

Civil was further
refinement and the
state



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Civil liberty is the personal liberty of individuals, either by themselves or in association with one another, to choose and pursue objects which they deem good, provided that all enjoy that liberty equally. It is both positive and negative in character and includes individual's right to free action and immunity from interference provided it does not interfere with the identical liberty of others.

This means that all those essential rights we discussed earlier, must be clearly guaranteed and protected from arbitrary interference, both from other citizens and from government officials. The civil liberty of individuals is protected against encroachment on the part of other individuals or association of individuals by the laws of the State, enforced by the organs of government, specially the police and courts. If my liberty is infringed by the action of another, the laws of the State come to my rescue and help me in the realization of my liberty. It means an adjustment of the relations of the individual through the laws of the State. The adjustment of man's relation to his fellowmen was one of the chief purposes for which the State came into being. With the lapse of time, there was further refinement and the State recognised the basic rights of man, made them definite and equally enjoyable by all classes in the State, and assured to all protection against encroachments.

Thus, " Definite law, sure enforcement and equality before the law," as Gettell says, " marked the advance of civil liberty of man to man." Protection of civil liberty against the interference of government is of comparatively recent origin. In the earlier stages of the development of the State the ruler personified its sovereignty and he exercised full control on the lives of his

subjects. There could be no liberty under these circumstances. If the rulers sometimes agreed to respect certain liberties it was done under the stress of circumstances, and as soon as the stress was over unlimited and absolute exercise of authority would be the rule. With the advent of democracy a definite distinction was made between the State and government and checks were placed on the manner and extent of governmental action.

The principles that defined and regulated the conduct of government, set a limit to its actions against the individual, and protected the rights and privileges of the individual, constituted the fundamental law of the State. Every democratic State must now have its fundamental law. It may be written or unwritten. When the fundamental law is written and is embodied in a written document, called the constitution, it clearly prescribes how government is organised, the scope of its powers, the manner in which those powers are exercised, and the general guarantees of civil liberties.

The Bill of Rights, which written constitutions usually contain, defines the sphere of civil liberties and prescribes remedies in case of their infringement. In a country, where the fundamental law is unwritten, as in Britain, the organisation of the government, the scope of its powers, the manner of their exercise and the guarantees of civil liberties are primarily the result of traditions, customs, usages and precedents or, to be brief, conventions of the Constitution, as Dicey called them. Fundamental law or the constitution is, therefore, the surest guarantee of the protection of civil liberty against the interference of the government. Whatever be the nature of the constitutional 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 Britain, the definition of civil liberty is scanty or at any rate scattered, but the remedies for the enforcement of liberties are numerous and, above all, effective. The Constitution of the United States contains a Bill of Rights and it further provides that "no person shall be deprived of his life, liberty or property without the process of law." The Chapter on Fundamental Rights in the Indian Constitution is more elaborate as compared with the Bill of Rights contained in any other existing constitution of importance. Another important feature of Fundamental Rights in India is that there is a special constitutional provision for their enforcement (Article 32). Liberty, according to Professor Laski, "is never real unless the government can be called to account; and it should always be called to account when it invades rights.

"In the United States any law or action of the national or State government can be challenged in a court of law, if it amounts to depriving a man of his civil liberty. There is no doctrine of the 'security of the State' in the United States and the legislatures cannot suspend or abridge an individual right on the ground of the security of the State. It is for the courts to decide and determine whether there is a "clear and present danger" to the existence of the social order so as to justify curtailment of civil liberty. The Constitution of India, on the other hand, imposes direct limitations on Fundamental Rights.

Courts cannot question the propriety of legislation on the ground that it seeks to unduly restrict personal liberty, once it has been established that it

is within the competence of the legislature to make such a law or in any way to modify its effect. The Forty-second amendment of the Constitution relegated Fundamental Rights to a position of inferiority by establishing the primacy of the Directive Principles of State Policy, though the recent Judgement of the Supreme Court has nullified it. In Britain, no court can challenge an Act of Parliament. Parliament may alter the Constitution; yet its action cannot be legally questioned. There is, thus, no constitutional guarantee of individual liberty in Britain in the sense in which it is found in the United States, India, and many other countries with a written Constitution. Rights in Britain are determined by customs and common law and protected by impartial and independent tribunals and the Rule of Law which involves absence of arbitrary power and privileges.

Civil liberty is not absolute. It is subject to limitations in order to secure or promote the greater interests of the community. The State may protect civil liberty through its laws against interference by other individuals, or through its constitutional system against interference by any single organ of government. But the State always possesses the power, through its legal machinery, to limit and abridge or even destroy civil liberty. Then, the real guarantees of civil liberty are not the many constitutional devices, but " what the people will stand," and what they will stand depends ultimately upon the outlook of the community. An intelligent community understands the social need of freedom.

It does not fear healthy and honest criticism; in fact, it knows that if government is to be responsible it must thrive upon variety of opinions. Regimented opinion is no opinion and it cannot bring about the willing

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cooperation of all for proper articulation of the machinery of government. An intelligent and liberal community, in one word, “ believes in freedom, and it assumes that in a free atmosphere men will, on the whole, use their freedom in a way which is not, in the long run, detrimental to the real interests of society criticism being one of these. But beyond this it is difficult to go, nothing will make up for an illiberal public outlook and a judiciary that will yield to every pressure either of the government or of opinion.”