INTRODUCTION
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The history of mankind could also be seen as the history of progress and the development of civilization. With the change of time the idea of state is also undergoing a process of change. From small city states, the form of state has changed a lot in recent times. It has come to take the role of the modern welfare state entrusted with the task of providing essential welfare services to the community. But while the state is entrusted more and more with the fulfillment of welfaristic ambitions, the task is getting more and more difficult, because, new concepts of rights and principles of state interference are coming to the forefront. Hence the state is being faced with a dilemma; on the one hand it has to preserve the rights and the liberties of the individual; on the other hand it has to take steps in pursuance of the welfaristic ideals which might well come into conflict with the rights and liberties of the individual. Hence, the task of maintaining a delicate balance between the rights and liberties of the individual on the one hand, and the welfare of the community as a whole on the other, becomes the pre-requisite for the survival of a modern welfare state. The task is not easy one considering the diverse and often conflicting claims that the individual liberty and social welfare, make upon the state. Further, the growing complexities of human affairs have made it more difficult to reconcile the competing claims of individual liberty and social welfare. Moreover, the lack of unanimity upon the issue has made it more problematic, because while some place a value so high upon the preservation of individual rights and liberties, others endorse. The contrary view – that the state should aim at the common good even at the cost of individual rights and liberties.
The pursuit of welfare of the citizens is not, however, confined to a kind of particular state, say for instance modern liberal democratic states or those states founded upon the principles of socialism. But the shift of emphasis changes. For example while a socialist state would place more emphasis upon the socio-economic rights, a liberal democratic state would appear to endorse the principle of greater individual freedom particularly with an economic content. This results in the absence of any agreed principles upon how much of individual right and liberties should be sacrificed in order to achieve social welfare. And it is a dilemma that confronts every modern state.

This contradiction and the attempt to harmonise both the claims of individual rights and liberties on one hand, and the demands of the social welfare on the other, could be seen in the concrete form in the conflict between the Fundamental Rights and the Directive Principles of State Policies of the Indian constitution. The framers of the Indian constitution saw no major difference between the negative and positive obligations of the state – a characterization generally associated with the Fundamental Rights and the Directive Principles.

Both of them developed as a common set of demands until the Constituent Assembly separated them into two parts, one entitled as "Fundamental Rights, and the other as Directive Principles of State Policies". But as we will see later in this work this was done by taking into account certain practical considerations rather than to divide them into two parts, often implying conflicting policy implications. After dividing these rights into two categories – one being enforceable in a court of law, the other is non-enforceable but nevertheless fundamental in the governance of the country.
This separation and the making directives non-enforceable generated much controversy and some even claimed that these Directives are no more than mere pious aspirations. But still the constitution makers included them with a sense of optimism. Hence these two parts came to be known as 'Fundamental Rights' and 'Directive Principles of State Policies'.

The Fundamental Rights and Directive Principles came to be seen as two kinds of obligations upon the state. As Granville Austin, a renowned constitutional expert sees them as two kinds of obligations. He sees the 'Fundamental Rights' as certain negative obligations upon the state not to encroach upon the individual liberty, while the Directive Principles according to him aim at making people free in a positive sense.\(^1\) He says that the Directives aim at making Indian people free from the passivity engendered by a prolonged colonial regime.

The Directive Principles, are, however more comprehensive and diverse than the Fundamental Rights. As D.D. Basu, says "even though they pertake the nature of each of the following, they cannot be put into any one of them precisely."

He then classifies them as:

(a) certain instruction to the legislative and the executive as to the manner in which they should exercise their power.

(b) certain rights of the citizens which they can enjoy in association with others, and these are those rights, which, even though not enforceable in a court of law, nevertheless the state should aim of securing.

(c) certain economic ideals.

(d) aims and aspirations of a welfare state.

According to Basu these principles together aim at establishing a welfare state; they embody the object of the state under the republican constitution, namely, that it is to be a welfare state and not mere a ‘police state’.2

If the Directives are more comprehensive and wider than the Fundamental Rights and at the same time it is incumbent upon the government to give effect to these principles, (Art. 37) then there is the possibility conflict between these principles and the Fundamental Rights. But some do not agree upon the fact that there is a conflict between them. As for instance, K. Suba Rao, the former Chief Justice of India sees both as complementary to rather than conflicting with, each other.3

Similarly K.C. Markandan, who has worked upon these Directives, sees both as two different kinds of rights. He describes the Directives Principles as certain collective non-enforceable rights which are collective in nature. “They are collective in the sense the individual enjoys these rights in his collective capacity by virtue of being a member of the welfare state”.4 He also regards the Directives as Social rights and says that in case of conflict with the Fundamental Rights which he regards as the right of the individual the social right should prevail.

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But there have been many instances of conflict between them since the commencement of the constitution. The cases of Minerava Mills vs. Union of India, Keshavenanda Bharati vs. State of Kerala, and the challenge in the courts to the numerous acts that government introduced in order to give effect to the agrarian reform in pursuance of the Directive Principles are the evidence of the conflict between them. Thus how can these conflicts are to be explained, or could these conflicts be explained in an other way. So far as these conflicts are concerned, in many cases they are seen as conflicts over priority. The view of the Supreme Court in Champakn Dorairajan case confirms this. The court observed:

'The Directives laid down in part IV of the constitution can not in any way override or abridge the Fundamental Rights guaranteed by Part III. On the other hand, they have to confirm to and run as subsidiary to the Fundamental Rights laid down in Part III.'

But could the Fundamental Rights and Directive Principles and their conflicts be interpreted in an another way which will view them more than mere provisions of the constitution conflicting over the issue of priority. And this is precisely what this work intends to do.

This work is an attempt to interpret the Fundamental Rights and Directive Principles of the constitution in a theoretical way. A theoretical interpretation would reveal that the Fundamental Rights and the Directive Principles of the Indian constitution infact represent two kinds of liberalisms. The Fundamental Rights concerns themselves mainly with the protection of rights and liberties of the individual. They are seen as certain safeguards

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5 *SCR*, 1951, p.525.
against the arbitrary actions of both government and private individual. This aspect of the Fundamental Rights seems to be in close resemblance with the classical liberal tradition. Because it is classical liberalism that is equally concerned with the preservation and protection of the rights and liberties of the individual. During the classical liberal tradition the government was entrusted with the minimum task of protecting the rights and liberties of the individual. Similarly, the Fundamental Rights also limit the power of the government by providing certain kinds of right which put limitation upon the state power.

On the other hand, the directive principles aim at establishment of a welfare state, and possessed with a sense of social justice, they are concerned with the reduction of socio-economic disparity in the society as far as possible. They contain certain rights which an individual can enjoy in association with others and, hence the welfare and progress of the society as a whole forms the ideal which these directive put before the state to strive for.

However the directives with their aims and aspirations seem to resemble a version of liberalism which, at the end of the nineteenth century and first half of the twentieth century, dominated the liberal mentality, it is this version of liberalism which better known as new liberalism The new liberalism came into existence as a result of the ideological adaptation which liberalism had to undergo due to survival necessity. This has been known as 'new liberalism which modified much of the tenets of classical liberalism in order to accommodate a positive concept of freedom and the idea of an active state into liberal ideology. The new liberalism welcomes the positive state action in order to reduce the socio-economic disparity. It also defines liberty or freedom – the key term in the liberal discourse – in a way which was different from the
definition found during the classical liberalism. In other words, whereas classical liberalism defined liberty as the absence of deliberately created impediments to one’s action, in new liberal tradition, it was seen to be consisting in the power or ability of doing something worth doing. It is this conceptual link between power and freedom which broadened the scope for state, activity. Because it was felt that power which is essential to freedom could also be hampered by social or economic disabilities. It was argued that unless those disabilities are corrected by the positive state action other freedoms would be of no use to individual. Further, the welfare of the all sections of the society was the aim of the new liberalism, and much of the liberal legislations was guided by these welfaristic and reformist considerations. In the Indian context it seems that these considerations also motivated the framers of the Indian constitution to include these directives into the constitution. Besides, the directives were meant to create the conditions in which the Fundamental Rights have their real meaning, and this closely corresponds to the view that the ideological adaptation which liberalism underwent was for the sake of key liberal values themselves. In other words, the aim of new liberalism was to create those favourable conditions which would provide meaning and substance to other liberal freedoms. Further the concept of social welfare, together with an appeal to the positive state action take the Directive Principles much closer to the new liberal tradition. Thus, on this basis, it could be shown that the Directive Principles and the new liberalism share a lot of similarities between them.

Therefore, the Directive Principles and the Fundamental Rights, if seen in a theoretical perspective, appear to exemplify two different kinds of liberalisms.
Chapter one starts with a brief historical account of the Fundamental Rights and the Directive Principles. While doing this it will elaborate their classification and at the same time it will take into account what justification if any, the framers of the constitution offered for separating them and making one enforceable and the other non-enforceable. Besides this the concerned chapter will also focus upon the relevant debates which were initiated in the Constituent Assembly.

Chapter second offers a small historical account of liberalism. It starts from the Renaissance to the aftermath of the French revolution, in order to find out what values and practices were common to the liberal tradition. While doing this, the focus has been largely upon the values and practices associated with classical liberalism. The particular points of debates raised by individual liberal thinkers have been excluded. For example there is the mention of toleration as a liberal value, but the points of disagreement among the particular individual liberal thinkers have not been included.

Chapter third consists of a comparison between the Fundamental Rights and the classical liberalism. Because the language which is used in defining these rights and the nature of these rights closely resemble the concept of right and liberties associated with classical liberalism. While doing this, the chapter will deal with the arguments which suggest that the modern political values and institutions were imported to India from outside. While dealing with this claim, the chapter will offer a brief account of the liberal tradition that existed in India and guided the Indian National Movement. The arguments offered here is that even though there is absence of a well articulated liberal philosophy in India,
the actions and the speeches of the Indian reformers contain the ingredients of a liberal theory in raw form.

It has often been suggested that liberalism confronted a crisis of ideological bankruptcy of the end of the nineteenth century, and to keep itself alive if adapted the old liberal creeds to the new realities. It enlarged the concept of freedom and equality with a view to accommodate the concept of an active state engaged in the pursuit of social justice, into the liberal ideology. As a result a new version of liberalism came into existence which, by redefining the concept of freedom and by allowing an active state ended, to some extent, the liberal hostility to state. The aims and ideals underlying this liberalism are seen as closely akin to the Directive Principles of the Indian constitution. What constitutes the link between the new liberalism and the Directive Principles is the subject matter taken up in chapter four. Apart from explaining the link between the Directive Principles and new liberalism, this chapter also attempts to find out how liberalism was able to preserve what Michel Freeden has called as ‘liberal essentials’, despite reformulation of key liberal concepts. It will be argued that even though the liberals changed to some extent the early liberal tenets, it did not amount to the total abandonment of the liberal affiliation. Instead they preserved continuity in certain respects.

As it has been shown in the chapter One that the Fundamental Rights and the Directive Principles embody different and often conflicting policy implications. The Fundamental Rights are negative injunctions to the state while the Directives, wider and comprehensive than the Fundamental Rights and being fundamental in the governance in the country are bound to come into

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conflict with the Fundamental Rights. But could on the basis of the fact that they represent two different kinds of liberalism, it be said that their conflicts also represent conflicts between two kinds of liberalisms – classical liberalism and the new liberalism. These are some of the issues which are addressed in chapter five. Chapter five will interpret the conflicts between the Fundamental Rights and the Directive Principles as a conflict between two kinds of liberalism, while doing this, it will also be shown that how this conflict is to be seen in its renewed form in the debate between recent libertarians and the welfare liberals.

The conclusive part of the study consists of some of the observation which this study reveals in course of arguments. One among them is that a blanket characterization of Fundamental Rights or of the Directive Principles is impossible in view of the fact that there is the cases of overlapping. In other words the existence of various group rights within the Fundamental Rights makes it impossible characterized them as the concrete embodiment of classical liberalism. Similar is the case with the Directive Principles as well. The existence of the provisions which do not directly aim of giving effect to the provisions upheld by new liberalism can not support the claim that they wholly represent the new liberalism. Another observation which is significant in the context of this study is that there are other versions of liberalisms that might be present within the Fundamental Rights and the directive Principles. Hence a start should be made from chapter one with a brief historical overview of the evolution of the Fundamental Rights and the Directive Principles.