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**Unarguably Arguable: The Salient Offerings of the Notion of Rights**

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**Abstract**

Rights are conceived of and upheld both philosophically and institutionally as being necessary to ensure justice. It is accepted in philosophical discourses that the presence of injustice presupposes the absence of rights. This paper aims to investigate why rights are so crucial to having justice as a just condition in light of this perspective. The paper makes an effort to investigate and emphasise the key aspects of rights that have been advocated in various philosophical discourses in order to achieve this goal.

To accomplish the goal, the current work makes an effort to represent the arguments as claims and to define them in terms of philosophical notions

Keywords: Rights, Justice, Natural Rights, utilitarianism, Human Rights

**The Background**

The concept of Rights is argued and emphasised in reference to justice, indeed with different reasoning. They, in most common understanding, are considered possessions that are exercised and enjoyed by individuals for a safe, good, and dignified life that creates and ensures happiness in life (McCloskey, 1965). Globally, in philosophical discourses, these possessions are argued with plural reasonings and are theorised as positive and negative rights<sup>i</sup>. Since the influence of these arguments is global, the theoretical argumentativeness has further advanced the regime of rights<sup>ii</sup>. This invisible but influential regime has identified, certain salient features of rights and has established them as unarguably arguable. This paper, in the following sections, attempts to through light on those features that have declared and established rights, which are the most essential condition for a just society.

**Claim 1: Instruments to escape from inconveniences of public and personal life**

In the initial political discourses, the ‘purpose’ of rights is argued to escape from inconveniences. The main argument of three major philosophical traditions, including the tradition of Natural Rights, utilitarianism, feminism and human rights, is deeply discernible<sup>iii</sup>. Although the various forms of inconveniences are defined differently and are argued in various situations, there is still a logical connection between the four.

For instance, the annoyance in the tradition of natural rights was a state of perpetual hostility between each. According to utilitarianism, the absence of law is 'something' that makes human life in its natural state inconvenient.

Discourses on human rights discussed a variety of inconveniences, but the biggest ones were injustices that pervaded various civilizations. Intriguingly, the remedies for the identified annoyances, as articulated in the four discourses, are the same, namely the identification of some situations as rights and the assurance that they are claimable. In accordance with proponents of natural rights, the benefits of social interaction are what rights are, thus each person chooses to give up his negative right that has immorality creating the power and desire to harm 'others' who are relatively weak<sup>iv</sup>. This right becomes a promise made by each to each in the utilitarian state as the concept of lawful rights develops because each will forego a negative right in favour of each. Inconveniences can be avoided through laws, which are made and stated to ensure the utmost advantage to each and every person. The idea of human rights proposes to universalize rights that are fundamental and basic for human survival in order to secure the necessary escape.

According to the feminist perspective, rights are prerequisites that allow one to reject sexual repression. With this conviction, the discourse has criticised the discriminatory mindset of various societies, evident at the social, economic, and political levels, and has highlighted patriarchal rules of society as the killer inconveniences. Thus, rights serve as a means of escape for feminism, enabling women to live lives free from both public and private constraints. With this assertion, radical feminism has expanded the notion of a woman's right to 'have' her body as a right.

### **Claim 2: Draws Peaceful conditions**

For contractual traditions rights are physiological claims of man that are argued for through self-defence (Hobbes 1651) and self-ownership (Locke 1689).<sup>v</sup> According to the contractual theory of rights, these criteria were once thought to be necessary in order to foster "betterness" in a particular society<sup>vi</sup>. Rights are argued as conditions that are found and achieved as essential to achieving and containing peace in the two fundamental ideas, namely those of Hobbes and Locke. According to this perspective, rights establish an environment where nothing is presented as extraordinary and nobody is treated differently; anything that one person can claim can be claimed by others as well.

The concept of having rights for peace is overwhelmingly predominant in the human rights tradition. It is a historical fact that conflict and unrest served as the backdrop for the conception of human rights. The proponents of this view maintain that because rights were not properly acknowledged and guaranteed in some political contexts, an unfair situation was conveniently made to appear just. Additionally, it has been suggested that a just condition should have no boundaries and that all states, regardless of their style of government, should recognise some rights as universal since only then can world peace be guaranteed. It is obvious that in human rights discourses, maintaining peace necessitates rights.

### **Claim3: Ensures Freedom of lawful actions**

Equal freedom of lawful actions results from equal rights entitlements<sup>vii</sup>. The utilitarian theory of rights holds that a sovereign person's actions are only restricted by the rules that the state creates and enforces (McCloskey, 1965). The idea of sovereign but legal action can be understood as manifested in utilitarian ideas. According to Mill, the right to pursue one's own interests does not include the right to inflict harm on self or others<sup>viii</sup>. He claims that because the reasoning guarantees their right to freedom of action, especially speech because it has a component of harmlessness, members of politically organised societies are in agreement.

The necessity for the legitimacy of freedom of action, from this perspective, establishes the state as the highest authority of authoritative allocations of fundamental values. As a political system, it has a duty to define, clarify, and protect the rights within the legal framework. Utilitarians, most notably Bentham, claim that rights provide freedom of action because the result is the greatest happiness for the greatest number of individuals<sup>ix</sup>. Nowadays, the concept of pleasure is associated with financial prosperity; as a result, rights are seen as economic rights that are referred to as manifesto rights (Joel Feinberg, 1973).

### **Claim 4: Creates Ability to owing things with the justifiable reasoning**

Every person possesses rights as a matter of ownership (Nozickian, 1974; Crowe, 2015), and these rights are valued since they are "claimable" (Onora O'Neill, 1996). However, each 'will' cannot be claimed as right. Wills are assumed to be essentially legitimate in accordance with concepts of rights, including in a social sense. They are what Feinberg (1973) called the "things we own" that are socially acceptable and hence they are not, in any condition, impermissible luxuries. They are nonetheless comparable good freedoms that are necessary for social existence as Laski (1991) and Gould (2004), persist<sup>x</sup>.

These 'socially justified essentially legitimate wills' are further introduced and supported within a legislative framework. Legal obligations guarantee the rights and privileges that the state accords to its citizens (Louden, 1983). Morally, they are preconditions that safeguard people's freedom of choice (Hart, 1982) and represent the accepted course of behaviour (Marin, 1993).

### **Claim 5: Rights as choices and permissions to take decisions**

In Marxist and feminist perceptions, rights are seen beyond political ends. They view rights as the freedom to make choices that are indissolubly tied to social and economic fulfilment and happiness. According to these two discourses, the existence of rights will only be valuable if it fosters the possibility of free will and if it aims to address structural injustice. Marxism holds that the goal of rights should be to solve economic injustice, and feminism holds that the goal should be to address gender inequality. Notably, in Marxian theory, rights are defined in terms of the outcomes of choices. Arguments primarily centred on the central query of capitalists or proletariats making the decision during the dialogue. Marxism holds that for a right to exist, each man must be equally allowed to be part of the social and economic dialogues and should be equally satisfied. The argument is that, in addition to being equal, man should also be equally satisfied (Marx, 1974).

According to the feminist viewpoint, arguments on rights originally centre on the relationship between men and women. Feminist scholars contend that in order to abolish the patriarchal system in favour of women, women must be satisfied with their claim to and exercise of their rights (Nussbaum, 2000). Feminist discourses have broadened the beneficiaries of rights that were previously presented as the 'rights of men' by encouraging women as deserving beings of rights.

The understandings and proposals advanced by Marxism and feminism have ascertained that rights are relationships and that the extension of their beneficiaries allows each person to benefit from rights such as claims, privileges, powers, and immunities (Hohfeld, 1923). According to Lyons (1970), these are categorised in the state's structure as active (privilege and power) and negative rights (claims and immunities). Due to this connection, rights have taken precedence over other considerations in order to seek a common social good (Dworkin, 1984), which includes economic effectiveness and opportunity equality (Ronald, 1984).

**Claim 6: Defines Virtue of humanity, Power, and preserves common good as duty**

According to Ockham (1997), and Tierney (1959), rights have evolved in the language of rights as a legitimate power to use "things." Power can only be used in limited circumstances and is tied to the performance of specific obligations. In accordance with the virtue of humanity, the element of duty upholds rights (Plamenatz, 1938; Charles R. Beitz, 2011), which effectively operates in a certain social context (Beitz, 1979). They are recognised as constitutional obligations in contemporary political systems, which have given individuals authority by guaranteeing the inalienability of their rights ((Foucault's understanding highlighted by Chevallier, 2013)<sup>xi</sup>.

Since rights have the quality of justice (Michel Lockwood 1981), the exercise of it, according to Green (1941), enables people to recognise their own potential and employ it for the welfare of society. In light of this, the concept of the common good calls on people to fulfil certain obligations that are supported by the existence of rightful public institutions and elements operating on a global scale, as well as by the validity of rights (Maliks & Follesdal, 2014).

**Conclusive Remarks**

The alleged six characteristics of rights, which are emphasised in this paper, highlight the fact that rights are moral powers that allow people to act in a certain way and make use of certain circumstances for their own satisfaction without endangering the interests of others. The outlined characteristics of rights support that the notion of 'Rights' are inherently linked to morality and that they encompass everyone's interests rather than just one. In an ideal society, rights, in this sense, aren't something that a being achieves; rather, they're something that beings, as logical creatures who are aware of how heavily reliant they are on other beings' survival, are entitled to. To put it another way, rights are generally accepted as ensuring certain rights, commonly to the commons.

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<sup>i</sup> Harel (2015) has considered rights as negative, when they are limiting governance and become positive when advocating strong governance to support a person's actions. An elaborated account is found in the Warren S. Quinn (1989)'s conception, who argued that the Principles of negative rights are often admired by capable societies where as positive actions of state are demanded by incapable societies (Warren S. Quinn, 1989). For him negative rights are claim rights against harmful intervention, interference, assault, aggression and might therefore naturally seem to proscribe harmful positive agency, whether by action of the agent himself or by action of some object to which, by strategic inaction, he lends a hand. Positive rights, on the other hand, are claim rights to aid or support and would therefore seem to proscribe harmful negative agency (Actions, Intentions and Consequences: The Doctrine of Doing and Allowing: philosophical review pages 287-312)

<sup>ii</sup> The term is taken from Yash Ghai's article. For the detail see: Yash Ghai, Rights, Social Justice, and Globalization in East Asia, in Richard Falk, Hilal Elver and Lisa Hajjar (Ed): Human Rights: Critical Concepts in Political Science Vol II, pages 66-88, Rutledge publications, New York.

<sup>iii</sup> In Marxism such inconveniences are dominance of capitalist over proletarians. In feminism, dominance of men over women is major inconvenience. Since rights in this school of thought have emphasis on self and others, which is not included here for this discussion.

<sup>iv</sup> It was HIS right only as natural rights are, initially, claimed as MEN's rights.

<sup>v</sup> Till 1947, for discussion of rights, the term 'Man' was used as a subject; Eleanor Roosevelt suggested in 1947 that the term 'Rights of Man' be changed to 'Human Right'. It is a term which was coined by Thomas Paine in the French Declaration of the Rights of Man and Citizen (1789).

<sup>vi</sup> Paper started the discussion of rights with the contractual interpretations because in political discourse, they have provided the first systematic argument on what are rights, and why and how they can be assured. In the discourse of rights this is recognized as the natural theory of right, which claims that the main cause of the origin of state is the contact between man and man. Its main purpose was to escape from inconveniences of life which was preventing a peaceful life. For details see Judith Jarvis Thomson (Jun., 1997, 'The Right and the Good' in *The Journal of Philosophy*, Vol. 94, No. 6), pp. 273-298.

<sup>vii</sup> Susan James (2003) has defined this as a practical entitlement, which makes an individual capable to enjoy right.

<sup>viii</sup> Hegel, in Vol. III of the *History of Philosophy* argues for the same.

<sup>ix</sup> Lyons, (1969) has identified Bentham's understanding with two perceptions i.e. 'rights resulting from the absence of obligation' and 'rights correlative to obligation'.

<sup>x</sup> According to James Nickel, all such conditions fixes the identity of a person who acquire the moral status given and assured by right. These conditions determines when a right applies, what has to be done to bring it into play and what are the circumstances when rights are being enjoyed and even more significantly by whom it should be protected. All these conditions have been added as capabilities by Nussbaum Martha (2003, 2007, 2011, 2012).

<sup>xi</sup> Brown argued that inalienable rights are natural rather than fortuitous, conventional, or supernatural. They are self-evident and needs consent and protection from the government (Brown S. M., 1955). He has explained them as "interests and objective of interest", "private moral interest" and "the possibility of modifying and creating institutions" (Frankena, 1955).