# Applied Ethics and Human Rights

# Applied Ethics and Human Rights

## Conceptual Analysis and Contextual Applications

Edited by
Shashi Motilal

ANTHEM PRESS
LONDON • NEW YORK • DELHI

Anthem Press India
An imprint of Wimbledon Publishing Company India Private Limited (WPCIPL)
WPCIPL is a subsidiary of Wimbledon Publishing Company Limited

This edition first published in 2010
by ANTHEM PRESS INDIA

Distributed by ANTHEM PRESS
*www.anthempress.com*



ISBN-13: 978 81 907570 7 2 (Hbk)
ISBN-10: 81 907570 7 5 (Hbk)

Dedicated to the memory of Professor Pranab Kumar Sen,
my most revered teacher of Philosophy

# TABLE OF CONTENTS

# PREFACE

Few ideas have engaged the thought of philosophers for so great a length of time and occupied a momentous place in its history as the idea of human rights and human moral obligations. Much has been written on almost every aspect of these two ideas, so, in a sense, this book, which addresses questions concerning the concepts of human rights and human obligations, the relations between them, the conflicts which arise when there are flagrant violations of each and the impact each has on decisions and actions undertaken (individually or collectively) in real life situations, cannot claim to be discussing things that have not been discussed before. However, philosophical enterprise being what it is, there is always room for another 'point of view' and that is justification enough. A different point of view brings to light new and distinct perspectives which may help provide a better understanding of morally perplexing problems. Many papers in this volume are an attempt to deal with the question of human rights and obligations in an Indian context, and herein lies its claim to novelty, its *raison d 'etre*.

Philosophical problems have this die-hard quality about them that they remain the same at the core; only the context in which they are presented provides a distinct perspective to them. The different context demands a review, revisiting and rehearsing of existing solutions to suit its present needs. The Indian context – a context that is a reflection of various socio-cultural, linguistic and religious hues of a multiplicity of diverse groups poses a host of ethical dilemmas that make a demand on the sagacious intellect of the moral philosopher.

It has been argued by many philosophers and sociologists that the notion of 'human rights' is a 'western notion' rooted in western political values. When we turn to traditional non-western societies (Indian, Chinese, Japanese, Islamic), we fail to find a corresponding notion of human rights. Instead, the notions of responsibility and community prevail. Respect for obligation, duty, moral and social responsibility towards the community, are considered more important than individualistic ideas of rights. In ancient Indian philosophy and ethics we find that the notion of dharma plays a pivotal role in understanding moral life. The point of view of dharma may be regarded as an Indian point of view,

though not the Indian point of view. Perhaps, there cannot be a pan Indian point of view and no such claim is being made in the book. The question is – what solutions can this specific Indian point of view provide to some common problems relating to issues of human rights that have been tackled from the western point of view? Can the notion of dharma, which in one of its interpretations is the notion of 'moral order', do the job that the notion of 'human rights' accomplishes in the western discourse on morality? Can a parallel notion of human rights be derived from the notion of dharma?

Part I of the book includes papers that deal with the conceptual analysis of issues relating to human rights. An understanding of these issues is a prerequisite to any endeavour in undertaking Applied Ethics. Some of the questions dealt with in this section are: What is involved in applying ethical principles to real life situations? What are the limits of the legal and why one needs to go beyond the realm of the legal to the moral? Can one claim that there exists only one uniform set of moral principles that will uniquely determine what is right or wrong in every society irrespective of differences amongst them? What is the logical justification for such a claim? Can there be a mid-way between the metaethical views of moral relativism and moral absolutism that will satisfy the need for moral objectivity? The conflict amongst competing human rights and between rights and obligations underlies many moral debates. This calls for a clear understanding of the notions of 'rights', 'human rights', and 'moral obligations and responsibilities'. The question of how the notion of 'dharma' squares with the notion of rights and obligations is also taken up here.

Part II of the book is devoted to the contextual applications of the concepts of human rights and human moral obligations. It comprises of papers that deal with the problems arising out of violation of human rights. It discusses the rights of various groups of people (e.g., people belonging to minority communities, gays, lesbians and other members of the transgender community, criminals, people afflicted with mental illness, the future generation, the unborn foetus and women) and the specific contexts of the violation of these rights. It includes papers on the right to violence for survival and on the right to freedom of information *vis-à-vis* the right to private (intellectual) property in the context of the Internet. The issue of globalization and how it impacts human rights is also discussed in this section.

Applied Ethics is a 'do-it-yourself' exercise. Anyone who is willing to think hard about moral matters has to discover his/her own solutions for which he/she needs adequate training. This training involves intellectual wrestling with the finer points of moral theory and practice. The book seeks to approach some typical moral problems keeping the above questions in mind, with the aim that a new approach may help understand the problem in a different light and may also help provide morally viable solutions. It is restricted in

its scope and does not claim to have dealt with all aspects of human rights and obligations. Even with respect to those aspects that have been discussed, no final conclusions have been offered. The main aim has been to state the problematic, provide a context of reference, raise relevant questions, examine logical arguments and direct the mind to think of satisfactory solutions. It provides food for thought, and would be useful for students taking a course in Applied Ethics or in the Philosophy of Human Rights, researchers in these areas, and for the general audience, provided it is philosophically discerning and willing to contemplate hard on these issues.

This book has been long in the making. It started as a volume under the 'Book Project' of DIVA-INDIA (Development of Integrated Value Applications), which was a registered society for Applied Ethics. I am extremely grateful to the Ford Foundation for financial support without which this project could not have taken off. I am especially thankful to my friend and colleague Dr. Deepa Nag Haksar who first thought of bringing out few volumes in different areas of Applied Ethics under the auspices of the 'Book Project', and whose enthusiasm encouraged me to think about editing a volume on Applied Ethics and Human Rights.

Editing a book which thematically binds together over twenty papers seemed to have taken longer than I thought it would. Also, being my first endeavour in this direction, it received, like one's 'first born', somewhat extended care and concern. For some time, other pressing professional and personal commitments occupied me and work on the book had to be put aside. I am happy that things have fallen in place and the book will finally see the light of day.

In the long journey with this book, I have many to be grateful to; people without whose support the journey and this book would never have happened. They are first and foremost the contributors who have so patiently borne with me, never losing confidence in my effort and commitment to bring out such a volume. I am deeply indebted to them all.

When working on the chapters I have benefited a lot by discussions held with the graduate students of my Philosophy of Human Rights class both at Delhi University and Carleton University, Ottawa, Canada, where I took a few guest lectures. I am also thankful to Professor Bijoy Boruah of the Department of Humanities and Social Sciences, IIT Delhi for his very valuable comments and suggestions on the Introduction of the book. For stylistic 'fine tuning' I am thankful to my son Arpan and close friend and colleague Bijayalaxmi Nanda. Their frank and free comments helped me see mistakes which would otherwise have gone unnoticed. Despite their help to make the book better, I am wholly responsible for any shortcomings in it.

Special thanks are also due to my friends Debjani Datta, Manidipa Sen, Franson Manjali and Pragati Sahni whose help and support saw this book

through some difficult times during the course of its publication. Heartfelt thanks are also due to my friend Bijayalaxmi, who in many 'big' and 'small' ways helped uplift my sagging spirits when things were not progressing well with the book.

Ms. Pramila Kardam and Ms. Suchitra Singh deserve a very big 'thank you' for their tremendous help with the computer work throughout the preparation of this volume. Their efficiency, patience and above all their willingness to work any time made my task much easier.

I express my deepest gratitude to Mr. Tej P. S. Sood, Publishing Director of Anthem Press, London, for offering to publish my work, and to Ms. Janka Romero and the Anthem Press team who very enthusiastically took up the publication of this work. I am also appreciative of Mr. Partha Mallik of the Kolkata office of Anthem Press for his timely help and advice.

I am grateful to late Prof. Daya Krishna, Ex-editor of JICPR (Journal of the Indian Council of Philosophical Research) for granting me permission to reprint the paper by Rajendra Prasad, "Applying Ethics: Modes, Motives and Levels of Commitment" JICPR, XIV: 2, Jan – April, 1997, and to the Indian Council of Philosophical Research for the paper by S.R. Bhatt, "Dharma: The Overriding Principle of Indian Life and Thought" which was presented at the International Conference on Indian Philosophy, Science and Culture, organized by ICPR during March, 2003.

Last but not least, I would like to express my heartfelt gratitude and indebtedness to my family for their help, support and encouragement, especially during times when I thought I could not make it.

# INTRODUCTION

## I

### *Applying Ethics*

Morality, our sense of the morally right or wrong act, finds expression in individual claims of what is of moral value, for example, honesty, loyalty, fidelity, and what ought to be done or avoided in general and on particular occasions, e.g., always help others in need, never cause unnecessary harm to others, be fair in your dealings with others, etc. More often than not, one may not know why, what is morally right or wrong, is so, except for the very general reason that the morally right action is beneficial for all and the morally wrong act is not. A moral/ethical theory purports to answer the basic question – why are certain acts morally right and certain other acts morally wrong? Of course, one can make moral claims and more generally possess a morality without having a moral theory. Furthermore, the same moral claims may be compatible with different moral theories. Thus, one may hold that lying is wrong without having a systematic account of what makes it wrong and this moral claim may be justifiable by quite distinct moral theories such as those of Consequentialism, Deontology or Divine Law. The level at which moral claims and judgements are made is the level of substantive ethics, and the level at which theories are adduced to explain these claims is the level of normative ethics. There is a third level, that of meta-ethics, which constitutes a discerning enquiry into the fundamental logic of the language of morals. The question 'Is there a single sense of moral correctness', for example, belongs to this realm.

Applied Ethics, which is the practical aspect of Ethics, consists in the systematic application of moral theory to particular moral problems. It is ethics applied to cases of morally dilemmatic situations where a person must act but does not know the morally correct course of action. The cases may be actual situations involving real (present or past) events, or may be possible future situations (e.g., when considering the moral implications of drawing

up certain legislation), or the situation may be wholly fictitious, taken as a 'thought experiment' to provide a paradigm for a class of cases which may include real ones. Substantive, normative and metaethical considerations do enter into Applied Ethics in the sense that a moral theory which is applied to resolve a moral dilemma may itself be a product of the combination of the three, but these considerations are not the primary concern of Applied Ethics. The primary concern of Applied Ethics is more of a practical nature rather than theoretical. In the words of Brenda Almond, co-founder of the Society for Applied Philosophy, Applied Ethics is, "the philosophical examination, from a moral standpoint, of particular issues in private and public life that are matters of moral judgment."[1]

Moral dilemmas, situations where an individual is faced with the question 'What ought I to do', are situations which on analysis are seen to be, at the core, a conflict between rights either of two individuals or two groups, or an individual and a group, or a conflict between equally demanding obligations (duties), or again, a conflict between a right which one has, and an obligation one is bound by. These conflicts are to be encountered in various fields of human life, and Applied Ethics attempts to resolve these conflicts.

In Medical Ethics such moral dilemmas abound in number. The issue of abortion brings forth the dilemma between the right of the mother and that of the foetus. Euthanasia or Mercy killing raises the question whether one has the right to die with dignity *vis-a-vis* the doctor's moral obligation to respect this right of the patient. There is also the question whether some circumstances endorse a 'duty to die'?

In the area of Ethics and Governance, policy decisions are affected by what accord is given to minority rights versus majority rights, what stance is adopted in case of a conflict between the larger interests of society and violation of minority rights. These issues come up in an important way in policy decisions which need to be taken in developmental projects affecting large sections of society.

There is no dearth of examples of such conflicts in Business Ethics. Conflicts between the rights and the obligations of the consumer and the producer of goods, the employer and the employees take various forms. The right of managers to profit and limits imposed on that, the duty of 'whistleblowers' to the general public as opposed to their employers, are issues which clearly express conflicts of rights and duties.

In Journalistic Ethics there are many issues that are at root clashes between the consumer's right to information and the provider's obligation to exercise restraint and avoid sensationalism. Other areas where the rights-obligation conflicts are encountered are Environmental Ethics, Legal Ethics, Computer Ethics, Neuroethics and various areas in public and personal life.

It is therefore important to be clear about the concepts of human rights and human obligations, before applying normative ethics to solve moral dilemmas in personal, professional and social life. At the same time, conceptual clarity is better achieved only in and through understanding the inter relations in a contextual setting. Applied ethics serves the purpose of providing rational and moral guidance for human action. In fulfilling this primarily practical purpose, applied ethics also – in passing as it were – serves to test moral principles at the tribunal of real life. In applying moral principles, we are called upon to question and, if need be, criticize and revise them. The first part of the present volume aims at developing conceptual clarity about notions of 'applying ethics' or 'applying the principles of ethics', 'human rights' and 'human obligations'. Some papers, which delineate the concept of *Dharma* as it is found in ancient Indian Philosophical texts, lead one to questions about the possibility of understanding the concept in the traditional Western human rights and obligations discourse. Alongside this endeavour to achieve conceptual clarity some discussion also centres around certain meta-ethical questions, such as whether there can be a universal and absolute concept of moral values. Since human rights are human values, the question whether there is or can be a single notion of human rights also becomes relevant.

When we talk of applying a moral principle to a concrete morally dilemmatic case, what exactly are we doing? What exactly are we effecting and how? Rajendra Prasad, in his paper **Applying Ethics: Modes, Motives and Levels of Commitment**, talks about the logistics of applying ethical principles to morally conflicting situations. He speaks of the modes of applying ethical principles, the motivation behind the application and the levels of commitment involved in such application. He maintains that ethical theory can be applied at various levels – the level of judgement, decision or persuasion. Taking examples from the great Indian epic the *Mahābhārata*, Rajendra Prasad shows that a sub-committal or a hyper committal attitude to applying moral principles is not correct. In applying moral principles, the commitment of the evaluator must be strong and firm. He must believe in the moral rightness or wrongness of the principle and his evaluation (judgement) or decision (to perform or not to perform the act) or persuasion, must follow from this belief. Claiming that neutrality has no place in applying ethics, Prasad argues that although it is possible to be non-religious, it is not possible to be non-moral, thus highlighting the distinction between religiosity and morality. Such a stand allows the co-existence of being secular and being morally judgemental with respect to religion.

An issue that is very important to any discussion of ethical questions is the distinction between the legal and the moral. The ethical is closely bound up with the legal and the religious, and yet it is distinct from both. Many things that are

morally prohibited are legally forbidden as well. However, most philosophers would insist on the autonomy and higher authority of ethics. This means that moral principles are neither reducible to nor derived from legal rules. The ultimate justification for moral principles, most philosophers would argue, is in human reason or human understanding or in human experience. In his paper **Jurisprudence and the Individual: Bridging the General and the Particular**, Abhik Majumdar puts forth various views adduced for and against the separation of law and morals and discusses the consequences this separation entails for the ordinary individual. Tracing briefly the history of the debate on Legal Positivism, the author shows that the debate does not provide a satisfactory answer to the question of why it is obligatory for an individual to comply with the law. A higher law prescribing obedience to the law would be pointless. It would clearly beg the question presupposing the very thing it was intended to justify viz., the general obligation to obey the law. This obligation must be moral since without it obedience to law would amount to prudence and not to doing the morally right thing. A system of positive law can come into being only in a community where most people acknowledge that they have a moral obligation to obey the law. Majumdar concludes that without the moral obligation to obey the law, there could be no legal obligation. We are forced to look beyond the realm of the legal into the realm of the moral. But the realm of the moral is not easy to comprehend.

At this point a pertinent question can be raised. We ought to consider whether the very idea of applying ethical theories is misguided, since it assumes that we can use ethical theories to determine what is morally right and wrong. But, is there any single theory of ethics which can claim that it gives us a set of moral values that are universal in the sense that they are universally accepted by all cultures of the world and strongly still, by all cultures there possibly could be? In applying ethical principles to real life situations, there may be a tacit presumption that there is a set of universally accepted moral values and that we can make moral judgements based on our understanding of these moral values – further still, that these judgements of right and wrong are objective assessments that will be universally accepted. This presumption has been widely challenged from many quarters, one of them being Moral Relativism. It is common to hear people say: 'what is right for one person is not necessarily right for another' and 'what is right in one circumstance is not right in other circumstances'. If this were true – that is, if moral values were relative to different cultures and contexts – then it would not be possible to make any general or objective moral assessments. In the absence of universally acceptable moral standards Applied Ethics would be a meaningless enterprise, unless one was prepared to admit that Applied Ethics is itself relative.

On the other hand, there are staunch believers in Moral Absolutism who have given arguments to show that Moral Relativism as a theory about morality cannot stand logical scrutiny. The debate between different forms of relativism and absolutism has gone on for decades with no conclusive answer. R. C. Pradhan in his paper **Why Moral Relativism Does Not Make Sense** argues why Moral Relativism cannot be the correct and final theory about morality. He argues that moral values are not the products of cultural differences; rather they are the preconditions of every culture. If moral values were determined by culture then ethics would no longer be a normative study; it would be reduced to an empirical study like sociology or anthropology. Further, moral relativism undermines the possibility of moral truths, and even moral emotions and prescriptions need evaluation in the light of moral truths. He claims that the entire enterprise of Applied Ethics can make sense only if we accept the presupposition of universal and objective moral truths.

### *Moral Relativism and Human Rights*

Relativism with regard to morality can take on various forms – there can be relativism about moral virtues, moral goods, moral rights and obligations. Moral Relativism with respect to moral rights would see the rights people have as relative to their society, state or governmental system. It would be totally opposed to the idea of a 'universal' 'transcultural' right. But what is a right? Or, more specifically, what is it to have a right? What are the sources of rights? Why should there be rights at all? The key notion in the concept of a right is 'entitlement'. To say that one has a right to something is to say that one is entitled to it, e.g. the right to vote gives one the legitimate entitlement to exercise one's franchise and so with other rights. But what entitles one to a right? There are three ways by virtue of which one becomes entitled to something. These are – law, custom and morality. A moral relativist maintains that all the rights that we can have are derived from either law or custom or both, and since these differ from one society to another, there can be no universal rights. There are no rights that are derived from a common sense of morality since there is no single morality common to all societies. It is a-historical to hold that there is/has been a single morality. The moral absolutist, on the other hand, believes that despite multiculturality, there is a core sense of morality (the inviolable sense of right and wrong) which forms the basis of certain rights and obligations, rights which are possessed by all human beings and obligations which bind all human beings despite myriad differences amongst them. These rights are moral rights and have come to be called 'human rights'.

If the adjective in 'human rights' is to have any significance, the idea of human rights must be the idea that there are certain rights which, whether or not they

are recognized, belong to all human beings at all times and in all places. These are the rights which they have solely in virtue of being human, irrespective of nationality, religion, sex, social status, occupation, wealth, property, or any other differentiating ethnic, cultural or social characteristic. Article 2 of the United Nations Declaration of Human Rights appears to support this claim. Human Rights are general (holding for human beings generally), and they are moral rights (not bestowed or given by a legal document or by legal action). The important feature of human rights is that they are entitlements we have independent of our standing in social institutions. Indeed, since social institutions should respect and/or promote human rights, they constitute a test of social institutions. An institution is judged to be adequate or inadequate, good or bad, in terms of its support of human rights. Human rights are moral rights because the arguments made on behalf of them are moral arguments.

Krishna Menon in her paper **Human Rights – A Theoretical Foray** traces the origins and development of the concept of rights to its present day form expressed in the notion to be found in the Universal Declaration of Human Rights. In tracing the development of the idea of rights she discusses the theoretical and practical difficulties involved in admitting rights that are taken to be universal, inviolable and absolute. She points out that there is a conflict between the doctrine of human rights and what nation states claim they need to do to guarantee them keeping in mind their own distinctive culture and religious practices. Above all there is the great difficulty in agreeing upon a common universal profile of human nature and what constitutes 'quality of life'. The basic difficulty with the doctrine of human rights is that it is individualistic and a-historical. Even a constructivist approach fails to answer the question of the contents of human rights. Notwithstanding this difficulty about content, most thinkers are inclined to accept human rights that are universally binding although they differ in the manner in which they claim to apprehend these rights. The author concludes with accepting what she describes as minimal universalism so far as rights are concerned.

The concept of human rights, the moral rights that human beings are said to have by virtue of being human, has its groundings in the Kantian principle of respect for persons. The foundationalistic approach to understanding human rights maintains that there are basic or primary values shared by human beings by virtue of their common humanity. As Amartya Sen observes, 'The notion of human rights builds on our shared humanity' (Sen, 1997: 39). Such rights and the duties they entail would be universally binding even if not universally acceptable. Hence, the important point is not whether such moral values are actually accepted by one and all but that they are binding on one and all. And they are binding in this manner because we share a common humanity. Shashi Motilal in her paper **Moral Relativism and Human Rights** considers

the debate between the foundationalists and anti-foundationalists on justifying universal human rights. The former proceed on the assumption that human nature is homogenous. They do not believe that the humanness of human beings is to be sought in and through the differences that are expressed in the forms of varying cultural beliefs and practices. Humanness, whatever that may be, is the basis of human rights, but takes on different forms in differing socio-cultural backgrounds. To consider only the commonalities in abstraction and make it a basis of human rights will be to ignore the multi-cultural and plural dimension of human society. A view that seeks to reconcile Moral Relativism with the demands of moral objectivity and moral universalism is required.

### *Moral Rights, Obligations and Responsibilities*

Philosophers and jurisprudents have commonly suggested various forms of relationships between rights and obligations (or duties) (White: 1984). Rights and obligations differ both in what can be the objects of one or the other and what can be the subjects of one or the other and also in their scope. We have rights and obligations to separate sets of things. We can have an obligation, but not usually a right to persons; and rights, but not usually obligations to things; for having an obligation to someone implies having a duty to do something for him, whereas having a right to something implies having a legitimate/fair/justified claim to its possession. Also, whenever we have an obligation to do something, it makes sense to say that we have a right to it, e.g., when I have an obligation to speak the truth I also have a right to speak it. But, the converse is not true. I can have a right to do something but from that it does not follow that I have an obligation to do it. For example, I can be said to have a right to receive parental guidance, but no duty to do so, in the sense that I may very well decline it. Our duties or obligations are confined to what we can be said to be capable of doing.

The question who is a proper bearer of rights and who can be said to be bound by a moral obligation is extremely important and one that needs to be settled before taking cudgels with philosophers on issues involving rights and obligations. What can have a right and what can have an obligation are in some cases definitely and in some cases contentiously different. Adult human beings can have both rights and obligations. But, whereas it may be, and has been argued, that rights may be possessed by other than adult human beings, whether they are the future generation, human fetuses, animals or objects in nature, it is never suggested that these have obligations of any sort. Most discussions about the kind of things that can possess rights center on the kinds of capacities (either necessary or sufficient, or both) these things have for their possible possession. These range from having interests, rationality, sentience,

capability to experience suffering, the ability to claim, etc. Sometimes the criteria (in terms of the above) are too narrow so as to exclude children and the feeble minded and sometimes too wide so as to include inanimate objects, artifacts, abstract conceptions within their fold. In deciding what qualifies as a rights holder, a question that may sensibly be asked is – is it the sort of subject of which it makes sense to use what may be called 'the full language of rights'?

A right can be described as something which can be said to be exercised, earned, enjoyed, given, claimed, demanded, asserted, secured, waived or surrendered. There can be rights of action and rights of recipience. One can also have a right to have a certain feeling or adopt a certain attitude. Further, a right is related to and contrasted with a duty or obligation, a privilege, a power, or a liability. A possible possessor of rights is, therefore, whatever can be properly spoken of in such language. Only a *person* can be the subject of such predications. In other words, rights are not the sorts of things of which non-persons can be the subjects, however right it may be to treat them in certain ways. This criterion will not exclude infants, the feeble minded, the comatose patient or the future generation from having rights. So long as they are persons, i.e., so long as we can speak of them as 'feeble', 'unborn', 'incapable' or even 'dead' persons, they can be said to have rights. It is a matter of unfortunate contingency, not a tautology, that these persons cannot exercise or enjoy, claim or waive their rights, or do their duty or fulfill their obligations. Even the law links the notion of a person and the bearer of rights. The charge of 'speciesism' does not apply here since it is not being contented that it is right to treat one species less considerately than another, but only that one species, that is a person, can sensibly be said to exercise or waive a right, be under an obligation, have a duty, etc., whereas members of the other species cannot, however unable particular members of the former species may be to do so.

The question about the logical relation between rights and obligations can arise either when it is one and the same person's rights and obligations or when it is the right of one person and the obligation of another. In the first case, it is quite clear that there are instances where a person may have both a right to do something as well as an obligation. For example, the judge has both a right and an obligation to direct the jury on certain points. On the other hand, there are examples where a person may enjoy a right without having any obligation, e.g., infants, children, persons with physical and mental disabilities, etc. Philosophers have usually been more interested in the second kind of logical relation, viz., the relation between one person's right and another's obligation since moral dilemmas about rights and obligations generally involve inter personal relationships.

With respect to the right of one and the obligation of another, it is generally held that rights and duties or obligations are correlatives or two sides of the same coin. If rights are claims then, to accord or ascribe a right to an

individual implies that someone or something other than that individual has an obligation to uphold or respect that right. This is definitely true of legal rights where the legal right of the right holder is to be respected by others who are also bound by the same law which confers the same legal right to them as well. The law of the state or of any institution is binding on each and every citizen or member of the institution as the case may be. Every one enjoys the benefits of the law because every individual while having a legal claim to something is also obliged to respect the same claim which others belonging to the same state or institution have. So, if X by virtue of being a bonafide member of an institution has a claim to something, then other members of the same institution have an obligation or responsibility to uphold that claim of X. This is true of every member of that institution.

There is, however, no *logical* connection between rights and obligations *per se* such that every right entails a positive duty on the part of someone else to do something. In one sense, however, there is a correlation between a right and an obligation and this is from the point of view of negative duties. If I have a right to something, it is an obligation upon everyone else to refrain from doing anything that would violate that right. Everyone else has an obligation not to prevent me from doing it and not to penalize me or make me suffer for having done it. If I have a right to receive something then there must be someone/ something who/which is under an obligation to provide it to me. Conversely, it is wrong for someone to stop that person from meeting his/her obligation to me. But, if it is right both for people to have what they are entitled to and also to meet their obligation, what is the difference between a right and an obligation? A *prima facie* difference is that an obligation may be supervened by another more pressing obligation in which case you must meet the latter. There is no choice about it. But, when you have a right, you have a choice not to exercise it.

Since there is no logical relation between rights and obligations *per se*, there are examples of rights without reciprocal obligations on the part of someone and similarly, there are examples of obligations that do not entail any reciprocal right had by someone. Notwithstanding the fact that there are instances of human relationships where rights and obligations are not reciprocal, it is important to note that the concepts of rights, privileges, responsibilities, obligations, duties, all hold together and not one in isolation from the others. To consider them in isolation is, perhaps, the source of many moral/ philosophical dilemmas.

An excerpt from the proposal on A Universal Declaration of Human Responsibilities put forward by the Inter Action Council in 1997 highlights the importance of considering rights and responsibilities together.

> Although traditionally we have spoken of human rights, and indeed the world has gone a long way in their international recognition and protection

since the Universal Declaration of Human Rights was adopted by the United Nations in 1948, it is time now to initiate an equally important quest for the acceptance of human duties or obligations.

This emphasis of human obligations is necessary for several reasons. Of course, this idea is new only to some regions of the world; many societies have traditionally conceived of human relations in terms of obligations rather than rights. This is true, in general terms, for instance, for much of Eastern thought. While traditionally in the West, at least since the 17th century age of enlightenment, the concepts of freedom and individuality have been emphasized, in the East, the notions of responsibility and community have prevailed. The fact that a Universal Declaration of Human Rights was drafted instead of a Universal Declaration of Human Duties undoubtedly reflects the philosophical and cultural background of the document drafters who, as is known, represented the Western powers who emerged victorious from the Second World War.

The concept of human obligations also serves to balance the notions of freedom and responsibility: while rights relate more to freedom, obligations are associated with responsibility. Despite this distinction, freedom and responsibility are interdependent. Responsibility, as a moral quality, serves as a natural, voluntary check for freedom. In any society, freedom can never be exercised without limits. Thus, the more freedom we enjoy, the greater the responsibility we bear, toward others as well as ourselves. The more talents we possess, the bigger the responsibility we have to develop them to their fullest capacity. We must move away from the freedom of indifference towards the freedom of involvement.[2]

The Preamble of the Universal Declaration of Human Responsibilities expresses that an exclusive insistence on rights can result in conflict, indecision and endless dispute, neglect of human responsibilities with a possible outcome of lawlessness and chaos. Rights and responsibilities are to be treated as two sides of the same coin. If exercising of a right is an expression of freedom, a freedom to a claim of a sort, then this freedom must come with its share of responsibilities too. In other words, we need to exercise our freedom "sensibly", and "sensitively". It is only when rights are tempered with responsibilities that we can be said to truly have a right to something. The 19 articles of the UN Declaration of Human Responsibilities manifest a deep and rich progression of legal thought treating rights and responsibilities as complementary to each other.

Moral Responsibility, unlike causal and legal responsibility, is not an easy concept to comprehend. Ascribing moral responsibility becomes more difficult when collective action is involved. Pratap Bhanu Mehta, in his paper

**Complicity and Responsibility**, discusses the intricacies of attributing individual responsibility to a person based purely on the causal relation between him/her as an agent and the act he/she causes. To do so amounts to identifying a trivial element in the context of guilt and moral wrong doing, and this is supported by the phenomenon of counterfactual guilt, from which people suffer occasionally. How should we then hold individuals responsible in contexts where the outcomes are products of a large number of actions undertaken by other people? Ascribing 'collective responsibility' really amounts to saying that no one is responsible and this, in a sense, does not nullify the question of individual responsibility.

Taking a series of examples, Mehta shows that an individual may become responsible in many ways going beyond direct causal responsibility. All these ways point to an expanded notion of responsibility, which, in his view makes responsibility a 'political' concept. According to him, questions of responsibility turn not simply upon our conception of the person, but upon our relations to others, which are determined by the fair terms of interaction between the concerned parties. To consider only the person, his actual involvement, his intentions and inclinations, tends to sever the link between responsibility and our interpersonal relations in terms of what we owe others. Allocation of responsibility centres on issues of distributive justice and is not merely a matter of figuring out the relation between agents and the consequences of their acts. Mehta's notion of responsibility draws heavily upon the distinction between act and omission or 'positive' and 'negative' conceptions of duty. Failing to do the right thing in a given situation is on a par with wilfully doing the wrong thing. Therefore, complicity also amounts to responsibility.

## *Dharma* as Moral Obligation or Righteousness

When we turn to the Indian context, particularly to the ethical philosophies of ancient India and look for a concept corresponding to the western notion of 'rights' or 'human rights' we are faced with a peculiar situation. There is no term in Sanskrit that is perfectly cognate with the term 'right' as a 'natural/moral entitlement'. Most thinkers who have dealt with the question of human rights in the context of ancient Indian Philosophy will readily agree that there is no notion of 'human rights' to be found there. It appears that in the traditional Indian context, one cannot speak of rights without giving priority to duty. Austin Creel cites B.N. Chobe saying that there is no Sanskrit word that means rights and goes on to remark, 'Rights are present in the system, but as the obverse of duties, the reciprocal duties of groups and individuals to each other, and never in any sense separated in status. To the extent that one not only owed duties to another but was owed duties by others, rights are

bound up with duties, any duty involving a corresponding right or claim.' (Creel, 1997: 19)

## *'Adhikāra'*: A Right in Classical Indian Philosophy?

At this juncture, it is interesting to note an attempt made by a scholar to read a rights discourse onto a certain interpretation given of the term '*adhikāra*' which occurs in a verse in the Mīmāmsā texts of Jaimini. In the popular vernacular usage, the term has stood for what are called rights. Taking the term '*adhikāra*', which occurs in certain Mīmāmsā texts, Purushottama Bilimoria explains how the term can be construed, through a series of derivations as coming closest to our current use of the term 'rights'. (Bilimoria, 1993) According to Bilimoria, the term '*adhikāra*' as used by Jaimini of the Purva Mīmāmsā School specifies the eligibility criteria for being a proper subject of the *vidhi* or injunctions regarding sacrificial performances. There are four major criteria that are mentioned. These are *ārthītva, sāmarthya, agniman* and *vidvan*.[3] Detailed specifications and requirements of the fourth criterion, however, restrict these entitlements to only one class of people, viz., the Brahmins. In a similar vein the Mīmāmsāka understands a text in the *Mahābhārata*, '*śrāvayet caturo varṇan*', as stating that the four castes[4] have the '*adhikāra*' to acquire knowledge of the *smrti* scriptures (*Itihāsa and Purānas*). This is reiterated in Samkara Vedanta too (*śrāvayet caturo varṇan iti ca itihāsapurāṇadhigame cāturvarṇasya adhikārasmaraṇat*). This offers concessional entitlements to the non-'twice-born' (non-brahmins) in respect of performing rituals derived from non-vedic injunctions.

It is quite evident that the *adhikāra*s spoken of in these texts are at best social or conventional rights as they are based on social stratification. They are not rights in the sense of 'natural' claims or moral entitlements. Bilimoria makes an interesting remark about one occurrence of the term '*adhikāra*' in the *Gītā*. According to him, the term '*adhikāra*' as it occurs in the verse "*Karmanyevādhikāraraste māphaleşu kadācana*" (11.47) is best understood when the verse is translated to mean 'You have entitlement indeed to actions, never though to the results.' Arjuna here is being told that, since he is a *kşatriya* (soldier) his *adhikāra* is only to the act performed by a soldier, not to the consequences which may or may not follow. Further he is also being told that he has no *adhikāra* to desist from the action that is incumbent on him as a *kşatriya*. Bilimoria remarks: 'While it may appear that the *Gītā* is confusing the locution of duties with that of rights (understood as entitlements, let us concede), the move is deliberate, because the author(s) here is attempting to introduce the idea of 'negative rights', which effectively states that no one, including oneself, can rightfully interfere with what is one's due or desert by virtue of the law (of *dharma*)… It is almost as though to say that the *Gītā* was tempted to speak of

the 'right to duty' (just as we speak of the right to employment).' (Bilimoria, 1993: 43) Bilimoria's suggestion is that the *Gītā* seeks to apply the notion of *adhikāra* beyond the Mīmāmsā framework of sacrificial and religious rites to the wider context of social dharma but does not go beyond that for then it would have to accept the idea that all persons are born equal and that there are no 'natural' differences among human beings which translate into social differentiations. This, perhaps, it was hard for the author(s) of the *Gītā* to accept considering the overbearing weight of the *varṇāsramadharma*. In conclusion, Bilimoria says, 'Thus the response of the *Gītā* is restrained and calculated; it merely suggests the possibility of a discourse of universal human rights (*mānavasarvadhikāra*) but does not develop it.' (Bilimoria, 1993: 44)

As mentioned earlier, there is no word in Sanskrit or even Pali which conveys the idea of a 'right' understood as a subjective entitlement. Does this mean that the concept of 'rights' is alien to Indian Philosophy? Alan Gewirth has pointed out that cultures/traditions may possess the concept of rights without having a specific vocabulary for it. He says it is 'important to distinguish between having or using a concept and the clear or explicit recognition and elucidation of it … Thus persons might have and use the concept of a right without explicitly having a single word for it.'[5] This is, perhaps, true of the Indian context. In the Indian context, the concept of *dharma* does 'double duty' for the concept of rights and obligations. *Dharma* determines what is right and just in all contexts. It determines what is 'due' in any situation. It tells us not merely 'what one is due to do' but also 'what is due to one'. This reciprocal sense of obligation ensures that justice is met.

Thus, when A performs his 'dharmic' duty, B receives what is 'due' to him or that to which he is 'entitled' in and through *dharma*. The duty of one corresponds to the entitlement of the other. If the husband has a duty or obligation to support his wife, the wife has a 'right' to seek support from her husband. If the wife has a duty/obligation to look after her husband's property, the husband has a 'right' to safe keeping of his property by his wife. Similarly, the king has a duty (*dharma*) to look after the subjects (citizens) and they have a 'right' to be looked after by the king. The king has a 'right' to collect taxes and the citizens have an obligation to pay it.

Thus, under *dharma*, human relationships are entrenched in bonds of reciprocal obligations that can be analyzed into rights and obligations. However, it must be noted that in the Indian context, *dharma*, the moral guiding principle, delineates these bindings only in terms of obligations, not rights. It states what is due in the form, 'A husband should support his wife' rather than 'A wife has a right to be maintained by her husband'. So, in a sense, rights are not recognized as discrete 'dues' under *dharma*. A right is a useful concept that provides a particular perspective on justice. Its correlative obligation provides

another. Both may be considered as windows onto the common good, which is justice.

It is widely acknowledged by most scholars of Indian philosophy that philosophy in India was a way of life rather than an isolated intellectual enterprise. Most scholars also acknowledge that Indian philosophy has been duty-centric rather than rights-centric, that the emphasis has always remained on duty than on rights. The welfare of the group, whether it be, the family or community or any larger group, was always placed higher than that of the individual. And this obligated the individual to perform actions that were conducive to the growth and welfare of the group. It was held that the individual's moral and spiritual progress could only be achieved in and through actions that are in accordance with the larger social and moral order of the cosmos and the principle governing that order was a form of *Dharma*. The concept of *Dharma* has been translated in many ways to mean Moral Obligation or Duty, Righteousness, Justice, etc. It is believed that this multi faceted concept has determined the moral, cultural and spiritual life of India ever since the Vedic period and continues to do so even now.

In his paper ***Dharma*: The Overriding Principle of Indian Life and Thought** S. R. Bhatt shows how the concept of *Dharma* forms the foundation of moral philosophy in India from Vedic times to the present day. He writes that the concept of *Dharma* has its genesis in the Vedic intuition of '*ṛta*' from which it has flown into and permeated every form and facet of Indian life. *Ṛta* conceptualizes the vision of the Vedic seers of an inexorable, unswerving and pervasive order prevailing in the Reality and the cosmos. The Vedic seers apprehended an immanent teleology in the Reality and 'telosembeddedness' in the cosmic process. In Bhatt's view the concept of *Ṛta* and *Dharma* are cognates and so in time they got conflated and the word *Dharma* got currency and popular acceptance. It retained the full meaning of the word *Ṛta* and also acquired new and additional meanings.

Shashi Prabha Kumar discusses the notion of *Dharma* as the moral foundation of the social order as it is given in the *Vaiśeṣikasūtra* of Kaṇāda in her paper **Moral Foundations of Social Order as Suggested in the *Vaiśeṣikasūtras***. She maintains that despite differences in their metaphysics, the Indian philosophical systems, except the materialist *Cārvākas*, are unified in their views about morality. For all, the highest aim of life is liberation from the material world, which is achieved by realizing the true nature of the self. All the systems maintain that human being is a manifestation of a deeper central reality and at the root of this is a cosmic moral principle that is *Dharma*. *Dharma* serves the dual function of facilitating one's own well being as well as the well being of others, the former being the spiritual development of man towards self realization or *nihśreyas*, and the latter being worldly progress

or *abhyudaya*. Shashi Prabha Kumar points out that though many thinkers are of the view that there is a basic opposition between *moksa dharma* and moral and social *dharma*s because the former repudiates the moral and social aspects of human existence, this is not so in the Vaiśeşika system, and this is a point to be appreciated. Kaṇāda deals with the moral values concerned with social harmony first and later on with those that lead a person to *nihśreyas*, his individual spiritual progress.

Saral Jhingran in her paper **Modern Western Conception of Justice as Equality before the Law and *Dharmaśāstras*** is of the view that the *varṇa vyavasthā* accepted in ancient India was based on birth and hereditary professions and not on psychological inclinations and voluntary professions as is claimed by some thinkers. Beginning with the notion of justice which incorporates the idea of equality before the law, Jhingran argues that in one interpretation of *Dharma* where it is taken to mean justice, (the concept as is found in the *Dharmaśāstras*, the Hindu law books of collective duties of human beings), it does not admit of the idea of being equal before the law. According to Jhingran, the notion of *Dharma* in the *Dharmaśās*tras is far from the Modern western conception of justice, which incorporates within it the idea of being equal before the law. Even if equality is understood in a limited sense, which she elaborates in her paper, such a limited notion cannot be admitted in the *Dharmaśāstras*, since the *varṇa* of a person is based on the contingent factor of birth.

There have been scholars who have maintained that although the *varṇavyavasthā* eventually degenerated into the much despised caste system, in itself it was a classification determined not by birth but by psychological inclination and the profession voluntarily adopted by an individual. All orthodox systems of Indian philosophy, the *Vedās* and the *Upaniśads* as well as the *Bhagvadgītā* unequivocally accepted the *varṇāsramadharmas* or socio-individual duties as necessary and indispensable for the ethico-spiritual development of individuals and society. In the Bhagvadgītā, Krishna, having attained true knowledge of *Brahman*, says:

*Cāturvarṇya mayā sṛişţam guṇakarmavibhāgaśah* (*Bhagvadgītā*, IV, 13)

That is, 'The four divisions of society have been created by me on the basis of inclination and profession'. It is evident from this statement and other statements disclaiming the spiritual difference between the high caste Brāhmana and the low caste Caṇḍāla that until the time of the *Bhagvadgītā* there was no rigidity in the caste system and the classification was based not on birth, but on the voluntary profession or occupation. Once a person had adopted a particular profession it was necessary for him/her to adhere to the duty enjoined upon

that profession even at the cost of his/her life rather than change professional duty. This is expressed in the following

*Svadharme ninhanam śreyad, paradharmo bhayāvahah* (*Bhagvadgītā*, III, 35)

Along with the four fold stages in life, the *varṇaāsramadharma* offered complete guide to right conduct. Deviation from dharma was regarded as immoral or wrong conduct. But it must be noted that the concept of dharma incorporates both empirical and spiritual duties and each is given equal worth. It would be wrong to overlook the instrumental value of social and professional duties, as it would be to neglect spiritual duties (complete self surrender to God). The *Bhagvadgītā* throughout emphasizes the importance of performing one's duty or moral obligation and provides guidance to resolve conflict of duties.

The social context in which the dictates of dharma prevailed in ancient India was a context based on the hierarchical structure of *varṇa* and the *dharma* to be followed was appropriately called *varṇāsramadharma*. In this structure of categories, the lowest caste, that of the *śudras*, did not enjoy any privileges. They had no claims but only obligations to fulfill. Can it be maintained that the obligations of the upper castes (the Brahmins, the *kşatriyas* and the *vaiśyas*) towards the *śudras* took care of the 'rights' of the latter? It is difficult to comprehend how that could happen, except on one assumption. The assumption being that the principle of *Dharma* worked in tandem with the retributive principle of Karma. The *śudra* by virtue of being a *śudra* was entitled to only that much or nothing at all. And, to the question why a *śudra* should be born a *śudra* the answer was because of his past karmas. The doctrine of Karma as the retributive principle of justice is appealed to which along with the principle of *Dharma* bestows only those privileges that are due to one. In other words, even if the *non-śudras* tried to bestow more on the *śudras*, they could not have done so because that would have gone against the Law of Karma. In such a society, justice could not possibly mean 'equal in the eyes of the law', for the law of Karma required that every body bear the fruits (good or bad) of their karma (deeds). So, it is bound to be the case that some people would suffer on account of not having any rights or only minimal rights, but in each case they would be receiving what is rightly due to them. So, one may argue that even in ancient Indian society where the *varṇavyavasthā* prevailed, people did have rights although it appeared that some did not have them at all.

In due course of time, this justification of the non-egalitarian distribution of rights and privileges came to be rejected by modern 'rights based societies'. One's position in society was no longer seen as the appropriate basis for the distribution of rights and privileges. Comparing traditional non-western

contexts with contemporary rights–based systems Uma Narayan observes that 'the contrast lies in the greater distribution of a great number of legal claims, powers, liberties, and so forth across the individuals who comprise the subjects of a contemporary "western" legal system. In many "traditional" systems, both "western" and "nonwestern", a few individuals had a great many legal powers, immunities, liberties and claims, while the rest primarily "enjoyed" no-claims, duties, disabilities and liabilities!' ( Narayan, 1993: 189) She further remarks that the 'highly unequal distributions of Hohfeldian advantages within these systems was grounded in the rationale that such a distribution was the one most conducive to the ideal of "social harmony". Thus, while the ideal of "social harmony" did not function so as to invalidate all rights claims in such a context, it might very well have functioned to normatively de-legitimize demands for more egalitarian distributions of rights within that context on the grounds that any significant change in the existing distribution of Hohfeldian advantages would be destructive of "social harmony"'. (Narayan, 1993: 191)

The question is whether the stake of preserving 'social harmony' is so important that it justifies unequal distribution of rights and privileges. The answer to this question can, perhaps, be found in the following thoughts. Even in a society without social hierarchies, natural differences among people resulting in benefits to some and disadvantages to others will have to be explained. One way of explaining these differences is by taking recourse to the Law of Karma as a retributive principle of justice. This helps maintain the 'natural harmony' in the world. Perhaps, the same explanation can be adduced to explain the in-egalitarian distribution of rights and claims, now for the sake of 'social harmony'. What is more important and incumbent on all is that we recognize our responsibilities and obligations to one another which will ensure that 'rights' of individuals are not flouted, although it will not ensure that there will be no inequalities that will bring advantages to some and deprivations to others.

## II

Part I of the book takes us through a conceptual analysis of some fundamental concepts of ethics. An understanding of these concepts is crucial, rather a necessary prerequisite, for any ethical enterprise, particularly, the applying of ethical principles to provide solutions to morally perplexing problems in real life situations. The moral philosopher not only needs to be clear about ethical concepts, she also needs to know what exactly she is aiming to do in applying ethics, to what extent her purpose can be fulfilled and how. She must also be prepared to encounter challenges put forward to her by the moral skeptic and the moral relativist.

Most moral dilemmas involving interpersonal relationships are at the root conflicts of rights and obligations in some form or the other. In majority of cases the problem arises due to a flagrant violation of some human right or conversely, the non-fulfillment of some moral obligation. As we saw between persons of equal moral standing, there can be no rights without obligations and therefore if one person's rights are being violated, then, there is some other person who is not fulfilling her obligation towards that individual. But, moral perplexities abound in such contexts also, where one individual has a moral obligation to fulfill towards another who/which does not have a moral right in any clear sense (the unborn, the future generation, animals, nature, etc.). The converse may also invite moral speculation; the cases where the fetus, the future generation and animals are said to have rights (in some sense) but human beings because of their superior position have no obligations towards them. Part II contains papers that discuss moral issues that arise when there is a conflict between rights people enjoy and obligations that bind them. Rights belong to people and people fall into groups, sometimes naturally (by way of biological differences, spatial-temporal differences or differences due to traits contingently possessed by them) and sometimes not so naturally (by way of social differences e.g., caste or racial differences). The papers dealing with issues pertaining to human rights belonging to these groups of individuals have been classified separately. The underlying idea, however, remains that of rights and obligations. The first set of papers concern rights of minority groups or the 'marginalized' sections of society.

Rakesh Chandra in his paper **Fragile Identities and Constructed Rights** raises interesting questions that place the problem of the identity of the minorities in a context that relates it to the discourse of ethics and to the discourse of philosophy of language. The question he addresses is – how do twentieth century discourses in philosophy of language and discourses in moral philosophy interface with the twentieth century struggle for identity that marks the movement of the socially marginalized? His query is that if one accepts Nussbaum's capability theory as the basis of human rights then why, if capabilities are same, two individuals cannot, or rather, do not as a matter of fact, belong to the same group despite their different social identities? He maintains that it is how we understand basic humanness that will determine whether a particular use of a certain referring expression ('dalit', 'gay', 'lesbian', Marxist') identifies the person as human being *per se* (the Kripkean use of rigid designation or Donellan's referential use of description) or *the human being as belonging to a certain group, clan* etc. (non-rigid designation or Donellan's attributive use of descriptions). According to Rakesh Chandra it is because of their universalism that branches of philosophy (philosophy of language, epistemology and metaphysics) have not concerned themselves with questions

pertaining to conflicts of personhood and identity among particular groups. But such universalism cannot afford to be exclusionary. Rakesh Chandra's attempt at understanding the problem of fractured identities is an attempt in this direction.

Another paper grappling with the issues of identities is **Ethics, Human Rights and the LGBT Discourse in India** by Ashley Tellis. The paper is an examination of the history and development of the Same-Sex Movement in India. The area it traverses spans from the Indian Women's Movement Studies/Women's Studies diluted and hesitant efforts to address the issue to the donor-driven NGO initiatives. Tellis's analysis wrestles with complex social realities taking into account the influence of class, individual and group identities as well as the shifting and heterogeneous character of the state itself. Through a series of compelling arguments, each centered round either the Indian Women's Movement's efforts or the NGO initiatives, this paper demonstrates the present inadequacy of their commitment to same-sex rights by exposing the contradictory position of the parties to the issue of same-sex relationships. It is a powerful critique of the addressing of the issue by the Indian Women's Movement/Women's Studies and the NGO initiatives. In the opinion of Tellis, Indian feminism has simply jumped over the knotty problem of how to conceptualize sexuality. According to him, the internationalization and globalization of gay/lesbian/transgender/queer identities, is closely tied to economic and market processes and by buying into the global speak of LGBT discourse we are unable to recuperate the richer and more complicated understandings of same-sex relations and their trajectories in India.

Tellis unfolds a two-pronged argument: (a) the language of rights and citizenship advanced by feminist politics in India cannot be unproblematically available to the same-sex rights movement since it continues to sustain 'woman' as a category of analysis; (b) the 'politics of funding' leaves the NGO's with very little scope to do justice to the issue. The paper concludes by emphasizing the issue of human rights and ethics in this case. In order to ensure the application of a human rights and ethics based approach to the same-sex rights movement, the author suggests the creation of a democratic, emancipatory space where there is dialoguing between people, keeping in mind the intersectionality of class, caste, ethnicity, religion, gender and sexuality. This continuous and sustained dialoguing can lead to a dynamic, vibrant and energised same-sex rights movement in India.

When it comes to the marginalized sections of society, an intriguing problem triggering an ongoing debate among moral philosophers relates to the rights of the 'discriminated against'. 'Affirmative action' or 'preferential treatment' seems to go against the very egalitarian spirit underlying the Universal Declaration of Human Rights and yet there has been support for it amongst

moral philosophers who have argued that it is a form of 'compensation' for those whose rights were initially violated by society. 'Is affirmative action a form of compensation, or another form of discrimination' is the question taken up by Madhucchanda Sen in her paper **Affirmative Action: Compensation or Discrimination?** Do discriminated social groups have a right to compensation? Do affirmative action policies provide compensation to those who truly deserve compensation? Does reverse discrimination violate the right of an applicant to equal consideration and equal opportunity? Can reverse discrimination be justified as an unwanted consequence of a benign act/policy. Madhucchanda Sen takes up these questions while critically appraising the arguments and counterarguments in the debate. In her opinion one cannot say that affirmative action policies are all morally right or wrong. Several factors including the political history of the society where such policies are being adopted have to be taken into consideration. She also thinks that one should not ignore the fact that beneficiaries of affirmative action policies feel thwarted when due credit is not given to their own efforts in their achievements, everything being attributed to desert from such policies.

Affirmative action policies and the resulting reverse discrimination are often seen to be a part of the program of retributive justice against injustices done to certain groups/sections of society where the grouping was determined by birth and ideologically based social constructs. At the same time affirmative action is a move in the direction of achieving distributive justice that to a large extent is a State affair and is intended to enhance upward mobility of a group, tribe, caste or community. Despite the reasonableness of its aims, distributive justice has its own merits and demerits in its practical application and fulfilment. Bhagat Oinam in his paper **Distributive Justice: Locating in Context** highlights some of these merits and demerits while also pointing to an inconsistency in the very concept of distributive justice. Oinam, takes off from Dworkin's formulation of distributive justice which includes 'equality of welfare' and 'equality of resources', and considering the Indian context, adds a third factor which is 'equality of opportunity'. He contends that though distinguishable, the three are not separable, inasmuch, as the first cannot be achieved without the second and the third. Here much depends on who is given the priority – the individual or the group to which he belongs though only contingently. In other words, it is only when an individual has free access/ opportunity over resources in and around her that she can utilize these for the enhancement of her welfare. Not withstanding the variable differences in individuals (including state of mind, needs and capabilities) basic infra structure facilities should be made available to every citizen of the State. The dual standards of the State in accepting the inalienability of private property rights on the one hand, yet promoting group-centric programs will not help

fulfilling the aims of distributive justice. There is no justification in counting *individual* political participation of citizens in the existence of adult franchise and disregarding the individual when chalking out programs of welfare. Plurality, in the opinion of the author, should not stop short at the group but percolate down to the level of the individuals. The question to consider, which Oinam admittedly avoids, is the relation between retributive justice and distributive justice and whether they should be seen as two sides of the same coin. In the debate on affirmative action the two must be seen as the same thing. It is only when group centered affirmative action programs are seen as retribution that they can make any sense and there can be some justification of the resulting 'reverse discrimination'.

But, does 'reverse discrimination' really need to be justified? In the first place, is it discrimination of any kind to exclude from consideration some one who fails to meet the requirements of a certain institution or program, the institution having a legitimate right to set its requirements as per its aims, motives and needs? Many thinkers do not believe so. Discrimination in its negative sense becomes intelligible only in a certain context, the context where 'discrimination' (i.e., reverse discrimination) is regarded as a form of punishment. And yet, many people do think that being excluded as a result of Affirmative Action Policies of the government, amounts to punishment; that they are being 'punished' for no fault of theirs. Punishment in any form is legitimate only when given to an offender. In what sense are those who are (reversely) discriminated against, offenders? Punishment presupposes responsibility for the offence. Therefore, the question is – in what sense can we hold them (the reversely discriminated) 'responsible' thereby justifying 'reverse discrimination? Can reverse discrimination be justified on the expanded notion of responsibility where it includes complicity as suggested by Mehta in his paper? Even on this understanding of responsibility, it would be odd to hold the present generation responsible for the deeds, rather 'misdeeds', of their ancestors in causing the initial acts of discrimination that now call for compensation.

Retributive punishment requires at least the identity of the offender and the punished, even if time and space conditions are not adhered to, as in the case of explanations of suffering given on the basis of past 'karma' by the doctrine of Karma in some systems of Indian philosophy. Also, it is important that if punishment is to reform the offender, he/she must know the offence he/she has committed. This also does not square well with reverse discrimination as a form of retributive justice. Moreover, if a particular group (caste, or tribe) has suffered in the past, no one individual has suffered on account of any one individual. People belonging to one group have suffered because of unjust social practices adopted by people belonging to another, supposedly 'higher'

group. It is difficult to attribute collective responsibility and punishment, since the notion of collective responsibility is very complicated and not very clear. There is also the point of view of the moral relativist who would not regard the initial act to be wrong in the first place. The subscriber of Moral Relativism need not regard the deprivation of equal opportunities suffered by the lower castes to be wrong, since that was accepted by the then society. If the initial suffering is not considered wrong, no question of compensation need arise. It therefore seems that because reverse discrimination cannot be regarded as a form of retributive punishment it is not wrong.

In the context of punishment the rights of the punished raises interesting moral issues. Does a person committing a moral offence have any claim to human rights that are by nature moral rights? Ruplekha Khullar in her paper **Punishment and Human Rights** takes up the question of how punishment impacts the issue of human rights. According to her, no punishment can claim legitimacy unless it adheres to the inviolability of the human person and is bound by the spirit of the Preamble to the Universal Declaration of Human Rights that emphasizes the inherent dignity of human beings for freedom, justice and peace in the world. The blatant violation of human dignity and growing awareness of human rights issues brought about a shift from corporal torture as a form of retribution to more 'humane' forms of retributive punishment. For the same reasons, excess punishment for stronger deterrence gave way to moderation and economy. However, it is reformation that provides the most spirited defense of human rights because it is based on the firm belief in the inherent dignity and worth of human life.

If rationality distinguishes human beings from other sentient beings (as is traditionally presupposed) and thereby is responsible for human worth and dignity, which in turn are the necessary and sufficient conditions for human rights, what happens to the rights of the mentally ill/ distressed, of people who are labeled as 'mad'? Can they be said to have any rights at all? Ranjita Biswas and Anup Dhar in their paper **Rights of the 'Mad' in Mental Health Sciences** address this all important question relevant to a large section of society. What does one mean by the rights of the mentally ill/distressed? Is it the right to informed consent? Does the very fact of mental illness/distress preclude/ foreclose the possibility of 'informed consent'? Would 'informed consent' also mean 'consent to restriction of movement', consent to the limitation of the freedom of the very person who gives the consent? Can the mentally ill be truly informed and be in a position to give consent? In the paper, the authors take up theoretical critiques that have come up against mental health science – both at the level of 'institutional operations' as well as at the level of 'epistemology' and try to understand the notion of insanity. According to them, the positing of one-way causal processes of 'labeling' both in dominant psychiatry and in

anti-psychiatry does not offer any agency to those labeled 'mad'. The biology *vs* society logic remains central to most debates surrounding the origins and phenomenology of mental illness. The authors believe that attempts at placing 'mental illness' within the realm of history, culture and politics and tracing the multidimensional relationship between 'knowledge', 'structural oppression' and the 'phenomenological being' could perhaps make possible a dialogue with mental illness (a dialogue that was broken off in the classical age by the Cartesian interdiction) and an engagement with the constructed complexity of human suffering. The authors look at both mainstream (the discourse of rights) and non-mainstream (ethical relation with unreason as the other of the Knowing Other) efforts to open a dialogue with Unreason.

From the realm of unreason we turn to the realm of potential reason – the realm of individuals who have the potential to reason – the human foetus. Does it have a right, not a potential right, but an actual right to life – the most basic right? Anirban Das in his paper **Choice, Life and the (m)Other: Towards Ethics in/of Abortion** tackles this all important question which has vexed philosophers engaged in the pro choice – pro life debate for decades. Taking into account the techno-scientific practices and instruments that shape the definitions of both, the foetus and the mother, and their relationships, Das goes on to ask how do relations of gender, race or economy take part in the process of formulating positions in the debate. He, however, maintains that a critical look into the terms and metaphors at work in the formulation of the matter in legal, medical, and philosophical texts, as also multiple intricacies of the situation, makes it difficult, if not impossible to comment on the desirability of a 'stance' with regard to the problem – a veritable 'aporia' in the Derridean sense. The question of an ethico-politics of a 'responsibility to the other' complicates the problem even more. A feminist position, sensitive to the predicament of the 'woman' in the gendered and (class, caste or ethnicity) divided society, can hardly afford to remain deaf to the 'call of the wholly other', to the other within her body. The paper tries to work out certain tentative ways to approach the violent impasse for the woman and the social institutions. Falteringly, it tries to whisper some conjectures to 'face' the foetus in a world made by nature and the nurturing and violating acts of science, technology and the (wo)man.

From considering issues related to rights of people who are living on the 'fringe' of society as it were, we turn to the rights of another section of society, the rights of women, a section of society that has not exactly been in the margins but nevertheless has remained deprived of its rightful space. Undoubtedly, the right to be able to live one's life with dignity, free from domination and violence, with full respect for autonomy, is a human right that women all over should be able to enjoy. To this, perhaps, one can add the right not to be

'idolized', a right, the lack of which has been the cause of many afflictions of the Indian woman particularly in ancient and modern Indian society.

How the 'deification' of a woman is in violation of her rights is the subject of the paper by Rekha Basu. In her paper **The Nationalist Project and the Women's Question: A Reading of *The Home and the World* and *Nationalism*** the author takes up some issues of women's rights in the very specific context of the *Swadeshi* movement in India as it is represented in Rabindranath Tagore's novel *The Home and the World* and four essays published under the rubric Nationalism. The author of the paper analyzes the character of the protagonist of the novel Bimala who has been portrayed as a site for two warring masculinities – Nikhilesh, her husband's gently persuasive humanism and Sandip's ultra chauvinistic form of nationalism. Basu sees Sandip's ostensive elevation of Bimala into the essential woman in the novel as a violation of her rights as a person. Her subjectivity, her autonomy is superseded by a grand image of her person as representative of Indian Womanhood. In Basu's opinion both Tagore's Nationalism and *The Home and the World* are anti-people in the sense that they are not sensitive to questions of caste, minority and gender. The nobility of the goal in each case failed to pay attention to the means employed and that was the reason why the projects misfired.

A morally perplexing issue in this context concerns the rights of the future generation, a class of people who do not exist when they are talked about. The issue is interesting because if we can talk about the future generation, we can talk about its needs, its expectations and perhaps, its rights. But, the matter is not so easy when it comes to the question of rights. For, rights as we saw imply obligations. So, if, in any strained sense, the future generation can be said to have rights then we are under an obligation towards it. Nirmalaya Narayan Chakraborty's paper **On the Idea of Obligation to Future Generations** calls into question this very idea throwing us back into the debate whether every right entails an obligation and *vice versa*. In fact, it takes us beyond the debate to consider the question whether not fulfilling this 'obligation' would amount to an immoral act on the part of an individual. This question is important because it impacts many policy decisions that affect people in the future, e.g., what should be our relation towards our environment and natural resources? Should we plunder, or preserve nature for the future generation? The author argues that though there may be other reasons why we, who technically are responsible for the existence of the future generation, may feel inclined to fulfil this causal responsibility, there cannot be any moral obligation to do the same.

According to Chakravarty, an obligation is always to some one, here the future generation. But by definition the future generation does not exist. So, it is only in a vacuous sense that we can talk of an obligation to it. Can we absolve ourselves of the responsibility of the welfare of that which presently

does not exist, but for whose existence we are causally responsible? In a sense, since my own existence in the future is by definition presently non-existent can I say that I do not have a moral obligation to myself e.g., to keep myself safe as far as I can? If we denounce our moral obligation towards the future generation then we must also denounce any moral obligation we have towards our future selves. In that case, all programs that aim to preserve and conserve nature for our own future use and that of the future generation will become futile.

From papers addressing problems and issues relating to certain groups of individuals as rights holders, we turn to a set of papers addressing the question how the conflicts amongst some basic human rights and obligations influence our individual, collective and global lives. The first paper in this group discusses the sensitive issue of the 'right to survive' which sometimes hinges on violating or infringing upon the very same right enjoyed by another individual. Taking up one such instance, Anup Dhar in his paper **Violence – A Right to the Survival of the Self?** raises the question whether this conflict can be solved from within the rights paradigm or whether one needs to move beyond rights to seek an ethics of survival where the desire of the 'self' to survive 'neither devours nor annihilates the other'. The author discusses the views of those who believe that survival is inherently violent – something that impinges on the survival of the other. It is in the very nature of the 'genes' to survive anyhow and therefore, the theory of the survival of the fittest. This idea affects us in the way we organize our lives, creating subjectivities of structures and layers of identity as we go along. An ethics of survival must transcend such pettiness of ideas to enter into the world of peaceful co-existence.

From violence as a 'right' to survival we can turn to violence, which becomes part of a duty – the duty to fight injustice – what is called *dharmayuddha* or *dharmārtha yuddha* ( war for the sake of restoring justice). Here not only is there a right to use violent means for a justified cause, there is a moral obligation to do so, albeit contentiously. Contentiously because it is not altogether clear that the obligation is moral in nature. In ancient Indian society, where the class system (*varna vyavasthā*) prevailed, it was the *kşatriy*a *dharma* to fight against injustice. But this may be regarded merely as a 'social duty' with no moral bindings attached. Just as it was the 'occupational duty' of the Brahmin to study the scriptures and impart knowledge, so, it was the 'occupational duty' of the *kşatriya* to fight for justice. In her paper **'Moral Obligation' to Fight for the Prevention of Greater Calamity: A Debate Between *Sādhārana Dharma* and *Sva Dharma*** Malabika Majumdar traces the meaning of the qualifying term 'dharma' in '*dharmayuddha*' in three different contexts: the context of the Bhagvadgītā, the context of the writings of 19th

century Renaissance thinkers of Bengal and the context of the Gandhian resurrection of the *ahimsā dharma*. According to her, the term lacks uniformity of meaning and application because its link with the conservative meaning of the term '*dharma*' as found in the *Śruti* and *Dharmaśāstras* is not very clear. Both sets of texts formulate rules of *dharma* that have served as quasi-legal rules governing the kinship behaviour till as late as 18th century. Taking a close look at the debate between the notions of *Sva dharma* and that of *Sādhārana dharma*, the author concludes that in all the three contexts there seems to be no conflict between the two, that in some special contexts it becomes part of the duty (moral obligation) of the individual to fight for the prevention of a greater calamity.

Another instance of a conflict of rights is that of the conflict between the right to freedom of information and the right to intellectual property. A context in which this conflict is glaring is the context of Cyberspace or the Internet. The moral issues defining this conflict have been addressed by Maushumi Guha and Amita Chatterjee in their paper **Morality in Cyberspace: Intellectual Property and the Right to Information.** Against the backdrop of a two-fold distinction drawn between rights and goods, the authors argue against the right to profit from intellectual goods which in their opinion is a commodity right. According to them, the creator of intellectual goods has only a moral right over his/her creation, meaning he/she can only lay a claim to be appropriately acknowledged. It would be immoral for the creator or any other 'middle man' to make profit from that intellectual good.

Just as a conflict of rights impacts the life of an individual (my right to life being the reason of another's death) or a collective (the collective of internet users), it also impacts life 'globally'. R. P. Singh in his paper **Globalisation and Human Rights** tries to reassess the realm of human rights in the wake of globalization. His contention is that 'globalization' which has affected human life in multiple ways has also given rise to a dilemma. On the one hand it creates obstructions to the progress of human rights and on the other hand it enhances sensitivity towards their practice. The author feels that globalization of technology, trade and commerce and the optimization of these factors will not be of much help unless we revitalize local identities. At the same time he admits that globalization provides avenues to enhance people's sensitivity to local identities. According to Singh, globalization hinders the rightful expression of human rights at two levels – at the top (where powerful nations are placed) and at the bottom (where the weaker nations are placed). As far as India is concerned, the author feels that there is a need to expose our selves to our own cultural traditions in the context of India's all round development in the global market. He rejects the idea that the State has withered and feels that it is the responsibility of the State to come forward and provide a framework