

III. ANALYSIS OF LIBERTY AND ITS COMPONENTS BY THE SUPREME COURT OF INDIA: A CRITIQUE

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Abstract

Against the backdrop of positive and negative liberty, this paper analyses the evolution of the Indian legal system, focusing on the role of the Supreme Court of India. The courts in India have traditionally interpreted constitutional guarantees as forms of negative liberty, requiring the State to remove specific obstacles or hindrances. This approach, however, offers a limited view of liberty. When an individual approaches the Court, demonstrating that an act of the State or an administrative process hinders their liberty, the Court intervenes only if it is convinced of such an obstacle. In such cases, can we truly say the individual's choice reflects genuine liberty? Or is it influenced by an overarching system that clouds independent thinking? True self-realization requires not only the removal of obstacles but also the capacity and conditions to explore new, unknown possibilities. Ignorance is often an invisible obstacle, as the lack of information or targeted knowledge creation restricts the individual's ability to make fully informed choices. The most realistic way to understand the State's role in enabling the unhindered exercise of liberty is by recognizing that it must go beyond removing barriers. The State should empower individuals to distinguish between free choices and those driven by external influences. The State's role, therefore, should be both

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minimal and positive, aiming to capacitate individuals to genuinely realize their liberty by overcoming externally imposed, driven choices.

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I. INTRODUCTION

Enlightenment was neither a big bang nor a lightening within the stratosphere of the Earth. Enlightenment conceded wo/man as creator. Creator, who was omnipotent because there were no obstacles on her/his expression of their exercise of free will. This unfettered permission could be exercised and expressed in the form of art, writing, discovery or innovation. In fiction the State, originally, promised the individual to have the autonomy to express as well as create according to their capacity. It was this promise that capacitated the individual to throw away their subjugation to the super State of Church and the feudal society and submit their Rights to the State. A submission and surrender of some of natural rights in lieu of protection as well as provision; to provide the circumstances to acquire the capacity and to realise the fundamental purposes of life and remain in the State of continuous aspiration of excellence.

The constitutional democracies have evolved according to the contemporary political and social aspirations.¹ The philosophy of free will is always juxtaposed with the constraints put by the State often expressed through legal rules. From a strict consequentialist view, it is truism to say that every law is at the cost of liberty. Human beings have not imagined themselves with absolute liberty and have accepted it in a milieu of some correlative jural conception. When it comes to the liberty of an individual and his/her unfettered free will there has always been a check on the same by identifying the existence of a ‘No-Right’ in the State. This No-Right sometimes is misunderstood as lexical opposite of a Right. This No-Right permits the free exercise of liberty as well as implies a no interference zone by others. There can be two examples of actual operation of the jural concept No-Right. If X has a plate with a *Samosa* and he says “this is my *samosa* and I alone will eat it”, that means X has a right to eat it and others are under a duty not to touch it. If X says “this is my *samosa* if you want you may eat it”, then the other has a right to eat and X is under a duty not to prevent him. However, if X says “this is my *samosa* if you want you may eat it, but I do not promise not to prevent you from having it”, in this third situation neither X nor ‘you’ has a right or a duty. Both X and ‘you’ have liberty and the other is under No-Right. When a judge awards imprisonment to an accused the jailor acquires a derivative right to keep him in the jail for the duration of imprisonment. The jailor has a right to prevent him from escaping and the convict has a duty not to

¹ Andre Béteille, ‘Constitutional Morality’ (2008) Economic & Political Weekly 35-42.

escape. In case the attempts to escape and captured by the jailor he will be punished for violation of his duty 'not to escape'. However, when the Indian army brought a large number of Prisoners of War and put them in military custody at *Mhow*, the case of the prisoners of war is governed by the Geneva Convention, 1949, which provides that prisoners of war are under no duty to remain in the custody of the enemy. Therefore, the military jailor doesn't have a right to keep them in custody and the prisoners of war are under no duty to remain in the custody. If the prisoner of war unsuccessfully attempts to escape and is recaptured, they cannot be punished because they have not violated any duty. The military jailor has liberty to keep them incarcerated and the prisoners of war have liberty to escape both the jailor and the prisoner have corresponding jural relation of No-Right. Thus, liberty neither exists without a society nor is ever unfettered.

It is a common fallacy to think that the idea of liberty for its fluid movement does not require interference of State. It is asserted that it is not so. The State has its important place but the State is burdened by negative duty. A duty that is compelling for the State as it overlooks and preserves an individuated society. A negative duty is an antithesis of the idea of an all-powerful State. It is wrongly perceived that the State, is monstrously capable of taking away anything from the person of an individual as it is merely a grant. Right to personal liberty was and has never been a grant. The classical Lockean sense is accepted that WE never surrendered all our Rights. The most basic of those

Rights that determines us as Human is never the State's or anyone else's to take away.

On one side, individuals may face numerous opportunities, with the freedom to choose which path to follow, though the consequences—whether beneficial or harmful—are of no concern to others. On the opposite side lies the ability to make a reasoned, informed decision, highlighting the fine line between what we call negative and positive freedom. These concepts were famously introduced by Isaiah Berlin in a 1958 essay, where he coined the terms *negative* and *positive* liberty. The rationale behind these terms is that negative liberty refers to the absence of obstacles, restrictions, or interference from others, while positive liberty implies the presence of control, self-direction, or personal mastery. As Berlin framed it, negative liberty addresses the question, “What is the realm in which an individual or group should be free to act or exist without others interfering?” whereas positive liberty asks, “What or who governs the choices and actions that lead a person to pursue one path over another?”²

² ‘Two Concepts of Liberty’ was Berlin’s inaugural lecture as Chichele Professor of Political and Social Theory at Oxford University. Second and third editions were published in 1969 and 2002 respectively. For an account of the historical and philosophical background of this essay, see Ricciardi (2007). Berlin’s influences must certainly have included T. H. Green (1895) and Bernard Bosanquet (1899), who made explicit use of the distinction between positive and negative liberty and whose writings were widely studied in the Oxford of Berlin’s youth. Ricciardi also points out that the distinction is present in the work of Berlin’s Oxford contemporary John Plamenatz (1938), and that Guido de Ruggiero’s *Storia del liberalismo europeo* (1925), in which the distinction is examined at some length, was probably familiar to Berlin through its English translator, R. G. Collingwood. Another Italian

Before Berlin, John Stuart Mill, a proponent of negative liberty, compared individual development to the natural growth of a plant. Just as a plant must be allowed to flourish according to its own internal logic, so too must individuals be free to develop their own abilities. Growth and progress, Mill argued, cannot be imposed from external forces but must arise from within the person. However, some critics contend that this vision aligns more closely with the concept of positive liberty than negative liberty. They argue that positive liberty encompasses the very process of individual growth, where a person autonomously shapes and refines their desires and interests. In this sense, freedom is not simply about the absence of barriers but involves personal autonomy and self-realization. Given this, critics question whether merely removing State interference guarantees personal growth. Can there be a method that promotes positive liberty without being authoritarian?³

Against the backdrop of these concepts of liberty, this paper seeks to analyse the Indian legal system and how it has evolved with the support of the Supreme Court of India's approach. The Courts of record in our country have always understood the guarantee of the Constitution only

discussion that predates Berlin's is that of Norberto Bobbio (1955), but this work probably did not influence Berlin <<https://plato.stanford.edu/entries/liberty-positive-negative/notes.html#note-1>> accessed 22 February 2024.

³ Stanford Encyclopedia of Philosophy, 'Positive and Negative Liberty' (plato.stanford.edu, First published 27 February 2003; substantive revision 19 November 2021) <<https://plato.stanford.edu/entries/liberty-positive-negative/>> accessed 22 February 2024.

as a negative liberty that the particular obstacles or hindrance ought to be removed by the State. This gives a very narrow connotation to liberty. It is a fact that when an individual brings a matter before the Court of Law in India claiming and demonstrating an act of the State or an administrative order or administrative process and if he is able to convince the Court of the obstacles in his exercise of liberty then and only then the Court passes a speaking order directing the State to remove the said obstacles. In such circumstances can we say the choice of the person is really an exercise of liberty? Or is it driven by an existing influential system that has clouded the individual's thinking. The real unhindered self-realisation is also about having the capacity and circumstances to explore the unexplored or the unknown. These are posed choices manifested by the limitations of knowledge or lack of information. Here one of the invisible obstacles is ignorance. Or the obstacle of creating specific knowledge in targeted areas that the liberty of the individual to choose remains shrouded by ignorance. The patent and realistic way of explaining the role of the State in the individual realising unhindered exercise of liberty is to understand that it is not merely the removal of the obstacles but the capacity of the individual to discern the free choice from the posed or driven choice. The State's role becomes minimal and positive if it is directed towards capacitating the individual to truly realise the exercise of liberty and removal of hurdles brought by driven choices.

The State has the difficult task of balancing the ‘lighter version of social interest’ with ‘heavier version of individual interest’.⁴ This paper attempts to convince the reader that the ‘No-Right’ of the State can be supplemented with ‘having a Duty’ towards every individual to be capacitated to exercise their liberty guaranteed by the Fundamental Rights. It analyses specific and few Supreme Court judgments that have denied relief to a petitioner who sought to attribute a liability to the State to perform specific act for public at large so that people may realise their true capacity to exercise their fundamental right of liberty to exercise their free will. In other words, the paper may fail in convincing its reader that liberty to exercise free will towards the full self-realisation is not merely a positive Right but a negative duty of the State as well, but it will fail spectacularly.

II.

The idea of fundamental Rights as the positive Rights of the individual which the State is duty bound to facilitate for its realisation has the flaw of it being assailed and the aggrieved approaching the Court under the prerogative Writs for its restoration. Logically it is a contradictory Statement that: something exists as ‘non-derogable’ however, it is susceptible to incursion. The fact that the State and its Courts do not take it as non-derogable is drawn from the approach that the State and

⁴ In terms of utilitarian perspective, it is common to think that that social interest can easily outweigh individual interest. However, the ever-evolving individuated world asserts that individual interest is not strictly a numerical value, but a complete whole of collection of individuals whose assertion of liberty outweighs any social interest of controlling the lives of others.

Courts decide the upholding of these rights by removing the obstacles and hindrances and may react with coercion if it is derogated. In light of this ideological deficiency the attempt here is to articulate it in such a way that the Part III of the Constitution of India is seen as fundamental duties of the State towards an individual. If this is discernable and capable of being established objectively, maybe it is acceptable as enhancing the positive liberty of the individual.

In a paradoxical way, it is the negative liberty which enjoys the objective existence in the political functions exercised by the State. The manoeuvres to remove obstacles observably demonstrates the efforts of the State that enables the individual in realisation of the free exercise of her/his negative liberty. This brings a political cliché in picture. It is in line with the common intuition that they are really a liberal democracy. On the other hand, the internal aspects of liberty exist in the realm of what is truly desired. The actions towards positive liberty are not encashable in political terms by the government of the day, which makes it rather unconvincing for the State to act upon. The State take the pretext of non-availability of resources when it comes to spending money so that the individuals with limited resources may exercise their positive liberty (such as education), but they have enough resources to create non-essential facilities in favour of influential and politically powerful sections of the society (such as creation of a new legislative building though the old building was equally useable, or creation of two auditoriums in an educational institution used by powerful people).

The riveting allurement of the constitutional law lies in the affinity of the fundamental rights of an individual with the duties of the State. While fundamental Rights have typically focused on an individual's entitlements and safeguards, the idea that they mirror the fundamental duties of the State towards an individual adds a subtle layer to the conversation. It makes it, thus imperative to assay the legal authorities which have augmented to the interpretation of the Fundamental Rights with the duties attributed to the State under the Constitution of India along with the attitude of the Supreme Court of India on this Statement.

Enshrined in the Part III of the Constitution of India, Fundamental Rights acts as the nucleus of individual liberty which inter alia also protect individuals against arbitrary official acts. These rights, which range from the right to equality and freedom of speech and movement to the right to life and personal liberty, are regarded as inherent in every individual's dignity and well-being. The extent can be perceived from the inviolability of such positive rights by the authority from the fact that they constitute the basic structure of the Constitution. Granville Austin, the eminent commentator of the Constitution of India has highlighted the inclusion of such rights 'to create an equitable and inclusive society' against the backdrop of freedom struggles.⁵

⁵ Granville Austin, *Working A Democratic Constitution: A History of the Indian Experience* (Oxford University Press 1999) 38-63.

The above considerations guide us towards undertaking a review of the constitutional semantics. The said review reflects the uncertain yet essential connection between these basic rights with the adjoining obligations of the government. Article 21, for example, provides that ‘No person shall be deprived of his life or personal liberty except according to procedure established by law.’⁶ This seemingly individual-centric right suggests that the State has an underlying need to implement fair and reasonable legal systems. In his work ‘We, the People’ constitutional scholar Nani Palkhivala emphasises the interconnection of Rights and obligations, claiming that the legitimacy of basic rights is dependent on the State's willingness to protect them.⁷ What Palkhivala does not emphasise is that it is also the State’s duty to ‘provide’ which in turn ensures realisation of positive liberty by the individual. When the State wants to seek legitimacy, it is provided by (all) ‘the people’, but when article 21 is framed it gives only protection but refuses to give ‘provision’ which requires just allocation of resources. Thus, neo-individualists have a contradictory approach.

As a guarantor of the liberty of the individual, the Supreme Court of India has also spent considerable thoughts in regaling the interaction between the basic rights and obligations, albeit painfully. *Maneka Gandhi v Union of India*⁸ is a seminal decision in which the Court broadened the reach of Article 21 beyond procedural due process,

⁶ The Constitution of India, 1950 art 21.

⁷ Nani Palkhivala, *We, the People* (UBS Publishers’ Distributors Ltd. 1984).

⁸ [1978] 2 SCR 621.

recognising the right to life and personal liberty as reflecting the essence of a meaningful existence. In his concurring opinion, Justice PN Bhagwati emphasized the State's responsibility to provide not just the presence of negative liberties, but also the availability of good circumstances essential for a decent life.⁹ In following decisions, the Court has emphasized that basic rights impose a corresponding obligation on the State to aggressively preserve and fulfill these rights. The Court said in *Olga Tellis v Bombay Municipal Corporation*,¹⁰ that the right to life encompasses the right to a living, emphasizing the State's role to guarantee the socioeconomic well-being of its residents. But ultimately the substantive outcome of the case was that homeless pavement dwellers people cannot be ousted without following the principles of natural justice. The critical analysis of these decisions reflects the restricted aspect of the interpretation of the rights to recognise the positive tasks of the State.¹¹

The contours of positive liberty are assimilative of the contingencies of the needs of the society. This stands with the incorporation of fundamental duties into the Constitution of India by the 42nd Amendment in 1976, thus facilitating a substantial change in the constitutional landscape. But this 42nd Amendment conveniently fails to provide for the duties of the State towards the citizens of the country. Article 51A enumerates a list of responsibilities that people are

⁹ Ibid.

¹⁰ [1985] Supp 2 SCR 51.

¹¹ Upendra Baxi, *The Indian Supreme Court and Politics* (Eastern Book Company, 1980).

required to fulfill, emphasizing the symbiotic link between rights and responsibilities. This link was an attempt to ensure the duty of the State to provide for circumstances of the highest realisation by the individual. Generally, most of the fundamental rights have imposed restrictions on the powers of the State in the spheres of equality and liberty. However, under Article 17 restrictions have been imposed on the individuals not to practice untouchability and a duty on the State to pass a law for the punishment of those who practice untouchability.

In *S. R. Bommai v Union of India*,¹² the Indian Supreme Court recognised the importance of basic obligations in sustaining the constitutional ethos. According to the Court, these obligations are in addition to the rights granted to individuals, and serve as a continual reminder of the delicate balance between individual liberties and community responsibilities. This judgment was accorded due applaud by the eminent Legal Doyen VR Krishna Iyer for seeing the inherent relationship between rights and obligations, regarding them as two sides of the same constitutional coin.¹³

In nutshell, in the Indian constitutional framework, the link between basic rights and fundamental obligations is nuanced and dynamic. While basic rights are sometimes seen as individual entitlements, the Supreme Court of India has played an important role in recognising the

¹² [1994] 2 SCR 644, para 246.

¹³ VR Krishna Iyer, *Democracy, Equality and Freedom* (Eastern Book Company, 2003).

State's correlative obligations to individuals. Legal experts including Granville Austin, Nani Palkhivala, Upendra Baxi, Subhash Kashyap, and VR Krishna Iyer have added vital and illuminating perspectives to the discussion, emphasizing the interconnection of rights and obligations in establishing a just and inclusive society. The delicate balance between individual rights and community obligations remains a cornerstone of India's democratic culture, even as constitutional interpretation changes.

Additionally, an examination of cases in which the Supreme Court of India has been chastised for failing to safeguard the sanctity of Article 32, relegating it to the status of a *discretionary remedy*, finds situations in which the Court's commitment to defending basic rights has been called into doubt. The right to petition the Supreme Court for the enforcement of basic rights is guaranteed by Article 32 of the Indian Constitution. However, the right to petition the Supreme Court has been severally curtailed by the Supreme Court itself and the petitioners are forced to go to the High Court instead of approaching under Article 32. In most of the cases the petition under Article 32 is dismissed and the petitioner is asked to approach the High Court. This is nothing but violation of fundamental rights under Article 32 by the Supreme Court. This is done on the grounds that the Supreme Court is over worked. Can overworked be a ground for the denial of a fundamental right? There can be a simple remedy. Instead of dismissing the petition under Article 32 the petition may be transferred to the concerned High Court and if necessary, the decision of the High Court should become

effective approved by the Supreme Court. If this course is adopted the fundamental rights under Article 32 will not be frustrated. In most of the situations, the Court's discretion in accepting or rejecting Article 32 petitions has raised doubts about the uniformity and usefulness of this constitutional remedy. This effectively also affects the individual liberty and its fulfillment by the State. Nevertheless, if history ever taught us anything, it was the fact that our higher aspirational goals also stem out of mistakes of the past and finding clearly the shortcomings. In the journey of knowing and ensuring the negative aspects of liberty and the desirability of truly aspiring towards realisation of positive liberty is an endeavor that all the branches of the government have to undertake. Analysis of some of the adjudications of the Supreme Court of India in this regard does not draw a very encouraging picture.

III.

The groundwork of understanding the aspects of positive and negative liberties leads to the question, how much have we achieved the acceptance of positive liberty as a legal system. The most significant part, hopefully, played by the Supreme Court as it is considered the guardian of the Constitution and the pragmatic institution to transcend the generality of political freedom. Some of the oft quoted and academically accepted adjudications of the Supreme Court can be looked upon and how it has fallen short of its legal and social pragmatism to realise the highest.

ADM Jabalpur v Shivkant Shukla,¹⁴ (now overruled) an adjudication passed during India's only Emergency period, known as the 'Habeas Corpus case,' it was found that under a declaration of Emergency, persons did not have the right to seek the Court for enforcement of their basic rights under Article 21 through the writ of habeas corpus. In this case, the question before the Court was whether fundamental rights, particularly the right to personal liberty under Article 21 of the Indian Constitution, could be suspended during a State of emergency. The Court held that during a State of emergency, the right to personal liberty under Article 21 could be suspended. Though the dissenting opinion of H. R. Khanna, J. was a silver lining in this judgment. He opined that although fundamental right to life cannot be enforced, during emergency, but even in this national emergency the human right to life has not been eclipsed. This concept of human right finds support in Kantian concept of *a priori*.

The Court's ruling in ADM Jabalpur was highly criticized for failing to maintain Article 32's sanctity during a moment of crisis. Legal academics and activists contended that the Court failed to fulfill its constitutional responsibility by failing to protect basic rights when they were most threatened. The adjudications of the Supreme Court, either patently or latently, have limited the scope of judicial review during emergencies, effectively restraining the power of the judiciary to

¹⁴ [1976] Suppl SCR 172.

enforce fundamental rights through Article 32 petitions, thereby making Article 32 in essence, redundant.

The Supreme Court held that preventive detention laws could be valid if they complied with the requirements of Article 22 of the Indian Constitution, which provides safeguards against arbitrary detention. This is what has been argued that in the gradual development of upholding the liberty of individual the Court has best went on to safeguard the liberty in the negative sense. Either the adjudications suggest failure to guarantee a negative duty or acceding to it, the legal system has not ascended to the level of even making an attempt to understand the positive liberty and how it may fuel the change in social justice and the aspirations of excellence.

The Court emphasized the importance of ensuring procedural fairness and safeguards against abuse of preventive detention powers. This case reaffirmed the judiciary's role in safeguarding civil liberties and protecting individuals from arbitrary State action, particularly in the context of preventive detention. Additionally, the case basically questioned the President's authority to suspend basic rights during an emergency. The Court ruled that the President's authority to suspend rights was not immune from judicial scrutiny, although it did not overturn the clause totally.

While the Court asserted its jurisdiction to evaluate the legitimacy of Emergency provisions, opponents contend that the Court's hesitation to

strike down the clause entirely undercut the provision's strength as a remedy during emergencies. The ruling was viewed as a squandered chance to unambiguously defend basic rights. However, it can be said that these are instances that reveal the Judiciary's bare minimum attempt at upholding the significance of Article 32 as a mechanism for individuals to seek redressal for violations of their fundamental rights, thereby reinforcing the importance of judicial review in protecting civil liberties.

Further, the case of *Justice K. S. Puttaswamy (Retd.) and Anr. vs Union of India and Ors.*,¹⁵ popularly known as 'The Privacy Judgment' rendered by the Indian Supreme Court in 2017 is considered to be a significant ruling that upheld the right to privacy as a fundamental right under the Indian Constitution. The opinion specifically highlighted the protection of privacy under Article 32, which grants citizens the ability to seek constitutional remedies. The verdict was spurred by concerns made in petitions questioning the validity of Aadhaar, India's biometric identification scheme. These issues sparked disputes regarding privacy infringement and the government's responsibility in protecting individual freedoms.

It is pertinent to know that the Court's ruling emphasized the State's obligation to safeguard individuals' privacy, which is a fundamental right, from unjustified intrusions, while also acknowledging the

¹⁵ [2018] 8 SCR 1.

importance of striking a balance between such rights and valid State concerns such as national security and public order.

The acknowledgment of such a responsibility on the shoulders of the State places an obligation on the government to establish legislation and policies that support the protection of privacy, while also considering the rights of citizens and the legitimate interests of the State. Nevertheless, it has been noted that the responsibility of the State goes beyond simply recognizing the existence of privacy rights, and should include taking aggressive steps to guarantee their enforcement and protection. Efforts are still needed to effectively implement this Court acknowledgment, requiring strong laws, institutional systems, and public campaigns. The privacy judgment underscores the interdependent connection between basic rights and the obligations of the government, underlining the government's duty to protect these rights as essential elements of a democratic society. However, the success of this legal acknowledgment of an individual's rights depends on the establishment of strong laws and institutional procedures to guarantee the efficient protection of private rights in the face of advancing technology and societal difficulties.

The popular kind of cases known in India as *Public Interest Litigation (PIL)*, have been criticized for the Court's selective treatment of petitions. In several cases, the Court has declined to intervene in matters concerning socio economic rights, considering them as concerns of policy matters better left to the executive or legislative

branches. It has attracted academic criticism that the Court's discretion in PIL matters frequently results in uneven implementation of Article 32, giving the impression that the remedy is discretionary rather than obligatory. It is often argued that this option played eagerly by the Supreme Court contradicts the objective of Article 32 as a guarantee of basic rights.

In many PIL cases, the Supreme Court's discretion in interpreting and enforcing Article 32 has been criticized.¹⁶ While the Court has definitely played an important role in protecting fundamental rights, some of its rulings have been seen as undermining the effectiveness of Article 32 as an essential and non-discretionary remedy for the protection of fundamental rights. Therefore, these judgments are not only reflective of the Supreme Court's stance on granting remedy(s) but also a portrayal of the Judiciary's understanding of the extents to which an individual's "claim for liberty" can stretch.

IV. CONCLUSION

In conclusion the question is whether the pursuit of positive liberty in the Indian legal landscape is elusive? Or it is present, but never discerned as such by the academic writers due to their myopic views.

¹⁶ *S.P. Gupta v Union of India* [1982] 2 SCR 365; *Bandhua Mukti Morcha v Union of India* [1984] 2 SCR 67.

This paper explores the intricate relationship between positive and negative liberty within the framework of the Indian Constitution. Starting by attempting to establish the foundational concept of liberty as an inherent human right, evolving from the shackles of absolute State control towards individual self-realization. However, the Indian legal system presents a complex picture, often favouring a narrow interpretation of liberty as the absence of restraint (*negative liberty*) rather than a proactive approach to empowering individuals (*positive liberty*).

The analysis of Supreme Court judgments, as provided in the preceding parts, reveals a series of missed opportunities to fully embrace positive liberty or even missed to provide an implied discussion of the same for setting the tone for future lawyers, judges and academics of our country. The infamous *ADM Jabalpur v Shivkant Shukla* (now overruled) judgement stands as a stark reminder of the judiciary's retreat from safeguarding fundamental rights during a crisis. While the recent revisiting of this case offered a glimmer of hope, the Court's hesitancy to definitively reject the original rationale left a sense of incompleteness. *Public Interest Litigation* cases further highlight the inconsistencies in the Court's approach to Article 32. For instance, the Court's reluctance to intervene in cases concerning access to basic education (a crucial element of positive liberty) contradicts the objective of Article 32 as a guarantee of fundamental rights.

The Road Ahead: Embracing the Duty to Empower

Moving forward, a shift is necessary. The Indian judiciary must recognise its role in not just protecting individuals from State overreach but also in actively facilitating the conditions for true self-realization. This necessitates viewing fundamental rights as corresponding to positive State duties. The State has a responsibility to create an environment that enables individuals to exercise their free will effectively, encompassing access to education, healthcare, and other essential resources.

The Indian legal framework, with its deep-rooted emphasis on fundamental rights, has made significant strides in protecting individual liberties. However, a more nuanced and balanced understanding of liberty—encompassing both negative and positive dimensions—is essential to aspire for a truly just society. While the judiciary has played a critical role in safeguarding against State overreach, its approach has often been reactive, focusing primarily on removing obstacles to personal freedoms rather than fostering conditions that enable citizens to thrive. The Indian judiciary has failed in one key aspect: placing adequate emphasis on the State's non-interference in certain domains of individual liberty.

To move forward, the Indian judiciary, legislature, and executive must adopt a more proactive stance, where the protection and promotion of individual freedoms are coupled with efforts to empower citizens. This requires a shift from seeing liberty merely as the absence of

interference to recognizing the State's responsibility in enabling personal development and self-realization. By ensuring access to education, healthcare, and economic opportunities, the State can help individuals exercise their freedoms meaningfully.

Ultimately, the true realization of liberty lies in the balance between protecting individuals from undue restrictions and creating an environment where they can achieve their highest potential. India's constitutional vision will only be fulfilled when this balance is achieved, leading to a more equitable and empowered society.

Recommendations:

- **Reinterpreting Article 32:** A reinterpretation of Article 32, focusing on its role as a mandatory duty of the Court rather than a discretionary power, could pave the way for a more proactive approach to enforcing positive liberty.
- **Judicial Activism for Social Justice:** The judiciary should embrace a more activist role in ensuring socio-economic rights through PILs. This requires a more balanced and consistent approach to intervention, ensuring equal access to justice for all. For instance, the Court could take a more proactive stance in PILs concerning access to quality education, particularly for underprivileged communities as the same enhances the capacity of the individual to understand and realise positive liberty.

- **Legislative and Executive Action:** The onus does not solely lie with the judiciary. The legislature and executive must also play their part by enacting progressive legislation and formulating policies that promote positive liberty. This could involve policies aimed at improving public healthcare infrastructure, creating equal opportunities for education and employment, and empowering marginalized communities.

Finally, the pursuit of positive liberty in India remains an ongoing struggle. While the Constitution provides the framework, its true realization hinges on a collaborative effort by the judiciary, legislature, and executive. A holistic approach that recognizes the State's duty to empower individuals is crucial for creating a truly just and inclusive society. By embracing a broader interpretation of Article 32, adopting a more activist approach to PILs concerning socio-economic rights, and enacting progressive legislation, India can move closer to achieving the ideal of positive liberty for all its citizens.