

UNIT – I

Jurisprudence of Human Rights

Nature • Definition • Origin • Theories

Human Rights Law and Practice

Unit Overview

This unit explores the foundational jurisprudence of human rights.

It examines the philosophical underpinnings, historical evolution, conceptual nature, and competing theoretical frameworks that justify the existence and protection of human rights as inherent claims of every individual by virtue of humanity.

Key focus areas include:

- Nature and essential characteristics of human rights
- Definitions from scholars and international instruments
- Historical and philosophical origins
- Major theories: Natural Rights, Positivist, Marxist and others
- Classification and generations of rights

What You Will Learn

01 Understand Nature

Grasp the inherent, inalienable and universal character of human rights

02 Define Precisely

Articulate scholarly and legal definitions of human rights

03 Trace Origins

Identify historical and philosophical roots across civilizations

04 Evaluate Theories

Critically analyse Natural Rights, Positivist, Marxist and other theories

05 Classify Rights

Distinguish generations and categories of human rights

06 Apply Concepts

Connect jurisprudence to contemporary human rights practice

MEANING

What Are Human Rights?

Human rights are those minimal rights which every individual must have against the State or any other public authority by virtue of being a member of the human family, irrespective of any other consideration.

CORE IDEA

Rights derived from the inherent dignity of the human person. They are moral claims that are inalienable and inherent in all individuals solely by virtue of their humanity.

ALSO KNOWN AS

Fundamental rights • Basic rights • Inherent rights
• Natural rights • Birth rights

When guaranteed by a written Constitution, they become Fundamental Rights.

Essential Nature of Human Rights

- 1 Inalienable** Cannot be surrendered, transferred or taken away. Conferred by existence itself.
- 2 Inherent** Belong to every human being by birth. Not granted by any authority.
- 3 Universal** Apply to all persons everywhere without distinction of any kind.
- 4 Indivisible** All rights are equal in importance; none can be prioritised over others.
- 5 Interdependent** Enjoyment of one right often depends on realisation of others.
- 6 Dynamic** Expand and evolve with socio-economic and political developments.

DEFINITIONS

Scholarly & Legal Definitions

UDHR, 1948

Rights derived from the inherent dignity of the human person.

D.D. Basu

Those basic rights which every individual must have against the State or other public authority by virtue of his being a member of the human family.

Justice J.S. Verma

Human dignity is the quintessence of human rights.

Cranston

A human right is something of which no one may be deprived without a grave affront to justice.

Historical Evolution

1

Ancient

Natural law in Greek Stoicism & Roman jurisprudence • Dharma in Indian thought (Vedas, Upanishads, Ashoka) • Code of Hammurabi • Confucian ethics

2

Medieval

Magna Carta (1215) • Islamic concepts of justice • Bhakti & Sufi movements emphasising dignity • Church doctrines of natural rights

3

Modern

English Bill of Rights (1689) • American Declaration of Independence (1776) • French Declaration of the Rights of Man (1789) • Abolition of slavery movements

4

Contemporary

UDHR 1948 • International Covenants 1966 • Regional systems • Expansion to third-generation rights

Philosophical Foundations

Natural Law Tradition

Rights exist independent of positive law. Discoverable by reason. Rooted in Stoicism, Aquinas, Locke, Rousseau.

Social Contract

Individuals surrender certain freedoms to the State in exchange for protection of remaining natural rights (Hobbes, Locke, Rousseau).

Dignity of the Person

Kantian idea of human beings as ends in themselves. Dignity forms the moral core of all human rights claims.

Religious Roots

Concepts of equality before God, sanctity of life, and justice appear in major religious traditions across cultures.

Major Theoretical Frameworks

1

Natural Rights

Rights inherent by nature; pre-political

2

Legal Positivism

Rights exist only when recognised by law

3

Marxist Theory

Rights as products of economic base & class

4

Utilitarian

Rights justified by greatest happiness principle

5

Interest Theory

Rights protect important interests of persons

6

Will / Choice Theory

Rights as protected spheres of individual choice

Natural Rights Theory

Human beings possess certain rights simply by virtue of being human — rights that exist prior to and independent of any government or legal system.

Key Thinkers

John Locke, Thomas Paine, Thomas Jefferson, Hugo Grotius

Core Claim

Life, liberty and property (or pursuit of happiness) are natural and inalienable

Implication

Government is legitimate only if it protects these rights; otherwise revolution is justified

Influence

American Declaration of Independence, French Declaration, modern human rights instruments

Legal Positivist Theory

Rights exist only when they are created and recognised by a valid legal system. There are no rights outside positive law.

Key Thinkers

Jeremy Bentham, John Austin, H.L.A. Hart

Bentham's Critique

Natural rights are “nonsense upon stilts” — imaginary rights from imaginary law

Source of Rights

Only those claims backed by legal rules and sanctions constitute real rights

Strength

Provides clear criteria for identifying enforceable rights and avoids metaphysical claims

Weakness

May legitimise oppressive laws; struggles to explain moral force of human rights

Marxist Theory of Rights

Human rights are historical products of particular economic and social conditions. They reflect class interests rather than universal human nature.

Core View

In a classless communist society, the need for “rights” against the State disappears

Critique of Liberal Rights

Bourgeois rights (property, contract) protect capitalist relations and formal equality masks real inequality

Emphasis

Collective emancipation, economic rights and social transformation over individual civil liberties

Contribution

Highlighted the material conditions necessary for genuine enjoyment of rights

Additional Theoretical Perspectives

1

Utilitarian Theory

Rights are justified if they promote the greatest happiness of the greatest number. Bentham and Mill. Rights may be overridden when utility demands.

2

Interest Theory

A person has a right when an interest of theirs is sufficient reason for holding others under a duty. Focuses on protection of important human interests.

3

Will / Choice Theory

Rights protect the freedom of choice of the right-holder. Emphasises autonomy and the capacity to control the duties of others (Hart).

4

Social Welfare Theory

Rights are instruments for achieving social welfare and collective good. Strong influence on economic and social rights discourse.

CLASSIFICATION

Categories of Human Rights

Civil & Political

First Generation / Blue Rights

Right to life, liberty, security •
Freedom from torture & slavery •
Fair trial • Freedom of expression,
religion, assembly • Political
participation

Economic, Social & Cultural

Second Generation / Red Rights

Right to work, social security •
Adequate standard of living •
Education • Health • Cultural
participation • Equal pay

Collective / Solidarity

Third Generation / Green Rights

Right to self-determination •
Development • Peace • Clean
environment • Common heritage of
mankind

Three Generations of Rights – Deep Dive

1st

Liberty Rights

17th–19th Century

Negative obligations of the State — non-interference. Protect individual autonomy against State power.

2nd

Equality Rights

20th Century

Positive obligations of the State — provision of resources and services for social justice and welfare.

3rd

Solidarity Rights

Late 20th Century

Collective rights requiring international cooperation. Address global challenges beyond single States.

Key Characteristics Highlighted

01

Inalienable & Inherent

Cannot be given or taken away by the State

02

Universal Application

Belong to every human being without distinction

03

Not Absolute

Subject to reasonable restrictions in a democratic society

04

Limit State Power

Impose both negative and positive duties on the State

05

Connected to Dignity

Protect and promote human dignity as core value

06

Dynamic & Evolving

Content expands with social progress and new challenges

Core Principles to Remember

Universality

Human rights belong to all people everywhere. Cultural relativism is limited by the core of non-derogable rights.

Indivisibility

Civil-political and economic-social rights are equally important and mutually reinforcing. No hierarchy of rights.

Accountability

States are the primary duty-bearers. They must respect, protect and fulfil human rights.

Non-Discrimination

Rights must be guaranteed without discrimination of any kind — race, sex, religion, status, etc.

Participation

Rights-holders should participate in decisions that affect the enjoyment of their rights.

Rule of Law

Human rights require an independent judiciary, access to justice and effective remedies.

Inalienability & Universality Explained

INALIENABILITY

Human rights cannot be surrendered, sold, transferred or waived. Even if a person consents to give up a right, the consent is void because the right is inherent in human dignity.

Example: A person cannot validly consent to be enslaved. The right to freedom from slavery remains intact.

This principle protects individuals against their own vulnerability and against coercive agreements.

UNIVERSALITY

Human rights are the same for everyone, everywhere. They do not depend on nationality, culture, religion or political system.

While implementation may vary, the core content of rights is universal.

The debate between universalism and cultural relativism continues, but the international community has affirmed the universal character of human rights in successive world conferences.

KEY HIGHLIGHTS

Sections & Main Points to Remember

Nature

Inalienable, inherent, universal, indivisible, interdependent, dynamic

Definition

Minimal rights every individual must have against the State by virtue of humanity

Origin

Natural law + historical struggles + philosophical reflection across civilisations

Natural Rights Theory

Rights pre-exist government; government exists to protect them

Positivist Theory

Rights are creations of positive law only

Marxist Theory

Rights reflect class relations and material conditions

Generations

1st (civil-political), 2nd (eco-social-cultural), 3rd (collective/solidarity)

Essence

Human dignity is the foundation and goal of all human rights

SUMMARY

Key Takeaways

1. Human rights are inherent moral claims rooted in human dignity.
2. They are universal, inalienable and form the foundation of modern international law.
3. Multiple theories explain their origin and justification — each contributes valuable insights.
4. Classification into generations helps understand historical development and different State obligations.
5. Understanding jurisprudence is essential for effective advocacy and application of human rights law.

Next Unit: Universal Protection of Human Rights — UN system and core international instruments.