



LEGAL DIMENSIONS OF PARAMETERS OF LIBERTY IN INDIAN CONTEXT: AN OVERVIEW

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Cite This Article: Dr. Amitava Basu, "Legal Dimensions of Parameters of Liberty in Indian Context: An Overview", *International Journal of Current Research and Modern Education*, Volume 2, Issue 2, Page Number 183-184, 2017.

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Abstract:

Liberty is an essentially a political and legal term which connotes protection from state interferences. In the Indian context the legal dimension can be found in Article 21 of the Constitution which secures the right to life and liberty. The Supreme Court verdict of August 2017 has not only widened the legal dimension of liberty, by making right to Privacy, its intrinsic part but it has other implications as well.

Key Words: Legal, Liberty, Privacy, Rights& Individualism

Introduction:

The term liberty comes from a Latin word, Liber which means to be free. Authors like Arendt having been influenced by political scientist like Pit kin view liberty as protection from state interference. Authors like Cranston concur with Berlin that liberty tends to be used in legal political context. Thus it emerges that liberty is basically a political and legal concept which implies protection from state interference.

Background:

The roots of liberty can be traced back to John Locke who is regarded as the father of liberalism. Locke's demand was that certain spheres of private interest should not only be regarded as inviolable but also state should safeguard the rights of the subjects in this sphere. Locke gave the concept of natural rights of an individual with which each person is born and which are not the gifts of the state. In Locke's opinion the state is bound to protect these natural rights of the individuals and these natural rights include the right to life liberty and property. Though there have been many who have made contribution to the cause of liberty but John Stuart Mill took the concept of liberty to another dimension. In his book, "On Liberty" Mill has divided human actions into two spheres, self-regarding and other-regarding sphere. The other-regarding sphere is one where individual actions influence other people and this sphere can be controlled by state or society. However, self-regarding sphere is one where individual actions influence himself alone and there is no impact on any other person. In Mill's opinion, over oneself and his own body and mind, the individual alone is sovereign. It is this sphere which neither state nor society can control and it remains totally immune from the interference of state and society. In this backdrop, the present paper throws light on the legal dimension of liberty which can be deciphered from Article 21 of the constitution which states that, "no person shall be deprived of his life or personal liberty except according to the procedure established by law". The importance of Article 21 has been emphasized by justice Mukherjee in the following words, "the fundamental rights not merely imposed limitations upon the legislators but they serve as checks on exercise of executive power as well and in the matter of depriving a man of personal liberty, checks on the highhandedness of the executive in shape of preventing them from taking any step, which is not in accordance with law, could certainly ranked as fundamental rights. In the constitution of various other countries, the provisions relating to protection of personal liberty are couched very much in the same language as in Article 21. It is all a question of policy as to whether legislature or the judiciary would have the final say in such matters and the Constitution makers of India, deliberately decided to place these powers in the hands of the legislators. This legal dimension of liberty has been further widened recently with the verdict given by the Supreme Court that right to Privacy is a fundamental right. On August 24, 2017 a nine judge constitution bench unanimously ruled that right to Privacy was a fundamental right while asserting that the state could not dictate what people should eat or wear or with who (sic) they should associate with personally, socially and politically. Justice J. Chelameshwar said, "I do not think anybody in this country would like to have the officers of the state intruding into their homes or private property at will or soldiers quartered into their houses without their consent". However, like all other fundamental rights, the right to Privacy is subject to reasonable restrictions. Besides this, the Court has contended that the right to Privacy can be invoked only against state and its instrumentalities and not against private individuals. The Supreme Court's verdict of August 2017 overruled the earlier constitution bench judgement- M. P. Sharma vs Satish Chandra (8 Judge Bench) 1954 and Kharak Singh vs State of U.P (6 Judge Bench) 1964 that said a citizen had no fundamental right to Privacy. However, the important point to be noted is that the Supreme Court has not declared the right to Privacy as an independent fundamental right but this right is protected as an intrinsic part of the right to life and personal liberty under article 21 as part of freedom guaranteed by Part III (chapters on fundamental rights of the constitutions). Therefore, it is understood that right to Privacy actually falls under the ambit of right to freedom which includes Article 19, 20, 21 and 22 and to be more specific, the right to Privacy falls under Article 21 of the Constitution

which secures the life and personal liberty of the individual. It can be said that the scope of right to freedom or to be more specific the scope of article 21 has been widened. The specific term personal liberty now in unambiguous terms includes the right to Privacy. Thus the legal dimension of liberty has been widened and given a new meaning by the 2017 ruling of the Supreme Court. Amongst liberals' thinkers, it was J.S. Mill who had taken the concept of liberty to zenith and the 2017 ruling of the Supreme Court has affirmed what J.S. Mill had said regarding the self-regarding sphere. The self-regarding sphere of J.S. Mill is nothing but the private sphere of an individual which in the opinion of the Mill is beyond the reach of any encroachment by the state or society. However, in this context, it must be said that while Mill intended to safeguard the self-regarding sphere of the private sphere of an individual from both state and society, the Supreme Court has made it clear that the right to Privacy can be invoked only against state or its instrumentalities and not against the private individuals. Thus the Supreme Court ruling of 2017 does not grant the right to Privacy against society. It can be said that Mill's self-regarding sphere has been partially adopted in the Indian context.

Conclusion:

It must also be mentioned in this context that the verdict of the Supreme Court in 2017 which made the right to Privacy as a fundamental right, was possible only because the citizens filed a petition in the court that the Government made Aadhar cards mandatory for every sphere of life which requires the citizen to part with their personal information. After the Central Government in July 2017 admitted in the Parliament that 2010 websites of Central and state Government departments had been found to be displaying personal details and Aadhar numbers of the beneficiaries', several citizens regarded it as a breach of trust and approached the Apex court to make the right to Privacy a fundamental right. It can thus be said that the Indian society is already moving towards individualism and liberalism as championed by Mill and the legal dimensions of liberty have been widened and its social parameters are also broadened with citizens becoming more conscious of their individual rights. As Thomas Jefferson rightly said, "Eternal vigilance is the price of liberty".

References:

1. Sushila Ramaswamy (2003), "Political Theory Ideas and Concepts", Macmillan, Delhi p. 252.
2. Maurice Cranston (1964), Western Political Philosophers, Bodley Head, London, p. 57
3. Sharma Savera (2014), "Euthanasia in the light of Hinduism and Mill's Liberalism", Paripex, Indian journal of Research, Gujarat, vol.3, issue 9 September, pp.44-46.
4. M.V. Pylee (2000), "India's Constitution" S.Chand New Delhi p.72
5. The Telegraph, August 25, 2017.
6. The Telegraph, July 21, 2017