SOME CONTEMPORARY PHILOSOPHICAL THEORIES OF HUMAN RIGHTS: A REVIEW

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It was total departure from the natural rights tradition when in later half of the nineteenth century some philosophers began to develop theories of human rights. This trend of developing human rights theories independently of the natural rights paradigm continues till recent times, although the influence of the natural rights thinking on the contemporary analysis of rights is not totally done away with. These philosophical theories of rights increasingly become free of the world-view that has shaped the theories of natural rights. The theories of natural rights are replaced by the theories of *human* rights. It was T. H. Green (1836-1882) who first put forward a radical critique of natural rights and elaborated his own views on the concept of rights. Again, after the adoption of the UN Declaration of Human Rights, 1948 many contemporary philosophers join this chorus in their own unique ways to develop the theories of human rights. In the present article, we would review the theories of human rights developed by T. H. Green, Margaret MacDonald, Carl Wellman and Joel Feinberg. These thinkers invent various new dimensions of human rights from their own perspectives, which are considered to be significant contributions in understanding the conception of human rights in contemporary era.

I. Rights as Recognised Claims:

The nineteenth century British political thought was dominated by the two contrasting doctrines, namely, utilitarianism and idealism. Though both the theories seem to concern themselves with a common issue, namely, the individual liberty but they differ in their method and approach to the matter. Individual liberty under the patronage of the utilitarians was a popular creed. In their zeal to safeguard the individual liberty the utilitarians developed somewhat negative attitude towards the authority of the state. In his *On Liberty*, J. S. Mill argues that those conducts of individual which affect

himself alone, the state has no excuse for intervening in his affairs. T. H. Green, as a member of the idealist camp, founds it as his task to revive the confidence in the authority of the state without impairing the ideal of individual liberty. He makes an attempt to strike a balance between the individual liberty and the authority of the state. And in doing so, he gives a pivotal role to rights in his writings.

Green puts forward some arguments against the natural rights doctrine in the context of evaluating the views of Hobbes, Spinoza, Locke, Rousseau and Austin, although it has already been severely assailed by Bentham and his fellow utilitarians. He rejects the doctrine of natural rights on three grounds: (i) The doctrine assumes that these rights have been brought into society from a pre-social state of human life, (ii) Yet this doctrine insists that these rights can be held against society, and (iii) it also asserts that an individual is entitled to enjoy these rights without regard for his duties that he owes to the society.[1]

Green is primarily concerned with moral rights, that is, the rights that are justified on moral grounds. Like Mill, Green cannot conceive of individual as one who enjoys his life in solitary orbit of self-regarding activities, in isolation from his fellow-beings. For him, individuals are social beings, and it is only as part of social nexus that they have rights. But the society is not conceived by Green as the sum-total of discreet and isolated individuals but is united by a conception of the common good which an individual is able to recognise as a member of the society as his ideal good. Hence Green writes,

> No one therefore can have a right except (1) as a member of a society, and (2) of a society in which some common good is recognised by the members of the society as their own ideal good, as that which should be for each of them. The capacity for being determined by a good so recognised is what constitutes personality in the ethical sense; and for this reason there is truth in saying that only among persons, in the ethical sense, can there come to be rights.[2]

What Green clarifies in the passage is that rights cannot belong to man merely as individual but as social being, provided that he can recognise in that common good an ideal good which is same for himself and for others as well.

Green believes in the primacy of self-realisation for which an individual is required to pursue a common good as a member of the society. This conception of self as the good to be realised and its pursuits can take place only within a social context. For, a man is able to realise his potentialities only in community with others towards a common good.

Conversely, when a person is capable of being determined by the conception of a common good, he can be said to possess rights. As a social being, a person *ought* to possess rights, which 'expresses the relation of man to an end conceived as absolutely good, to an end which, whether desired or no, is conceived as intrinsically desirable. The moral capacity implies a consciousness on the part of the subject of the capacity that its realisation is an end desirable in itself, and rights are the condition of realising it'.[3] In other words, the possession of rights relates a person to an end which is not valid for some *other* end considered valuable but something that has an absolute worth. And the common good as an end has an absolute worth and is, for Green, intrinsically desirable, that is, desirable in itself. Rights are the conditions for realising this end having absolute worth. Rights are claimed for making the common good a reality in the life of man by providing a power to him. Further, rights enable a person to freely exercise his power and thereby to secure the treatment of one person by another on equal footing. But in doing so, each person should realise that the free exercise of his power depends on allowing the free exercise of power of every other member of the society.

The point that is central to Green's scheme of rights is the idea of common good. It is the concept of common good on the basis of which Green analyses the condition necessary to the realisation of human potentialities and the extent to which the state could be used to pave the way for the pursuit of self-perfection. The common good is conceived as an ideal not yet attained by the individual; it is 'the absolute end' of man as a social being. The ideal of common good enables a person to recognise his power as a right leading to the growth and development of his potentialities. Hence a right is

> a power of which the exercise by the individual or by some body of men is recognised by a society, either as itself directly essential to a common good, or as conferred by an authority of which the maintenance is recognised as so essential.[4]

Green holds the view that right is a power exercised by person and recognised by society as essential for the realisation of the common good. He is reluctant to use the term 'natural' in the context of rights, in the sense that they actually exist when a man is born and continue to exist as long as human race. For Green, rights can be 'natural' only in the sense that they would apply to fulfilling 'a moral capacity without which a man would not be a man'.[5] In other words, rights are 'necessary to the end which it is the vocation of human society to realise'.[6]

One of the reasons for Green to repudiate the doctrine of natural rights, as we have already pointed out, is that it de-links rights from duties that individual owes to his society. He says: 'Because a group of beings are capable each of conceiving an absolute good of himself and of conceiving it to be good for himself as identical with, and because identical with, the good of the rest of the group, there arises for each a consciousness that the common good should be the object of action, i.e. a duty, and a claim in each to a power of action that shall be at once secured and regulated by the consciousness of a common good on the part of the rest, i.e. a right'.[7] In other words, as a moral being I have a capacity for duty towards the realisation of the common good and in order to fulfill my duty I should have a right - the latter being the condition of fulfilling my duty. Green points out that although all rights here are taken as relative to moral ends or duties, but this must not be confused with the popular assertion that every right implies a duty, or that right and duty are correlative. In this context, the correlativity of right and duty is accepted, in the sense that the 'possession of a right by any person both implies an obligation on the part of someone else, and is conditional upon the recognition of certain obligations on the part of the person possessing it'.[8] What is meant here is that the fulfillment of man's vocation as a moral being is his basic duty and this duty cannot be carried out except through the exercise of rights.

According to Green, any right contains two aspects: on the one hand, it is a claim of the individual, and the recognition of it by the society on the other. Green writes,

> In analysing the nature of any right, we may conveniently look at it on two sides, and consider it as on the one hand a claim of the individual, arising out of his rational nature, to the free exercise of some faculty; on the other, as a concession of that claim by society, a power given by it to the individual of the putting the claim in force.[9]

A person claims certain rights which are more or less articulate and pronounced for the development of his moral personality. For, the moral personality can be developed only through the exercise of rights, that is, 'through the recognition by members of a society of powers in each other contributory to a common good, and the regulation of those powers by that recognition'.[10] This claim arises out of his rational nature because of the free exercise of some faculty. But this claim would remain merely a claim unless it is conceded by other members of the society. When the claim made by the individual is co-ordinate with the recognition of the claim by others, only then there exists a right. An individual's moral capacity to identify his ideal good in the common good and to regulate the exercise of his power concerning the good that others recognise are what make it obligatory to have rights. In order to exercise a right it is not enough to have a claim of the individual but this claim has to be recognised by the members of the society.[11] A claim of the individual is put into force only when it is recognised by others. Thus moral personality can be developed only through the two-faceted rights, and thereby it would be contributory to the common good. But these two distinguishable aspects, Green says, belong to the same common consciousness.[12]

Now, the question is: Why rights are as crucial for the person as a moral and social being? Green's reply is that 'a right is a power claimed and recognised as contributory to a common good'.[13] In other words, rights are necessary in the life of a person for his development and thereby to realise his end as a moral being - the end that is absolute and intrinsically desirable.

Green seems to argue that although an individual has rights only as a social being; the focal point of growth and development is *not* the social group but the individual. It is for the self-development of the individual that rights are invoked in social life, although political and social contexts are not without significance. As Paul Harris and John Morrow writes,

> Green argues that the essential social dimension to individual self-realisation means that the individual must regard social institutions and practices (political organisation, customs, mores, law) as collective efforts after a common good. They are the result of the need to secure and maintain the conditions within which individuals can pursue their self-realisation in their own ways, and of the need to harmonise the ways in which they do so. As such, these institutions and practices need to be acknowledged by the individual as deserving his allegiance and consideration as essential to his own self-realisation – provided they continue to act as means to the common good and not as impediments to it.[14]

Further, Green points out that right cannot be held against society or state; they are only sustainer and harmoniser of social relations on which all rights are founded.

II. Rights as Taking a Stand:

In 'Natural Rights', Margaret MacDonald has leveled some specific and pointed criticisms against the traditional doctrine of natural rights but her criticism moves along sympathetic lines. In the last section of the essay, she puts forward her own views on rights. Her article 'while in the broad stream of what is sometimes called "analytic philosophy" is near in spirit to the Logical Positivism of the 1930s than to the linguistic or conceptual analysis of the post-war years'.[15] She is concerned here to understand the nature of propositions/assertions expressing right-claims and to classify them into one of the following three types among indefinite number of utterances. These are: (i) Tautological or analytical propositions, (ii) Empirical or contingent propositions, and (iii) Assertions of value. She makes an attempt in this article to show that some of the difficulties we face with the doctrine of natural rights is because of confusions of propositions about them either with analytical or

with empirical propositions, whereas the assertions concerning right-claims, according to MacDonald, are ethical assertions.

Though MacDonald has directed a few specific points of criticism against some of the premises of the doctrine of natural rights, but she has not entirely dismissed it as a tissue of confusions. She says, 'The exponents of the natural Rights of Man were trying to express what they deemed to be the fundamental conditions of *human* social life and government. And it is by the observance of some such conditions, I suggest, that human societies are distinguished from anthills and beehives'.[16] She further points out that the natural rights of man conceived by its exponents *independently* of civil society and government in order to lay stress on their fundamental nature, that is, to lay emphasis on the natural rights of man as the ultimate moral and social values without observation of which human society would no longer remain fit for human survival. These are the conditions of a good society. But these conditions are *not* given by Nature as the latter cannot dictate what ought we to do. For MacDonald, Nature as such does not harbour values to provide directions to human beings in their social and political life. It is man who determines standards through his choices and preferences independently of Nature. As she writes,

> In short, 'natural rights' are the conditions of a good society. But what those conditions are is not given by nature or mystically bound up with the essence of man and his inevitable goal, but is determined by human decisions.[17]

Among the three types of human utterances mentioned above, assertions about natural rights, according to MacDonald, fall within the third category. That is, utterances about natural rights are neither tautological or analytical nor empirical or contingent but are value-assertions which 'include all those which result from human choice and preference, for example in art and personal relations, as well as in morals and politics'.[18] Now, what are the characteristics of value-assertions? According to MacDonald, an important feature of such assertions is that they are 'more like records of *decisions* than propositions'.[19]

For her: ‘To assert that ‘‘Freedom is better than slavery’’ or ‘‘All men are of equal worth’’ is not to state a fact but to *choose* a side. It announces *This is where I stand’*.[20] The point here is that utterances that concern ultimate social values like human rights are *decisions,* rather than propositions, as a result of human choices and preferences. They do not state facts but are meant to take a stand or to choose a side. While taking a decision, one has to choose a side with regard to certain ultimate social values, for example, whether we prefer freedom or slavery.[21] Thus decisions which concern the ultimate structure of society are more like choosing our favorite poems, novels, pictures, etc. but not like choosing to accept the law of gravitation. In fact, one can*not* choose to accept the scientific law like the law of gravitation but rather he is bound to accept it. In case of choosing this or that novel, one is at liberty. Here, two important characteristics of such decisions are to be noted.

Firstly, the decisions about fundamental values of society are neither *explicit* decisions nor taken at a particular date. These decisions come from those people who live and work in society and take part in operating its institutions. Secondly, these decisions are not taken on the basis of any evidence. MacDonald considers the doctrine of equality according to which all human beings are to be treated as of equal worth. But on what ground the equality has to be accorded to men? According to the natural rights theorists, it is having reason as a natural fact that provides the ground for equal treatment of all human beings. That is, the decision here is taken on the basis of possessing by men a natural characteristic called ‘reason’. Now a question arises: If in course of time a person no longer remains in possession of the natural characteristic called reason and becomes lunatic, then can the decision about treating him as having equal worth like other human beings hold true? Is the lunatic entitled any longer to claim his natural rights? MacDonald’s reply to such a query is that losing rationality does not make him a mere animal. He is very well entitled to his human rights even though he has lost his rationality. Thus reason or any *one* natural characteristic cannot be the basis of the value-

assertion that all men are of equal worth. Now, does it follow then that the decision concerning the equal worth of human beings is arbitrary? MacDonald answers this question in the negative. She argues that although any evidence cannot be adduced (as we do in the case of a scientific laws, such as the law of gravitation) in support of decisions concerning the ultimate social values, but they can be supported and defended in the way a lawyer defends his clients or a literary critic of his judgement that one poet is better then another.

To elaborate her position, MacDonald considers the situation that arises in a court room. The statements of fact of certain case is known to both the prosecuting and defending lawyers and the presentation of the statements of facts before the jury is not enough for winning the case. What is needed by the defending lawyer is to marshal those facts in a manner that would go to favour his client. His presentation involve not mere stating the facts but his voice, gesture, etc. all of which are supposed to influence the decision of the jury on his client's favour. It is in the like manner that the decision which concerns the rights of man to liberty and equality can be supported and defended but cannot be proved by evidence. MacDonald concludes,

> There are no certainties in the field of values. For there are no true or false beliefs about values, but only better or worse decisions and choices. And to encourage the better decisions we need to employ devices which are artistic rather than scientific. For our aim is not intellectual assent, but practical effects. These are not, of course, absolutely separate, for intellectual assent to a proposition or theory is followed by using it. But values, I think, concern only behaviour. They are not known, but accepted and acted upon.[22]

The crux of MacDonald's arguments is as follows: According to natural rights theorists, the law of nature and natural rights are standards by which existing human conditions are judged and this standard is known by reason which is regarded as intrinsic property of man. But MacDonald argues that the characteristic of being rational is simply an empirical fact which does not constitute man's specific nature, and hence cannot set the standard of what ought to be. According to her, they cannot be known by reason as the latter is capable of knowing only analytic or tautological propositions. The assertions

which concern natural law and natural rights, according to MacDonald, are neither analytic nor empirical propositions but are ethical assertions. The latter are records of decisions as a result of human choices and preferences that can*not* be proved but can only be defended in the way a lawyer defends his client or a literary critic defends a particular poet. A good counsel or a literary critic does *not* prove anything as a result of his arguments but uses his materials with results in order to impress and convince the jury. Similarly, the assertions of equality and liberty being in the nature of ethical assertions cannot be demonstrated by any inductive means but can only be decided and defended.

III. Rights as Constellations of Hohfeldian Elements:

Wellman in his article entitled 'A New Conception of Human Rights' develops the idea that rights are constituted by a group of normative elements identified by Wesley Hohfeld in legal terms during the first quarter of the twentieth century. According to Hohfeld, legal rights could be constituted by any of the four elements: a liberty, a claim, a power, or immunity. But he regards the claim-rights as a pre-eminent type of right among the four elements. Wellman agrees with Hohfeld that any of these four elements may be fundamental to a given right, but he does not think that each right is constituted by just the one element. For Wellman, every right is a complex normative structure, which typically involves several of these elements. Let us now briefly explain Hohfeld's conception of a legal right consisting of four elements, each element having a unique second party correlative.

A legal *liberty* to do A - which consists in the absence of duty on the agent's part to refrain from A - is matched with other people's lack of a claim that A not be done by the agent. For example, I am at liberty to purchase a car of Maruti Company in that I have no duty not to, and others have no claim against me not to. A legal *claim* correlates with a legal duty of some second party. A legal *power* to do A consists in a person's legal competence to perform an act which will create, or at least bring to bear, certain legal

consequences for a second party and is matched by a liability to be acted on. For example, a policeman has the legal power over fleeing suspect to place him under arrest and the suspect is liable to be arrested by the police. And a person's *immunity* from A is necessarily correlated with a lack of power on the part of others to do A, and thus the correlative of an immunity is a disability. For example, I have legal immunity against others when I practise the religion of my choice.

Since Wellman thinks that the problem of defining the content of rights has been better solved by law than ethics, he takes legal rights as his model of human rights. He finds it particularly helpful to define the content of legal rights following the Hohfeldian terminology that explicates them in unambiguous and practical terms. Wellman intends to preserve all the four features, defined by Hohfeld, in his 'new' conception of human rights. The Hohfeldian conception of a legal right is not an aggregate of disparate legal liberties, claims, powers, and immunities but a *cluster* of all these four features. Wellman conceives an analogous concept of ethical right as a complex system of ethical advantages, a cluster of ethical liberties, claims, powers, and immunities as follows.

Firstly, X has an ethical liberty to do A if and only if X does not have any duty not to do A. Here duty is taken to be based on some specific moral reason and need not be a duty *to* any determinate second party. I am at liberty to spend my spare cash as I wish or to practise any religion of my choice. Secondly, X has an ethical claim against Y that Y performs some action A if and only if Y has a duty to X to do A. For example, you have an ethical claim against me that I refrain from striking you or my child has an ethical claim against me that I support him. Here, the duty is a duty to someone who would be seriously injured by its non-performance. Thirdly, X has the ethical power to bring about some ethical consequence C if and only if X possesses the competence required for performing some act with this ethical consequence. For example, I have the ethical power of making a promise, and this act not

only creates an obligation to do what I have promised but also empowers the promisee to release me from my promise if he so chooses. By the term 'competence' in the definition, Wellman refers to the qualifications or characteristics one must possess in order that one's action can actually bring about some sort of ethical consequence. Thus everyone is not competent to make promise or to release the promiser. Fourthly, X is immune from some specified ethical consequence C if and only if there is no other party who is competent to do some action with this ethical consequence. For example, I am immune from the loss through any act of another of my ethical claim against second parties that they refrain from striking me.

According to Wellman, just as a legal right is a complex system of legal advantages, so an ethical right is a complex system of ethical advantages consisting of liberties, claim, power, or immunities. What give these four constituents a unity is its core. Each and every right has a core which defines the essential content of a right. In other words, it is the defining core that holds together the constituent elements of a right. The defining core of my right to be repaid is my ethical claim to repayment. The essential content or defining core of my right to free speech is my ethical liberty of speaking out on controversial issues. The same defining core lies at the centre of my every power-right or immunity-right. Wellman writes,

> When we classify rights as claim-, power- or immunity-rights, it is to their defining cores that we refer. Whatever other legal elements may be contained in any right, they belong to this right because of their relation to its core. Thus, a legal right is not a mere aggregate or collection of disparate legal liberties, claims, powers and immunities; it is a system of legal advantages tied to its defining core.[23]

Just as there is a system of legal advantages tied to its defining core, so there is a cluster of ethical advantages integrated with their essential content. It is the defining core or essential content that gives stability to an ethical right and also maintains its unity even when its associated elements are changing. Thus Wellman distinguishes between the *defining* core and the *associated* elements in his conception of an ethical right. For example, the creditor's right

to repayment includes not only a defining core, the *claim* against the debtor for repayment, but also a *liberty* to request or not to request for repayment, and a *power* to waive the repayment, and an *immunity* to be protected from arbitrary or willful cancellation of the indebtedness.

Now, Wellman distinguishes human rights from other ethical rights. The right of a promisee, a teacher, or a citizen is not a human right, for they are not the right one has simply by virtue of being human. Traditionally, human rights are generally defined as those ethical rights that every human being possesses by virtue of being human. Wellman proposes a narrower conception of human rights which is as follows: 'I define a human right as an ethical right of the individual as human being vis-à-vis the state'.[24] In this definition, Wellman excludes other individual or organisation as an addressee of human rights. He adduces two reasons in support of his exclusion of other individual or organisation: (i) In his definition Wellman thinks it appropriate to follow the major human rights documents which proclaim the state as the addressee of human rights; (ii) He finds the ethical relation of the individual human being to other individual or organisation is quite different from his ethical relation to the state in that the latter has a much more greater role in human affairs. In order to mark the distinctive role of the state Wellman proposes to reserve 'the expression "human right" to refer to a right any individual has *as* a human being *in face of* the state'.[25] Hence, Wellman provides his final definition of human rights as follows: 'A human right is a cluster of ethical liberties, claims, powers and immunities that together constitute a system of ethical autonomy possessed by an individual as a human being vis-à-vis the state'.[26]

Wellman now turns to illustrate his 'new' conception of human rights with respect to the right to privacy. The term 'privacy' is opposite of being public. That is, it is a condition which is not open to public. Generally, it is regarded as unethical to invade one's private realm. Every human being requires privacy in his home, family, personal correspondence, etc. This also

includes some relationships such as those between husband and wife, doctor and patient. One is in need of privacy in these and other areas of human life for the development of his personality, for his sense of security and for the maintenance of certain sensitive relationships. Thus the privacy is considered to be an important good, which ought to be protected with respect to all persons. Wellman finds out three distinct elements in the right to privacy as its defining core or essential content: 'a claim to freedom from invasions of one's privacy' 'a claim to legal protection from invasions of one's privacy by the state or other individuals', and 'the ethical claim of the individual against the state that it sustains the conditions necessary for the existence of privacy for the individual'.[27] Wellman also brings out some associated ethical elements which contribute to the satisfaction of the three defining core of the right to privacy. The illustration of the right to privacy with respect to his 'new' conception of human rights, Wellman hopes, would pave the way for similar analyses to be given for other human rights.

IV. Rights as Claims:

Feinberg begins his analysis of the nature of rights by means of a thought-experiment. He imagines a land called Nowheresville which is just like our own world except that no one in it has any rights. But the denizens of Nowheresville possess other moral qualities in abundance: they are benevolent, compassionate, sympathetic and deserving of the benefits of modern civilisation. But it remains that they lack the power to claim something as their due. That is, they cannot claim *to* something and *against* someone else, which is based on some system of rules - be it legal or moral.

For Feinberg, rights are claims, and what are called claim-rights are traditionally distinguished by legal writers from liberties, immunities and powers with which they are often confused. In case of legal claim-rights, rights logically entail other person's duties. One example of such rights is the creditor's right to be paid by his debtor. Here, the creditor's right against his debtor and the debtor's duty to his creditor are but the same relation viewed

from two different standpoints. But Feinberg argues for the primacy of claims over duties. If Nip has a claim-right against Tuck, then this implies that Tuck is bound by some duty to Nip who is free. The duties derivative from claims is missing in Nowheresville, for the denizens of the land lack the power to claim.

In order to establish his view that right is a sort of claim, Feinberg finds it feasible to explain the idea of a claim in informal analysis rather than by means of a formal definition. For him, one can learn more about what a claim is by attending to the activity of claiming. He begins by pointing out that '*claiming* is an elaborate sort of rule-governed *activity*. A claim is that which is claimed, the object of the act of claiming…'.[28] He distinguishes between (i) making claim to…, (ii) claiming that…, and having a claim. First of all, the activity of claiming involves 'making claim to something'. A claim is an activity in which individuals demand things as their due. For example, when an insurance policy holder places a demand to the insurance authority by presenting his policy deed to pay him the amount of money which is his due or an inventor stakes a claim for his patent right. These are the claims of the insurance policy holder or an inventor. Thus only the individual who has a title to something, or who has qualified for it, can make a claim as a matter of right. What is distinctive about rights is that they can be claimed only by those who have already possessed them. In legal sense, 'making claim to' means that the thing claimed is bound to happen. This is, for Feinberg, the 'performative sense' of term 'claim'.

Feinberg now turns to the second employment of the term 'claim', namely, 'claiming that'. Claiming that one has a right is to make an assertion that one is possessed of a certain right and to demand that it be recognised. This is what is called by Feinberg 'the propositional claiming' as opposed to 'performative claiming'. In propositional claiming, it is not enough to make assertion of a claim but to make it listen to by those concerned. In other words, in case of 'claiming that', to assert that something is the case goes together with the demand that it is to be recognised. In order to ensure that the demand

is to be recognised, it is to be asserted under 'appropriate circumstances' which may include when one is challenged or when one's possession of something is denied or acknowledged. Thus 'having a right' is to be in a position to making a claim. Feinberg writes,

> Having rights, of course, makes claiming possible; but it is claiming that gives rights their special moral significance… Having rights enables us to 'stand up like men', to look others in the eye, and to feel in some fundamental way the equal of anyone. To think of oneself as the holder of rights is not to be unduly but properly proud, to have that minimal self-respect that is necessary to be worthy of the love and esteem of others. Indeed…what is called 'human dignity' may simply be the recognizable capacity to assert claims.[29]

Feinberg also analyses the third component involving the term 'claim'. Here, his question is: 'what is to have a claim and how is this related to rights?' Feinberg replies that '…having a claim consists in being in a position to claim, that is, to make claim or claim that'.[30] This suggests that it is primarily a verbal rather than a normative activity. As the claim is an activity, it is quite different from *things*, such as coins, pens, pencils and other material possessions. Even the title in the form of tickets, certificates, receipts, etc. is not the same thing as the claim. The title is rather the evidence that establishes the claim as valid. According to this view, there may be a claim without ever claiming that to which one is entitled or even without being aware that one has the claim. Because one might be unaware of the fact that one is in a position to claim or might not be inclined to take the opportunity of that position for any reason, such as the fear that the government machinery is not working or debased and will not give effect to the valid claim of an individual.

On Feinberg's view, rights are not mere claims but *valid* claims. He rejects the view according to which all claims as such are valid and hence it is superfluous to use the adjective 'valid' before the term 'claim'. He argues that all claims are *presented* as valid whether they are in fact valid or not. Only those claims, which are *in fact* valid, are acknowledged as rights. Hence Feinberg admits that there *are* certain claims which are *not* valid; these claims are merely *presented* as valid.[31] In a parallel to the *prima facie* case in the

judiciary, there may be *prima facie* sense of 'claim'. In the judiciary the initial evidence, which is put forward by a plaintiff is serious but not conclusive, is called *prima facie* case. Similarly, there may be *prima facie* case of a claim but not amounting to a right.

In Feinberg's view, if someone has a right, then this implies that he has a claim *to* something and *against* someone else. He writes, 'A man has a moral right when he has a claim the recognition of which is called for - not (necessarily) by legal rules - but by moral principles, or the principles of an enlightened conscience'.[32] In other words, there must be a set of reasons based on legal rules or moral principles to support a person's claim *to* something and *against* someone. But there may be someone having claim-to without knowing whom that claim-to might be against. Imagine a hungry and sickly orphan child living in a slum. Does not this child have a *claim* to be fed, taken care of and taught to be read? In Feinberg's view, a valid claim calls for, but does not entail, the duties of other person to satisfy the claim. If it is practicable for a claim to be satisfied, then it is enough justification for calling on relevant duties of determinate persons.

Thus in Feinberg's theory, a right is always a combination of two elements (namely, a valid claim *to* something and *against* someone), although any of these two elements may be more clearly perceived in a particular case. He, however, speaks of special 'manifesto sense' of right, which lacks addressee. 'Natural needs', Feinberg analyses,

> are real claims if only upon hypothetical future beings not yet in existence. I accept the moral principle that to have an unfulfilled need is to have a kind of claim against the world, even if against no one in particular. A natural need for some good as such, like a natural desert, is always a reason in support of a claim to that good. A person in need, then, is always "in a position" to make a claim, even when there is no one in the corresponding position to do anything about it. Such claims, based on need alone, are 'permanent possibilities of rights', the natural seed from which rights grow.[33]

The manifesto rights are a special class of rights, in the sense that they are based only on the validation of claims-to but a full-fledged right requires

the combination of a valid claim-*to* with a claim-*against*, which are justified under a system of valid rules.

V. Conclusion:

Among the four thinkers the views of whom we have dealt with in the foregoing analysis, Green and MacDonald reject the conception of natural rights and develop their views on rights in their own unique ways. The remaining two thinkers, namely, Wellman and Feinberg have not criticized the natural rights paradigm of rights but develop their views independently of it. For MacDonald, the utterances that concern ultimate social values like human rights are decisions as a result of human choices and preferences. If we think that human rights are beneficial for us, then they must be defended by means of arguments. And in order to defend the ultimate social values like human rights, we have to choose a side, that is, to choose, for example, whether to defend liberty or slavery. This is more like choosing one's favourite poems, stories, work of art, etc. and not like choosing a scientific law, such as the uniformity of nature. But Wellman, following Hohfeldian model of legal rights, conceives analogous conception of ethical rights as a cluster of ethical liberties, claims, powers and immunities. Unlike Hohfeld who thinks that any of these elements is fundamental to a right, Wellman proposes that a right is constituted by these four normative elements together. What gives these elements a unity is the defining core or the essential element of a right. Human rights, according to Wellman, are a specific kind of ethical rights the addressee of which is the state. Green and Feinberg recognise rights as possessing an irreducible duality. For Green, a right is both a claim of the individual and its recognition by the society. Similarly, for Feinberg, a right is a claim *to* something and *against* someone based on some legal or moral rules. For him, the claim has a primacy over duties. It is not a claim put forward merely as a claim but a *valid* claim.

NOTES AND REFERENCES:

1. Freeden, M. *Rights* (Delhi: World View Publications, 1998), p. 20.
2. Green, T. H. *Lectures on the Principles of Political Obligation*, (New Delhi: Orient Longman, 1967), p. 44.
3. *Ibid*., p. 44-5.
4. *Ibid*., p. 113.
5. *Ibid*., p. 47.
6. *Ibid*., p. 34.
7. *Ibid*., pp. 47-8.
8. *Ibid*., p. 41.
9. *Ibid*., p. 144.
10. *Ibid*., p. 45.
11. Elsewhere Green says, 'There can be no right without a consciousness of common interest on the part of members of a society. Without this there might be certain powers on the part of individuals, but no recognition of these powers by others as powers of which they allow the exercise, nor any claim to such recognition, and without this recognition or claim to recognition there can be no right'. See T. H. Green's *Lectures on the Principles of Political Obligation*, op. cit., p. 48.
12. As Amal Kumar Mukhopadhyay clarifies, 'In all this discussion the main thesis Green tries to establish is that the origin of right lies both inside and outside the individual. On the one hand, it flows from his moral personality. On the other, it is derived from social relations'. See his *The Ethics of Obedience*: *A Study of the Philosophy of T. H. Green,* (Calcutta: The World Press Private Limited, 1967).
13. Green, T. H. *Lectures on the Principles of Political Obligation*, op. cit. p. 110.
14. Harries P. and Morrow, J. 'Introduction', *Lectures on the Principles of Political Obligation and Other Writings*, (Cambridge: Cambridge University Press, 1986), p. 6-7.
15. Milne, A. J. M. *Freedom and Rights*: *A Philosophical Synthesis*, (New York: George Allen & Unwin Ltd., 1968), p. 57.
16. MacDonald, M. 'Natural Rights', *Theories of Rights*, edited by Jeremy Waldron, (Oxford: Oxford University Press, 1984), p. 33.
17. *Ibid*., p. 34.
18. *Ibid*.
19. *Ibid*., p. 35.
20. *Ibid*.
21. As MacDonald writes, 'Lawyers and art critics are not frauds, but neither are they scientists. They are more like artists who use material with results which impress and convince but do not *prove*. There is no conceivable method of *proving* that Keats is a better poet than Crabbe or that freedom is better than slavery. For assertions of value cannot be subjected to demonstrative or inductive methods'. See his 'Natural Rights' *Theories of Rights*, op. cit. p. 39.
22. MacDonald, M. 'Natural Rights', op. cit. p. 39-40.
23. Wellman, C. 'A New Conception of Human Rights', *The Philosophy of Human Rights*, edited by Morton E. Winston, (California: Wadsworth Publishing Company, 1989), p. 90.
24. *Ibid*., p. 93.
25. *Ibid*.
26. *Ibid*.

27. *Ibid*.
28. Feinberg, J. 'The Nature and Value of Rights', *The Philosophy of Human Rights*, op. cit., p. 68.
29. *Ibid*., pp. 69-70.
30. *Ibid*., p. 30.
31. Feinberg writes, 'Nearly all writers maintain that there is some intimate connection between having a claim and having a right. Some identify right and claim without qualification; some define "right" as justified or justifiable claim, others as recognized claim, still others as valid claim. My own preference is for the latter definition'. See his 'The Nature and Value of Rights', *The Philosophy of Human Rights'*, op. cit., p. 70.
32. *Ibid*., p. 72.
33. *Ibid*.