



AN ANALYSIS OF AUTONOMOUS FREEDOM IN CONTEXT OF PUBLIC WELFARE

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Abstract: “Centuries have undergone debates on public welfare and freedom. The notions of justice and welfare have often been found to be in conflict with that of freedom. Freedom has at times been a hurdle to the legal system in its quest to pursue justice. However, without it, there would not be a legal system in the first place. This arises does the common notion of freedom we perceive is to act autonomously (a law that we give to ourselves) or to be a slave to our own desires, preferences or ideologies? In this paper, while depicting Kant’s perspective of freedom, its analysis on the imposed lockdown due to COVID-19 in India has been attempted while addressing the dilemma faced while choosing justice and/or freedom.”

Introduction:

There is no society that is not confronted with problem of criminality. Consequently, as long as people exist, society will and so will crime persist until humanity meets its end. Therefore, it will only be utopian to estimate the possibility of totally abolishing crime. In its sheer adversity, it is best to face the fact that criminal law is essential in a society for maintaining law and order. The question of efficacy of the criminal justice system and protection of rights of the people are interrelated and need constant scrutiny. Criminal law is indeed a reflection of social

consciousness and faithful mirror of a given civilization, reflecting the fundamental values on which it rests. Hence, to say Criminal law is not concerned with the right to life and personal freedom would be erroneous. It is the concept of justice that places restrictions on these rights to make an effort to achieve the ultimate goal of a crime-free society.

Social Dilemma:

In the classic case of *R v. Dudley and Stephans*¹, four sailors were stranded in a lifeboat with limited resources after their vessel had gone down due to a storm. In absence of fresh water, the cabin boy drank sea water and his health deteriorated. For around fifteen days after their resources exhausted, they didn’t eat or drink anything. In such circumstances, the captain decided to kill the cabin boy for rest of them to survive. They were rescued a on the 24th day and were put on trial upon returning to England for murder of the cabin boy. The strongest argument for the defence was of necessity, in order to save three, one had to be killed and eaten, otherwise all four would’ve likely died. Parker, weakened and ill, was the logical candidate, since he would soon have died anyway. A utilitarian would say that even considering the lives saved and happiness of the survivors and their family, allowing such a killing might have bad consequences for society as a whole by weakening the norm against murder. Although a libertarian would suggest, even if, all things considered, isn’t it wrong to use a human being in this way—exploiting his vulnerability, taking his life without his consent— even if doing so benefits others?

A similar question arises in contemporary debates about whether torture/detention is

¹ *R v. Dudley and Stephans*, (1884) 14 QBD 273.



ever justified in the interrogation of suspected criminals. Consider this scenario: Imagine that you are the head of local police branch in your country. You detain a terrorist suspect who you believe has information about a nuclear device set to go off in Mumbai later the same day. As the clock ticks down, he refuses to admit to being a terrorist or to divulge the bomb's location. Would it be right to detain/torture him until he tells you where the bomb is and how to disarm it? (Maybe he doesn't have a part in the act, it's just a presumption, then?). On utilitarian grounds, one might argue that it's morally justified to inflict intense pain on one person if doing so will prevent death and suffering on a massive scale. Some people reject torture/detention on principle. They believe that it violates human rights and fails to respect the intrinsic dignity of human beings. Their case does not depend on utilitarian considerations. They argue that human rights and human dignity lies beyond utility. However, the above scenario can be misleading as it purports to prove that numbers count, so that if enough lives are at stake, we should be willing to override our rights.

Liberty, on the other hand, is the willing preservation of the environment in which men have the right to own themselves. The concept of self-ownership, consistently applied, has consequences that only an enthusiastic libertarian would love – a minimal state that prevents most steps to ease inequality. Unrestricted independence, however, will lead to conflict of interests and break peace as no man stands alone; he lives in the company of others. You may protect human rights on the ground that respect for them would enhance long-term effectiveness.

² The Metaphysics of Morals, Immanuel Kant (1797).

In that situation, though, the justification for respecting rights is not to honour the individual keeping them, but to make life easier for all.

To act autonomously:

Immanuel Kant, a German philosopher of the 18th century, opposed the utilitarian approach to justice in his *"Ground Work for the Metaphysics of Morals."*² Though he ties justice and morality to freedom, his definition of freedom is different. His definition of freedom is more challenging than the freedom of choice that we exercise. What we generally consider to be market freedom or consumer preference is not true freedom, since it actually requires fulfilling desires, we have not chosen in the first place. He says, "If we, like animals, pursue pleasure or escape pain, we really do not act freely, we act as slaves to our appetites and desires. Why? Because whenever we are seeking to satisfy our desires, everything we do is for the sake of some end given outside us. I go this way to assuage my hunger, that way to slake my thirst."² Suppose I'm trying to decide what flavour of ice cream to order: Should I go for chocolate, vanilla, or blueberry? I may think of myself as exercising freedom of choice, but what I'm really doing is trying to figure out which flavour will best satisfy my preferences. After all, I didn't choose my desire for chocolate instead vanilla, I just got it. I act out of obedience, not freedom. To act freely, according to Kant, is to act autonomously. And to act autonomously is to act according to a law I give myself—not according to the dictates of nature or social convention or urges which he considers as acting 'heteronomously'.



Now, if acting freely is acting autonomously, acting according to the law I am giving myself, wouldn't there be different moral laws? If the categorical imperative (universal law) is the outcome of my will, is it not possible that different people will come up with different categorical imperatives? Kant responds, when we're going to moral rule, we don't choose as you and me, as individual persons that we are, but as rational beings, as participants of what Kant calls "*pure practical reason*." It is also a mistake to assume that moral law is up to us as individuals. Of course, if we reason on the basis of our individual interests, needs, and ends, we can be motivated by a variety of principles. But these are not moral concepts, they are prudential ones. In so far as we exercise pure practical reason, we are abstract from our individual interests. This means that anyone who exercises pure practical reason will come to the same conclusion. Kant argues that every person is worthy of respect, not because we own ourselves but because we are rational beings, capable of reason; we are also autonomous beings, capable of acting and choosing freely. Our capacity for reason is bound up with our capacity for freedom. It is this idea of reason, due to which we have entered into a hypothetical social contract that generates this principle of rights, but it has undoubted practical reality, as it can oblige every legislator to frame his laws in such a way that they could have been produced by the united will of the whole nation.³ Thus, the united will of the country will want the law to preserve its rights, first of all, but in situations where a criminal is at a disadvantage or some obvious danger is foreseen, the 'collective will' is more likely to

prefer its security than the liberty of a single person.

A main feature of the relationship between the government and the people is the assurance of certain basic rights to the people. Modern constitutions put a great deal of emphasis on universal human rights. The underlying principle is that there are certain fundamental rights inherent in a human being, which no government can attempt to take away either through legislation or through executive action. The judiciary has the role of defending and serving as protector of those rights. If any law is enacted by the legislature or the executive acts in such a way as to infringe any of the fundamental rights, the courts which find such a law or action unconstitutional. Some of these fundamental rights are: freedom of the individual, freedom of expression, the right to equality, the right to life, etc.

Analysis in the light of lockdown:

The Indian constitution too lays down provisions to safeguard liberties of people. However, at times, these very liberties become threat to delivery of justice or the general well-being of people if the authorities are not let to do their work according to the required standards. If '*pure practical reasoning*' is to be applied, every citizen would want the best, in terms of prevention, protection and remedy for his/her peers.

The application of Kant's philosophy of freedom can be observed and examined in recent events. Following the onset of the novel Coronavirus ('COVID-19'), an infectious disease first detected in Wuhan, Hubei, China, in December 2019. The World Health Organization had declared the

³ Justice: What's the Right Thing to Do? *Michael J. Sandel* (2008).



outbreak of COVID-19 a public health emergency of international concern on 30 January 2020 and a pandemic on 11 March 2020. In the midst of the rapid and uncontrollable spread of the deadly COVID-19 in all parts of the world, many countries have entered a lockdown with only a few vital services in place. It's been almost seven months since the lockdown was declared, and every other organisation is struggling to keep it going through this time.

In the midst of the current crisis, there have been incidents in which the police have resorted to force during the initial months of the lockdown to ensure that there is no unwanted movement. I am not to be confused as a supporter of such cases, rather, I do condemn the actions of the police force. However, if we look at the broader picture, the threat of COVID-19 cannot be undermined, given the overall number of cases and casualties. In addition, unwanted people's gatherings will only add to existing cases, since people in large groups of crowds are more likely to get infected if social distancing and other norms are not followed. Further, if we look at the intent behind the imposition of lockdown, we can see that it was to curb the spread of the virus in a densely populated country.

On the basis of the above facts, if one was asked what was the best preventive measure to avoid COVID-19, the answer would mostly be "stay at home!". More and more dependence was put upon the authorities to ensure that the lockdown so imposed has been followed by the people. However, it was people themselves who did not choose to abide this lockdown which may include various reasons, not that of "essential services". The police, left with no option but

to give warning and to use force at times to cause a deterrent effect so as to people avoid stepping outside. Thereby, possibly trying to curb the spread of the disease. Although the same action, was not quite welcomed by the people in large. Where on the one hand it is expected from the authorities to curb the disease and on the other, to ensure that no responsibility is upon them. Again, it is the dilemma faced where one has to form his/her opinion based upon personal liberty or public welfare. If, one were to enjoy his freedom 'autonomously', he would rather give himself a law by applying 'pure practical reason' by considering his own welfare, which over here would probably be to stay safe from the disease. As discussed earlier, application of pure practical reason would lead to the same conclusion if observed by a reasonable man. Therefore, everyone would rather choose to stay safe from home than to be slave to their desires i.e. to travel outside for trivial things.

Conclusion:

There is always a constant swinging of the pendulum between liberty and welfare. Enlarging corpus of rules in favour of protection of the rights of the accused in the criminal justice system are growing burden on the police. The fact that human rights of the accused are to be respected is not questionable. At the same time, the existing legal regime is to be suitably amended, to curb the criminal elements in the interest of the well-being of the society. Society has to reverse the common law notion of criminal justice that "it is better that a hundred of the guilty should escape than that one innocent person should perish." The security of innocence may be complete without favouring the impunity of crime.
