

Pro-liberty: A pulsating approach

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"Do not let your fire go out, spark by irreplaceable spark in the hopeless swamps of the not-quite, the not-yet, and the not-at-all. Do not let the hero in your soul perish in lonely frustration for the life you deserved and have never been able to reach. The world you desire can be won. It exists, it is real, it is possible, it is yours."

—Ayn Rand

To me, liberty means and includes all that a human can and want to do without harming others. Justice Das observed that "personal liberties may be compendiously summed up as the right to do as one pleases within the law¹." The Constitution under Article 21 treats liberty of the individual as sacrosanct. Right to liberty has none of the fetters of other fundamental rights, but laws that can deprive an individual of liberty must be fair and pale. In the case of *Munn v. State of Illinois*², the US Court referred to the observation of Justice Field, wherein he stated that by the term 'life' as here used something more is meant than a mere animal existence.

Liberty as we know it and as pervaded upon us by Apex Constitution is a derivation of the social acts of life, laughter, labour along with respecting sanity of others with acceptance and interference summed up as civil nature of liberty. With extensive growth of law, the perennials of liberty with strict and narrow interpretation along with implementation of approach to deference to its agencies have deviated from its judicial branch and taken a completely dynamic approach.

The French Revolution's "Declaration of the Rights of Man and Citizen" came close to capturing the idea when it said that "Liberty consists in the ability to do whatever does not harm another; hence the exercise of the natural rights of each man has no other limits than those which assure to other members of society the enjoyment of the same rights." The understanding and conceptualization transpires the high held respect of the human being at that time and hence has fostered the economic growth of the European Union and other parts of the world excluding a herd which still enjoys ascendancy and dominance thereby giving less room to the liberty and more to the custom and tradition, although inhumane.

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Pro-liberty is nothing more than a situation out of comfort zone, when the liberty implored for is impediment to the ease of provider. Its real test is when it allows people the rights when they are offensive and hindrance in ways associated. Liberty in its niche sense does not mean a right as obligation only when the favour of provider is initiated; it is also to permit it when it is spared by him. Pro-liberty as a rainbow in all its true colours comes as a band not individually but for every aspect, aspiration and condition for every right holder as any private individual comes with the terms and conditions that is deemed fit with him and alike. The pro-liberty basically mean to stay with any one as an adult, choice to live in shared household without marriage, respecting the gender choices, respecting the right and liberty to love and marry whomsoever they have to.

The Supreme Court of India has also shown its dynamic and activist approach in compensatory jurisprudence which majorly focused on the pro-liberty dogma, understanding and not limiting the meaning of the term 'liberty' to a restricted one. For the first time in *Nilabati Behera v State of Orissa*³ the Supreme Court directed the respondent i.e. the State of Orissa to pay the sum of Rs. 1, 50, 000 to the petitioner and a further sum of Rs. 10,000 as to be paid to the Supreme Court Legal Aid Committee while holding the right to compensation as a fundamental right under Article 21 of the Constitution of India.

Earlier in *Khatris & Ors. vs. State of Bihar*⁴ the Hon'ble Supreme Court held that the right to free legal service is clearly an essential ingredient of reasonable, fair and just procedure for a person accused of an offence and it is implicit in the guarantee of Article 21. In *Rudal Shah vs. State of Bihar*⁵ the Hon'ble Supreme Court awarded a sum of Rs. 35,000/- to

the petitioner who was kept in jail for 14 years despite his acquittal order.

In *Chairman, Railway Board vs. Chandrima Das*⁶ the employees of the Railway Board had gang raped a Bangladeshi woman for which the Central Government was directed to award compensation under Article 21 of the Constitution to Smt. Hanuffa Khatoon, who was not the citizen of this country but came here as a citizen of Bangladesh was, nevertheless, entitled to all the constitutional rights available to a citizen so far as right to life was concerned. She was entitled to be treated with dignity and was also entitled to the protection of her person as guaranteed under Article 21 of the Constitution of India, 1950.

Liberty is not only a narrow concept which is applied with suitable conditions of the provider but also with discomfort of new changes. The pro-liberty approach not only focuses on the implementation of the existing civil liberties but enlargement of other suppressed choices and voices. Rights exist simultaneously with the people of nation and everyone is obligated to their share to others. As any private individual using his right with living in privacy and safe environment he cannot deny others with their right to reside with anyone they desire. For every private individual, it owes the difference between them and also the tolerance for choices that they partake.

In re: Noise Pollution, the right to life enshrined in Article 21 has been liberally

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interpreted so as to mean something more than survival and mere animal existence. It therefore includes all those aspects of life which go to make a man's life meaningful, complete and worth living. Article 21 is to be read not only with directive principles but also fundamental duties⁷. In *Parmananda Katara vs. Union of India*⁸, the Supreme Court pronounced that preservation of life is of paramount importance. Once life is lost, *status quo ante* cannot be restored. It is the duty of the doctors to preserve the life without any discrimination and treatment cannot be based on the race and sex, thereby giving a pro-liberty interpretation of Article 21.

Pro-liberty is like constitutionalism but should not be confused with liberalism. In its basic sense what is derived as expected results from both are common interest of distinctive ideologies arising out of straight jacket rules and regulations formulated and how they are treated with the existing machinery and limited scope for unlimited justice. Pro-liberty as constitutionalism focuses is the concept of elaborating the powers conferred upon the authority limited by a body of fundamental law and allowing complex of ideas, attitudes and perspectives to stand in para materia to shoulder as any existing right.

In a brief example of striking down of the colonial era law for homosexuality aka Section 377 of the Indian Penal Code, 1860, by the Hon'ble Supreme Court in *Navtej Singh Johar vs. Union of India*⁹, the bygone era for repressed non-heterosexuality aging

from colonial times was also a far cry and considered to be much consternation to the 'statutory conscience rights', the foundation of which was laid down by the Hon'ble Supreme Court in *K. S. Puttaswamy vs. Union of India*¹⁰. Pro-liberty in all senses, plays a vital role when it urges the authority to not only provide in times of comfort but also discomfort the right and liberties of individuals. The pro-liberty approach can be seen from the very first line of the judgment which states the great German thinker, Johann Wolfgang von Goethe had said, "I am what I am, so take me as I am".

According to Aristotle, "if we resign ourselves to a world in which the collective practice of self-rule is no longer experienced in any tangible way, we will find the innate human desire for it expressing itself in debased and perhaps dangerous ways, including in wild crusades for amorphous "change."

Regardless of anything else, the Indian judicial system has warned the idea of liberties and civil rights of the alternative sexuality and non-conforming gender identities. Hence, to only provide an umbrella not only when the sky is pouring but also when the sun is burning is essential.

Pro-liberty is the professional approach as to the casual approach to attainment of justice, conforming to the technical and ethical standards of liberties and civil rights without limiting and sidelining the settled laws and principles; only to the extent it violates the dynamics of liberty. It requires implementation of the special training acquired by the authorities by virtue of education and professional experience in understanding the human and the idea behind humanity.

Pro-liberty in its core guarantees the rights *prima facie* available along with rights under the shadow of available rights, to bifurcated as to what is a right and what is an

extended version of balderdash talk of plots. In brief the case of *Sodan Singh vs. New Delhi Municipal Corporation*¹¹ it was held that Article 19 extends the right to carry on a trade and business as an embedded right but the right to carry the same at a particular place is not included in the concept of life and personal liberty as enshrined under Article 21 of the Constitution of India. The contention made was that it would be absurd for the administration to allow the vacuous plea of vendors and hawkers for carrying on trade or business on paved roads it would not only muddle traffic and crowd on busy narrow crowded roads. Also in *Secretary, State of Karnataka vs. Uma Devi*¹² the court rejected the plea that right to employment in the present economic scenario cannot be made part of life and personal liberty.

Both the above cases distinctly distinguish between as to what rights can be provided when with hindrance to comfort and what rights cannot be even if suitable to comfort. Behind every struggle for change there is resistance, protest, thinking and change then revolution and in parallel is the approach to provide rights and liberties proficiently. Whenever liberty is taken into consideration it is linked with positive enjoyment of various social, political, economic rights and privileges. What liberty in its true virtue does not allow pro-liberty is also barred from the same. The positive enjoyment of one's right is the capacity to act upon one's free will and this gives one entitlement; this entitlement gives the person to enforce his rights and privileges along with freedom and power to do what one pleases.

Over the course of Indian history, the conception of liberty is on fence with several interpretations and has been posed against one another.

It is the real test of law keepers who decides if the ambit of liberty extended falls within the permissive standards or not as the law makers have already made the law and the law keepers are deciding upon it. When such question arises as to which requires the extension of boundaries of personal life and liberty to decide as what is included and what is not, the proficiency and adaptive approach is scanned and is, per se the test of vulnerability of the foundation of laws of that nation. India, as such stands amidst the pro-liberty thinkers and the judicial approach has ex-facie opened the Pandora of extensible rights, many more to be added. Pro liberty approach reflects the possibilities of constructive confidence in modern civilization by advances in scientific, social and economic sciences. Both the difference of ideology and habits present in society pushes against the established aspects of life and freedom.

The Constitution and the law affords with protection of private decisions as to birth, marriage, contraception, adoption, family relationships and education matters, these are the toughest and most important matters one takes decisions about in their life duration and act as choices central to personal freedom and dignity, along with being central



to the liberty. Liberty as its being is the right to define one's own interpretation of life, morals, ideologies, meaning of universe and mystic human existence. Pro-liberty focuses on the regular updates on the existing law and progressive citizen development. It allows the interpretation and examination of liberty to be dynamic and dialogic. The most important is to keep the main founders vision and ideas of politics same. According to Aristotle, " if

we resign ourselves to a world in which the collective practice of self-rule is no longer experienced in any tangible way, we will find the innate human desire for it expressing itself in debased and perhaps dangerous ways, including in wild crusades for amorphous change. Liberty is precious and necessary in our time, no matter how small." Pro-liberty as a concept details that as long as the courts remain dedicated to their understanding they will attain maximum pro-liberty. □□

Endnotes

1. *A.B.S.K. Sangh vs. Union of India* A.I.R 1981 SC 298.
2. 94 U.S. 113 (1876).
3. (1993) 2 SCC 746.
4. (1981) 1 SCC 627.
5. (1983) 4 SCC 1.
6. (2000) 2 SCC 465.
7. AIR 2005 SC 316.
8. AIR 1989 SC 2039.
9. (2018) 1 SCC 791.
10. (2017) 10 SCC 641.
11. (1989) 4 SCC 155.
12. (2006) 4 SCC 1.

"If you look at what you have in life, you'll always have more. If you look at what you don't have in life, you'll never have enough."

-Oprah Winfrey