



Liberty at midnight: A dynamic approach!

Mohit Singhvi

Research Scholar, Faculty of Law, J.N. Vyas University, Jodhpur, Rajasthan, India

Abstract

The following article details about the advancement required for liberty of an individual to its maximum potential. The concept being a stagnant approach with dynamic societal environment, it throws light upon legislative taboos and the urgency to provide legal framework and the controversial, complexity and tangled aspects of the rights of a holder. The achievement of Honourable courts in expanding and narrowing of rights while exhibiting plethora of suits before them have been exemplary. With the elaboration of the legal and philosophical foundations of the term 'liberty', and landmark judgments related to the same, we can say that Liberty is not as we understand it but liberty is as it evolves.

Liberty at its dawn is setting for a new sun to rise, with arrival of new advancements in every field possible and the birth of new legislations to control, protect and protection for rights, remedies and remunerations. Liberty not only is inclusive of freedom to do as one wishes according to the law being in force but also to do what law in force does not cover, limited to a group, sect, age, profession, or region. The tree of liberty should be planted, and replanted with the growth and development of human race. The mere existence of right does not fulfil the purpose of its existence, unless effectively exercised. There should be evolution of liberty along with integration of biological concepts related human and societal developments. The law must meet the challenges and needs of modern society taking into account not just social issues but developments in medicine and technological innovations both of which raise moral as well as legal issues.

The risks of lack of legislative consequences include huge impact on justice, equality and freedom of an individual in a democratic country. In order for the law to remain relevant, the law must uphold and reflect the values and beliefs of society in present time. Change in law reflects the constantly change in the working operations of the legislature. Liberty is not only a concept for the judiciary but also an approach connected to legislation. The true essence of liberty lies in its fundamentalism and theories. Liberty is not conducive to a life of feckless ease. The ideas of Liberty have changed with the changed expectations towards our legal system. Like law, which is never static nor can be the rights and rules which the law provides and requires be reinterpreting and redefining. The author focuses that the law cannot remain reliant on tradition and sometimes there is an urgent need for either new laws or changes to the older laws.

Keywords: liberty, midnight, law of liberty

Introduction

Law as a protector and provider of fundamental rights need to ensure safeguards for atrocities against basic human injustice. The law must be capable to respond to situations and scenarios of the changing society with the advent of technology and growth of mankind. Law needs modification as to reflect the current needs of technological society and its values. It's not only necessary that the law needs a change, but it also the way law by which the law is administered, requires a change. Growing of technology has resulted in growth of harm inventories, changing law, perspectives and is necessary for protection of public interest. It is essential that law changes and expand to align with ongoing trends along with pre-emption of unforeseen situations.

After all, the Constitution is meant to facilitate the working of the Government and the administrative and other structures of this country. It is meant to be not something that is static and which has a static form in a changing world, but something which has something dynamic in it, which takes cognizance of the dynamic nature of modern conditions, modern society [1]. Midnight liberty as the name suggests is the transition time from one event to another because of the great consequence of natural facts and something which did not happen over a period of time

and then suddenly transformed with a blink of any eye. The Constitution itself sets out principles for an expanding future and is obligated to endure for future ages to come and consequently it has to be adapted to the various changes that may take place in human affairs [2]. There are times when sun sets, to rise again, same way every process in biological life wears and tears which causes changes in social adjustments. Hence the rules, rights and privileges also suffer the efflux of time, as the constitution along with prominent legislations are 69 years old with dynamics to cover centuries, but not every implication arising could be solved with it, no matter how farsighted one can think beyond conspiracies of time and change.

Those rights which are provided under the Constitution of India, 1950 have been extended, expanded and elaborated under Article 141 in various forms by the Hon'ble Supreme Court, over the past 70 years but such extensions require severe expansions now as the age of technology modernized every theory of modern justice, equality and liberty. The definitions, theories, concepts paved way for an interesting new want for life and living a life.

The laws enacted before concentrated on providing security for life, discrimination, uplifting women and backward classes, voting rights, sustainability for poor, growing economic ability of country, agricultural as the concept of

liberty and rights for its subjects but with radical western influences and rise of literacy, subjects of nation focused on rights never existed before as results of technological advances of society and culture with the perspectives to change taboos of prevailing views.

The modern concepts of advanced liberties, equalities, and privileges are yet under construction for some have paved their way through highways and some stay stranded in busy crowded narrow roads. With reference to changing of Indian cultural resultant of two aspect of which one is the influence of western civilization through ubiquitous media and second is hostility to age old orthodox rules and regulations which raises questions as to common practices followed and to status not commonly recognized. These are the contemporary liberty that people ask for, as change is only the constant contrivance in universe.

While giving an extended meaning to the term 'liberty' which comprises of the humane 'life' not mere animal existence, there have been recent remarkable incidents which stared and gave an altogether different angle and understanding of the term liberty. Some of which are rights of LGBTQ, right to enter in temple during menstruation age, Rights to communalism, Right to cohabitation, and Rights of animal, along with others which can be summarized as taboos of Indian legislations.

All the above-mentioned fall in purview of no specific acts made for them, or any clear mentions in other enactments for their rights and protection of such rights. But the Indian judiciary does a sterling effort to masterpiece the same, with their brilliance and argumentation of understanding human rights and by virtue of binding force of the judicial precedents under Article 141 of the Constitution of India, 1950.

Communalism has spread widely in their nature and geographical forms lately. It is unfortunate that apart from the riot that has taken place, the country witnesses' religious fundamentalism, hate in education institutions, communal violence, social and economic boycotts, ghettoisation, victimization and stigmatization in its ugliest form and regarded as the factor undermining the secular fabric of India.

The Constitution looked to the future with a commitment to social reform and change [3]. Therefore, the judicial responsibility becomes vocal and imperative. Nonetheless, the elementary subject always remains unanswered as to permissible limit of judicial hands in bringing social reform and change. Touching upon this aspect, Kerala High Court [4] has made a pertinent observation:

Courts interpret law and evolve justice on such interpretation of law. It is in the domain of the legislature to make law. Justice has become elusive for Muslim women in India not because of the religion they profess, but on account of lack of legal formalism resulting in immunity from law.

Fig 1

Convincingly, majority in *Shayara Bano v. Union of India* [5] by 3:2 expressly held that triple *talaq* is invalid relying upon the decision of this court in *Shamim Ara v. State of UP*

[6] and earlier decisions of Guwahati High Court [7]. This marked the advent of basic rudiments of life and liberty even in professing the religion giving a whole new approach towards equality and liberty of the muslim women. Indian constitution gives every Citizen the right to profess his religion without any unjustified hindrance and tolerance for every faith practiced in country without having any religion of its own. In the times after 1994, communalism have spread itself like virus and is a dividing line between the era of secularism followed and concept of secularism followed with twists and end, from the *Babu Rao Patel's case* [8] where a man was prosecuted on grounds of being communal to Muslims and *Emmanuel's case* [9] for protection of religious sentiments along with respect of nation anthem, to changing times of Babri mosque, to the case of validating the judgment of Gujarat high court on cow slaughter leaving many Muslim butchers barren for livelihoods.

For some people not just proving their talents, abilities and intelligence is enough, they have to prove for their existence, such is the life's of LGBT community, which has changed overnight with the latest waiver of the colonial era law of Section 377, prohibiting gay sex being declared unconstitutional by the Hon'ble Supreme Court in *Navtej Singh Johar & Ors. vs. Union of India* [10] as a part of human race as the members demand their part if life where they can live in shared domestic household in marital ties, can adopt and undertake permitted surrogacy. With the concept of personal life and liberty being developed to this extent, the community *de facto* should be provided with such rights. The basic question arises is with regard to equal treatment as fellow citizens of the same country for basic human rights, the discrimination based upon sexual orientation is violative of Article 14, 15, 19 and 21 or not?. The answer is in affirmative and by way of the aforesaid judgment, the people belonging to LGBT community in India are given unlimited rights and by decriminalizing Section 377 it paved a way for two fold aspect of marriage and adoption for the community as the social aspect was well established the legal aspect which bestows rights such as inheritance, maintenance, purchasing property and raising a child.

The recent and most important additions of apex court in the significant decision of constitution bench on banning entry of women in menstruating age into temple. Susan B. Anthony, known for her feminist activity, succinctly puts, "Men, their rights, and nothing more; women, their rights, and nothing less." The age old nearly 800 years old restriction was waived off with the contention that "Can a religious practice run contrary to constitution?". There is no hesitation in saying that such an exclusionary practice violates the rights of women to visit a temple to freely perform rituals they have right to. The supreme court struck down the rule at Sabarimala temple in the case of *Indian Young Lawyers Association & Ors. vs. The State of Kerela & Ors.* [11], the women pleaded that they were allowed in other Ayyappan temple and such rule was absurd and inconsistent and menstruation is not impure. The battle was fought for the grant of liberty to enter, perform rituals to enter the temple and was considered to be violative of Article 21 of the Constitution of India, 1950. The rule was not only prejudicial to women's right to pray but also deprivation of their personal liberty as a group in whole, to which "All persons are equally entitled to freedom of conscience and the right to freely profess, practice and

propagate religion. This means your right as a woman to pray is not dependent on a legislation. It is your constitutional right," Justice Chandrachud said. The recent judgment mentioned is only the start of a plethora of changes required for women discriminated and deprived of their liberty and rights.

Not only this, in India, a living arrangement between two unmarried couple involved and living in closed intimate relationship were legally considered void-ab-initio, but in a judgment in 1978 in the case of *Badri Prasad v. Director of Consolidation* ^[12], such relationships were validated for the first time, only if the requisites of a valid marriage are present such as sound mind, adult and consent for the same. The taboos of pre marital sex and live in relationships have faded away with the slowly widening up of mindsets of the orthodox society yet the atrocities faces have not decreased as they lack legality. There is no particular enactment related, nor definition of such relationships in country. However, the judiciary widening the scope has ruled out many judgments by interpreting already existing legislation and is a judge made law in consonance with Article 141 of the Constitution of India, 1950.

Providing people with rights and liberties for their life is not enough providing with Protection of such rights and liberties is also critical. The judgment passed in the famous case of *Indra Sarma v. V.K.V. Sarma* ^[13] and relying upon the verdict of *D. Velusamy v. D. Patchaiammal* ^[14], the apex court segregated five types of living together arrangements, not only this but also held that but such relationships also fall in the ambit of Section 2 (f) of the Protection of women against Domestic violence. Many times they are conceived valid marriages if for a long period but all facets of the relationship are to be contemplated before arriving at any conclusion.

Judiciary is neither expressly promoting such concept nor prohibiting such sort of relationships. It is, however, just concerned that there should not be any miscarriage of justice. It ends up plainly obvious that the Indian judiciary is not prepared to treat all kind of living relations as akin to marriage.

In the recent verdict, the Hon'ble Tripura High Court ^[15] was considering the issue relating to right to sacrifice animal in temple and while relying upon the earlier judgments passed in *Animal Welfare Board of India vs. A Nagaraja & Ors* ^[16], and in *Chief Secretary to the Government, Chennai, Tamil Nadu vs. Animal Welfare Board & Ors* ^[17]. The court delivered an important judgment banning the sacrifice of bird and animal in temples of state and discerning that " sacrifice of an animal not being an essential part of religion is also violative of Article 21 of constitution". The bench brought to focus many articles embedded in the constitution calling citizens to exhibit compassion towards animals and develop temper of humanism towards them as animals also have a fundamental right to life.

Succinctly put, it can be concluded that the liberty remains enigmatic. Though being a fundamental right have a distinctive profusion of rights that it manifest. The whole subject of liberty is complex, broad and controversial. Like every other trait of human, political and judicial branch, it grows for some which have attained the recognition and some awaiting advancement. With the elaboration of the legal and philosophical foundations, the term liberty permits to make such comments on such modern political and judicial context. The requirement of different array of

legislations to fit in different legal and constitutional context that term liberty has acquired is vital and is the need of the hour. The courts have played a significant role in the recent past and expanded the scope of the term liberty and are now incumbent upon the Legislature to be dynamic in approach and legislate laws while keeping in mind the dynamic approach so adopted by the courts of law.

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