CHAPTER - III

DIRECTIVE PRINCIPLES OF STATE POLICY VIS-À-VIS
FUNDAMENTAL RIGHTS

3.1 INTRODUCTORY

The Directive Principles of State Policy (DPSP) embodies in Part IV of the
Constitution contains certain obligations of the State. The Directive Principles according
to the chief architect of the Indian Constitution Dr. B.R. Ambedkar, ‘have a great value
for they lay down that our ideal is economic democracy’.1 Thus, the Constitutional ideal
is not only political democracy but also economic democracy and for that reason only
DPSP have been included in the Constitution.2 They are the instruments of instructions in
the governance of the country. The main intention of including Part IV in the
Constitution is that it may form a set of instructions issued to the prospective lawmakers
and executives for their guidance for good governance.3 Part IV enjoys a very high place
in the Constitutional scheme as it imposes obligations on the State to take positive actions
for creating socio-economic conditions in which there will be egalitarian social order
with social and economic justice to all.4

The Directive Principles of State Policy contained in Part IV of the
Constitution of India, are not enforceable by any Court, but the principles laid down
therein are considered fundamental in the governance of the country, making it the duty
of the State to apply these principles in making laws5 to establish a just society in the
country.6 Article 38 sets out it unmistakably that the State shall strive to promote the
welfare of the people by securing and promoting as effectively as it may a social order in

1 A. David Ambrose, “Directive Principles of State Policy and Distribution of Material Resources with
Special Reference to Natural Resources – Recent Trends” 55 JILI 1 (2013).
3 They are instructions to the Legislature and the Executive. Such thing is to my mind to be welcomed,
wherever there is a grant of power in general terms for peace, order and good Government, it is necessary
that it should be accompanied by instructions regarding its exercise. Dr. Ambedkar, III Constituent
Assembly Debate at 41.
4 Minerva Mills Ltd. v Union of India, AIR 1980 SC 1789.
5 Art.37 of Indian Constitution: The provisions contained in this Part shall not be enforceable by any court,
but the principles therein laid down are nevertheless fundamental in the governance of the country and it
shall be the duty of the State to apply these principles in making laws. (Emphasis supplied).
6 Mahendra.P.Singh, V.N.Shukla’s Constitution of India 345-46 (Eastern Book Company, Lucknow, 11th
edn 2008).
which justice – social, economic and political, shall inform all the institutions of national life. The Article 39 says that the citizens, men and women equally have the right to an adequate means of livelihood\(^7\); that the ownership and control of material resources of the community should be so distributed as best to subserve the common good\(^8\); that the operation of the economic system should be such as not to result in the concentration of wealth and means of production to the common detriment\(^9\); that, there should be equal pay for equal work for both men and women\(^10\); that the health and strength of the workers, men and women, and the tender age of children is not abused\(^11\); that the citizens are not forced by economic necessity to enter avocations unsuited to their age or strength and that the children and youth should be protected against exploitation and against moral and material abandonment.\(^12\) These clauses highlight the Constitutional objectives of building an egalitarian social order and establishing a welfare State, by bringing about a social revolution assisted by the State, and has been used to support the nationalization of mineral resources as well as public utilities.\(^13\) Article 39(f)\(^14\) provides that children should be given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity. Children and youth should be protected against moral and material abandonment. The re-drafted clause though widens the State obligation towards children but does not add anything materially to the provisions that are included in Articles 39 & 42. Article 42 imposes a duty on the State to provide for just and human conditions of work and maternity relief. Another important Article introduced is Article 43A\(^15\) by which suitable legislation is recommended to secure the participation of workers in the management of undertakings, establishments or other organizations engaged in any industry. The new Article 43B\(^16\) by which the State shall endeavor to promote voluntary

\(^7\) Article 39(a), *the Constitution of India*.
\(^8\) Article 39(b), *the Constitution of India*.
\(^9\) Article 39(c), *the Constitution of India*.
\(^10\) Article 39(d), *the Constitution of India*.
\(^11\) Article 39(e), *the Constitution of India*.
\(^12\) Harlow and Rowlings, *Law and Administration* 49 (Cambridge University Press, 2009).
\(^14\) Subs. by the Constitution (42\(^{nd}\) Amendment) Act, 1976, Sec.7 (w.e.f. 3-1-1977).
\(^15\) Ins. by the Constitution (42\(^{nd}\) Amendment) Act, 1976, Sec. 9 (w.e.f. 3-1-1977).
\(^16\) Article 43 B Ins. by the Constitution (97\(^{th}\) Amendment) Act, 2011, Sec. 3 (w.e.f. 15-2-2015).
formation, autonomous functioning, democratic control and professional management of co-operative societies.

Article 41 of the Constitution provides that the State shall within the limits of its economic capacity and development make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want. Article 38 states that the State shall strive to promote the welfare of the people and Article 43 states, it shall endeavor to secure a living wage and a decent standard of life to all workers. It is no doubts true that Article 38 and Article 43 of the Constitution insist that the State should endeavour to find sufficient work for the people so that they may put their capacity to work into economic use and earn a fairly good living. The promotion of the cottage industry and establishment of Panchayati Raj has been two main ideals of Gandhian philosophy. Speaking from the floor of the Constituent Assembly, Dr. Ambedkar observed that there was a considerable feeling in the house in favour of governmental encouragement for the cottage industry. In view of this, latter part of Article 43 lays down that the State shall endeavor to promote cottage industries on an individual or co-operative basis in rural areas. Article 40 enjoins the State to take steps to establish village panchayats. Through 73rd and 74th Amendments to the Constitution, Panchayati Raj has been given the Constitutional status with more powers.

Article 39A which has been added to invest the legal process with functional relevance and promotion of social justice enjoins on the State to make provisions for providing free legal aid to the weaker sections of the society. The State shall ensure that the operation of the legal system promotes justice, on a basic of equal opportunity. It also recommends that access to justice should not be denied to the citizens merely because of economic or other disabilities. The expenses involved in obtaining justice have prevented many people from fighting for their rights. Thus, the directive requires the State to provide free legal aid to deserving people so that justice is not denied to anyone merely

---

20 Ins. by the Constitution (42nd Amendment) Act, 1976, Sec. 8 (w.e.f. 3-1-1977).
because of economic disability. Recently, some of the States have taken steps to implement the above directive.\textsuperscript{21}

Article 44 stipulates for a Uniform Civil Code. Article 45 by which the State shall endeavor to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for children up to the age of fourteen years has been substituted by the Constitution (86\textsuperscript{th} Amendment) Act, 2002. Now, the Article makes provision for early childhood care and education to the children below the age of six years.\textsuperscript{22} The State also promote with special care, the educational and economic interests of weaker sections of the society including the Scheduled Castes and Scheduled Tribes etc. and shall protect them from social injustice and all forms of exploitation.\textsuperscript{23} The State shall regard the raising of the level of nutrition and the standards of living.\textsuperscript{24} Article 47 enacts the national policy of prohibition and enjoins the State to bring about prohibition of the consumption, except for medical purposes in intoxicating drinks and of drugs which are injurious to health. This directive has been sought to be implemented from the beginning.

In a predominantly agricultural Hindu society of the ancient times emphasis on the protection of the cow, and other cattle connected with the agriculture was natural. Article 48 enjoins on the State to organize agriculture and animal husbandry on modern and scientific lines and in particular, to take steps for preserving and improving the breeds, and prohibiting the slaughter of cows and calves and other milch and draught cattle.\textsuperscript{25} Article 48A\textsuperscript{26} provides for safeguarding the wild life and forests of the country.

Article 49\textsuperscript{27} provides for the protection of monuments and places and objects of

\textsuperscript{21} The State of Himachal Pradesh, Punjab and Haryana have taken a lead in this behalf. In the State of Himachal Pradesh all those persons whose monthly income is less than rupees three hundred are eligible for obtaining free legal assistance from the State.
\textsuperscript{22} Article 45 of Indian Constitution: The State shall endeavor to provide early childhood care and education for all children until they complete the age of six years. Subs. by the Constitution (86\textsuperscript{th} Amendment) Act, 2002, Sec.3 (w.e.f. 1-4-2010).
\textsuperscript{23} Article 46, the Constitution of India.
\textsuperscript{24} Article 47, the Constitution of India.
\textsuperscript{26} Ins. by the Constitution (42\textsuperscript{nd} Amendment) Act, 1976, Sec. 10 (w.e.f. 3-1-1977).
\textsuperscript{27} Part IV, the Constitution of India.
artistic or historic interest, declared by or under law made by Parliament to be of national importance against destruction and damage. Article 50\textsuperscript{28} enjoins that the judiciary shall be separated from the executive. To a great extent this directive has been implemented. Article 51\textsuperscript{29} lays down that the State shall endeavor to promote international peace and security, to maintain just and honorable relations between nations and to foster respect for international law and treaties and to encourage settlement of international disputes by arbitration.\textsuperscript{30}

It is by enacting Directive Principles of State Policy in Part IV of the Constitution that we have endeavored to create a welfare State.\textsuperscript{31} In number of pronouncements, the Supreme Court has insisted that these Directive Principles seek to introduce the concept of a welfare State in the country. Thus, the Supreme Court in \textit{Paschim Bangas} case observed:\textsuperscript{32}

The Constitution envisages the establishment of a welfare State at the federal level as well as the State level. In a welfare State the primary duty of the government is to secure the welfare of the people.

The idea of welfare State\textsuperscript{33} envisaged by our Constitution can only be achieved if the State endeavors to implement them with a high sense of moral duty.\textsuperscript{34} In view of the above an attempt has been made to present a classification of these DPSP along with their relationship with Fundamental Rights provided under Part III of the Constitution. The judicial approach towards creating harmony between DPSP and Fundamental Rights has also been discussed in detail.

3.2 CLASSIFICATION OF DIRECTIVE PRINCIPLES OF STATE POLICY

Part IV of the Constitution which is entitled as “Directive Principles of State

\textsuperscript{28} \textit{Ibid.}
\textsuperscript{29} \textit{Ibid.}
\textsuperscript{30} See Appendix B for all DPSP included in the original Constitution by Constitutional Amendments so far.
\textsuperscript{31} \textit{Supra} note 25.
\textsuperscript{33} A welfare State is a concept of Government where the State plays a key role in the protection and promotion of the economic and social well-being of its citizens. It is based on the principles of equality of opportunity, equitable distribution of wealth, and public responsibility for those unable to avail themselves of the minimal provisions for a good life.
\textsuperscript{34} \textit{Supra} note 2.
Policy”, contain sixteen Articles, from 36 to 51, that deal with the Directive Principles. These cover a wide range of State activity embracing social, economic, legal, educational, administrative and cultural problems. Some of the writers on Constitutional law have attempted to group these principles in separate categories. A systematic presentation of this classification has been discussed as follows.

3.2.1 G.S. Sharma’s Classification of Directive Principles of State Policy

Professor G.S. Sharma has also attempted a value-based classification of directives. According to him, the values enshrined in these directives can be grouped in three broad categories. In the first category fall those values which appear to have been borrowed from the liberal humanitarian traditions of the west. Here, Professor Sharma makes a reference to provisions dealing with welfare, means of livelihood, public assistance in case of undeserved want, and living wage for workers and free and compulsory primary education. In the second category fall those values which owe their origin to the special and peculiar Indian problems. These relate to the establishment of panchayats, enforcement of the policy of prohibition, ban on cow slaughter and upliftment of Scheduled Castes and Scheduled Tribes. And the last category contains values which fuse the traditional and modern modes of life and thought. The provisions dealing with panchayats, cottage industries, Uniform Civil Code and the separation of executive from the judiciary have been grouped under this last mentioned category.

It is pertinent to mention here that the above classification of Professor Sharma makes no mention of the directives dealing with protection of monuments of historic and of national importance. This also makes no reference to the policy of the country in the international sphere. However, the learned Professor himself admits of the weakness inherent in his classification when he observes:

The above categories into which ..... directives ... have been grouped are not fixed and final.... the contents of some of the Articles like 39 and 43

---

36 Articles 38, 39, 41, 43 and 45, the Constitution of India.
37 Articles 40, 47, 48 and 46, the Constitution of India.
38 Supra note 35.
can be covered in more than one of the above categories.

However, the point which can be urged in support of the classification of Professor Sharma is that the directives as projected by him bear out a synthesis of the Indian traditional values and modern ways of life and thought.

3.2.2 Professor Baxi’s Classification of Part IV of the Constitution

Professor Upendra Baxi, though commends Professor Sharma’s classification but at the same time is inclined to advocate his two-fold classification of directives. The directives contained in Part IV of the Constitution, says Baxi, can be classified in two categories: viz., fundamental directives and transitional directives. In the category of fundamental directives, which he also calls ‘social revolution directives’ fall those directives which aim at the establishment of a constitutionally proclaimed social order in general terms. In the second category, i.e., of transitional directives, Baxi makes a reference to those directives which are attainable over a specific period of time and once attained will cease to be ‘fundamental’ in the governance of the country.

Baxi maintains that the above classification, if accepted, will definitely provide some guidelines for a sensitive discrimination among the directives. While advocating this two-fold classification, Baxi has also invented another category of directives entitled, ‘objectionable directives’. In this category, he places two provisions which deal with cow slaughter and prohibition. He has accused the members of the Constituent Assembly for introducing these provisions as ‘intra-party compromises” and pleads that since these provisions have outlived their utility and hence, they should be expunged from the text of

---

40 Professor Baxi lays more stress on Article 38 and 39. In his view, Article 38 is basic to the desired Constitutional goal while Article 39 specifies certain modalities for its attainment. But the learned Professor seems to have gone far away when he observes that the directives ranging from prohibition of cow slaughter to obligation to provide “just and human conditions of maternity relief” and from prohibition of liquor to protection of national monuments fall in the category of less fundamental or transitional directives. Professor Tripathi seems to have approached these directives in a positive spirit and appears to be coming nearer to our approach when he says that not only the directives but all the rights comprised in Part III and IV of the Constitution have a “common grounding”. See P.K. Tripathi, Spotlight on Constitutional Interpretation 701 (N.M.Tripathi Pvt. Ltd., Bombay, 1972).
the Constitution. Baxi maintains that if these provisions are completely eliminated from the Constitution, it will not affect the constitutionally desired social order.

The classification advocated by this eminent scholar of international repute, however, is open to several objections. For examples, Article 37 accords a status of fundamentalness to all the directives enshrined in Part IV of the Constitution. Now to judge as to which of the directives are more fundamental or less fundamental is a question outside the four walls of the Constitution which is the fundamental law of the land. It is an admitted fact that if these directives are translated into practice by the State, they would not cease to be fundamental but on the other hand would become an inseparable part of the life of each and every man living in the society. Since, the society changes with the pace of time and with the changes in the society the needs of the individuals also change. In other words, the development of society is a continuing phenomenon. Therefore, to say that after sometime some of the directives would become needless or meaningless is nothing but an attempt to undermine the Constitutional directives whose objectives are beyond the pale of any controversy. Secondly, every society cherishes some values depending on the background of the people who constitute that particular community or the society as such. Therefore, to argue that the provisions concerning cow slaughter and prohibition should be eliminated from the Constitutional text would mean that Baxi is ignoring a vital aspect of the Indian societal set up which is primarily based on agriculture. To accuse the drafters of the Constitution for incorporation these provisions as ‘intra-party compromises’ would be a manifested injustice to those who had no axe to grind while giving this valuable document to the nation. If we read these submissions in the light of the Supreme Court’s opinion in Quareshi’s case, the apprehension raised by Baxi relating to the operational aspect of these provisions would be cleared. The way, Baxi has studied Part IV of the Constitution

---

41 Upendra Baxi, “Directive Principles and Sociology of Indian Law: A reply to Dr. Jagat Narain” 11 JILJ 245, 255 (1969). Dr. Jagat Narain, however, holds the views that since the directives are also a Part of Constitutional law; they are in no way subordinate to the Fundamental Rights. Besides, he characterizes than as “law in the real sense of the term”. See Jagat Narain, “Equal Protection Guarantee and the Right to Property under the Indian Constitution” 15 ICLQ 206-07 (1966).

42 M.H. Quareshi v. State of Bihar, AIR 1958 SC 73. Here, the petitioner has challenged the laws of different States aimed at preventing the slaughter of different cattle.
under the title “Dustbin Approach”\textsuperscript{43} itself shows that the learned Professor has considerably underestimated the values enshrined in this Part of the Constitution.

3.2.3 Gajendragadkar’s Classification of Directive Principles of State Policy

P.B. Gajendragadkar, the former Chief Justice of India in his Gandhi Memorial Lectures delivered at the University College, Nairobi in 1969 on “The Constitution of India: Its Philosophy and Basic Postulates”, has classified the directives contained in Part IV of the Indian Constitution under four principal groups. The first group deals with general principles of social policy\textsuperscript{44} requiring the Governments in different States and at the Centre to create a social order in which three-fold justice (social, economic and political) will inform all the institutions of national life. The second group deals with the principles of administrative policy for the Government\textsuperscript{45}. The third group deals with the socio-economic rights of the citizens while the fourth one contains a statement of the international policy of the Republic.\textsuperscript{46} Thus, Part IV gives a broad picture of the progressive principles on which the Constitution wants the governance of the country to be based.\textsuperscript{47}

The classification of directives as presented by Gajendragadkar appears to be more acceptable for two reasons. First, it gives a systematic exposition of the Directive Principles and second, it is more precise and logistic and avoids any overlapping.

3.2.4 D.D. Basu’s Classification of Directive Principles of State Policy

D.D. Basu has classified these principles enshrined in Part IV of the Constitution into three broad groups\textsuperscript{48} as (i) Directives in the nature of ideals of State (ii) Directives shaping the policy of the State and (iii) Non-justiciable rights.\textsuperscript{49} The first group contains certain ideals, particularly economic, which according to the framers of the Constitution,

\begin{itemize}
\item \textsuperscript{43} Supra note 39 at 345.
\item \textsuperscript{44} Articles 36, 37 and 38, \textit{the Constitution of India}.
\item \textsuperscript{45} Articles 40 to 45, \textit{the Constitution of India}.
\item \textsuperscript{46} Article 50, \textit{the Constitution of India}.
\item \textsuperscript{48} See Appendix B (i).
\item \textsuperscript{49} D.D.Basu, \textit{Introduction to the Constitution of India} 151 (Lexis Nexis Butterworths Wadhwa, Nagpur, 20th edn., 2009).
\end{itemize}
the State should strive for. The second group contains certain directions to the Legislature and Executive intended to show in what manner the State should exercise their legislative and executive powers. According to Basu, by following policies contained in these Articles State is to establish economic democracy and justice by securing certain economic rights. The third group provides for certain rights of the citizen which shall not enforceable by the Courts like the Fundamental Rights, but which the State shall nevertheless aim at securing by regulation of its legislative and administrative policy.

The classification of directives as made by Basu appears to be more scientific but overlapping exposition of the Directive Principles. However, he succeed to some extent to categorize the directives into different and unique way as ideals contained in the Preamble and the policies prescribed in directives by the following of which the State can achieve those ideals of Preamble and economic democracy. Lastly, he put the directives as non-justiciable rights that could not find place in the chapter of Fundamental Rights.

3.2.5 Ranbir Singh and A. Lakshminath’s Classification of Directives Principles of State Policy

This classification of Directive Principles has been attempted by Dr. Ranbir Singh and Dr. A. Lakshminath. They have classified the provisions concerning Directive Principles into four specifies categories. In the first category, the provisions fall relating to Socialistic and Economic Principles. At the time of independence, India was socially and economically backward. In order to solve these problems, the provisions relating to socio-economic justice have been inserted in the Constitution. The second category consists of provisions relating to Gandhian Principles. The founding fathers of the Constitution included certain principles advocated by the father of the nation, Mahatma Gandhi, during the independence struggle against the British. The third category contains

---

50 Articles, 38(1), 38(2), 43, 47, 39(b) & (c), 51, the Constitution of India.
51 Articles 44, 45, 47, 43, 48, 40, 46, 48A, 49 and 50, the Constitution of India.
52 Articles 39(a), 39(d), 39 (e) & (f), 39A, 41, 42, 43, 43 A and 45, the Constitution of India.
53 Ranbir Singh and A.Lakshminath, Constitutional Law 308-10 (Lexis Nexis Butterworths, New Delhi, 2006).
54 Articles 39(a), 39(b) & (c), 39(d), 41, 45, 42, 43A, the Constitution of India.
55 Articles 40, 43,47,46,48, the Constitution of India.
some of the Directive Principles\textsuperscript{56} indicating the foreign relation policy to be adopted by India \emph{i.e.}, International Principles. The last category contains some miscellaneous provisions\textsuperscript{57} which deal with protection of monuments of historic interest or of national importance, separation of judiciary from the executive and establishment for a Uniform Civil Code for all citizens throughout the country.

The above classification appears to be satisfactory to some extent. The provisions contained in some of the directives are based on socialistic as well as Gandhian ideology. The Gandhian programs of reconstruction and liberal intellectualism suggested by him have specified directives. But the classification does not contain any provision relating to legal aid and for the protection and improvement of environment and safeguard of forest and wildlife.

\subsection*{3.2.6 J.N.Pandey’s Classification of Directive Principles of State Policy}

Dr. J.N.Pandey has also attempted to classify the Directive Principles of State Policy. According to him, the directives contained in Part IV of the Constitution can be grouped in three main categories, namely, Social and Economic Charter, Social Security Charter, Community welfare Charter.\textsuperscript{58}

The social and economic charter contained Articles 38 and 39 which direct the State to administer ‘distributive justice’ in the sphere of law-making connot, \emph{inter alia}, the removal of economic inequalities rectifying the injustice resulting from dealings and transactions between unequal in society.\textsuperscript{59} These principles represent the basic aim as social-economic justice of a socialistic State. The second category of principles\textsuperscript{60} bears also social security mark in other specific form. They include right to work with just and human condition, living wage and participation of workers in management of industries, early childhood care and education, public assistance in old age etc., raising the standard of living, promotion of educational economic interest and free legal aid to economically

\textsuperscript{56} Article 51, \textit{the Constitution of India}.
\textsuperscript{57} Articles 44, 50, 49, \textit{the Constitution of India}.
\textsuperscript{60} Articles 41, 43, 43A, 45, 46, 47, 39A, \textit{the Constitution of India}.
backward classes with a view to providing equal justice. In the third category, we find certain principles which the liberals or reformers have been commending to the attention of the Government in India. Some of these principles are a Uniform Civil Code for the country, promotion of co-operative societies, organization of agriculture and animal husbandry, protection and improvement of forests and wild life, protection of monuments and places and objects of national importance, separation of judiciary from executive, promotion of international peace and security, and organization of village panchayats.

The above classification of Dr. Pandey does not appear to be a sound one. The provisions contained in first two categories both are based on socialistic pattern and third category consist so many principles liberally. The principles based on Gandhian ideology have not been differentiated form other category but mixed unreasonably. In view of this, it is very difficult to appreciate the contents of these principles in their right perspectives.

3.2.7 Professor Diwan’s Approach to Directive Principles of State Policy

Professor Paras Diwan seems to be wiser when he refrains from making any such rigid classification and studies them in an atmosphere of openness. It is this approach of the learned Professor which has been adopted by this author to study Part IV of the Constitution in its proper perspective. Professor Diwan has discussed these DPSP under the following heads:

(a) General principles of social policy;

(b) Socio-economic Rights of Citizens;

(c) Protection to minorities and weaker sections of society;

(d) Gandhian Ideals of Panchayat Raj: Promotion of Cottage Industry and Prohibition;

(e) Hindu ideals of cow protection and modernization of agriculture and animal husbandry;

(f) National integration and promotion of international peace; and

61 Articles 44, 43B, 48, 48A, 49, 50, 51, 40, the Constitution of India.
(g) Miscellaneous Directives.

(a) General Principles of Social Policy

Under this heading fall three provisions, namely, Articles 36, 37 and 38. Article 36 is definitional. It explains the meaning of the term State used in Part IV of the Constitution. It provides that the term “State” shall have the same meaning as in Part III of the Constitution. This means that not only the Union and State authorities but also local authorities shall have a moral obligation to follow the directives contained in Part IV. But the core of commitment to the social revolution lies in Articles 38 which, \textit{inter alia} provides that the State should promote the welfare of the citizens by extending social, economic and political justice in as many institutions as will be feasible. This Article gives content to that Part of the Preamble which refers to social, economic and political justice. In other words, the Article issues a mandate to the State to effectuate the hopes expressed in the Preamble of our Constitution. It is the star by which we are expected to charter our course.

Article 38 is similar in phraseology to Article 45(1)\textsuperscript{63} of the Irish Constitution with the deletion of the words “and charity” and substitution of, in its place, the words “social, economic and political”.\textsuperscript{64}

Another significant provision which requires mention in this regard is Article 37. The Article reads: The provisions contained in this shall not be enforceable by any Court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws. The Article brings forth the following three-fold characteristics of Directive Principles. First, the directives shall not be enforceable by any Court. Second, the directives are fundamental in the governance of the country despite the fact that the judiciary cannot see

\textsuperscript{63} Article 45(1) of the Irish Constitution 1937 reads: The State shall strive to promote the welfare of the whole people by securing and protecting as effectively as it may a social order in which justice and charity shall inform all the institutions of the national life.

\textsuperscript{64} The words “Justice – social, economic and political” were for the first time used in clause (5) of the Objectives Resolution moved by Jawaharlal Nehru in the Constituent Assembly on 13 December, 1946. Subsequently, these words found a place in the Preamble of the Constitution of India. See I Constituent Assembly Debates at 59.
their effective compliance. Third, it shall be the duty of the State to apply these principles in making laws.

On comparison, it is clear that there are broad differences between the Irish\(^{65}\) and the Indian directives in this regard. First, the Indian directives make the principles contained in it ‘fundamental in the governance of the country’ whereas in the Irish directives the principles are intended ‘for the guidance of the Qireachtaí’. Second, whereas the Indian directives makes it the “duty of the State” to apply these principles in making laws, the Irish directives makes it only ‘the care of the Qireachtaí exclusively’ to apply these principles in making of laws. Finally, whereas in the Irish Constitution it is provided that the principles contained in the directives ‘shall not be cognizable by any Court under any of the provisions of this Constitution’, the Indian directives merely provides that the provisions contained in this Part shall not be enforceable by any Court.

The use of the word “unenforceable” in place of “cognizable” is significant in the context. The Indian directive admits of the fact and even requires that the judiciary shall take notice of the directives a position denied to the Irish judiciary, although the judiciary shall have no power conferred on it, directly or indirectly, to compel the State to discharge its duty at any point of time.\(^{66}\) In view of the above it seems that the framers of the Constitution wanted to see that in the fulfillment of these principles recourse was not taken to the Courts of law and this sense is fully covered by use of the word “not enforceable”.\(^{67}\)

The question that arises for consideration is that if the directives are to be regarded as fundamental in the governance of the country and a duty is imposed on the State to apply these principles in making laws then what would happen if they are not carried out. In other words, if the State ignores these principles, then what is the legal and Constitutional effect of having such provisions in Article 37 of the Constitution? Who bears the responsibility of carrying out these directives and what is the consequence of

\(^{65}\) Article 45 of the Irish Constitution reads: The principles of social policy set forth in this Article are intended for the general guidance of the Qireachtaí. The application of those principles in the making of laws shall be the care of the Qireachtaí exclusively and shall not be cognizable by any Court under any of the provisions of this Constitution.


\(^{67}\) It has been held that the term “making of laws” used in Article 37 is wide enough to include interpretation of laws. Hence, Courts have a duty to interpret laws in the light of Directive Principles of State Policy.
breach of these Directive Principles? It is true that these principles are not judicially enforceable and, therefore, cannot be regarded as justifiable. But the fact that the assistance of the judicial process cannot be claimed by citizens in the enforcement of the principles laid down in this Part does not detract from the basic position that the Constitution-makers wanted the governance of the country to be founded on these principles. Whatever may be the political affiliation of the Party which remains in power either in the States or at the Centre, it is bound to recognize the fact that the principles laid down in Part IV are intended to be its guide, philosopher and friend in the matter of its legislative and executive activities. This is what B.R. Ambedkar emphasized when he invited the Constituent Assembly to accept the provisions in Part IV. To quote him:68

It is the intention of the Assembly that in future both the legislature and the executive should not merely pay lip services to these principles but they should be made the basic of the legislative and executive action that may be taken hereafter in the matter of governance of the country.

He further said:69

If any Government ignores them, they will certainly have to answer for them before the electorate at the election time.

The above analysis shows that the Directive Principles, though not enforceable by Courts, are nonetheless binding on all organs of the State and failure to implement them would not only be a breach of faith but also make a vital Part of the Constitution practically a dead letter. If the State ignores them, it in effect ignores the Constitution.

(b) Socio-Economic Rights of Citizens

Article 39 enunciates the dimensions of social justice70 and provides for certain principles concerning the socio-economic rights of the citizens. These principles are: (a) that all citizens have the right to an adequate means of livelihood; (b) that the ownership and control of the material resources of the community have to be so distributed as best to subserve the common good; (c) that the operation of the economic system should be so

68 VII Constituent Assembly Debates at 41.
69 Ibid.
70 Article 45(2) & (4), the Constitution of Eireland, 1937.
organized as not to result in the concentration of wealth and means of production to the common detriment; (d) that there should be equal pay for equal work for all citizens, irrespective of sex; (e) that the health and strength of workers and the tender age of children should not be abused and that citizen should not be forced by economic necessity to enter avocations unsuited to their age or strength; and (f) that childhood and youth should be protected against exploitation and against moral and material abandonment.

Article 39 is in a way the operative portion of the objectives set out in Article 38. In other words, it prescribes the minimum programs which are considered necessary to create the social order visualized in Article 38. Thus, the principles laid down in Article 39 illustrate what the Constitution-makers had in mind when they referred to the necessity to establish social and economic justice. To quote Nehru:71

The service of India means the service of the millions who suffer. It means the ending of poverty and ignorance and disease and inequality of opportunity. The ambition of the greatest man of our generation has been to wipe every tear from every eye. That may be beyond us, but as long as there are tears and suffering, so long our work will not be over.

This shows the concern of the makers of our Constitution for amelioration of the lot of down-trodden masses of India. Hence, the projection of Article 39 is in the Constitution. The Article has a very laudable object. It contemplates measures for securing equitable distribution of community resources. It also contemplates measures for preventing concentration of wealth and means of production in a few private hands. The avoidance of concentration of wealth or of material resources in the hands of a few people leads to the economic betterment of the common man. Therefore, the trend appears to be towards nationalization of the key industries. This does not mean that private enterprise is discouraged but such enterprise should not encourage monopolistic trend so as to affect the common good. Private ownership is recognized but not too much of it when it is to the detriment of the common good preventing the workers from having

a liberal share in the nation’s wealth. Concentration of large books of land in the hands of a few individuals is contrary to Article 39. Therefore, legislation for agrarian reforms and abolition of zemindari do fulfill the objectives enshrined in Article 39.

Again the principle of equal pay for both men and women connotes that both men and women should be taken in embracing aspect. What is required is that equal pay should exist between man and man, man and woman, and woman and woman, for equal work shown. Otherwise, the equality principle in Article 14 would get offended.

The discussion on Article 39 would definitely remain incomplete if we do not make a mention of the provisions contained in Articles 41, 42 and 43 of the Constitution as they also deal with the welfare of workers. Article 41 enjoins the State to make effective provisions for providing the right to work, subject of course to the capacity and development of the country. It also stresses that if conditions permit right to education should also be provided. Public assistance when feasible should be made available to citizens who are unemployed, old or ill. All cases of avoidable distress should be cases for public assistance. Here, however, the stress is not on immediate redress but on an assurance that those should be brought out as soon as it would be possible economically. Similarly, Article 42 obliges the State to make provisions for securing just and human conditions of work and for maternity relief. Likewise, Article 43 stresses the need to make available to the citizens an adequate, i.e., a living wage for work done, in all sectors of economic activities, healthy conditions of work, and to ensure a decent standard of living and of leisure for all.

(c) Protection to Minorities and other Sections of Society

The traditional composition of the Indian community, particularly the Hindu part of it, presented the very difficult problem of Scheduled Casts and Schedule Tribes. These casts and tribes constitute the socially and economically weaker sections of the community, and the Constitution-makers were very solicitous about their economic

---

73 Articles 14 of the Constitution of India reads: The State shall not deny to any person equality before law or the equal protection of the laws within the territory of India.
betterment. Article 46, therefore, provides that 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.

The need of providing safeguards to the weaker sections of the community is also recognized by several countries. The protection afforded, however, aims at safeguarding, normally, the physically weak and mentally under-developed as also those who are in need of economic assistance. But the underlying idea in this Article of the Indian Constitution is to afford protection and promote the welfare of those who are socially handicapped due to reasons peculiar to India. Therefore, the present Article is of great relevance and significance in the Indian context where society has not advanced uniformly and where there are what are called educationally and economically backward sections of the people.

Thus, the Article provides three-fold protection to: (a) the weaker sections of the people, (b) the Scheduled Castes and (c) the Scheduled Tribes. There is no difficulty regarding the latter two classes of tribes and castes. But a great difficulty has been experienced in demarcating as to who are the weaker sections of the society? This is a question to be decided on the facts of each case. It may be stated that Article 15 (4) of the Constitution also enables the State to make special provisions for the advancement of “socially and educationally backward classes of citizens.” Hence, unless a class of citizen is socially as well as educationally backward, no special protection can be accorded in its favour irrespective of the fact that they are regarded as a “weaker section” of the people. In such an eventuality Article 46 will have no application and the case would be covered

74 Article 35, the Constitution of Burma 1948; Article 45 Clause 4(1), the Constitution of Eireland 1937 and Article 169, the Constitution of Republic China 1946.

75 Article 366 Clause (24) of the Indian Constitution defines Scheduled Castes, as castes, races or parts of groups within such castes, races or tribes as are deemed under Art. 341 Scheduled Castes for the purpose of Constitution. The Scheduled Caste’s order of 1950 issued by the President under Article 341 details various Scheduled Castes in various areas in India.

76 Article 342 describes similarly the Scheduled Tribes and the same have been specified in the Presidential Order of 1950.

77 Article 15(4) reads: Nothing in this Article or in Clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward class of citizens or for the Scheduled Castes and Scheduled Tribes.
under Article 15(4). In the case of Scheduled Castes and Scheduled Tribes, however, both Articles 46 and 15(4) will apply.

It is submitted that while the State may make special provisions for socio-educational upliftment of the people under Article 15(4), it would go in a long way to improve the lot of the common man if the State also takes into account the mandate of Article 46 and the Preamble of the Constitution.

(d) Gandhian Ideals of Panchayat Raj, Promotion of Cottage Industry and Prohibition

The promotion of the cottage industry and establishment of Panchayat Raj has been two main ideals of Gandhism. Speaking from the floor of the Constituent Assembly, Dr. Ambedkar observed that there was a considerable feeling in the House in favour of governmental encouragement for the cottage industry.78 Similarly, there was a considerable opinion to enact in the Constitution decentralization and the Panchayat Raj. But with emphasis on industrialization and a highly centralized federal system that was adopted, there was no alternative but to place these ideals among the Directive Principles. In view of this, the latter Part of Article 43 lays down that the State shall endeavour to promote cottage industries on an individual or co-operative basic in rural areas. Article 40 enjoins the State to take steps to establish village panchayat.

It has to be understood that India is a vast agricultural country. Rural India is, thus, very important and the economy of rural parts can be made self-sufficient only by the encouragement of cottage industries which will give adequate employment and remuneration to all rural workers. The provision has its application to all categories of workers – industrial, agricultural, artisan, independent or in groups.

The directive relating to the introduction of Panchyat Raj in rural India is a welcome provision. But the operational aspect of this system is full of controversy. The main controversy relates to the jurisdictional aspect of these institutions. In one case, Madras High Court observed:79

78 Supra note 68 at 535.
This case is a good instance to show that in this country the Panchayat Courts ought not to be invested with criminal jurisdiction. They seem to be carried away by the local politics and the inimical feelings that, they happen to entertain against persons.

To this, it may be submitted that there are certain factors like want of education and poverty which are standing in the way of successful functioning of the panchayats. Moreover, we are on a stage of experimentation and it would not be wise enough to entrust these institutions with enormous powers. Besides, if these institutions have to be efficiently run, the persons who are made incharge of these institutions should be honest, capable and competent men and also the law which they have to administer should be clear and plain.

In pursuance of the above directive, many States in India have made positive efforts by enacting legislation\textsuperscript{80} for the organization of village panchayats in the State.\textsuperscript{81}

In the matter of prohibition, Article 47 enacts the national policy of prohibition and enjoins the State to bring about prohibition of the consumption, except for medicinal purposes, of intoxicating drinks and of drugs which are injurious to health. This is the ultimate goal towards which the State must always make an endeavour. There is no other Constitution of the world where prohibition is enjoined in the Constitution as such.\textsuperscript{82}

\textbf{(e) Hindu Ideals of Cow Protection and Modernization of Agriculture and Animal Husbandry}

In a predominantly agricultural Hindu society of the ancient times emphasis on


\textsuperscript{81} Entry 5, List II of the Constitution empowers the State to legislate in such matters.

\textsuperscript{82} Even in 1937 the Congress Ministers in several Provinces introduced prohibition. In several States of India total prohibition has been introduced. Partial prohibition exists practicably in all States. See R.N. Aggarwala, \textit{National Movement and Constitutional Development of India} 219 (Council of Scientific and Industrial Research, New Delhi, 11\textsuperscript{th} edn., 1981).
the protection of cow and other cattle connected with agriculture was natural. In the modern India, too, a national policy against slaughter of certain categories of cattle is needed. The question is not merely of the Hindu’s reverence towards cow, though religious aspect of cow protection cannot be ignored, but protection of milk cattle in a country which is suffering from acute shortage of milk, is an imperative need. Article 48 deals with this and allied matters. It enjoins on the State to organize agriculture and animal husbandry on modern and scientific lines and in particular, to take steps for preserving and improving the breeds and prohibiting the slaughter of cows and calves and other milk and draught cattle.

This is a salutary provision for improving the nation’s wealth. Cattle wealth and the produce wealth are the twin treasures of India. Animal husbandry on scientific lines has yet to make a big headway in India. Improvement of breeds and the prohibition of slaughter of cattle – cows, calves and other milch and draught cattle are also of paramount importance.

The Supreme Court has emphasized in _M.H. Quareshi V. State of Bihar_ that:

In Article 48, the directive for taking steps for preventing slaughter of certain specified categories of animals is quite explicit and positive. It is an aspect of organizing animal husbandry on scientific lines. The Court has opined that the directive in Article 48 contemplates protection only to cows and calves and other animals which are presently and potentially capable of yielding milk or doing work as draught cattle but not of cattle which, though once milch or draught, ceased to be so in course of time.

Article 48 has accorded recognition in somewhat “guarded and hesitant form” to the Hindu sentiments regarding cows. Under the above Article, total ban on cow slaughter is possible and this position has been accepted by the Supreme Court in _Quareshi’s_ case. While the test of usefulness has to be applied in extending protection to other animals, it is not so applied to cows. This is criticized by many as anti-secular

---

83 AIR 1958 SC 731.
84 P.B. Gajendragadkar, _Secularism and the Constitution of India_ 117-143 (Bombay University Press, Bombay, 1971).
85 _Supra_ note 68.
and uneconomic. A number of States have enacted laws to preserve, protect and improve live stock.

(f) National Integration and Promotion of International Peace

It is well known that India is a land of diversities. Hindus, Muslims, Christians and many other communities follow their own personal laws which greatly differ from one another. This tends to encourage separatist tendencies which are detrimental to the national integrity. Thus, Article 44 was incorporated into the Constitution which stipulates for Uniform Civil Code. The object underlying the directive in respect of a Uniform Civil Code for the country is to cut across the barriers of religion, caste and sub-caste and build India a homogeneous nation.

This Article caused considerable difficulty in the Constituent Assembly. It was opposed on the one side by an orthodox section of Hindus and, on the other, by the minorities who thought that with a Uniform Civil Code they would lose their identity. The Article has not been implemented because of considerable opposition by the Muslims. Only certain portions of Hindu law could be reformed and codified.

It is submitted that Article 44 does not affect religious liberties but seeks only to divorce all personal laws from religion, with the result that a Uniform Civil Code touching all matters of the person and property of the citizen can be ushered into the glory of a unified and nationalistic India with one people, one culture, one law and one voice.

Article 51 affirms the principle of international law being recognized by the State

---

86 Ibid.
87 Ibid.
88 Supra note 68 at 540-546.
89 The Adoption Bill, 1972, an enabling law, had to be abandoned because of opposition by the minorities.
90 The Hindu Marriage Act, 1955; the Hindu Succession Act, 1956; the Hindu Minority and Guardianship Act, 1956; and Hindu Adoptions and Maintenance Act, 1956.
in India. The directive lies down that the State shall endeavour to promote international peace and security, to maintain just and honorable relations and to foster respect for international law and treaties and to encourage settlement of international disputes by arbitration. Article 253\(^91\) of the Constitution empowers Parliament to enact legislation implementing treaty obligations. In America treaties by themselves become part of the law of the land, but not such in India. Thus, in *Nanka v. Government of Rajasthan*\(^92\) it was held that an extraditing treaty between the Maharaja of Indian State and British Government not incorporated in the Municipal law of the State is not binding on the subject. It follows that international law is not part of the law of the land as in America unless the Parliament adopts it by enacting legislation for implementing any such treaty, agreement or convention.

It is submitted that inter-dependence of world order and social and economic progress led the framer of the Constitution to include this provision in the Directive Principles of State Policy. Hence, the provision of Article 51 indicates what should be the policy of India in the international sphere.\(^93\)

**(g) Miscellaneous Directives**

Article 50 enjoins that the judiciary shall be separated from the executive. The separation of judicial and executive functions is of prime importance to uphold the dignity and prestige of the judiciary and to remove all semblance of the executive influence.\(^94\) In *Chander Mohan v. State of Uttar Pradesh*\(^95\), the Supreme Court emphasized the role of the judiciary as an independent organ of Government in the scheme of separation of powers. The Court was of the opinion that though the doctrine of separation of the power is not envisaged in the Constitution, there is a clear provision for

---

\(^91\) Article 253 of Indian Constitution reads: Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body. Also see Entry 14, List I, *the Constitution of India*.

\(^92\) AIR 1951 Raj 153.


\(^95\) AIR 1966 SC 1987.
the independence of the judiciary in Article 50. To a great extent the directive in question has been implemented.96

Article 49 provides for the protection of monuments and places and objects of national importance. The directive here make a departure from material, health or moral objections and taken the new field of culture and aesthetics. Education, economic welfare and health cannot be complete without a development of the nation in matters of art or history. Although the legislation enacted by the Parliament in furtherance of the above directive empowers the State with powers to make this effective but monuments and national objects of historic and religious interest are still mutilated and removed mainly for sale or export. What is needed is effective implementing machinery.

3.3 COMMENTS ON THE CLASSIFICATIONS

The various classifications advocated by the renowned Constitutional pandits are merely attempts to put new wine in old bottles. It is respectfully submitted that none of the scholars has been able to present purely a logical, consistent and coherent classification of these directives. Professor G.S. Sharma’s value based classification though appears to be quite attractive but is not complete in it. There is considerable overlapping in his classification. Moreover, his classification does not make any reference to some of the directives more especially relating to international policy of the country. Similarly, Prof. Baxi though has done a lot of research on Part IV of the Constitution but has been most injudicious to these provisions. He has opened a new debate on the fundamentalness of these directives. Perhaps, he could not properly appreciate the mandate of Article 37 of the Constitution which is the mirror through which we can see the provisions contained in Part IV of the Constitution. Though, Baxi pleads for elimination of some of the directives from the Constitutional text but he has not been able to point out as to which are those directives which require addition to this Part of the Constitution. However, P.B. Gajendragadkar has to some extent succeeded in

96 The State of Andhra Pradesh, Assam, Delhi, Gujarat, Haryana, Himachal Pradesh, Maharashtra, Orissa, Punjab, Rajasthan, Tamil Nadu and West Bengal have completed the process of separating the judiciary from the Executive. See Y.D. Phadke and R. Srinivasan, The Constitution of India 75 (Himalaya Publishing House, Bombay, 2nd edn., 1979).
presenting these directives in somewhat a logical manner. The classification of directives as made by Basu appears to be more scientific but overlapping exposition of the Directive Principles. However, he succeeds to some extent to categorize the directives into different and unique way from above three learned authors. The classification made by Dr. Ranbir Singh and Dr. A. Lakshminath appears comprehensively to comprising of all most directives to some extent yet cannot said to be complete classification of Directive Principles. Dr. Pandey has made good effort to differentiate the directive into three broad categories by dividing them in forms of different charters. But he failed to classify the principles in proper classification systematically. In last, but not least, Prof Diwan has complete approach to Part IV of the Constitution of India. He made an exhaustive and universally accepted classification of the Directive Principles in its proper prospective. He dynamically classified the directives and refrained from making any rigid classification and studied them in an atmosphere of openness.

The whole scheme of Directive Principles of State Policy as projected in Part IV of the Indian Constitution indicate that the leaders of the freedom movement wanted not only political independence but the economic and social regeneration of the country for providing maximum socio-economic justice to her people. They hoped for a maximization of the economic dimensions of justice, for making the rural communities to be self governing, for the abolition of untouchability, for raising the living standards of the people and for promoting the cause of international amity. The Directive Principles reiterate them and sum up succinctly the political philosophy of the nationalist movement. They have sought to reconcile the liberties of the individual with the public good, reducing the rights of the few for the welfare of the many. In a sense, Part IV provides an answer to the question as to what is the basic philosophy of the Constitution of India towards socio-economic justice for the society at large. To put it in the words of Gajendragadkar

The ultimate object of the Directive Principles is to liberate the Indian masses in a positive sense; to free them from the passivity endangered by centuries of

---

97 Supra note 47 at 21-22.
coercion by society and by nature and by ignorance, and from the abject conditions that had prevented them from fulfilling their best-selves.

This shows that the directives have been incorporated in the Constitution to promote welfare of the common man and to bring about radical socio-economic changes in the structure of our society so that the country’s all round advancement could be accelerated. These directives are the embodiment of the ideals and aspirations of the people of India and constitute the goal towards which the people expect the State to march. In short, they are constant reminders to the Government for taking all possible steps for the socio-economic transformation of the country.

3.4 RELATIONSHIP BETWEEN DIRECTIVE PRINCIPLES OF STATE POLICY AND FUNDAMENTAL RIGHTS: JUDICIAL APPROACH

The Preamble to the Constitution of India records the solemn resolve of the Indian People to establish a “socialist”98 society based on socio-economic justice. In attaining this ideal of socio-economic justice, India is committed to the democratic way of life, and so the first declaration made by the Constitution is that India is a Sovereign, Socialist, Secular, Democratic, Republic. Complete political freedom is emphasized by the word “Sovereign” and the adoption of the democratic way of life is emphasized by the words “Sovereign, Socialist, Secular, Democratic, Republic”. After referring to India as a Sovereign, Socialist, Secular, Democratic, Republic, the Constitution in its Preamble, has further declared its resolve to secure certain basic objectives to all its citizens, and amongst these objectives pride of place is given to social, economic and political justice. In other words, the Constitution emphatically declares that the socialist democratic republic99 of India shall be a welfare State100 committed to the pursuit of the ideal of socio-economic justice. Socio-economic justice, however, has to be attained in a

98 The word socialist was not there in the Preamble at the time of adoption of Constitution of India on 26 November, 1949, but it was added by the 42nd Constitutional Amendment in 1976. As being a socialist State, the Government is required to take steps to ensure that the minimum facilities of life are provided to every person, and there are equalities of income and material resources as far as democratically possible. A socialist State strives to achieve many ideals that are contained in Part IV of the Constitution.
99 The principal aim of a socialist State is to eliminate inequality in income and status, and standard of life. The basic framework of socialism is to provide a decent standard of life to the working people and especially provide security from cradle to grave. See D S Nakara v. Union of India AIR 1983 SC 130.
100 P.K.Tripathi, supra note 40.
democratic way by the rule of law.

Today, democracy is a kind of society, more a way of life and not merely a mechanical device of capturing power and running the Government. The egalitarian principle of democracy requires not only one man one vote, but also the equal and effective right of each and every man to live full human life, to develop his personality in accordance with the tenets of freedom, equality and justice. This message has been translated into several Articles, dealing with its different facets in Part III (Article 12 to 35) and Part IV (Article 36 to 51) of the Constitution. Part III deals with the Fundamental Rights and Part IV deals with the Directive Principles of State Policy. Both aim at the establishment of an egalitarian social order and give sustenance to the rule of law. They aim at the betterment of the individual as an integrated component of the society. They exhort the State to take positive action by protecting the minimum of the individual’s right and by reducing the number of those whose share of utilities of life fall below the minimum level. They aim at the betterment of the weaker sections of the society ensuring human rights to the lowliest and the lost living in the low visible areas of human life. In fact, these two chapters read with the Preamble of the Constitution summarize the legitimate aspirations, lofty ideals and objectives of the people of the country. But what has happened subsequently is obvious. An impression has been created that there is conflict between the Fundamental Rights and the Directive Principles and that two cannot operate in harmony with each other. There is a school of thought who propounded the view that Fundamental Rights being sacrosanct and inviolable if their discipline is withdrawn, then it will have adverse effects on the body politic and will tear the country asunder. Because of this view which has found support from the observations made in some judgments of the Courts, the progress towards the implementation of the Directive Principles has somewhat been impeded. It is really unfortunate that we have not been able to resolve this controversy even after a lapse six decades. Here, an attempt is made to explode this thinking and uncover the myth of inferiority being attributed to the Directive Principles.

The status of Directive Principles in the Constitution has been under discussion ever since the Constitution was framed. The main question that was posed was whether
the Fundamental Rights or the Directive Principles should have precedence, in the event of their being a conflict between the two. But the most significant question that comes to the mind is: Why we have reached such a stage? Did the framers of our Constitution anticipate such a state of affairs? Here, it seems that the whole of the trouble has started because of the special status given to property as a Fundamental Right. The matter seems to have been succinctly put by Mr. Justice Despande.101

Perhaps the only ‘means’ contained in Part III which would conflict with the implementation of the ‘end’ contained in Part IV of the Constitution would be an undue emphasis on protection of property and business.

The following discussion would also show as to how the judiciary protected the right to property against legislation which were enacted to implement the socio-economic justice as enshrined in Article 38102 and 39(b) and (c)103 of the Constitution.

In the following pages an attempt would be made to examine the role of the judiciary in relation to the Directive Principles of State Policy with Fundamental Rights. To what extent the judiciary as an instrument of social and economic justice has been influenced by the Directive Principles? Has the judiciary stood in the way of implementation of various socio-economic legislations enacted by the State to effectuate the policies enshrined in the Directive Principles? Has it been able to resolve the so called controversy about the true position and role of the Directive Principles and Fundamental Rights which has arisen since the coming into force of the Constitution? And lastly, to what extent the judiciary has been responsive to the role played by the Directive Principles in implementation of socio-economic justice under the Indian Constitution? Before answering these questions, it would be useful to make a few preliminary

---


102 Article 38 of Indian Constitution commands: (1) 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. (2) The State shall in particular, strive to minimize the inequalities in income, and endeavor to eliminate the inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.

103 The relevant provisions read as follows: Article 39(b) of Indian Constitution: That the ownership and control of the material resources of the community are so distributed as best to subserve the common good; Article 39(c): That the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment.
observations. First, in the Constitutional set up the Articles dealing with Fundamental Rights guaranteed in Part III show the balance which must be held between the interest of the individual and the community, whereas the Directive Principles in Part IV indicate the way in which the State should frame its laws to ensure social and economic justice. Both Parts possess a stature of Constitutional equality. The basic distinction between these two fundamental mandates of the Constitution is that the former are enforceable in the Court of Law,\(^\text{104}\) while the latter are not enforceable in the Court of law.\(^\text{105}\) The fact that one is enforceable and the other is not, does not affect adversely their relative importance. In fact, the directives are not excluded from the cognizance of the Courts of law. They are merely made non-enforceable by a Court of law. The directives being the instructions of the ultimate sovereign, the people of Indian, the judiciary is obliged to make use of them in interpreting legislations. And secondly, since the coming into force of the Constitution, there has been a controversy about the nature of these rights. Judicial corridors were mostly wishful in paying glorious tributes to Fundamental Rights and relegating the Directive Principles to a position of inferiority. This might be because of lack of proper appreciation by the judiciary of their true significance and place they occupy in the Constitution. In the light of these observations an attempt has been made to evaluate the role of Judiciary with regard to the inter-relationship between Part III and Part IV of Constitution.

### 3.4.1 Supremacy of Fundamental Rights over Directive Principles of State Policy

The *State of Madras v. Champakam Dorairajan*\(^\text{106}\) was the first case decided by the Supreme Court in this regard. The facts of the case were as follows: The Government of Madras issued an order known a Communal Government Order under which the seats in the Engineering and Medical Colleges were apportioned on a communal and religious base.\(^\text{107}\) The petitioner, a Brahmin lady contended that the Madras Communal G.O. violated her Fundamental Rights under Articles 15 (1) which prohibits discrimination on

\(^{104}\) Article 32, *the Constitution of India.*

\(^{105}\) Article 37, *the Constitution of India.*

\(^{106}\) AIR 1951 SC 226.

\(^{107}\) For every fourteen seats to be filled up by the Selection Committee, candidates were to be selected on the following lines – Non-Brahmins (Hindus) – 6; Haijans – 2, Backward Hindus – 2, Anglo-Indians and India Christian – 1 ; and Muslime -1.
grounds only of religion, race, caste, sex and place of birth, and Article 29(2) which protects the citizens from denial of admission into any educational institution, maintained by the State or receiving aid out of the State fund, on the grounds only of race, religion, caste and language. As against this, the State of Madras contended that such a discriminatory treatment was justified under Article 46 of Part IV which imposes a duty on the State to promote the educational and economic interests of the weaker sections of the people and, in particular of the Scheduled Caste and Scheduled Tribes. It was also contended that the provisions of Articles 29(2) and 15(1) should be read with Article 46 of the Constitution. The Full Bench of the Madras High Court which heard the case held that Article 46 could not override the provisions contained in Articles 15(1) and 29(2) or justify any law or Act of the State contravening their provisions. 108

The State of Madras brought up the matter in appeal to the Supreme Court and there also reliance was placed on Article 46 in support of the validity of impugned order. The Supreme Court, however, dismissed the appeal on the ground that the order being discriminatory was clearly invalid. Moreover, said order had resulted into denial to certain sections of the citizens, admission to educational institutions maintained by the State on the sole ground of caste. The Court held: 109

The Directive Principles of State Policy, which by Article 37 are expressly made unenforceable by a Court, cannot override the provisions found in Part III, which notwithstanding other provisions, are expressly made enforceable by appropriate writs, orders or directions under Article 32. The Chapter on Fundamental Rights is sacrosanct and not liable to be abridged by any Legislative or Executive act or order, except to the extent provided in the appropriate Article in Part III. The Directive Principles of State Policy have to conform to and run as subsidiary to the Chapter on Fundamental Rights.

108 Champakam Dorairajan v. State of Madras, AIR 1951 Mad. 120. Justifying the opinion of the Court, Rajamanner, and C.J. observed that though the State was at liberty to achieve the objective enshrined in Article 46 but the action of the State should not contravene or infringe any provision of the Constitution including the Fundamental Rights, Ibid.
109 Ibid.
This view is based on the idea that Fundamental Rights have been expressly made enforceable by the Court, whereas the Directive Principles have been explicitly made unenforceable by any Court. The Supreme Court ignored the fact that the framers of the Constitution made the Directive Principles unenforceable to discourage people from going to the Courts to compel the State to implement them immediately. But this did not affect their relative place in the Constitutional scheme. The Constitution nowhere states that the Directive Principles shall be subsidiary to Fundamental Rights. On the contrary, Part III dealing with Fundamental Rights and Part IV dealing with Directive Principles are to be given equal position while making Constitutional interpretation. Further, nowhere in the Constitution it has been laid down that the Courts could give more weight to Part III (which embodies the existing social values) than to Part IV (which provides aspirations of the people). Aspirations of the people not only represent a goal to be(112,466),(157,485) reached but also signify the intention of the people to march from “is” to “ought”, form the “real” to the “ideal”. One of the aspirations is to bring into existence a new social order wherein socio-economic justice is assured to all. This goal of new social order evidently envisages re-making of material conditions and re-casting of socio-economic structure on the lines suggested in Article 39 of the Constitution.110 Commenting upon the judgment Justice Hegde observed:111

One might ask whether it was necessary for a decision in that case to hold that the Directive Principles should run subsidiary to the Fundamental Rights as though there was a conflict between Article 46 and 29(2).

Similarly, Professor G.S. Sharma112 also criticized the opinion of the Court on the ground that the Court adopted a purely logical and technical approach which was remindful of the Waston Heldane Era of the Privy Council divisions with reference to the Canadian Constitution. In the words of Professor P.K. Tripathi,113 this was perhaps “the most damaging opinion” expressed by the Court. The learned Professor described it “a

112 Supra note 35 at 183.
plain and categorical declaration of the superiority of the Fundamental Rights over the Directive Principles.” In his view, “It (was) a declaration of an inherent and uncompromising superiority of one set of provisions over the other.” The Court’s view seems to go against the avowed intention of the framers of the Constitution who visualized a change from “state of serfdom to one of freedom”, which can be accomplished only if the Court accords equal, if not more, importance and weight to Directive Principles.

3.4.2 Doctrine of Harmonious Construction of Fundamental Rights and Directive Principles of State Policy

The judiciary, subsequent to the Champakam Dorairajan case modified its attitude towards the Directive Principles although it always held it subordinate to the Fundamental Rights. There was an increasing recognition of the fact that although directives were non-justiciable in character, the Courts were to recognize their significance because of the simple reason that they formed a vital Part of the Constitutional document. The directives were no longer to be ignored when they came into conflict with Fundamental Rights. In M.H. Quareshi v. State of Bihar, the question related to the validity of enactments of Bihar, Uttar Pradesh and Madhya Pradesh legislatures banning the slaughter of certain animals including cows. These enactments were challenged mainly on the ground that they violated the rights of the petitioners to carry on butcher’s business under Articles 19 (1) (g) which provides freedom to practice any profession, or to carry on any occupation, trade or business and also offended Article

---

114 Ibid.
116 Supra note 108.
dealing with equality and Articles 26\textsuperscript{119} of the Constitution. Here the petitioners who were Muslims by religion were engaged in the butcher’s trade and its subsidiary undertakings. The State argued that the impugned Acts were passed by it in discharge of its obligation contained in Article 48 which provides that the State shall take steps for preserving and improving the breeds, and prohibiting the slaughter, of cows and calves and other milch and draught cattle. It was further argued that the Directive Principles though not enforceable by any Court were nevertheless fundamental in the governance of the country and the State owed a duty to give effect to them. The laws so enacted were in discharge of the fundamental obligation imposed on the State under Part IV of the Constitution. The Directive Principles were equally fundamental and therefore must prevail.\textsuperscript{120}

The Supreme Court, however, rejected the contention of the State and held that the impugned Acts contravened Articles 13(2) which, \textit{inter alia} provided that the State shall not make any law which takes away or abridges the right conferred by Chapter III of the Constitution which enshrines the Fundamental Rights. The Court reiterated its earlier stand in \textit{Champakam Dorairajan} case\textsuperscript{121} and observed:\textsuperscript{122}

\begin{quote}
The Directive Principles cannot override this restriction imposed on the legislative power of the State. A harmonious interpretation has to be placed upon the Constitution and so interpreted it means that the State should certainly implement the Directive Principles but it must do so in such a way that its laws do not take away or abridges the Fundamental Rights, for otherwise the protecting provisions of Chapter III will be ‘a mere rope of sand’.

In this context it is submitted that though the decision reflects a change in attitude of the Courts towards the Directive Principles but its view that these directives cannot override the categorical restriction imposed by Article 13(2) shows that they must remain
\end{quote}

\textsuperscript{119} The relevant provision reads: … all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion.

\textsuperscript{120} \textit{M.H. Qureshi, supra} note 117 at 739.

\textsuperscript{121} \textit{Supra} note 108.

\textsuperscript{122} \textit{Supra} note 120.
subservient to Fundamental Rights as envisaged by the Supreme Court in *Champakam Dorairajan* case\(^{123}\).

The Court, however, introduced the doctrine of harmonious interpretation or construction as a new technique of interpretation in this field. But it has defined the doctrine in such a way as to mean that the State must implement the Directive Principles in such a way that its law do not take away or abridge Fundamental Rights. This definition seems to lead nowhere, for there can hardly be any scope for the Court to apply the doctrine of harmonious construction if the laws made by the State in pursuance of the Directive Principles do not conflict with Fundamental Rights. In fact, every legislation which does not take away or abridge Fundamental Rights is valid not because it is in consonance with a Directive Principle but in spite of it. Therefore, so long as a legislation, whether enacted in pursuance of a Directive Principle or not, is not in conflict with Fundamental Rights, or so long as the individual affected by such legislation in some way or other, do not choose to challenge its validity, the question of interpretation does not arise at all. But most important question in this regard is what role the doctrine of harmonious construction can play in a situation where in a legislation enacted in pursuance of a Directive Principle conflicts with a Fundamental Right or is alleged to have infringed the Fundamental Right of an individual? The doctrine as enunciated herein does not seem to be of any help in solving the problem.

The Supreme Court *In Re Kerala Education Bill*\(^ {124}\) was called upon to give its opinion, *inter alia*, on the relationship between Fundamental Rights and Directive Principles. One of the issues before the Court related to the validity of clause 20 of the Kerala Education Bill, which prohibited the Government and private schools from collecting any tuition fee from the students in primary classes within the State.\(^ {125}\) Clause 3(5) of the Bill read with Clause 20 made the provisions of the Bill applicable to new schools that may be established after the coming into force of the Act and provided that any such new school which does not comply with the provisions of the Act shall not be

\(^{123}\) *Supra* note 108.

\(^{124}\) (1959) SCR 995; *M.H.Qureshi, supra* note 117 at 956.

\(^{125}\) Clause 20 of the Bill provides: No fee shall be payable by any pupil for any tuition in the primary classes in any Government of private school.
eligible for recognition by the Government.\textsuperscript{126}

It was contended before the Supreme Court that Clause 20 of the Bill violated the right of the minorities to establish and administer educational institutions of their choice guaranteed to them by Article 30 of the Constitution.\textsuperscript{127} The State, on the other hand, asserted that the Bill sought to implement the Directive Principle contained in Articles 45, which required the State to provide for free and compulsory education for all children below the age of fourteen years.\textsuperscript{128} Thus, the Supreme Court was faced with the problems of resolving the alleged conflict between the impugned provisions of the Bill made in pursuance of a Directive Principle and the Fundamental Right of the minorities guaranteed under Article 30(1) of the Constitution. After having gone through the provisions of the Bill, the Supreme Court said:\textsuperscript{129}

Although this legislation may have been undertaken by the State of Kerala in discharge of the obligation imposed on it by the Directive Principles enshrined in Part IV of the Constitution it must, nevertheless, subserve and not override the Fundamental Rights conferred by the provisions of the Articles contained in Part III of the Constitution and referred to above… Nevertheless, in determining the scope and ambit of Fundamental Rights relied on by or on behalf of any person or body the Court may not entirely ignore these Directive Principles of State Policy laid down in Part IV of the Constitution but should adopt the principle of harmonious construction and should attempt to give effect to both as much as possible. Keeping in view the principle of construction referred to above, we now proceed to examine the provisions of the said Bill in order to get a clear conspectus of it.

\begin{footnotesize}
\begin{enumerate}
\item Clause 3(5) of the Bill provides: After the commencement of this Act, the establishment of a new school or the opening of a higher class in any private school shall be subject to the provisions of this Act and the rules made there under and any school or higher class established or opened otherwise than in accordance with such provisions shall not be entitled to be recognized by the Government.
\item Article 30 of Indian Constitution provides: (1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice. (2) The State shall not in granting aid to educational institution, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.
\item Article 45 of Indian Constitution reads: The State shall endeavor 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.
\item In Re Kerela Education Bill, supra note 124 at 1022; M.H.Qureshi, supra note 117 at 956, 966-67.
\end{enumerate}
\end{footnotesize}
Having thus laid down the principle of construction, the Court examined the impugned provisions of the Bill and their impact on the right of the minorities guaranteed under Article 30 of the Constitution. After making a thorough analysis of the provision under consideration, the Court opined that if the Bill becomes law, all the schools would have to forgo the fruitful source of income, namely, the fees collected from students attending primary classes. There was, however, no provision for counterbalancing the loss of fees which would be brought about by Clause 20 when it came into force. Therefore, the Court opined that the imposition of such restriction against the collection of fees from any pupil in the primary classes as a condition for recognition will in effect make it impossible for an educational institution established by a minority community being carried.  

The argument of the State that impugned provision implemented the Directive Principle contained in Article 45 of the Constitution was brushed aside by the Court when it said that the State could discharge that solemn obligation through Government and aided schools. Articles 45, the Court said, could not be implemented at the expense of the minority communities. The only way to implement the directive was to make good the loss suffered by minority educational institutions as a result of not charging the fees. The Court concluded that Clause 20 in so far as it affected educational institutions established and administered by minority communities was violative of Article 30(1) of the Constitution. 

This pronouncement does not strike any new ground. It merely reiterates the earlier view that the Directive Principles must “subserve and not override the Fundamental Rights.” The application of the doctrine of harmonious constructions does not seem to be different from the one applied in Quareshi’s case wherein the doctrine has been constructed to permit the State to implement Directive Principles in such a way that its laws do not take away or abridge the Fundamental Rights. In fact, the same result could have been achieved by following the rigid and narrow construction rule adopted in

---

130 In Re Kerela Education Bill, id. at 1069.
131 Id. at 1070.
132 Id. at 1071.
133 M.H. Qureshi, supra note 117.
Champakam Dorairajan case\textsuperscript{134}. Besides, the observations of the Court that Articles 45 does not require that obligation to be discharged at the expense of minority communities if read with the concluding observations in the case, can lead the absurd results. First, the directive embodied in Article 45 can never be implemented because those who attend educational institutions established and maintained by the minority communities, will have to pay fees charged by them. Secondly, the directives shall not be implemented if their implementation affects the Fundamental Right. If this proposition is accepted, (which the Court has made us to accept) it will become impossible for the State to carry into effect the various socio-economic policies laid down in Part IV of the Constitution. For example, Article 39(b) and (c) mandates the State to direct its policy towards securing distributions of ownership and control of the material resources of the community in such a way as to subserve the common good and securing an economic system, the operation of which does not result in the concentration of wealth and means of production to the common detriment. Now, if the State wishes to implement the above directive, it will definitely affect the right to property of a few individuals in whose hands material resources of the community, wealth and means of production are concentrated. If we accept the Court’s approach, this would mean that the directives are to be implemented without affecting the Fundamental Rights or without affecting the existing property rights of the individuals. This virtually amounts to laying down a rule which not only makes the implementation of the socio-economic policies impossible but also perpetuates the property rights of a few individuals in whose hands the wealth of the community and means of production have already concentrated.\textsuperscript{135} Thus, the reasoning advanced by the Court in the name of the doctrine of harmonious construction is unconvincing and seeks to prevent change in the socio-economic structure of the society on the lines suggested in Part IV of the Constitution. The role played by the Directive Principles in the implementation of socio-economic justice to the timing millions of India has not been properly appreciated by the judiciary which still seems inclined to give more importance to the Fundamental Rights.

\textsuperscript{134} Supra note 108.
\textsuperscript{135} See Chapter 4.
The Court in *I.C. Golak Nath v. State of Punjab*\(^{136}\) also made a reference to the Directive Principles of State Policy and observed that the Fundamental Rights and the Directive Principles formed an integrated scheme and a self-contained code and were elastic enough to respond to the changing needs of the society.\(^{137}\) It was further observed that these directives could reasonably be enforced without their violating the Fundamental Rights.\(^{138}\) But the Court was reluctant to give a position of parity to the Directive Principles by making it clear that the Fundamental Rights occupied a transcendental position in the Constitutional scheme. Thus, the Court again failed to appreciate properly the significance of Directive Principles. It is worthwhile to note that in *Sajjan Singh* case,\(^{139}\) Hidayatulls, J. (as he then was) in his dissenting opinion had aptly said that “the rights of society are made permanent and they are placed above those of the individual”.

In *R.C. Cooper v. Union of India*,\(^{140}\) popularly known as the *Bank Nationalization* case\(^{141}\), the Supreme Court attached too much sanctity to Fundamental Rights. In *Madhav Rao Scindhia v. Union of India*\(^{142}\) popularly known as *Privy Purses* case, the Supreme

---

\(^{136}\) AIR 1967 SC 1643.

\(^{137}\) *Id.* at 1656.

\(^{138}\) This reasoning of the Court gives impression that any piece of modern legislation with the slightest claim to advance socio-economic justice can be interpreted in the light of Directive Principles. This also envisages that no implementation of Part IV could “take away or abridge” Part III. Thus, it is submitted seems to be unacceptable because in our society there are people who possess much more than that of their requirements and there are also people who do not even have bread to eat. Now if the State enacts legislation to provide socio-economic justice to the have-nots, certainly those who have much more than their needs will have to part with the excess. If they are prepared to do so, we see no conflict but the moment they resist their claim the practical difficulty of interpreting these two claims in the light of the so called “integrated scheme” arises. In the list of these views, the opinion of Krishna Shetty that “the rule of construction (adopted in Golak Nath) is in consonance with the intentions of the framers of the Constitution”, is clearly wrong. *Supra* note 110 at 104.

\(^{139}\) *Sajjan Singh v. State of Rajasthan*, AIR 1965 SC 862.

\(^{140}\) AIR 1970 SC 564.

\(^{141}\) In this case the Court struck down the Banking Companies (Acquisition and Transfer of Undertaken) Act, 1961 as violative of Article 14, 19 and 31. It held that the Act which provided for nationalization of fourteen named scheduled banks did not at all provide for just compensation as guaranteed under the Constitution. Another ruling of the Supreme Court in the same case is that Article 19(1) Sub-Clause (f) and Article 31(2) is not mutually exclusive. It means that the reasonableness of a law passed under the latter provision can be judged by the Courts. See *id.* at 592-93, 596-97.

\(^{142}\) AIR 1971 SC 53.
Court again reiterated its opinion expressed in *R.C. Cooper’s* case.\(^{143}\) The Court observed that the Privy Purses were property and that the rules could not be deprived of them without just compensation. It further held that the rights to Privy Purses and to recognition were justiciable rights.\(^{144}\)

Thus, the whole gamut of national policy of socialization to avoid the concentration of wealth to the common detriment\(^ {145}\) was frustrated as a result of conflicting judicial pronouncements. In other words, from 1967-1971 the relationship between the Fundamental Rights and social values of Part IV become turbulent. It is essential to highlight that the Court adopted a highly legalistic and technical approach towards the Constitutional provisions and the domination of the individual rights. The judicial attitude favored the Fundamental Rights and failed to give due importance to Directive Principles.\(^ {146}\) The Supreme Court interpreted property rights in such a way that it virtually defeated the provisions contained in Article 39(b) and (c). It also overlooked the fact that implementation of progressive economics and social policies as enshrined in Part IV of the Constitution is a necessary step in the direction of establishing a welfare State.

### 3.4.3 Supremacy of Directive Principles of State Policy over Fundamental Rights

The Twenty-Fifth Amendment in the Constitution took place in the year 1971 and a new Article 31C was incorporated. Article 31C provides that notwithstanding anything contained in Article 13, no law giving effect to the policy of the State towards securing the principles specified in clause (b) and (c) of Article 39 shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by Article 14, Article 19 or Article 31, and no law containing a declaration that it is for giving effect to such policy shall be called in question in any Court on the ground

\(^{143}\) *Supra* note 140. The Privy Purses were held property and the rules could not be deprived of them without just compensation. The Court further held that the rights to Privy Purses and to recognition were justiciable rights.

\(^{144}\) *Ibid.*

\(^{145}\) Article 39, *the Constitution of India*.

\(^{146}\) Lamenting on the role of judiciary towards Part IV of the Constitution, Professor G.S. Sharma observed: We suggest that this aspect of judicial behavior should be taken up for scientific study, for a process can be better utilized when it is properly understood. *Supra note 35* at 118.
that it does not give effect to such policy, provided that where such law is made by the legislature of State, the provisions of this Article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent.

Later, the Twenty-Fourth, Twenty-Fifth, Twenty-Sixth and Twenty-Ninth Amendments were challenged as unconstitutional in Kesavananda Bharti v. State of Kerala, which was decided by the full Bench of the Supreme Court in 1973. The case is commonly known as Fundamental Rights case and has a direct bearing on the attitude of the judiciary towards the directives. In Kesavananda Bharati case, the Supreme Court observed that the Fundamental Rights and Directive Principles constitute the conscience of the Constitution. There is no antithesis between the both, and one supplements the other. Mathew, J. went further in attributing that the Directive Principles, in this case, a significant place in the Constitutional scheme. His Lordship observed:

In building up a just and social order it is sometimes imperative that the Fundamental Rights should be subordinated to Directive Principles…. Economic goals have uncontestable claim for priority over ideological ones on the ground that excellence comes only after existence. It is only if men exist that there can be Fundamental Rights.

Seervai considers this conclusion as correct because express provisions giving primacy to a law implementing two of the six directives in Articles 39 over the Fundamental Rights conferred by Articles 14, 19 and 31 was necessary. It seems that the sole objective of the introduction of Article 31 C is to ameliorate and improve the lot of the common man and to bring about socio-economic transformation based on principles of social justice.

The Constitutional Bench of Supreme Court, consisting of thirteen judges also dealt with the Constitutional importance of Directive Principles and Fundamental Rights and their inter-relation. It is, therefore, pertinent to quote the relevant portions of various

---

147 This Amendment added the Kerala Land Reforms (Amendment) Act, 1971 (Kerala Act 25 of 1971) to the Ninth Schedule of the Constitution.
149 Ibid.
150 Id. at 1966.
judgments which would help to highlight the real controversy between Part III and Part IV of the Constitution and its judicial settlement. Hedge and Mukherjee JJ said:  

Part IV of the Constitution is designed to bring about the social and economic revolution that remained to be fulfilled after independence. The aim of the Constitution is not to guarantee certain liberties to only a few of the citizens but for all. The Constitution visualizes our society as a whole and contemplates that every member of the society should participate in the freedoms guaranteed. To ignore Part IV is to ignore the substance provided for in the Constitution, the hopes held out to the nation and the very ideals on which our Constitution is built. Without faithfully implementing the Directive Principles, it is not possible to achieve the welfare State contemplated by the Constitution. A society like ours steeped in poverty and ignorance cannot realize the benefit of human rights without satisfying the minimum economic needs of every citizen of this country. Any Government which fails to fulfill the pledge taken under the Constitution cannot be said to have been faithful to the Constitution and to its commitments.

Their Lordship further observed:  

Our founding-fathers were satisfied that there is no anti-thesis between the Fundamental Rights and the Directive Principles. One supplements the other. The Directives lay down the end to be achieved and Part III prescribes the means through which the goal is to be reached. Our Constitution does not subscribe to the theory that end justifies the means adopted.

Emphasizing the duty of the Court to interpret the Constitution in the light of the Directive Principles, Jagmohan Reddy, J. said:  

There can be no doubt that the object of the Fundamental Rights is to

---

152 Id. at 1641.
153 Ibid.
154 Id. at 1755.
ensure the ideal of political democracy and prevent authoritarian rule, while the object 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. What is implicit in the Constitution is that this is a duty on the Courts to interpret the Constitution and the laws to further the Directive Principles which under Article 37 are fundamental in the governance of the country.

Expressing his views on the nature and scope of Part III and Part IV of the Constitution vis-à-vis the role of judiciary, Mathew, J. observed:¹⁵⁵

The Constitution was enacted by the people to secure justice, political, social and economic. Therefore, the moral rights in Part IV of the Constitution are equally an essential features of it, the only difference being that the moral rights embodied in Part IV are not specifically enforceable as against the State by a citizen in a Court of law in case the State fails to implement its duty but, nevertheless, they are fundamental in the governance of the country and all the organs of the State, including the judiciary, are bound to enforce these directives. The Fundamental Rights themselves have no fixed content; most of them are mere empty vessels into which each generation must pour its contents in the light of its experience. Restrictions, abridgements, curtailments and even abrogation of these rights in circumstances not visualized by the Constitution-makers might become necessary, their claim to supremacy or priority is liable to be over-born at particular stages in the history of the nation by the moral claims embodied in Part IV…. The significant thing to note about Part IV is that, although its provisions are expressly made unenforceable, that does not affect its fundamental character … Judicial process is also State action under Article 37 and the judiciary is bound to apply the Directive Principles in making its judgment.

¹⁵⁵ Id. at 1952 (Emphasis supplied).
Beg, J. also highlighted the importance of Fundamental Rights and Directive Principles. His Lordship observed:\textsuperscript{156}

It appears to me that it would be more correct to describe the Directive Principles as laying down the path which was to be pursued by our Parliament and State legislatures in moving towards the objectives contained in the Preamble. Indeed from the point of view of the Preamble, both the Fundamental Rights and Directive Principles are means of attaining the objective which were meant to be served body by the Fundamental Rights and Directive Principles.

The learned judge further clarified that:\textsuperscript{157}

Fundamental Rights (were) … like the banks of a flowing river, which could be mended or amended by displacements, replacements or curtailments or enlargements of any part according to the needs of those who had to use the path.

Chandrachud, J. (as he then was) also stressed the fundamental character of Directive Principles when he observed:\textsuperscript{158}

I have stated in the earlier part of my judgment that the Constitution accords a place of pride to Fundamental Rights and a place of permanence to the Directive Principles. I stand by what I have said. The Preamble of our Constitution is to constitute India into a sovereign democratic republic and to secure to ‘all its citizens’, Justice-social, Economic and Political liberty and equality. Fundamental Rights which are conferred and guaranteed by Part III of the Constitution undoubtedly constitute the ark of the Constitution and without them a man’s reach will not exceed his grasp.

But it cannot be over-stressed that the Directive Principles of State Policy are fundamental in the governance of the country. What is fundamental in the governance of the country cannot surely be less significant than what

\textsuperscript{156} Id. at 1970.
\textsuperscript{157} Ibid.
\textsuperscript{158} Supra note 148 at 2050.
is fundamental in the life of an individual …. As I look at the provisions of Parts III and IV, I feel no doubt that the basic object of conferring freedom on individuals is the ultimate achievement of the ideals set out in Part IV …. Therefore, Article 37 enjoins the State to supply the Directive Principles in making laws. The freedom of a few has then to be bridged in order to ensure the freedom of all. It is in this sense that Parts III and IV, as said by Granville Austin,\(^{159}\) together constitute ‘the conscience of the Constitution’. The nation stands today at the cross-roads of history and exchanging the time honored place of the phrase, may I say that the Directive Principles of State Policy should not be permitted to become a ‘mere rope of sand.’ If the State fails to create conditions in which the fundamental freedoms could be enjoyed by all, the freedom of the few will be at the mercy of the many and then all freedoms will vanish. In order, therefore, to preserve their freedoms, the privileged few must part with a portion of it.

It may further be pointed out that though there seems to be a marked change in the judicial attitude towards the directives enshrined in Part IV of the Constitution but neither majority nor the minority opinions of the Court declared that the Directive Principles were superior or subservient to the Fundamental Rights. What the Court has said is this that in case of conflict between the two, the Court’s interpretation should be such as favours both Parts III and IV and both should be made effective. The justifiability of Part III has not been changed and the legal position remains the same. Though, Mathew J. was clear in his mind that with the passage of time Fundamental Rights may have to be subordinated to the Directive Principles,\(^{160}\) yet the majority appeared to be reluctant to


\(^{160}\) Mathew, J. expressed the above view while he was drawing his conclusion about Article 31C. He observed: If Parliament, in its capacity as amending today decides to amend the Constitution in such as way as to take away or abridge a Fundamental Right to give priority value to the moral claims embodied in Part IV of the Constitution, the Court cannot adjudge the Constitutional Amendment as bad for the reason that what was intended to be subsidiary by the Constitution makers has been made dominant. *Supra* note 148 at 1966. These observations have also been supported by H.M. Seervai. See, *supra* note 151 at 1035. Beg J. also felt that judges were duty bound to give prominence to the Directive Principles. The learned judge relied on two judgments of the Allahabad High Court, *viz.*, *Motilal v. State of Uttar*
endorse this view. The Court, in *Narendra Prasad v. State of Gujarat* observed: 161

A particular Fundamental Right cannot exist in isolation in a water-tight compartment; one Fundamental Right of a person may have to co-exist in harmony with exercise of another Fundamental Right by others and also with reasonable and valid exercise of power by the State in the light of the Directive Principles in the interest of social welfare as a whole. The Court’s duty is to strike a balance between competing claims of different interests.

It, however, tilted the balance in favour of Directive Principles in *Mumbai Kamgar Sabha v. Abdulbhai Faisula Bhai*.162 Recognizing the value of the social philosophy of Part IV, the Court observed: 163

Statutory interpretation, in the creative Indian context, may look for light of the load-star of Part IV of the Constitution, for example, Article 39(a) and (b) and Article 43, where two judicial choices are available, the construction in conformity with the social philosophy of Part IV has preference.

Despite the above judicial trend, the Parliament enacted Forty-Second Amendment which enlarged the scope of Article 31C by applying it to all the Directive Principles contained in Part IV of the Constitution. The Constitution (Forty-Second Amendment) Act, 1976 was based mainly on the recommendations of the Swaran Singh

---

161 AIR 1974 SC 2098.
162 AIR 1976 SC 1455.
163 Id at 1465. In *State of Kerala v. N.M. Thomas*, AIR 1976 SC 490, Fazar Ali, J. of the Supreme Court observed: The Directive Principles contained in Part IV constitute the stairs to climb the high edifice of a socialistic State and the Fundamental Rights are the means through which one can reach the top of the edifice. *N.M. Thomas*, id. at 546.
Committee. The Amendment made a number of significant changes in Part IV of the Constitution. The most important of them related to the assignment of a supreme position to the Directive Principles over the Fundamental Rights. This was done by amending Article 31C, which in the altered form provides that notwithstanding anything contained in Article 13, no law giving effect to the policy of the State towards securing all or any of the principles laid down in Part IV shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by Article 14, Article 19 or Article 31.

The whole object of subordinating Fundamental Rights to Directive Principles was to secure socio-economic justice which is the high ideal and aspiration contained in the Preamble. The Amendment was identical to the one introduced by B.N.Rau in the Constituent Assembly which gave primacy to laws implementing Directive Principles over all Fundamental Rights. Rau’s Amendment, however, could not find its place in the body of Constitution because the framers thought that on a fair reading of the entire Constitution it was abundantly clear that the rights conferred in Part III must be consonant with the Directive Principles. This Amendment revived the position stated by Rau in the Assembly as well as by Jawahar Lal Nehru when he introduced the Fourth Amendment to the Constitution in Parliament. He categorically stated that in case of conflict between Fundamental Rights and the Directive Principles the latter must prevail. Therefore, the Amendment set at rest the long-long agitated problem of relationship between the Directive Principles and Fundamental Rights and made it clear that times have changed in the world, conditions have altered in India, the residence of power having shifted from Raj to Republic. In other words, the social philosophy

---

164 The Committee was constituted in consequence of the Resolution passed by the Congress at its session held at Kama Gata Maru Nagar in 1975. The Committee which functioned under the Chairmanship of Sardar Swaran Singh undertook a comprehensive review of the working of the Constitution and to provide solution to the problems inherited from the past, those inherited in the present and those likely to arise in future. See R.C.S. Sarkar, “Some Aspects of Constitutional Reforms: Judicial Review and Directive Principles” 10 JCPS 347 (1976).

165 The words and figures “Article 14, Article 19 or Article 31” have been substituted by the words and figures” Article 14 or Article 19” by the Constitution (Forty-Fourth Amendment) Act, 1978.

166 Lok Sabha Debates, 14 March 1955.

embodied in Part IV should be taken as a guide in the interpretation of the Constitution. The Forty-Second Amendment also added three more Articles to Part IV of the Constitution. These were: Article 39A, Article 43A and Article 48A. Article 39A obliged the State to secure the operation of a legal system promoting justice on the basis of equal opportunities and in particular to provide free legal aid to ensure that opportunities for securing justice are not denied to any citizen by reason of economic and other disabilities. Articles 43A enjoined the State to take steps to secure the participation of workers in management of undertakings, establishments or other organizations, engaged in any industry. Article 48A obliged the State to protect and improve the environment and safeguard the forest and the wildlife of the country. The inclusion of these directives was a welcome step.

Later, the Constitution (Forty-Fourth Amendment) Act, 1978 inserted Clause (2) Article 38 in Part IV which provides that the State shall, in particular, strive to minimize the inequalities in income, and endeavor to eliminate inequalities in status, facilities and opportunities, not only amongst groups of people residing in different areas or engaged in different vocations. It is essential to highlight here that the Constitution (Forty-Second Amendment), Act, 1976 which established the supremacy of Directive Principles over Fundamental Rights did not tear off fundamental character of property rights. This was, however, done by enacting the Constitution (Forty-fourth Amendment) Act, 1978. The Amendment took away the right to property from the category of Fundamental Rights and made the same a right which can be regulated by ordinary law. A new Article 300A in Part XII of the Constitution has been inserted to provide that no person shall be deprived of his property saved by authority of law. It may be stated that the above Amendment was necessitated because of the fact that the judiciary always accorded a special position to the right to property which resulted in a number of amendments to the Constitution. Therefore, the avowed and declared purpose of the Amendment is to make the right to property to “cease to be a Fundamental Right” and to take away the right to

---

168 The Amendment repealed Article 19(1) (f) which read “to acquire, hold and dispose of property; and Article 31 dealing with compulsory acquisition of property. It also substituted sub-clause (d) and (e) for Sub-Clause (d), (e) and (f) in Article 19(5).
property from the category of Fundamental Right.

In *Minerva Mills Ltd. v. Union of India*, the Supreme Court invalidated the changes made in Article 31C of the Constitution by Forty-Second Amendment projecting the primacy of Directive Principles of State Policy over Fundamental Rights. The Court held (Bhagwati, J. dissenting) that these changes damaged the basic structure of the Constitution, and violated its decision in *Kesavananda Bharti* case. The resulting effect of the Court decision is that the Parliament can frame laws to give effect to the provisions contained in Article 39(b) and (c) irrespective of the fact that they may violate the Fundamental Rights enshrined in Articles 14 and 19. In other words, Article 31C has not been struck down as such, but the 1976 attempt to enlarge its scope has been nullified. To understand fully the socio-legal implications of this leading judicial pronouncement on the socio-economic structure envisaged in Part IV of the Constitution, it would be useful to quote extensively from the Court’s majority and minority opinions.

The majority opinion of the Court was delivered by Chandrachud, C.J. for himself and Gupta, Untawalia and Kailasam, JJ. The main controversy in the case centered round the point whether the Directive Principles of State Policy in Part IV can have primacy over Fundamental Rights conferred by Part III. At the very outset of the judgment Chandrachud, J. expressed his views regarding Directive Principles and Fundamental Rights. His Lordship held:

> To destroy the guarantees given in Part III in order purportedly to achieve the goals of Part IV is plainly to subvert the Constitution by destroying its basic features.

The learned Chief Justice expressed the above view because the thought that the Fundamental Rights occupy a unique place in the lives of civilized societies and have

---

170 The theory of Basic structure was for the first time devised by the Supreme Court in *Kasavananda Bharti* case, *supra* note 148. It was again affirmed by the Court in *Indira Nehru Gandhi v. Raj Narain*, AIR 1975 SC 2299 & reiterated in *Minerva Mills Ltd.*, *ibid*; recently in *J.K. National Panthers Party v. Union of India*, AIR 2011 SC 3.
171 *Supra* note 148.
172 *Minerva Mills Ltd.*, *supra* note 169 at 1806.
been variously described... as ‘transcendental’\textsuperscript{173} ‘inalienable’\textsuperscript{174} and ‘perimodal’\textsuperscript{175}... and constitute the ark of the Constitution.\textsuperscript{176} His Lordship further observed:\textsuperscript{177}

The Indian Constitution is founded on the bedrock of balance between Parts III and IV. To give absolute primacy to one over the other is to disturb the harmony of the Constitution. This harmony and balance between Fundamental Rights and Directive Principles is an essential feature of the basic structure of the Constitution.

Chandrachud, C.J. pointed out that:\textsuperscript{178}

The goals set out in Part IV, are, therefore, to be achieved without the abrogation of the means provided by Part III. It is in this sense that Parts III and IV together constitute the core of our Constitution and combine to form its conscience. Anything that destroys the balance between the two Parts will \textit{ipso facto} destroy, an essential element of the basic structure of our Constitution.

The Chief Justice concluded by saying that the amended Article 31C had disturbed the harmony and balanced between Part III and Part IV, which was an essential feature of the Constitution. In his Lordship’s view the clear intendment of Article 31C was to shut out all judicial review, which was again a basic feature of the Constitution.\textsuperscript{179} However, the judgment of the Court is open to serious objections. Are the Fundamental right eternal or inviolable? How these rights are to be reconciled with the Directive Principles? What is the true content and scope of Article 31C? The answer to some of these questions is found in the dissenting opinion of erudite scholar judge, Bhagwati, J. Hence, it becomes relevant to throw some light on the minority opinion also.

The minority opinion of the Court was delivered by Justice P.N. Bhagwati. Dwelling upon the Fundamental Rights and Directive Principles jurisprudence his

\footnotesize

\textsuperscript{173} \textit{Supra} note 136.
\textsuperscript{175} \textit{A.K.Gopalan v. State of Madras}, AIR 1950 SC 27; \textit{supra} note 106.
\textsuperscript{176} \textit{Minerva Mills Ltd.}, \textit{supra} note 169.
\textsuperscript{177} \textit{Ibid}.
\textsuperscript{178} \textit{Id.} at 1807.
\textsuperscript{179} \textit{Id.} at 1808.
Lordship observed:¹<sup>180</sup> The Fundamental Rights are no doubt important and valuable in a democracy, but there can be no real democracy without social and economic justice to the common man and to create socio-economic conditions, in which there can be social and economic justice to everyone, is the theme of Directive Principles…. The dynamic provisions of Directive Principles fertilize the static provisions of Fundamental Rights …. It will, thus, be seen that the Directive Principles enjoy a very high place in the Constitutional scheme and it is only in frame work of the socio-economic structure envisaged in the Directive Principles that the Fundamental Rights are intended to operate, for, it is only then they can become meaningful and significant for the millions of our poor and deprived people who do not have even the bare necessities of life and who are living below the poverty level.

Describing the Directive Principles as permissible restrictions which could be implemented in the public interest, Bhagwati J. observed:¹<sup>181</sup>

It will, therefore, be seen that if a law is enacted for the purpose of giving effect to a Directive Principle and it imposes a restriction on Fundamental Right, it would be difficult to condemn such restriction as unreasonable or not in public interest. So also where a law is enacted for giving effect to a Directive Principle in furtherance of the goal of socio-economic justice it may conflict with a formalistic and doctrinaire view of equality before the law, but it would almost always conform to the principle of equality before the law in its total magnitude and dimension because the equality clause in the Constitution does not speak of mere formal equality before the law but embodies the concept of real and substantial equality which strikes at inequalities arising on account of vast social and economic differentials and is consequently an essential ingredient of social and

¹<sup>180</sup> Id. at 1847.
¹<sup>181</sup> Id. at 1850.
economic justice.

The learned judge was of the view that greater importance should be given to the Constitutional directives contained in Part IV. He maintained: 182

The two Constitutional obligations, one in regard to Fundamental Rights and the other in regard to Directive Principles, are of equal strength and merit and there is no reason why, in case of conflict, the former should be given precedence over the other.

According to him, the effect of giving greater importance to Fundamental Rights would amount to refusal to give effect to the words’ fundamental in the governance of the country’, and a Constitutional command which has been declared by the Constitution as fundamental, would be rendered non-fundamental. 183

In the present case, the counsel for the petitioners, Mr. Palkhiwala has argued that by reason of amendment of Article 31C, the harmony and balance between Fundamental Rights and Directive Principles is disturbed, because Fundamental Rights which had, prior to the Amendment, supremacy over Directive Principles are now, as a result of the amendment, made subservient to Directive Principles. Rejecting the contention of the learned counsel, Bhagwati, J. pointed out that prior to the amendment of Article 31C Fundamental Rights never enjoyed a higher or superior position in the Constitutional scheme than Directive Principles and there is accordingly no question at all of any subversion of the Constitutional structure by the Amendment. 184

The Constitution-makers, therefore, never contemplated that a conflict would arise between the Constitutional obligation in regard to Fundamental Rights and the Constitutional mandate in regard to Directive Principles. But if a conflict does arise between these two Constitutional mandates of equal fundamental character how is the conflict to be resolved is? The Constitution did not provide any answer because such a problem was never anticipated by the Constitution-makers and this problem has therefore to be solved by the Parliament and some modus operandi had to be evolved in order to

182 Id. at 1851.
183 Ibid.
184 Ibid.
eliminate the possibility of conflict however remote it might be. Quoting extensively from the speech of Jawhar Lal Nehru, delivered in the Lok Sabha at the time of discussion on the Constitution (Fifth Amendment) Bill, 1951, Bhagwati J. observed: 185

Parliament took the view that the Constitutional obligation in regard to Directive Principles should have precedence over the Constitutional obligation in regard to Fundamental Rights in Articles 14 and 19 because Fundamental Rights though precious and valuable for maintaining the democratic way of life, have absolutely no meaning for the poor, downtrodden and economically backward classes of people who unfortunately constitute the bulk of the people of India and the only way in which Fundamental Rights can be made meaningful to them is by implementing Directive Principles, for, the Directive Principles are intended to bring about a socio-economic revolution and to create a new socio-economic order where there will be social and economic justice for all and everyone, not only a fortunate few but the timing millions of India would be able to participate in the fruits of freedom and development and exercise the Fundamental Rights.

Bhagwati, J. pointed out that the amendment in Article 31C far from damaging the basic structure of the Constitution strengthens and reinforces it by giving fundamental importance to the rights of the members of the community as against the rights of a few individuals. 186 The learned judge very correctly held that only a law which had a real and substantial connection with the Directive Principles could obtain the protection of amended Articles 31C. 187 In this context it is stated that the Supreme Court in Minerva Mills’s case 188 seems to have overlooked its primary Constitutional obligation which it owes towards the common man. It is a matter of great concern that the learned Chief Justice favoured the Directive Principles in Kesavananda Bharti’s case 189 but in Minerva

185 Id. at 1851-52.
186 Id. at 1853.
187 Id. at 1855-56.
188 Minerva Mills Ltd., supra note 169.
189 Supra note 148.
Mills’s case\textsuperscript{190} he switched over to the Fundamental Rights. It seems that his lordship belied the hopes of millions of destitute who are still to come up to level of the privileged class. It is true that the steady erosion of the Fundamental Rights is a question of concern, but non-implementation of the Directive Principles in their true letter and spirit is also disturbing.\textsuperscript{191}

Thus, the majority opinion sounds hollow and unconvincing, whereas the minority opinion appears to be more sound, consistent, coherent and suits to the socio-economic spirits of our Constitution. It is high time that the judiciary adopts a balanced approach at this juncture. The judiciary will be failing in discharging its Constitutional obligation if it fails to attune itself to the spirit and soul of the Constitution. The soul and spirit of our Constitution is Justice – social, political and economic, to all its citizens.\textsuperscript{192}

\textbf{3.4.4 Inter-Dependence of Fundamental Rights and Directive Principles of State Policy}

The Supreme Court in some cases has shown a positive and marked tendency to take the principle of the interdependence of human rights seriously and interpreted the entrenched Constitutional guarantees of Fundamental Rights in the light of Directive Principles.\textsuperscript{193} The Court’s Path-breaking decision in \textit{Manaka Gandhi v. Union of India}\textsuperscript{194} was the critical moment in this transformation. Thenceforth, the Court resuscitated judicial activism, mainly to render Constitutional liberties a living reality for the most vulnerable and powerless sections of Indian Society. In this case the Court held that the Fundamental Rights are not island but have to be read along with the other rights. Hence,

\textsuperscript{190} \textit{Supra} note 188.
\textsuperscript{191} It is interesting to note that the Supreme Court in \textit{Laxmi Khandaari v. State of Uttar Pradesh}, AIR 1981 SC 873 has read the Directive Principles as permissible restrictions on Fundamental Rights. See also \textit{Randhir Singh v. Union of India} AIR 1982 SC 879, wherein the Court construed Articles 14 and 16 of the Constitution in the light of the Preamble and Article 39(d) which provides for 'equal pay for equal work'. The Court pointed out that the principle of "equal pay for equal work" though not expressly declared to be a Fundamental Right, but is certainly a Constitutional goal which should guide Constitutional interpretation. See \textit{Laxmi Khandaari}, id. at 881.
\textsuperscript{192} Delivering his speech in the All India Seminar on Directive Principles Jurisprudence, at Chandigarh on 3 March 1981, Krishana Iyer remarked: … Do not walk into the false dilemma of conflict between Parts III and IV.
\textsuperscript{193} \textit{Ashok Kumar Thakur v.Union of India} (2008) 6 SCC 1.
\textsuperscript{194} (1978)1 SCC 248.
reading Article 21 with 14 and 19, it was held that “procedure established by law” under Article 21 of the Constitution means not just any procedure but a just, fair and reasonable procedure. This decision also stressed on the fact that the words “personal liberties” have to be given the widest possible amplitude. In *Francis Coralie Mullin* the Court declared:¹⁹⁵

The right to life includes the right to live with human dignity and all that goes with it, namely, the bare necessaries of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings. The magnitude and components of this right would depend upon the extent of economic development of the country, but it must, in any view of the matter, include the bare necessities of life and also the right to carry on such functions and activities as constitute the bare minimum expression of the human self. Every act which offends against or impairs human dignity would constitute deprivation *pro tanto* of this right to live.

In *Unni Krishnan v. State of Andhra Pradesh*¹⁹⁶ Jeeven Reddy said that the Fundamental Rights and Directive Principles are supplementary and complementary to each other, and not exclusionary of each other and that the Fundamental Rights are but a means to achieve the goals indicated in Directive Principles. Further, in *Rajasthan v. Union of India & Another*,¹⁹⁷ It has been held that Fundamental Rights must be construed in the light of the Directive Principles. The said principle was reiterated by the Constitutional Bench in *Paramati Educational and Cultural Trust and Others v. Union of India and Others*,¹⁹⁸ This judicial approach indeed led to the latest stage namely enforcement stage. In this period the DPSP, otherwise unenforceable (non-justiciable) were actually enforced through not directly but indirectly. Thus some DPSPs are actually enforced as Fundamental Rights. The Supreme Court in *Ashok Kumar Thakur v. Union of

---

¹⁹⁶ (1993) 4 SCC 111.
¹⁹⁸ (2014) 8 SCC 1.
India held: From the Constitutional history of India, it can be seen that from the point of view of importance and significance, no distinction can be made between the two sets of rights, namely Fundamental Rights which are made justiciable and the Directive Principles which are made non-justiciable. The Directive Principles of State Policy are made non-justiciable for the reason that the implementation of many of these rights would depend on the financial capability of the State. Non-justiciable clause was provided for the reason that an infant State shall not be made accountable immediately for not fulfilling these obligations. Merely because the Directive Principles are non-justiciable by the judicial process does not mean that they are of subordinate importance.

Now it is clear from the judicial decisions that there is no conflict between the Directive Principles and Fundamental Rights. Both constitute an organic unit. A common thread runs through Part III and Part IV of the Constitution of India. They are divided into two Parts for the sake of convenience. Both embody the philosophy of our Constitution, the philosophy of justice social, economic and political. They are the two wheels of the chariot as an aid to make social and economic democracy a truism. Thus, the integrative approach towards Fundamental Rights and Directive Principles, or that the both should be interpreted and read together, has now come to hold the field. It has now become a judicial strategy to read Fundamental Rights along with Directive Principles with a view to define the scope and ambit of the former. Mostly, Directive Principles have been used to broaden and to give depth to some Fundamental Rights and to imply some more rights therein for the people over and above what are expressly stated in the Fundamental Rights.

In this reference, the observations made by Professor G.S. Sharma are worth

199 Supra note 193.
200 In Re Kerala Education Bill, supra note 124; Minerava Mills Ltd., supra note 169.
201 In Re Ramila Maidan Incident (2012) 5 SCC 1.
203 M.P.Jain, Indian Constitutional Law 1370 (Wadhwa and Company, Nagpur, 5th edn., 2004);
mentioning when he says that ‘almost’ any piece of legislation and certainly with the slightest claim to advance “socio-economic justice” can, if need be, by stretching of language is interpreted to relate “to one or other Directive Principles”. The Court in construing the limitations expressed or implied in Part III, can then draw on the all embracing justifications in Part IV so as to uphold almost any measure allegedly in detraction or abridgement of Part III. It may do this by direct reference to specific Part IV directives; or it may prefer to work by referring to a picture of society presented by the Directive Principles…. in a general way.

3.5 SCOPE AND SIGNIFICANCE OF PART IV IN COMPARISON WITH PART III IN THE CONSTITUTIONAL SCHEME

The Fundamental Rights and the Directive Principles are the elaboration of the objective specified in the Preamble of our Constitution. Both should be mutually harmonized and adjusted with the changing needs and requirements of the ever-changing society to which they are intended to serve. Indeed, the original intention of the Drafting Committee of the Constituent Assembly was to have only one set of Fundamental Rights which would include the social and economic rights along with civil and political rights. In democratic societies, the rights are enforced judicially. The State has to be prepared to give effect to judicial decisions. This was why this division between the two kinds of equally Fundamental Rights was made. Those rights which every individual must be guaranteed for the full development of his personality, which are inherent in human nature, in short which are not given to the individual by the welfare activity of the State were placed in Part III as enforceable Fundamental Rights. Those which required not only legislation but also economic and social progress before which they could be provided by the State were made the goals of the State action in Part IV. That was also

\[\text{Supra} \text{ note 35 at 174, 185. Commenting the role of judges, Prof. Sharma says that in deciding the validity of a measure enacted by the State in furtherance of the Directive Principles, the judge can take into the account the social needs operative value patterns and practicability of the measures taken. He can, thus, go far beyond the mechanical interpretation of provisions. When he does so, Prof. Sharma says, “He plays the role of a leader”. The learned Professor is interested to take this aspect of judicial behavior for scientific study. It is submitted that the arguments advanced by Prof. Sharma is plausible, praiseworthy and presents and objective outlook of the provisions contained in Parts III & IV of the Constitution. If the submissions made in this chapter are taken into account, we hope that the same may provide some guidelines to the judicial behavior in India.}\]
the reason why the Universal Declaration of Human Rights adopted by the General Assembly of the United Nations on 10 December, 1948 was later split up into two covenants, one containing the civil and political rights and the other social and economic one in 1966.\textsuperscript{205}

It may be stated even at the cost of repetition that the Directive Principles are to guide the path which will lead the people of India to achieve the noble ideals which the Preamble of the Constitution proclaims. It is this realization that impelled a member of the Constituent Assembly to demand the placing of this Chapter immediately after the Preamble in order to give it “greater sanctity” than others. There was also a suggestion to change the title of the chapter to ‘Fundamental Principles of State Policy’.\textsuperscript{206} Granville Austin has also remarked about the origin of these rights in the following words:\textsuperscript{207}

Both types of rights had developed as a common demand, products of the national and social revolutions, of their almost inseparable intertwining, and of the character of Indian politics itself.

From their common origin it becomes quite clear that the intention of the framers of the Constitution was that when the State was in a position to materialize the directives and enact laws in that direction, they (directives) shall be rights and enforceable in the same manner as Fundamental Rights. It was simply to overcome administrative and other practical difficulties that might arise if the directives were to be enforced at the behest of citizens, the distinction was drawn. It was because of this reason, that many important Fundamental Rights\textsuperscript{208} such as those of an adequate means of livelihood, employment, education, human conditions of work and living wage could not be provided in the Chapter of Fundamental Rights because the financial and other resources of the infant State were not adequate, hence they were put under Part IV of the Constitution till

\begin{footnotesize}
\begin{itemize}
\item[205] In December, 1966 the General Assembly adopted international covenant on economic, social and cultural rights. In December 1969 the Assembly further adopted a declaration of social welfare, progress and development. In December 1974, it endorsed a Universal Declaration on Eradication of Hunger and Malnutrition. Paying Homage to the natural law philosophy, these covenants refer to these rights as the equal and inalienable rights of all members of human family, deprived from the inherent dignity of the human person. See Ian Brown Ile, \textit{Basic Documents on Human Rights} (Clarendon Press, Oxford, 1971).
\item[207] \textit{Supra} note 71 at 52.
\item[208] Articles 39(d), 41, 42 and 45, \textit{the Constitution of India}.
\end{itemize}
\end{footnotesize}
conditions of effective realization are achieved in future. If this position is truly appreciated, there is hardly any problem of conflict between Part III and Part IV of the Constitution and the theory that the Directive Principles are inferior and have to run subservient to the Fundamental Rights will no longer hold good.\textsuperscript{209}

It was Pandit Jawahar Lal Nehru, the late first Prime Minister of India who gave a vivid picture as to the concept of rights in Part III \textit{vis-a-vis} the directives in Part IV. While moving for consideration of the Lok Sahba the Constitution (1\textsuperscript{st} Amendment Bill) on 16\textsuperscript{th} may, 1951, Nehru observed: \textsuperscript{210}

The whole conception of Fundamental Rights is the protection of individual liberty and freedom. That is a basic conception and to know from where it was derived you have to go back to European history from the latter days of the eighteenth century. That might be said to be the dominating idea of the nineteenth century and it was continued and it is matter of fundamental importance. Nevertheless as the nineteenth century marched into the twentieth century and as the twentieth century again marched into the twenty first century, other additional ideas came into the field which is represented by our Directive Principles of State Policy.

If the rights contained in Part III are flouted by the Government, then the people can resort to the Court action. But if the directives in Part IV are disregarded or their implementation is not proper then the people do not resort to the Courts for this but would do the stock taking by themselves. In other words, in India, the individual voter is the most effective policeman for safeguarding the Directive Principles of State Policy. Viewed in this perspective, there appears to be no point in advocating the needless controversy as to the superiority of Fundamental Rights. In fact, rights in Part III and duties in Part IV is complimentary and supplementary to each other. There is, therefore, a


solemn duty cast on our Courts to interpret laws in the light of not only the rights in Part III but also the obligations cast on the Government in Part IV. If, therefore, a Directive Principle is sought to be implemented by an executive action or a statute, there is a solemn duty on the part of the Court to construe it as a reasonable restriction on the Fundamental Right in the interest of general public.\textsuperscript{211}

Describing the nature of the Fundamental Rights and the Directive Principles, Austin has observed:\textsuperscript{212}

The Indian Constitution is first and foremost a social document…. The core of commitment to the social revolution lies in Parts III and IV. These are the conscience of the Constitution.

In the words of Justice Bhagwati:\textsuperscript{213}

It is not possible to fit Fundamental Rights and Directive Principles in two distinct and strictly defined categories, but it may be stated broadly that Fundamental Rights represent civil and political rights while Directives Principles embody social and economic rights. Both are clearly part of the broad spectrum of human rights.

He further observed:\textsuperscript{214}

The Fundamental Rights are no doubt important and valuable in a democracy, but there can be no real democracy without social and economic justice to the common man and to create socio-economic conditions, in which there can be social and economic justice to everyone, is the theme of the Directive Principles. It is the Directive Principles

\textsuperscript{211} For a detailed account of the Legislative and Executive measures taken for the implementation of the Directive Principles of State Policy since 1950, See Chapter 4 \textit{infra}.
\textsuperscript{212} \textit{Supra} note 71 at 50.
\textsuperscript{213} \textit{Minerva Mills Ltd.}, \textit{supra} note 169 at 1844.
\textsuperscript{214} \textit{Id.} at 1850. To the same effect are the observations of C.H. Alexandrowics that “legislation implementing Part IV must be regarded as permitted restrictions on Part III.” See C.H. Alexandrowics, \textit{Constitutional Development in India} 106-7 (Oxford University Press, Oxford, 1957). According to Prof. Allen Gledhill: Many of the Fundamental Rights are subject to reasonable restrictions in the interest of the general public. In interpreting the rights the Court will be obliged to lay down canons for determining what is reasonable and it is improbable that a restriction should be deemed reasonable if it offends against those Directive Principles. See Allen Gledhill, \textit{Republic of India} 162 (Stevens and Sons, London, 1950).
which nourish the roots of our democracy, provide strength and vigour to it and attempt to make it a real participatory democracy which does not remain merely a political democracy with Fundamental Rights available to all irrespective of their power, position or wealth. The dynamic provisions of the Directive Principles fertilize the static provisions of the Fundamental Rights. The object of the Fundamental Rights is to protect individual liberty, but can individual liberty be considered in isolation from the socio-economic structure in which it is to operate. There is real connection between individual liberty and the shape and form of the social and economic structure of the society. Can there be any individual liberty at all for the large masses of people who are suffering from want and privation and who are cheated out of their individual rights by the exploitative economic system? Would their individual liberty not come in conflict with the liberty of the socially and economically more powerful class and in the process, get mutilated or destroyed? It is axiomatic that the real controversies in the present day society are not between power and freedom but between one form of liberty and another. Under the present socio-economic system, it is the liberty of the few which is in conflict with the liberty of the many. The Directive Principles, therefore, impose an obligation on the State to take positive action for creating socio-economic conditions in which there will be an egalitarian social order with social and economic justice to all, so that individual liberty will become a cherished value and the dignity of the individual a living reality, not only for a few privileged persons but for the entire people of the country. It will, thus, be seen that the Directive Principles enjoy a very high place in the Constitutional scheme and it is only in the framework of the socio-economic structure envisaged in the Directive Principles that the Fundamental Rights are indeed to operate, for it is only then they can become meaningful and significant for the millions of our poor and deprived people who do not have the bare necessities of life and who are
living below the poverty line.

Researcher keenly quotes here Justice Mathew who went farthest in attributing to the Directive Principles, a significant place in the Constitutional Scheme. According to him:215

\[ \ldots \text{In building up a just social order it is sometimes imperative that the}\]

Fundamental Rights should be subordinated to Directive Principles\ldots. Economic goals have an uncontestable claim or priority over ideological ones on the ground that excellence comes only after existence. It is only if men exist that there can be Fundamental Rights.

Thus, there can be no doubt that the Fundamental Rights must operate within the socio-economic structure envisaged by the Directive Principles then only the Fundamental Rights will be exercisable by all and a proper balance and harmony between the two as contemplated by the Constitution can be easily secured. Hence, the supposed confrontation or dichotomy between these two Parts of the Constitution is nothing more than a myth.

3.6 CONCLUSION

The Constitution of India, \emph{inter alia}, envisages a just and an egalitarian social order promised on justice – social, economic and political; liberty of thought, expression belief, faith and worship; and equality of status and of opportunity.216 These values are more elaborately perceived in Part III and Part IV of the Constitution. However, justiciability (of Fundamental Rights) and non justiciability (of Directive Principles) for quite some time, led to a conflicting approach of Parliament and the Supreme Court of India. But it can be evidently stated that both type of rights have developed as a common demand, products of the national and social revolutions, of their almost inseparable inter-twining, and of the character of Indian politics itself.217 In fact, they are the “conscience of the Constitution.”218 The founding fathers of our Constitution did not contemplate any

---

215 Supra note 148.
217 Supra note 207.
218 Id. at 50
disharmony between the two. To quote Basu:\textsuperscript{219}

There is no disharmony between the Directive Principles and the Fundamental Rights, because they supplement each other in aiming at the same goal of bringing about a social revolution and the establishment of a welfare State, which is envisaged in the Preamble. It is entirely in tune with the philosophy of our Constitution that the Fundamental Rights and Directive Principles are neither subordinate nor sub-servile to each other,\textsuperscript{220} but are complementary and supplementary to each other. The makers of the Constitution were satisfied that there is no anti-thesis between the Fundamental Rights and the Directive Principles.

It was perhaps the ‘unenforceability clause’\textsuperscript{221} in the directives which misled the Courts and some jurists also and led them to believe that the directives contained in Part IV of the Constitution is lesser in significance than the Fundamental Rights guaranteed by Part III. If we read together Parts III & IV of the Constitution along with the submission made by the present researcher, we may find that the so called confrontation between the two is nothing but a myth.

Thus, the so called ‘irreconcilable conflict’\textsuperscript{222} between Directive Principles and Fundamental Rights has been resolved not by making any prophetic statement or projections relating to the abridgements, curtailments, superiority or inferiority of any of these Constitutional mandates, but by a careful reading of the provisions contained therein and also by assigning relative values to them which depend upon the changing condition of our society. Therefore, the most vital question about their relationship is not of any confrontation or dichotomy but the adoption of a creative and cautious approach relating to “assignment of priorities” between the two, keeping in view the “institutional arrangements” devised for their enforcement. However, the overall picture of the Indian societal set up which comprise of “haves” and “have-nots” will always have to be kept in view so as to enable us to take a correct and balanced view of things. It is submitted that

\textsuperscript{220} \textit{Supra} note 108.
\textsuperscript{221} Article 37, \textit{the Constitution of India}.
\textsuperscript{222} \textit{Supra} note 151 at 1026.
if the above solution is kept in view, it will solve not only the problem of dichotomy between Parts III and IV of the Constitution but also the most important and nation-wide problem of ‘doing justice to the people of India’.\footnote{223}

The above discussion entails that Part III and Part IV of the Constitution comprises of the entire jurisprudence on what comprises social, economic and political justice, that is, what are the rights of the citizens of India, and what are the obligations on the part of the State in that behalf. Overriding the principle of subsidiary of the Directive Principles of State Policy, the principles today constitute an integral part of governance in our country, and the rights so enumerated in that Part have to be given the same status as that of Fundamental Rights. In essence, Part III and Part IV of the Constitution provide for the substantive rights of the citizenry of India. The provision on Fundamental Rights and Directive Principles of State Policy form the bulwark for a new social order in which social and economic justice would bloosom in the national life of the country.\footnote{224} As in Kapila Hingorani v. State of Bihar has been observed:\footnote{225}

The States of India are welfare States. They having regard to the Constitutional provisions adumbrated in the Constitution of India and in particular Part IV thereof is laying down the Directive Principles of State Policy and Part IVA laying down the Fundamental Duties are bound to preserve the practice to maintain the human dignity.

Thus, it is high time that we all put our joint efforts to achieve the high ideals and great expectations under which we made our “Tryst with Destiny” in the great and inspiring words of Pandit Jawaharlal Nehru, and gave ourselves a Constitution worthy of lofty thoughts and ideals of those who led us to the achievement of a Sovereign, Socialist

\footnotetext{223}{To use Lord Denning’s words from his work, The Family Story (Butterworths, Boston, London, 1981): They (Judges) give priority to the strict letter of the law, whereas I give priority to the doing of justice. The reason is because to quote Denning again, they have a different philosophy of the law from me. Krishna Iyer rightfully asks: How many Indian Judges are oriented to and tuned to the democratic socialist philosophy of the Constitution? See V.R. Krishna Iyer, Law versus Justice: Problems and Solutions 24 (Deep & Deep, New Delhi, 1981). Iyer tells us that in India, Law and Justice are not on talking terms with each other and therefore pleads for “cross-fertilization of Law and Justice” which he thinks, “is the demand of the people of India.” V.R. Krishna Iyer, id. at 9.}

\footnotetext{224}{Suresh & Another v. State of Haryana, 2014 Indlaw SC 815.}

\footnotetext{225}{(2003) 6 SCC 1; Charu Khurana & Others v. Union of India & Others, 2014 Indlaw SC 781.}
Secular Democratic Republic.

Therefore, an all round effort should be made to strike the right balance between the Fundamental Rights and the Directive Principles of State Policy.

On the basis of the above discussion, the following points inevitably emerge:

1. Directive Principles of State Policy are fundamental in governance.
2. The basic Constitutional scheme for realization of socio-economic goal is laid in Part III and Part IV of the Constitution.
3. Entrenched and Justiciable Fundamental Rights enshrined in Part III provide Constitutional guarantee of these basic human rights as being inalienable and not subject to political vicissitudes.
4. Directives for realization and effectuation of Part III are contained in Part IV that permeates the whole ethos of Part III.
5. Directive Principles are made not enforceable as their implementation would depend on financial capabilities of State.
6. Part IV is viewed as ‘Book of Interpretation’ to interpret Constitutional provisions especially Part III.\(^\text{226}\)
7. Directive Principles of State Policy aim at achieving economic democracy and in order to realize socio-economic justice primacy is given to Part IV over Part III.\(^\text{227}\)

\(^{226}\) Supra note 193.

\(^{227}\) Supra note 148; State of Punjab & Others v. Rafiq Masih, 2014 Indlaw SC 876.