

## **RIGHTS AS COMMON CONCERNS**

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### **Abstract**

In modern civilization, an academic discussion on the idea of Rights is essential because its core principles ascertain humans as independent and sovereign. This paper, in the view of the significance of rights in a human being's life, discusses the idea of rights and focuses on two questions that ask what is the purpose of rights and who is entitled to have rights. To explore the possible answers, this paper discusses different perspectives that have evolved with political thinking. While doing so, the paper argues that in the modern States, rights are introduced and discussed as a common consensus and their objective is to attain a common good. In order to keep the rights as a common consent, this paper argues to realize and endorse rights above the division of self and others. In view of this stance, this paper discusses rights with reference to three ideas. The first sheds light on the fact that rights are interests of individuals that are collective in nature. The second pinpoints that rights are benefits and as individual benefits, they are basically to be enjoyed by the entire community. Lastly, the third idea of this paper underlines that rights are entitled to attain individual welfare which includes the welfare of all as commons.

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## **I. The Backdrop:**

In the modern political systems it is challenging to understand the nature and practice of rights as it allows to raise a fundamental question that asks: to whom have rights been given. It is difficult to answer such questions because the purpose of rights, i.e. the common good, has multiple meanings and is attached with various interests. In the discourse of rights, the most common purpose of rights is to identify, attain and sustain those positive conditions that are essential for the survival of human beings and are a prerequisite for individual growth.

In this view, the democratic states, as politically mature societies, have an obligation to fulfill the purpose of rights i.e. to attain a common good. These States, while giving and ensuring rights to its citizens, endorse that every individual has a right to live and develop and thus every individual has a claim against State. The claim-ability of individuals over State infers that a State will not curtail the rights of an individual and at the same time will also stop others from doing so. Such an assurance is a key feature of a democratic system. However, confusion begins when in the process of progress an individual starts believing herself as self and considers members of different communities as others. The confusion becomes grim when the difference of nature is taken as difference of interests as well. The author of this paper believes that the argumentative discussions which divide a human being's interests as self and other, is problematic. This is because it encourages to the politics of "Otherisation", where each has a claim against the other. Unfortunately, this suspends the fundamental reason to have rights. The argument of self and other ignores that the purpose of agreeing on the idea of rights is to escape from inconveniences of human life, i.e. violence and instability and to have a dignified and peaceful society. Since "Otherisation" of interests disregards this fundamental aspect of rights, this, instead of offering solutions to the problems of human life, has created new inconveniences. In modern societies, the divide of interests has led to social, political and economic tensions and has hindered the processes of establishing public policy. To escape from these created inconveniences, this paper emphasizes to reconceptualize the idea of rights and in doing so urges to identify and establish a balance between rights of "one" and "all". At the same time, the paper insists in recognizing rights as an entitlement of the individuals and benefits to the community.

To attain the objective, the author of this paper has taken a background of political history which suggests that in functional democracies, promises made in the initial levels of civilization have evolved in the form of rights. In modern political systems, the promises that were initially given to each other have been ensured by the political system and have been protected by judicial institutions. Here, the legal endorsement of rights is secondary because rights are firstly recognized as moral adjustments on which both individuals and community have agreed upon. It is important to note that in these political systems, the absence of clarity on the nature of rights, does not affect the purpose to have a right. In all the situations the purpose to argue and have rights remains the same and insists that rights can be attained and enjoyed only if there is a common consensus. Since common consensus urges for common good it protects individual interests. The author of this paper thinks that the idea of rights as common concern is extremely useful to justify that rights are needs and benefits of individuals and community, both. An academic discussion over such a line of thought is the actual requirement of time because the idea of rights as a common concern does not challenge individualistic aspects. The same has attained the interest of individual within the interest of the community, and establishes a society above a division of the self and others. With respect to this view, the present paper underlines that the ideas to ensure a balance between the individual and community rights have evolved with a political philosophy and the understanding is prevalent in major political thinking including that on natural rights, utilitarianism and Human Rights. In these discourses, rights are justified as essential conditions and are explained as tools that serve human beings to “escape from inconveniences”. Notably, in the three discourses, inconveniences are been identified in different contexts and have defined and explained rights differently. For instance, in the discourse of natural rights, rights are introduced to minimize the confusions and inconveniences. During talks of natural rights, they are recognized as the consequence of an agreement that has taken place between a man and man (Hobbes and Rousseau) and also between man and society (Locke). According to this agreement, at the stage of natural state, man had surrendered his power of killing and harming others to a politically organized society, with a condition that others would do the same. Since each individual had given this promise to each, in the process of civilization, each one has received the desired security of life. In utilitarianism, rights as a tool to escape from inconveniences have been defined and preserved in the form of laws. Here, the idea of rights is endorsed to ensure maximum utility to each and to all (Bentham). In the Human

Rights discourses, the prevailing injustice and inequality are explained as inconveniences. To escape from these identified inconveniences the discourse has argued to define and endorse those rights as universal that are basic and fundamental for human survival. The author of this paper believes that in the discourses of natural rights, utilitarianism, and human rights, rights are endorsed as essentials because in the due process of law each individual has accepted responsibility. Importantly, the responsibility has assured that individual claims on rights will be in the interest of the entire community. Accordingly, rights are rational because, in a given state, their entitlement and practice has benefitted each and every individual and has secured the interests that ultimately reach society as benefits. With this belief, the following paragraphs present A discussion under three headings. The three headings collectively argue that the purpose of rights is to ensure the common good and while arguing so, it discusses the arguments of major political thinkers. The argument presented here is that extreme segregation of interests as self and others is not real as it challenges the idea of rights itself.

**Claim I: Rights are interests of individuals that substantiate the interest of others.**

Claim 1 argues that natural rights are individualist in nature but communitarian in spirit. A claim like this has a philosophical background which states that the benefit that is attained from the individualist approach of natural rights is ultimately achieved by the entire community. The idea of natural rights states that since rights are a pre-state phenomena, they are above the State. According to this idea of rights, an entitlement of rights is the consequence of a contract made between man and State. Studies made in the context of the theory of natural rights presents that the idea of right (s) as a feature of pre-state was systematically developed with the belief of Christianity. The principles of the idea argue that obligations of the State to ensure the rights of every individual are endowed by God and hence, the State has no moral power to suspend the rights of individuals. This idea further argues that since rights are as natural as nature itself, their entitlement will remain with every individual and its deprivation cannot be justified by any civil authority including the State (Antieau, 1960).

Indeed, the purpose of rights to protect individuals against the consequences of the uninhibited pursuit of collective or social good (Heral, 2015) is significant. However, it is important to note that the idea of protecting individuals against the community is not an unconstructive action of the State nor is it the seclusion of individuals. But the rationale of “individual’s protection

against the community” is to assure entitlement of everyone and to maintain a reasonable balance between different entitlements of claims. The balance is supposed to be obvious because according to the theory of natural rights every individual is a part of the contract. In this view, the discourse of natural rights insists that the idea of rights does not emerge as an instruction of the powerful but that it has as conditions that have “common consent on common principles”, as Hobbes, Locke, and Rousseau argue. In this sense, rights, in their natural state endeavor to strike a balance between different rights as entitlements, claims and privileges and have prevented a situation of “constant war of each against each”. Clearly, according to natural rights, rights in the modern state system have emerged and evolved as agreements in which individual rights are reconciled with the rights of the community that assure common goods. Here, the author insists that a right of an individual cannot be against the good of the community. If it is so then it is not a right but a power, enjoyed by one or few or even many as a consequence of discrimination. In the discourse of natural rights, this argument/idea is underlined by classical thinkers. For instance, Hobbes, in his universalistic conception of individual rights (Panichas, 1988 and Hinchman, 1984), infers that individuals choose to transfer some basic right because he wants to do "some good to himself," (Hobbes, 1968: 192). Here, the desire to do “some good to himself” means attaining a safe and peaceful life. In his thesis he insists that every individual who has witnessed inconveniences of a primitive state wants to adjust with the powers of others. In the primitive stage, the process of such adjustments took the shape of a social contract where an individual surrenders power to a single authority with the condition that all others will do the same. In the natural rights discourse, the agreement to surrender the power to one by all is realized as a rational choice because this allows for the re-use of power as rights in the agreed sense that further ensures the safety of each against each. Looking at the objective of rights, an individual who is otherwise entitled to power by nature is ready to surrender his power that otherwise had enabled him to scare/exploit others. Since such power was vulnerable, the agreement on rights was a decision that relieved him from the fear of vulnerability and secured his future. The agreement of a powerful man with others is important. This pinpoints to a process of realization that insists that his interest of some good to himself is not attainable without the consent of a community that agrees and allows him to do good for himself. In the absence of the community, the very idea of the self is deemed illogical. Similarly, in the absence of an agreed

community, the argument of self-preservation is an empty promise that can be broken now and then.

Rousseau's opinion is close to this view. His notion of rights is a collection of collective wills (Actual Will) of individuals who are by nature members of different communities. He argues that the actual will of one which demands rights is the same as the actual will of others and hence the right of an individual is actually the right of the entire community. This further implies that rights as the will of one, logically becomes/translates into the rights of all, irrespective of whether anybody wants them or not (Rousseau, 2011; Hayden, 2001). Moore too has added rights with reference to the community; he states that if people had rights, they had them only as members of an established, ongoing community (Moore, 1966: 466). For him, rights that are a consequence of agreement are conditions on which society agrees upon, as they assure "righteousness" in a given society. The position of community is balanced with the status of individual rights in Ritchie's conception. Ritchie ascribes that rights are individualist claims of an individual upon others that are recognized by society, irrespective of their recognition by the state (Ritchie, 1894). In Lockean conception, the rationality of individual rights is seen in harmony with the rights of community. In his opinion, the Creator endowed man with natural rights because they were a means to universal harmony. In opposition to Locke, Green insists redefine the nature and value of "individuality". He explains that the existence of individualism even if based on the objective of universal harmony, challenges the natural co-existence of the individual and society and hinders the attainment of a common good.

Thus, Green, like Rousseau and Moore, argues that there can be no right without the consciousness of common interest on the part of members of a society. The consciousness that is collective enables man to enjoy rights as a power to act for their own interest, and its exercise ultimately contributes to the good of a community (Green, 1976 page 207). According to him, no one has rights unless he is "a member" of a society in which some rights have been recognized by the members of the society as their "own ideal good" (Green, 1885). Laski elaborates on similar ideas by saying that rights are confined by the state to a community because they are found to be good by a community. To put it briefly, right becomes a right because conceptually, it is in the interest of a community (Laski, 1917). Laski observes that considering

rights to be merely individualist is dangerous because a self-centric understanding of rights creates obstructions and influences policy framing negatively that ultimately prevents the realization of the social aims of government. Clearly, without contributing to the good of a community there can only be powers but no rights (Bagnali, 2002). The self as power is constituted by the community, of which an individual is a part. This means that while an individual is agreeing on self-right, he or she is also agreeing to the rights of the other. The unity of rights is actually the real value of right as Tully argues. According to him, even classic rights theorists such as Locke (1690) and Thomas Jefferson (1857) did not treat humans as isolated individuals but always as members of a unified community. The argument is significant with reference to democratic states as it proposes right as the people's ability to participate meaningfully in the direction of collective life (James, 2008).

**Claim II: Rights are benefits that are enjoyed by both, i.e. individual and the community**

This idea basically focuses on the idea that considers rights as benefits. Accordingly, rights are accepted by society and endorsed by the State because they have an inherent virtue of utility that creates benefits. In the discourse of rights, the idea that insists that rights are utilitarian, has emerged and evolved on the principle of utilitarianism. In utilitarian belief, individual benefits comprise the benefits of others. The arguments that values rights as utility emphasizes that a right cannot be enjoyed without encompassing the community. In a civilized society rights are evolved within a State. In the idea of rights, the role of the state is defined with reference to a law that is the actual reason for individual entitlements. According to utilitarianism, entitlements that were unclear in the natural state got clarity with legal frameworks made by the state. Since the state has arranged rights more rationally, the attainment of maximum happiness by maximum people is has become more feasible. Importantly, in this notion, rights as maximum utility, i.e. maximum happiness are not the utility of one but a sum total of all utility. Accordingly, in this persuasion, rights cannot be enjoyed as a mere claim of an individual but they are legally allowed to be enjoyed because the idea of rights has the virtue to create a common utility that is accepted and noted by an individual as well as by the community. In the discourse of utilitarianism, acceptance of community is weighed more than individual acceptance because the purpose here is to satisfy social stability. This states that enjoyment of each right has a duty to ensure maximum utility that predicts the actions of each person and limits them in favor of

others. Clearly, rights in this notion have an obligation towards others. The idea clarifies that liberty of action is given to create happiness for self and also for others. Bentham's idea of utilitarianism, in this regard, directed towards maximizing goals, is a collective conception that places the 'greatest happiness of the greatest number' (Alexander, 2003). He explains that individual happiness matters only when it is placed along with collective interest i.e., interest of the entire community. According to him, to confirm maximum happiness for maximum people, a legal framework should be provided by the State. Thus, in utilitarianism, the common maximum happiness is found as liberty that is protected and confined by society and the state (Mill, 1861). Mill, while arguing for the principles of utilitarianism, insists that rights are the symbol of liberty. Importantly, for him, liberty as a right is not a favorable condition for one or few but it is a situation enjoyed by all. In his opinion, rights means an absence of biased privileges and assure a situation where everyone is to count for one and no one is to count for more than one (Mill, 1993:64). Thus, in his conception, the value of each one's happiness is equal, which means that the interest of one individual is not above the interests of others. It is therefore permissible to say that no one person's happiness counts more than anyone else's happiness. In the theory of rights, this establishes "collective individualism" that assures a balance between individual and community rights. Significantly, in utilitarianism, the idea of collective individualism is underlined as non-discriminatory and equal. It is decisively based on the principle of equality because it argues against preferences and priorities (Hamilton, 2002).

The concept of utilitarianism presents that rights have individualistic purposes. However, they are introduced by a State and protected and maintained in the interest of the whole community. Significantly, the conceptualization of rights in utilitarianism, mainly with reference to Mill's notion of rights, is a combination of both individualism and egalitarianism, where enjoyment of right is dependent on the purpose of the action. In utilitarian arguments, the purpose of an action in a given society is essentially moral by nature and hence rights are not a mere claim, but a moral concern that involves all interests of the community (Sidgwick, 1874). And since it is the moral conduct of an individual, it holds a higher principle of utility. Importantly, in a State, the process of entitlement includes the community as a whole that allows laws to check on an action of every individual and in favor of all. Rights in the utilitarian perception have created self-



evident maxims. These are the fundamental principles of rights that underlie more specific maxims of common morality (Schneewind, 1977).

The author of this paper realizes that the idea of the utility of rights is a powerful concept. However, in comparison to natural rights, the perceptions offered in the principles of utilitarianism are confusing. One unavoidable problem is that during the policy-making and implementing process, the principles of utilitarianism that insist on maximum utility, weighs the interest of the community more, and while doing so ignores the interests of the minorities. This sacrifices the basic interests of the individuals, which they deserve as a human being. Indeed, such a criticism is based on intellectual grounds and requires to be considered. However, while accepting the criticism, it is also necessary to take into account that utilitarianism has introduced rights as the expression of justice and has endorsed them as a positive possession of the individuals. According to the utilitarian notion, rights are utilities and the values of utility of one are equal to the value of the utilities of all.

Certainly, exercising rights with this understanding makes and assures equal entitlement of rights. In a State, it puts moral obligations on individuals to think beyond the self and to do what gives maximum happiness to the self and to others. On the other hand, a State has the obligation to institutionalize mechanisms to protect each right as a utility for all. The enjoyment of rights, in this sense, becomes a vehicle of egalitarian individualism as Mill presents. It is not an exception to state that for a civil society, values of utilitarianism work as "expediency", "evolutionary," or "positive" laws that secure the interests of the individuals and objectives of societies, as Grotius presents.

**Claim III: Rights signifies liberal egalitarianism that emphasises to attain common welfare.**

The third claim that this paper presents is that the purpose of rights is to attain well-being and this is possible only when an individual enjoys his/her rights for common welfare. One can draw from this that while enjoying a right, an individual has to assure that practice of her/his rights will not hinder the well-being of others. In this respect, the State has an obligation to ensure equal and positive conditions for all that are essential for the fulfillment of rights. Within the discourse of rights, this understanding has evolved in the Human Rights tradition. To

redress/mend/address the existing injustices that have evolved in the form of inequality, the concept of Human Rights insists that in the modern state system, the individualistic values of rights are required to be rediscovered in their true metaphysical connotations and their realist dynamism (Maritain, 1948). While responding to the identified requirements, the concept defines rights as-

- An ingredient of moral pluralism which ensures mutual consensus and allows people to get what they deserve to have. Here, the idea insists that rights are relevant because they assure those conditions which every individual deserves to have/enjoy (Baier, 1958). Since each relevance in this regard is equal, it emerges that rights are moral claims (Hinsch & Stepanians, 2006), and are an unusual set of social values and practices (Donnelly, 1999:81) which obligates an individual to respect the rights of others.
- Significant and valuable, because they have globally emerged as unrestricted moral claims (Gewirth, 1978, 1982, and 1992) and are non-discriminatory in nature. Importantly, here the virtue of unrestricted rights is linked with morality. A continuous relationship of rights and morality states that it is permitted to restrict the exercise of rights if they are against established moralities and are unrestricted if they are based on accepted moralities. Rights as morality, in this sense, are an obligation, which each individual has to hold. The idea of human rights denotes that individuals agree to have rights because they match with the moral principles in which s/he believes.
- For a source that creates equal opportunities and enables individuals to build capacities, it is essential to have a dignified life. Here, the objective of rights is to attain a situation of equal opportunities and accordingly, equal rights are argued to be applied for each one. This infers that what is right for one person is actually right for any other person in similar circumstances (Gewirth, 1964).

In the view of this understanding, one can state that in the understanding of Human Rights, the idea of right is conceptualized in the common belief in equality and morality. This has built a social, political and economic structure that is attached with those moralities that are common and have been commonly identified by the entire community. From such an understanding of Human Rights, it would be incorrect to argue about rights as conditions against others because

explicitly or inexplicitly, every “self” is an “other”. The author of this paper believes that the concept of Human Rights points that the other-isation of rights has suspended the core purpose of rights and hence it is difficult to achieve a condition of individual well-being and common welfare. To solve the problem, the tradition of Human Rights has offered to identify, provide and ensure rights in the context of human relevance. The concept of Human Rights denotes that the exercise and enjoyment of uncontrolled rights has a limitation of morality. The obligations in this regard are defined by scholars as John Rawls and Robert Nozick. According to Rawls (1999), fulfillment of rights is possible if decent people accept their obligation towards indecent people<sup>1</sup>. He clarifies that the purpose of rights is to ensure individual well-being and so it is incomplete without the collective effort of decent people, i.e., the community.

For Nozick (1974:92) it is an obligation of an individual and the State not to interfere in the actions of others. The author of this paper believes that such an obligation can be negative as well as positive. For instance, indecent people have the obligation not to interfere in the entitlements of decent people and decent people have an obligation to use rights in favor of others i.e. indecent or burdened people as Rawls points (1999: 64-81). The author of this paper thinks that a correct understanding and fulfillment of obligation, as argued in the Human Right tradition, can create a required balance between different rights and conceptualize rights as justice (Rawls 1999: 65-67). Importantly, this has not sidelined the monopoly areas of individuals as individuals (as argued by Nozick 1975). However, the Human Rights tradition insists on establish of rights in favor of the community. The discourse in this sense does not advocate for absolute egalitarianism but rather insists on defining equality in the context of equals, which is the first step to creating a common consensus.

The author of this paper believes that in the conception of Human Rights, rights have a strong base of individualism. However, their dependence on society is obvious. It is a political fact that a claim can be considered as a claim if it has been considered as a claim and has been responded

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<sup>1</sup> According to Rawls decent peoples respect a minimal set of basic human rights, including rights to life, liberty, and formal equality; they are nonaggressive with respect to other peoples; they live under something like the rule of law; they have a decent consultation hierarchy in which the interests of all groups are represented; and they view all persons as moral citizens(Law 64). Those who are opposite to this qualities are indecent people.

to by others. The response can be positively or negatively. In this sense, rights even as individual claims are consequences of collective efforts (Darby, 2004) and are the political trumps that are held by individuals, as Dworkin (2000) argues. Since entitlements reach to each individual and represent “liberal egalitarianism, rights can be understood as promises given by majority to minorities that states that their dignity and equality will be respected” (Dworkin, 1981). Accordingly, even in the understanding of Human Rights, rights are exercised by an individual in order to produce some overall benefit to the collective as a whole (Dworkin 1977, 91 & 2000). This makes individual rights, community rights as well, because they are exercised by individuals as the member of a group (Barry, 2002).

An idea of Human Rights that presents “an individual as a member of different groups” is an important pillar of liberal and democratic systems. Here, rights are argued as essential because they serve public as well as private interests. Rights, in this discourse, promote common good as well as individual good, where individual good is enjoyed only as member of a community (Raz and Gewirth 1972). Such an understanding insists that the possibility to have rights is possible within a community but these are truly individual rights because the community exists with and for individuals (Laguna, 1946).

### **In Conclusion**

This paper has presented that the process of identifying rights is complicated because rights are discussed within complex narrative structures. Since there is a common tendency of rejecting the simple accounts of rights in favor of complex narrations, answering to ‘what rights are and whom they concern is difficult. While attempting to answer this question, this paper has emphasized that it is necessary to re-think the concept of rights and to read them with respect to common concern. The basic argument is that humans as rational beings argue for things because their use has a clear benefit that can be social, political, economic or even emotional. In the context of the idea of rights, it is important to have a similar understanding because this enlarges the scope and use of rights. Accepting rights as a common concern includes both negative and positive aspect of rights. Such an inclusion is constructive in for it enables and allows peoples to do certain things that are in their interest. It is essential to understand that this includes all those

permissions that not only concern “me” only but includes “you” as well. Importantly, in the State system, such agreed arrangements are protected by the State.

The discussions highlighted in this paper present that rights are essential conditions that have emerged and evolved as a result of negotiations, and have happened between different independent individuals. This presents that rights stands for the individual good and ensure the same goodness for those who have organized themselves as members of a community. This paper has considered human begins as social beings and therefore it proposes to consider rights as social arrangements that are endorsed by societies, and see them as being protected by a political apparatus. This paper insists that in a civilized society, rights work/operate as a system that protects individuals against the tyranny of the community and argues against individual anarchism.

This paper has insisted on identifying the objective of having and assuring rights in favor of individuals as well as the community. While insisting so, the paper urges that understanding and practice of rights should assure freedom from the fear of vulnerability. The status of fearlessness can be attained only when assurance is given by the community and is further preserved by the State. It is essential that the community has confidence on community on individual rights because in its absence the political and legal apparatus will be unable to rescue ordinary humans from the feeling of vulnerability.

In brief, the arguments presented in this paper propose that rights are required to harmonise individual claims of rights with collective entitlements. In the notion of rights, the idea of collective-ness is as equally important as individual-ness because the absence of collective exercise of rights means an absence of justice. A claim on rights as a reward of individual struggles creates problems of ‘Otherisation’ in entitlements. This paper insists that for the entitlement and fulfillment of rights, the idea and practice of otherisation is threatening because in such practices rights are argued only for the self and are frequently expressed and claimed against the rights of others. It understands individuals as sole claimers of rights and allows them to believe that they are the only real deservers. Since the articulation of the deserving is subjective, an understanding of rights as a sole individual claim systematically disturbs the idea of having rights. In this view, this paper endeavours to understand rights in the common sense

and while so arguing, attempts to fill the gap that has arisen/arose due to the division between the self and others

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