

## The Changing Notion of Rights: A Critical Analysis

**Dr. Abhishek Kumar\***

*\*Post Doctoral Research Fellow (ICSSR), Centre for Philosophy, SSS-I,  
Jawaharlal Nehru University, Delhi*

### Abstract

*The aim of this paper is to introduce and examine different philosophical approaches to rights. One reason, why it is important is because, it is helpful to get a sense of the way arguments about rights have emerged over time according to different circumstances and contexts. A philosophical survey of theories of rights helps us to see the complexity and diversity of arguments about rights. This can help protect us against an overly reductive or simplistic approach that some critics and even defenders of rights often take. More importantly, it sheds light on the way conceptual change can occur in light of practical and political-circumstances. This paper begins with the notion of rights in 'the state of nature' propounded by social contract theorist and discusses more recent notion proposed by several contemporary thinkers.*

**Keywords:** *Rights; Liberalism; State of Nature; Justice;*

Reference to this paper  
should be made as  
follows:

**Dr. Abhishek Kumar,**  
"The Changing  
Notion of Rights:  
A Critical Analysis  
", RJPSSs 2017, Vol.  
43, No.1, pp. 61-66  
[http://  
anubooks.com/  
?page\\_id=2012](http://anubooks.com/?page_id=2012)  
Article No. 9 (RJ1885)

### **Introduction**

In general the term 'right' is associated with an entitlement or a justified claim. In other terms, the term 'right' relates to anything to which either an individual or an institution feel they can make a fundamental claim. Sometimes rights are related to obligations. Rights are different from obligation in the sense that on any occasion one has a choice whether or not to exercise one's right. Yet rights are connected to obligations in the sense that when one has the right to do, others have an obligation to let one do it. One can have rights as a member of a social group, be it a society or a nation or any other institution. Rights need recognition from society, state or the institution as the case may be. Throughout history, rights have been justified on legal, moral, ethical, human and other grounds. Several theories of rights have been discussed by different thinkers in the process.

One of the most influential and initial statement on rights was given by John Locke in his *Second Treatise on Civil Government* published in 1690. But before Locke, Hobbes had also propounded a theory of natural rights, which can be traced in his conception of 'state of nature'. Hobbes<sup>1</sup> points out that the state of nature is a condition of war where everyone is against every one and in which everyone is governed by his or her own reason. In this case, the laws of the jungle would prevail where only the fittest survive. Man's desires are insatiable. Since resources are scarce, humankind is naturally competitive, inevitably creating jealousy and hatred, which eventually leads to war. This constant state of war is what Hobbes' believes to be man's original state of nature. According to Hobbes, man cannot be trusted in the state of nature. Limits must be put on freedom and inalienable rights.

John Locke, unlike Hobbes, does not think that the state of nature is inherently a state of war. Locke states, in the state of nature "Men living together according to reason, without a common superior on earth, with authority to judge between them, is properly the state of nature"<sup>2</sup>. According to Locke, in the state of nature men are in perfect freedom to order their actions and dispose off their possessions and person as they think it within the bounds of the law of nature, without asking leave or depending upon the will of any other man. It is "a state of equality wherein all the powers and jurisdiction is reciprocal no one having more than the other"<sup>3</sup>. But this natural freedom is 'within the bounds of the law of nature'. The state of nature is governed by law of nature. This law teaches all mankind who will consult it that being all equal and independent; no one ought to harm another in his life, liberty or possessions. As per Locke every man has a natural right to his life and freedom of

action to use his property as he thinks fit, provided he does not interfere with any other man's enjoyment of the same.

On the other hand there are thinkers who have second thoughts on natural rights. Rousseau contends that the basis of all the rights does not come from nature; "But the social order is a sacred right which is the basis of all other rights. Nevertheless, this right does not come from nature, and must therefore be founded on conventions"<sup>4</sup>. He insists that whoever refuses to obey the general will shall be compelled to do so by the whole body<sup>5</sup>. Rousseau's conception of a state of nature is closer to Locke's than Hobbes's. To Rousseau the social contract is a mystical construct by which an individual merges into the community and becomes part of the general will. "Each of us puts his person and all his power in common under the supreme direction of the general will, and, in our corporate capacity, we receive each member as an indivisible part of the whole"<sup>6</sup>.

For Rousseau general will is supreme, alternatively for Immanuel Kant 'universal law of freedom' is the influential factor. As per Kant "right is therefore the sum of the conditions under which choice of one can be united with the choice of another in accordance with a universal law of freedom"<sup>7</sup>.

Theory of natural rights has been criticized by many thinkers but the most vehement critics of this theory are the utilitarians. The utilitarian theory of rights was outlined by the English philosopher Jeremy Bentham. Bentham was not satisfied with the aimless and unscientific character of the legislation of his day and critical of the idea that significant and genuinely reforming legislation could be based on the traditional idea of rights. For Bentham benefit of community is much more important than the benefit of individual. Bentham suggested that lawmakers to use his "principal of utility" to construct morally sound legislation. By utility, Bentham means that "property in any object, whereby it tends to produce benefits, advantages, good or happiness or that which prevents the happenings of mischief, pain, evil or unhappiness of the party whose interest is considered"<sup>8</sup>. The debate is carried forward by contemporary thinkers such as John Rawls for whom notion of right is individual centric. For Rawls what is directly relevant for social ethics and justice is the individual's means to pursue their own ends and to live whatever 'good life' they choose for themselves. For Rawls 'principal of justice' was the guiding factor. The socio-economic status of the individual was given due preference by Rawls as opposed to many other thinkers. On one hand Rawls argued that social and economic inequalities are to be arranged in particular to the advantage of least well off persons; on the other hand Robert Nozick talks about the inalienable rights which no one can take

away from a person without his or her consent<sup>9</sup>. Property is the centre of Robert Nozick's idea of rights. In some way Nozick takes the concept of Locke's idea of property rights to a different level. For Nozick, if something is created by someone then it belongs to that person unless he has given it away or sold it. Both Rawls and Nozick find their opposition in communitarians like Michael Sandel. Michael Sandel in *Liberalism and the Limits of Justice*<sup>10</sup> argues that liberalism rests on a series of mistaken metaphysical and meta-ethical views, liberal politics of rights should be abandoned for a "politics of common good". They also find support in Karl Marx<sup>11</sup>, who was equally critical about natural rights', which, according to him, despite their apparent universalism, actually in practice serve to defend a particular system of bourgeois property rights. Marx believes that any economic and political system based on liberal capitalist values will collapse through its own self contradictions. In its place a new form of community would evolve in which people could as members, participate equally as in the shaping of their own lives as social beings. Since the rights of an individual or institution often collide with other's rights, one has to override the other and hence a priority is decided on the basis of certain theories. For example Ronald Dworkin<sup>12</sup> says 'rights are trumps' by which he means that treating people in accordance with their rights takes priority over promoting general utility or the common good. John Rawls gives a similar priority to justice. Over times priority of individual and hence priority of institution have changed. Some philosophers while discussing rights shows concern to 'gender' perspective. Okin argues that the social structure of gender relations and the nature of family certainly raises the issues of justice. Okin contends, that "in a gender structured society there is such a thing as the distant standpoint of women and..... this standpoint cannot be adequately taken into account by male philosopher"<sup>13</sup>.

Concepts of rights and priorities keep changing from Locke to Rousseau to Kant to John Rawls. For Locke concept of 'law of nature' was the governing factor, in Rousseau's case theory of 'general will' was the guiding factor. Kant suggests that 'universal law of freedom' regulates the theory of rights whereas for Rawls nothing supersedes 'principal of justice'.

It is evident that change in individual and social perspectives, values, priorities and beliefs has affected the philosophy of right. From the ages of Locke and Hobbes when natural right was taken in obvious terms to times of communitarians like Michael Sandel and thinkers like Ronald Dworkin the term "Right" has earned many dimensions.

Most of the theories propounded by philosophers, right from the beginning till 20<sup>th</sup>

century, conceive rights either as a claim against the state or an obligation upon the state. Certainly such a conception has had something to do with the prevailing social, political and economic systems of the time concerned. But these systems and the socially dominant groups are never static, rather they march ahead according to what a Darwinianists would call the law of evolution. Social, political and economic systems also had a particular relationship amongst them. Progress and changing arrangements between the above mention three systems complicates the status of a philosophical theory of rights propounded at a particular time, in the sense that its losses its teeth in any new found milieu.

It is significant to note that in economic sphere the concept of free market economy has gained acceptance all over the world in which the so called liberal rights reign supreme. The state no longer is the sole entity which controls, regulates and affects in various way the life of the individual or the community. Multi National Companies, International Organisations, Civil Society Groups/Organisations, Terrorist Organisations have come to assume several roles which could earlier only be attributed to the state. In such a situation exposition of a theory of right only in juxtaposition of state is not enough or at least not real. Thus any realistic philosophical theory of right will have to take into account the roles and influence of above mentioned factors. Again, humans have now achieved new heights in technology. These achievements too have an impact on the 'practice' and 'profession' of rights. Thus there is talk of human right prohibition against certain kind of technology (bio/chemical/nuclear weapons, cloning, stem cell research, and pre natal sex determination-abortion). Conversely there is talk of rights of post humans (intelligent machines, computers, animal rights, etc.).

Now the new approach to ideas like rights, justice has emerged which claims to be non-institutionist<sup>14</sup>. This perspective is not content only with providing and creating or erecting edifice of institutional arrangements. Rather they focus on realisation of that idea (here it would be several rights). Even from this perspective, the traditional philosophical theories of rights are lacking. They do not attend to practical hurdles which come into the way of such realisation and accomplishment of rights.

### References

<sup>1</sup> Hobbes, Thomas, *Leviathan* (Oxford: Basil Blackwell, 1946), p.82

<sup>2</sup> Locke J., *Treatise of Civil Government*, Edited by Lamprecht Sterling P., (New York: Appleton-Century-Crofts, 1937), #19

<sup>3</sup>Ibid, # 4

<sup>4</sup>Rousseau Jean-Jacques, *The Social contract* (Penguin, 1968), Bk 1, chp. 1

<sup>5</sup> *Ibid*, Bk 1, chp. 7

<sup>6</sup> *Ibid*, Bk 1, chp. 6

<sup>7</sup>Kant, I. *Groundwork of Metaphysics of Morals*, ed by Mery Gregor, (Cambridge University Press, 1998), p. 51

<sup>8</sup>Burns, T. H. And H. L. A. Hart (eds), *Jeremy Bentham: An Introduction to the Principle of Morals and Legislation* (London: Athlone Press, 1970), p. 14

<sup>9</sup> Nozick, Robert, *Anarchy, State and Utopia* (New York: Basic Books, 1974)

<sup>10</sup>Sandel, M., *Liberalism and the Limits of Justice*, (Cambridge: Cambridge University Press 1982), p. 183

<sup>11</sup>Marx, K., 1844, "On the Jewish Question"; page reference in the text is to the reprint in Waldron 1987: 137-50

<sup>12</sup> Dworkin, Ronald, *Taking Rights Seriously* (London: Duckworth, 1977), p. XI,90-4,364-8

<sup>13</sup>Okin, Susan Moller, "Justice and Gender" *Philosophy and Public Affairs* (16 (1, 1987), p. 107

<sup>14</sup>Sen, Amartya, *Idea of Justice* (Harvard University Press, 2009)