Rights

Syllabus
- Rights: meaning and theories
- Different kinds of rights
- Concept of Human rights

Intro
- Relationship between individual and state
  - Safeguard of the individual against arbitrary use of power
    - Any theory says human cannot have rights "against state "
      - No theory of rights
        - Hobbes , Hegel, Rousseau
- Benefit which come automatically from existence of state do not constitute rights
  - Come into picture only
    - When authority sought to be limited
      - Negative rights
        - Against arbitrary use of power
          - State is restricted
            - F.o.s.e.
    - When some demand positive role of the state
      - Positive rights
        - Protection of weaker and vulnerable
          - Responsibility of the state
            - Education
    - Positive and negative
      - Continuum
        - Universal education promotes f.o.s.e

Theory of natural rights
- Early liberals
- Source of rights
  - Not state
  - Human himself
    - Moral intuition
    - Reason
- Two dimensions
  - Social Contract
    - Hobbes
      - Unconditional surrender
        - Political obligation
    - Rousseau
      - Rights become irrelevant
        - In civil society
    - Locke
      - Man surrendered only
        - Few natural rights
          - Inalienable rights
            - Life, liberty and property
  - Teleological
    - Thomas Paine
      - Doctrine of final cause
        - Social contract - eternally binding and hence a clog on the wheel of progress
        - Every generation should be free to think and act for itself
- Evaluation
  - Source of inspiration for A.R. and F.R.
    - American Declaration of Independence 1776
    - French Declaration of rights 1789
    - Consent of the governed
  - In spite of historical significance
    - Remain ambiguous
    - Claimed to be eternal and immutable
      - In actual practice
        - Depends on views and values of the class, groups
        - Capable of immense variation
          - For some, men are naturally superior over women
          - For Aristotle slavery is natural
          - Modern states and I.O. Invokes
            - H.R.
              - Based on Human dignity which cannot be exchanged for other benefits

Theory of moral rights
- Based on the accepted morals in society
  - Rights should conform to what is right or good for human beings
- T.H. Green
  - The rights depends on recognition
    - Recognition is granted by the moral consciousness of community
      - Shared by all individuals not by state
  - Concerned about ideal rights
    - Not legal rights
  - Source of right
    - Inherent moral propensity of man
      - Not from state
- Evaluation
  - Ronald Dworkin
    - Book "Taking rights seriously"
      - Right Trump other consideration such as community welfare
  - Pragmatist
    - Finds justification for state coercion in justice and efficiency
      - Doesn't take rights seriously
  - Purely hypothetical
    - Not concrete rights
  - Moral relativists
    - No fixed moral for all societies at all times
      - Moral rights can't be recognises universal rights

Theory of legal rights
- All rights of men depends on the state for their existence
  - No rights prior to states
  - State declares law and thereby guarantees and enforce rights
  - May change from time to time
    - No fixed/eternal/universal rights
- Hobbes
  - Only
    - The right of self preservation
  - Free to anything which is not restrained by state
    - No rights against state
- Jeremy Bentham
  - Greatest champion of legal rights
  - Natural rights
    - Are the creatures of natural law
      - They are metaphors which derives it's origin from another metaphor
  - Right is the guarantee
    - Creatures of law
- Ernest Barker
  - Dilemma of rights
    - Ideally a right will always be derived from
      - Two sources
        - Individual personality
          - State and its law
      - Double quality
        - Development of individual
          - Secured and guaranteed
  - If only one source
    - Quasi - right
- The gulf between legal and ideal rights
  - Bridged by
    - Fixing responsibility of the state
      - Once ideal rights are conceived by community through moral consciousness
        - Steps must be taken to secure legal sanction
        - RTI

Historical theory of rights
- Features
  - Product of long historical process
  - Differ from state to state
    - Time to time
      - Different levels of historical development of society
  - Source - customs
    - Stabilised through usage in several generations
- Edmund Burke
  - Criticised FR
    - Conception of abstract rights of man
  - Glorified English revolution
    - Resurrected the customary rights
      - Magna Carta 1215
- Evaluation
  - No criteria to ensure sense of justice
  - Many customs were oppressive
    - Slavery, sati, polygamy
  - How injustice can be perpetrated through rights

Social welfare theory of rights
- Utilitarian
  - Greatest happiness of greatest number of people
    - Sole criteria
- Eliminates
  - Subjective, ambiguous, dogmatic and static criteria
- Practical problem is
  - Who will define social welfare

Social-democratic perspective
- To achieve liberty and social justice together
- Liberty
  - Every state known by the rights its maintains
  - Rights are not concession granted
    - Essential condition for development of man
  - Rights are superior to states
    - They provide standard to judge the state itself
      - For deny the claims of rights is to sacrifice the claim to allegiance
- Social Justice
  - One may have rights against state
    - but not against community which represents common good
      - Subordinate their self interest
  - Man is entitled to rights
    - to enable him to make his contribution to the social good function
      - Duty is implicit in right
  - Duty of individual is coexistence with the duty of state
    - If state fails
      - Individual can resist

Marxist perspective
- Rights
  - Designated to serve interests of particular class
  - Secured by law
    - Part of superstructure
  - Freedom of trade, speech, expression
    - No substantive advantage
      - As long as society divided
  - No contradiction between man & society
- Lenin
  - In transitional state
    - Bourgeoisie rights
      - Right to work, minimum wage, rest etc
  - In communism
    - To each according to his needs
      - No contradictions

Presented with xmind