CHAPTER I

TRACING THE ROOTS OF THE HUMAN RIGHTS IDEA

It may be pertinent to closely examine the issue of "liberty" in political theory. It is a frequently, though loosely, used word. Its normative nature and abstract quality are perhaps a hindrance in understanding its correct usage. Isaiah Berlin has testified to this over-use of the political term 'liberty':

"Almost every moralist in human history has praised freedom. Like happiness and goodness, like nature and reality, the nature of the term is so porous that there is little interpretation that it seems to be able to resist."

The term liberty entered political discourse in a popular way after 1789 with the call given by the French Revolutionaries from where it was disseminated into political thinking and the written constitutions of newer countries. Nevertheless the notion of liberty is as old as political thought itself, forming the core of Stoic political thinking.

Its influence spread via Roman Law which is rooted in the concept of Natural Law, and it remains a part of modern political thought. It has received primacy through the forum of the United Nations and its close involvement with the issue of human rights.
The issue of liberty, according to Barker, is wrapped up in the idea of the development of the individual human personality and closely related to the notion of justice. He explains it:

"... if justice be regarded ... as the primary social and political value — though grounded itself on the moral development of its capacities — then the procedural rules required by justice may be considered as the secondary social and political values, and we may say, 'First Justice, and then the rules of Liberty, Equality and Fraternity, which follow from Justice'.”

Thus liberty is never an end itself, it is a means to an end.

The condition of liberty has been described "as the eager maintenance of that atmosphere in which men have the opportunity of being their best selves.”

Laski has offered a wider explanation too. He says that liberty may be defined as "the affirmation by an individual or a group of his or its own essence."

Laski points to the conditions of liberty:

"It requires on the negative side the absence of restraint upon the exercise of this affirmation; and it demands on the positive, the organisation of the opportunities for the exercise of continuous initiative."

Barker perceives it as the principle which recognises every individual as a moral person, a free agent capable of utilising the available rights for his growth.
However the idea of liberty cannot be understood without the significant role played by law, control and restraint in its exercise. Untramelled liberty is licentious. And liberty has been described as "freedom within restraint" or "freedom within law". It balances the individual's choice with rational and justifiable restraint upon it. This regulated liberty makes liberty possible, and meaningful. Barker has termed regulated liberty as "the greatest common measure of liberty." 6

Let us look at Barker's statement:

"Legal liberty just because it is legal, is not absolute or unconditioned liberty. The truth that every man ought to be free has for its other side the complimentary and consequent truth that no man can be absolutely free. The need of liberty for each is necessarily qualified by and conditioned by the need of liberty for all; and the liberty of A will therefore be such a liberty as he can enjoy concurrently with the enjoyment of similar and equal liberty by B, and C, and D ... Because the liberty of each is thus relative to that of the other, and has to be adjusted to that of others, it must always be regulated; and indeed would not exist unless it were regulated."

This compatibility of liberty with law is also brought out by Hobhouse. He says:

"We draw the important inference that there is no essential antithesis between liberty and law. On the contrary, law is essential to liberty. Law, of course, restrains the individual; it is, therefore, opposed to his liberty at a given moment and in a given direction. But equally, law restrains others from doing with him as they will. It liberates him from the fear of arbitrary aggression or coercion, and thus is the only way, indeed the only sense, in which liberty, for an entire community is attainable."
The idea of Natural Law, upon which the idea of justice has been posited has remained a core idea of European political thought. However, while holding on to its essential moral core, it was understood with some differing nuances. The Stoic understanding of natural law was philosophical, the Romans linked it with jurisprudence, the mediaeval thinkers understood it as being linked with morality.

Let us examine the idea in some detail. For the Stoics, Natural Law was based on the belief that every human body was a reflection of the cosmic reason. Barker explains it thus:

"The creed, in the form in which it was developed by Zea and his successors, was built on a single premiss, and issued in three different conclusions. The premiss was that men, in their essential constitution and nature, were rational beings who were each divinae partcula aurea (a 'fragment' as they said, or detached part of cosmic reason), and who altogether shared, if only as such 'particles', in the all-pervading reason, which was the constitution and nature of God." 9

The Stoics formulated the doctrine of natural rights as something which were not the privilege of particular citizens or cities, but as something which were universal, which were the entitlement of all human beings, by virtue of the fact of being human. 10

From the Natural Law idea could be derived the principle of liberty: "that men .... should all be regarded as free and self-governing"; the principle of equality: "that men, being all in their essential
nature rational .... should be regarded as equal in status"; and the principle of fraternity: "that men being united to one another by the common factor of reason, should be linked together in a solidarity of world society".

It is relevant to understand the use of the word "nature" in Stoic thought. Barker sees it as:

"the keyword of a religious ethical conception of what should be in the spiritual world rather than a term of art denoting what actually was in the material world of substance and flesh .... The Stoic canon of living 'in agreement with nature' was, therefore, fundamentally a canon of living 'according to the norm which a man ought to realise'. We may even say, in a paradox, that nature was man's art: it was man's .... conscious effort to fit himself into the universe, of an ideal by which he could judge the mere given facts of his life in the past, and by which he could shape his life for the future into its rational God-intended 'natural' form."

Thus God was carrying out the governance of the universe by the natural principle of Reason, and the world of men should also attempt to emulate these ideal principle.

Phyllis Doyle points out that the Roman lawyers attempted to interpret this philosophy into a "practical scheme of jurisprudence." Cicero interpreted Natural Law in this manner:

"There is in fact a true law — namely, right reason — which is in accordance with nature, applies to all men, and is unchangeable and eternal. By its commands this law summons men to the performance of their duties; by its prohibitions it restrains them from doing wrong .... To invalidate this law
by human legislation is never morally right, nor is it permissible ever to restrict its operation, and to annul it wholly is impossible ... It will not lay down one rule at Rome and another at Athens, nor will it be one rule today and another tomorrow. But there will be one law, eternal and unchangeable, binding at all times, upon all peoples; and there will be, as it were, one common master and ruler of all men, namely God who is the author of this law, its interpreter, and its sponsor."14

The concept of Natural Law binding on all men, and natural rights belonging to all men was also articulated in the philosophy of Thomas Aquinas. Human Law was to be derivative from Natural Law, and should give force only to what is inherently reasonable and right.15

John Locke whose writings were able to influence declarations and political events of his time was a believer in the notion of natural rights deriving from Natural Law. However an understanding of the evolution of the Natural Law idea must take cognisance of changes emanating from the decline of feudalism, the growing capitalism and the advent of the idea of the State.16

The State had come into existence around the sixteenth century as a result of a slow transformation of the "complex medieval system of estates and corporations into closely knit sovereign powers ruling over subject nationals".17 In England especially, the State was strong and centralised absolutism18 and the struggle for religious freedom19 and the demand for free
trade, have been two important programmes in the quest for releasing civil society from the control of the State.

The loose body of political thinking termed liberalism which was concerned with the task of freeing the society from the control of the absolute State and outlining a sphere of freedom for the individual, gradually grew.

Locke's philosophy reiterates ideas like government resting on the consent of the governed, right to private property, doctrine of religious tolerance, belief in rational education of the young. Sabine outlines the essence of his belief in a natural law and limited government:

"The law of nature provides a complete equipment of human rights and duties. Everything that is ever right or wrong is so eternally; positive law adds nothing to the ethical quality of different kinds of conduct but merely provides an apparatus for effective enforcement." 20

The influence of Lockean thought was seen in the Glorious Revolution of 1688 - which has been termed as the first liberal revolution, 21 and the Bill of Rights (1689) which was designed to translate some natural rights into positive rights. 22

It was upon the idea of preservation of natural rights that Locke based his argument for the establishment of the State. He was attempting to
reconcile the maintenance and protection of natural rights with a degree of control by the State in the interest of their continued maintenance.23

The consequence of the Lockean ideas was to loosen the bonds of absolutism in which the English State had found itself around the sixteenth century.

Thomas Paine in "Rights of Man" had also pointed out to the distinction between natural rights which derive from man's presumed right to existence and civil rights which man obtains as a member of society. The latter are all founded upon pre-existing examples of the former, but become 'civil' by reason of the inability of individual to ensure their continued enjoyment or maintenance. Thus an individual retains all those rights which he has the power to execute and use, but he hands over to the society the execution of those rights which he cannot ensure personally such as security and protection.24

On the level of ideas the Lockean philosophy gives impetus to the development of a body of ideas called liberalism which called for a greater sphere of freedom for the individual. This concept of a free environment encouraged the growth of capitalism which had been establishing itself since the sixteenth century.25

The growth of capitalism on the other hand also supported the growth and development of the liberal
idea. Liberalism and capitalism mutually reinforced each other.

The requirements of capitalism—free trade, absence of State interference etc. were supported by liberal ideas and led to the formation of a liberal society. The growth of capitalism had benefitted from the strong Nation States which were competent to keep peace and enforce contracts. However the capitalist ethic itself aided the creation of a liberal and free society. One aspect of this idea was that it served to destroy the residue of feudalism. According to Macpherson:

When it [market society] was established—and it was established in the now advanced countries between the seventeenth and the nineteenth centuries—it was an enormously liberalizing force. It changed not just the economic arrangements but the whole society. Instead of a society based on custom, on status, and on the authoritarian allocation of work and rewards, you had a society based on individual mobility, on contract and on impersonal market allocation of work and rewards in response to individual choices.

The other aspect of it was a demand for reduction in regulation of trade. It called for free trade, as against the old State protectionism. In the economic arena, free trade had been established under Peel. This was favourable for the English manufacturers and merchants and became the accepted policy. The repeal of
Corn Law (1846) reduced the dominance of the English industrial over the agricultural and manufacturing class. The outcome was the emergence of England as the first of the modern industrialised nations.

Freedom of control in the economic field, and freedom in the political arena, characterised the atmosphere of liberalism. Restraint on arbitrary government, rule in accordance with law, exercise of government control according to law, were hallmarks of liberalism. The concept of civil liberties and limited State is an essential part of the ideology of liberalism. It implies a regulation of human freedom and liberty in the interests of an organised life. What we must emphasise is that the civil liberties idea is linked to the traditional idea of natural rights rooted in Natural Law.

Subsequently, democratic rights made an entry in order to enable successively wider groups of people to participate in the process of decision-making and legislation.28

However it was the entry of the social and economic rights which were an encroachment upon the important civil right of property. The core of these social rights has been social security, statutory employment, old age, disability and unemployment benefits, health insurance, public education, public housing, minimum
wages, etc. These came into popular discourse and gradually took the shape of legislation as the negative consequences of industrialisation and economic growth made themselves manifest in the form of child labour, low wages, poor working environment, etc.

The inclination towards social welfarism was motivated by several concerns. While Beatrice Webb spoke about "the collective consciousness of sin" arising from the poverty and misery of the poor labourers, there was also fear that the workers would fall to the "blandishment of socialism." An intellectual argument related these rights to increased efficiency of workers and therefore of production in industry. However the advent of the idea of social welfarism does pose a conflict between civil rights, especially right to private property, and social rights.

The entry of social welfare rights in the industrialised countries of Europe in the nineteenth century signalled the erosion of a laissez-faire State. It marked the advent of the positive State, no longer interested in merely 'holding the ring', but active in the life and welfare of the citizen, i.e. a positive State.

Bhiku Parekh has drawn a distinction between civil and social rights and has analysed the changes which occurred in the second half of the nineteenth century as follows.
The rights to life, liberty and property that had so far been emphasised were all rights to protection in the sense that the only thing their agents required to enjoy or exercise them were forbearance or non-interference by their fellow citizens, and protection by the government. In the nineteenth century social and economic rights were added to the list. Now, obviously, these have a very different character. They are not rights to protection but provision — the provision of sustenance, the means of material well-being, employment and even basic opportunities for personal growth. As such they require the government to play a positive and active role in economic life. They also imply that, in order to meet the social and economic rights of those in need, citizens should not merely forbear from interference, but positively contribute by taxes and other means to the resources which a government requires.2

However it was only with the advent of the United Nations that the entire gamut of rights — economic, social, cultural, civil and political were systematically organised and assimilated into the United Nations Declaration of Human Rights (1948) and its two Covenants — one on Civil and Political Rights and the other on Economic and Social Rights. This Declaration was an organised and ordered description of rights which were already a part of the rights discourse and now came to be encompassed in the broad term Human Rights, and became a part of the political discourse of the post-World War Two period.

However the appearance of the United Nations Declaration of Human Rights is not without its anomalies. Cranston points out that the addition of social and economic rights to the civil and political
rights has resulted in the loosening and slackening of the significant idea of Human Rights. Whereas the latter - the civil and political right are granted by the States and could be drawn from governments, the former category of rights - the social and economic - presuppose a high degree of economic development before a government can give them to a citizen. Putting the two categories together, says Cranston, not only contributed to ambiguity on the issue but has meant the loss of a valuable opportunity to press forward for meaningful action to compel States to give practical shape to at least civil and political rights.

However even an assertion, a declaration by an International Agency carries its own significance and worth.

The civil liberties groups we propose to discuss derive their motivation and inspiration from the concept human rights.

Jacques Maritain has succinctly explained the notion of Human Rights:

The human person has rights because of the fact that it is a person, a whole, a master of itself and its acts and which consequently, is not merely a means to an end, but an end, an end which must be treated as such ... by virtue of natural law, the human person has the right to be respected, is the subject of rights, possesses rights. These are things which are owed to man because of the very fact that he is a man.
When these groups address themselves to the civil liberties denials in course of their reports, they are in essence pointing to the core Lockean idea of the limited state, of the state's purpose being linked to the preservation of natural rights, of the state existing with the objective of protecting 'life, liberty and property' for the subjects. In other words:

... that government — the king specifically, but no less, Parliament itself and every political agency — is responsible to the people or the community which it governs; its power is limited both by moral law and by the constitutional traditions and conventions inherent in the history of the realm. Government is indispensable and its right is therefore in a sense indefeasible, but it is also derivative in the sense that it exists for the well-being of the nation.32

Protection of civil liberties calls for the restriction of the executive arm of the state and restriction of the government's interference in the citizen's activities.33 But is the social and economic rights which call for positive and beneficient legislation by the state. Here we may recall the difference made earlier by Bhiku Parekh, between civil and social rights — that the former category were rights to protection, and the latter were rights to provision.34

For our discussion we have picked two categories of voluntary organisations — three groups concerning themselves with issue of protection of civil liberties and democratic rights, and two groups concerning women's rights. While the former address themselves to the
issue of the balance between authority and liberty—a classic concern of political science, the women's groups are concerned with women's civil liberties and democratic rights which are mediated through a society the patriarchal organisation of which is adverse to women.

How do these two categories of voluntary organisations, perceive their role in social change in order to enhance liberty for citizen? This is the issue to which we will address ourselves.
NOTES


6. Ibid., p. 145.

7. Ibid., p. 145.


Phyllis Doyle points out, "Natural Law united all men together in one great community, the city of the world. In this great family all men were brothers and equals; all sought to harmonise their several individual lives with the one sustaining law of nature". See, *History of Political Thought* (London: Johnathan Cape, 1949) p. 43.


12. Ibid., p. 107.


14. Quoted in G.H. Sabine, *A History of Western Political Thought* (New Delhi: Oxford and IBH, 1973), p. 161. Sabine points out, "Cicero's true importance in the history of political thought lies in the fact that he gave to the doctrine of natural law a statement in which it was universally known throughout Western Europe from his own day to the nineteenth century."
15. Says Sabine, "The underlying moral relations between Natural and Human Law are still for Locke substantially what they were for Thomas."

16. Says David Held, "In modern Western political thought, the idea of State is often linked to the notion of an impersonal and privileged legal or constitutional order with the capacity of administering and controlling a given territory. This notion found its earliest expression in the ancient world (especially Rome), but did not become a major object of concern until the development of the European state system from the sixteenth century onward." See, David Held ed., States and Societies (Oxford: Martin Robertson, 1983), p.1.


18. Says Barker, "England of the sixteenth century had cherished the conception of the one undivided Commonwealth ... with religious life under a State Church; with economic life regulated by a system of State protection at the port and by a State labour code ... in towns and shires; and even moral life supervised by the Courts of the State-Church....", op. cit., p.25. However Barker also notes that the Common Law for rights protection, and the 300 year old Parliament with its own procedures and ideas served as a restriction on absolutism.

19. Barker points out, "Non-conformity ... steadily stood for the principle that the State had nothing to do with religion, so far as churches other than the State-Church were concerned: it vindicated the conception of religion as something apart from and independent of the State", Ibid., p.27.

20. Says Sabine, "Locke was merely repeating Hooker and through him the mediaeval tradition about the relation between law and morals". Op.cit., p.113.

21. Other events of history which Lockean thought have influenced have been the Bill of Rights of Virginia, June 1776, the Declaration of Independence of July 1776 of the thirteen American States and the Declaration of the Rights of Man, of Paris, in 1789.

22. For example the rights of a person charged with criminal offence to a fair and public trial by jury, the outlawing of excessive fines and cruel and unusual punishment.
23. HAL Fisher states that in Locke's philosophy is to be found "all the quintessential thought of the age of enlightenment", e.g., the belief that civil government is based on the consent of the governed, that right to private property is based on labour, religious toleration, rational education of the young. See, H. A. L. Fisher, A History of Europe, Vol. II (Glasgow: Collins, 1975), p. 781.


25. According to David G. Smith, "The liberalism recognised and vindicated in 1689 was essentially negative in character, protecting groups and individuals from government, especially from the prerogatives of the crown. It was also aimed at securing chiefly political rather than economic objectives. Among those political objectives are some of the most important principles of liberal constitutionalism: the right to opposition, the rule of law and the separation of powers. The settlement also included a recognition of important civil liberties by acts securing toleration in 1688, and the liberty of the press in 1695 ...". See, International Encyclopaedia of the Social Sciences, Vol. 9 and 10 (London: Macmillan, 1968), p. 278.

26. Political philosophers like Bentham enhanced this economic principle in political practice when they called for "the greatest happiness of the greatest number."


28. According to Macpherson, "Those who had no vote saw that they had no weight in the political market — they had, so to speak, no political purchasing power ... when they saw this, they came to demand the vote for themselves ....". Ibid., p. 9.

30. Cranston has pointed out that political and civil rights are largely against government interference, the greatest efforts will have to be directed towards restraining the government's own executive arm. But this is not the case when economic and social rights are involved. For a government to enforce the latter, it would need to have access to great wealth. *op. cit.*, p.67.


