CHAPTER - IV

DR AMBEDKAR’S SOCIO ECONOMIC IDEAS IN THE NEW SPECTRUM [AMBEDKARISM]

4.1. Introduction

4.2. Ambedkarism

4.3. Contribution of Dr. B.R. Ambedkar

4.4. Dr. Ambedkar’s state socialism for weaker sections

4.5. The concept of social justice

4.6. Dr. Ambedkar’s socio economic ideas in the new spectrum

4.7. The place of Judicial Review in the Indian Constitution

4.8. Milestones of public interest litigations in India

4.9. Summary
CHAPTER - IV

DR AMBEDKAR’S SOCIO ECONOMIC IDEAS IN THE NEW SPECTRUM [AMBEDKARISM]

4.1 Introduction :

Dr. B. R. Ambedkar was champion of social justice. His economic ideas were based on state socialism which he has reflected in Indian constitution at different places. It has been pointed that social justice is a part of governance reflected in Indian constitution\(^1\). Hence in this chapter Dr. B.R. Ambedkar’s economic views have been reviewed in a systematic manner. The present chapter is a significant part of this study. Dr. B.R. Ambedkar was an educationist, economist and administrator. Besides this he was a social reformer, political thinker, parliamentarian and constitutionalist of high order. He possessed many rare qualities of head and heart.\(^2\) There is need to study his economic idea’s reflected through is writing. Pandit Jawaharlal Nehru rightly pointed out that “Dr. Ambedkar has often been described as one of the chief architects of the constitution. On his part, he knew of one who took greater care and trouble over constitution making. He played a very important and constructive role.”\(^3\)

4.2. Ambedkarism :

Dr. Ambedkar’s social economic ideas in the new spectrum Dr. B. R. Ambedkar believed that, State can play important role in economic development of people. His book “States and Minorities”, this was as much an economic manifesto as a social one. It proposed a united States of India without right of secession. It called for separate electorates, separate village

---

\(^1\) R.V.R. Chandrasekhara Rao, Indian Constitution and Polity, Sterling Publishers Pvt. Ltd. New Delhi, 1991, p. 34

\(^2\) Chanchreek K.L., Dr. B.R. Ambedkar, H.K. Publishers and Distributors, Delhi, 1991, p. 11

\(^3\) Ibid p. 1
settlements and strong measures against social boycott of untouchable and put forth a program for what Ambedkar called „State Socialism, the nationalization of basic industries, and the nationalization of land and its organization in collectives. Therefore, under the States Socialism the following principles will be followed.

a) Active role of state in the planning of economic life of people
b) Emphasis on increase the productivity and production by providing physical capital and Human capital.
c) Freedom to private sector to plan and manage their industries and trade except in selected areas.
d) Equitable distribution of National wealth and income among all sections of society irrespective of castes, creed, gender, region and religions. The design of governance is based on social justice. It plugs an important role in the problem of Indian constitution.

4.2.(1) Threefold Strategy

India being inequitably graded society Dr. Ambedkar recognized the need for a threefold strategy:

a) Provision of equal rights (overturning the customary framework of caste system based on principle of equality and denial of equal rights, particularly, to untouchables).
b) Provision of legal safeguards against the violation of these rights in terms of laws.

---

5 Ibid p-35
6 R.V.R. Ibid, p.34
7 Ibid. p. 35
c) Pro-active measures against discrimination for fair share and participation in legislature, executive, public services, education and other public spheres for discriminated groups (in the form of reservation).

The economic ideas of Dr. Ambedkar can be explained by observing chances in the fields of economic scenario from nineteen thirties to fifties, truly, his economic thought had gained momentum in the nineteen forties though his serious research work. It is true that the discrimination has no place in the constitution. Citizens cannot be denied justice on the basis of economic or other disabilities ⁸.

4.2.(2) Relevance of Study.

The resent study can be said to be significant from the following aspects:

On one side Dr. Ambedkar was contributing his social movement and on the other hand he was developing his own strategies. Dr Ambedkar social economics received a climax when he submitted a memorandum to the constituent assembly on the behalf of scheduled cast federation on the year 1947.

The debate of state secularism which is very original as made by Dr Ambedkar can be stated in the new context of Indian constitutional culture i.e Liberty, equality, fraternity and socio - economic justice. It is the free thinker’s culture and it is Ambedkarism. It has been rightly pointed that, “Ambedkar brought to bear upon his task a vast array of qualities, crudition, scholarship, imagination, logic, eloquence and experience. Whenever he spoke in the House, usually to reply to criticism advanced against the

⁸ Ibid p. 82
provisions of the Draft Constitution, there emerged a clear and lucid exposition of the provisions of the constitution. As he sat down, the mist of the doubts vagueness. Indeed he was a “Modern Manu” and deserves to be called the father or the Chief Architect of the Constitution of India.”

4.3 Contribution of Dr. B.R. Ambedkar

Let us accept the fact that Dr. B.R. Ambedkar has been victim of a process of reductionism. Mainstream media, academia and intelligentsia have played a dominant role in this process of reductionism. As a result he has been viewed and reviewed only as ‘a Dalit Leader’. Some progressive intellectuals have at the most called him ‘Chief Architect of the Indian Constitution’. In turn his contributions in the spheres of understanding individual, caste, Hindu Social order, problems of Hindu women, Indian minorities, nation and nation building etc. from an alternative perspective have been fully blacked out. Above all his ideas about social justice have also not caught the imagination of the mainstream academia and intelligentsia. It has been rightly observed that, Dr. Ambedkar presided over all the meetings of the Drafting committee, minutely scrutinized the draft clause wise and piloted the Draft Constitution in the House, securing to all citizens justice, liberty, equality and fraternity. He impressed to sovereign House, having the most ablest and talented personalities of the century, with has parliamentary skill, oratory, sense of judgment, fearlessness, farsightedness, vast knowledge and above all his genius in the field of constitutionalism.  

Today also Dr. B. R. Ambedkar is leader of modern India has. On the basis of association of masses to a particular leader, number of statues of a particular leader erected by the individuals on their own not with the help of government, types of celebrations on the occasion of his birth and conversion anniversaries and commemoration on his Mahaparinibban anniversaries, Dr. B.R. Ambedkar can be termed as the omnipresent organic leader of modern India. His contribution in reviving Buddhism in India and subsequently his association with the world’s Buddhist community has made Babasaheb acceptable in the countries where ever Buddhism is practiced. Moreover, in this era of globalization with the information revolution and presence of Dalit Diaspora, Babasaheb Ambedkar is revered all over the world and truly he has become a Global icon. The poem below explains most of the facets of significant personality of Babasaheb and different roles he has played during his lifetime. S.B. Sharma rightly pointed that Dr. Babasaheb Ambedkar was brilliant intellectual, powerful orator, prolific writer, the maker of India’s Constitution and, above all, a profoundly significant revolutionary who championed human rights and human dignity as a true path finder towards a higher human civilization.  

Today Babasaheb Ambedkar is accepted as a Dalit leader, architect of the Constitution, a nation builder, a human rights, champion, ‘Global Icon’ and India’s greatest leader. This acceptance of Babasaheb Ambedkar by the masses in general and global community in particular has forced the mainstream academia and intelligentsia in India to include Ambedkar nominally or notionally in the curriculum of social sciences, although, he is 

\[\text{Chavan Sheshrao, Bharat Ratna Dr. Babasaheb Ambedkar Architect of Indian Constitution, Vimal Publication, Aurangabad, 1990, p. 4}\]
not taught in curriculum at different levels of education i.e. primary, secondary or higher. The irony is that even if he is taught, no questions are asked on him in the examination and if a question is asked it is asked in optional. This whole attitude towards an icon of erstwhile-marginalized community proves the point of the reductionism and blackout of the icon. Babasaheb Ambedkar conceptualized the principles of social justice. However, before we analyze his ideas of social justice let us look at the concept of social justice as propounded by the different social scientists. Based on the principles enshrined in the scientific definition of Social justice we will evolve a ‘purposive’ definition of social justice with principles as envisaged by Babasaheb Ambedkar. Dr. Y.D. Phadke rightly observed that, In his lifetime Ambedkar ceased to be a mere individual and had become a force to be reckoned with in Indian politics as he symbolized the revolt against all the oppressive features of Hindu society. He always asked his countrymen to beware of the dangers of hero worship, a malady from which the Indian society has suffered since its known history.¹²

4.4. Dr. B. R. Ambedkar’s State Socialism for Weaker Sections

Dr. B. R. Ambedkar’s state socialism tried to provide justice to weaker sections:

Dr. Bhimrao Ambedkar had equipped himself fully to wage war against the practice of untouchability on behalf of the untouchable and the downtrodden. Meanwhile the political situation in India had undergone substantial changes and the freedom struggle in the country had made significant progress. Many provisions have been made in the Constitution to ensure social justice for scheduled castes, scheduled

¹² Ibid. p. 14
tribes and backward classes. Dr. Ambedkar was of the opinion that traditional religious values should be given up and new ideas adopted. He laid special emphasis on dignity, unity, freedom and rights for all citizens as enshrined in the Constitution. Ambedkar advocated democracy in every field: social, economic and political. For him social Justice meant maximum happiness to the maximum number of people. Dr. Ambedkar's patriotism started with the upliftment of the downtrodden and the poor. He fought for their equality and rights. His ideas about patriotism were not only confined to the abolition of colonialism, but he also wanted freedom for every individual. For him freedom without equality, democracy and equality without freedom could lead to absolute dictatorship. Ambedkar's idea of social justice was based on social, cultural and economic roots.

4.5. Dr. Ambedkar’s concept of Social Justice:

Based On Indigenous Historical, Social And Cultural Roots can be studied in the following manner.

Dr. Ambedkar favored neither liberal nor Marxist perspectives on social justice. Instead, he favored radico-liberal perspective based on useful means for social transformation. "Ambedkar's idea of social justice was based on our indigenous historical, social and cultural roots. Dr. Ambedkar’s dream of a society based on socio-economic justice human dignity and equality. It has been observed that, Dr. Ambedkar as scholar is extraordinary for the another reason. He challenged the existing beliefs and deep rooted sometimes of the society and changed
the society to be the vehicle of modern values of objectivity and autonomy of reason in the affairs of men.\textsuperscript{13}

4.5.(1) Economic justice: (Article 38(1) in The Constitution Of India 1949)

(1) Dr. Ambedkar’s view behind this that, the State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life. Amartya Sen has rightly observed that the global politics of justice in the latter half of the twentieth century became more and more involved with these second generation rights. The nature of global dialogue and of the types of reasoning entertained in the new era has come to reflect a much broader reading of agencies and the content of global responsibilities.\textsuperscript{14} In the post globalization period social economic justice in the new era has become a part of human rights.

4.5.(2). Political Justice: The basic political rights of individuals

Dr. Ambedkar’s view behind this that, "The rights of the person require that individuals have an effective role in shaping their own destinies. They have a right to participate in the political process freely and responsibly. They have a right to free access to information, freedom of speech and press, as well as freedom of dissent. They have a right to be educated and to determine the education of their children. Individuals and groups must be secure from arrest, torture and imprisonment for political or ideological reasons, and all in society, including migrant workers, must be guaranteed juridical protection of their personal, social, cultural and political

\textsuperscript{13} Ibid. p. 116
\textsuperscript{14} Sen Amartya, The Idea of Justice, Thomson Press (India) Ltd. New Delhi, 2009, p.380
rights."\textsuperscript{15} Political situation changed very rapidly in India and long with transfer of power.\textsuperscript{16}

4.5.(3) Privatization of Education And Government Educational Loan

The inevitability of progressive and powerful nation is by means of Higher Education. But taking higher education is getting expensive day by day. Simultaneously Privatization of education is also necessary and mandatory, the rising cost of acquiring higher education comes with it too. But these expenses cannot be met by all the students, therefore the banks are expected to formulate schemes for disbursements of education loans. Several Banks have various schemes however do not disburse these amount due to stringent procedures to be followed for availing the loan facility, which safeguards them against any default.

In view of these the finance department of the Central Government has assured to take the guarantee of such loan amounts advanced. It has therefore given the permission to establish a credit guarantee fund trust, and an amount of Rs2500/- Crore would be provided to such fund. 75% of Banks Bad debts fall mainly into this category, i.e. non repayment of loan availed for higher education. And this could be a valid figure, because it is not necessary that immediately after the higher education one gets the job as per their expectations.

Possibilities of some of the graduates then starting their own businesses cannot be ruled out. And that could be one of the reasons, that instead of repaying the loan amount they prefer to deploy the funds in their business. Which is one of the reasons that most of the banks are now

\textsuperscript{15} Pope Paul VI, Message Issued in Union with the Synod of Bishops (1974).

\textsuperscript{16} Chanchreek K.L. Op.Cit. p. 2
demanding a third person as a guarantor, and it is very difficult to get such a person as a guarantor. Therefore some of the banks take the parents as their guarantors. Which again creates difficulty to the parent as it is considered as an income of the respective parent. Even this is not possible for a poor student. In these circumstances, the government has taken it as its own responsibility to make available the loan amount to the students, thus if the student is not in a position, capable of repaying the loan amount 75% of such loan amount can than be paid to the banks from such funds created by the Government\textsuperscript{17}. These are the positive steps on part of State to implement State Socialism which was in the reason Dr. B. R. Ambedkar.

4.5.(4) Reflections On The Basic Political Rights Of Individuals.

Dr. Ambedkar’s view behind this that, Everyone can participate in the political process and free access to information an important right, freedom of speech and expression and also the right to be educate political rights, agree that the migrant workers have personal, social, cultural, and political rights which should be protected. Amartya Sen observed that, the removal of global poverty and other economic and social deprivations has thus come to centre stage in the global engagement with human rights.\textsuperscript{18} Dr. Ambedkar wanted to protect basic political rights of human being. It has been observed that, there is a large area of fruitful public discussion and possibly effective pressure; concerning what a particular society or a state even an impoverished one can do to prevent violations of certain basic economic or social rights.\textsuperscript{19}

\textsuperscript{17} Dainik Lokmat Editorial Pg 6 dated -06.02.2013
\textsuperscript{18} Amartya Sen, Op.Cit. p.381.
\textsuperscript{19} Ibid p. 383
4.5.(5) The Rights And Duties Of Political Communities:

Dr. Ambedkar thinks that, the Political communities have the right to existence, to self-development, and to the means necessary for this. They have the right to play the leading part in the process of their own development and the right to their good name and due honors. From which it follows at one and the same time that they have also the corresponding duty of respecting these rights in others and of avoiding acts which violate them.

The civil authority and its laws relate to the rights of its citizens. In recent years there has been a growing realization throughout the world that protecting and promoting the inviolable rights of persons are essential duties of civil authority, and that the maintenance and protection of human rights are primary purposes of law.” It has been pointed that, Dr. Ambedkar’s draft on Fundamental Rights submitted to the Sub-Committee had said : “Any Privilege of disability arising out of rank, birth, person, family, relation or religious usage and system is abolished.”

4.5.(6) Government’s Role in Social Justice

Dr. Ambedkar was very strict about the government’s role to provide justice to the weaker section.

Government should not replace or destroy weaker section and individual initiative. Rather it should help them to contribute more effectively to social well-being and supplement their activity when the demands of justice exceed their capacities. This does not mean, however, that the government that governs least governs best. Rather it defines good government intervention as that which truly 'helps' other social groups contribute to the common good by directing, urging, restraining, and

20 Chavan Sheshrao, Op.Cit. p. 57
regulating economic activity. It has been rightly pointed that, he declared that Depressed Classes could not consent to any self-governing constitution for India, unless their just and fair demands were met, like abolition of untouchability, equal citizenship, fundamental rights, protection against discrimination, adequate representation in legislatures and in services, departmental care and ultimately, opportunity in the Cabinet. Since 1919 till 1946 he was alert and watchful for seeking constitutional rights for them, through his evidences, memorandums, notes, writhing and speeches. He organized and awakened the oppressed classes and was successful in his mission when many of his demands were incorporated in the Government of India Act of 1935. 21 Thus Dr. Ambedkar sincerely tried to protect rights of weaker sections.

4.5.(7) The philosophy of Social Justice:

Plato defined social justice as, “the principle of a society consisting of different types of men… who have combined the impulse of their need for one another and their concentration on their combination in one society and their concentration on their separate functions, have made a whole which is perfect because it is the product of image of the whole of the human mind (Republic 368d quoted in Mohapatra 1999)”. In modern times the term social justice was first used in 1840 by a Sicilian priest, Luigi Taparelli d’Azeglio. However, Antonio Rasmini Serbati gave the term prominence in his work, La constitutione Civile Secodo La Giurtizia Sociale in the year 1848 (Noval 2000: 11 quoted in Yadav: 2006).

Further, in a series of articles beginning with “Justice as Fairness” John Rawls propounded a contractualist theory of Justice as it applies to

institutions and practices. It is based on the notions of fairness and reciprocity. Rawls believed that his theory of justice is an improvement over utilitarian accounts of justice as maximum welfare. John Rawls developed the following principles of justice:

1. Each person is to have an equal right to most extensive basic liberty compatible with similar liberty for others.

2. Social and economic inequities are arbitrary unless they are reasonably expected to be to the advantage of the representative man in each income class.

3. Inequalities are to attach to positions and offices equally open to all (Choptiany 1973:146).

Similarly taking a leaf from Rawl’s theory of social justice, Beteile (2005: 417), argues that, “the fundamental issue in distributive justice is equality; a more equal or at least a less unequal distribution of the benefits and of social co-operation”. He opines that, “In that sense distributive justice to go beyond equality in the purely formal sense: equality before the law, seeks to go beyond equality in the purely formal sense: equality before the law, the equal protection of the laws, or even formal equality of opportunity. Its central concern is, in the language of Rawl ‘to address the bias of contingencies in the in the direction of equality’… Any attempt to promote distributive justice must begin with a consideration of the existing inequalities in society…it is essential to keep in sight both inequalities between individual and disparities. Disparities between groups have been historically go great significance in Indian society.
Plato and Rawl’s concept of social justice would mean giving every man his due. The basic aim of social justice is to remove the imbalances in the social, political and economic life of the people to create a just society. In terms of culture-specificity, the term social justice has a different meaning in Indian society. It means dispensing justice to those to whom it has been systematically denied in the past because of an established social structure. Dr. Ambedkar rightly pointed that, the Depressed classes may not be able to overthrow inequities to which they are being subjected. But they have made up their mind not to tolerate a religion that will lend its support to the continuance of these inequities. If the Hindu religion is to be their religion then it must become a relation of Social Equality. The mere amendment of Hindu religious code by the mere inclusion in it of a provision to permit temple entry for all; cannot make it a religion of Equality of social status.\(^{22}\) Dr. Ambedkar thus provided way of social emancipation to his followers, in this regards, Amartya Sen has observed that, Dr. Ambedkar, whose own scholarship helped him to overcome the stigma of low caste (indeed ‘untouchability), saw education as a cornerstone of his strategy for the liberation of oppressed castes a strategy which has been put to good effect in some parts of India.\(^{23}\)

4.5.(8) Uniformed Currency

The Court thought a uniform currency (i.e. a currency composed of like but independent units) was all that India needed. Indeed, they had given the Governments to understand that they did not wish for more in the matter of simplification of currency and were perfectly willing to allow the Sicca

\(^{22}\) Dr. Babasaheb Ambedkar Writings and Speeches, Vol. 5, The Education Department Govt. of Maharashtra, 1989, pp.383-384.
and the mohur to remain as they were, unassimilated. 24 A uniform currency was no doubt a great advance on the order of things such as was left by the successors of the Moguls. But that was not enough, and the needs of the situation demanded a common currency based on a single unit in place of a uniform currency. Under the system of uniform currency each Presidency coined its own money, and the money coined at the Mints of the other Presidencies was not legal tender in its territories except at the Mint. This monetary independence would not have been very harmful if there had existed also financial independence between the three Presidencies. As a matter of fact, although each Presidency had its own fiscal system, yet they depended upon one another for the finance of their deficits. There was a regular system of "supply" between them, and the surplus in one was being constantly drawn upon to meet the deficits in others. In the absence of a common currency this resource operation was considerably hampered. The difficulties caused by the absence of a common currency in the way of the "supply" operation made themselves felt in two different ways. Not being able to use as legal tender the money of other Presidencies, each was obliged to lock up, to the disadvantage of commerce, large working balances in order to be self-sufficient 25. The very system which imposed the necessity of large balances also rendered relief from other Presidencies less efficacious. For the supply was of necessity in the form of the currency of

24 Cf. Dispatch to Bengal dated March 11, 1829.
25 The Accountant-General of Bengal, in a letter to the Calcutta Mint Committee, dated November 21, 1823 wrote—"Para. 32. The amount of the balance must also necessarily depend upon the state of the currency. If the Madras, Bombay, and Furrukabad rupees instead of differing in weight and intrinsic value were coined of one standard weight and value bearing one inscription and in no way differing, the surplus of one Presidency would at all times be available for the deficiency of another, without passing through the Mint, and the balance of India might be reduced in proportion to the increased availability of currency for the disbursements of the three Presidencies " (Bombay Financial Consultations, February 25, 1824).
the Presidency which granted, it, and before it could be utilized it had to be re-coined into the currency of the needy Presidency. Besides the loss on re-coinage, such a system obviously involved inconvenience to merchants and embarrassment to the Government.26

4.5. (9) Answerability of the Government:

Dr. Ambedkar’s view was that, the government is answerable to all of society's problems, to socioeconomic political cultural civic. The essential sense of the State, as a political community, consists in that the society and people composing it are master and sovereign of their own future.

Dr. Ambedkar thinks that, instead of the exercise of power with the moral participation of the society or people, what we see is the imposition of power by a certain group upon all the other members of the society. Freedom is essential to society. The all individual be free to act autonomously and the state to regulate as a caretaker of every individuals. It is necessary for the state to keep these two factors in balance. Modern scholars like Dr. Amartya Sen also support this view he has pointed that, the diagnosis of injustice will figure often enough as the starting point for critical discussion.27 Thus Dr. B.R. Ambedkar began a new age of justice in India. It is true that, Dr. Ambedkar crusade against inequality was is mission. He was of the opinion that, even between the members of the same minority guarantee of equality of opportunity might become essential because of the conflict between individual benefit and social good. This is in the real spirit of upholding human dignity and providing opportunities for

26 The evil of the system had already made itself felt in Bombay, where the Government had been obliged by a Proclamation dated April 9, 1824, to declare the Furrukabad rupee of 1819 standard as legal tender within its territories on a par with the Bombay rupee, in order to facilitate the supply operation from Bengal. Cf. Bombay Financial Consultations, dated April 14, 1824.

growth for all.\textsuperscript{28}

4.5. (10) Rule of Law -

The members of society share the same basic rights and duties, as well as the same supernatural faith. Within a country which belongs to each one, all should be equal before the law, find equal admittance to economic, cultural, civic, and social life, and benefit from a fair sharing of the nation's riches. Every citizen should have same basic rights, duties and equality before the law, admittance to economic life, cultural life, civic life, social life. Dr. Ambedkar believed in equality. He respected freedom and liberal democracy. Amartya Sen rightly opined that, Freedom is valuable for at least two different reasons. First, more freedom gives us more opportunity to pursue our objectives those things that we value.\textsuperscript{29} Dr. Ambedkar also respected freedom and he aimed to develop human being through these freedom. According to Amartya Sen, “In our ability to ability to decide to live as we would like and to promote the ends that we may want to advance. This aspect of freedom is concerned with our ability to achieve what we value, no matter what the process is through which that achievement comes about, Second, we may attach importance to the process of choice itself.”\textsuperscript{30} Dr. Ambedkar provided such choices to the oppressed people through constitutional law.

4.5. (11) Misuse Of Equality

"If, beyond legal rules, there is really no deeper feeling of respect for and service to others, then even equality before the law can serve as an alibi for flagrant discrimination, continued exploitation, and actual contempt.

\textsuperscript{28} Chavan Sheshrao, Op.Cit. p.57
\textsuperscript{29} Amartya Sen, Op.Cit. p. 228
\textsuperscript{30} Ibid p.228
Without a renewed education in solidarity, an overemphasis on equality can give rise to an individualism in which each one claims his own rights without wishing to be answerable for the common good. Power may never be used to attack the dignity of persons, to subjugate them, to prevent them from seeking and realizing the goods to which their humanity gives them a claim.

Dr. Ambedkar’s view reflected in the Constitution is that, "Every individual have a duty to work positively for the empowerment of the weaker section: to help others gain control over their own lives, so that as free and responsible persons they can participate in a self-determining manner in the goods proper to human beings. The powerful must therefore work for the liberation of the oppressed and powerless. He provided voice to voiceless Ambedkar brought to bear upon his task a vast array of qualities, condition, scholarship, imagination, logic, eloquence and experience."31

Dr. Amberkar believed in rule of law and was of the opinion that every citizen is equal before the law.

4.5.(12) The Duties Of Power

The fundamental duty of power is solicitude for the common good of society; this is what gives power its fundamental rights. Precisely in the name of these premises of the objective ethical order, the rights of power can only be understood on the basis of respect for the objective and inviolable rights of man. There are no political communities which are superior by nature, and none which are inferior by nature. All political communities are of equal natural dignity, since they are bodies whose membership is made up of these same human beings.

31 Chanchree K.L. Op.Cit.4
Discussing on the scope of the Directive Principles of State policy Dr. Ambedkar said that, the main object of incorporating the Directive Principles in the Constitution was to lay down that future Governments should strive for the achievement of the ideal of economic democracy, but not to prescribe, any particular or rigid method or way it. (B. Shiva Rao, Framing of the Indian Constitution A Study).  

4.6. Dr. Ambedkar’s Socio-Economic Ideas In The New Spectrum:  
(state socialism in india in terms of economy).

Dr. Ambedkar drafted the provisions in the constitution of India that are guaranteed every citizens the social, economic, political and culture rights, a State socialist societies were formed in opposition to the political and economic the view behind Dr Ambedkar was that the systems of the capitalist world. It is questioned, however, whether they were able to form an autonomous bloc interacting with the capitalist system or whether they became a constituent part of the “capitalist world system.” Analysis of this relationship has a new significance in the period of transformation because it informs our understanding of the constellation of interests pursuing national and/or international policies. It also raises the question of the classes driving the transition process: were they newly formed from groups within the socialist societies, or were classes already in place? The collapse also raises questions on the extent to which new national capitals have been formed and remain, and the place the post-communist countries and their corporations have in the global political and economic order.

Amartya Sen has pointed that, every poverty is, of course, a matter of deprivation. The recent shift in focus especially in the sociological literature.

from absolute to relative deprivation has provided a useful framework of analysis.33

State socialist systems, it is contended, were not socialist modes of production, but interacted with the capitalist world economy. The socialist state, which exhibited some features of socialism (e.g. employment security, comprehensive welfare provision), nevertheless became a major player in capitalist accumulation, which in turn provided a basis for reintegration into the world capitalist system. An analogy is made with socialist parties under capitalism: they are separate from, but part of, capitalist economies; with time, trade unions have become functionally integrated parts of modern capitalist societies.34

After gaining independence from Britain, India adopted a broadly socialist-inspired approach to economic growth. Like other countries with a democratic transition to a mixed economy, it did not abolish private property in capital. India proceeded by nationalizing various large privately run firms, creating state-owned enterprises and redistributing income through progressive taxation in a manner similar to social democratic Western European nations than to planned economies such as the USSR or China. Today India is often characterized as having a free-market economy that combines economic planning with the free-market. It did however adopt a very firm focus on national planning with a series of broad Five-Year Plans. In the late 1970s, the government led by Morarji Desai eased restrictions on capacity expansion for incumbent companies; removed price controls, reduced corporate taxes and promoted the creation of small scale industries

in large numbers. However, the subsequent government policy of Fabian socialism hampered the benefits of the economy, leading to high fiscal deficits and a worsening current account. The collapse of the Soviet Union, which was India's major trading partner, and the Gulf War, which caused a spike in oil prices, resulted in a major balance-of-payments crisis for India, which found itself facing the prospect of defaulting on its loans.\textsuperscript{35} India asked for a $1.8 billion bailout loan from the International Monetary Fund (IMF), which in return demanded reforms.\textsuperscript{36}

In response, Prime Minister Narasimha Rao, along with his finance minister Manmohan Singh, initiated the economic liberalization of 1991. The reforms did away with the License Raj, reduced tariffs and interest rates and ended many public monopolies, allowing automatic approval of foreign direct investment in many sectors.\textsuperscript{37} Since then, the overall thrust of liberalization has remained the same, although no government has tried to take on powerful lobbies such as trade unions and farmers, on contentious issues such as reforming labor laws and reducing agricultural subsidies. By the turn of the 20th century, India had progressed towards a free-market economy, with a substantial reduction in state control of the economy and increased financial liberalization.\textsuperscript{38} This has been accompanied by increases


\textsuperscript{36} “Economic reforms in India: Task force report” (PDF). University of Chicago. p. 32.

\textsuperscript{37} “Economic reforms in India: Task force report” (PDF). University of Chicago. p. 32.

in life expectancy, literacy rates and food security, although the beneficiaries have largely been urban residents.\(^{39}\)

While the credit rating of India was hit by its nuclear weapons tests in 1998, it has since been raised to investment level in 2003 by S&P and Moody's.\(^{40}\) In 2003, Goldman Sachs predicted that India's GDP in current prices would overtake France and Italy by 2020, Germany, UK and Russia by 2025 and Japan by 2035, making it the third largest economy of the world, behind the US and China.

India is often seen by most economists as a rising economic superpower and is believed to play a major role in the global economy in the 21st century.\(^{41}\) This was the social economic ideas of Dr. Ambedkar in the new spectrum.

### 4.7. The Place Of Judicial Review In The Indian Constitution

In post-independence India, the inclusion of ‘judicial review’ was a necessary device to give teeth to the individual and group rights guaranteed under the Constitution. Dr. B.R. Ambedkar described the provision enabling the same as the ‘heart of the Constitution’. Article 13(2) of the Constitution of India prescribes that the Union or the states shall not make any law that takes away or abridges any of the fundamental rights, and any law made in contravention of the aforementioned mandate shall, to the extent of the contravention, be void.

While judicial review over administrative action has evolved on the lines of common 3 law doctrines such as ‘proportionality’, ‘legitimate

---

\(^{39}\) "Economic reforms in India: Task force report" (PDF). University of Chicago. p. 32.

\(^{40}\) S. Venkitaramanan (2003-02-10). "Moody's upgrade — Uplifts the mood but raises questions".

\(^{41}\) Grammaticas, Damian (2007-01-24). "Indian economy 'to overtake UK'". BBC News
expectation’, ‘reasonableness’ and principles of natural justice, the Supreme Court of India and the various High Courts were given the power to rule on the constitutionality of legislative as well as administrative actions. In most cases, the power of judicial review is exercised to protect and enforce the fundamental rights guaranteed in Part III of the Constitution. The higher courts are also called on to rule on questions of legislative competence, mostly in the context of Centre-State relations since Article 246 of the Constitution read with the 7th schedule, contemplates a clear demarcation as well as a zone of intersection between the law-making powers of the Union Parliament and the various State Legislatures. It has been observed that, Dr. Ambedkar was an ardent believer in Indian Unity and Integrity. He earnestly believed that without united and concerted efforts it would be virtually impossible to lift the downtrodden masses from the morass of poverty and user in economic democracy.42

Hence the scope of judicial review before Indian courts has evolved in three dimensions – firstly, to ensure fairness in administrative action, secondly to protect the constitutionally guaranteed fundamental rights of citizens and thirdly to rule on questions of legislative competence between the centre and the states. The power of the Supreme Court of India to enforce these fundamental rights is derived from Article 32 of the Constitution. It gives citizens the right to approach the Supreme Court in order to seek a remedy against the violation of these enumerated rights. This ‘right to constitutional remedy’ is itself a fundamental right and can be enforced in the form of writs evolved in common law – such as habeas corpus (to direct the release of a person detained unlawfully), mandamus (to

42 Chavan Sheshrao, Op.Cit. p. 60
direct a public authority to do its duty), *quo warranto* (to direct a person to vacate an office assumed wrongfully), *prohibition* (to prohibit a lower court from proceeding on a case) and *certiorari* (power of the higher court to remove a proceeding from a lower court and bring it before itself). Besides the Supreme Court, the High Courts located in the various States are also designated as constitutional courts and Article 226 permits citizens to file similar writs before the High Courts. With the advent of Public Interest Litigation (PIL) in recent decades, Article 32 has been creatively read to shape innovative remedies such as a ‘continuing mandamus’ for ensuring that executive agencies comply with judicial directions. In this category of litigation, judges have also imported private law remedies such as ‘injunctions’ and ‘stay orders’ into what are essentially public law-related matters. Successful challenges against statutory provisions result in reliefs such as the striking down of statutes.

On this background it would be interesting to study the scope of judicial review.

4.7.(1) The Scope Of Judicial Review

There are of course several points of reference in the Indian constitutional experiences that enable us to reflect on the so-called tensions between constitutionalism and democracy. The most prominent challenge to the scope of ‘judicial review’ has occurred over the proper place of the “right to property in the constitutional scheme. It must be borne in mind that there existed immense inequality in the land ownership in pre independent India, much of it corresponding to caste divisions. In the rural setting, most agricultural lands were owned and controlled by dominant castes who received the patronage of the colonial government in return for ensuring the
prompt collection of land revenue. Elaborate institutions of landed intermediaries (such as the Zamindari system) had become entrenched while cultivators from the lower caste either had very small land holdings or were forced to work as bonded laborers under the control of these Zamindars. After Independence, Parliament as well as the State Legislatures sought to tackle this institutionalized inequality by urgently pursuing a policy of agrarian land reforms, which often overlooked questions such as the payment of adequate compensation to the landowners whose property was acquired for public purposes as well as for redistribution among smaller cultivators. Such governmental excess prompted the land owning classes to repeatedly approach the courts to protect their “right to acquire, hold and dispose of property” which had been enumerated in Article 19(1)(f) of the constitution. While the higher judiciary repeatedly defended the rights of landowners against the acquisition by the State, Parliament responded with legislative changes as well as constitutional amendments to address the same. In fact, legislations pertaining to agrarian land reforms were placed in Schedule IX to the constitution, a part which was immunized from scrutiny by the courts, and thus, formed a exception to the power of “judicial review” provided under Article 13.

“However, there was some inconsistency in identifying all the provisions of constituted this ‘basic structure’. While later decisions identified basic features such as democracy, secularism, federalism, judicial independence, as well as for protection of life and liberty among others, many commentators have drawn attention to the “open textured” nature of this doctrine. In these recent years, some political formulations, especially the left wing parties have publicly argued that judges can use the basic
structure doctrine in a discretionary unpredictable manner to rule against otherwise socially beneficial legislative and executive acts, for instance, those seeking to expand the policy of reservations for disadvantaged sections of land acquisition for developmental purposes. Despite of these misgivings, the coining of the basic structure doctrine in the Kesavananda Bharati v/s State of Kerala 4 SCC 225 1973 holds immense significance in our constitutional history since it reasserted the independence of the judiciary, especially during a period of excessive interference by the executive. There can be no quarrel with the fact that sometimes the deep deliberations of the unelected branch are the only thing that prevents impulsive majoritarian tendencies from infringing upon the rights of individuals and minorities…” 

As we look ahead to the constitutional and legal challenges faced by our country, the legacy of the Kesavananda Bharati decision will continue to be the fulcrum for debated about the same.

In this category of litigation, judges have also imported private law remedies such as ‘injunctions’ and ‘stay orders’ into what are essentially public law-related matters. Successful challenges against statutory provisions result in reliefs such as the striking down of statutes or even reading down of statutes, the latter implying that courts reject a particular approach to the interpretation of a statutory provision. Beginning with the first few instances in the late-1970’s, the category of Public Interest Litigation (PIL) has come to be associated with its own ‘people-friendly’ procedure. The foremost change came in the form of the dilution of the requirement of ‘locus standi’ for initiating proceedings. Since the intent was to ensure redressal to those who were otherwise too poor to move the courts

---

43 Kesavananda Bharati v/s State of Kerala 4 SCC 225 1973
or were unaware of their legal entitlements, the Court allowed actions to be brought on their behalf by social activists and lawyers.3 In numerous instances, the Court took *suo moto* cognizance of matters involving the abuse of prisoners, bonded laborers and inmates of mental institutions, through letters addressed to sitting judges. This practice of initiating proceedings on the basis of letters has now been streamlined and has come to be described as epistolary jurisdiction.

In Public Interest Litigation, the nature of proceedings itself does not exactly fit into the accepted common-law framework of adversarial litigation. The courtroom dynamics are substantially different from ordinary civil or criminal appeals. While an adversarial environment may prevail in cases where actions are brought to highlight administrative apathy or the government’s condonation of abusive practices, in most public interest-related litigation, the judges take on a far more active role in terms of posing questions to the parties as well as exploring solutions. Especially in actions seeking directions for ensuring governmental accountability or environmental protection, Ashok H. Desai and S. Muralidhar, Public Interest Litigation: Potential and Problems’ in B.N. Kirpal et. al. (eds.), *Supreme but not Infallible – Essays in Honour of the Supreme Court of India* (OUP, 2000) at p. 159-192; Also see K.G. Balakrishnan, ‘Growth of Public Interest Litigation in India’, *Fifteenth Annual Lecture, Singapore Academy of Law* (October 8, 2008).

---

44 *Essays in Honour of the Supreme Court of India* (OUP, 2000) at p. 159-192
45 Justice K. G. Balakrishnan, ‘Growth Of Public Interest Litigation In India’, *Fifteenth Annual Lecture, Singapore Academy Of Law* (October 8, 2008)
In the United Kingdom, Courts have developed another tool for ruling on legislative action – i.e. issuing a ‘declaration of incompatibility’ for statutory provisions that contravene the ECHR.

Refer: Susan D. Susman, ‘Distant voices in the Courts of India: Transformation of standing in Public Interest Litigation’, 13 Wisconsin International Law Journal 57 (Fall 1994)

The orientation of the proceedings is usually more akin to collective problem-solving rather than an acrimonious contest between the counsels. Since these matters are filed straightaway at the level of the Supreme Court or the High Court, the parties do not have a meaningful opportunity to present evidence on record before the start of the court proceeding. To overcome this problem, our Courts have developed the practice of appointing ‘fact-finding commissions’ on a case-by-case basis which are deputed to inquire into the subject-matter of the case and report back to the Court. These commissions usually consist of experts in the concerned fields or practicing lawyers. In matters involving complex legal considerations, the Courts also seek the services of senior counsels by appointing them as *amicus curiae* on a case-by-case basis. “Judges must know their limit and must not try to run the Government they must have modesty and humility, and not behave like emperors”. 46 The said comment appears in the judgement delivered by Hon’ble Justice A.K. Mathur which appears to follow the self limitation. “Dispensation of Social Justice and achieving the goal setforth in the Constitution are not possible without the active, concreted and dynamic effort made by the person concerned with the justice

---

46 Aravali Golf Club v/s Chanderhas (2008) 1SCC, 683, Para-20
dispensation system. “complete justice would be justice according to law, and though it would be open to the Supreme Court to mould the relief, the Supreme Court would not grant relief which would amount to perpetuating and illegality,” “Assets to justice….. is a valuable right”.

4.7.(2) Considering The Objections To The Doctrine Of ‘Judicial Review’: Dr Ambedkar has been given constitutional provisions given for judicial review. However, in many jurisdictions questions have been asked about the proper understanding of ‘judicial review’ as well as its expansion. There are two principled objections offered against the very idea of ‘judicial review’ in a democratic order.

The first idea is that the judiciary being an unelected body is not accountable to the people through any institutional mechanism. In most countries judges are appointed through methods involving selection or nomination, in which ordinary citizens do not have a say. It is argued that allowing the judiciary to rule on the validity of the acts of a democratically constituted legislature is in itself a violation of the idea of ‘separation of powers’. Skepticism is also voiced against judges using their personal discretion to direct action in areas in which they have no expertise. This critique locates the role of the judiciary as purely one of resolving disputes between parties and deferring to the prescriptions of the elected legislature while doing so. In the Common Law realm, this critique is based on the age-old notion of ‘parliamentary sovereignty’. With respect to the inherent value of a written constitution that also incorporates ‘judicial review’, it

47 Rammohan Services (p) Ltd v/s Subhsh Kapoor, (2001) 1 SCC 118, Para-21
48 State of Karnataka v/s Uma Devi (3) (2006) 4 SCC 1, Para -44
would be appropriate to refer to an observation made by Justice Aharon Barak:

“To maintain real democracy and to ensure a delicate balance between its elements. In a formal constitution is preferable. To operate effectively, a constitution should enjoy normative supremacy, should not be as easily amendable as a normal statute, and should give judges the power to review the constitutionality of legislation. Without a formal constitution, there is no legal limitation on legislative supremacy, and the supremacy of human rights can exist only by the grace of the majority’s self-restraint. A constitution, however, imposes legal limitations on the legislature and guarantees that human rights are protected not only by the self-restraint of the majority, but also by constitutional control over the majority. Hence, the need for a formal constitution.\(^5\)

However, we must also consider another nuanced objection to the doctrine of ‘judicial review’. It is reasoned that the substantive contents of a constitution adopted by a country at a particular point of time reflect the will of its framers. However, it is not necessary that the intent of the framers corresponds to the will of the majority of the population at any given time. In the Indian setting, it is often argued that the members of the Constituent Assembly were overwhelmingly drawn from elite backgrounds and hence did not represent popular opinions on several vital issues. Furthermore, the adoption of a constitution entails a country’s recommitment to its contents and the same become binding on future generations. Clearly the understanding and application of constitutional principles cannot remain

static and hence a constitutional text also lays down a procedure for its amendment.


This power of amendment by the legislature is not unlimited and the idea of ‘judicial review’ designates the higher judiciary as the protector of the constitution. This scheme works smoothly as long as the demands and aspirations of the majority of the population correspond with the constitutional prescriptions. However, scope for dissonance arises when majoritarian policy-choices embodied in legislative or executive acts come into conflict with constitutional provisions. The higher judiciary is then required to scrutinize the actions of its co-equal branches of government. Some scholars have argued that institutions of this type involve tensions between the understanding of the words ‘constitutionalism’ and ‘democracy’ respectively. Hence, it is postulated that the provision for ‘judicial review’ gives a self-contradictory twist to the expression ‘constitutional democracy’.

In this regard the role of the judiciary can be described as one of protecting the counter-majoritarian safeguards enumerated in the Constitution by Dr B R Ambedkar. It is apt to refer to an opinion given by Justice Robert Jackson where it was held that citizens could not be compelled to salute the U.S. national flag if the same offended their religious beliefs.

Dr. Ambedkar was very clear in his understanding that the very purpose of the bill of rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied
by the Courts. One’s right to life, liberty, and property, to free speech, a free press, freedom of worship and Assembly and other fundamental rights may not be submitted to vote: they depend on the outcome of no elections.

4.7.(4) uniform civil Code’

‘uniform civil code’ is necessary for regulating the private relations of citizens belonging to all religions.

Dr Ambedkar has given freedom of religion in the fundamental rights, in India there is considerable disenchantment with the constitutional provision which places the personal laws of religious groups beyond the scope of constitutional scrutiny. The framers preferred this position in order to protect the usages and customs of religious minorities with regard to the guarantee of ‘freedom of religion’. However, there have been persistent majoritarian demands for a constitutional amendment of this position in order to enact a ‘Uniform Civil Code’ for regulating the private relations of citizens belonging to all religions. Even though there may be a good case for some specific changes to personal laws that come into conflict with the objective of gender-inequality, the demands for whole-scale overriding of personal laws carry a connotation of imposition by the majority. Noted scholar Samuel Isachar off has argued that in fractured or pluralist societies it is beneficial to implement a constitutional scheme so as to restrain destructive majoritarian tendencies. In Ambedkar’s “States and Minorities”, he urged to establish state socialism not by the will of the legislature but by the law of the constitution making it unalterable by any act of the legislature and the executive. 

51 Chavan Sheshrao Op.Cit. p. 88
This is true not only about uniform civil code but also about just land reforms. The civil code is required to balance Indian society and village life can be changed through progressive land reforms. It has been observed that, According to Ambedkar, the fundamental cause of Indian backward economy was the delay in changing the land relations in Indian villages. To him, the real remedy was democratic collectivism. It aimed at wiping out completely elements of economic exploitation and social injustice.\(^{52}\)

### 4.8. Milestones Of Public Interest Litigations:

Dr. B R Ambedkar has given the constitutional remedies - milestones of public interest litigations:

One of the earliest cases of public interest litigation was reported as *Hussainara Khatoon* v. Home Secretary, *State of Bihar, Patna*. This case was concerned with a series of articles published in a prominent newspaper - the *Indian Express* which exposed the plight of under trial prisoners in the state of Bihar. A writ petition was filed by an advocate drawing the Court’s attention to the deplorable plight of these prisoners. Many of them had been in jail for longer periods than the maximum permissible sentences for the offences they had been charged with. The Supreme Court accepted the *locus standi* of the advocate to maintain the writ petition.\(^{53}\) Thereafter, a series of cases followed in which the Court gave directions through which the ‘right to speedy trial’ was deemed to be an integral and an essential part of the protection of life and personal liberty. This was the view of Dr Ambedkar about natural justice. It has been pointed that he had to wage war against all injustices. But it was a peaceful one. He was a defender of “peace and constitutional morality”. He said, “I am

---

\(^{52}\) Ibid. p. 88

\(^{53}\) Hussainara Khatoon v. Home Secretary, state of bihar air 1979 sc 1360
reported to be against peace. This is not correct. I am for peace. But the peace which is based on justice, not the peace of a graveyard. So long as justice is not respected in the world there cannot be any peace.”

Dr. Ambedkar wanted to bring peace through the practice of state socialism.

Soon thereafter, two noted professors of law filed writ petitions in the Supreme Court highlighting various abuses of the law, which, they asserted, were a violation of Article 21 of the Constitution. These included inhuman conditions prevailing in protective homes, long pendency of trials in court, trafficking of women, importation of children for homosexual purposes, and the non-payment of wages to bonded laborers among others. The Supreme Court accepted their locus standi to represent the suffering masses and passed guidelines and orders that greatly ameliorated the conditions of these people.

In another matter, a journalist, Ms. Sheela Barse, took up the plight of women prisoners who were confined in the police jails in the city of Bombay. She asserted that they were victims of custodial violence. The Court took cognizance of the matter and directions were issued to the Director of College of Social Work, Bombay. He was ordered to visit the Bombay Central Jail and conduct interviews of various women prisoners in order to ascertain whether they had been subjected to torture or ill-treatment. He was asked to submit a report to the Court in this regard. Based on his findings, the Court issued directions such as the detention of female prisoners only in designated female lock-ups guarded by female constables and that accused females could be interrogated only in the presence of a female police official. Public interest litigation acquired a new dimension –

54 Chavan Sheshrao Op.Cit. p. 128
namely that of ‘epistolary jurisdiction’ with the decision in the case of *Sunil Batra v. Delhi Administration*, It was initiated by a letter that was written by a prisoner lodged in jail to a Judge of the Supreme Court. The prisoner complained of a brutal assault committed by a Head Warder on another prisoner. The Court treated that letter as a writ petition, and, while issuing various directions, opined that:

“…technicalities and legal niceties are no impediment to the court entertaining even an informal communication as a proceeding for habeas corpus if the basic facts are found”.

In Municipal Council, *Ratlam v. Vardichand*, the Court recognized the *locus standi* of a group of citizens who sought directions against the local Municipal Council for removal of open drains that caused stench as well as diseases. The Court, recognizing the right of the group of citizens, asserted that if the:

"...centre of gravity of justice is to shift as indeed the Preamble to the Constitution mandates, from the traditional individualism of locus standi to the community orientation of public interest litigation, the court must consider the issues as there is need to focus on the ordinary men.”

In *Pandit Parmanand Katara v. Union of India*, the Supreme Court accepted an application by an advocate that highlighted a news item titled "Law Helps the Injured to Die" published in a national daily, *The Hindustan Times*. The petitioner brought to light the difficulties faced by persons injured in road and other accidents in availing urgent and life-saving medical treatment, since many hospitals and doctors refused to treat them unless

---

55 *Sunil Batra v. Delhi Administration*, AIR,197, SC 1675
56 *Municipal Council, Ratlam vs Vardichan And Ors. on 29 July, 1980*
certain procedural formalities were completed in these medico-legal cases. The Supreme Court directed medical establishments to provide instant medical aid to such injured people, notwithstanding the formalities to be followed under the procedural criminal law.\textsuperscript{57}

In many other instances, the Supreme Court has risen to the changing needs of society and taken proactive steps to address these needs. It was therefore the extensive liberalization of the rule of \textit{locus standi} which gave birth to a flexible public interest litigation system. A powerful thrust to public interest litigation was given by a 7-judge bench in the case of \textit{S.P. Gupta v. Union of India}. The judgment recognized the \textit{locus standi} of bar associations to file writs by way of public interest litigation. In this particular case, it was accepted that they had a legitimate interest in questioning the executive’s policy of arbitrarily transferring High Court judges, which threatened the independence of the judiciary. Explaining the liberalization of the concept of \textit{locus standi}, the court opined:

\begin{quote}
"It must now be regarded as well-settled law where a person who has suffered a legal wrong or a legal injury or whose legal right or legally protected interest is violated, is unable to approach the court on account of some disability or it is not practicable for him to move the court for some other sufficient reasons, such as his socially or economically disadvantaged position, some other person can invoke the assistance of the court for the purpose of providing judicial redress to the person wronged or injured, so that the legal wrong or injury caused to such person does not go unredressed and justice is done to him." \textsuperscript{58}
\end{quote}

\textsuperscript{57} Pandit Parmanand Katara v. Union of India, AIR 1989, SC 2032  
\textsuperscript{58} S.P. Gupta v. Union of India, AIR 1982 SC 149
The unique model of public interest litigation that has evolved in India not only looks at issues like consumer protection, gender justice, prevention of environmental pollution and ecological destruction, it is also directed towards finding social and political space for the disadvantaged and other vulnerable groups in society. The Courts have given decisions in cases pertaining to different kinds of entitlements and protections such as the availability of food, access to clean air, safe working conditions, political representation, affirmative action, anti-discrimination measures and the regulation of prison conditions among others.

For instance, in *People’s Union for Democratic Rights (PUDR) v. Union of India*, a petition was brought against governmental agencies which questioned the employment of underage laborers and the payment of wages below the prescribed statutory minimum wage-levels to those involved in the construction of facilities for the then upcoming Asian Games in New Delhi. The Court took serious exception to these practices and ruled that they violated constitutional guarantees.\(^{59}\) The employment of children in construction related jobs clearly fell foul of the constitutional prohibition on child labor and the nonpayment of minimum wages was equated with the extraction of forced labor. Similarly, in *Bandhua Mukti Morcha v. Union of India*, the Supreme Court’s attention was drawn to the widespread incidence of the age-old practice of bonded labor which persists despite the constitutional prohibition. Among other interventions, one can refer to the *Shriram Food & Fertilizer* case where the Court issued directions to employers to check the production of hazardous chemicals and gases that endangered the life and health of workmen. It is also through the vehicle of

\(^{59}\) People’s Union for Democratic Rights (PUDR) v. Union of India, AIR, 1982 Sc 1473
PIL, that the Indian Courts have come to adopt the strategy of awarding monetary compensation for constitutional wrongs such as unlawful detention, custodial torture and extra-judicial killings by state agencies.⁶⁰

In the realm of environmental protection, many of the leading decisions have been given in actions brought by renowned environmentalist M.C. Mehta. He has been a tireless campaigner in this area and his petitions have resulted in orders placing strict liability for the leak of Oleum gas from a factory in New Delhi, directions to check pollution in and around the Ganges river, the relocation of hazardous industries from the municipal limits of Delhi, directions to state agencies to check pollution in the vicinity of the Taj Mahal and several afforestation measures. A prominent decision was made in a petition that raised the problem of extensive vehicular air pollution in Delhi.

The Court was faced with considerable statistical evidence of increasing levels of hazardous emissions on account of the use of diesel as a fuel by commercial vehicles. The Supreme Court decided to make a decisive intervention in this matter and ordered government-run buses to shift to the use of Compressed Natural Gas (CNG), an environment-friendly fuel. This was followed some time later by another order that required privately-run ‘auto-rickshaws’ (three-wheeler vehicles which meet local transportational needs) to shift to the use of CNG. At the time, this decision was criticized as an unwarranted intrusion into the functions of the pollution control authorities, but it has now come to be widely acknowledged that it is only because of this judicial intervention that air pollution in Delhi has been checked to a substantial extent.

---

⁶⁰ Bandhua Mukti Morcha v. Union of India, AIR 1984 SC 802,
Another crucial intervention was made in *Indian Council for Environment Legal Action v. Union of India*, wherein a registered NGO had sought directions from the Supreme Court in order to tackle ecological degradation in coastal areas. In recent years, the Supreme Court has taken on the mantle of monitoring forest conservation measures all over India, and a special ‘Green bench’ has been constituted to give directions to the concerned governmental agencies. At present, I am part of this Green bench and can vouch for the need to maintain judicial supervision in order to protect our forests against rampant encroachments and administrative apathy.\(^{61}\)

An important step in the area of gender justice was the decision in *Vishaka v. State of Rajasthan*. The petition in that case originated from the gang-rape of a grassroots social worker. In that opinion, the Court invoked the text of the *Convention for the Elimination of all forms of Discrimination Against Women (CEDAW)* and framed guidelines for establishing redressal mechanisms to tackle sexual harassment of women at workplaces. Though the decision has come under considerable criticism for encroaching into the domain of the legislature, the fact remains that till date the legislature has not enacted any law on the point. It must be remembered that meaningful social change, like any sustained transformation, demands a long-term engagement. Even though a particular petition may fail to secure relief in a wholesome manner or be slow in its implementation, litigation is nevertheless an important step towards systemic reforms.\(^{62}\)

A recent example of this approach was the decision in *People’s Union for Civil Liberties v. Union of India*, where the Court sought to ensure

\(^{61}\) *Indian Council for Environmental-Legal Action Vs Union of India: 1996(3)SCC 212; A.P*

\(^{62}\) *Vishaka and Ors Vs. State of Rajasthan and Ors. (JT 1997 (7) SC 384)*
compliance with the policy of supplying mid-day meals in government-run primary schools. The mid-day meal scheme had been launched with much fanfare a few years ago with the multiple objectives of encouraging the enrolment of children from low-income backgrounds in schools and also ensuring that they received adequate nutrition. However, there had been widespread reports of problems in the implementation of this scheme such as the pilferage of food-grains. As a response to the same, the Supreme Court issued orders to the concerned governmental authorities in all States and Union Territories, while giving elaborate directions about the proper publicity and implementation of the said scheme.63

The expansion of ‘judicial review’ (which is often described as ‘judicial activism’) has of course raised the popular profile of the higher judiciary in India. However, arguments are routinely made against the accommodation of ‘aspirational’ directive principles within the ambit of judicial enforcement. There are two conceptual objections against the justifiability to these positive obligations. The first is that if judges devise strategies to enforce the directive principles, it amounts to an intrusion into the legislative and executive domain. It is reasoned that the articulation of newer fundamental rights is the legislature’s task and that the judiciary should refrain from the same. Furthermore, it is posed that executive agencies are unfairly burdened by the costs associated with these positive obligations, especially keeping in mind that these obligations were enumerated as directive principles by the framers on account of practical considerations. This criticism mirrors the familiar philosophy of ‘judicial restraint’ when it comes to constitutional adjudication.

63 People's Union for Civil Liberties Vs. Union of India and Ors of 2001
However, the second objection to the reading in of positive obligations raises some scope for introspection amongst judges. It can be argued that the expansion of justifiability to include rights that are difficult to enforce takes away from the credibility of the judiciary in the long-run. The judicial inclusion of socio-economic objectives as fundamental rights can be criticized as a theoretical exercise, which may have no bearing on ground-level conditions. In turn the inability of state agencies to protect such aspirational rights could have an adverse effect on public perceptions about the legitimacy and efficacy of the judiciary. The judiciary must be free fair and fearless. In article 124 of Indian consultation in part 4 has uphelded independence of judiciary.  

His understanding was perfect Upendra Bakshi has observed that when justice is accomplished both ideologically and professionally grass rout analysis is required.

The following expose encapsulates the arguments offered against the constitutional prescription of aspirational rights, such as directive principles: Jeffrey Usman, ‘Non-justifiable Directive. The prescription of normative rights always carries the risk of poor enforcement. However, the question we must ask ourselves is whether poor enforcement is a sufficient reason to abandon the pursuit of rights whose fulfillment enhances social and economic welfare. At this point, one can recount Roscoe Pound’s thesis on law as an agent of social change. The express inclusion of legal rights is an effective strategy to counter-act social problems in the long-run. At the level of constitutional protection, such rights have an inherent symbolic value.

which goes beyond empirical considerations about their actual enforcement. The colonial regime in the Indian subcontinent periodically made legislative interventions to discourage retrograde and exploitative social practices such as Sati (immolation of widows), prohibition of widow-remarriage and child marriage. Even though there have been persistent problems in the enforcement of these legislations, in the long run they have played an important part in reducing the incidence of these unjust customs. It is evident that in the short run even the coercive authority of law may not be enough of a deterrent, but in the long run the very fact of the continued existence of such authority helps in creating public opinion against the same practices. In the same way the framers of our Constitution sought to depart from the inequities of the past by enumerating a whole spectrum of rights and entitlements. While the understanding of ideas such as ‘social equality’ and ‘religious freedom’ is keenly contested in the legislative as well as judicial domains, there is no doubt constitutional rights have been an important tool of social transformation in India. The enumeration of the various civil liberties and protections against arbitrary actions by the state are now identified as core elements of citizenship and violations provoke a high standard of scrutiny both by the judiciary as well as by civil society groups. The inclusion of entitlements such as universal adult franchise have greatly reduced the coercive power of casteist and feudal social structures and empowered political parties that represent historically disadvantaged sections such as the Scheduled Castes and Scheduled Tribes. Dr. Ambedkar was of the opinion that after independence also the untouchables would have
to use the different methods of political resistance because Swaraj as not completely moved the wheel of democratic revolution.  

Even though practices such as untouchability, forced labor and child labor have not been totally eradicated, Dr Ambedkar given the provisions in our constitution prohibiting the same are the bedrock behind legal as well as socio-political strategies to curb the same. The Supreme Court of India has further internalized the importance of laying down clear normative standards which drive social transformation. Its interventions through strategies such as the expansion of Article 21 and the use of innovative remedies in Public Interest Litigation (PIL) cases has actually expanded the scope and efficacy of constitutional rights by applying them in previously un-enumerated settings. Furthermore, the Courts allow groups and interests with unequal bargaining power in the political sphere to present their case in an environment of due deliberation. The dilution of the rules of standing among other features has allowed the Courts to recognize and enforce rights for the most disadvantaged sections in society through an expanded notion of ‘judicial review’. Dr. Ambedkar may not have thought of these innovations on the floor of the constituent assembly, but would have certainly agreed with the spirit of these judicial interventions. He was of the opinion that ethical values or moral codes will be voluntarily accepted by the people and no external force will be required to implement them. His socialism was having moral base.

4.8.(1) Moral Obligation Of State

Dr. Ambedkar was of the opinion that, State shall moral obligation to follow the directives article 36 to 51.

66 Chavan Sheshrao, Op.Cit. p. 84
67 Ibid. p 105
Article 36 in its scope defined the State in Article 12 shall apply throughout in Part IV. It shall have a moral obligation to follow the directives. It will be in the manner the promotion of cottage industries, prohibition of consumption of intoxication or of slaughter of cows and Milch Cattle, improvement of public health and of the level of nutrition of the people. Since the definition of State includes the Executive origin of the Government, it follows the directives can be implemented by executive action.

The Article 37 i.e. application of principles contended in this part i.e. in Directive Principles of State Policy are not enforceable by any Court, but the principles therein laid down are nevertheless fundamental in the governance of country and it shall be duty of the State to apply these principles in making law. For to bring implementation of Dr. Ambedkar’s State Socialism effective present report of National Commission is necessary to implement.

In the report of National Commission to review the working of Constitution, commission has suggested a mechanism for realization of Directive principles. In Chapter III para 35, Commission has stated thus:

1. State should derive appropriate mechanism for realization of Directive Principles, the commission does not propose to recommend a complaint procedure inasmuch as it is more concerned with a procedure which will ensure proper allocation of resources for the realization of the right to work, health, food, clothing, housing,
education and culture. Domestic bodies in various countries have
different composition, membership and powers.

2. In the view of commission there must be a body of high status which
first reviews the State of the level of implementation of the directive
principles and economic, social and cultural rights and in particular

i) The right to work

ii) The right to health

iii) The right to food, clothing and shelter

iv) The right to education upto and beyond 14\textsuperscript{th} years

v) The right to culture.

The said body must estimate the extent of resources required in each
State under each of the heads and makes recommendation for allocation of
adequate resources, from time to time. For ensuring that the directive
principles of State policy are realized more effectively the following
procedure is suggested:

i) The Planning Commission shall ensure that there is a special mention
/ emphasis in all the plans and schemes formulated by it, on the

ii) Every Ministry / Department of the Government of India shall make a
special annual report indicating the extent of efficiency / realization of
the Directive Principle of State Policy, the shortfalls in targets, the
reasons for the shortfalls, if any, the remedial measures taken to
ensure the full realization, during the year under report.

iii) The report under attempt (ii) shall be considered and discussed by the
Department related parliamentary standing Committee which shall
submit its report on the working of Department indicating the achievements / failures of the Ministry / Department along the recommendations thereto.

iv) Both the above reports (ii) and (iii) shall be discussed by the Planning Commission in an interactive seminar with the representatives of the various NGOs, Civil Society Groups, etc. in which the representative of the Ministry/Department and the Departmental Related Parliamentary Standing Committee would also participate. The report of this interaction shall be submitted to the Parliament within a time bound manner.

v) The Parliament shall discuss the report at (iv) above within a period of three months and pass a resolution about the action required to be taken by the Ministry/Department. (3) A similar mechanism as mentioned above may be adopted by the States.70

3. Dr. B.R. Ambedakar told the constituent assembly that every Government, Central, State and Local “shall be on the anvil, both in daily affairs and at the end of certain period when the voters and electorate will be given an opportunity to assist the work done by the Government ………… while we have established political democracy, it is also the desire that we should lay down as our ideal economic democracy ………… there are various ways in which people believe that economic democracy can be brought about we have deliberately not introduced in the language that we have used in the directive principles something which is fixed or reached. We have left enough room for the people of different ways of thinking, with regard to the

70 Durga Das Basu – Commentary on The Constitution of India 8th Edition 2008 publisher Lexis Nexis
Butterworths Wadhwa Nagpur – page No.4014-4015
reacting of the ideal of democracy. Our objective in framing the Constitution is twofold:

i) To lay down the form of political democracy and also to prescribe that every Government whatever is in power, shall strive to bring about the economic democracy…….”

Dr. Ambedkar’s view in nutshell one can know he was not only in keen interest to bring a political democracy but his desire was also to bring an ideal economic democracy. The directive principles Court cannot enforce them but they are nevertheless fundamental in the governance of the country.

In Keshavanand Bharati v/s. State of Kerala the nature and object of directive principles is stated: thus, the directive principles of state policy set forth the humanitarian socialist precepts that were the aims of Indian social evaluation ………….. Part III & IV essentially form a basic element of Constitution, without which its identity will completely change. A number of provisions in Part III And Part IV are fashioned in Union Declaration of human rights …………………. Part III of the Constitution shows that the founding fathers were equally anxious that it should be a Society where citizens will enjoy the freedom and such rights as are the basic elements of those freedom without which there cannot be no dignity of the individual. Our Constitution maker did not contemplate in disharmony between fundamental rights and the directive principle. It can be well said that the directive principles prescribe the goal to attend and fundamental rights laid down the means by which the goal was to be achieved (Per Shelat and Grover JJ.) The directive principle and fundamental rights mainly proceed

---

71 Constituent Assembly debates, Vol. VII Pp 494-95
on the basis of human rights, freedom is nothing else but a chance to be better. It is this liberty to be better that is the theme of directive principles of state policy in Part IV of the Constitution (Per Hegde and Mukherjee JJ.)

The scheme of Constitution generally discloses that the principles of social justice are placed above individual rights and whenever or wherever it is considered necessary, individual rights have been subordinated or cut down to give effect to the principle of social justice. Social justice means various concepts which are evolved in the directive principles of the State policy (Per Ray J.) The objective of directive principles of State policy is to establish a welfare state where there is economic and social freedom, without which political democracy has no meaning (Per Jagmohan Reddy J.) The significant thing to note about Part IV, although its provisions are expressly made enforceable, that does not affect its fundamental character. Enforcement by Court is not a real test of law. (Per Mathew J.) Fundamental rights are the ends of endeavours of the Indian people for which the directive principles provided guidelines (Per Beg J.) The basic objective of confirming freedom on individuals is the ultimate achievement of the ideals setout in Part IV. Fundamental rights which are confirmed and guaranteed by Part III of the Constitution undoubtedly constitute the arc of Constitution and without them a man’s reach will not exceed his grasp but it cannot be over stretched that the directive principles of state policy are fundamental in governance of the country. What is fundamental governance of the country cannot be surely be less significant than what is fundamental in the life of the individual (Per Chandrachud J.)

72 Durga Das Basu – Commentary on The Constitution of India 8th Edition
2008 publisher Lexis Nexis Butterworths Wadhwa Nagpur – page No.4019-4020
of colonial area had ended, that the Indian people (through the democratic institution of Constitution) had assumed economic as well as political control of the country and that the Indian capitalist should not inherent the empire of British colonist. The idea of incorporating in the Constitution non justiciable directive was of course taken from Constitution of Eira (4015 ante). As Dr. Ambedkar explained the precedent under the Government of India Act, 1935 of issuing instruments of instructions to the Governor General also influenced the makers of the Constitution. In other words of Dr. Ambedkar, again, enacting this part of Constitution, “the assembly is giving certain direction to future legislation, and future executive to show in what manner they are to exercise the legislature and the executive powers they will have. Surely it is not the intention to introduce in this part, this principles are merely pious declarations. It is the intention of assembly that in future both the legislature and executive should not merely pay lip service to this principles but that they should be made the basis of all legislative and executive action that they may be taking hereafter in the matter governance of the country.”

As Dr. Ambedkar observed in Constituent Assembly .. “…. If it is said that directive principles have no legal force ……, I am prepared to admit it. But I am not prepared to admit that they have no sort of binding force at all…… nor I am prepared to concede that they are useless because they have binding force in law. The draft Constitution as framed only provides a machinery for the Government of the country. It is not a contravenes to in a nutshell any particular party in power as has been done in some countries .. who should be in power is left to determine by people, as it must be, if the

73 CAD Vol VII page 41 (CAD Vol VII Page 476)
74 CAD Vol VII page 41 (CAD Vol VII Page 476)
system is to satisfy the test of democracy. But whoever captures power will not be free to do what he likes with it. In the exercise of it, he will have to respect this instruct of instructions which are called Director principles. He cannot ignore them. He may not have to answer for their breach in Court of law but he will certainly have to answer for them before the electorate at the election time. What great value these directive principles possess will be realized better when the forces of right contravened to capture power.\textsuperscript{75} He said … the intention was that in future the legislature and executive should not merely pay lip service to these principles but they should be made the basis of legislative and executive function. They may be taking hereafter in the matter of governance of the country ………. It was not an attempt to incorporate in Chapter IV the positive mandate to the State and prescribe the manner in which those mandates were to be realized. The directive principles were intended to impart continuity to national policy and their flexibility made it possible for the parties of the right and left to strive in their own way to reach the ideals of social and economic democracy whenever they would get an opportunity to form the Government after having received the verdict of the people at the path.\textsuperscript{76}

The fundamental rights and directive principles are two wheels of chariot as an aid to make social and economic democracy a truism\textsuperscript{77}

Fundamental rights are not end in themselves, but are the means to an end specified in Part IV. Just as the right confirmed by Part III would be without a radar and a compass, if they are not geared to an ideal, in the same manner the attainment of the ideal set out in Part IV would become a

\textsuperscript{75} CAD Vol VII page 41
\textsuperscript{76} CAD Vol VIII page 382
\textsuperscript{77} Jilubhai Nanabhai Khachar V/s. State of Gujarat AIR 1995 SC 142
pretence for a tyranny, if the price to be paid for achieving the ideal is human freedom. Anything which destroys the balance between the two Parts will ipso facto destroy the essential elements of basic structure of Constitution. 78 Even the conditions for the exercise by each individual of his fundamental rights cannot be ensured unless and until the directive principles are implemented. 79

4.8.(2) welfare of the people.

Article 38 i.e. state to secure a social order for promotion of the welfare of the people.

1. The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may social order in its justice, social, economic and political shall inform all the institutions of the national life.

2. The state shall in particular strive to minimize the inequalities income, and endeavour to eliminate inequality in status, facilitates and opportunities, not only among us individual but also amongst groups of people residing in different areas or engaged in different occasions. This Article and succeeding ones show that framers of our Constitution did not contemplate purely “police state” but a “welfare state” The functions of which should, within the bounds of the Constitution and subject to its limitations, be commensurate with the public welfare. 80

The object in Article 38 to evolve a State which must constantly strive to promote welfare of people by securing and making as effectively as it may be a social order in which social, economic and political justice shall

---

78 Minerva Mills Ltd. V/s. Union of India AIR 1980 SC 1789
80 CF. Loknath V/s. State of Orissa AIR 1952 ORI. 42 (47)
inform all institution of the national life and to minimize inequalities in income and endeavour to eliminate inequalities in status, facilities, opportunities amongst individuals and groups of people residing in different areas or engaged in different occupations. Article 38 reaffirms what has been declared in preamble to the Constitution, viz., the function of Republic is to secure inter alia, social, economic and social justice. It was held therein that the preamble and Article 38 envision social justice as the arch to ensure life to be meaningful and liveable with human dignity and the Article envisages not only legal justice, but also socio economic justice as well. Affirmative action through public interest litigation as remedial measure is supported by constitutional provision in Article 38 read with Article 19 and 21.81

4.8.(3) Role Of Court: (Court should make a positive and mandatory order.)

The Supreme Court held that interpreting and applying Section 133 of the Cr.P.C. and allied municipal laws, Court should have regard to directive in Article 38 to promote welfare of the people and social justice so that where a municipality has failed to remove filthy conditions of drains etc., in slums, the Court should make a positive and mandatory order directing the municipality to remove the public nuisance within a given time, irrespective of financial resources of the municipality.82

Regarding the payment of family pension it was held that pension is a right and not a bounty or gratuitous payment and does not depend upon the discretion of the Government, where a Government servant rendered service to compensate for which a family pension scheme is devised, the widow and the dependent minor would be equally entitled to family pension, as a matter

81 Peoples Union for Democratic Rights V/s. Union of Indian AIR 1982 SC 1473
82 Ratlam Municipality V/s. Vardhichand AIR 1980 SC 1622
of right taking into consideration Article 38, 39 and 41 of Constitution and also the relevant Pension Rules likewise, any pension scheme is to be construed liberally taking into consideration the Preamble and Directive Principles of State Policy.\textsuperscript{83}

Taking into consideration large number of rape cases, Court observed that under Article 38(1) it is necessary to set up a Criminal Injuries Compensation Board. Court directed to pay interim compensation to the victim. The Court took judicial notice of the fact that woman in our Society belongs to classes of group of Society who are in a disadvantage position and are victims of tyranny at the hands of man.

4.8.(4) Policy Principle for State

Article 39 Certain Principles Of Policy To Be Followed By The State:

The State shall, in particular, direct its policy towards securing-

(a) That the citizens, men and women equally, have the right to an adequate means to livelihood;

(b) That the ownership and control of the material resources of the community are so distributed as best to subserve the common good; that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;

(d) That there is equal pay for equal work for both men and women;

(e) That the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced

\textsuperscript{83} D.S. Nakra V/s. Union of India AIR 1985 SC 1196
by economic necessity to enter avocations unsuited to their age or strength;

(f) That children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

These Articles makes clear what has already been pointed out viz., the end of the State in India is not doctrinaire but practical. The humanist path towards socialist pattern of Society is ideal for India and Article 39 (b) and (c) listed these ideas and it also illustrates the doctrine of growth accompanies by distributive justice.\(^{84}\)

**A. Equality Between Sexes As To Livelihood Clause 39 (A) I.E.**

Man and woman doing the same work or work of similar nature should get equal pay. In determining whether the work done is similar, the Court should take a broad view and also strike down any discrimination made on ground of sex.\(^{85}\)

**B. About Distribution Of Material Resources Clause (B) And (C)**

The directive principles cannot directly override the fundamental rights and because without implementation of the directive, the very condition for the enjoyment of fundamental rights by all cannot be created, the Constitution has been amended several times, culminating in the insertion of Article 31 (c) to ensure that the implementation of Article 39 (b) and (c) may not be blocked by the guarantee of fundamental rights.

---


\(^{85}\) Mackinnon Company V/s. Audrey 1987 2 SCC 469 Para 7, 9
The right to economic justice to schedule caste/schedule tribe and other weaker Section is a fundamental right to secure equality of status, opportunity and liberty in rural India, land provides economic status to the owner. The state, is therefore, under a Constitutional obligation to ensure to them opportunity of giving its largess to the poor to augment their economic position. Assignment of land in favour of such person with a condition that it cannot be alienated is in consonance with the Constitution policy and is protected under this Article. Under this Article, the state is enjoyed to distribute largess, land, to subserve public good taken along with Article 46. Abolition of Inamdaris, Protection of Tenants at Will and Subtenants, Ceiling on Holdings also was on account of this Article. Nationalization of industry and businesses, nationalization of coal mines, validity of drug price control also comes within the ambit of this Article.

C. Clause (d) i.e. equal pay for equal work and Clause (e) i.e. the evils about prostitution and clause (f) i.e. childhood and youth against exploitation

This clause of Article 39 is to be read with fundamental rights i.e. Part III and Preamble of Constitution. In the vision of father of Constitution i.e. Dr.Ambedkar, the welfare it appears to the last man of Society as well as like first man of Society.

Through there is no specific Fundamental Right guaranteeing ‘equal pay for equal work’, the Directive in Article 39 (d) which directs the State in its policy, equal pay for equal work for men and women has been read into Article 14, for the purpose of invalidating an administrative order which violated equal pay to women employees. Thus, the right to equal pay for

86 Papaiah V/s. State of Karnataka AIR 1997 SC 2676
equal work has been raised to the status of a fundamental right. Yet, in Steel Authority of India Ltd. V. State of West Bengal, the Supreme Court of India ruled that, “equal pay for equal work is not applicable to contract workers.”

**D. Dignity of woman upheld by the Apex Court.**

No legal consequences, citizens will forget the case of Rupen Deol Bajaj V/s. K.P.S. Gill\(^7\) which upheld the dignity of women. In this case the Apex Court did not allow the blue eyed and the mighty Police Supremo Mr.Gill to escape judicial scanning of his alleged insult to the modesty of the Complainant who has non else but a very sensitive IAS Officer. In Vishaka V/s. State of Rajasthan\(^8\) the Court has enacted law to provide for the effective enforcement of the basic human right of general equality and guarantee against sexual harassment and abuse, more particularly against sexual harassment at work place. The Apex Court laid down guidelines and norms until legislation is enacted for the purpose, it was further emphasized that this would be treated as a law declared by Apex Court under Article 141 of the Constitution. Thereafter also the States effectively failed to follow the said law and the cases about atrocities and sexual harassment of woman are ongoing. The Apex Court further delivered a judgment in a Writ Petition, Medha Kotwal Lele & Ors. V/s. Union of India and others.\(^9\) The said Authority is delivered by Their Lordships Hon’ble Justice Shri R.M. Lodha, Shri Anil R. Dave, Shri Rajan Gogai. In the said authority at the introductory para stated as follows:

---

\(^{7}\) AIR 1996 309
\(^{8}\) AIR 1997 SC 3011
\(^{9}\) Reportable in Supreme Court of India Original Appellate Jurisdiction Writ Petition (Criminal) Nos.173-177 of 1999
“The Vishaka judgment came on 13\textsuperscript{th} August 1997. Yet, 15 years after the guidelines were laid down by this Court for the prevention and redressal of sexual harassment and their due compliance under Article 141 of the Constitution of India, until such time appropriate legislation was enacted by the parliament, many women still struggle to have their most basic rights protected at workplace. The statutory law is not in place. The protection of women against sexual harassment at workplace Bill, 2010 is still pending in parliament though Lok Sabha is said to have passed that Bill in the first week of September 2012. The belief of the Constitution framers in fairness and justice for women is yet to be fully achieved at the work places in the country.” In para 13 it is stated as follows:

“The implementation of guidelines in Vishaka has to be not only formed but substance and spirit so as to make available safe and secure environment to women at workplace. In every aspect and thereby enabling the working women to work with dignity, decency and due respect. There is still no proper mechanism in place to address the complaint of sexual harassment of the women lawyers in Bar Associations, lady doctors and nurses in medical clinic and nursing homes, women architects working in the offices of the Engineer and Architects and so on and so forth.”

In para 15 it is stated as follows:

“As the largest democracy in the world, we have to combat violence against women. We are of considered view that the existing law, if necessary, be revised and appropriate new laws be enacted by parliament and legislature to protect women from any form of indecency, indignity and disrespect in all respect in at all places (in their homes as well as outside), prevent all forms of violence – domestic violence, sexual assault, sexual
harassment at the work place, etc. and provide new initiative for education and advancement of women and girls in all spheres of life. After all they have limitless potential, lip service, hallo statement, inert and inadequate law with sloppy enforcement are not enough for true and genuine upliftment of our half most precious population – the women.

In para 16 the Hon'ble Court passed a direction (iii) The State and Union Territory shall form adequate number of complaint Committee so as to ensure that they function at Taluka level, district level and State level. Those State and/or Union Terrtiroy which have formed only one Committee for the entire State shall form adequate number of complaints Committee within two months from today. Each of the complaint Committee shall be headed by a woman and as far as possible in such Committees an independent member shall be associated.

(iv) The State functionary and public sector undertakings/organization/bodies/institutions etc., shall put in place sufficient mechanism to implement full implementation of the Visakha guidelines and further provide that if the alleged harasser is found guilty, the Complainant – victim is not forced to work with/under such harasser and where appropriate and possible the alleged harasser should be transferred. Further provision should be made that harassment and intimidation of witnesses and the Complainant shall be made with severe disciplinary action.

(v) The Bar Council of India shall ensure that all bar association in the country and persons registered with the Bar Councils follow the Vishaka guidelines. Similarly, medical council of India, council of Architecture, institute of chartered accountant, institute of company secretary and other
statutory institute shall ensure that the organization, bodies, associations, institutions and persons registered / affiliation with them follow the guidelines laid down by Vishaka. To achieve this, necessary institution / circular shall be issued by all the statutory body such as Bar Council of India, Medical Council of India, Council of Architecture, Institute of Company Secretary within two months from today. On receipt of any complaint of sexual harassment at any of the places referred to above the same shall be dealt with by the statutory body in accordance with Vishaka guidelines and the guidelines in the present order.

**In para 17 it is stated as follows:**

We are of the view that if there is any non compliance or non adherence to Vishaka, order of this Court following Vishaka and the above direction, it will be open to the aggrieved person to approach the respective High Courts. The Hon'ble Court of such State will be in better position to effectively consider the grievances raised in that regard.

That being a fundamental right under Article 21 and the State machinery is also directed by the directive principles of state policies to protect the woman/females under Article 39 of the Constitution of India. Failure to follow the same still it is found that day to day the atrocities and harassment of women is ongoing. To estoppels the said harassment it is necessary to the State to follow the direction made in Vishaka V/s. State of Rajasthan and in Medha Kotwal & Ors. V/s. Union of India and others.

**E. 39A. Equal justice and free legal aid –**

The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free
legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

The Law Commission advocated legal aid, so that the poor man can afford a lawyer. When the accused is unable to engage a lawyer owing to poverty of similar circumstances, the trial would be vitiated unless the State offers free legal aid for his defence by engaging a lawyer to whose engagement the accused does not object.\footnote{Hussainara V/s. State of Bihar AIR 1979 SC 1969, 1980 (1) SCC 98 (Para 6 and 7)}

That the Apex Court in the matter of Hosket Vs. State of Maharashtra delivered a judgment, to compel the jail Authority to supply free copy of the judgment to the prisoner so that he may exercise his right to appeal.\footnote{1978 (3) SCC 544 (Para .. 11-13, 24)} The right to legal aid has been extended to the proceeding U/Sec.110 of the criminal procedure code 1973, where there is no trial.\footnote{Gopal Anachari V/s State of Kerala (1980 suppl. SCC 649) (para 6)}

\section*{F. Clause 40. Organization Of Village Panchayats.}

The State shall take steps to organize village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government.

In the draft Constitution “organization of village panchayat did not find a place. The subject was brought up much later, before the constituent assembly through the initiation of Dr. Rajendra Prasad himself the Chairman of Constituent Assembly and an ardent Gandhian, who wrote to the Advisor Sir B.N. Rau that the that the structure of the Constitution should begin from the foundation and then go up. Others also suggested that instead of copying
Western models, the Constitution should have been drafted on the ancient Hindu model of a State, and built upon Village Panchayat. Dr. Ambedkar, the Chairman of the Drafting Committee, forcefully presented a most scathing criticism of the village communities. He observed: “The love of the intellectual Indian for village community is of course infinite if not pathetic. They have survived through all vicissitudes may be a fact. But survival has no value. The question is one what plane they have survived ……….. What is the village, but a sink of localism, a den of ignorance, narrow mindedness and communalism ? …………. I am glad that the Draft Constitution has discarded the village and individual as its unit.”93

Dr. Ambedkar met stiff opposition from all sections of the Constituent Assembly, except two members; he ultimately gave up and accepted the Amendment94 which finally took the shape of Art. 40 of the Constitution, Political autonomy and economic independence were both advocated for the village Panchayats. The amendments which incorporated the idea of “self-sufficiency”, etc. were dropped, and the language of this Article was kept flexible providing for latitude to the States to determine the nature of powers, its area and functions, etc. as they thought appropriate.95

3-Tier System

Part IX of the Constitution as inserted by the 73rd Amendment 1992, envisages a three-tier system of Panchayats, namely, (a) the village level; (b) The District Panchayat at the district level; (c) The Intermediate Panchayat which stands between the village and district Panchayats in States where the

---

93 CAD, Vol. III, p. 39
population is above 20 lakhs. (In some States, these bodies are known as Local Board, Union Board or Taluka Board.)

All the seats in a Panchayat shall be filled by persons chosen by direct election from territorial constituencies in the Panchayat area. The electorate has been named ‘Gram Sabha’ consisting of persons registered in the electoral rolls relating to a village comprised within the area of a Panchayat. In this way representative democracy will be introduced at the grassroots.

The chairperson of each panchayat shall be elected according to the law passed by a State and such State law shall also provide for the representative of Chairpersons of Village and Intermediate Panchayats in the District Panchayat, as well as members of the Union and State Legislature in the Panchayats above the village level.

Art.243 D provides that seats are to be reserved for (a) Scheduled Castes, and (b) Scheduled Tribes. The reservation shall be in proportion to their population. If, for example, the Scheduled Castes constitute 30% of the population and the Scheduled Tribes 21% then 30% and 21% seats shall be reserved for them respectively.

Out of the seats so reserved not less than one-third of the seats shall be reserved for women belonging to Scheduled Castes and Scheduled Tribes respectively.

Not less than one-third of the total number of seats to be filled by direct elections in every Panchayat shall be reserved for women

4.8.(5) Reservation For Offices Of Chairperson

A State may by law make provision of similar reservation of the offices of Chairpersons in the Panchayats at the village and other levels. These reservations favouring the Schedule Castes and Tribes shall cease to
be operative when the period specified in Art. 334 (at present 50 years, i.e. until 2000 A.D.) comes to an end.

A State may by law also reserve seats or offices of chairpersons in the Panchayat at any level in favour of the backward classes of citizens.

4.8.(6) Clause 41. Right To Work, To Education And To Public Assistance In Certain Cases.-

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.

4.8.(7) The Philosophy behind the right to work

Talks about equality, the right to living wage or to secure a decent standard of living and the like become hollow unless every individual has the opportunity to earn these things by suitable employment. But every citizen may have this opportunity to satisfy his needs through work only, if there is sufficient work and employment in the State to which he belongs.

In the modern world of unemployment and under-employment, there is hardly any State where sufficient avenues of work are available to all its citizens. The right to work of each individual involves an obligation on the part of the welfare State to create the necessary quantum of work by ensuring and promoting production, trade and business. But a limit to this obligation is ‘the economic capacity and development’ of the particular State for the time being, as Art.41 of our Constitution makes it clear.
4.8.(8) How Far Right To Work Exists Under The Indian Constitution

The Parliament has passed National Rural Employment Guarantee Act (42 of 2005). The Act is intended for the enhancement of livelihood, security of the households in rural areas of the country by providing at least one hundred days of guaranteed wage employment in every financial year to every household, where adult members volunteer to do unskilled manual work. The Act guarantees for unskilled manual work for not less than one hundred days on payment of wages at the wage rate for each of work. It further provides and directs the State governments to prepare a scheme for providing not less than one hundred days of guaranteed employment. The Act further provides for payment of minimum wages as prescribed by the Minimum Wages Act, till the government fixes the rates of wages. If an eligible applicant is not provided work as per the provisions of the legislation within the prescribed time limit, it will be obligatory on the part of the State government to pay unemployment allowance at the prescribed rate. The Central and State governments are also obliged to establish funds, viz., “National Employment Guarantee Fund and State Employment Guarantee Fund.”

The following works in their order of priority shall be the focus of the scheme:

(1) Water conservation and water harvesting, (2) drought proofing (including afforestation and tree plantation), (3) irrigation canals including micro and minor irrigation works, (4) provision of irrigation facility to land owned by households belonging to Scheduled Castes and Scheduled Tribes or to land or beneficiaries of land reforms or that of the beneficiaries under

---

96 Received the assent of the President on 5-9-2005 and published in Gazette of India, Part II, Section I, Issue No.48 on 7-9-2005

192
the Indira Awas Yojna of the Government of India, (5) renovation of traditional water bodies including desilting of tanks, (6) land development, (7) flood control and protection works including drainage in water logged areas, (8) rural connectivity to provide all weather access, and (9) any other work which may be notified by the Central Government in consultation with the State Government.

Hence, Arts.41, 45 read with Art.21, give rise to a fundamental right to receive education up to the age of 14;\textsuperscript{97} and the State has, therefore, a corresponding duty to establish educational institutions to enable the citizens to enjoy the said right, within the limits of its economic capacity (paras 148-495).\textsuperscript{98}

In Unnikrishnan v. State of A.P., (supra), it was held that no capitation fee shall be levied by any educational institution and also framed a Scheme. In T.M.A. Pai Foundations v. State of Karnataka,\textsuperscript{99} the Scheme prepared in Unnikrishnan’s case was overruled. But the direction that there shall be capitation fee or profiteering was found to be valid. Primary education was also declared as a fundamental right.

4.8.(9) Public Assistance In Old Age

In view of this Directive, the Supreme Court has held that the President cannot exercise his power under Rule 9 of the Civil Services Pension Rules, 1972 to withhold the pension of a retired employee, even in part or for a temporary period, in the absence of a definite finding recorded

in a departmental or judicial proceeding that the Pensioner committed grave misconduct or negligence in the discharge of his duty while in the office.\textsuperscript{100}

4.8.(10) **Clause 42. Provision For Just And Humane Conditions Of Work And Maternity Relief.**

The State shall make provision for securing just and humane conditions of work and for maternity relief. It is as per international charters universal declaration of human rights, 1948 Article 23 and 25 i.e. right to work, free choice of employment, protection against unemployment and everyone who works has right to just and favourable remuneration for himself and his family and existence worthy of human dignity by other means of social protection.

4.8.(11) **International Covenant On Economic Social And Cultural Rights, 1966 Article 7.**

Special protection should be accorded to mothers during the reasonable period before and after child birth. During such period working mother should be accorded paid leave or leave with adequate social security benefits.

For the first pregnancy whatever is needed to facilitate the birth of a child to a woman who is in service the employer has to be considerate and sympathetic towards her and must realize the physical difficulty which a working woman would face in performing her duties at work place while carrying the baby in the womb or while rearing the child after birth. The Maternity Benefit Act, 1961. Court held that the benefit of legislation will be available even to woman engaged on casual basis or on muster roll basis.

on daily wages and the benefit is not confined to woman in regular employment. The Court further directed that the principles enumerated in Article 11 of the convention have to read into contract of service.\textsuperscript{101} Maternity relief in case of a girl student are concerned will include leave.\textsuperscript{102}

Dr. Ambedkar by a Hindu Code Bill tried to give justice to the woman on account of socio economic factors including dignity. The above Article shows the sensitivity while drafting the Indian Constitution for to meet the ends of justice as regards woman. Further there are many progressive policies in DPSP

4.8. (12) Clause 43. Living Wage, etc., for workers.-

The State shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the State shall endeavour to promote cottage industries on an individual or co-operative basis in rural areas.

4.8.(13) Dr. Ambedkar thoughts on freedom of trade:

The chaotic situation that prevailed was noticed by Dr. Ambedkar and he introduced draft articles to reduce the adverse effects of multiple taxation in the Constituent Assembly. Dr. Ambedkar informed the Assembly that sales tax had caused a great deal of difficulty in the matter of freedom of trade and commerce. He further stated that this kind of chaos ought not to be allowed and proposed to limit sales tax. These articles restrained States

\textsuperscript{101} Municipal Corporation of Delhi v. Female Worker (Muster Roll, AIR 2000 SC 1274.)
\textsuperscript{102} Nithya v. University of Madras AIR 1995 MAD 1964.
from levying sales tax on sales that had taken place outside the State or those which were in the course of import or export.\footnote{Nani Palkhivala - The Courtroom Genius, Soli Sorabjee, Lexis Nexis Butterworths Wadhwa, Nagpur, Edition - 2012, page 292.}

The said thoughts are also reflected in Article 19 of the Constitution of India presently Article 19(g). The present Article is incorporated for minimum wages can be termed as living wages which ensure not only bare physical maintenance of health and decency.\footnote{Bajaj Cotton Mills v. State of Ajmer, AIR 1955 SC 53.} It has also held that read with Article 23 and 43 enjoins that reasonable wages should be paid to the prisoner for the work extracted by them while in jail.\footnote{Standard Vacuum Refining Co. of India v. Workman AIR SC 895} Decent standard of life is being expected on account of shelter and accommodation by the present Article.

4.8.(14) **Clause 43.A Participation of workers in management of industries.-**

The State shall take steps, by suitable legislation or in any other way, to secure the participation of workers in the management of undertakings, establishments or other organizations engaged in any industry.

4.8.(15) **44. Uniform civil code for the citizens.-** The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India.

Dr. Ambedkar explained in constituent assembly (7 CAD, P. 550) “In fact the bulk of these different attempts of civil law have already been codified during the British rule and the only major items still remaining for a uniform code are marriage and divorce and inheritance, succession” (adoption, guardianship). It is to be noted that several enactments which
have been made by Parliament since Independence in the name of Hindu Code, relating to marriage, succession, adoption and guardianship relate only to Hindu (including Buddhist, Jains and Sikhs) and excluded the Muslim who are the major SLIC of the minority communities in India and who are more vociferously objecting to framing of a Uniform Civil Code relating to this matters for all the citizens of India. The object behind the Article 44 is to effect an integration of India by bringing all communities on the common platform on matters which are at present governed by divorce personal laws but which do not form the essence of any religion e.g. divorce, maintenance for divorce. Dr. Tahir Mohamed in his book on “Muslim Personal Law” 1977 Edition pp.200-02 had made a powerful play for framing a uniform civil code for all citizens of India. He says.. pursuance of the goal of secularism, the state must stop administering religion based on personal law.” And made an appeal to the Muslim communities .. thus .. instead of wasting their energy in exerting theological and political pressure, in order to secure an immunity for their traditional personal law, on the State’s legislative jurisdiction, the Muslim will do well to begin exploring and demonstrating how the true Islamic laws purged of their own time – worn and anachronistic interpretations, can enrich the Common Civil Code in India.” Along with this appeal, the author has made an earnest attempt to trace the history of codification and development of the law in the major countries of the Muslim world (Algerian Family Code, Egyptian law, Syria, Tunisia, Turkey, etc.)

4.8.(16) Muslim arguments against Uniform Code.

Muslim opposed Article 44 after four decades of commencement of Constitution.
4.8.(17) **Argument against Article 44.**

It says it is opposed to the Shariat. It stands in the way of maintaining Muslim identity.

It is next contended that even a common code be desirable, it could not be brought out until the Muslims themselves comes forward to adopt it. It is urged that Shariat or Muslim Personal Law is immutable being founded on the Quran which is ordained by God.

Even if a Common Civil Code is formulated it should be optional for the Muslim to adopt its provision. Shariat has been controlled by legislation in Pakistan and Bangladesh by the ordinance in the year 1961. In India a uniform law of maintenance was adopted, Sec.488 of CPC 1898 which extends to Muslims as well. When Sec.125 of Cr.P.C. 1973 extended it to divorce woman, Muslims contended that it should not be applied to Muslim as it was contrary to Shariat. The contention was turned down by Supreme Court in Shah Banu’s case.\(^{106}\)

The Uniform Civil Code the Article’s wording is very speaking but it is not uniformly followed whatsoever under religion or tradition due to non compliance uniformly on account of population control also, the nation has suffered a lot.

4.8.(18) **Clause 45. Provision For Free And Compulsory Education For Children.**

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.

\(^{106}\) Ahmed v. Shah Banu AIR 1985 SC 945
4.8.(19) Clause 46. Promotion Of Educational And Economic Interests Of Scheduled Castes, Scheduled Tribes And Other Weaker Sections.-

The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.

August 1917 - Dr. Ambedkar had to leave his studies of law, economics and political science half way in London due to expiration of scholarship¹⁰⁷

Today also it will be found that students are leaving their higher education due to insufficient funds for their basic requirement. The scholarships provided today are not sufficient. By the virtue of Article 46 that is about promotion of educational and economic interest of Schedule Caste, Scheduled Tribes and other weaker section protected. The scholarships which were in the academic year 1980/1990 they are as like same today. The issue which is raised is about rise in prices of necessary commodities is hundred times more than what was prevalent in that decade. The employees who work for the State and Union due to they are organized by Union and Association, the legislature established Pay Commission to recommend increase in Pay. The Students who are the beneficiaries of Government of India’s scholarships, they are due to insufficient scholarship are found mostly leaving their studies. Some of them work in the hotels, restaurants as a waiter. Many a times i.e. the Schedule Caste Commission has recommended in his recommendation about higher education scholarship as follows:

¹⁰⁷ Letters of Dr. Babasaheb Ambedkar to Karmaveer Dadasaheb Gaikwad Editor Prof. Waman Nimbalkar First Edition Prabodhan Prakasan Nagpur 440027 page No.508
a. Scholarship for higher education for technical professional courses should be provided. Sometime it is found that in some States post matric scholarships given is less than the amount of prematric scholarship. Therefore it is suggested that State Government should utilities matching grants where funds are inadequate. Since committed liabilities are not met by the State Government due to financial constraint and Central Government is not providing fund due to strict financial discipline imposed by Ministry of finance and welfare. Schedule Caste and Schedule Tribe boys and girls are facing hardship due to non payment of scholarship amount under post matric and prematric scholarship scheme. Commission therefore recommends that state should get their full requirement of non plan funds for post matric scholarship and prematric scholarship to children of those engaged in unclean occupation as a part of Finance Commission Award. If states are not able to meet the requirement from non plan side the central Government may continue to release the funds under the scheme to protect the interest of Schedule Caste and Schedule Tribes for their educational development. 108 This was the recommendation to chapter IV of educational development of Schedule Caste and Schedule Tribes in annual report of 1996-1997 and 1997-1998 by the Commission which works under Article 338 of Indian Constitution and bound to submit a report to President of India under clause 5 (d) to present to the President, annually and at such other time as commission may deem fit, reports upon the working of these safeguards. (e) to make in such report recommendation as to the

measures that should be taken by union or any state for the effective implementation of those safeguards and other measures for the protection, welfare and socio economic development of Schedule Caste.

b. The President shall cause all such reports to be laid before each house of Parliament along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the union and the reasons for the non acceptance, if any, of any of such recommendation.

C. Where any such report, or any part thereof, relates to any matter with which any State Government is concerned, a copy of such report shall be forwarded to the Governor of the State who shall cause it to be laid before the Legislature of the State along with a memorandum explaining the action taken or proposed to the State and the reasons for the non-acceptance, if any, of any of such recommendations.\(^\text{109}\)

The settled position of law protects by the virtue of above stated provision of Constitution, thereafter also students of certain classes are to be suffered. It is necessary to establish scholarship commission as like Pay Commission. National Commission for Schedule Castes in Financial Year 1997 about the scholarship issue but the subject remains as on place but the academic journey of the students of Schedule Castes also break down. This is nothing but failure on the part of welfare State. Dr. Ambedkar’s vision one can say remains in Constitution not in practical life. State Government as the State like Maharashtra if not sharing into those scholarships, it is a hardship for the students. Establishing a scholarship commission is must in

the present scenario when the 80% and more students after matriculation are leaving the academic studies from Schedule Caste and Schedule Tribes.

**4.8.(20) The Scope Of Article 46 Is About Promotion Of Educational And Economic Interest Of Weaker Sections.**

Article 46 does not ignore the minimum primary needs of our Society. The Supreme Court in Prithi Shrivastava v. State of M.P.\(^\text{110}\) also held that special provision for S.C./S.T. for admission to medical college, the lowering of qualifying marks should be minimal in the post graduate level …… the scope of Article 46 is wider than Article 15 (4) or 16 (4) the object of Article 46 may be served by majors other than reservation in educational institution or employment under the State. But since it does not confer any justiciable right, member of backwards classes cannot obtain relief from the Court when he is denied any concession in school fees, but the state may impose such a condition while granting recognition or affiliation.\(^\text{111}\) The State of Maharashtra while passing a resolution for establishment of foreign university, they failed to follow the Article 15 (4), 16(4) and Article 46 by not bringing the reservation policy. This was the shame on the part of the State. The Ministers in the public meeting starts the speech by the name of Phule Shau Ambedkar to show their political parties welfare part to the Schedule Caste, Schedule Tribes and OBCs but introducing such an important Bill about establishment of foreign university denied reservation in it. Ultimately due to the agitation and representation made to the Governor, it was known that Governor has sent back for fresh consideration to the Ministry.

\(^{110}\) AIR 1999 SC 2894

The First Backward Class Commission headed by Kaka Kalelkar submitted its report on March 30, 1955, recommending that factors such as traditional occupation and profession, percentage of literacy and general educational advancement, estimated population, and classifying a community as a ‘backward class’. The Commission also opined that the social position occupied by a community in the caste hierarchy would have to be taken into account when identifying backward classes for the purpose of job reservation Interestingly, Kaka Kalelkar, who was the chairman of this Commission, had second thoughts after signing the report and, in his covering letter addressed to the President of India, he virtually pleaded for the rejection of this report on the ground that the recommendation for caste-based reservations would be detrimental to national interest and unity!\textsuperscript{112} It was only in the year 1979 that the Union of India got around to appointing a second commission, popularly known as the Mandal Commission, for determining the criteria for defining ‘socially and educationally backward classes’ and to examine the desirability of providing for reservation in public services and posts in favour of such backward classes of citizens. It is interesting to note that even the terms of reference of the Mandal Commission never used the expression ‘any backward classes’ and referred only to ‘socially and educationally backward classes’. The report of this Commission was submitted on December 31, 1980, and it relied almost exclusively on caste as the predominant criterion for reservation in Government jobs. Significantly, Indira-Gandhi never implemented this

report, although it was tabled in Parliament first in 1982.\textsuperscript{113} After Indira-Gandhi tragic assassination, her son Rajiv Gandhi stormed to victory on a massive sympathy wave, winning almost four-fifths majority in the Lok Sabha. He too did not implement the Mandal Commission Report.\textsuperscript{114}

V.P. Singh became the Prime Minister in the 1989 election, V.P. Singh, by announcing a 27% reservation for OBCs, altered the political landscape of the country forever.

The Mandal Commission was appointed by the president under Article 340. The Constitution of India.

The V.P. Singh Government issued an Office Memorandum (O.M.) dated 13\textsuperscript{th} August, 1990, that provided, for the first time, 27% of reservation for OBCs in public service.

The Mandal case which is known as Indra Sawhney v. Union of India.\textsuperscript{115}

And lastly the OBC reservation was protected by Supreme Court.

The court observed that the Indian Constitution was founded on the bedrock of the balance between Parts III and IV- i.e. between fundamental rights and Directive Principles. Any attempt to give primacy to the Directive Principles would disturb the harmony of the Constitution. This harmony and balance between fundamental rights and Directive Principles was an essential feature of the basic structure of the Constitution. Goals or objectives set out in Part IV had to be achieved without abrogation of the means provided in Part III.\textsuperscript{116} Subsequent events have shown the necessity of


\textsuperscript{115} AIR1993SC477

the basic structure doctrine and it has been the bulwark against repeated attempts of politicians to subvert the Constitution. It is now accepted by everyone in India that Parliament should not be given unlimited power to amend the Constitution.\textsuperscript{117}

Whatever its defects and the manner in which the case was heard and judgment delivered, the formulation of the basic structure theory saved democracy and preserved the rule of law. Our political leaders, with nothing else in mind but political vote banks and the next election, will never be able to destroy the basic features of our Constitution.\textsuperscript{118}

\textbf{4.8.(21) Resolution No. 10, Subject- provision for Education}

The working committee of all India Scheduled Castes Federation feels that unless persons belonging to scheduled castes are able to occupy posts, which carry executive authority, the scheduled caste must continue to suffer as they have been doing in the past all the injustices and indignities from the hands of the Government and Public.

The working committee therefore regards the spread of higher and advanced education among the scheduled caste as of vital importance them. But it cannot be denied that such advanced education is beyond the means of scheduled castes.

The committee regards it as essential, that a definite liability should be imposed on the state to provide funds for that purpose and demands that the constitution should impose an obligation upon the Provincial Government and Central Government to set apart adequate sums as may be specified by


the constitution exclusively for advanced education of scheduled castes in their annual budgets and to accept such provisions as a fast change on their revenues.\textsuperscript{119}

4.8.(22) Educational views:

“An educated person would play as a role of engine to the entire society. Society should get direction like engine, and it could be drawn by the elite, educated person. An educated has to cooperate with each and every member of the society for the development of desired future.”\textsuperscript{120} “An education is very important role in human life, as our basic needs such as food, clothes and shelter as lord Buddha said.”\textsuperscript{121} “I had a speech at Shyam hotel, Nagpur addressing to my people that, “I know that you people are interested in politics other than the religion. But I am interested in religion than politics. Schedule caste federation would cultivate self-respect and self-confidence, among our oppressed schedule caste people.

The situation is that now people from other casts are not ready to vote for our cast representatives. The persons, leaders who considered the views and approaches of our people by their help we have to formed the separate political party. You people also try to work politically with other party members too. This is the time to get review of the situation,”\textsuperscript{122} Buddha Said………

\textsuperscript{120}“My Autobiography” Dr.B.R. Ambedkar, Edited by : J.G.Sant, Published by: Sahil Prakashan, Jalna, Maharashtra. Page No.75.
\textsuperscript{121} “My Autobiography” Dr. B.R. Ambedkar.Edited by : J.G. Sant, Published by: Sahil Prakashan, Jalna, Maharashtra. Page No.77.
\textsuperscript{122} “My Autobiography” Dr. B.R. Ambedkar, Edited by : J.G. Sant, Published by: Sahil Prakashan, Jalna, Maharashtra. Page No.100.
The solution on poverty is only Education that’s why Dr. Ambedkar compared an educated person as a engine for entire society and it was expectation by an educated to co-operate the needy for the Development of the community society in present era these thoughts are seems to be never followed. It appears even in Dalit presently there are two classes are born one class behave in the manner as a Dalit Brahmin whereas other class socio economic condition became Dalit to poor Dalit. This classification has to be end by some or other way. The needy Dalit, Adivasi must required micro-reservation in present Constitutional Reservation on very ground socio, economic condition. The demonstration is not fit the purpose to bring SC. ST. within the preview of Crimilayer but it is expected that concession can be enjoyed by the SC, ST Community in toto. But as Dr. Ambedkar expected by Elected Class to be engine of the society so practically the class from SC, ST, who are in the services as like IAS, IPS, IRS, IFS and state services should scarifies their right of their children’s reservation to the needful class from ST,ST still which is surviving under below poverty line Dr. Ambedkar was not at all having compromise about self respect and self confidence and he always thinks “Religion is more important than politics” but present political leadership it seems they are less worried about self respect and they are lack of confidence they love politics more then religion.

Grandson of Dr. Ambedkar Advocate Prakash Ambedkar followed line this was best efforts. The idea of Advocate Prakash Ambedkar is required to be appreciated being Bahujan together nationwide to bring socialism in the vision of Ambedkar in the practical séance. There is no motive to highlight by Adv. Prakash Ambedkar Leadership either Prakash Ambedkar or Bahujan Samas Party Leader Kumari Mayawati known some
Dalit/Bahujan leader as like Ramvilas Paswan, Udit Raj, Chagan Bhujbal, Gopinath Munde, may be required to be take an initative for the very purpose ‘Bahujan Hitaya Bahujan Sukhaya’ in nut shall that must be the agenda of State Socialism and directive Principle.

4.8.(23) Integration Maharashtra:

One day an editor of “Prabhat’ Mr. Nawre and one more editor of ‘Tarun bharat’ Mr. Madkhulkar had came to meet me regarding the moment of separate Maharashtra. I had asked both of them that where they thought that we would be again become the slave of the foreigner and if so we have to make separate Maharashtra for our Maharashtrian people. I asked them that why they would be unable to considered ourselves as an Indian instead of as a Maharashtrian. I would like to ask them as I said that what efforts had been put by the people like them to unite our country? Why it could not happened? And why they had not interested to unite the Maharashtra with the nation? Why they could have struggled for the moment of one language, one religion as the state as Maharashtra concerned? I stated they have to spend their time to unite over all the country instead of united Maharashtra.

I had asked them that had they knows the history of united America? How United America had accepted united with the states & had build up the essence of equality among them. In their history, It had divided among German, Italian, Portuguese, Spanish, English & French Language of the united Nation, I thought that would be the only way to had equality for the same. So I would like to request them that instead of binding with the state of Maharashtra, try to bind them with the single rope of the nation. I
believed me at first as an Indian and at the end to the same which I proud of.

4.8.(24) **Clause 47. Duty Of The State To Raise The Level Of Nutrition And The Standard Of Living And To Improve Public Health**.-

The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.

4.8.(25) **International Charters.**

Universal Declaration of Human Rights, 1948 – Art.25 and International Covenant on Economic, Social and Cultural Rights, 1966 – Art.12 which is introduced for attainable standard of physical and mental health, environmental and industrial hygiene, reduction of the still birth rate and of infant morality and for health development of the child. Also for control of epidemic, endemic, occupational and other diseases, assure to a medical service and medical attention in the event of sickness.

**Right to food.** Is being introduced in American Constitution on human rights under Article 12 of it.

4.8.(26) **Medicines For All:**

National Sample Survey data indicate that free drugs supplied during hospitalization declined from 31.20 per cent in 1986-87 to 8.99 per cent in 2004. The high cost of medicines from the mid-1990s resulted in out-patients not receiving drugs in one-fourth of all cases by 2004, up from

---

12.11 per cent in the base year. It is important therefore that the central government acts urgently on the expert group's suggestion to move to a system where essential medicines are available free of cost to everyone. It is estimated that this can be achieved through a four-fold increase in public spending on drugs. Such a programme should rely mainly on quality generic drugs produced by a revitalised public sector and compulsory licensing under the TRIPS Agreement of WTO. It is worth pointing out that in the absence of social health insurance, several patented medicines are beyond the reach of the majority of Indians. 124

Article 47 of Indian constitution specify about state shall regard the raising of level of nutrition and slandered of living of its people and improvement of public health as amongst Primary duties. The international covenant on Economic, Social and Cultural rights 1966, Art 12 provides ‘The states parties to present covenant recognized the right of everyone to enjoyment of the highest attainable standard of physical and mental health.

A legislative measure to check menace of growing population was held to be valid It was held that fundamental rights are not to be read in isolation. They have to be read along with the chapter on Directive Principles of State Policy and the Fundamental Duties enshrined in Art. 51A. None of the lofty ideals envisaged under Art. 38 or 47 can be achieved without controlling population inasmuch as the material resources are limited and claimants are many. The problem of population explosion is a national and global issue for which priority in policy-oriented legislation, wherever needed, is necessary. Legislative measures to check the menace of

growing population is valid.\textsuperscript{125} A provision that person who has more than two children is not qualified to hold office in a local authority was, therefore, held to be valid.\textsuperscript{126} The Report of the National Commission to Review the working of the Constitution, in Chapter III para 32, has stated thus: “The Commission noted with concern that proper planning and monitoring of the socio-economic development of the country is considerably hampered and neutralized by the exponential growth of population.”

The Commission, therefore, recommends that the following Article should be added as Directive Principles of State Policy after Art. 47 of the Constitution: Art. 47A. Control of Population- “The State shall endeavour to secure control of population by means of education and implementation of small family norms.”\textsuperscript{127}

The majors by an amendment by control of population for socio-economic development as prescribed by the national commission is required to be appreciated by inserting amendment Art.47 by Art.47A.

It has been held that a law of prohibition cannot be challenged on the ground of contravention of Art. 19(1)(g), because dealing in liquor would not come within the category of ‘trade or business’ which is guaranteed by Art. 19(1)(g).\textsuperscript{128}


4.8.(27) It Is Required To Prohibit Trade Of Alcohol, Liquor And Drugs For Healthy Society.

The Planning Commission had no choice. The results of the 2009-10 edition of the five-yearly large sample survey of consumption by the National Sample Survey Organisation are in the public domain. So it had to release the official estimates of poverty that are based on them. They point to a seven-percentage-points reduction in the national incidence of poverty between 2004-05 and 2009-10. Public attention is focused on the fact that the “poverty lines” on which these estimates are based appear ridiculously low: a per capita daily consumption expenditure of Rs. 28.35 and Rs. 22.42 in urban and rural areas respectively. This is not a mere statistical issue. That line was also initially presented as the benchmark to determine who would or would not be eligible for access to a range of state subsidies and benefits. It held that eligibility for state support would be determined using a different methodology with data collected by a Socio-Economic and Caste Census. The official poverty line has a sanctity derived from its role in identifying “below poverty line” beneficiaries. That ‘line’ is, however, controversial. It was meant to identify those with an average daily per capita calorie intake below 2400 calories in rural areas and 2100 calories in urban areas. In the event, the government is caught in a statistical trap over poverty. It would do well, therefore, to give up its effort to find a benchmark for targeting its flagship social programmes and opt for universalisation, which has much else to recommend it as a principle. The poverty estimate would then not matter much.129

The Planning Commission's claim in its March 19 report that poverty has declined in the country by 7.3 per cent is totally unacceptable, the Planning Commission to obfuscate data so as to justify the exclusion of a large number of the poor and deny them the benefits of anti-poverty and welfare schemes. Women from the underprivileged and marginalised sections of society were being particularly affected because their poverty was being deliberately made invisible, as a result of which they were unable to access many schemes meant for them, “It is shocking that despite widespread protests from all quarters about the absolutely unrealistic poverty lines being used for poverty estimation, the Planning Commission has once again used such faulty data to argue that poverty has declined. It is also not clear how the poverty lines, which, according to the affidavit filed by the government in the Supreme Court in September 2011 were around Rs. 26 per person per day [rural] and Rs. 32 per person per day [urban] have now suddenly been brought down to Rs. 22 and Rs. 28 [estimated from the monthly per capita poverty line mentioned in the recent note]. It has to be reiterate that all these lines are actually “destitution” lines and do not reflect the reality of people's daily lives,”

National poverty line of Rs. 22.40 per day for an adult in rural areas and Rs. 28.65 per day for an adult in urban areas in 2009-10. Anyone spending more than this is being categorised non-poor. On the basis of these flawed figures, the Planning Commission claims that the proportion of below poverty line (BPL) persons has gone down by 7 per cent between 2004-05 and 2009-10.

“This shows the huge gap between the members of the Planning Commission and the reality lived by crores of people in this country who
have been burdened by relentless price rise amid meagre incomes. It hardly needs to be stated that these are destitution lines and it is a shame that an institution chaired by the Prime Minister should produce such absurd figures,” the statement said. It said what was “shocking” is that even with these gross under-estimates, large proportions of our population are shown to continue living in destitution.

The recently released Household Amenities and Assets Census 2011, it said the figures show the extent of poverty in different spheres in India. It has to be consider the Planning Commission's poverty estimates to be a “dishonest attempt” to conceal the reality of glaring inequalities and increasing poverty in India.

Montek Singh says he is willing to revise poverty estimates on the basis of expert opinion.130

By saying that anyone with a daily consumption expenditure of Rs.28.35 in cities (and Rs. 22.42 in rural areas) is above the poverty line, the Planning Commission has insulted the collective intelligence of our nation.

It is not expected by the virtue of part IV i.e. Directive principles of state policy. The chairman for planning commission is prime Minister of India and he has to very honest. The III schedule of constitution of India by which oath of office for a Ministers has to do swear, solemnly affirm for true faith and allegiance to the constitution of india and also to uphold to sovereignty and integrity of india. The said constitution frame has to be bare in the mind while discharging the duties may be as a chairman of planning commission as prime minister failing to which the society has to face the consequences.

Dr. Ambedkar’s view on family planning means for control of population are very clear, Ambedkar was of the opinion that population can be controlled by means of family planning “Ambedkar agreed that there was no doubt in many places injustices prevailed in the distribution of property and impartial public workers must take all steps to secure justice for the wronged person in this respect, it is, however, necessary to remember the mere equal distribution will never be able to bring about a permanent and material amelioration of the condition of the masses unless growth of population was controlled by means of family planning.131 The thought of Dr. Ambedkar is required to be appreciated by the State Machinery but it is not found on account of the political agenda which takes a root in the religious votes in general elections as Islamic extremists groups opposed to follow the Uniform Civil Code and to have a sympathy by these or that political party such important thought of Dr. Ambedkar are not came in existence till today and nation is suffering due to imbalance of population.

Dr. Ambedkar has moved a non official Bill on the population control through his lieutenant, Shri Roham in Bombay assembly on 10th November 1938, Dr. Ambedkar strongly recommended the methods of birth control. According to Dr. Ambedkar the methods of birth control was in the interest of downtrodden and poor people of the country. These lower strata of the Society can achieve economic development by keeping their family small. He raised a very important question namely “What is more important, birth rate or survival rate? He then argued that if there is a higher birth rate after three children. There is a higher mortality rate and poor survival rate. He,

therefore, said that survival rate is more important than the birth rate and
birth control would go long way in improving the health and financial
condition of the scheduled caste people. This argument is not only
convincing but also full of truth that is universally applicable to all poor
communities."\textsuperscript{132} Dr. Ambedkar said that all the population irrespective of
their caste, religion, creed or language must adopt the measure of birth
control but he had given more stress on the welfare of the Schedule Caste
and Schedule Tribe and they must utilize these methods to check
population.\textsuperscript{133} Dr. Ambedkar tabled this bill in the Assembly but the political
parties did not favour this bill. He gave warning to younger persons to bear
in mind that to have many children is a social crime.\textsuperscript{134} The legislature if
while discharging their part of duty if they bear in mind the above thoughts
of Dr. Ambedkar they may then it is necessary to amend Article 47 by an
amendment inserting Article 47A i.e. about control of population – “the state
shall endeavor to secure control of population by means of education and
implementation of small family norms and also it requires an amendment in
Criminal Procedure Code and Indian Penal Code for breach of the same it
must be punishable as the offence of “treason” which means offences against
the State.

None of the lofty ideals of Arts.38 and 47 can be achieved without
controlling the population, since the material resources are limited and
claimants are many. Fundamental duties as envisaged under Art.51-A too
indicates that expansion of population must be within reasonable bounds. A
legislation which provides for disqualification from occupying an elected office by person having more than two children is aimed at population control and a social welfare legislation coming within Art.38. Courts will declare such legislation as invalid.\textsuperscript{135} The Government servants who works within the ambit of Art.12 of Constitution they are only bound for family planning to secure control of population the questi

On raised why not for the corporate, businessman and professional, scot-free them to have more than two child, it is in practical sense, discrimination with those are within the ambit of Art.12. The Supreme Court judgment about more than two children is not qualified to hold the office which was delivered in Javed v. State of Haryana is required to be seen as a precedent under Article 141 of Constitution of India not only upto the Government service but also for corporate, businessman, professionals such as Advocates, Doctors, Chartered Accountant, Accreditation Card Holder Journalist, Editors, public service providers viz. taxi drivers, auto rickshaw drivers, fruit vendors, footpath stalls, vegetable vendors either prior to the registration or licensing they may be asked to require to furnish a small family Affidavit as like to the public servant and thereafter if they commit breach the license is required to be cancelled or revoked or the Authority should have power to take necessary steps against violation proposed amendment to Article 47A of the Constitution of India, and the same must be punishable as the offence as well as for “treason” which means offences committed against the State.

\textsuperscript{135} Javed v. State of Haryana AIR 2003 SC 3057.
4.8.(28) Article 48. Organization Of Agriculture And Animal Husbandry.-

The State shall endeavour to organise agriculture and animal husbandry on modern and scientific lines and shall, in particular, take steps for preserving and improving the breeds, and prohibiting the slaughter, of cows and calves and other milch and draught cattle.

Article 48 consists of two parts. The first part enjoins the State to “endeavour to organize agricultural and animal husbandry” and that too “on modern and scientific lines.” The expression is not only on ‘organisation’, but also on “modern and scientific” lines. The subject is ‘agricultural and animal husbandry.’ The second part of Art.48 enjoins the State de hors, the generality of the mandate contained in its first part, to take steps in particular “for preserving and improving the breeds and prohibiting the slaughter of cows and calves and other milch and draught cattle.\(^{136}\)

Dr. Ambedkar stresses the need for thoroughgoing land reforms, noting that smallness or largeness of an agricultural holding is not determined by its physical extent alone but by the intensity of cultivation as reflected in the amounts of productive investment made on the land and the amounts of all other inputs used, including labour. He also stresses the need for industrialisation so as to move surplus labour from agriculture to other productive occupations, accompanied by large capital investments in agriculture to raise yields. He sees an extremely important role for the state in such transformation of agriculture and advocates the nationalisation of land and the leasing out of land to groups of cultivators, who are to be encouraged to form cooperatives in order to promote agriculture.

\(^{136}\) Narayana Rao v. State Bank of India 1999 AIHC 639 (Kant.)
Intervening in a discussion in the Bombay Legislative Council on October 10, 1927, Dr. Ambedkar argued that the solution to the agrarian question "lies not in increasing the size of farms, but in having intensive cultivation that is employing more capital and more labour on the farms such as we have." (These and all subsequent quotations are taken from the collection of Dr. Ambedkar's writings, published by the Government of Maharashtra in 1979). Further on, he says: "The better method is to introduce cooperative agriculture and to compel owners of small strips to join in cultivation."

During the process of framing the Constitution of the Republic of India, Dr. Ambedkar proposed to include certain provisions on fundamental rights, specifically a clause to the effect that the state shall provide protection against economic exploitation. Among other things, this clause proposed that:

* Key industries shall be owned and run by the state;
* Basic but non-key industries shall be owned by the state and run by the state or by corporations established by it;
* Agriculture shall be a state industry, and be organised by the state taking over all land and letting it out for cultivation in suitable standard sizes to residents of villages; these shall be cultivated as collective farms by groups of families.

As part of his proposals, Dr. Ambedkar provided detailed explanatory notes on the measures to protect the citizen against economic exploitation. He stated: "The main purpose behind the clause is to put an obligation on the state to plan the economic life of the people on lines which would lead to highest point of productivity without closing every avenue to private
enterprise, and also provide for the equitable distribution of wealth. The plan set out in the clause proposes state ownership in agriculture with a collectivised method of cultivation and a modified form of state socialism in the field of industry. It places squarely on the shoulders of the state the obligation to supply the capital necessary for agriculture as well as for industry."

Dr. Ambedkar recognises the importance of insurance in providing the state with "the resources necessary for financing its economic planning, in the absence of which it would have to resort to borrowing from the money market at high rates of interest" and proposes the nationalisation of insurance. He categorically stated: "State socialism is essential for the rapid industrialisation of India. Private enterprise cannot do it and if it did, it would produce those inequalities of wealth which private capitalism has produced in Europe and which should be a warning to Indians." 137 As Supreme Court in the matter Raghunath v. State clarified about Article 48 i.e. organized agriculture, there is no violation of the directive if suburbs are brought within the limits of Municipal Corporation, on other hand, chances of organizing agriculture on model lines would be better. 138 Directive principles, fundamental rights and fundamental duties are to be beared in mind by the common man along with legislature, executive, judiciary to strengthen the nation. The Court overruled the part of the decision in Mohd. Hanif Qureshi’s case, wherein total prohibition was confirmed only to cows and calves and to those animals which are presently or potentially capable of yielding milk or of doing work as draught cattle, but does not protect the cattle which has ceased to be so. Court gave predominance to fundamental

138 Raghunath v. state AIR 1982 Pat 1 (para 14)
rights only without taking into consideration the Directive Principles. While over-ruling that part of the decision, Court took into consideration the later development in law, i.e. harmonious construction between Fundamental Rights and Directive Principles and held that ‘prohibition’ amounted only to a ‘reasonable restriction’ and hence valid. The Court took into consideration the additional materials to come to the conclusion that though the cow and her progeny have ceased to ‘milch”, they still continue to be very useful to Indian agriculture. It was held that as soon as milch cattle cease to produce milk, it does not go out of the purview of Art.48. It was held that Art.48 is to be interpreted read along with Art.51A, which mandates that State and every citizen must have compassion for living creatures. A cattle which has served human beings is entitled to compassion in its old age, when it has ceased to be milch or draught, though it has become “useless” in that sense. The weak and meek need more of protection and compassion. On ceasing to be ‘milch or draught’, it cannot be pulled out from the category of “other milch and draught cattle.” The decision gives full effect to Art.48 and has given a wide interpretation to protect cows and their progeny, and it includes cattle which have become permanently incapacitated to be used for milch and draught purposes.

4.8.(29) Article 48a. Protection And Improvement Of Environment And Safeguarding Of Forests And Wild Life.-

The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.

Though Art.48 nor 51A is judicially enforceable by itself, it becomes enforceable through the expanding interpretation of Art.21, so that in case of failure of the foregoing duties the Supreme Court or a High Court would
entertain a Petition under Art.32 or 226 as a Public Interest Litigation brought by any individual or institution in the locality or any social action group, even by a letter.

Under Art.21 a person has a fundamental right to the enjoyment of pollution-free air and water, which are necessary for the full enjoyment of life.

The state must take effective steps to protect the rights to life, pollution-free air and water and in implementing this duty, the state must have regard to the evolving international dimensions and standards, relating to the corresponding human rights. But in adopting the code of conduct on Transitional Corporations and in granting licenses to such Corporations, the State must maintain the sovereignty and integrity of the Nation and the Constitutional rights of our citizens to recover compensation owing to accidents caused by such corporations. It is never remain that not at all directive principles of state policy are not enforceable before the Court of law.

4.8.(30) Article 49. Protection Of Monuments And Places And Objects Of National Importance.-

It shall be the obligation of the State to protect every monument or place or object of artistic or historic interests, declared by or under law made by Parliament to be of national importance, from spoliation, disfigurement, destruction, removal, disposal or export, as the case may be.

4.8.(31) Article 50. Separation Of Judiciary From Executive.-

The State shall take steps to separate the judiciary from the executive in the public services of the State. Postscript – Shameful supersession of judges.
The judgment in Kesavananda Bharati was delivered on the last working day of Chief Justice Sikri. He retired on April 25, 1973. The tradition of appointing the senior most judge as the Chief Justice was abandoned and Justice Ray, who was the fourth in the line of seniority, superseded Justices Shelat, Hegde and Grover. Shamefully, this announcement was first made known through a radio broadcast over the All India Radio. The three superseded judges resigned, leading to widespread protest throughout the country. In several High Courts, there was a boycott of one day. Chief Justice Ray never commanded the respect that was due to a Chief Justice. Over the years, his judgments were mainly in favour of the Union of India. To be fair, he had struck down the Thirty-ninth Amendment which sought to nullify the Allahabad High Court judgment and make the election of the Prime Minister unquestionable in any Court of India. This was done despite the Emergency. Similarly, he also stuck down the Newsprint Control Order in the Bennett Coleman case in late 1972. But the Bar never forgave him for being a party to the supersession of senior judges. It is reported that when there were earlier attempts to supersede the senior most judge, all the remaining judges threatened to resign. If Ray had set a similar example, he would have greatly contributed to the independence and prestige of the judiciary. The supersession of judges was just the beginning of a continued onslaught on the judiciary which extended till 1977 and was resumed once again after Mrs.Gandhi came back to power.  

Justice H.R. Khanna gave a dissenting verdict that cost him the office of Chief Justice. Justice M.H. Beg, who gave a favourable verdict, superseded Justice Khanna and became Chief Justice. The message was
clear: ‘toe the line of the Government and be rewarded.’ H.R. Khanna lost the Chief Justiceship of India but earned the affection and goodwill not only of the entire Bar but millions of Indians as well.\textsuperscript{140}

If it is the fact one cannot say judiciary is enjoying independence, so, on account of thoughts of Dr. Ambedkar which are particularly attributed in Preamble of the Constitution of India i.e. about justice will fail studying the above facts as Lordship H.R. Kannan lost the Chief Justiceship of India. As Fali S. Nariman “Before Memory Fades”… An Autobiography – Chapter XVI i.e. about “A case I won – but which I would prefer to have lost.”

I don’t see what is so special about the first five judges of the Supreme Court. They are only the first five in seniority of appointment – not necessarily in superiority of wisdom or competence. I see no reason why all the judges in the highest Court should not be consulted when a proposal is made for appointment of a High Court judge (or an eminent Advocate) to be a judge of the Supreme Court. I would suggest that the closed-circuit network of five judges should be disbanded.\textsuperscript{141}

In respect of Judges of Supreme Court of India Article 124(2) provided about the appointment of Judges. In respect of Judges of the High Court Article 217(1) provided about the appointment.

However things changed with the Supreme Court’s literal interpretation of the property clause of our Constitution beginning with decisions in the 1960s, which were years of conflict between Parliament and the superior judiciary. Under Article 31, as it originally stood in the 1950 Constitution, no person could be deprived of his property save by authority

\textsuperscript{140} Nani Palkhivala - The Courtroom Genius, Soli Sorabjee, Lexis Nexis Butterworths Wadhwa, Nagpur, Edition - 2012, page 181
\textsuperscript{141} Fali S. Nariman “Before Memory Fades”… An Autobiography – Chapter XVI page 387 Publisher Hay House India Pvt. Ltd. New Delhi – 70
of law, and no property could be taken without payment of ‘compensation’ – as the American Courts had said: ‘compensation’ meant ‘a just equivalent’ for the property taken. This almost set at naught the government’s avowed policy of abolishing the old zamindaris because the country just could not afford to pay the zamindars the full worth of vast lands taken over as a measure of agrarian reform.

It was felt in the highest echelons of the government that judges of the Supreme Court had become ‘property-minded’, out of tune with Society, and that it would be appropriate if there were henceforth appointed on the highest Court ‘forward-looking’ judges – judges who subscribed to the economic policies of the government. The government at the time was a majoritarian government composed of members of the single largest party in Parliament (the Congress) – a party that commanded a majority sufficient to secure the passage of almost any constitutional amendment. ¹⁴²

As the Architect of Constitution while framing Constitution were conscious about independence of judiciary as above referred happens interference it is injurious.

No one person can pronounce an opinion or form a judgement... upon any disputed right of persons, respecting which doubt and confusion may not be raised by those who may choose to call it in question; for very few of the public or persons in office at home, not even the Law Officers, can be expected to have so comprehensive and clear a view of the Indian system of law, as to know readily and familiarly the bearings of each part of it on the rest”. ¹⁴³

¹⁴² Fali S. Nariman “Before Memory Fades”.... An Autobiography – Chapter XVI page 391 Publisher Hay House India Pvt. Ltd. New Delhi – 70
¹⁴³ Dr Babasaheb Ambedkar. Writings and Speeches, 1989, vol. -6, p 65
So nothing has worked well – neither the system of appointments between 1981 and 1992 (where government had the veto), nor the post – 1993 system of appointments (where three and later five senior most of the court had the right to recommend judges for appointment).

But then, is the National Judicial Commission the right answer? I sincerely hope so. Will there not be more confusion in even greater numbers? Perhaps, there will be or perhaps not – only time and experimentation will tell. The idea of a National Judicial Commission is an excellent one, but it has somehow not passed muster with Parliament on three separate occasions:

First, when the 67th Constitution (Amendment) Bill of 1990 was introduced by Law Minister Dinesh Goswami on 18 August 1990 in the Lok Sabha, pursuant to the recommendations of the 121st Law Commission Report. But the idea of a National Judicial Commission which the Bill envisaged could not be pursued since the government of Prime Minister V.P. Singh resigned in November 1990.

Second, when during the regime of the successor government of Chandrasekhar – Constituent Amendment Bill (Bill No.54 of 1990) was prepared by Law Minister Ram Jethmalani (also making provision for a National Judicial Commission); it could not even be introduced in the Upper House since Prime Minister Chandrasekhar prematurely resigned after support to his government was withdrawn by the Congress Party, and fresh elections were called soon after.
Third, an attempt was made by the Constitution 98th Amendment Bill, 2003 (prepared by Law Minister Arun Jaitley), again seeking to amend Articles 124 and 217 of the Constitution to introduce the concept of a National Judicial Commission, but this Bill lapsed with the dissolution of the 13th Lok Sabha in the year 2004.\textsuperscript{144}

Dr. Ambedkar demonstrated tremendous foresight in the constituent assembly when he called for deleting the phrase – ‘is in the opinion of the state, not adequately represented’ – from Article 16(4). He believed that it would become a matter of litigation and the Courts could substitute their judgment on adequacy of representation by holding that a reservation was being made despite being adequately represented.\textsuperscript{145}

In nutshell for the transparency procedure is required and that procedure only by way of appointing a National Judicial Commission by an amendment in Article 124(2) and in Article 217(1) of the Constitution of India, if not, not to meant for contempt but again someone will say a Shameful supersession of judges.

4.8.(33) Parliamentary Committee Wants Reservation For Sc, St And Obc In Higher Judiciary:

About the said the report is been published on newsackindia.com/newsdetails/700 which states as follows

August 18: Parliamentary standing Committee in a recommendation extended reservation for SC, ST and OBC in appointment of judges of High Court and Supreme Court the Judges Inquiry Bill.

\textsuperscript{144} Fali S. Nariman “Before Memory Fades”…. An Autobiography – Chapter XVI page 402 Publisher Hay House India Pvt. Ltd. New Delhi – 70
\textsuperscript{145} www.thehindu.com/opinion/lead/winning-the-case-for-promotion-quotas/article3863068.ece
The Committee is headed by Sudarshan Nachiappan accused the higher judiciary system of denying post to competent person of the disadvantage group through a shrewd process of manipulation.

He substantiated the argument by quoting 1993 judgment of Supreme Court. “Even today there are complaints that generations of men from the same family or caste, community or religion are being sponsored and initiated and appointed as judges, thereby creating a new theory of judicial relationship.”

He justified by saying, “The nexus and manipulative judicial appointment have to be broken. Reservation in judiciary is the only answer.”

The report is a step to end the “dubious distinction” among three organ of a state that is executive, legislative and judiciary. He argued if the two organs can give reservation then why not the higher judiciary.

Giving an account of 2002 Constitution Review report which says that out of 610 judges, not more than 20 belong to SC and ST.

The parliamentary Standing Committee believes that judiciary too should reflect the people’s aspirations and the Committee said, “Only when candidates drawn from different sections of Society are appointed as judges, they would understand the social flavor of the legislation passed by Parliament and State legislature.”

The panel also recommended inclusion of non judicial member in National Judicial Council and the empowered Committee which will be represented by the three organ of state will decide appointment as well as complaints against the judges.
This report holds importance amidst the controversy of extending reservation to OBC in centrally funded institution which has been deferred by Supreme Court.\(^{146}\)

As a guardian of the Constitution as against unconstitutional acts of executive, the jurisdiction of the Court is nearly the same under all Constitution system but not so is the control of judiciary over the legislature.\(^{147}\)

If it is a settled law, the legislature why for and what for waited for six decades they failed to bring reservation in the higher judiciary i.e. in Supreme Court and High Court. It is essential either to amend the Constitution in Article 124 to bring reservation in the higher judiciary or in Part XVI under special provisions relating to certain classes i.e. under Article 330 amending as Article 331A for reservation in judiciary. The representation in Supreme Court if it had been arithmetically tallied the representation of the dalits / adivasi / obc will be found merely not even 1% so if it is a factual matrix how long dalit and adivasi has to wait for adequate representation in the judiciary.

4.8.(34) Article 51. Promotion Of International Peace And Security.-

The State shall endeavour to –

(a) promote international peace and security;
(b) maintain just and honourable relations between nations;
(c) foster respect for international law and treaty obligations in the dealings of organized peoples with one another; and
(d) encourage settlement of international disputes by arbitration.

\(^{146}\) newstrackindia.com/newsdetails/700

\(^{147}\) Durga Das Basu – Commentary on The Constitution of India 8\(^{th}\) Edition 2008 publisher Lexis Nexis Butterworths Wadhwa Nagpur – page No.5560
51A. In the original Constitution of India of 1949, there was no provision relating to fundamental duties. Part IVA has been added by the Constitution 42\textsuperscript{nd} Amendment Act, 1976 in accordance with the recommendation of Swaran Singh Committee.\textsuperscript{148}

Inclusion of duties in the Constitution is not found necessary because they can always be imposed by state in absence of or consistently with the fundamental rights. Their inclusion, however reminds that the Constitution presents an integrated scheme of which the fundamental or any other constitutional rights are only a part. The scheme must be so seen as one. The Constitution and its scheme envisages responsible citizens. In that sense the fundamental duties person an educative role. They also have legal valud in the sense that any laws which implement fundamental duties cannot be invalid on the ground of conflict with the fundamental right unless such conflict is irreconcilable. The rights must be reconciled with duties. The reconciliation may not exactly of this kind as between fundamental rights and directive principles because they constitute a scheme of rights. the reconciliation will, however be on similar lines.\textsuperscript{149}

The draft Constitution was presented by Dr. Ambedkar, with a covering letter dated 21\textsuperscript{st} February 1947 addressed to the President of constituent assembly. That draft Constitution was released to public on 28\textsuperscript{th} February 1947. As stated earlier, Part III provided for legally enforceable fundamental rights and for legally unenforceable directive principles. On 15\textsuperscript{th} August 1948, in the Independence Day issue of the Hindu, Sir B.N Rau

\textsuperscript{148} Durga Das Basu – Commentary on The Constitution of India 8\textsuperscript{th} Edition 2008 publisher Lexis Nexis Butterworths Wadhwa Nagpur – page No.4215
\textsuperscript{149} V .N. Shukla on Constitution of India by Mahendra P. Singh Professor of Law,
contributed a special Article on draft Constitution. In that Article, Sir B. N. Rau said, inter alia,

“………. Certain lawyers object to the Part in the draft Constitution dealing with ‘directive principles of State Policy.’ On the ground that seeing the provision in that Part are not to be enforceable by any Court, they are in the nature of moral precepts, and the Constitution, they say, is no place for sermons. But it is a fact that many modern Constitution do contain moral precepts of this kind nor can it be denied that they may have an educative value.\textsuperscript{150} In the result, the drafting Committee and constituent assembly by not incorporating Shri B.N. Rau’s amendments showed clearly that they wanted to enact legally enforceable fundamental rights and legally unenforceable directive principles. Dr.Ambedkar, who was the Chairman of drafting Committee and who was sponsored the Constitution through the constituent assembly admitted by directive principles had no legal force. Shri B.N. Rau whose draft of Constitution form the basis of discussion in drafting Committee and in the constituent assembly admitted that once the amendments had been rejected, directive principles had no legal force but had moral effect by educating members of the Government and the Legislature. Dr. Ambedkar admitted that directive principles are unenforceable as even if he was in favour, it must be enforceable thereafter also by democratic means, once constituent assembly has rejected the issue comes to end until in furtherance by way of bill is required to be brought before the House.

Hedge J. in his Rau Lectures said “…… a mandate of the Constitution, though not enforceable by Courts is nonetheless binding on all the organs of the State. If the State ignores those mandates, it ignores the Constitution.  

“The question is whether our programmes and policy have to any appreciable extent, reduce the gap between the rich and the poor? In our country there are innumerable obstacles – mostly man made – that stand in the way of initiating or implementing socio-economic reform. We hear so much about corruption, nepotism, favoritism and casteism. These will, if allowed to continue, corrode vitals of our body politics. I do not intend to paint an unduly pessimistic picture and again, “further care should be taken to see that sacrifices made are not allowed to go down the drain. A just social order cannot built up by any Society if it is corrupt and no amount of sacrifice can build a welfare State unless there is efficient and honest administration. More or less in all the States the office of Prime Minster through their Minister came in limelight in last two decades about misusing of office for corruption. Rau’s thought about directive principles about to make enforceable by Courts are required to be presently understood by the present political parties.

Justice Hegde rightly stated about much corruption, nepotism, favoritism and casteism. So social order cannot be built up, it is a correct analysis.

---

To bring in real sense Dr. Ambedkar state socialism reflected in Indian Constitution preamble, part III i.e. fundamental rights, part IV directive principles of state policy and part IV A fundamental duties as required to be read together unless and until Dr. Ambedkar’s state socialism cannot be achieved in the true sense.

4.9 Summary:

Thus in this chapter Dr. Ambedkar’s economics idea’s have been presented in this chapter. Ambedkarism is based on social justice his contribution to economic development was discussed in this chapter. Social economic and political justice was explained. The role of government in providing justice to weaker section was discussed. Further place of judicial review was discussed the public interest litigation were discussed and finally the role of judiciary was also explain. Thus socio economic and socio legal ideas of Dr. Ambedkar were pin pointed.

In the next chapter relevance of economic idea’s of Dr. Ambedkar is discussed.