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Liberty & Activism: The Never Ending Confrontation of Directive Policies Over Egalitarianism

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ABSTRACT

The version of liberty that the preachers of an equitable society seek is somewhat blurred or rather only a part of the facet of reality. Liberty as much associated with libertarianism probes for how there is need for non-aggressive government as well as the civilians not coercing each other. However in a tradition ridden country like India where every faction demands for its sanction liberty can never confide with equality. It has been an existent fact since the inception of the constitution that equality shall only exist among equals and but liberty is practiced among all factions, because the right to free will is something that is executed by all equally. However such can't be the case with equality because not everyone has equal opportunities which plays a vital role but cannot be rebutted as being inequality.

Therefore, the purpose of this paper is to probe as how equality and liberty are independent and interdependent on each other. This paper shall also have a magnifying research as to how these two slit each other. The paper shall also research on how various factors play their part in these elements while at the same time comparing the issue in hand with other sovereigns. The paper shall relate the notion of equality with liberalism and how it encompasses different group and ideological movements such as feminism, while at the same time relating it to the concept of liberty. The second part of the paper shall deal with how over the years judicial activism has turned into judicial chauvinism and changed the complete platform of the Indian constitution. The hearsay that what is more rudimentary to life should be given prevalence over what forms the social welfare state because it is that the faction that forms it have been proved rather just like an obiter dicta of a case. Therefore, the paper shall probe on how the instrument of judicial review attacks on the fundamental rights and despite the fact of its primary need, sometimes the directive principles hold authority. The paper shall probe on those issues whereby the DPSP have been given more importance than what the fundamental rights bar. The paper shall individually probe on these directive policies and dissect them in lieu to their

contradiction with equality. Hence, "to stop a battle, one must prevent the internal war on law".

The Idea of Liberty and its Dimensions

From where the inception of the term "liberty" took is hard to place. However, if it only signifies free will then arguably the birth of the Indian constitution should be the right time to place it. But what is this free will, what is its purpose? The very question poses a big threat to the notion of free will because free will to murder someone might not encompass the very periphery of liberty. The very purpose for such could not be reprimanded.

In philosophical terms, liberty involves free will which itself encompasses the concepts of advice, persuasion, deliberation, guilt and sin. This is how a course of action is limited but is this in execution in the Indian constitution? Or rather the preachers are worshipping a mirage of liberty? In India, the most applicable definition of liberty would be, "social and political freedom enjoyed by all civilians". For the protection of such freedom the constitution provides Article 21 of the Indian constitution which clearly states for "No person shall be deprived of his life or personal liberty except according to procedure established by law." Article 21 secures for Indian citizens same rights which the British citizens derive from the famous Magna Carta. Art. 21 imposes an obligation on the executive to observe the forms and rules of law when depriving individuals of their rights to life or liberty.

The basic ideology that underlies any sovereign constitution is that all men were created equal, even though not born equally in wealth, status or their opportunities. This is the basic framework of the law of nature and rule of law function since as regards to rule of law it has to uphold that it is in harmony with the concepts of generality, equality and certainty. Therefore, not gaining similar or equal opportunities may not be the base for coercing the government to formulate laws for equalisation of conditions. Now another debatable issue that comes into the picture is when the factions make two parallel lines, intersecting lines, the parallel lines being "freedom" and "liberty". It is vital that the one has his books clear on how different of a concept "freedom" is. The recent movie Gabbar focused on how a civilian distressed over the present corruption conditions and governmental functioning and takes charge into his hand to remove corruption. This may certainly be perceived as dramatic but in fact it is where one could extract the meaning of the two terms. Liberty is the condition wherein individuals behave according to their will and govern themselves, taking responsibility for their actions and

behaviour .Then again it could be positive or negative, "positive liberty" wherein individuals act on their own will without being influenced by any social restrictions. Then again liberty is derived from freedom which could be defined as the state of being free to enjoy political, social, and civil liberties. It is the power to decide one's actions, and the state of being free from restraints or confinement. Thus, by analysing the above example, it was the protagonist's freedom to choose a more morally sound method in his road to reform "corruption" while it was his liberty, that he chose to take a villainous-heroic role without any restraints. However in either case one has to be bound by what is morally and ethically sound.

Through the lens of history one can only find India in much custom-tradition ridden form, so why is liberty such a fallacious belief in such a large democracy? When the society is disintegrated into several linguistic, caste etc. based hierarchies, it is unlikely that liberty and equality could come later than the demands for individualism. In the past, caste has played a dominant role in both the Indian legislature and society, holding the very roots of Indian democracy .Caste in its own form played both for the better or worse, however seeing back it is leant towards the worse. With caste still as one of the major factors in the technology era , liberty is miles apart because to act according to one's will should include the right to choose one's partners wherein as being suggested the right to equality also plays its role. But the immense number of cases decked for "honour killing" proves our notions of liberty are yet to be reached and so is equality. Much accepted fact that equality can never exist among unequal's but can caste be the deciding factor for who equals whom since much is said that "each person is born equal"

Ideological belief and race towards the Apex - Equality v. Liberty

If we seek to discuss it in the truest sense of its notion then, what do these values apply for in the normal or daily legislative instances? Before turning pages to the ideological belief, it is vital to understand as to what challenges the lawmakers face when they weigh the two notions. In this que the first one which has posed a major threat to the country's legal system could be "right to die or committing suicide". As fast paced the life becomes , the much more the criminal mind becomes and affects the psychology of a man with resulting to the final question " I have right over my body, so I can choose to do what I want with it" , much affected by the prowess of the media and gaining awareness. In such situations the legal fraternity comes into the grey area of law, when several factions demand the same in lieu of

their right to equality and liberty to do so. The High Court of Bombay in **State of Maharashtra v. Maruti Sripati Dubal**[2]., held that the right to life guaranteed under Article 21 includes right to die, and the Hon'ble High Court struck down section 309 IPC which provides punishment for attempt to commit suicide by a person as unconstitutional. In **P. Rathinam v. Union of India**[3] however, a Division Bench of the Supreme Court while supporting the decision of the High Court of Bombay in the previous case held that under Article 21 right to life also include right to die and laid down that section 309 of Indian Penal Court which deals with 'attempt to commit suicide is a penal offence' as unconstitutional. However, this issue was raised again before the court in **Gian Kaur v. State of Punjab**. In this case, a five-judge Constitutional Bench of the Supreme Court overruled the P. Ratinam's case[4] and held that Right to Life under Article 21 of the Constitution does not include Right to die or Right to be killed and there is no ground to hold that the section 309, IPC is constitutionally invalid.

This being the legal perspective, but by passing the issue through the lens of ideological belief, the thoughts of libertarianism and liberalism should be mentioned. In the right words, it comes under the philosophy of suicide. In this the liberalism asserts that a person's life belongs only to them, and no other person has any right to force their own ideals that life must be lived. Rather, only the individual involved can make such a decision, and whatever decision they make should be respected. Philosopher Thomas Szasz goes further, arguing that suicide is the most basic right of all. If freedom is self-ownership, it is ownership over one's own life and body, then so is the right to end that life which is the most basic of all. "If others can force you to live, you do not own yourself and belong to them". Now here comes a very prudent question, if all people have ownership over their being, then they should all have equal rights in judging what to do with their being, in such a case a sovereign doesn't needs law to govern. Seemingly the picture doesn't fits straight. The law prohibits "suicide" because if every person were allowed this right and be justified then there would be no room for criminal codes. However one also does not completely complies with this notion. Liberty is where equality cannot exist and equality is where liberty cannot exist.

As much as libertarianism thought is applied, it is to be understood that free will without restraint is to be exercised imbibed with ethnic principles with non-aggressive form. One if demands equality and in the process exercises his free will to achieve something it is not to be done by coercing one another's liberty. One of the most prudent example for such could be

male chauvinism which took its inception during World War II. After the war ended and men returned home to find jobs in the workplace, male chauvinism was on the rise. Men who had been the main source of labour, and they expected to come back to their previous employment, found women had stepped into many of their positions to fill their positions.

On one hand, it is reiterated through the voice of the statutes that there is no gender proclivity and existing legislature could put up with the rising demands of the feminist faction, while on the other with the chauvinistic remarks the judges still make about the rights of women make us wonder whether equality in gender roles is a reality or not. Ideology may inhibit difference of opinion but the fact that the two contradict, can never be overturned.

Feminism and Libertarianism – Accounting for liberty

Libertarianism association with the feminist movement began with the ideology of "free thought". It was traced in anarchism resulting to anarcha-feminism beginning with Josiah Warren who laid great stress upon the women's rights .They had an initial battle for the provisions and removal of suppressions from marriage laws for women's. Anarcha-feminism developed as a fusion of radical feminism and anarchism, and viewed "patriarchy" as a fundamental manifestation of compulsory government. Anarcha-feminists, like other radical feminists, criticised and advocated the abolition of traditional conceptions of family, education and gender roles. Here the concept of equality was widely applied, while at the same time not waiving the concept of liberty. The fire spread when the debate began as to how the laws for "women related issues" were made by men, rather than women. The structural and functional perspective of gender defined roles also arose the issues of the traditional concepts and much relations of equality. However much was yet to come in forms of cyber- crimes and the Medical Termination of Pregnancy (MTP) Act ,because from the act arose the issues of sex selective abortions which was an issue of gender equality which split the concept of a woman's autonomy and existence itself. Although on occasions, it was contended that liberty to do with one's body resides within a soul, but it must be rebutted with the fact that the "life and equality both are to be safeguarded".

Equality and liberty on a different plane- Hijack of Nations to the Battle

The above said examples much deal with either what the Indian laws are presently facing in its tussle against the liberty-equality war or what the individual battle has been facing, but a

common nexus where the present century has ended in its grey area in which even the apex of courts or the biggest of the nation's find hard to deal would be "same sex marriage" or precisely LGBT rights. Beginning with the United Nations, the issue of the conflict between religion and same-sex marriages was debated in Maine, where a referendum held it invalidated and so the legislation recognizing same-sex marriage. People who were not in the support of same-sex marriage argued, inter alia, that the legislation should be removed because of its impact on religious liberty. That argument would have been denied then, had the original legislation provided meaningful religious liberty protection. In many states where same-sex marriage was on the lawmakers list, proponents of same-sex marriage had vigorously opposed any religious exemption beyond the religious institution ceremony provision. In New Hampshire, for example, the governor had insisted on broad religious liberty protection as one of the condition for signing same-sex marriage legislation. The legislature originally complied with it, including protection that roughly followed what the proposed statute above urged. But, under intense pressure from supporters of same-sex marriage, the legislature retreated to a far restricted and mostly meaningless protection for religious institutions. The governor did not insisted on the original version, and now the New Hampshire statute legalizes same-sex marriage at the expense of religious liberty.

One of the judgements for the same happened in **Employment Division v. Smith**[5] , in which the Supreme Court held that facially neutral, generally applicable laws which burdened religion, need no special legislative justification and, therefore, would not be subject to compelling (or other heightened) interest analysis. Laws that mandate the acceptance of the validity of same-sex marriage would be neutral laws of general applicability and, hence, would require no special justification to fulfil the federal constitutional guarantee of free exercise of religion. On the other hand, such indirect burdens on religious practices might violate state constitutional religious liberty guarantees in those states departing from the rule introduced in Smith.

However, the question here doesn't merely concern religious liberty for if asked any man of antecedent generation and even in this generation they may have a hundred marks for heterogeneous relationship for that is the only way to achieve the ends. But because the "law of nature " and religious sanction provide a better reason to back one's reasoning it is right way to place it .If the question is only about "liberty" then , the landmark supreme court judgement,

Lawrence v. Texas [6] in which the 6–3 ruling the Court struck down the sodomy law in Texas and, by extension, invalidated sodomy laws Lawrence[7] explicitly overruled Bowers[8], holding that it had viewed the liberty interest too narrowly., making same-sex activity legal in every U.S. state and territory. However, it is not concerned merely with liberty because, the basic rights to be treated equally could not be equally denied. Since it is a stated fact that, every person belonging to either gender is human and has been born equally only to be treated as an equal civilian in the vision of law. Here is where one has to find what should be the correct balance between these, and purport what could be the outcome of any actions .To claim equal citizenship over bare religious liberty claims should be foremost.

The Indian plane for this issue is also not set on a different foot, because the civilians of India, value culture and religion more than the preaching's of liberty and equality, for which one would not be sarcastic, because since, the ages religion has played a vital role in the Indian history and judiciary. For the proponents of the issue this system would not make sense, and it would be deemed as a transgression of the boundaries of liberty and equality, but at the end of the day, it is an individualistic issue. The offence of homosexuality is read under this section as an Unnatural Offence. The major provisions of criminalisation of same-sex acts is found in the Section 377 of the Indian Penal Code (IPC) of 1860.However if by any means one can draw an absolute line between what weighs the most, "liberty" or "equality", then the question remains unanswered and in ambiguous position, for every faction shall demand it individually and sometimes maybe even at the expense of another. But to carefully choose as to what would not harm the shield of a welfare state and help achieving one's rights, lies in the person's judgement.

Judicial Activism and Fundamental Rights-The Battle of Benches

Judicial activism turned chauvinism – retaliating course of law

It is fascinating as to how over the years the judiciary has gained the undeniable powers to almost form a retaliating shield for the lawmakers. But where does the inception of judicial activism lest chauvinism takes place? Since independence, judiciary has been very actively playing a role in dispensing the justice since the case of **A K Gopalan v. State of Madras**[9] case followed by **Shankari Prasad case**[10], etc. However, judiciary remained submissive till the 1960s however its assertiveness started in 1973 when the Allahabad High Court rejected the candidature of Indira Gandhi and introduction of public interest litigation by Justice P N

Bhagwati further expanded the scope of judicial activism. From the stream of activism flew chauvinist methodology which became a part of much accepted judicial procedure, however in the landmark decision of **Minerva Mills Ltd. and Ors. v. Union of India and Ors**[11] used the word in the lieu of regional superiority and depicted regional chauvinism. Judicial activism is a way through which relief is provided to the underprivileged and aggrieved citizens. Judicial activism is a way of providing a base for policy making in competition with the legislature and executive. However over the past decades the eyes of factions have only witnessed the harsher side of judiciary. It is a stated fact that what the law purports is for a better integrated society, however when self –inflicted emotions control the senses of a decision maker then it is liable to cause transgression of the basic structure. But what is this basic structure and why are the law sealers taking a villainous role for the act of interpretation? The basic structure could take various forms as every soul has different perspective, so he shall count on different notes, however without equal status and free restraints, life is next to a heinous beast.

Rudimental or obligatory – backdrop of judicial review

The basic object for any legislation or judiciary is to understand whether the statute in inappropriate in its constitution is rudimental or obligatory? Or the rights incorporated fall in which of the two? To understand rudimental is something without which one thing cannot survive whilst the latter speak of which is required but can be managed with. So the war between fundamental rights and the directive principles of state policies is not a new issue but took inception since back. So what infuriated it? Why is there a strain? Which is superior?

The Directive Principles of State Policy (DPSP) are contained in part IV, from the articles 36 to 50, of the Indian Constitution. Many of the provisions correspond to the provisions of the International Covenant on Economic, Social and Cultural Rights (ICESCR).[12] For instance, article 43 provides that the state shall venture to secure, by suitable legislation or economic organization or in any other way, to all the workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of respite and social and cultural opportunities, and in particular the state shall venture to promote cottage industries on an individual or cooperative basis in the rural areas. This corresponds more or less to articles 11 and 15 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). However, some of the International Covenant on Economic, Social and Cultural Rights (ICESCR) rights, for instance, the right to health (article 12), have been interpreted by the Indian Supreme Court to form a part of the right to life under article 21 of the

Constitution, thus making it directly enforceable and justiciable. As a party to the ICESCR, the Indian lawmakers has enacted laws giving effect to some of its treaty obligations and these laws are in turn enforceable in and by the courts.

Now since the concept itself is so dynamic and viable that a lot references could be used, such as the differences between the Economic, social and cultural rights and The International Covenant on Civil and Political Rights (ICCPR), whereby both initiated from United Nations General Assembly, but are much similar to the concept of fundamental rights and directive principles of state policy. Of the two, which is more rudimental, be it one's right to "life" included in the latter or the right to education in the earlier. Here is where one draws a line between rudimentary and obligatory. However being a chain reaction both affect each other, since without proper health a faction cannot exist and to attain such level of medical advancement, one needs education. But which is superior? With all voices in sync, the faction would support to what supports the branches of life, but then overwhelming the waves of essential rights would be, whether the right to housing be given consideration. However, synonymous to the concept of liberty and equality, both are weighed on a different scale, "no life to live with the right heath in the houses".

Similarly the two parts of the Indian constitution, the fundamental rights (Part III) and the directive principles of state policy (Part IV) are considered on a different scale, because what is elementary for the sound living of the factions must be what should be considered most prime in "judicial activism". It is not rebutted that there may be instances where the state needs to divert from its notions of understanding of basic importance and may apply differently to fit the mould. However, it is not implied that must be done so as to completely quash the horizons of judicial review. Such became evident when a series a judgement took place over the tussle, first being **State of Madras v. Champakam Dorairajan**[13] whereby the Supreme Court first, the court said, "The directive principles have to conform to and run subsidiary to the chapter on fundamental rights". Much related to issues of equality but dealing with the two constituents, the case was by the **Fundamental Rights Case**[14], in which the majority opinions reflected the view that "what is elementary in the governance of the country cannot be less significant than what is significant in the life of the individual". Another judge constituting the majority in the similar case said- "In building up of a just social order, it is sometimes imperative that the fundamental rights should be subordinated to directive principles." This view, that the

fundamental rights and directive principles of state policy are complementary to each other, "neither part being superior to the other,"[15] has held the ground firm since.

Articles 39(a) and 39 (b) provide that- The State shall, in particular, direct its policy towards securing-

That the citizens, men and women equally, have the right to an adequate means to livelihood.

That the ownership and control of the material resources of the community are so distributed as best to sub serve the common good.

Articles 31B and 31C of the Constitution were introduced by the 1st and 25th amendments in the Indian Constitution. In fact the Fundamental Rights case concerned with the constitutional validity of article 31C of the Constitution, in which the court has retained its power of judicial review to examine if, in fact, the legislation has intended to achieve very the objective of articles 39(b) and (c), and whether the legislation is an amendment to the Constitution, whether it violates the basic structure of the constitution. Many a times courts have protected itself from any menace against the riot of violation, if in cases there is violation against "right to equality", so as to bring agrarian reforms or other cultural reforms. Similarly, courts have used directive principles of state policy to uphold the constitutional validity of statutes that apparently impose restrictions on the fundamental rights. So is the verdict being overruled by the judiciary's own verdict or is it to fix the mould, as the interpreters would wish for? In a traditional country like India, from the birth of child he is taught about the virtues and morals, but not about what fundamental rights he is going to inherit as a person. One is taught to be more moral then a law bound and learned civilian, because it is an assumption that with morality comes all the aspect being a good lawful citizen. These two dynamic concepts are still mid- air because morality plays a major part in our legal system. The directive principles of state policy derives its major ideology from the concept of morality. To presume that what is based on the value or virtues or moral of a person is still deemed higher to what breathes in the soul of a person is a hypocrite remark. The Fundamental rights case raised the similar issue on the concept of fundamental rights having no originating base, however if even being empty as they were, they still had scope for further developing the base and moreover had since time of its inception provided people a backbone for what was elementary to them, if not in all, rather than the policies which built on the moral grounds.

The Eventual battle against the Rights

In several of the decisions passed by the apex court, it was ruled as to how running both the fundamental rights and directive principles together was vital, but throughout out the cases the ratio decidendi changed and the above became mere obiter dicta. Numerous cases were lined in a row to fit the mould of judicial "activism". It is rightful to have a magnifying research on each individual directive policies and how they overruled the elementary rights Right to Shelter. In **Shanti Star Builders v. Narayan K. Totam**[16], the court has recited its word in an envisaging manner that, "The right to life . . . would take within its sweep the right to food . . . and a reasonable accommodation to live in." Unlike certain other Economic, Social and Cultural rights, the right to shelter, which forms part of the right to an adequate standard of living under article 11 of the International Covenant on Economic, Social and Cultural Rights, finds no similar expression in the Directive Policies. This right has been seen as forming part of Article 21 itself.

Similarly some of the other Fundamental rights include many other directive policies such as again witnesses in the landmark case of **Olga Telis v. Bombay Municipal Corporation**[17] the court held that the right to life also included the "right to livelihood". The petitioners contended that since they would be deprived of their livelihood if they were ousted from their slum and pavement dwellings, their expulsion would be next to deprivation of their life, and hence would be unconstitutional.[18] The court, however, was not prepared to go to that extent. It denied that contention, by saying that:

"No one has the right to make use of a public property for a private purpose without requisite authorisation and, therefore, it is erroneous to contend that pavement dwellers have the right to encroach upon pavements by constructing dwellings thereon . . . If a person puts up a dwelling on the pavement, whatever may be the economic compulsions behind such an act, his use of the pavement would become unauthorised".

However tracing back to the time of John Rawls and his Justice theory which has one of the postulates beginning from "the most disadvantaged section should be given the greatest benefit", keeping harmonious with the first principle of "each person is to have an equal right to the most extensive basic liberty". As already reiterated several times that each person is born equal but does not have equal opportunities', so for those disadvantaged sections , if not equal wealth then, to provide sound economic and social conditions is the job of the

constitution .Just by evicting these factions and passing up the statutes would not help the situations. Here since fundamental right is inclusive of the directive policies, so either both should run parallel or what is in best need of the civilians of the country should be chosen .And for strengthening such rudimentary rights the prevalence of morality should not be taken, but what is going to create a "social welfare state" must be taken into count.

Right to Work

Article 6 of The International Covenant on Economic, Social and Cultural Rights (ICESCR) which firmly states for, work, under "just and favourable conditions" is quite synonymous to Article 41 of the Indian constitution stating, "the State shall within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want." Article 38 states that "the state shall strive to promote the welfare of the people" and article 43 states "it shall endeavour to secure a living wage and a decent standard of life to all workers". One of the cases in which the problem of enforceability of such a right was posed before the apex Court was of large-scale abolition of posts of village officers in the State of Tamil Nadu in India. Afters this case began the intersection of the policies and rights and war of laws began for the right to work provision. It was only after this case that the court had felt much more independent to interfere even in areas which would have been considered to be in the domain of the policy of the "executive". Where the issue was of regularizing the services of a large number of casual (non-permanent) workers in the posts and telegraphs department of the government, the court has not hesitated to invoke the directive principle of state policies to direct such regularization.

Then again by the instrument of Public Interest Litigation [19], the court breathed life into the fact that the fundamental rights derive its soul from the directive principles and without it cannot stand firm and by the virtue of judicial activism, article 21 was spoken to be the part of clauses (e) and (f) of Article 39 and Article 41 and 42, the court converting what seemed a non-justiciable issue into a justiciable one by invoking the wide streak of the enforceable article 21.

Right to Education

This right is a right which has its position on both the cliffs, as mentioned above the Economic, social and cultural rights and International Covenant on Economic, Social and Cultural Rights

(ICESCR) are also in mid -way battle. But for such, this rights position for one, is disputed. Article 45 of the directive principles of state policy, which corresponds to article 13(1) of the ICESCR, states, "The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years." Now the question arises as to whether the right to education was a fundamental right and enforceable, such was answered by the Supreme Court in the affirmative in Mohini Jain v. State of Karnataka.[20] The correctness of this decision was examined by a larger bench of five judges in **Unnikrishnan J.P. v. State of Andhra Pradesh**[21]. For as such the above ratio goes it was the view that the policies flow from the fundamental rights and that they derive their decisions with the base of it , however if in the above example article 21 was used to supplement the other the directive policies then the similar should be applied with the other judgements. It is true that right to education is a much demanded and required need for any civilian a sovereign for sustainable and industrial development. But to fit the mould of law and fluctuating from either will make both lose their initial status. The parameters of life and liberty included in Article 21 is not exhaustive but inclusive of all the traits found in the legislation.

CONCLUSION

It can never be said that a person requires either liberty or needs only to at an equal frequency with another. Their battle is a confrontation which has went since decades, but the question at the present moment should be, whether one can survive without either of the two? The answer in all sync would be "no". For one person to be in an equal plane with the other factions might be difficult but it is not really difficult to obtain liberty and decide one's course of action. It is impossible for every person to achieve equal status and impose upon the government the conditions for equality and also not possible to achieve another's wealth, but one can always decide his political and social actions according to the course of actions. [22] Equality is not fundamental to liberty. It is its intractable opposite. It wouldn't be wrong to say "more equality and less liberty, or more liberty and less equality. However to find a mid –way balance between the both is the job of judiciary and the lawmakers and for the past decades several statutes and several acts has worked towards that direction. Whether that was achieved or not, is only for the future generations to witness.

Equality and liberty, are the concepts not much left out in the judicial provisions which act through judicial activism. According to Professor Upendra Baxi, judicial activism is an

inscriptive term. It means different things to different people. While some may define the term by describing it as judicial creativity, dynamism of the judges, bringing a revolution in the field of human rights and social welfare through enforcement of public duties etc., while others have criticized this term by describing it as judicial extremism, judicial terrorism, and transgression into the domains of the other organs of the State negating the constitutional spiritedness. There were different periods, which activism witnessed however during the post–emergency period, it was found that there were three forms of judicial activism which were observed in India. The first form of judicial activism was the evolution of human rights jurisprudence. The second form of judicial activism were the procedural innovations through Public Interest Litigations. The third form was doctrinal activism through the concept of rule of law. Matters of policy of government became subject to the Court's scrutiny. Distribution of food-grains to then people below poverty line was monitored, which even made the Prime Minister remind the Court that it was interfering with the complex food distribution policies of government.

If this wasn't the only activism phase of judiciary, it prevailed on the battle between the fundamental rights and the directive principles of state policy. Though at first the view that the fundamental rights is superior prevailed, however it didn't take long for the policies to find its way upwards. One believes that fundamental rights are rudimentary and should be always have the first seat but if the things fall into consideration then the policies should only act as supplements to the rights. It can't be denied that the directive policies form a part for the welfare state but it should also not be overlooked that fundamental rights are the life supports of that welfare state. What one does supports would be the fact that "activism is beneficial only when it doesn't becomes chauvinism". Hence, "to create a new era of realism and mindful jurisprudence, one has to oust the aging chauvinism".

