

CIVIL LIBERTY: A CONTEMPORARY ANALYSIS

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ABSTRACT

Civil Liberties or Fundamental Rights, as they are known in India, are the basic rights given to the people of a country by the respective governments. The Civil Liberties ensure basic but essential rights like right to speech and expression, religion, assembly, privacy, security etc. and protect the interests of an individual from another or the government.

In India, the Fundamental rights give the privilege to an individual to approach the High Courts and the Supreme Court if his basic rights are being infringed. Civil Liberties ensure a smooth functioning of the state and maintenance of order as everyone's rights are protected unless they are interfering with those of other.

In this article, the authors have attempted to show the importance of civil liberties by analyzing the position of civil liberties as promised for the first time in the Magna Carta of 1215 to the present status of Fundamental Rights that both the respective Governments and international organizations like the UN promise to an individual. A number of cases cited in this article help in understanding that how at regular intervals the Judiciary has come to the rescue of civil liberties of an individual from being infringed arbitrarily.

This article also deals with the international scenario concerning the civil liberties and their present global status and how different governments protect the interests of their people. An analysis of the situation in major countries like USA, France and China help in developing a better understanding of the same. The authors have also tried to answer a major question that whether the current Indian government is a threat to Civil liberties analyzing the present Modi government and the stand that the Bhartiya Janata Party has taken in the past.

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INTRODUCTION

As William Douglas said, “the liberties of none are safe unless the liberties of all are protected.” Civil liberties or personal freedom are personal guarantees and freedoms that the government cannot abridge, either by law or by judicial interpretation, without due process.² According to Britannica encyclopedia, civil liberty is the freedom from arbitrary interference in one’s pursuits by individuals or by government. The term is usually used in the plural. Civil liberties are protected explicitly in the constitutions of most democratic countries.³

Though the scope of the term differs between countries, civil liberties may include the freedom from torture, freedom from forced disappearance, freedom of conscience, freedom of press, freedom of religion, freedom of expression, freedom of assembly, the right to security and liberty, freedom of speech, the right to privacy, the right to equal treatment under the law and due process, the right to a fair trial, and the right to life. Other civil liberties include the right to own property, the right to defend oneself, and the right to bodily integrity.⁴

Numerous contemporary states have a constitution, a bill of rights, or similar constitutional documents that identify and look to ensure civil liberties. Different states have sanctioned similar laws through an assortment of lawful means; including signing and confirming or generally offering impact to key conventions, for example, the European Convention on Human Rights and the International Covenant on Civil and Political Rights. The presence of some asserted civil liberties involves question, similar to the degree of most civil rights. Dubious cases incorporate property rights, reproductive rights, and civil marriage. Regardless of whether the presence of harmless wrongdoings encroaches upon civil liberties involves debate. Another matter of open deliberation is the suspension or modification of certain civil liberties in times of war or highly sensitive situation, including whether and to what degree this ought to happen.

The formal idea of common freedoms is dated back to Magna Carta, an English legitimate sanction concurred in 1215 which in turn was based on previous reports, namely the Charter of Liberties.

² https://en.wikipedia.org/wiki/Civil_liberties (last visited June 17, 2017)

³ <https://www.britannica.com/topic/civil-liberty> (last visited June 26, 2017)

⁴*supra* note 1

These Fundamental Rights, epitomized in Part III of the constitution, ensure freedoms with the end goal that all Indians can lead their lives in peace as natives of India. The six fundamental rights are right to equality, right to freedom, right against exploitation, right to freedom of religion, cultural and educational rights and right to constitutional remedies.⁵

These incorporate individual rights common to most liberal vote based systems, consolidated in the principal rule that everyone must follow and are enforceable in a court of law. Infringement of these rights result in punishments as recommended in the Indian Penal Code, subject to discretion of the judiciary. These rights are neither unrestricted nor insusceptible from constitutional amendments. They have been aimed at overturning of pre-autonomy social practices. In particular, they brought about abolishment of untouchability and forbid segregation on the grounds of religion, race, caste, sex, or place of birth. They prohibit human trafficking and unfree labor. They ensure social and educational rights of ethnic and religious minorities by enabling them to save their dialects and regulate their own particular educational institutions.

All individuals, regardless of race, religion, caste or sex, have the privilege to approach the High Courts or the Supreme Court for the implementation of their basic rights. It is redundant that the bothered party must be the one to do as such. Out in the open intrigue, anybody can start suit in the court for their benefit. This is known as “Public Interest Litigation.”⁶ High Court and Supreme Court judges can likewise follow up on their own on the basis of media reports.

The Fundamental Rights underline equality by ensuring to all nationals the access to and utilization of public institutions and securities, independent of their background. The rights to life and individual freedom apply for people of any nationality, while others, for example, the right to speak freely and expression are pertinent just to the nationals of India (including non-resident Indian citizens).⁷

Basic Rights principally shield people from any discretionary State activities, yet a few rights are enforceable against private people too. For example, the constitution nullifies untouchability and disallows begar. These arrangements go about as a check both on State activity and activities of

⁵Constitution of India-Part III Fundamental Rights

⁶*Bodhisattwa Gautam vs. Subhra Chakraborty*; 1995 (This was the case where public interest litigation was introduced , date of ruling 15 December 1995)

⁷Tayal, B.B. & Jacob, A. (2005), *Indian History, World Developments and Civics*, p. A-25

private people. Basic Rights are not supreme and are liable to reasonable limitations as essential for the insurance of national intrigue.

In the *Kesavananda Bharati vs State of Kerala* case, the Supreme Court decided that all provisions of the constitution, including Fundamental Rights can be amended.⁸ However, the Parliament can't change the essential structure of the constitution like secularism, democracy, federalism, division of forces. Regularly called the "Fundamental structure doctrine", this decision is generally viewed as an essential part of Indian history.

In the 1978 *Maneka Gandhi v. Union of India* case, the Supreme Court developed the doctrine's significance as better than any parliamentary legislation. According to the decision, no act of parliament can be viewed as a law in the event that it abused the essential structure of the constitution. This landmark guarantee of Fundamental Rights was viewed as a one of a kind case of legal autonomy in saving the holiness of Fundamental Rights.

The Fundamental Rights must be modified by a constitutional amendment; henceforth their incorporation is a check on the executive branch, as well as on the Parliament and state legislatures.⁹ The burden of a highly sensitive situation may prompt a brief suspension of the rights given by Article 19 (including freedoms of speech, assembly and movement, etc.) to save national security and public order. The President can, by order, suspend the constitutional written remedies as well.

It is surely satisfying to see Indians showing our flag with satisfaction. However the flag is just an image of our country. It is our Constitution that we ought to now stick to. We should not be so anxious to exchange civil liberties for a deception of safety. The government can't secure us. Under the best situation, law requirement, intelligence and the military may stop 99.9 percent of fear based terrorist attacks. Indeed, even in prisons where civil liberties don't exist, frantic, vicious men discover approaches to cause hurt. Putting the entire nation under lockdown is not going to be any more powerful. Rather we ought to be hoping to enable ordinary citizens to

⁸*Kesavananda Bharati vs. State of Kerala*; AIR 1973 S.C. 1461, (1973) 4 SCC 225 - In what became famously known as the "Fundamental Rights case", the Supreme Court decided that the basic structure of the constitution was not amendable.

⁹*supra* note 6

secure themselves and each other. Confining our civil liberties will lessen the capacity of the Indian individuals to react adequately to dangers. It won't be with firearms.

We are at war against terror; the thinking goes, so certain liberties must be yielded. It's a similar thing individuals said when similar issues emerged under the Bush regime. It doesn't appear to make a difference to them that the "war" is open-ended and for the most part allegorical, implying that we can expect no formal surrender point when our rights will be reestablished. For what it's worth, we've seen similar irresoluteness toward the abundance of another open-ended figurative clash, the War on Drugs. It has likewise played havoc with fundamental civil rights, the courts basically giving police free reign to stop whomever at whatever point without requiring a warrant or a reason.

FEW IMPORTANT CIVIL LIBERTIES

1. Right to Life

It is the most fundamental of every single civil right. Man should live first before he can do anything. The State must make sufficient provision for the individual security of its subjects. This privilege additionally suggests the privilege to self-defense and prevention of suicide.

2. Right to Liberty

This right suggests free movement. Each native has complete freedom to move within the State. None can be confined discretionarily without trial and there must be provision for review of wrongful arrest: In India on the off chance that anyone is arrested by the government; he should be conventionally put before the closest magistrate within 24 hours of his arrest.

3. Right to Property

Property in democracy is viewed as a sacrosanct foundation. It creates a feeling of ownership and a motivating force to work. It is reward for one's capacity and is necessary for the benefit of man and society. Machiavelli once stated, "Man may forget the murder of his father but he will never forget the loss of his property". The communists, obviously, advocate the nullification of property. In any case, every democratic State ensures this privilege to their natives.

4. Right to Freedom of Speech

Right to speak freely is an essential need of man. There can be no society unless its individuals are allowed to express their views and exchange their perspectives without restrictions. The residents have, in this manner, the privilege to uninhibitedly censure the strategies and activities of authorities.

5. Freedom of Press

The right to freedom of press is nearly connected with the freedom of speech. It implies the privilege to publish what a man can legally speak. Opinion of the citizens can be published in daily newspaper and leaflets. Daily papers are the most capable organ in modern democracy to shape general opinion. Free dialogs and reactions are fundamental for the accomplishment of democracy.

6. Right to Form Association

Man lives in gathering and forms associations. He has distinctive parts of life and every perspective may be represented in an association. This is what is known as the “split” identity of man. The State is viewed as a political association. Be that as it may, it is by all account not the only relationship in the society. There are different associations like social, educational, and religious relationship in a society.

7. Right to Religion & Conscience

Religion is profoundly established in the nature of man. An individual ought to be allowed to take after any religion he prefers. He ought to have complete freedom of conviction and worship. The State has nothing to do with the religions of nationals. Huge numbers of the present day States are, hence, secular States.

CIVIL RIGHTS VS. CIVIL LIBERTIES

It is essential to take note of the contrast between “civil rights” and “civil liberty.” The legitimate territory known as “civil rights” has generally rotated around the fundamental ideal to be free from unequal treatment in light of certain secured attributes (race, gender, disability, and so forth.) in settings, for example, work and lodging. “Civil Liberties”, as opposed to natural liberty, refers to the liberty enjoyed by man in society. Freedom in isolation is meaningless. One approach to consider the contrast between “civil liberties” and “civil rights” is to look at 1. What right is affected and 2. Whose right is affected?

For instance, as an employee, you don’t have the lawful right to a promotion, principally in light of the fact that getting a promotion is not an ensured “civil liberty.” But rather, as a female worker you do have the lawful right to be free from segregation in being considered for that advancement - you can’t legitimately be denied the advancement in view of your sexual gender (or race, or disability, and so forth). By picking not to advance a female laborer exclusively in light of the employee’s gender, the employer has committed a civil rights infringement and has occupied with unlawful work segregation based on sex or gender.

FEW LANDMARK CASES OF INDIA & AMERICA

With the passing away of Mr. Vithal Mahadeo Tarkunde, India has lost the father of the Civil Liberties Movement in the nation. When even four out of five judges of the Supreme Court surrendered and got frightened into holding that Fundamental rights and Civil Liberties got overshadowed amid an Emergency, Mr. Tarkunde established the People’s Union for Civil Liberties (PUCL). From that point on, till he kicked the bucket, he worked with commendable bravery, commitment and individual uprightness, for the reason for Civil Liberties and human rights in the nation, notwithstanding when it was dangerous and not in vogue.

In the case of *PUCL vs. Union of India*,¹⁰ the Indian Supreme Court decided that Constitution ensures a right not to vote as a major aspect of the basic right to the right to speak freely and expression. The case had been conveyed as a test to government rules which required a presiding

¹⁰ <https://indiankanoon.org/doc/15059075/> (last visited June 19, 2017)

officer to take a note at whatever point a voter chose not to vote in favor of any of the competitors. The People's Union for Civil Liberties tested the constitutionality of this practice. The Court found that the choice of a voter to not vote in favor of any of the applicants in the wake of assessing each of them was a feature of the right to freedom of expression, as secured under Article 19(1) (a) of India's Constitution. Finally, the Court held that an arbitrary distinction had been drawn between voters who choose to vote and the individuals who don't. This infringed the right to equality under Article 14 of the Indian Constitution. Therefore, the Court presumed that the Rules as they stood abused basic rights and decided that a 'none of the above' choice in electronic voting machines ought to be given.

In the case of *Kyollo vs. United States*,¹¹ when thermal imaging was used to examine the House of Kyollo where the police suspected that Kyollo grew marijuana and Warrant getting issued subsequently, the Supreme Court held that this act was illegal as technology which was not commonly used in public was used and the consent for the use of which would not have been received if Kyollo would have known about this. Stating this act of intrusion, the Supreme Court also stated that use of UAV's and drones should not be done over civilian spaces for unauthorized and unreasonable searches.

In another incident of district of *Columbia vs. Heller*,¹² when the law of district of Columbia restricted Heller from keeping arms which is a civil liberty in the United States of America and also includes the right of people of bearing arms which the military may possess the Supreme Court Of the U.S protected Heller's right of possessing arms by referring to the second amendment of the U.S Constitution and protected the citizens' right of bearing arms

In the case of *New York Times Co. vs. United states*,¹³ however, in a twist of events when the New York Times had classified information about the pentagon papers, the publication of which was opposed by the government on the ground that in the case of publication, grave and irreparable damages could be incurred to the state, the court held the view that even though freedom of press was a civil liberty described in the second amendment of the U.S Constitution,

¹¹Jack Lee, *3 Major Supreme Court Cases That Protected Our Civil Liberties Against the Government*, <https://mic.com/articles/29173/3-major-supreme-court-cases-that-protected-our-civil-liberties-against-the-government#.NtA3BZUKD> (last updated Mar 10, 2013)

¹²*Ibid*

¹³*Ibid*

reasonable restrictions could be imposed onto it for matters regarding the safety and security of the state. Some Judges were, however, of the view that if published the classified content would be available to an enlightened citizenry, who should have the right to access to such information.

IS THE CURRENT GOVERNMENT A THREAT TO CIVIL LIBERTY?

It has been over 39 years since Indian Prime Minister Indira Gandhi pronounced the State of Emergency that suspended majority rule government in the nation. Prime Minister Narendra Modi shared his considerations on “one of the darkest periods” in Indian history. He proclaimed it a “day to reaffirm our promise to protect the right to speak freely and expression.” Modi may have hit the correct notes, yet Indians are watching to perceive how his new government’s national security technique will affect civil liberties and civil rights.

After only few weeks in power, the Bharatiya Janata Party (BJP) - led government is occupied with its first open spat over issues of speech and dissent. Reports composed by India’s Intelligence Bureau (IB) affirms that Greenpeace and different NGOs working in the nation are puppets of foreign powers that look to stop advancement in India by restricting coal and nuclear power plant ventures. Previous public authorities have denounced the report as an endeavor to silence commentators, and a few people are thinking about lawful activity against the government. Observers will think about whether the tenor and substance of this report is demonstrative of the way the Modi national security apparatus, expected by critics to favor intimidation and quash dissent, will work together.

Ajit Kumar Doval “bemoaned the tendency to emphasize Indian diversity, as opposed to solidarity,” and contended “that the core of national security was not physical security but rather cultural identity.” He “applauded the BJP just like the main political gathering advancing Indian-ness.” It is possible that Doval was playing to a political group’s sympathies; however his words ought not to be dismissed as exaggeration or opportunistic rhetoric. Doval’s prior compositions additionally bolster the thought that he finds in India’s diversity - social, political, and intellectual - threats to security.

For instance, in a piece on Maoist extremism, Doval has composed that “front organizations taking on the appearance of NGOs and think tanks, who skillfully help the radicals in exploiting

discontent and subvert them to take response to the firearm must be made accountable. The individuals who give them intellectual and ideological space by anticipating them as social revolutionaries are as liable as the gullible people who take to arms.” This contention has parallels to the current IB report’s view that NGOs that restrict expansive improvement ventures are hostile to national forces. Doval goes ahead to state that “any unlawful police activity” and endeavors to “outline innocents” must be punished, yet does not disclose how to adhere to a meaningful boundary between NGOs whose right to speak freely and affiliation ought to be secured and those that are insignificant “front organizations” for violent groups.

What’s more, the request that there is peril in diversities is a naturally oppressive interest that runs counter to India’s liberal establishing ethos. It is additionally not another thought one of a kind to either Doval or the BJP. Indian national and nearby governments have frequently shown illiberal states of mind toward distinction and carelessness for civil rights and liberties. The removed Congress government, castigated by the BJP for allegedly “appeasing” of minorities, was no incredible champion of civil liberties.

During its tenure from 1998 to 2004, the Vajpayee-drove BJP government instituted the Prevention of Terrorism Act, a law that was abused to stifle political adversaries. Narendra Modi’s own tenure as Chief Minister of Gujarat started with a progression of Hindu-Muslim mobs in 2002 that left thousands dead and harmed. The state government’s powerlessness or unwillingness to control violence has made one of India’s continuing discussions of the 2000s. What’s more, obviously, the Indira Gandhi-led Emergency that started on June 25, 1975 stays one of the best stains on India’s democratic record.

Modi has stood up with regards to the right to speak freely and expression, yet the genuine test will be the manner by which his government handles distressing and profoundly public national security issues later on. All the more vitally, national security concerns influence something other than free speech. There will be wrangles over profiling certain gatherings, the confinement of militant suspects, strategies on police fierceness, and regard for appropriate criminal procedure amid arrests and trials, to name a few.

None of these alerts is intended to propose that India ought not to have a powerful security contraption. Since quite a while ago seen as effete, complicated, and incapable in advancing

interior security and seeking counter-terrorism oppression goals, India has much to pick up from a national security group, as Modi's, that is proclaimed as skillful and intense. And, Modi is all around arranged to execute viable approaches, on account of an electoral mandate and significant public support.

On the off chance that the Modi government is to prevail at this errand, it should show that the perspectives of persuasive pioneers like Doval won't be changed into national security policies that endanger civil rights and civil liberties. Opposition parties and civil society will assume a vital part in guaranteeing that Modi and his government keep their "vow to defend" the qualities or values that Indians hold dear.

IoT (Internet of things) usage and deployment can give rise to IoT privacy, data protection, cyber security and civil liberty issues in India. It is obvious that we need techno legal framework for effective and wide scale utilization of IoT in India. Notwithstanding, this is a troublesome undertaking to oversee as we have very few techno legal experts in India and other jurisdictions that can assist in this regard. This is the reason why India is still struggling to enact privacy, data protection and cyber security laws in India. As a result, India has a very poor track record of civil liberties protection in cyberspace and surveillance and censorship issues of Digital India and Aadhaar projects are in active violation of provisions of Indian Constitution.¹⁴

Coming to the Aadhar issue, critics of the government's decision to make Aadhaar obligatory for obtaining PAN cards cautioned that the move would "weaken civil liberties and rule the citizens". It was told by the Attorney General that "one cannot have an absolute right over his or her body".

Senior Advocate Shyam Divan told the bench, that the law says life and body is paramount and if the fingerprints of an individual are stolen, it might end his identity. If we fail here, there is tremendous possibility that state will weaken civil liberties and rule its citizens. The concept of civil liberties will go then. Referring to reports that newborns in Haryana need Aadhaar for their birth certificates, he said the issue raised questions of civil liberties of the highest constitutional

¹⁴Praveen Dalal, *IoT Privacy, Data Protection, Cyber Security And Civil Liberties Issues In India*, <http://perry4law.org/?p=113> (last visited June 22, 2017)

level, and the court was and the court was compelled by a solemn obligation to secure the rights of subjects.¹⁵

INTERNATIONAL PERSPECTIVE

The United States Constitution, particularly its Bill of Rights, ensures civil liberties. The passage of the Fourteenth Amendment additionally secured civil liberties by presenting the Privileges or Immunities Clause, Due Process Clause, and Equal Protection Clause. The Civil Liberties Act of 1988 was signed into effect by President Ronald Reagan on August 10, 1988. The act was passed by Congress to issue a public apology for those of Japanese ancestry who lost their property and liberty because of prejudicial activities by the United States Government amid the internment period.¹⁶ This act additionally gave numerous different advantages within different parts of the government. Within the treasury it builds up a civil liberties public education fund.

The Constitution of People's Republic of China (which applies just to mainland China, not to Hong Kong, Macau and Taiwan), particularly its Fundamental Rights and Duties of Citizens, claims to secure numerous civil liberties. Taiwan, which is isolated from China, has its own particular Constitution.

France's 1789 Declaration of the Rights of Man and of the Citizen listed many civil liberties and is of constitutional force.

¹⁵Ananthkrishnan G, *In Supreme Court, Centre admits Aadhaar data leak, critics cite 'civil liberties'* <http://indianexpress.com/article/india/govt-admits-aadhaar-data-leak-critics-cite-civil-liberties-4639819/>(last updated May 04, 2017)

¹⁶ https://en.wikipedia.org/wiki/Civil_liberties (last visited June 22, 2017)

CONCLUSION

Whatever be the nature of the constitution, civil liberty will be at its greatest under two conditions. First, when the rights of private action are clearly defined in ample terms in order to cover the widest possible range of such action and secondly, when the defined rights are strictly enforced by definite remedies which can be applied as speedily and effectively as possible.

In perspective of the current occurrences of terrorism in a few places in India, some people have begun saying that to combat terrorism it is important to curtail civil liberties and introduce draconian laws. No one denies the need to contradict terrorism but by passing draconian laws terrorism and crime will not be lessened, rather our country's progress will be blocked they can be terminated only by the abolition of poverty and unemployment which are the fundamental well springs of wrongdoing. Only rapid industrialization can abolish poverty and unemployment which will to a great extent can eliminate crime and terrorism.

For industrialization, the advancement of science is completely vital and for that freedom is absolutely essential - freedom to think, freedom to write, freedom to discuss with others, freedom to explain, freedom to criticize and freedom to dissent. *As Clarence Darrow said "you can only protect your liberties in this world by protecting the other man's freedom"*.

The development of science requires certain supportive values specifically liberty. We should spread the scientific outlook to every nook and corner of our country and pulverize the superstitions for instance the faith in astrology and palmistry and the feudal thoughts of casteism and communalism.

The significance of judiciary in India needs to be highlighted in this connection into key decisions: Government of Andhra Pradesh vs. P Lakshmi Devi [2008 (4) SCC 720, JT 2008 (2) 639] and Deepak Bajaj vs. State of Maharashtra [JT 2008 (11) SC 609]. The Supreme Court of India has emphasized the importance of liberty for progress and observed that the Judiciary must act as guardian of the Liberty of the general population protecting them against executive or even authoritative intervention and despotism.

To my mind harsh and draconian laws will restrain liberty that won't just infringe the right to liberty conceded by Article 21 of the constitution, it will likewise prompt great evils such as an

increase in corruption in the police and other law enforcing agencies which will have much more opportunity to extort money from the citizens, apart from impeding scientific and economic growth.