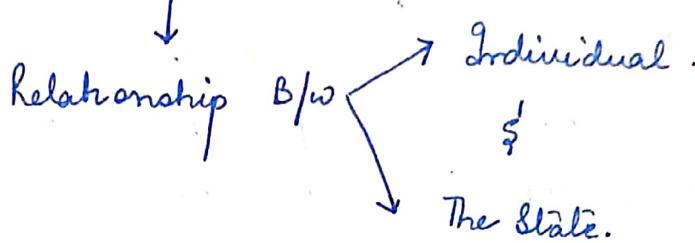


RIGHTS

Concept of Rights.

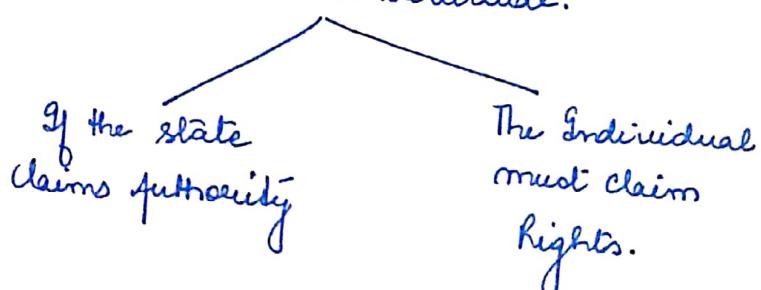
- The concept of rights provides for an essential tool of analysis of the relations b/w the individual and the state.

Concept of Rights



- The State → claims authority over the individual but when the state is viewed as an instrument of society, it is essential that the authority of the state is made to depend on the functions it performs.

In other words, → when state is regarded as a means and the individual as an end, the state cannot be armed with absolute authority over the individual.



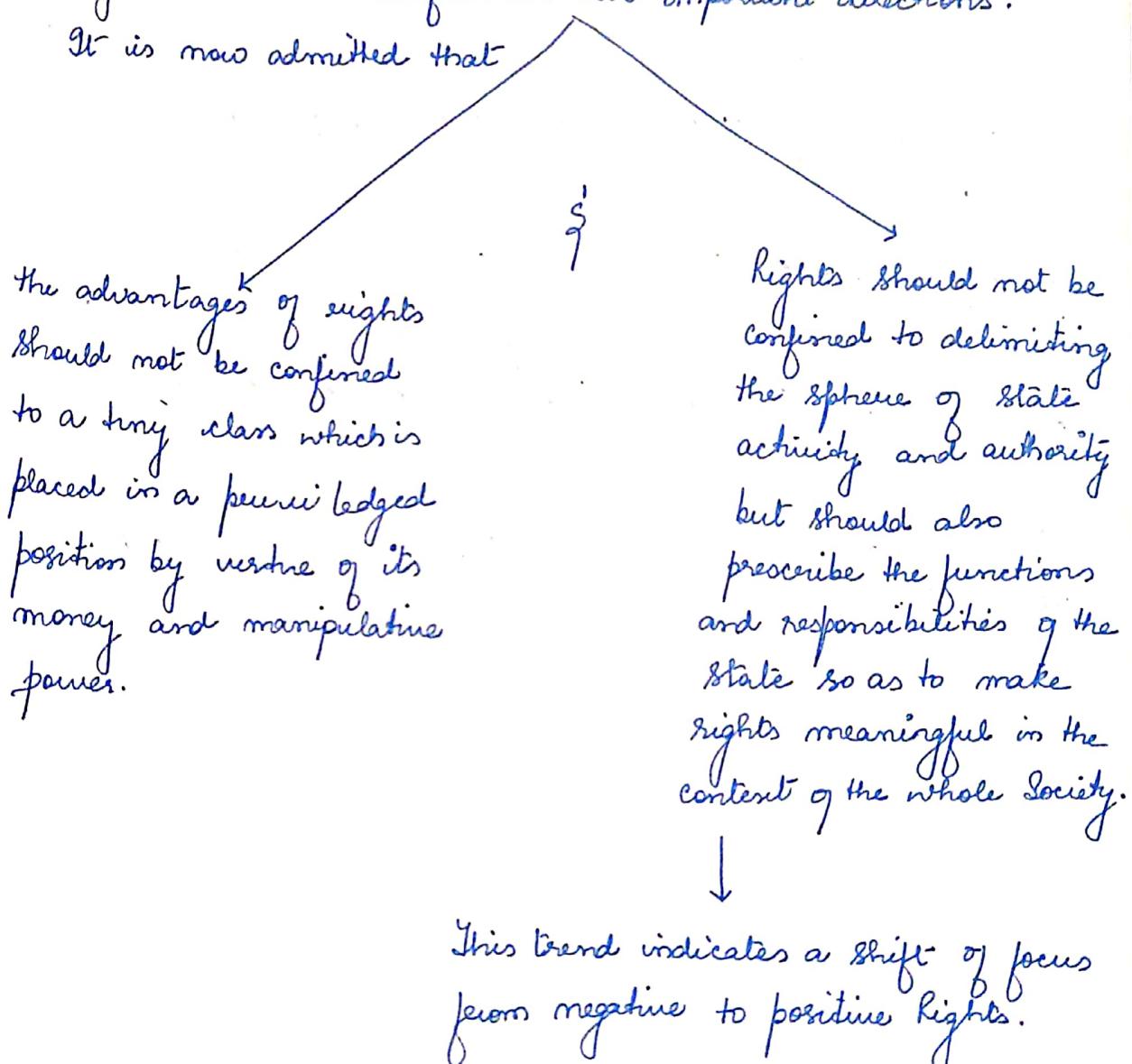
- Rights essentially belongs to the sphere of Conflicting claims between the individual and the state.

- It is important to note that the benefits which flow automatically from the existence of the state do not constitute rights.
- Rights → come into picture only when the authority of the state is sought to be limited or when individuals and their groups demand a positive role of the state.
- Glorification of the state, without any in-built mechanism to curb the authority of the state means complete subordination of the individual to the ruler or the ruling groups, thereby opening the floodgates of corruption, oppression, exploitation and injustice.
- Rights → are meant to safeguard the individual from the irresponsible and arbitrary use of power by ruling class.

In a nutshell → rights consists in claims of individuals and groups on and against the state which are sought to be secured through legal and constitutional mechanisms.

Negative and Positive Rights

- The concept of rights is a dynamic concept. With the development of social consciousness, rights are subjected to continual review and redefinition.
- With the spread of modern consciousness, the concept of rights has been modified in two important directions:
It is now admitted that



Negative rights → suggest the sphere where the state is not permitted to enter. They suggest what privileges of the individuals shall not be encroached on by the state.

Positive Rights → prescribe the responsibility of the state in securing rights of the individuals. They require the state to take positive measures for the protection of rights of the weaker and vulnerable sections or those placed in a vulnerable position.

- This may be illustrated by the case of the 'Right to life'. In the negative sense - this means that the state shall not deprive men of their life except as a measure of punishment for a crime.

If we proceed to Positive aspect of this right — it immediately occurs to us that state shall provide for the protection of Individual's life, otherwise the right to life has no meaning.

This means - that the state shall provide for laws, police, defence etc.

LIBERAL - INDIVIDUALIST THEORY OF RIGHTS

The liberal-individualist theory of rights originated in 17th Cen Europe.

Its object was → to secure certain rights for the new middle class although these rights were proclaimed to be universal rights.

- The exponents of liberalism came forward as champions of the 'rights of man', but they interpreted and formulated these rights according to the model of a 'free market society' which suited the interests of the new merchant-industrialist class.

These rights, when secured, seemed as the foundation of the capitalist system.

- In later phases, the liberal theory of rights was sought to be modified so as to accommodate the interests of the rising working class, consumers and ordinary people, without prejudice of the functioning of the capitalist system.

In this way the liberal theory of rights found expression in a variety of theories:

1. Theory of Natural Rights

- The theory of natural rights were very popular in 17th Cen and 18th Cen political thought.

It treats the rights of man as self-evident truths.

In other words, these rights are not granted by the state, but they come from the very nature of man, his own intrinsic being.

This theory was broadly developed on two important bases

the contractual basis

the theological basis.

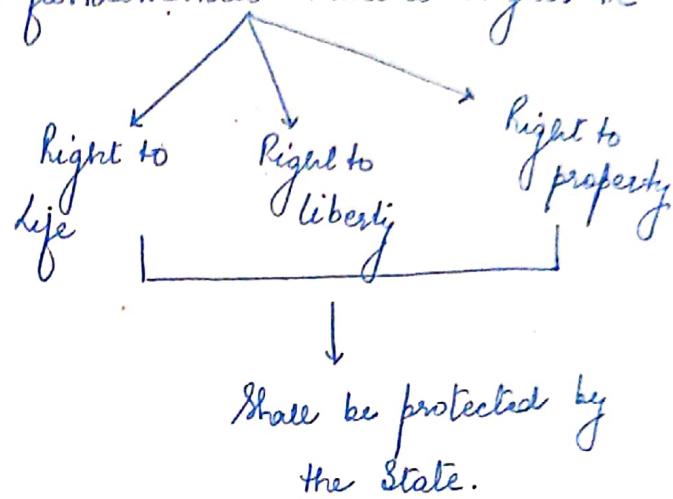
@. Contractual Basis →

- In the first place, the theory of natural rights is based on the liberal theory of the origin of the state from the 'Social contract'.
- Acc. to this theory, certain rights were enjoyed by man in the 'state of nature'; that is, before the formation of civil society itself: these comprise the natural rights of the man, which must be respected and protected by the state..
- Among the exponents of social contract theory, John Locke is the greatest champion of natural rights.
Hobbes draws a gloomy picture of the state of nature and shows that natural rights as the freedom of the stronger to oppress the weaker.

Rousseau - on the other hand, draws a fascinating picture of the state of nature and glorifies natural rights.

Bentley, Hobbes and Rousseau - do not contemplate maintenance of natural rights by the state.

Locke, however, postulates that man surrendered only some of his natural rights, particularly the right to be judge of his own acts, on the condition that his (individuals) fundamental natural rights i.e.



- If the state failed to maintain these rights man had the right to overthrow government and to set up a new govt. in its place.

Thus, it was Locke who tried to demonstrate how natural rights that is, the rights derived from the state of nature could form the basis of governance.

(b). Teleological Basis : →

Teleology → means the doctrine of final causes.

The teleological view of rights seeks to relate the rights of man → with the purpose of Human life.

These rights do not depend upon any institutional arrangements, but ensue from the very nature of man.

and serve the purpose of his life. → these are therefore natural rights.

- The theory of natural rights has played an important role in modern history. It served as a source of inspiration for the American and French Revolutions.
- The historical significance of the natural rights theory remains important. As the doctrine of natural rights was put forward at a historical juncture with a view to securing favourable conditions for the 'free market society'.

2. Theory of legal rights

The theory of legal rights holds that all rights of man depend on the state for their existence; there can be no right in the proper sense of the term unless it is so recognized by the state.

- Acc. to this theory, no rights are absolute nor are any rights inherent in the nature of man as such.

Rights have no substance until they are guaranteed by the state. This implies:

- in the first place, that there are no rights prior to the state. because they come into existence with the state itself.
- secondly, it is the state which declares the law and thereby guarantees and enforces rights - no right can exist beyond the legal framework provided by the state!

- finally, as the law may change from time to time, the substance of rights also changes therewith - there can be no 'fixed' rights in any society, not to speak of eternal or universal rights.
- Hobbes argued → that only the fundamental right of the individual i.e. the right to self-preservation is better maintained by the state than the individual himself.
Hence, man must depend on the state for the maintenance of his rights.
- Jeremy Bentham → is the greatest champion of the theory of legal rights. He rejects the doctrine of natural rights as unreal and ill founded.
- The theory of legal rights takes account of the factual position only, it takes note of what rights are legally recognized and guaranteed in a particular state.

3. Historical Theory of Rights

The Historical theory of rights holds that rights are the product of a long historical process.

They differ from state to state and from time to time because of the different levels of historical development of society. Rights grow out of customs which stabilized through usages in several generations.