



# HUMAN RIGHTS: THEORETICAL FOUNDATIONS AND RELEVANCE

**\* Suma K G**

Assistant Professor,  
Department of Social Work,  
Vijaynagar Srikrishna Devaray University-Ballari  
P G Centre Nandihalli, Sandur, Karnataka, India [suma@vskub.ac.in](mailto:suma@vskub.ac.in)

**\*\* Laxman Toli**

Teaching Faculty  
Department of Social Work,  
Vijaynagar Srikrishna Devaray University-Ballari  
P G Centre Nandihalli, Sandur, Karnataka, India [tlaxmanmsw@gmail.com](mailto:tlaxmanmsw@gmail.com)

## Abstract

*The Present article has made an effort to understand the theoretical foundations for human rights. There are different theories related to human rights and presents different approaches and viewpoints. Human rights are a distinct category of inherent moral rights. They are universally applicable to all people, regardless of ethnicity, country origin, or membership in any particular social group. As a result of being human, an individual possesses human rights. After World War II, the word "natural rights" gained widespread usage, supplanting the previous phrase "natural rights." The major theories of human rights such as Utilitarianism theory of human rights, Deontological theory of human rights or Kantianism theory, Laski's theory of human rights, Barker's theory of human right and Marxist theory of human rights are reviewed along with other theories.*

**Key Words: Human Rights, Theories, Legal, Natural.**

## 1. Introduction:

Human rights are inherent in human beings and serve as moral safeguards for our claims to the enjoyment of a minimum desirable existence. Human rights are conceptually derived on the idea of a right. Human rights as a moral concept seeks to define the essential conditions necessary for each human being to have a minimum good existence (O'Byrne, 2003). Human rights seek to define both the negative and positive criteria for live a minimum decent life, such as protection against torture and access to health care. This aspiration has been enshrined in a number of declarations and legal conventions over the last half-century, beginning with the Universal Declaration

of Human Rights (1948) and continuing with, among others, the European Convention on Human Rights (1954) and the International Covenant on Civil and Political Rights (Fagan, 2005).

Human rights are universally recognised fundamental concepts of absolute liberties, freedoms, and protections to which all individuals are entitled by virtue of their humanity. Human rights declarations and charters, on the other hand, are simply a subset of a continually generated, contested, and reconstructed discourse on human rights (Ife, 2008).

Each individual possesses dignity. Human beings developed the principles of human rights in order to ensure that everyone's dignity is properly and equally respected, that is, to ensure that a human being can fully develop and use human qualities such as intelligence, talent, and conscience, as well as meet his or her spiritual and other needs (Naseema, 2002).

Since 1948, the United Nations has enacted more than a hundred human rights agreements addressing all aspects of human interaction. These include the rights of women, children, refugees, migrant workers, stateless people, minorities, and indigenous peoples, as well as the prohibition of racial or religious discrimination, genocide, enslavement, and torture against stateless people, minorities, and indigenous peoples (Hayden, 2001). With the establishment of international human rights protection, institutional mechanisms of international human rights law became available that could serve as the foundation and framework for the full development of man's personality, representing his status as a human being and the equality of citizens before the law in various States (Arun Kumar Palai, 1999). The significance of human rights is such that it can fairly be said that their development and the initial efforts made to promote and safeguard them marked a qualitative leap forward for human civilization. In any case, human rights are a novel concept (Mullender, 2008).

## 2. Theoretical Review of Human Rights:

It is critical to get a fundamental grasp of human rights through studying various views on the issue in order to see the evolving priority of rights throughout history. The essential purpose of theory is to give an analytical instrument for determining the particular subject matter of any notion on which agreement may be reached. The following theories of Human rights are discussed in this article.

**Table No 01: Overview of Human Rights Theories**

S. No	Theory of Human Rights	Approach	Viewpoint
1	Utilitarianism Theory of Rights	Consequentialist	Instrumental
2	Deontological theory of Rights	Non-consequentialist	Non-Instrumental
3	Laski's Theory of Rights	Functional	Co-relativeness
4	Barker's Theory of Right	Need-Based	Integral factor-Human Development
5	Marxist Theory Rights	Idealistic	Political Participation
6	The Theory of Natural Rights	Natural	Self-Evident
7	The Legal Theory of Rights	Positivism	Sovereignty
8	The Anti-Utilitarian Theory of Rights	Equality	Welfare of All
9	The Legal realist Theory of Rights	Moral-Values	Broder values
10	The Socialist Welfare Theory of Rights	Practical	Social Welfare
11	The Idealist Theory of Rights	Essentialist	Integral view
12	The Historical Theory of Rights	Natural Law Enforcement	Common Good

## 2.1 Utilitarianism's Theory of Rights

Utilitarianism defines rights as the fair action that maximises utility or the good in comparison to all other potential acts. Utilitarianism is a consequentialist philosophy, which means that the fairness or injustice of an action or condition of affairs is decided only by the consequences it produces. A course of action that maximises utility is fair. According to this perspective, rights are essentially instrumental. Additionally, many in the utilitarian tradition have shown antipathy for the concept of rights of any kind.

Utilitarians will uphold a right if doing so maximises utility. Additionally, this phrase specifies the boundaries of all rights. If exercising a specific right does not maximise utility, the utilitarian is compelled to violate the individual's right for the sake of utility. The utility principle constrains rights. If exercising a right maximises the common good, the right must exist. If it does not, the right may be legitimately curtailed. Opponents of the utilitarian account of rights contend that it overextends rights in certain circumstances and unfairly limits them in others.

## 2.2 Deontological or Kantian philosophy of rights:

The Declaration of Human Rights According to philosopher Kant, the Categorical Imperative captures the essence of morality. Deontological theory, or Kantianism, is unmistakably an a priori approach. The repercussions of our activities are frequently decided by contextual elements outside our control. Honour and blame are only logical ideas when the subject is held accountable for their actions. All appeals to consequences must unavoidably shift the centre of blame to a diverse array of elements, only one of which is the individual's agency. Moral accountability for outcomes is nonsensical. Ethics must be a matter of intentions, as they are the only things that can be evaluated independently of external factors.

The Categorical Imperative is a test for determining the applicability of standards of behaviour. It will declare immoral any norm of behaviour that says that one person may do something but another may not under relevantly identical circumstances. In other words, consistency is required. This is crucial to human rights because we believe that human rights apply universally to human beings, and Kant asserts that what is ethically justifiable applies to all rational individuals. Additionally, this test tends to favour norms of behaviour that safeguard our most fundamental interests, precisely the types of things that rights safeguard.

## 2.3 Harold Laski's Theory of Rights

The theory defines rights as "those circumstances of social existence without which no one may attempt, in general, to be his best self." Laski refers to rights as "social conditions." Rights are a social notion that are intrinsically tied to social life. The necessity of rights is demonstrated by the fact that individuals assert them in order to achieve their best selves. He equates rights, persons, and state in the sense that they cannot be separated and are not antagonistic.

Laski's theory is particularly notable for its emphasis on the functional component of rights. It places a premium on the relationship between right and obligation. According to him, rights are correlative with functions. The functional theory stresses that an individual is only allowed to assert rights if he fulfils his obligations; otherwise, the claim or demand for rights would be denied. This directly contradicts a commonly held belief in the legal theory of rights. However, rights are now recognised and safeguarded primarily for political reasons.

#### **2.4 The Historical Theory of Rights**

According to the Historical Theory of Rights, rights evolve over time. Historically, rights were established by traditions and usages. However, in the modern state, legal rights are recognised and protected. Human beings in society created specific usages, traditions, and conventions for the common benefit over time, and these unwritten forms constituted the foundation for law, which granted individuals rights in their real written form. Custom was an unwritten law to the primitive man. All human rights theories emphasise the interconnectedness of human existence and humanity, but some are particularly rich in diverse viewpoints. Pre-funded human rights theories contribute to the conceptualization and literary foundation of the notion of human rights.

#### **2.5 Barker's Righteousness Theory:**

Additionally, Barker explores the moral dimension of rights. He asserts that the state's legislation assists him in securing his rights. However, rights are asserted, and the originator is the individual. The individual is a moral being, and it is up to him to develop his moral identity via the exercise of his rights. Barker's position does not deviate theoretically from Laski's. Both are liberal thinkers, but Barker demonstrates a strong preference for idealism. The primary objective of any political organisation known as a state is to ensure that the individual's personality has adequate opportunity for growth. The state's responsibility is to ensure and safeguard the circumstances necessary to accomplish that goal. The term "rights" refers to these safeguarded and guaranteed conditions. The personality of an individual does not develop naturally or in the most unfavourable or adversarial circumstances. Personality development requires favourable conditions, which the state must ensure through the creation of law.

#### **2.6 The social welfare theory of rights:**

Rights are produced by society and are aimed at achieving social welfare. Individual and societal happiness are rights, and they should take precedence over conventions, usages, traditions, and inherent rights. This Theory examines rights solely from the perspective of social welfare. The theory has the significant advantage of sustaining the social welfare premise. Utilitarians, who backed the idea, took a practical approach to rights, advocating for legislation in a variety of disciplines to protect them.

## 2.7 Marxist Theory of Human Rights:

Marxist Theory Propounded Karl Marx and Friedrich Engels They did not conduct a systematic examination of rights, but they were well aware of the state of various rights in bourgeois society. Liberal philosophers placed a low premium on the realisation of economic rights. Political rights were paramount for them, and if individuals have the chance to exercise their political rights, the absence of economic rights will not jeopardise political rights.

Furthermore, failure to realise economic rights may eventually result in increased economic inequality, which liberal theoreticians regard as a positive indicator of liberty. Marx and Engels, on the other hand, condemned this approach to rights, stating unequivocally that political rights are practically meaningless in the absence of economic rights. Marxists acknowledged that in a bourgeois society, attempts are constantly made and achieved to extend the number of rights. However, the increase in the number of rights does not help the general public.

## 2.8 Natural Rights Theory

This is the earliest theory of right, with its origins in ancient Greece. According to this theory, rights are inherent in man and thus self-evident. They were regarded as inherent, absolute, pre-civil, and even pre-social. They can be asserted at any time and in any place. To name a few, Thomas Paine, Grotius, Tom Paine, and John Locke are major proponents of this theory. These theorists derived their notions of rights from God, reason, or an underlying moral presumption. According to them, each individual has a distinct identity and is obligated to answer for his acts according to his own conscience.

## 2.9 Legal Theory of Human Rights:

Thomas Hobbes, John Austin, and Jeremy Bentham contributed significantly to the development of this idea. According to them, rights are purely utilitarian concepts, and thus require rules and regulations to identify and protect one's rights. This theory is a rebuttal to the theory of natural rights. Proponents of this theory argue that natural law and natural rights are abstract and absurd concepts. Thus, the State, rather than the individual, can better ensure and practise the existence and enjoyment of an individual's fundamental rights. To accomplish this, each individual was required to give up certain rights and liberties for the greater good of the society.

## 2.10 The Anti-Utilitarian Human Rights Theory

Numerous theorists argue forcefully that the utilitarian's stated priority of the majority's well-being is not the primary objective of the state. Dworkin, Nozic, and John Rawls are among the most prominent. They believe that pursuing the welfare of the majority may have unintended repercussions for the wellbeing of an individual or a group of individuals. Thus, a healthy balance between the majority's well-being and individual well-being is necessary for the greater enjoyment of social and individual rights.

### 2.11 Legal Realist Theory of Human Rights:

The Legal Realist Theory is a very recent development. This theory emerged primarily in the United States of America, with the rise of regulatory actions that followed President Roosevelt's "New Deal Policy." In a highly complex and industrialised society, a group of jurists including Karl Llewellyn, Roscoe Pound, and others argued the point of what the law does, rather than what the law is. None of these philosophers advanced a unified theory of rights. Rather than that, they viewed rights as the outcome of both the interaction of the society's dominant moral norms and the widespread worldwide sharing of values.

### 2.12 The Idealist or Personality Theory of Human Rights

According to rightists, a human being requires favourable external conditions for the development of his personality. Green, England's idealist thinker, asserts that rights are abilities essential for man to fulfil his purpose as a moral creature. According to Krause, Henriki, and Wilde, without rights, man cannot be his best self.

Human rights have a long and distinguished history. Human rights are predicated on the belief in the existence of a universally applicable system of justice. The contemporary human rights ideology has come to prominence in global events in this fashion. Human rights are a global language that is understood and used by a diverse range of peoples in diverse circumstances. Human rights have become inextricably linked to contemporary conceptions of how humans should be treated, both by other humans and by national and international governmental authorities.

#### Conclusion:

Human rights are best understood as future moral guarantees that each human being has the possibility of living a minimally decent existence. The extent to which this objective has been missed reflects the contemporary world's abject inability to establish a morally compelling order based on human rights. Human rights' intellectual underpinnings have been roundly criticised. While several issues of contention between academic supporters and opponents of human rights remain unresolved, if not irresolvable, the fundamental case for human rights remains ethically persuasive. The exercise of imagination is perhaps the most compelling cause for human existence. Consider a world in which human rights are non-existent

#### References

- Arun Kumar Palai. (1999). *National Human Rights Commission of India : formation, functioning, and future prospects*. Atlantic Publ.
- C Naseema. (2019). *Human rights education : conceptual and pedagogical aspects*. Kanishka Publishers, Distributors.
- Fagan, A. (2005). *Human Rights | Internet Encyclopedia of Philosophy*. Iep.utm.edu. <https://iep.utm.edu/hum-rts/>
- Hayden, P. (ed.) (2001), *The Philosophy of Human Rights* (St. Paul, MN: Paragon House).

- Ife, J. (2008). *Human Rights and Social Work: Towards Rights-Based Practice*. (Revised Edition). Cambridge: Cambridge University Press.
- Mullender, R. (2008). A Very Short Introduction to Human Rights, by Andrew Clapham. Oxford: Oxford University Press, 2007, xii + 189 + (index) 4pp (£6.99 paperback). ISBN 978-0-19-920552-3. *Legal Studies*, 28(4), 641–645. [https://doi.org/10.1111/j.1748-121x.2008.00107\\_4.x](https://doi.org/10.1111/j.1748-121x.2008.00107_4.x)
- O’Byrne, D. J. (2003), *Human Rights: An Introduction* (Harlow: Pearson Education Limited).

