-led Narmada Bachao Aandolan [NBA] which has forced all to take notice of environment and its continued degradation. Similarly, the feminist movement has spread awareness about gender equality and gender justice.

2.5 MARXIST PERSPECTIVE ON EQUALITY

Like on many other issues, Marx had given us a completely different perspective on Equality. In Marxist philosophy, 'equality is nothing but abolition of classes and equal status for all'. To understand the difference between the Marxist perspective and other perspectives, one needs to know other perspectives in a nutshell. As we know in a liberal society, equality means 'equality before law'. It also means the liberal perspective on equality does not take into account economic exploitation, political inequality, etc. Liberal perspective also grants every person to hold private property, but it does not talk about production relations. On other hand, Marxist perspective begins with abolition of private property as without this, no real equality is possible. After abolition of private property only, all round development of human personality is possible.

It is necessary to connect the demand for equality in human history with the then prevailing socio-economic conditions. The bourgeois demand for equality had risen during the high noon of feudalism. Similarly, when capitalism and capitalist state were reigning supreme, similar demand was raised. The answer, in Marxist thought is, the collectivizing the means of production.

Though this was more in theory, it suddenly became a practical issue after the Russian Revolution, 1917. Lenin explained that since Russian socialist system retains some elements of social inequalities due to inadequate development of material production, these inequalities will continue even during the early phases of Dictatorship of the Proletariat.

The next issue about equality in post-revolution Russia needs to mention the Constitution of the USSR. It had specifically established equality of

rights for Soviet citizens in all walks of life like social, political, cultural, etc. The overall policies of Soviet state were tilted in favor of gaining equality. In due course came the contradiction. The USSR had launched industrialization on a massive scale which in turn needed scientists, engineers, and technocrats in a big number. At times these trained personnel were paid 30 times higher salary than the ordinary worker. By 1930s, a new class structure was in place.

Slowly and steadily, the party had come to dominate all spheres of Soviet life. The government structure had become highly centralized and authoritarian. The entire system was tightly controlled by the Communist Party of the Soviet Union [CPSU]. No wonder the whole thing collapsed like a pack of cards in 1990s.

2.6 EQUALITY AND LIBERTY

The relationship between these two concepts has always been debatable. They could be complimentary as well as contradictory. The principle of liberty suggests 'equal' freedom to all. It must be ensured that freedom of the strong should not destroy the freedom of the weak. Failing which it will be the negation of liberty of the weak.

The early scholars of Liberalism were convinced that liberty and equality are poles apart and are opposed to each other. The scholars of Classical Liberalism argued that liberty quite important than equality. Locke, Bentham, Mill were convinced that there should be minimum restrictions of liberty. It is interesting to note that Locke covered three rights as natural rights, which were life, liberty and private property. He did not add equality in this list. Those scholars further argued that demand for equality reduces the scope of liberty. This political position had supporters even in 20th century. Bagehot, Hayek, Milton Friedman, etc. were new exponents of classical liberty. If you try to achieve equality, you end up destroying liberty, has the main thread of their argument. In short, liberty and equality are at logger-head and are highly incompatible.

On the other hand, some scholars argue that liberty and equality are not only highly compatible, they need each other. These scholars became known as Positive Liberals. Some important names are Rousseau, Hobhouse, T H Green, Barker and Laski. These scholars saw individual as a social being whose personal desires could be satisfied in the context of cooperative social relationship. They further explained 'liberty' as 'equality of opportunity' which means opportunity should be given to all to realize his or her true potential. And to provide such opportunities to all, some conscious restraints need to be placed on liberty of individual. Similarly, liberty insists that nobody should be placed at the mercy of others. By ensuring opportunities for all, liberty makes equality real. It also means without liberty, equality lapses into dull uniformity.

Further, the Positive Liberals did not agree that state control in socio-economic sphere will automatically lead to authoritarianism. In reality the liberal legislations passed by the state enhances the liberty of people by making them available many opportunities. Social legislations supporting employment, medical facilities, provident fund, and free education are passed to ensure more and more liberty to the citizens. Scholars like Eduard Gans commented that 'there is no inherent conflict between Liberty and Equality.

2.7 SUMMARY

Equality is about ensuring that every individual has an equal opportunity to make the most of their lives and talents. It is also the belief that no one should have poorer life chances because of the way they were born, where they come from, what they believe, or whether they have a disability. Equality of treatment is guarantee to society that no matter where an individual belongs with respect to age, sex, religion, caste and race they shall be treated as equals.

2.8 UNIT END QUESTIONS

1. Explain the idea of equality of rights
2. Discuss the concept of equality in democracy
3. Put your views on Equality of treatments vs. treatment as equals
4. Write and describe about any two fundamental rights of Indian constitution which advocates the equality in India
5. Short note on Dimensions of Equality?

MODULE - III

3

JUSTICE

Unit Structure

3.0 Objective

3.1 Justice as fairness- John Rawls

3.1.1 Introduction to Concept of Justice

3.1.2 Utilitarianism

3.1.3 Social Contract

3.1.4 Difference Principle and Notion of Equality

3.2 Justice as entitlement- Robert Nozick, Amartya Sen

3.2.1 Justice as Entitlement Robert Nozick

3.2.2 Justice as Entitlement Amartya Sen

3.3 Justice as Embedded-Michael Sandels and Iris Young

3.3.1 Iris Young

3.4 Summary

3.5 Unit End Questions

3.0 OBJECTIVE

- To understand the idea of justice
- To understand the Justice in Social and Political perspective
- To evaluate the concept of justice through western thinkers

3.1 JUSTICE AS FAIRNESS- JOHN RAWLS

3.1.1 Introduction to Concept of Justice:

John Rawls's ideas on Justice have been discussed in his A Theory of Justice (1971). This work was considered as the most influential contribution in political philosophy, since post second world war. It continues to be central to any discussion on Justice. Using the contractual approach, he developed a liberal theory of justice. It attempted to combine new egalitarianism to protect individual liberty. His work revived what is known as 'The Classical Tradition' in political theory. In keeping with the Socratic Method', after several deliberations and criticisms, Rawls, revised some of its arguments, while retaining the chief principles of his theory. Thus, this seminal work began a series of discussions on Justice, mainly as a response to Rawls's book, A Theory of Justice.

The theory appeared in the background of various movements in United States of America of the 1960s and 70s. These movements, including the Anti-Vietnam War campaign, the Black Rights Movement and others

raised fundamental questions about individual and minority rights in the USA. It included issues of just and unjust wars and of social justice in policy making and its implementation of democratic liberties and constitutional rights. This provided reasons for finding out permanent or long-term principles of justice in a democratic society. For Rawls, a democratic society and a just society were identical, in other words, one could not be imagined without the other. He declared that his theory was based on fairness of procedures followed in a society. In simple words, he stated that if the procedures set by the institutions of society were fair and just then the outcomes of the functioning of such institutions will lead to justice...”

Rawls believed that the procedures or rules decided for the most important institutions in society led to injustice or justice. He went on to demonstrate that under carefully determined conditions, rational decision makers will instinctively choose a set of rules or principles that would lead to distributive justice or justice that would lead to fair outcomes that are acceptable to all humans.

As a theory of Social Justice, Rawls emphasised that any distancing or dilution from equality can be tolerated only if leads to justice or fair outcomes. He refused to allow the market rules to control or dominate policy making and citizens choices. On the contrary, he argued that the market or economic system should be subjected to or its influence to controlled by regulating it as per requirements of social justice. He thus, favoured the idea that skills, talents, etc cannot be grounds for treating humans as unequal. Rather, special talents, for Rawls, were a result of social advantages and hence should be utilised to help the disadvantaged sections of society.

3.1.2 Utilitarianism:

Rawls's ideas upheld liberty and mutual reciprocity as the central values in society. Hence, he developed his theory, by criticising Utilitarianism. This 18th century philosophical tradition dominated political theory and philosophy in the western countries. Rawls criticised Utilitarianism as it ignored the distinctions between individuals when it declared its aim as 'greatest happiness of the greatest number'. This maxim was based on a faulty assumption that all humans were alike and that their happiness was the same at least that of a majority of people were supposed to have identical needs. And ideally justice will be achieved if decisions and policies favour a large number of individuals. But for Rawls, this amounted to treating individuals as means to achieve something else. Hence, he argued that justice as fairness meant treating individuals not as means but as ends in themselves. This involved acknowledging the fact that humans are distinct and have different needs and wants. For Rawls, justice involved securing liberties and rights of individuals without compromise or dilution to some greater cause like 'happiness of the greatest number'.

3.1.3 Social Contract:

Rawls theory of justice was founded on the 17th-18th century Theory of Social Contract. With Rawls, social contract theory was revived in the 20th century as he founded his justice theory on the former theory first developed in 17th-18th century. However, he used it for a completely different purpose unlike the 18th contractualists who used it to explain the importance and nature of state and sovereignty. He utilised the contract theory to explain the origins of the principles of justice.

Similar to the imaginative concept of 'State of nature' in the contract theory, Rawls stated that the principles of Justice were also an outcome of the original contract or agreement. He referred to this original contract as 'Original Position'. Further, he imagined that persons in his 'state of nature' or pre contract stage or original position were rational beings, endowed with a sense of justice and conception of good. They were capable, as rational decision makers, to follow self-interests, and had fair understanding of good along with sense of justice. Hence, they were also capable to enter into an agreement and abide by it. Rawls believed that these persons had similar needs and interests, equal in capacities and were moral and independent, thus, ensuring mutually beneficial cooperation.

Rawls firmly believed in mutually cooperative nature of society. Hence, human cooperation was possible amongst all members as they possessed similar aims and needs. This made them willing to cooperate for mutual benefit.

Further, Rawls developed the concept of 'Veil of Ignorance' as part of his 'Original Position'. It was another imaginative device that meant the assumption that those in the original position lacked of in-depth knowledge about certain things. It meant that the contracting parties were ignorant about their economic and social position, their own natural capacities, and the general economic and political situation of their society.

However, along with this lack of knowledge, Rawls states that the members had a basic understanding of politics and economics as well as human psychology.

Rawls refers to two main principles in his theory. According to him, the question of justice involved:

- 1) The economic system; and
- 2) Social system; as parts of basic structure of a society.

These determine the aspirations and needs of the citizens and also lay down the institutional framework for fulfilling the present and future wants and dreams of the citizens. Thus, basic structure as per Rawls, was supposed to provide necessary conditions that enable fulfilment of citizens needs and aspirations. This leads to his two principles of Justice that were

an outcome of the deliberations in the 'Original Position'. The same will now be discussed below:

The first, called the Principle of Equal Liberty. It secured the fundamental civil and political liberties including freedom of speech, right to vote and to property and freedom from arbitrary arrest.

The second principle called the difference principle involved distribution of income and wealth and also of power and authority in social organisations. Following suggestions and criticisms, Rawls reformulated the liberty principle and stated that any limits on liberty were justified only if they were required to prevent unjust inequality or to the advantage of those whose liberties were restricted. His emphasis on fair equality of opportunities aimed to remove the disadvantages imposed by both natural endowments and social conditions.

As far as his first principle is concerned, Liberty was of utmost importance to Rawls' conception of Justice. Hence, he referred to a list of liberties instead of defining the concept of liberty. List of liberties, he argued, were fundamentally important for a justice-based society. For Rawls, Liberty meant the entire set of freedoms that lead to equal citizenship. On the other hand, Rawls added that Liberty, different from the worth of liberties of freedoms, was the capacities of persons or groups to achieve their aims within the institutional framework established by society.

Rawls further stated that constitutional democracy was a prerequisite for achieving justice as it ensured equal participation and thus upheld the principle of equal liberty. Constitutional democracy involved representative and accountable legislature, free and fair elections, guaranteed liberties. In addition, adequate tax revenues and publicly funded elections as well as separation of powers, checks and balances, bill of rights with judicial review were all related to equal political liberty.

3.1.4 Difference Principle and Notion of Equality:

Along with Liberty, Rawls also emphasises the principle of equality in his aim to establish a just society. Under the Difference Principle, he rejected the notion of desert or merit or natural talents and special skills as worthy of special share of resources or important place in distribution. He argued that special skills or natural talents at birth are mere natural facts and are unevenly distributed in society. Hence such merit or desert do not deserve a larger share of resources or special rewards. Instead, he stated that such natural gifts should be utilised to help the least disadvantaged sections of society.

The uniqueness of Rawls' formulation was that it justified inequality or special rewards only if it benefitted the most disadvantaged sections of society. It was his search for permanent standards of justice in context of relatively prosperous and democratic societies that led him to develop a theory of justice.

For Rawls, the problem of justice was mainly a problem of distribution. It concerned the fair distribution of essential things necessary for a good life i.e., rights, liberties, powers and opportunities, income and wealth and means of self-respect and so on. He argued that increasing happiness of the privileged cannot be used as a remedy to reduce the sufferings of the disadvantaged sections in society. He invoked the idea of the 'chain connection' that implies identifying the weakest link of a chain and strengthening it and to then going on to the next weakest link. It is through this process that the entire chain gets strengthened. By the 'chain connection' he implied that it is necessary to strengthen the most disadvantaged in society if the whole society is to be healthy and strong.

Conclusion:

Rawls is credited for having restored the concept of Justice to the centre of political debate. He revived the grand old style of political theorising that was identified with the classical tradition. Another fact that points to underlines the importance of his theory is that it was subjected to critical evaluation from diverse range of critics. The theory was central to discussions on political theory for at least the next thirty years after it was published in 1971. In sum, as far as his Theory of Justice is concerned, Rawls remained the most important liberal theorist in the post Second World War era.

3.2 JUSTICE AS ENTITLEMENT- ROBERT NOZICK, AMARTYA SEN

3.2.1 Justice as Entitlement Robert Nozick :

Robert Nozick's views on justice are a strong defence of the minimal state within the libertarian tradition. Referred to as entitlement theory, he advances his theory as an alternative to Rawls theory of justice. Nozick's theory is categorised as purely procedural theory of distributive justice. It is based on three aspects of property, namely, original acquisition, secondly, its transfer and thirdly, its transfer and related issues. In contrast to this, Rawls does not consider special entitlements like acquired property, while Nozick's entitlement theory argues that individuals are to be rewarded as per merit or entitlement. In other words, the entitlement theory of Nozick focusses on how people have acquired or transferred property will decide the reward they get.

Nozick's theory implies that if the procedures are followed in order to acquire property or other goods, then the resultant distribution is fair and based on justice. For him, protection of individual freedoms is more important than equality. In other words, liberty cannot be compromised to ensure egalitarian society. Further, he criticises equality of opportunity as wrong or unfair mainly because it violates liberty of those from whom resources are taken to help those who do not have them/own them. Such redistribution, for him amounted to violations of justice if the original holders of property had acquired it through fair means. He rejects

government intervention to maintain equality as it destroys freedom, because desire for envy is a result of resentment and based on prejudice.

As far as acquisition of property is concerned, Nozick states that as long as ownership of property does not lead to worsening of condition of others, there is nothing wrong in it. In this manner, he advocates natural right to private property as long as it is available to everyone. Unlike John Locke, Nozick imagines individual property rights as a product of power.

He allows correction of past injustices in acquiring and transferring property through the temporary redistribution. This is intended to improve the position of the least advantaged section of society. This is advanced by Nozick as an alternative to socialist measures and welfare-based schemes.

Similar to John Rawls, Nozick criticises utilitarianism for neglecting individual differences, however, the later also questions the social nature of individuals, and hence prefers individuals over groups. Through this he also argues against the Rawlsian argument that the privileged enter into cooperation for the benefit of the least advantaged sections of society. In other words, he states that those with higher talents are bound to rule over the less privileged individuals. Any imposition of limits on social cooperation on account of fairness would lead to benefit to the already privileged. Hence, he is against the Rawlsian theory that demands increase in the state activities, as it is the opposite of what a minimalist state stands for. On the question of worth or whether an individual deserves a certain thing or not, Nozick equates desert with entitlement and believes that as long as individuals acquire things, goods, property etc in a lawful manner, the worthiness of the individual does not matter. In other words, there is no difference between worthiness and entitlement claim over property by an individual as long as the same is by legitimate means or methods. In this manner, his entitlement theory rules out any interference from state as required by redistributionist theory of justice.

Even though, Nozick attempts to speak for all humans, he clearly comes out as an ardent supporter of free market society that benefits only the wealthy and powerful. On the other hand, it leaves the less privileged on their own, while the rich are left to enjoy limitless privileges. In this sense, he is a status quoist, who wants to maintain the prevalent wealth inequality and call it as justice. Collecting taxes from the rich for welfare of the poor is considered as theft or exploitation of the privileged. Helping the least advantaged should be a voluntary act and not by social justice interventions by the state. Thus, Nozick's theory rejects any claim that the free market itself could create injustice.

3.2.2 Justice as Entitlement Amartya Sen:

Amartya Sen's theory is based on his key idea that economic and political rights are interlinked and organically connected. Hence, according to him, deprivation is an outcome of absence of entitlements. Starvation is not due to scarcity of food, but due to absence of entitlement of the poor to food as

seen during famines in British India. In such places, the poor suffer starvation more due to governmental policy rather than lack of food supply. In other words, the poor are denied entitlement to food supply that is available, yet inaccessible mainly due to authoritarian governments.

Sen also brings in entitlement in his views on gender. Using gender data, he demonstrates that in poorer regions of the world, a woman to men ratio suffers mainly because the former lack economic freedom. Hence, they also lack independence to assert their entitlement to food and other basic needs. Therefore, due to preference for male child, girls are neglected within the family and thus their chances of survival till adulthood also suffer.

More importantly, for us, Sen has argued that ideas of Reason, Liberty and Justice do not belong only to the West. Ancient Indian texts also have references to values like Justice or Nyaya. In short, such values are universal in characteristic and apply to all humanity without discrimination.

In his *The Idea of Justice* (2009), he discusses the Indian understanding of Social Justice and Rationality. He deliberates on the wider problem of global justice, something that was not much discussed in Rawls Theory of Justice.

Like most critics of Rawls, Sen argues against the idea of Justice as a product of contractual agreement. This is because it includes only those who deliberated and entered into the social contract. In effect, this means that the foreigners, future generations who were not part of it are excluded from it. Importantly, for Sen, this is a problematic basis for Justice, while the details of within the contract may not be important.

Sen criticism of Rawls justice theory, uniquely stands out due to the fact that he believes that it is nor essential nor simple to develop a universal Theory of Justice, one that can apply across time and place. In fact, Sen argues that several theories of Justice are possible simultaneously due to pluralistic character of the modern world. Further, while formulating concept of Justice, his emphasis is on evaluating different and their outcomes on justice, rather than finding an ideal theory. Thus, for him it is more about comparing policies in order to establishment justice in the society.

Sen criticises Rawls's theory for neglecting the impact of actual human behaviour in just outcomes or social justice. In his 'The Idea of Justice' Sen also discusses the notion of social choice. Based on his welfare economics, he argues that for any policy to be based on Justice, it should involve a reasonable concern for interests of others.

Further, he invokes the human capabilities approach and looks at democratic decision making by discussions, instead of mere regular

elections and resultant government formation. In simple words, he emphasises substantive democracy instead of procedural or electoral democracy. He also makes a strong case for the need of global aspect to justice.

He calls for us to engage in deliberations on justice, by actual comparisons of policies and examine claims of impartiality and fairness. Instead of focusing on procedures and rules, it is more important to focus on the social order and their general impact on justice. Such discussions should also be more global in outlook. While also taking into consideration that there are multiple ways of doing things, especially given the fact that the modern world is essentially pluralistic in character.

3.3 JUSTICE AS EMBEDDED-MICHAEL SANDELS AND IRIS YOUNG

3.3.1 Iris Young:

Iris Young has taken a broad view of John Rawls theory and his critics to argue that all these critics lack grounding in theory. According to her, all these theories are based on understanding Justice as a problem of distribution. What is common all critics of Rawls theory of justice is that they look at the question of justice as an outcome of distribution of rights and goods etc in society. For Young, this faulty way of dealing with the question of justice, and the right way is to look at the issue as arising out of institutional arrangements and relations of power and domination in society. She advocates the use of Jurgen Habermas's concept of 'Ideal Speech Situation' to develop a theoretical framework for justice.

Habermas's ideal speech situation helps develop a theoretical framework that focuses on more significant questions of institutional relations and domination. Young traces back such a conception of Justice back to Plato that provides an alternative understanding of Justice. She objects to two things in the distributive justice view: one that it creates conceptual confusions; and second, it wrongly focuses on outcomes of existing institutional forms and relations. In sum, she maintains that questions of distribution are crucial for social justice. But there are other questions that deserve importance; those are of structure of power and decision making and its outcomes for justice.

While comparing ideal speech situation with Rawls's Original Position, Young points out that the similarities as well as strong differences between the two. What makes the original position problematic is the fact that in emphasising the distribution of rights, liberties amongst members of society, it ignores the very institutions, institutional relations and relations of power that allocate these goods and lead to injustice of justice.

Another serious charge that Young levels on distributive theories of justice is their lack of substantial and historically grounded understanding of

justice. For her, it very important that the historically specificity be considered while advancing the framework for justice. Habermas's conception of ideal speech situation should be applied to actual situations in order to lead to substantive theory of justice.

The logical problem here is that claims to a universal and objective theory of justice in reality represent interests and values of the powerful or dominant class. This leads to an assumption that a rationally oriented and firmly grounded theory of justice is not possible. However, here Habermas's conception of ideal speech resolves this dilemma of retaining universality of principles of justice and at the same time being readily applicable to specific circumstances.

Embedded in the communications theory, the ideal speech situation has a universal nature due to its insistence on formality of interests and values of the speakers involved. In turn, such universality provides a firm grounding to theory of justice while retaining its distance from specific local circumstances.

However, the ideal speech situation is too formal and abstract to be applied as a neutral standard of justice. Recognising this limitation, Young introduces material considerations that are defined by the actual social circumstances. Though this is similar to Rawls' original position, yet those in the ideal speech situation, have the correct knowledge of the levels of resources available in their society. In other words, they know what is the level of material and social goods that are to be distributed in the society.

This approach, rather than arriving at a single idea of a just society, makes it possible, as many principles of justice as there are specific circumstances in society. Therefore, it allows us to think that is not possible to have one substantive framework of justice that applies to a multitude of societies. Thus, it identifies the sources of domination and also proposes an alternative way of organising society that does not have unequal power relations amongst its members.

Young illustrates her arguments by referring to the feminist's standpoint on the issue of women's oppression due to child bearing and rearing. This ideal speech situation is in regard of advanced industrial country. So, the question of justice, here ideally involves creating a society that is free from domination and resultant exploitation. In this regard, it is possible to ask how we create a just society that does not have any place for domination of one over the other. In an ideal speech situation, a discussion on such an issue should involve all women, men and children in society debating the issue of creating a dominance free society, this too within limits of reciprocity, equality and freedom from dominance.

3.4 SUMMARY

Justice as fairness is been discuss by John Rawls's ideas on Justice in his A Theory of Justice (1971). The idea included issues of just and unjust wars and of social justice in policy making and its implementation of democratic liberties and constitutional rights. Rawls criticised Utilitarianism as it ignored the distinctions between individuals when it declared its aim as 'greatest happiness of the greatest number'. Rawls firmly believed in mutually cooperative nature of society. Hence, human cooperation was possible amongst all members as they possessed similar aims and needs. This made them willing to cooperate for mutual benefit.

Robert Nozick's views on justice are a strong defence of the minimal state within the libertarian tradition. Referred to as entitlement theory, he advances his theory as an alternative to Rawls theory of justice. Nozick's theory is categorised as purely procedural theory of distributive justice. But Nozick's theory rejects any claim that the free market itself could create injustice.

Iris Young has taken a broad view of John Rawls theory and his critics to argue that all these critics lack grounding in theory. According to her, all these theories are based on understanding Justice as a problem of distribution. This approach, rather than arriving at a single idea of a just society, makes it possible, as many principles of justice as there are specific circumstances in society. Therefore, it allows us to think that is not possible to have one substantive framework of justice that applies to a multitude of societies.

3.5 UNIT END QUESTIONS

1. Write the Note on Justice as fairness
2. Explain the idea of justice in social contract theory
3. Describe the concept justice as entitlement
4. Write on Iris young's idea of justice

COERCION AND CONSENT (POWER, AUTHORITY, LEGITIMACY AND HEGEMONY)

Unit Structure

- 4.0 Objective
- 4.1 Introduction to Power
- 4.2 Power: Definition and Meaning
- 4.3 Forms of Power
- 4.4 Faces of Power
- 4.5 Meaning of Authority
- 4.6 Types of Authority
- 4.7 Hegemony
- 4.8 Legitimation
- 4.9 Perspectives on Legitimacy
- 4.10 Legitimation Process
- 4.11 Summary
- 4.12 Unit End Questions
- 4.13 References

4.0 OBJECTIVES

- To understand and analyze the nature , features of Power and Authority
- To understand and analyze the meaning, feature of Legitimacy
- To understand and analyze the nature and feature of Hegemony

4.1 INTRODUCTION TO POWER

Power is considered to be the central element of politics and it can be argued that without power politics is purely theoretical activity. A student of political science is always interested in the phenomena of power. The famous political scientist Harold Lasswell defined politics as ‘who gets what, when and how’. His definition of politics raises the question of power as to who will decide the distribution of resources and values in the society. Power may take different forms like economic, ideological and political, related and it is linked to authority and its legitimacy?

The unequal distribution of values, prestige, preferences, and resources reflected the nature of power. Power has both normative and empirical dimensions. The normative dimension gives moral or ethical reason for the fair or unfair distribution of power whereas empirical dimension describes the actual process of operation of power. A pluralist thinker will assume that power is fairly distributed among the different sections of the society and every group has equal access to power and can fulfil their demands from the state. An elite theorist would challenge the above position and claim that power distribution in society is shared by the elites and the masses do not have similar channels of access. A democrat will demand for rule of law and government by consent as a way to prevent concentration of power in the hands of few groups or people. A Marxist thinker will argue that power is a means of class dominance because power in the capitalist society is concentrated in the hands of capitalist class and politics is always a means to retain power by capitalist. Feminist thinkers contend that politics traditionally has been the domain of men because of patriarchy that subordinated the position of women to the household. In their view, patriarchy is a form of oppressive power that has curtailed the freedom and liberty of women.

4.2 POWER: DEFINITION AND MEANING

Bertrand Russell says power is ‘the production of intended effects’
Keith Dowding defines power as ‘the ability of an actor to bring about or help bring about outcomes’

Max Weber described power as ‘the probability that a command with a specific content will be obeyed by a given group of persons’

Talcott Parson defines power as ‘the capacity to mobilize the resources of society for the attainment of goals for which a general public commitment . . . may be made’.

Nicos Poulantzas defines power as ‘the capacity of a social class to realise its specific objective interests.’

4.3 FORMS OF POWER

Power manifests in multiple ways and it has various elements through which it asserts itself in the society. We will understand power in three different forms.

Political Power:

Power is a feature of the political system, In democratic system power rests in the masses. Fundamental rights, federal polity, separation of power, independent judiciary are institutional means to fragment power. The free and fair elections are mechanisms given to the citizens to elect the government of their choice. On the contrary, in a dictatorship, power is

concentrated in the hands of the dictator or party or military. At the international level it is said power operates through anarchy as there is no centralized authority. The sovereign states are considered as independent and rational actors. Power is a highly contested concept in politics as its nature, function and modality varies in temporal and spatial dimension.

Traditionally, political power is linked with sovereignty. In the 16th and 17th century the divine right theory rested on the premise that monarchy is the embodiment of sovereign power. Thinkers like Thomas Hobbes challenged the traditional theories of monarchy and stated that power is dispersed among the individuals. The individuals in the pre social and pre political epoch had equal power due to which there was constant warfare. Finally, the state was created by social contract to establish peace. Thinkers like John Locke and later Jean Rousseau argued that sovereignty rests with the people and the ruler will continue to rule as long as it enjoys the consent of the governed. Rousseau's idea of popular sovereignty became widespread after the French Revolution

The American revolution of 1776 brought forth the idea of separation of power and checks and balances. It means the three branches of legislature, executive and judiciary function separately, and each will keep a check on the other. The underlying logic was to prevent the concentration of power in one single institution.

Economic power:

Economic power is located in the material resources and related to the means of production, distribution, and its regulation. In modern times the concept of market exemplifies economic power as it is the principle of production, supply and distribution of goods in the state and society. The industrialists, rich agriculturist farmers, traders and big business have economic power because they own and control the means of production.

Karl Marx argued that the class that owns the means of production exercises real power in the modern society. In the age of capitalism the capitalist class owns the means of production, and therefore it also exercises economic power. The state in the Marxist analysis serves the interests of the capitalist and bourgeoisie. The latter class systematically exploits the working class. The workers cannot seek help from the state because the state exists to serve the interests of the capitalist society. The solution, for Marx, lies in revolution by the working class and followed by the establishment of communist society. In communism private property will be abolished and all economic means of production will be owned by the society. Wealth will be equally distributed in society. Although Marx's prediction of communist society has not been realized except in the form of communist state (in former Soviet Union or China), across the world many democratic states followed the welfare programme for its citizens. In the welfare state a large segment of the economic activities known as the public sector is run by the state. It is assumed that the market alone cannot remove poverty and bring prosperity in the society.

The libertarian on the other hand has questioned the role of the state in the economic sphere. F. A. Hayek and Milton Friedman have argued that the role of the state in the economic sphere of power threatens the rights of the individual. Libertarians demand that economic freedom is essential and call for elimination of any role of the State in controlling or directing economic activity. Hayek says that state intervention in the economy distorts the market. The individual choices in the market are destroyed by the state intervention. Friedman also argues individual economic liberty provides a guarantee against any excesses of political power.

Cultural power:

Culture plays an important role in the life of an individual and community. Culture provides a world view to understand, interpret, analyses and experience the material and nonmaterial objects. Cultural objects include form of utterances, interactions, pictures, songs, narratives, rituals etc. Power plays an important role in the shaping of cultural objects. Cultural objects are present in various forms of social organizations and practices like family, community, association, religions, ethnicity and language.

The close connection between power and culture was analyzed in the works of Max Weber at the beginning of the 20th century. In the early 1970s with the work of Pierre Bourdieu and Michel Foucault closely examined the interrelationship culture and power relationships in modern society. Antonio Gramsci's notion of hegemony explored the role of culture in generating dominant ideas of the capitalist class that are internalized by the working class, resulting in the perpetuation of class inequalities.

In modern time's communication, speech, symbols, ideas are loaded with cultural power. Culture hierarchies define the parameters that further intensify social discrimination. A dominant group in the society may impose its cultural values on the minority groups, robbing them of opportunities and access to material and nonmaterial goods. Since cultural power is highly invisible, it's difficult to detect and assess the impact it has on society.

4.4 FACES OF POWER

In the above section we learnt how power may exhibit in different forms. Every society and state has all forms of power that are mentioned above, though its scope and nature may differ. In some capitalist countries economic and political power may be dominant whereas in dictatorial regimes political power is given priority over economic, social and cultural power. In the age of globalization driven by information technology, cultural power plays an important role. It takes the forms of images, videos, symbols, messages etc. It is important to know the actual operation of power. Is it possible to observe how power flows like water or is it invisible like the water currents? This brings into picture what is

called the face of power. In other words, it's the debate of how power actually operates in modern society.

Power as Decision Making:

The first face of power is known as decision-making. It is the ability to get others to do something that they would not otherwise do. Power is seen as an empirical phenomenon having two components. First are the decision makers and second are on whom the decisions are imposed. It is possible to identify the places or sites where decisions are made like parliament, councils and international organizations. Second it is possible to observe on whom decisions are imposed like citizens, foreigners, regions, world public etc.

Robert Dahl and Nelson Polsby discussed the concept of power as decision-making in the academic debates that came to be known as the community power debates. Dahl defines power as A has power over B to the extent that he can get B to do something that B Dahl depicted his 'intuitive idea of power' as 'something like This: A has power over B to the extent that he can get B to do something that B would not otherwise do'. This concept of power is popular among the pluralists who conceive the state has an open field where different groups can compete for their interest. For the pluralist political activities is based on free and fair competition for all. This idea of power has been popular in the 1950 and the 1916 in the United States where it was believed in liberal and open democracy individuals are important, and they are free to form groups because of interest. Political groups are fluid in nature and vary in the context of time and space the first phase of power came under criticism from the left and the Marxist for taking a naive view of power.

Power as Agenda Setting:

The conception of power as agenda setting was developed by political scientists Peter Bachrach and Morton Baratz. They criticize Robert Dahl's idea of power as very simplistic for viewing power as an empirical phenomenon and neglecting the other dimension of power known as agenda setting. It is the process of functioning of power that enables a certain group to put forth their issues across the political system and at the same time it systematically denies other social or political groups from raising their issues. In other words, a political system and the actors involved in it ensures only those issues are raised that are compatible with the interest of political or social elites. If decision-making approach to power focusses upon the active participation of groups in the process, non-decisions highlight the importance of political organization in blocking the participation of certain groups and the expression of particular opinions Bachrach and Baratz highlighted how the powerful groups suppress challenges to the existing order so that demands for change made by the new or marginalized groups can be sidelined. For instance, despite being a liberal and open democracy the African Americans in the United States were systematically excluded from the social political process. The demands for political and social equality were never allowed to enter into

the political or policy process. This is also known as non decision-making wherein demands of the marginalized or oppressed minorities are kept on the periphery of the political system or even if it enters the legislative or executive process diluted to the extent of making it defunct or diluted. Elitist theory has analyzed the effect of non-decision-making on political process. The status quo uses 'mobilization of bias' to filter out radical proposals are weeded out and kept off the political agenda. In liberal democratic regimes issues like debt of the developing countries, intellectual property rights, military policies are often kept out of the purview of the public scrutinizes.

The dimensions of power discussed above are of empirical and rational nature. It assumes that power is visible it can be known who exercises power over whom. Power often cloaks its working by setting agenda which is not visible to the public but on scrutiny it can be revealed.

It is assumed that individuals know their preferences and the ways to achieve it. Stephen Lukes argues that the above two faces of power fails to recognize how desires, wants and preferences are generated, shaped and articulated through the operation of power. Here power operated by inserting itself deep inside the mind and consciousness of the person.

Power as thought control:

Lukes's radical conception of power aims to demonstrate that power can be exercised by causing subordinate groups to accept their position, by shaping how they perceive of themselves and their interests. The radical conception of power contends that individual desires and preferences are insidiously shaped and structured by the society and the state. An individual remains unconscious to these processes and it unaware of the fact how it is manipulated by the power games. For instance, Marx has contended that capitalism works by imposing a false consciousness on workers, so that they fail to recognize their true interests. Similarly, many feminists believe that patriarchal societies preserve themselves by ensuring that women internalize gendered norms and understandings, and thus fail to recognize their true interests in female emancipation.

John Gaventa, in his work *Power and Powerlessness: Quiescence and Rebellion* the weaker section of the society internalizes the dominant values and beliefs of the elite or ruling class thus reinforcing the existing inequalities. The acceptance of the values and norms of the elite class produces quiescence among the subordinate groups. This conception of power as preference manipulation minimizes the need to use explicit force or manipulating the content of the decision-making process.

An important aspect of the third face of power is the distinction between truth and falsehood. It refers to the individual understanding of the difference between real and felt interests. Marxists thinkers have strongly favored this concept of power in their class analysis. Capitalism is a system of class exploitation and oppression; however the bourgeoisie uses

the ideological power to manipulate the consciousness of the working class. According to the Marxist the dominant ideas, values and beliefs of any society are the ideas of its ruling class. Hence, the ideological power of the capitalist system blind the working class to its exploitation thus preventing the working class to engage revolutionary activity.

4.5 MEANING OF AUTHORITY

Politics traditionally has been concerned with the exercise of power. However at the same time, it is interested in the phenomenon called authority. Generally speaking authority is a form of power through which one person can influence or change the behavior of another. The main difference between power and authority is the way by means of which compliance or obedience is created in the society or state. Authority based upon a notion of the legitimate rule – a procedure through which compliance is sought of the citizens. It imposes a moral obligation on the citizens. Power creates compliance through pressure, coercion or violence. A more generic view of political authority could be to treat it as right to rule.

4.6 TYPES OF AUTHORITY

The German thinker Max Weber has given important analysis and classification of authority. Weber was concerned to explain why, and under what circumstances, people were prepared to accept the exercise of power as rightful or legitimate. In other words, he defined authority simply as a matter of people's belief about its rightfulness, regardless of where that belief came from and whether or not it is morally justified. For Weber authority is a form of power; authority is legitimate form of power.

Weber has classified authority into three types based on how they seek

a. Traditional Authority: Traditional authority is rooted in the belief, custom and tradition and it seeks justification of the political system through these bases. In the ancient times people had accepted that kings exercise powers as divine rights and they have a hereditary right to inherit this divine right. This is the reason which divine rights theory was popular in the pre modern era. Some examples of traditional authority are found amongst tribes or small groups or the traditional village. Political authority based on dynastic and hereditary rules can be found in Saudi Arabia or Bhutan but it is an exception rather than rule. In traditional authority the distribution of offices are based on personal, familial or status-based considerations. The traditional authority remains strong as long as people believe in traditions and customs, once the customs loses its sanctity traditional authority loses its respect.

b. Charismatic Authority: Weber's second form of authority is charismatic authority. This form of authority is based upon the charisma of an individual's personality. Charismatic authority owes everything to the

personal qualities of the leaders and his personal capability to make a direct and personal appeal to others. Some examples of charismatic authority in India are Dr Babasaheb Ambedkar, Mahatma Gandhi and Pandit Jawaharlal Nehru. These great men by their sheer charismatic appeal were able to inspire the masses and channelize their energy for the achievement of political goals. An interesting thing of charismatic authority is it does not need formal offices or institutional structures. The masses simply believe in the greatness of the leaders. However sometimes leaders deliberately construct charisma about themselves, as in the case of fascist leaders such as Mussolini and Hitler. Some political leaders deliberately create charisma, either by cultivating their media image and sharpening their oratorical skills or, in cases such as Mussolini, Stalin, Hitler and Mao Zedong. Charismatic authority often portrays the leader as having messianic quality who has come to liberate the masses. Charismatic authority sometimes can be long lasting. The intellectual legacy of leaders like Dr Ambedkar, Dr Martin Luther King or Nelson Mandela continues to inspire posterity. It must be noted charismatic authority can fail if the masses loses faith in the leadership qualities of the leader as it happened in case of Hitler or Mussolini. Charismatic authority is less appealing in liberal democratic regimes where the limits of leadership are constitutionally defined, but is nevertheless still significant.

c. Rational Legal Authority: Weber stated that the modern are is marked by the rise of rational legal authority. Legal-rational authority functions through the existence of a body of clearly defined rules. In legal-rational authority, the authority is attached to the formal office and its formal powers and not to the office-holder. We refer to the office of the Prime Minister or the office of the President that emanates from an institutionalized and established office defined by the constitution of the state. Obedience to the authority of the prime minister or the president results not from respect to a particular person but to the post he occupies it. The rational legal authority is based on certain criteria like official rules, written documents, hierarchy of offices, official position with duties and right, division of work, fixed procedure for recruitment to offices and separation of the official and the personal.

4.7 HEGEMONY

Although Gramsci popularized the concept of hegemony, it is essential to understand the work of Karl Marx. Marxism believed everything in life as determined by economic forces. In other words, the relation of production shapes our social relationship. Marx stated that everything in our social life is determined by economic content. According to Marxism, men find themselves born in a process independent of their will, they cannot control it, they can seek only to understand it and guide their actions accordingly.

Marx states in any society there are two classes, haves and have-nots. The former are ruling class and the latter are the servile class. To perpetuate the exploitative system, the ruling class imposes its dominant ideas over the working class. In the context of capitalist society, Marx argued, the

working class eventually tries and changes this situation through revolution producing its ideas as well as its industrial and political organization.

Marx divided the society into base and superstructure. The base is composed by the material relations of production whereas the superstructure refers to the political, social, cultural and ideological institutions. The superstructure according to Marx is determined the material forces working at the base.

Antonio Gramsci was writing the theory of hegemony when Europe was going through the turbulent phase. The destruction caused by World War I caused economic damage, social tension and political turmoil. As predicted by Marx, communist revolution was not happening anywhere in industrially advanced countries, rather it happened in semi industrial Russia. In countries like Germany and Italy, extreme right-wing regimes were propping up in the form of Nazism and Fascism. Ideologically, Nazism and Fascism were opposed to communism, yet the working class in both countries supported the ideology. The development baffled many Marxist thinkers as to why communism revolution was not happening and why working class supported anti-class ideology. Antonio Gramsci tried to provide the answer by deploying the concept of hegemony. Gramsci did not agree with the notion put forward by Marx that the ruling class stayed in power solely because they had economic power. He argued hegemony is the shared ideas or beliefs which serve to justify the interests of dominant groups. Gramsci felt that hegemony kept the ruling class in power because it allowed them to indoctrinate the minds of the masses. Hegemony is the form of ideology that secures the consent of the ruled class by insidiously imposing the values and culture of the capitalist class on the rest of the society. As a result, false consciousness is developed in the minds of the masses, and they tend to justify the rule of the oppressing class. In the capitalist society the bourgeoisie due to economic domination and intellectual and moral leadership have managed to established itself as hegemonic force.

Gramsci stated that hegemony is a constant process of securing consent, though its content is constantly changed. There are two types of social control, says Gramsci, the first is known as coercive control- that uses direct force., The second type is consensual control which arises when individuals voluntarily adopt the world view of the dominant group. In the modern age, Gramsci says hegemony operates within civil society wherein the dominant group exercises hegemony over the subordinate group. The religious, cultural, legal and educational institutions existing in the society reinforces the ideological values of the ruling class and subtly ingrains the values in the minds of the masses. Thus, social hegemony and political government are enforced historically in which the dominant group enjoys its position because of its function in the world of production and legally by state coercive power which enforces discipline on groups that do not consent.

4.8 LEGITIMATION

Modern states, political institutions and governments have to depend upon the co-operation of the governed. Use of power, despotism and terror is used by the above entities, but the exclusive reliance on force is expensive and often counterproductive. Even primitive regimes have to rely on consent of the governed subject to sustain political rule.

The process through which political rule is transformed from the use of brute force to one based on consent of the subjects or citizens is known as legitimation process. A given command has legitimacy to the extent that it secures willing obedience even where it conflicts with the obvious interests of those commanded.

Meaning and definition:

The best known writing on legitimation is given the great sociologist Max Weber. Weber considered legitimacy as one form of domination.

According to Weber, 'every genuine form of domination implies a minimum of voluntary compliance'.

Robert A. Dahl writes, "Leaders in a political system try to ensure that whenever governmental means are used to deal with conflict, the decisions arrived at are widely accepted not solely from fear of violence, punishment, or coercion but also from a belief that it is morally right and proper to do so."

G.K. Robert says, 'Legitimacy is that principle which indicates the acceptance on the part of the public of the occupancy of political office by a person or the exercise of power by a person or group either generally or in some specific instance on the grounds that occupancy exercise of powers is in accordance with some generally accepted principles and procedures of component of authority.'

In political science the concept of legitimation is closely linked to the nature and functioning of a political community called 'State'. Since the time of Thomas Hobbes the main issue about legitimation of the state is how to secure the compliance of the subject or citizens. What must be the basis of legitimation; force, violence, rights or liberties. What are the instruments available with the state to create and enforce legitimation? Let us understand how different political thinkers have conceptualized legitimation.

4.9 PERSPECTIVES ON LEGITIMACY

In Hobbes view the state is created by the social contract. Hobbes argues that in the state of nature every person is fighting for self-preservation and every person is at war with the other. Finally, to establish peace and order

individuals come together and create a state and transferring their rights to this sovereign—an individual or a group of individuals. When there is no such sovereign, one may be created by a covenant—Hobbes calls this “sovereignty by institution”. But political authority may also be established by the promise of all to obey a threatening power. Both types of sovereign formation are equally legitimate. Political authority is legitimate as long as the sovereign ensures the protection of the citizens. Hobbes makes no distinction between effective authority and legitimate authority in’ thought. It might even be argued that Hobbes fails to distinguish between legitimate authority and the mere exercise of power.

In Hobbes account the focus was on de facto mode of legitimation. He didn't look into the ethical basis of legitimacy. The normative concept of political legitimacy is often seen as related to the justification of authority. John Locke provided a normative explanation of legitimacy. Locke’s starting-point is a state of nature in which all individuals are equally free to act in accordance with the norms of natural law. However, natural law in the state of nature is not powerful enough to rule a society and cannot enforce itself when violated. The problem is solved by creating a social contract that transfers political authority to a civil state that can realize and secure the natural law. Social contract, according Locke, does not create political authority as it is embodied in individuals and pre-exists in the state of nature. The legitimacy of the state is derived from natural law and government has the obligation is to respect it. Natural law entails rights and liberties of the citizens. The moment a state violates natural law it loses its legitimacy.

Rousseau makes a distinction between legitimate social orders with a system of rules that is merely the expression of power. Coercive power is primarily a feature of the civil state which is not legitimate. Political authority can be considered as legitimate if it is backed by the general will of the people. Rousseau general will is the collective manifestation of the people to generate political authority. In other words, Rousseau is claiming sovereignty rests with the people.

4.10 LEGITIMATION PROCESS

Legitimation in democratic system:

Legitimacy in modern times is intricately connected with democracy. Democratic system promotes legitimacy in various ways. Consent is the important principle of democratic legitimacy. A democratic constitution provides a set of rights and liberties to its citizens. These rights in turn legitimize the establishment of government by the process of regular elections that gives mandate to political parties to run the government. In this respect, democracy fosters legitimacy by increasing the opportunities for political participation to the masses. Democratic governance is often based on compromise, conciliation and negotiation, through which rival interests and groups find a way of living together in relative peace, rather than resorting to force and the use of naked power. Finally, democracy

system provides mechanisms to redress the grievances that functions as a feedback loop that sustains political stability eventually.

Apart from democratic mechanisms several thinkers believe there are other factors that contribute or aids legitimation process in the democratic system. In advanced capitalist economies, democratic societies tend to enjoy widespread prosperity so the capitalist system and welfare state played important in ensuring the stability of the political system by generating and distributing material wealth across the population. A further factor is that democratic societies tend to be liberal as well as democratic. It provides a range of opportunities for self-expression, personal freedom and social mobility.

Legitimation in non-democratic system:

Non-democratic regimes like dictatorship, authoritarian states, military junta, theocracies etc do not have the principal means of legitimation that are used in democracies. For instance none of the above-mentioned regimes conduct free and fair elections or guarantees set of fundamental rights to its citizens. However, it doesn't mean non democratic regimes indulges in coercive and violent means as an essential tools for sustaining the regime. Violence and coercion is used but often in times of crisis as the continuous use of violence will increase the political cost for the regime and generate hostile environment.

Some authoritarian regimes use elections as a facade to gain legitimacy and helping both to create the impression of popular support and to draw people into a ritualized acceptance of the regime. Nazi Germany and Fascist Italy and communist regimes often used the mechanisms of (rigged) elections to secure the mandate of the people. In reality people are given extremely limited choice to vote and voting procedures are tweaked to favour the ruling party. Non-democratic regimes have often used non-political factors to boost the legitimacy of the regime. Communist regimes often bolster legitimacy by providing material and social benefit to the citizens, a strategy that continues to be practised by China through its ability to generate high levels of economic growth. Ideological legitimation is sought by promising teleological goals either material or ideological to the masses and claiming or usurping the state power for people. Gamal Abdel Nasser always justified the seizure of state power for Arab unity. Saudi Arabia's rulers proclaim as the vanguard of Sunni Islam and seek legitimacy to protect the same.

4.11 SUMMARY

The chapter has discussed important aspects of consent and coercion. It discussed the definition, types and forms of power. It explained the meaning and types of authority. It analysed the concept of hegemony and finally elaborated the concept of legitimation

4.12 UNIT END QUESTIONS

1. Define power and explain various forms of power
2. Analyze the various faces of power
3. Define Authority and explain its various forms.
4. Analyze hegemony as a form of power
5. Explain the meaning of legitimation and analyse its different perspectives
6. Elucidate the process of legitimation

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