Chapter – IV

The Directive Principles of State Policy and the protection for women:

The founding fathers of the Constitution through Directive Principles had set out the aims and objectives of a welfare State to be taken up by the State. Considering the prevailing conditions in India, these principles are the ideals for forming the State Policies with the object of achieving Socio-economic progress of the Country. According to Shri G.N.Joshi, “they constitute a very comprehensive political, Social and economic programme for the modern democratic State.”

Commenting on the underlying objectives of Directive Principles, Dr. Babasaheb Ambedkar said in a speech in the Constituent Assembly. He said:

“. . . . . Our Constitution lays down what is called Parliamentary democracy. By Parliamentary democracy, we mean “one man one vote . . . .” He further commenting on the flexibility and the importance of Directive Principles, he said “. . . . . It is no use giving a fixed, rigid form to something which is not rigid, which is fundamentally changing and must and having regard to the circumstances, and at times keep on changing. It is, therefore, no use saying that the Directive Principles have no value. In any Judgement, the Directive Principles have a great value, for they lay down that our ideal is “economic democracy”.

Though the Directive Principles are not enforceable as fundamental Rights, they are in no way less important for achieving the objectives of welfare State.

A new dimension: Some of the Directive Principles have been given the Status of Fundamental Rights by the Supreme Court.

In Unnikrishnan v. State of A.P., the provision for free and compulsory education for children, provided by Article 45 has been raised to the status of fundamental right and hence the Court held that children from the age of 6 to 14 years have fundamental right to free and compulsory education.

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1 39931 1 SCC 645.
Article 39 (a) and (d) requires the State to secure equal Status to women with men:

Clause (a) to Art. 39 of the Constitution requires the State to direct its policy for securing of equal right of men and women to adequate means of livelihood, whereas clause (d) provides for equal pay for equal work for both men and women.

Equal pay for equal work, both for men and women under Article 39 (d) of the Constitution:

In compliance with Art. 39 (d), the Parliament has passed the Act. "Equal Remuneration Act, 1976". Though the Directive Principles are not enforceable by law, the Apex Court in Randhir Singh v. Union of India,¹ has held that the principle of 'Equal pay for equal work' though not a fundamental right is certainly a constitutional goal and, therefore, capable of enforcement through Constitutional remedies under Article 32 of the Constitution. This right, although, is included in Directive Principles is an accompaniment of equality clause enshrined in Art. 14 & 16 of the Constitution, based on intelligible criteria having nexus with the object sought to be achieved is permissible.

In this case the Supreme Court has raised the Status of Art. 39 (d) to that of Fundamental Right.

In another case Grih Kalyan Kendra Workers Union v. Union of India,² the Court has given the status of Fundamental Right to the principle under Art. 39 (d) of the Constitution.

The Directive Principle under Art. 44 requires the State to same Uniform Civil Code for every citizen:

In a most important and historic judgement in Sarla Mudgal v. Union of India,³ the Supreme Court has directed the then Prime Minister Shri Narsimha Rao to take a fresh look at Art. 44 which requires the State to secure uniform Civil Code, which according to the Court is imperative for both protection of the oppressed and promotion of National Unity and integrity.

¹ AIR 1982 SC 879.
² AIR 1994 SC 1173.
³ (1995) 3 SCC 635.
In this case, the question before the Court was whether a Hindu husband married under Hindu law, after conviction to Islam, without dissolving the first marriage can solemnise a second marriage. The Court held that a second marriage will be illegal and husband can be prosecuted for bigamy under Section 494 of the Indian Penal Code.

In the above case, the Apex Court dealt with four petitions together and gave the above ruling. The first petition was filed by a registered society working for due welfare of women as Public Interest Litigation. The second was filed by Mina Mathur in which she contended that she was married to one Jitendra in 1978 and they had three children out of the wedlock. However, her husband in in 1988, solemnised second marriage with another woman, named Sunita Narula alias Fatima after they converted into Islam. In third case, Sunita alias Fatima contended that after marrying with her, Jitendra Mathur had again reverted back to Hinduism and started living with his first wife. She contended that she still continues to be a Muslim but not being maintained by her husband and has no protection under either of the personal law. In third case, the petitioner Gita Rani contended that she was married to one Pradeep Kumar in 1988 according to Hindu rites. However, in 1991, her husband ran away with another woman named Deepa and after conversion to Islam, he married with her. In the fourth case, the petitioner Sushmita Ghosh contended that she was married with G.C.Ghosh in 1984 according to Hinduism but in 1992, her husband told her that he did not like her and would marry one Vinita Gupta after converting to Islam. She prayed that her husband be restrained from entering into second marriage with Vinita Gupta.

On the facts of the above four petitioners, the Supreme Court held that a Hindu marriage continues to exist even after one of the spouse converted to Islam. The Court further held that there is no automatic dissolution of Hindu marriage which can only be dissolved by a decree of divorce on any of the grounds, mentioned in section 13 of Hindu Marriage Act. The Court held that the second marriage of Hindu after converting to Islam was void in terms of Section 494 of IPC and the husband was liable to be prosecuted for bigamy.
The above judgment could be instruments in the hand of the legislators to remove the greatest evil of bigamy. But unfortunately, the Court while dealing with an appeal filed by one of the accused, clarified that its direction to Government on Uniform Civil Code was only on *obiter dicta* and not legally binding on the Government. The clarification was given by Justice Kuldip Singh who had directed the Government to take immediate steps for implementing the provision of Art. 44 of the Constitution, on Uniform Civil Code. Even before the above clarification by the Court, the then Prime Minister Shri Narsimha Rao told to the Muslim Ulemas of Rampur, U.P. that his Government would not implement the constitutional mandate of Art. 44 of the Constitution.

In *Pragati Vargherse v. Cyril George Varghese*, the validity of Section 10 of the Indian Divorce Act was in question before the full Bench of the Bombay High Court, under which a Christian wife had to prove adultery along with cruelty or desertion while seeking a divorce. The Full Bench of Bombay High Court has struck down Section 10 of the Indian Divorce Act on the ground that it violates the fundamental right of Christian woman to live with human dignity under Art. 21 of the Constitution. The Court observed that Section 10 of the Act compels the Christian wife to continue to live with a man who deserted her or treated her with cruelty. Such a life is sub-human. There is denial to dissolve the marriage when the marriage has broken down irretrievably.

In another case *Noor Saba Khatoon v. Moud Quasim*, the Supreme Court held that a divorced Muslim woman is entitled to claim maintenance for her children till they become major. The Court further held that the obligation of the father was absolute when the children were living with divorced wife under both the Muslim Personal Law and also under Section 125 of Cr. P.C. 1973.

The Panjab & Haryana High Court has also directed a Muslim husband to pay alimony to his divorced wife and minor children even after the expiry of the *iddat* period.

1. AIR 1997 Bom 349,
2. AIR 1997 SC 3280.
In brief, the Directive Principles have recognised the rights of women and specifically by Art. 39 under clause (a) has provided the directives to the State to ensure its Policy for securing of equal right of women with men for adequate means of livelihood whereas clause (d) provides for equal pay for equal work for women at par with men. The Apex Court in Randhir Singh v. Union of India,¹ and in another case Griha Kalyan Kendra workers Union v. Union of India,² has given the status of Fundamental Right to Directive Principles under Art. 39 (d) of the Constitution and upheld the equal pay for equal work for women at par with men.

1. AIR 1982 SC 879.
2. AIR 1991 SC 1173.