NEGATIVE AND POSITIVE LIBERTY: THE EARLY DEBATE

Henry Sidgwick (1838-1900) asserted that a person who freely negotiated a contract, expressed his individual choice even if the terms were particularly onerous to him. The early liberals who stood for liberty in all spheres insisted that law must enforce all contracts (with some exceptions, such as in the case of contracts of slavery) since each individual was the best judge of his own interest, and he used his judgment before entering into any contract. The state was not allowed to impose its own conception of 'good' on the individuals in their mutual dealings.

This idea of negative liberty led to the doctrine of laissez-faire, that is freedom from government interference in economic affairs. Hence most of the advocates of negative liberty, such as Adam Smith (1723-90), Jeremy Bentham (1748—1832), James Mill (1773-1836), Henry Sidgwick (1838-1900) and Herbert Spencer (1820-1903), favoured the minimal state.

This liberal-individualist view of liberty was originally put forward by the spokesmen of the new middle class—the merchant-industrialist class which sought to establish a 'free market society' against the mercantile policies of the state. It was argued that, in an atmosphere of non-intervention, the interaction between self-interest of each individual would result in the promotion of social interest as a whole. The exponents of laissez-faire individualism saw society as an aggregate of atomized, alienated individuals, joined together by a bond of mechanical unity. Liberty was seen as the freedom of trade, freedom of enterprise, freedom of contract, a free competition of the market forces of supply and demand. The state was viewed as a negative state, a necessary evil, which was required not to interfere with the natural liberty of men, but only to maintain their liberty by protecting their person and property from the onslaught of other individuals.

The concept of negative liberty played an important historical role. It proved instrumental in the establishment of capitalist system in Europe. It released the forces of production which were blocked by the feudal system inherited from the Middle Ages. But by the middle of the nineteenth century it became evident that the capitalist system supported by negative liberty had brought about miserable conditions for workers and consumers. The appalling disparities of wealth and power—mounting oppression, exploitation and injustice in society—amply demonstrated contradictions in this concept of liberty. Humanist writers, socialists, Marxists and positive liberals came forward to demand a new definition of liberty. They argued that the non-interventionist policy of the state, particularly in the economic sphere, was not compatible with liberty as a universal principle. The employer's freedom to hire and fire workers at his will in the face of a rapidly rising labour force in industrial cities had made a mockery of the freedom of contract; the workers were forced to live under constant insecurity and threat of unemployment, to work under uncongenial conditions, and to live a life of abject poverty at a sub-human level. The benefit of 'liberty' was now sought to be extended to the working class, largely because of the mounting pressure from the working class itself.

It was John Stuart Mill (1806-73) who introduced the conception of positive liberty and consequent transition from negative liberalism to positive liberalism.

Mill started with a defence of laissez-faire individualism, but realizing its weaknesses in the light of the new socio-economic realities, he proceeded to modify it. Mill was the first prominent liberal thinker who realized that the working classes were being deprived of their due share in a capitalist economy based on laissez-faire individualism. He, therefore, sought to discover an area where state intervention could be justified. At the outset, he drew a distinction between two types of actions of men: 'self-regarding actions' whose effect was confined to the individual himself; and 'other-regarding actions' which affected others. Mill advocated complete freedom of conduct for the individual in the sphere of self-regarding actions unless he was proceeding on a self-destructive path due to ignorance. However, in the sphere of 'other-regarding actions' Mill conceded the right of the community to coerce the individual if his conduct was prejudicial to its welfare. Whether it is possible to draw a clear line of demarcation between 'self-regarding actions' and 'other-regarding actions' of the individual is beside the point. The real significance of making such a distinction lay in Mill's effort to define a sphere where an individual's behaviour could be regulated in the interests of the community. Thus, he was contemplating a positive role for the state in securing social welfare even if it implied curbing liberty of the individual to some extent. It was Mill who gave a sound theory of taxation, pleaded for the limitation of the right of inheritance, and insisted on state provision of education.

After J.S. Mill, T.H. Green (1836-82), L.T. Hobhouse (1864-1929) and H.J. Laski (1893-1950) further developed the positive concept of liberty. Green postulated a theory of rights and insisted on the positive role of the state in creating conditions under which men could effectively exercise their moral freedom. Hobhouse and Laski postulated that private property was no absolute right, and that the state must secure the welfare of the people—no matter if it is constrained to curtail economic liberty of the privileged few.