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Absolute Freedom: A Curse in Disguise of a Boon

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ABSTRACT

'A well-regulated Militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed.' This is the notorious second amendment of The United States of America. Right to bear a firearm is a subset to right to life because to protect your life from a specific danger, sufferer must be equipped with the right weapon to protect themselves. But the challenge is whether a prudent citizen is intelligent enough to exercise his or her right. A flawless civilization is generally seen as a society with no restrictions, a society with absolute freedom, a society where everyone, despite their differences, is treated equally but, is this visionary society a perfect fit in the current era? This paper believes in restricting freedom of individuals for the benefit of the public. The paper does not promote dictatorship or inequality but rather protects the society from misusing their own rights to harm themselves and their fellow citizens. The aim is to analyze the deleterious effect which originates from absolute freedom.

Keywords: Absolute freedom, Article 21, Reasonable restrictions, gun violence.

I. INTRODUCTION

Mass shootings all over the world in a menace to humanity. The most developed country in the world with one of the finest justice systems, the United States of America leads the world in most citizens incarcerated per capita and defense spending, where the USA spends more than the next 26 countries combined, 25 being allies. Now the US also leads the race for most of the mass shootings in a year. The debate over gun control in the United States has waxed and waned over the years, stirred by frequent mass shootings in civilian settings. Gun violence is the leading cause of death for children and young adults in the United States. In particular, the ready availability of assault weapons and ammunition has provoked national discussion after multiple mass shootings of school children. Recent years have seen some of the worst gun violence in U.S. history. In 2021, guns killed more than forty-five thousand Americans, the highest toll in decades; and the upward trend is on track to continue. The United States, with less than 5 per cent of the world's population, has 46 per cent of the world's civilian-owned guns, according

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to the most recent report by the Switzerland-based Small Arms Survey (2018). It ranks number one in firearms per capita. The United States also has the highest homicide-by-firearm rate of the world's most-developed nations.² However, the right to carry firearms is not absolute. The US Congress and legislation have certain restrictions on the said right to regulate the liberty given to the people by the second amendment, such as bans on concealed firearms, bans on possession of certain weapons and prohibition of the sale of a weapon to certain categories of people and age group. These restrictions were not safe from judicial review and over the years the laws regarding guns became more flexible. The flexibility of gun laws in the US has proved to be fatal to the nation. As of June 2022, guns killed some nineteen thousand people in the United States. The majority of those were in acts of suicide. Mass shootings—those with at least four victims—were occurring at a rate of at least one per day.

II. INTERPRETATION OF THE SECOND AMENDMENT

The Second Amendment of the United States Constitution reads: "*A well-regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.*"

Such language has sparked a debate over the interpretation of the aforesaid amendment. The second amendment contains two clauses: the *prefatory clause* (introduction clause) and the *operative clause* (functioning clause). The *prefatory clause* is 'A well-regulated Militia, being necessary to the security of a free State' and the *operative clause* is 'the right of the people to keep and bear Arms, shall not be infringed'. The framers of the Constitution never clearly elucidated the interrelation between the two clauses hence, the accurate interpretation of the amendment is still debated.

The debate stemmed from two models: the *individual rights model and the collective rights model*.

- ***Individual rights model***

The individual rights model argues that the second amendment guarantees individuals the right to bear and own firearms. The model contends 'the people' in the operative clause ensures all citizens have the right to own firearms, as individuals. The prefatory clause merely explicates why such a right is needed. To put it another way, the prefatory clause elucidates that one purpose of the people's individual right to bear arms is to defend their states, if needed, as an

² Council foreign relations, <https://www.cfr.org/backgrounders/us-gun-policy-global-comparisons>, (July 12, 2022)

armed civilian militia. Under this model, the prefatory clause explains a purpose, but not an exclusive prerequisite to exercise the right.

- **Collective rights model**

Law scholars for collective rights argue that the second amendment shields the right of individuals to form a well-maintained militia. Only those who are part of the well-regulated militia have the right to keep and bear arms. In other words, the operative clause creates a collective right on behalf of states' citizens to own firearms, but only for the object stated in the prefatory clause. The prefatory clause cites a well-regulated militia, which can be regulated by the states. Under the collective rights model, the prefatory clause provides a clear limitation on the scope of the operative clause. A 'well-regulated' militia is subject to state laws whose members are highly trained like the national guard who can own weapons.

III. EVOLUTION OF THE SECOND AMENDMENT

As discussed earlier the debate regarding the relevancy of two theories is a major topic of discussion among law scholars. In the 20th century the 'collective rights model' was perceived as the appropriate interpretation of the second amendment. In 1939 the U.S. Supreme Court considered the matter in *United States v. Miller*, 307 U.S. 174. There, the Court adopted a collective rights approach, determining that Congress could regulate a sawed-off shotgun which moved in interstate commerce under the National Firearms Act of 1934 because the evidence did not suggest that the shotgun "has some reasonable relationship to the preservation or efficiency of a well-regulated militia" The Court then explained that the Framers included the Second Amendment to ensure the effectiveness of the military. This precedent stood for nearly 70 years until 2008. The Supreme Court in *District of Columbia v. Heller* concluded that the collective rights approach adopted previously was dissenting with the intention of the framers of constitution and second amendment intended to provide right to possess firearm to the people. Recently in 2022, The Supreme Court also ruled that the State "may issue" Licensing regime violates the Second Amendment.

IV. CONSEQUENCES OF ABSOLUTE FREEDOM

Absolute freedom sounds virtuous but is a curse on the society. Absolute Freedom indicates no restriction on speech, movement, property and much more which will prove a disaster for both society and legal system. The Constitution of India provides freedom to the people but with reasonable restrictions to ensure true justice, even Article 14 of the Constitution of India

ensuring equality before law permits Intelligible differentia. Intelligible differentia refers to discrimination or altered treatment towards a class of people to achieve a just objective which is permitted by the fundamental rights within the Constitution through just means. For Example, a minor or person with unsound mind is not allowed to enter into a contract, here the class of people are minors or unsound people, and the objective is to prevent injustice against minor and unsound person, since they are not capable to form a contract on their own and could be easily cheated by the society. The question lies whether it is justice to let minors and unsound persons to form contract in name of absolute freedom or restrict their ability to do so.

In a scenario where minor and unsound people are permitted to form a contract, the consequences of freedom for people incapable of entering a contract will be against the justice and their development. Since, as talked earlier they could be coerced into an exploitive contract or victim to consenting an oppressive contractual relation. But if their ability to enter into a contract is monitored by a guardian or courts, then the chance of entering into an unjust contract becomes close to 0.

Here, the rights of people incapable to a contract are not taken away rather a reasonable restriction is placed with an intention to benefit and protect them from oppression.

(A) When should rights be restricted ?

Restricting a person or class of persons right is a difficult task, which can easily turn into oppression. As stated in Article 21 of The Constitution of India that “*no person shall be deprived of his life or personal liberty except according to procedure established by law*”³ which interprets that only with fair and just procedure established by law a person can be deprived of his rights. Here, the deprivation must be for a just reason and done with a fair process parallel to principles of natural justice. Some examples are.

- A convict is deprived of his right to liberty and freedom, to punish him and bring justice but with established procedure which is followed in a criminal trial.
- A person is denied of his or her driving license to ensure safety of others on road only after an impartial driving test.

But when a restriction is placed for an unjust reason with a fair procedure or a restriction is placed for just reason but with an unfair procedure, both are in contravention of Article 21 and principles of natural justice. Some examples are.

³ The Constitution of India, 1950, Art 21.

- In Sabarimala Temple menstruating women were not allowed to worship, here the restriction placed is unjust thus, no matter the procedure of deprivation. The restriction placed was illegal and corrected by the Supreme court.
- In famous case of Maneka Gandhi v Union of India AIR 1978 SC 597, Maneka Gandhi's passport was confiscated by the police without any fair or just procedure. The Supreme court laid down the principle that no person can be deprived of their right without a fair procedure established by law. Here the confiscation of passport and denial to travel maybe just but since she was not given the right to defend herself and confiscation maybe done with a law but an unfair one. The confiscation is against the basic structure of The Constitution of India.

Restrictions can only be placed when done for a just reason and with a proper procedure established by law.

V. CONCLUSION

A jurisprudence from the concept of restricting rights can be drawn. The Constitution offers rights to people who are intelligent enough to practice their rights, for those who are incapable of doing so, a restriction is imposed to protect their own and society's interest.

For someone who is a surgeon, he has a duty to operate on a patient with their consent. The reason they are permitted to operate on a human being is because they have studied extensively about medicine and deemed competent by a university recognized by the government. An advocate cannot operate on a human being since he is not intelligent enough to do so or deemed competent by a university.

A policeman or soldier is allowed to carry firearm because they have been trained on how to operate the weapon and when to use the weapon. The difference between a common American person and a police officer is their knowledge regarding the functions of a firearm and wisdom of its usage. One of the main reasons for increase of gun violence in America is ignorance regarding self-defense laws, a common man is not expected to know when he can use a deadly weapon or not. A firearm bearer who is unaware of self-defense laws is likely to use deadly force in situations where he is not supposed to. By imposing restriction to obtain a license for ownership of firearm which educates people on its use and knowledge of relevant law doesn't violate their right.

The Supreme Court of United States of America interpreted *individual rights model* which

allows a citizen to bear firearm as an absolute right with no restrictions. This interpretation is against the doctrine of *reasonable restrictions*, since a person who is not intelligent enough to practice a right should not be allowed to do so with absolute freedom, restrictions on the practice of the said right should be enforced.
