

Freedom and State: A Contemporary Thought

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Abstract

The concept of freedom is a subject of interest for various theorists in jurisprudence and political philosophy. This paper seeks to explain the notion of freedom and the relationship of freedom with the state. Theories of freedom by thinkers such as Locke, Marx, Hegel and Nozick form the bedrock of this paper. The focus, however, is on Nozick's concept of distributive justice and his case against taxation. India's progressive taxation is discussed in this regard, and the feasibility of Nozick's theory is discussed. Thus, the paper analyses the notion of distributive justice vis a vis individual freedom in the contemporary context. It aims to answer the question whether Nozick's theory of the minimal state and absolute self-possession is applicable in contemporary India.

Keywords: Freedom, jurisprudence, distributive justice, Nozick, taxation

The concepts of freedom and state must be understood in their entirety, and then a relationship between the two will be drawn out.

Defining Freedom

In layman's language, freedom is understood as an absence of restraints. The Cambridge dictionary defines freedom as "the condition or right of being able or allowed to do, say, think, etc. whatever you want to, without being controlled or limited."ⁱ Yet in jurisprudence, the concept of freedom is not simple as it is often contested. There are various theories about freedom and liberty and what is ideal and what is normative; almost all of these theories concern the state—the authority that levies restrictions on individuals and their actions.

The concept of freedom has been dealt with by various schools of jurisprudence. For instance, natural law jurists such as John Locke have propounded the concept of inalienable natural rights, which are quintessential to individual freedom and cannot be taken away by the state.ⁱⁱ This gave birth to the nineteenth century idea of laissez faire, or non-interference by the state. As such, Locke is considered as a propounder of the idea of individual liberty or freedom. Another natural law philosopher, Immanuel Kant has elaborated on the notion of freedom. He disagrees with the proposition that freedom means the absence of obstacles or restraints in doing what one desires to do; rather, he has a more stringent, demanding notion of freedom.ⁱⁱⁱ According to him, freedom does not mean to choose the best means to a given end, rather it means to choose the ends itself. Sandel explains this by using Sprite's advertising slogan "Obey your thirst" as a convenient example. To choose between Sprite or another carbonated drink is prima facie one's choice. However, it is the obedience to thirst that this choice arises in the first place. Responding to a desire that one has not chosen cannot be called freedom. What is freedom is to act according to a law one gives oneself.

Apart from natural law philosophers, various other jurists have also philosophised on the notion of freedom. For instance, J. S. Mill, in an attempt to redefine and defend Bentham's theory of utilitarianism,^{iv} wrote his famous *On Liberty*^v wherein he argued that one should be free to do whatever one wants, as long as one's action is not harming others.

Thus, it can be seen that freedom is perhaps one of the pillars of jurisprudence and philosophy. It can be viewed from different perspectives, and there can be no rigid definition for it.

Defining State

Although there are various theories as to what constitutes a state, there are four essential elements of state that are popularly agreed upon. These elements are population, territory, government and sovereignty. Yet, these elements are not foolproof. For example, Israel does not have a defined territory due to its ongoing dispute with Palestine, yet it is recognised as a state by the United Nations.

Relationship Between Freedom and State

As stated earlier, there is a clear link between freedom and state. It is the state that puts restrictions on freedoms of individuals. In contemporary India, freedoms are well defined as fundamental rights under Article 19 of the Constitution. Further, even the restrictions that can be imposed by the state are laid down in Article 19(2). Thus the relationship between freedoms and state are well defined in constitutional law. However, in jurisprudence, there are

different views by various jurists of what the relationship between freedom and state should be.

One of the main schools that deal with freedom and state is one which has already been touched upon is the philosophy of liberalism, wherein social contractualists like Locke have attempted to explain the powers of the state in relation to individual rights and freedoms. In simple terms, the libertarian concept of freedom is using one's life, liberty and property according to one's wishes, as long as it does not harm another person.^{vi} The liberal view of freedom is to live a life chosen autonomously.

For the socialists, freedom is "freedom from" rather than "freedom of", freedom from a coercive state. which essentially means freedom from a coercive state.^{vii}

It becomes essential, while discussing the socialistic freedom and state, to take it onestep further and talk about Marx. For Karl Marx, freedom can be attained only in a communist society, where the state has withered away.^{viii} A very important influence on Marxism was that of Friedrich Hegel, and his concept of dialectics. According to Hegelian dialectics, the individual and civil society synthesise to form the state which is the embodiment of freedom.^{ix} Thus, it becomes evident from this discussion thatthe relationship between freedom and state is not well defined when it comes to jurisprudence.

Robert Nozick's Freedom and State

Freedom and state is a much philosophised issue. One of the contemporary thinkers to have dealt with it is Robert Nozick. Although he did not expressly define a relationship between freedom and the state, his theory of distributive justice deals with the extent to which the state can interfere with individual rights.

Nozick, an American libertarian, strongly believed in natural rights. He believed that these individual rights were so powerful that "they raise the question of what, if anything, the state may do."^x Thus, he arrived at the proposition of a minimalistic state. The function of this minimalistic state is restricted to enforcing contracts and protecting people's rights.

Distributive Justice

In Nozick's minimalistic state, every individual is free to do what he or she wants with the things owned by them. Everyone owns themselves. Nobody can be coerced to do certain things. It is important to note here that this ideology draws inspiration from Kant's idea of people as ends in themselves.

Further, Nozick does not see economic inequality as unjust. In a scenario where nobody can be coerced to do anything, nobody can be coerced to help others. Thus, the rich cannot be coerced to pay taxes for the benefit of the poor. What one individual owns is that individual's property, and he or she has the sole right over it. To take it away in the name of justice is unjust. In this, the influence of Lockian proviso—the natural right to property is evident.

Nozick rejects the idea that distributive justice should lead to equality. In his theory of distributive justice, what matters is how the distribution is done. In this, there are two requirements. The first is "justice in initial holdings", which means that the resources that have been used to make money should be one's own. Thus, money made from stolen products cannot be held justifiably. The second requirement is "justice in transfer", which means that the money made should have been in a free-market economy or through voluntary gifts. Therefore, distribution in a free market is just, even if it leads to inequality.

Nozick illustrates his proposition with a hypothetical example. He uses Wilt Chamberlain; Sandel updates the example by using Michael Jordan. For the purpose of this project, the example can be updated to the latest Forbes Celebrity 100 list of 2019 which lists the highest paid celebrities. The list is topped by American singer songwriter Taylor Swift, who has US \$185 million in earnings. Her 2018 stadium tour "Reputation" is the highest grossing stadium tour in the USA. Now, it is assumed that the tickets for her concerts were sold to individuals for \$50. Since Swift is popular, people readily buy the tickets, and by the end of the year, she becomes the richest celebrity. Now, it is seen that she has made the money through her own performances, using her own voice and skill. Further, the persons who bought the tickets to her show have not been coerced to buy the tickets. They have done so on their own free will. Thus, the requirements of "justice in initial holdings" and "justice in transfer" are fulfilled. In this

scenario, the people who have paid to see Swift will not complain as they had done so of their own accord; people who did not pay to see Swift will not complain as there is no difference in their position; Swift will not complain because she is getting her fair share of money. Thus, this is a just scenario.

The Case Against Taxation

In the example discussed above, what happens if Swift's enormous earnings are taxed? Surely, she will still remain one of the richest Americans. Moreover, the state can use the money off the taxes to help the economically poor. This would be the egalitarian argument. However, for Nozick, this is problematic as it is not a voluntary transaction. It violates Swift's right over her earnings. Taxation, thus, is a restraint on human freedom.

Nozick's case against taxation is so strong that he equates taxation with forced labour. The reasoning behind such a strong statement is that if the state can take away a portion of one's earnings, it can also take away one's time. So instead of taxing one's earnings, the state can ask one to spend a portion of one's time working for the state for free, and this is forced labour. Thus, when the state takes the fruit of one's labour, it is as bad as forced labour. This is in complete opposition to one's freedom, and one's right to self-ownership, of which Nozick is a supporter.

Progressive Taxation in India

Keeping in view Nozick's view on taxation and how it allows the state to take away individual freedom, let us now discuss the taxation system in India. India follows a progressive taxation policy, which essentially means that higher income earners will be taxed more than lower income earners. Tax slabs also vary according to age. Tax slabs are highest for people under 60, and lowest for those over 80 years of age. The justification for this type of a taxation policy is that India has a large population, wherein the majority is poor. Thus, there is a very small proportion of extremely rich people, and there exists high levels of income disparity. So, if the tax for every person is the same, it would either result in very high taxes for the poor or taxes so low that it will be inconsequential. Another justification of taxation is that it is not a coercive measure since when one agrees to live in a democratic society, one can always vote on laws and policies.

For Nozick, such redistributive taxation is no less than theft by the state. According to Nozick's theory of distributive justice, the Indian state expressly violates the freedoms of its citizens and their right to self-possession. If every individual owns himself or herself, then the state has no authority to levy taxes. Those who want to give charity to the poor will do so voluntarily, and not through compulsory taxation. Further, living in a democracy does not mean that one has consented to taxation. For example, if Swift votes against taxation, but the majority are pro taxation, Swift will still have to comply with the taxation policy of the state.

A Critique of Nozick's Critique

Nozick strongly supports individual freedom, right to self-possession and a minimalistic state, and is vehemently against taxation. However, all jurisprudential thought comes down to whether or not it is practical and just to actually implement the theory. Nozick's theory cannot be applied in a state like India. While there are basic rights and freedoms guaranteed to the Indian citizen, such absolute right to self-possession is not possible. In a country where a large chunk of the population is poor, such right to self-possession could lead to cases such as a father selling both his kidneys to pay for the education of his children. Further, the government needs to collect revenue, and the best possible way to do this in a country with a great deal of income disparity, is through progressive taxation.

Conclusion

This paper has aimed to answer the question whether Nozick's theory of freedom and state is practical in a democratic state. It can be concluded from the preceding discussion that Nozick's emphasis on individual freedom, self-possession and minimalistic state is a utopian theory. However, to implement the theory is not very practicable because firstly, absolute self-possession is not possible in a society and secondly, the state needs revenue which are collected through taxes.

The state both guarantees and restricts freedoms of individuals. While freedom of thought, speech, movement, etc. and freedom from discrimination etc. are guaranteed, certain freedoms, such as freedom to kill oneself is restricted. Certain restrictions on freedoms are required. However, these restrictions must always be reasonable and cannot impinge on the basic freedoms of an individual, and to ensure this does not happen, the Constitution makers have guaranteed such freedoms and rights in Part III of the Constitution. Finally, it would not be unwarranted to assert that the relationship between freedom and state is dynamic and complex.

Endnotes

- i *Freedom*, Cambridge Dictionary, available at <https://dictionary.cambridge.org/dictionary/english/freedom> (last accessed 8 September 2019).
- ii John Locke, *Two Treatises of Government*, 1689.
- iii Immanuel Kant, *The Metaphysical Elements of Justice*, 1965. Michael J. Sandel, *Justice: What's The Right Thing To Do?*, 2009.
- iv Jeremy Bentham, *Introduction to the Principles of Morals and Legislation*, 1789.
- v John Stuart Mill, *On Liberty*, 1859
- vi Simon Keller, Freedom!, *Social Theory and Practice*, Vol. 31, No. 3, 2005, pp. 337-357.
- vii K. Balagopal, What Is 'Socialist Freedom'?, *Economic and Political Weekly*, Vol. 24, No. 31, Aug. 5, 1989, pp. 1761-1763
- viii Karl Marx and Friedrich Engels, *The Communist Manifesto*, 1848
- ix G.W.F. Hegel, *Elements of the Philosophy of Right*, 1820
- x Robert Nozick, *Anarchy, State, and Utopia*, 1974

