CHAPTER -V

INTERPRETATION OF DIRECTIVE PRINCIPLES OF STATE POLICY: JUDICIAL CONTRIBUTION

5.1 INTRODUCTORY

The Constitution of India has in its Preamble declared unequivocally that the Sovereign, Socialist, Secular, Democratic Republic shall secure, to all its citizens, social, economic and political justice. With this end in view, the Constitution has made provisions for the establishment of the Supreme Court of India to head the judicial system.\(^1\) The Constitution entrusts the judiciary with the administration of justice, including adjudication of disputes and interpretation of laws between citizens and the State and between the Union and a State and State \(\text{inter se}\). The judiciary is independent of the Executive and the Legislature\(^2\) and the judges are free under a Constitutional guarantee.\(^3\) But this should not be taken to mean that the judiciary is accountable to none and can do whatever it likes to do. In fact, the judiciary is accountable to the nation and works under the Constitution. That is why the goal of social revolution, assured by Part III which deals with Fundamental Rights and Part IV which enunciates the Directive Principles of State Policy, has to be shared, not shunned, by the judiciary.\(^4\) It must protect basic human rights and pave the way for socio-economic revolution by upholding legislative measures and executive projects designed to secure economic justice to the weaker sections of the population. This Constitutional goal of socio-economic justice can be achieved only if the Courts adopt a pragmatic and sociological approach without making much ado about the rights in interpreting socio-economic legislations, which contemplate change in the social structure, effect a transition from serfdom to freedom or attempt to remark material conditions of the society.\(^5\)

It is an admitted fact that the interpretation of Fundamental Rights in a sense is a

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\(^1\) S.N. Jain, “Judicial System and Legal Remedies” in J. Minattur (ed.), \textit{The Indian Legal System} 133-147 (Indian Law Institute, New Delhi, 1995).

\(^2\) In pursuance of the directive contained in Article 50 of the Constitution, the passing of the New Criminal Procedure Code by the Parliament in 1973 has brought out a complete separation of executive and judicial functions all over India.


search for truth. Whatever is protected by the Constitution must be given to the individual subject to reasonable restrictions. Truth in this sense, however, accords with individual justice. But beyond this is the social justice who is given the first place in the Preamble and in Part IV of the Constitution. If law is a system of norms, if the Constitution is framed to achieve progress and uplift of the downtrodden, then justice has to be the first consideration guiding the judicial progress; social justice\(^6\) as distinguished from individual justice between the parties.\(^7\) Hence, in case of conflict between the Directive Principles and the Fundamental Rights, the judiciary has to take notice of the Directive Principles. One may argue that the directive being unenforceable through the Courts, the Courts are not bound to take note of them. To this, it may be stated that Fundamental Rights represent civil and political right only while Directive Principles embody social and economic rights. But they are clearly part of the broad spectrum of human rights. Hence, the judiciary seems to be as much bound by the provisions of Directive Principles as it is bound with the provisions of Fundamental Rights.

The role of the judiciary and the principles of Constitutional interpretation were stated in *S. P. Gupta v. Union of India*:\(^8\)

The Constitution is a document of social revolution which casts an obligation on every instrumentality including the judiciary, which is a separate but equal branch of the State, to transform the *status quo ante* into a new human order in which justice, social, economic and political will inform all institutions of national life and there will be equality of status and opportunity for all. The judiciary has therefore a socio-economic destination and a creative function. It has to use the words of Glanville Austin, “…to become an arm of the Socio-economic revolution and

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\(^6\) Social justice means availability of equal social opportunities for the development of personality to all the people in the society, without any discrimination on the basis of caste, sex or race. No one should be deprived, because of these differences, those social conditions which are essential for social development. The issue of social justice is associated with social equality and social rights and these are dependent on economic equality and rights. Social justice can be made available only in a social system where the exploitation of man by man is absent, and where privileges of the few are not built upon the miseries of the many. See S. Waseem Ahmad and M. Ashraf, “Social Justice and the Constitution of India” 67 *JILI* 768 (2006).

\(^7\) V.S. Deshpande, “Between Truth and Justice”, an inaugural address at the All India Seminar on Directive Principles Jurisprudence held at Chandigarh under the auspices of the Department of Law, P.U. Chandigarh (From February 28 to March 1, 1981).

\(^8\) AIR 1982 SC 149.
perform an active role calculated to bring social justice within the reach of
the common man. It cannot remain content to act merely as an umpire but
it must be functionally involved in the goal of Socio-economic justice.

While rejecting the narrow and limited role of the judiciary the Court observed:¹⁹

A narrow approach would not be proper …for a society pulsating with
urges of gender justice, weaker justice, minorities’ justice, dalit justice and
equal justice between chronic unequal. The process of social justice might
be seriously and prejudicially affected if the judges do not follow a
creative and activist role.

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. To what extent the
judiciary as an instrument of social and economic justice has been influenced by the
Directive Principles? And 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 we answer these questions, it would be useful to make a few
preliminary 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,¹⁰ while the latter are not enforceable in the Court of
law.¹¹ 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.¹²

In view of the above discussion, an attempt has been made in the following pages
to analyze and evaluate the role of judiciary towards the interpretation of DPSP contained
in Part IV of the Constitution.

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¹⁹ Ibid.
¹⁰ Article 32, the Constitution of India.
¹¹ Article 37, the Constitution of India.
¹² There is a well recognized distinction between enforceability and cognizability. See Chapter 3.
5.2 JUDICIAL INTERPRETATION SENSITIVE TO DIRECTIVE PRINCIPLES OF STATE POLICY: STATUS QUO TO JUDICIAL ACTIVISM

The Constitution of India provides for Fundamental Rights in its Part III and the Directive Principles of State Policy in Part IV and provided for the basis for social welfare measures. Roughly, they represent the two streams in the evolution of human rights, which divide them into so-called negative and positive or civil and political and social and economic rights respectively. In other words the Constitution of India aims at social revolution and that despite the permeation of the entire Constitution by the aim of national renaissance, the core of the commitment to the social revolution lies in Part III and Part IV, in the Fundamental Rights and in the Directive Principles of State Policy.

As we have seen ‘justiciability’ is the basis of division between them. The former are justiciable, which the latter are not. As reference to the Preamble and Constituent Assembly Debates would show, it would be invidious and indeed dangerous to give primacy or overriding effect to Fundamental Rights over the Directive Principles of State Policy. In fact, Indian Constitution is interpreted by the Supreme Court minimizes the gap between Fundamental Rights and social welfare rights. Unfortunately, during the initial period of the working of the Constitution, the trend of judicial pronouncements showed an undue emphasis on the aspect of justiciability. In the first period, primacy was given to Part III over Part IV by virtue of Article 37 accordingly, it is known as the subsidiary period. Thus, in *State of Madras v. Champakam Dorairajan*, Supreme Court held that the Directive Principles of State Policy have to conform to and run as subsidiary to the Chapter of Fundamental Rights because the latter are enforceable in the Courts while the former are not. In the second period, which is generally known as harmonious construction period, an attempt was made by the judiciary to draw a balance and harmony between Part III and Part IV. The observation that the provisions contained in Part III and Part IV, ‘are complementary and supplementary to other’ in the *C.B.Boarding and Loding v. State of Mysore* signaled the dawn of this period. In *Kesavananda Bharati v.*

16 See Chapter 3.
17 AIR 1951 SC 226.
18 AIR 1970 SC 2042.
it was observed that Fundamental Rights themselves have no fixed content and that the attempt of the Court should be to expand the reach and ambit of the Fundamental Rights. Later, in *Minerva Mills Ltd. v. Union of India*, it was held that harmony and balance is an essential feature of the basic structure of the Constitution. This judicial approach indeed led enforcement of Directive Principles of State Policy. In this period the DPSP, otherwise unenforceable (non-enforceable) were actually enforced though not directly but indirectly. Initially provisions of Part IV were used to justify restrictions imposed on the Fundamental Rights and in this fashion, they were indirectly accorded judicial recognition. However, in later the Supreme Court has recognized in many cases that both DPSP and Fundamental Rights are complimentary to each other and are equally fundamental in the governance of the country and that different Articles in the chapter on Fundamental Rights and the DPSP in Part IV of the Constitution must be read as an integral and incorporeal whole with possible overlapping with the subject matter of what is to be protected by its various provisions. Later being fueled by the international revelation and realization that the two kinds of human rights namely civil and political rights and economic and social rights are actually complementary to one other as civil and political right cannot be realized without economic and social rights, the judiciary while interpreting Part III started reading part IV into Part III. India is also one of the signatories of the UDHR and promotes its principles in conjunction with its obligations under the Directive Principles of State Policy enumerated in the Indian Constitution. It its

19 (1973) 4 SCC 225.
20 AIR 1980 SC 1789.
21 For example in *State of Bombay v. F.N.Balsara*, AIR 1951 SC 318 with reference to Article 47 it was held that a restriction imposed by a law on the sale and possession of liquor was a reasonable restriction in the interest of public; in *State of Bihar v. Kameshwar Singh*, AIR 1952 SC 252, Article 39 was taken into consideration while upholding abolition of Zamidari System as it was for a public purpose; Article 43 was used to uphold the validity of Minimum Wages Act, 1948 in *Bijay Cotton Mills Ltd v. State of Ajmer*, AIR 1955 SC 33; in similar fashion cattle protection laws prohibiting slaughter of cattle was upheld as it meant to give effect to Article 48 in *Md. Hanif Quereshi v. State of Bihar*, AIR 1958 SC 731. See also A. David Ambrose, "Directive Principles of State Policy and Distribution of Material Resources with the special reference to Natural Resources” 55 JILI 4 (2013).
22 *Delhi Transport Corporation v. DTC Mazdoor Congress*, AIR 1991 SC 101; *supra* note 19.
23 The International Covenant on Economic, Social and Cultural Rights (1966), together with the Universal Declaration of Human Rights (1948) and the International Covenant on Civil and Political Rights (1966), make up the International Bill of Human Rights. In accordance with the Universal Declaration, the Covenants recognize that the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can be achieved only if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights.
24 Article 39 A has been found to be an interpretative tool for Article 21 in *Madhav Hayawadanrao Hoskot v. State of Maharashtra*, AIR 1978 SC 1548.
path to developing into a welfare State, India has attempted to provide not only the basic Fundamental Rights, but also make available certain unenumerated Fundamental Rights to its citizens. It is also important to remember that the International Covenant on Economic, Social and Cultural Rights (ICESCR), which India has ratified, recognize the principle of progressive realization of obligation under it and there is a positive obligation on the State to make attempts at the progressive realization of these rights through the best possible use of the maximum of its available resources.\(^\text{25}\)

The Constitution is required to be kept young, energetic and alive.\(^\text{26}\) It has been held that the Constitution is a living document and its provisions have to be construed with regard to the march of time and the development of law.\(^\text{27}\) The Constitution gives an idea of the society which is sought to be built and also defines the space and the framework of action to realize the vision.\(^\text{28}\) Thus, Fundamental Rights have to be constructed in the light of Directive Principles. Over 66 year experiments with the Indian Constitution, the Supreme Court of India has interpreted many so-called social welfare rights (Directive Principles) as fundamental. After 1978, the Supreme Court has shown a positive and marked tendency to take the principle of the interdependence of human rights seriously and to interpret the entrenched constitutional guarantees of Fundamental Rights in the light of the Directive Principles. In *Ashok Kumar Thakur v. Union of India*,\(^\text{29}\) Mr. Justice Balkrishnan, the Chief Justice of India observed that Part IV of the Constitution shall be treated as the Book of Interpretation for the fundamental rights in Chapter III.

The activist role of the Supreme Court has gone a long way in assuring that the basic needs of the people which are the basic human rights are met. The Seminal decision

\(^\text{25}\) Article 2.1 of the ICESCR reads as follows: Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum if its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative means.


which has been the pillar of reform both in civil and political liberties and socio-economic justice has been the decision in *Maneka Gandhi v. Union of India*.

The case involved the refusal by the Government to grant a passport to the petitioner, which thus restrained her liberty to travel. In answering the question whether this denial could be sustained without a pre-decisional hearing, the Court proceeded to explain the scope and content of the right to life and liberty. It was held therein that the Fundamental Rights are not island but have to be read along with the other rights. Hence, 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.

The emphasis during the expansion of Article 21 has been on a wide interpretation of the words “life and liberty”. In *Kharak Singh v. State of UP*, Subba Rao J quoted Field J in *Munn v. Illinois*, to emphasize the meaning ‘life’ covered by Article 21 as something more than mere animal existence. The inhibition against its deprivation extends to all those limbs and faculties by which life is enjoyed. In *Francis Coralie Mullin v. Union Territory of Delhi*, the Court declared:

> 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.

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30 (1978)1 SCC 248.
31 AIR 1963 SC 1295.
32 (1877) 94 US 113.
The negative wording of Article 21 shows that the right to life is not created but is inherited by birth in every man.\textsuperscript{34} It has been held by the Supreme Court that Article 21 has not only a negative but even a positive content.\textsuperscript{35} In \textit{People’s Union for civil Liberties v. Union of India},\textsuperscript{36} it was strongly stated that merely because certain rights are implied as they have been read into Article 21, would not make them any less fundamental and they also are equally enforceable as express Fundamental Rights. It was held that there cannot be any distinction between the Fundamental Rights mentioned in Chapter III of the Constitution and the declaration of such rights on the basis of the judgments rendered by this Court.

The Supreme Court of India has impliedly accepted the theory of ‘unenumerated rights’ in its interpretation of Article 21. There is adequate scope for the development of the theory of ‘core rights’ or subsistence rights’. For, traditional liberties arose out of protest against oppressive political institutions, while the subsistence rights \textit{i.e.} social and economic rights arise out of protest against oppressive social and economic institutions. The concept of human rights is complete only when there is acknowledgement of subsistence rights along with traditional liberties. As a matter of fact, the Supreme Court of India accepted this principle and held that there is harmony and balance between Fundamental Rights and the Directive Principles of State Policy and this harmony and balance is a basic feature of the Constitution.\textsuperscript{37} The Supreme Court upheld traditional liberties \textit{i.e.} Fundamental Rights when there is a political threat to these rights. Similarly, the Supreme Court has to uphold subsistence rights when there is social and economic threat to these rights. Political threats to traditional liberties may be conscious or otherwise. But, the social and economic threats to subsistence rights being conscious only, these rights command greater attention from the judiciary. As the Supreme Court ensures the enjoyment of Fundamental Rights by warding off political threats, the Court has also to ensure enjoyment of subsistence rights by warding off social and economic threats. This is the new role of Indian superior Courts and through this role a new

\textsuperscript{34} Kartar Singh v. State of Punjab (1994) 3 SCC 569.
\textsuperscript{35} Unni Krishnan, supra note 26; P. Rathinam v. Union of India (1994) 3 SCC 394.
\textsuperscript{36} (2003) 4 SCC 399.
\textsuperscript{37} Supra note 20; J & K National Panthers Party v. Union of India & Others, AIR 2011 SC 3.
jurisprudence is being involved.\textsuperscript{38}

The new strategy of reading Fundamental Rights along with Directive Principles with a view to define the Fundamental Rights paved a way to enlarge the scope of Directive Principles to an extent of creating more rights for the people over and above the expressly stated, Fundamental Rights. At the same time the values underlying the Directive Principles have also become enforceable by riding on the back of the Fundamental Rights. On the whole the judiciary has used Directive Principles not to restrict but to expand, the ambit of Fundamental Rights. The much benefited area of this approach is Article 21, by reading Article 21 with Directive Principles, the Supreme Court innovated many rights.\textsuperscript{39} With public interest litigation, the Supreme Court has refashioned its institutional role to readily enforce social rights and even impose positive obligations on the State.\textsuperscript{40}

India is a socialist Republic with a population of more than 1 billion and about half of it living below poverty line. Therefore, its Constitutional command is social justice and social welfare. Indian Constitution, no doubt, aims at welfare State. In this context, the weaker sections of society need protection for true realization of their right to live with human dignity as is guaranteed to them under Article 21 of the Constitution. “Social rights” refer to those rights that protect the basic necessities of life or rights that provide for the foundation of an adequate quality of life.\textsuperscript{41} Social rights may also be defined as claims against the State to have certain basic social and economic needs of life satisfied. They may also be termed as basic entitlements.\textsuperscript{42} The Constitution of India does not merely provide the apparatus for governance, but it is also futuristic in envisioning what social and economic transformation India would undergo.\textsuperscript{43}

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

\textsuperscript{40} Jayna Kothari, “Social Rights and the Constitution” 6 SCC 32(2004).
\textsuperscript{41} State of Punjab & Others v. Rafiq Masih etc., 2014 Indlaw SC 876.
\textsuperscript{42} Supra note 40.
\textsuperscript{43} Ibid.
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 been the bare necessities of life and who are living below the poverty line.  

To present the subject in its right perspective the discussion is confined mainly to areas such as Socio Economic justice covering Right to work, Equal pay for equal work, Right to food, Right to shelter, Right to rehabilitation, Right to Health, Right to education, Gender Justice, Environmental Justice, Access to legal justice.

5.3 SOCIO-ECONOMIC JUSTICE BY EXPANSION OF ARTICLE 21: THE NEW JUDICIAL STRATEGY

The Preamble to the Constitution says that the people of India having resolved to secure to all its citizens social and economic justice also made it subject to equality of status and opportunity to promote the dignity of the individual in the united and integrated Bharat. Social and Economic justice can be called as one of the basic objectives of the Constitution of India. They are two important pillars on which the edifice of Constitutional law is construed in India. The concept of social justice engrafted in the Constitution of India, consists of diverse principles essential for the orderly growth and development of personality of every citizen. The object of the concept of social justice is to bring economic equality, to provide a decent standard of living to the people and to safeguard the interests of the weaker section of society. In Ramon Services (P) Ltd. V. Subhash Kapoor, R.P. Sethi observed thus:

After independence the concept of social justice has become a part of our legal system. This concept gives meaning and significance to the

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44 Justice Bhagwati in Minerva Mills Ltd., supra note 20.
47 (2001) 1 SCC 118.
democratic ways of life and of making the life dynamic. The concept of welfare State would remain in oblivion unless social justice is dispensed. Dispensation of social justice and achieving the goals set forth in the Constitution are not possible without the active, concerted and dynamic efforts made by the persons concerned with the justice dispensation system.

Expounding the notion of social justice in *M.Nagraj and Others. v. Union of India and Others*, the Supreme Court opined that Social Justice is one of the subdivisions of the concept of justice. It is concerned with the distribution of benefits and burdens throughout a society as it results from social institutions – property systems, public organizations etc. The problem is what should be the basis of distribution? Writers like Raphael, Mill and Hume define ‘social justice’ in terms of rights. Other writers like Hayek and Spencer define ‘social justice’ in terms of deserts. Socialist writers define ‘social justice’ in terms of need. Therefore, there are three criteria to judge the basis of distribution, namely, rights, deserts or need. These three criteria can be put under two concepts of equality – “formal equality” and proportional equality”. “Formal equality” means that law treats everyone equal and does not favor anyone either because he belongs to the advantaged section of the society or to the disadvantaged section of the society. Concept of “proportional equality” expects the States to take affirmative action in favor of disadvantaged sections of the society within the framework of liberal democracy. Under the Indian Constitution, while basic liberties are guaranteed and individual and individual initiative is encouraged, the State has got the role of ensuring that no class prospers at the cost of other class and no person suffers because of drawbacks which is not his but social.

The idea of economic justice is to make equality of status meaningful and life worth living at its best removing inequality of opportunity and status-social, economic and political. In fact, this aspect of social justice and economic empowerment was held to be a Fundamental Right in *CESC Ltd. v. Subhash Chandra Bose*. In *Air India Statutory Corporation v. United Labour Union*, it has been held that the Directive

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48 AIR 2007 SC 71.
50 AIR 1992 SC 573.
51 AIR 1997 SC 645.
Principles in the Constitution are UNO Convention on Right to Development as inalienable human right and every person and all people are entitled to participate in, contribute to and enjoy economic, social, cultural and political development in which all Human rights, fundamental freedom would be fully realized. These principles are embedded as integral Part of the Constitution in the Directive Principles of State Policy. The Court observed in *Gujarat Agriculture University v. Rodhod Labhu Prachar*,\(^{52}\) that the Government who is a guardian of people and obliged under Article 38 of the Constitution to secure social order for promotion of welfare of the people to eliminate inequalities in a status, will endeavor to give maximum posts even at the first stage of absorption. The State should provide facilities and opportunities to ensure developments and to eliminate all obstacles development by appropriate economic and social reforms so as to eradicate all social injustice.

Thus, social facet and the economic aspect are the ideal goal of the welfare State. The Constitution casts a responsibility on the State to sustain social and economic security, for the Preamble is the floodlight illuminating the path to be persuaded by the State to set up a Sovereign, Socialist, Secular, and Democratic Republic.\(^ {53}\) Therefore, the Directive Principles now stand elevated to inalienable fundamental human right.

### 5.3.1 Right to work or Livelihood

The Supreme Court has interpreted the Preamble, Chapters on Fundamental Rights and Directive Principles to mean that the right to livelihood encapsulates a meaningful life, social security and disablement benefits which are integral parts of socio-economic justice. 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 doubt true that Article 38 and Article 43 of the Constitution insist that the State should endeavor to find sufficient work for the people so that they may put

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\(^{52}\) AIR 2001 SC 706.

their capacity to work into economic use and earn a fairly good living. The Court in *Maneka Gandhi v. Union of India*, placing the right to livelihood in the right to life stated as follows:

An equally important facet of that right is the right to livelihood because no person can live without the means of living, that is, the means of livelihood. If the right to livelihood is not treated as a part of the Constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation. Such deprivation would not only denude the life of its effective content and meaningfulness but it would make life impossible to live. Thus, deprive a person of his right to livelihood and you shall have deprived him of his life.

In *Bandhua Mukti Morcha v. Union of India*, the Supreme Court held that right to live with human dignity enshrined in Article 21 derives its breath from DPSP and particularly clauses (e) and (f) of Article 39 and Article 41 and 42 and therefore it must include protection of the health and strength of workers, men and women, and facilities for children to develop in a healthy manner and in conditions of freedom and dignity with educational facility and just humane conditions of work and maternity relief. Likewise, the right to education even though not been guaranteed earlier *i.e.* before the insertion of Article 21A as a Fundamental Right, was found out to be a Fundamental Right after interpreting Article 21 in the light of Articles 42, 45 and 46. These are the minimum requirements which must exist in order to enable a person to live with human dignity and no State has the right to take any action which will deprive a person of the enjoyment of these basic essentials. Since, the Directive Principles of State Policy contained in clauses (e) and (f) of Article 39, Articles 41 and 42 are not enforceable in a Court of law, it may not be possible to compel the State through the judicial process to make provision by statutory enactment or executive fiat for ensuring these basic essentials which go to make up a life of human dignity, but where legislation is already enacted by the State providing these basic

54 AIR 1978 SC 597.
55 Ibid.
56 AIR 1984 SC 802, 811-12; Centre for Public Interest Litigation v. Union of India & Others, AIR 2014 SC 49.
requirements to the workmen and thus investing their right to live with basic human
dignity, with concrete reality and content, the State can certainly be obligated to ensure
observance of such legislation, for inaction on the part of the State in securing
implementation of such legislation would amount to denial of the right to live with human
dignity enshrined in Article 21, more so in the context of Article 256 which provides that
the executive power of every State shall be so exercised as to ensure compliance with the
laws made by Parliament and any existing laws which apply in that State.58

In Olga Tellis v. Bombay Municipal Corporation,59 the question was regarding
the validity of State actions in eviction of pavement and slum dwellers in Bombay. The
question was whether eviction a pavement or slum dweller is a violation of the right to
life under Article 21 of the Constitution. Though, a right to live on the pavement was not
claimed, it was argued that the eviction would deprive them of their livelihood, thus,
violating their rights under the Constitution. It was contended that the right to life and the
right to work are independent and that the economic compulsions under which these
persons are forced to live in slums or on pavements, impart to their occupation the
character of a Fundamental Right. The Court emphasized the wide meaning of the right
to life and held that the right to work and livelihood constituted an integral part of the
right to life, since without working one cannot expect to live. The Court recognized that
one of the reasons for the massive influx of people from rural areas to the urban is the
lack of opportunities to work in the rural areas. It was recognized that their livelihood
was the only thing which sustained them and their families. An important point stated by
the Court in this case pertains to the application of the proof requirement in cases. It was
further held that in such a case where half the city’s population was at stake ‘It would be
unrealistic on our part to reject the petitions on the ground that the petitioners have not
adduced evidence to show that they will be rendered jobless if they are evicted from the
slums and pavements. Commonsense, which is a cluster of life’s experiences, is often
more dependable than the rival facts presented by warring litigants.

In Delhi Development Horticulture Employees’ Union v. Delhi Administration,60
it was held that there was no doubt that broadly interpreted, the right to life would include

59 AIR 1986 SC 180.
the right to livelihood and, therefore, right to work, the Court while referring to the *Olga Tellis* case,\(^{61}\) stated thus:\(^{62}\)

This was, however, in the context of Article 21 which seeks to protect persons against the deprivation of their life except according to procedure established by law. This country has so far not found it feasible to incorporate the right to livelihood as a Fundamental Right in the Constitution. This is because the country has so far not attained the capacity to guarantee it, and not because it considers it any the less fundamental to life.

In *DTC v. DTC Mazdoor Congress*,\(^{63}\) a regulation giving the power to the employer to terminate the services of a permanent and confirmed employee without giving notice and without assigning reasons was held to be violation of the right to livelihood under Article 21. Thus, the procedure to deprive a person of his life, with its extended meaning to include the unenumerated right to livelihood, must be fair, just and reasonable. It was held thus:\(^{64}\)

The right to life includes right to livelihood. The right to livelihood therefore cannot hang on to the fancies of individuals in authority. The employment is not a bounty from them nor can its survival be at their mercy. Income is the foundation of many Fundamental Rights and when work is the sole source of income, the right to work becomes as much fundamental. Fundamental rights can ill-afford to be consigned to the limbo of undefined premises and uncertain applications. That will be a mockery of them.

In *M. Paul Anthony v. Bharat Gold Mines*,\(^{65}\) the right to payment of subsistence allowance during suspension was held as being a part of Article 21 of the Constitution as being a basic right.

In *Gujarat Agriculture University v. Rodhod Labhu Prachar*,\(^{66}\) the Supreme Court

\(^{61}\) *Supra* note 59.  
\(^{63}\) AIR 1991 SC 101.  
\(^{64}\) *Ibid.*  
\(^{65}\) (1999) 3 SCC 679.  
\(^{66}\) AIR 2001 SC 706.
considered the regularization of daily wage workers, who continued for more than 10 years in Gujarat Agriculture University and their absorption on relaxation of the eligibility conditions on a compassionate ground and held that the Court should exercise the discretion very cautiously. The Court held has held that though right to work cannot be claimed as Fundamental Rights but once a person is appointed to a post or of an office, be under the State, or private agency, it has to be dealt with as per public element. So after the abolition of contract labor system, the workmen have right to regulation of their services. The Act is socio-economic welfare legislation. Right to means of livelihood is a Constitutional right. Without employment the workmen will be denuded of their means of livelihood and resultant right to life under Article 21 of the Constitution. The Court held that though there is no provision in the Contract Labour (Regulation and Abolition) Act, 1970 for absorption of the employees whose contract labor system stood abolished under the Act. But the Act does not prohibit the corporation to absorb them in regular service and that is the mandate of the Constitution in Article 21.

In Indian Drugs & Pharmaceuticals Ltd. v. Workmen67 it was recognized that right to livelihood under Article 21 could not extended so far as to require that everyone be provided with a job. Article 41, the Directive Principle of State Policy states that the State shall seek to secure the right to work to its citizens and even the Directive Principle lays down that this duty of the State would be within the limits of its economic capacity and development. An important aspect as stated by this Court in the Delhi Development Horticulture Employee’s Union was that there was a need to create classes among the poor also, such as those below poverty line and others. It was also stressed that where a scheme is for a limited purpose such as providing income to those below the poverty line, and that too for a period when they had no income whatsoever, the Court could not expand the scheme and direct regularization with the obligation on the State to provide full employment for the whole year. The Court warned that such an approach may do more harm by benefiting a select few over a mass of others and also by compelling the State to wind up the existing schemes for want of resources. However, the judiciary has always taken cognizance of this precious right i.e., right to livelihood in providing socio-economic justice to Indian poor masses. Again, describing the importance and

67 (2007) 1 SCC 408.
significance of right to work or livelihood, in Harjinder Singh v. Punjab State Warehousing Corporation, Singhvi, J opined thus: 68

It need no emphasis that if a man is deprived of his livelihood, he is deprived of all his fundamental and constitutional rights and for him the goal of social and economic justice, equality of status and of opportunity, the freedoms enshrined in the Constitution remain illusory. Therefore, the approach of the Courts must be compatible with the Constitutional philosophy of which the Directive Principles of State Policy constitute an integral part and justice due to the workman should not be denied by entertaining the specious and untenable grounds put forward by the employer-public or private.

Article 43 states State shall endeavor to secure a living wage and a decent standard of life to all workers. It is no doubt true that Article 38 and Article 43 of the Constitution insist that the State should endeavor 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. But these Articles do not mean that everybody should be provided with a job in the civil service of the State and if a person is provided with one he should not be asked to leave it even for a just cause. 69 If it were not so, there would be justification for a small percentage of the population being in Government service and in receipt of regular income and a large majority of them remaining outside with no guaranteed means of living. It would certainly be an ideal State of affairs if work could be found for all the able-bodied men and women and everybody is guaranteed the right to participate in the production of national wealth and to enjoy the fruits thereof. But we are today far away from that goal. The question whether a person who ceases to be a Government servant according to law should be rehabilitated by being given an alternative employment is, as the law stands today, a matter of policy on which the court has no voice. 70

Along with the right to livelihood, the Higher Judiciary stressed upon equal pay for equal work. In Girish Kalyan Kendra Workers Union v. Union of India, 71 the

71 AIR 1991 SC 1173.
Supreme Court held that equal pay for equal work is not expressly declared as a Fundamental Right, but in view of the Directive Principles of State Policy as contained in Article 39(d) of the Constitution ‘equal for equal work’ has assumed the status of Fundamental Right in service jurisprudence having regard to the Constitutional mandate of equality in Articles 14 and 16 of the Constitution. It certainly is Constitutional goal. Perhaps for the first time, the Court in Randhir Singh v. Union of India\textsuperscript{72} has innovated that it is a Constitutional goal capable of being achieved through Constitutional remedies. The Court pointed out how the principle ‘equal pay for equal work’ is not an abstract doctrine and how it is a vital and vigorous doctrine accepted throughout the world, particularly by all socialist countries. Therefore, the Court pointed out that the principle has to be read into Article 14 of the Constitution. For the benefit of those who do not seem to be aware of it, we may point out that the decision in Randhir Singh case\textsuperscript{73} has been followed in many number of cases by this Court and has been affirmed by a Constitution Bench of this Court in D. S. Nakara v. Union of India\textsuperscript{74}. In the immediate aftermath of the decision in Randhir Singh’s case\textsuperscript{75}, there were bumper cases filed in this Court for enforcement of the right to ‘equal pay for equal work’, perhaps little realizing the inbuilt restriction in that principle.

After reviewing various decisions\textsuperscript{76} of Supreme Court on the subject, Ranganath Mishra, J. speaking for Supreme Court in Dharwad P.W.D. Employees Association v. State of Karnataka, observed:\textsuperscript{77}

We have referred to several precedents all rendered with in the current decade – to emphasize upon the feature that equal pay for equal work and providing security for service by regularizing casual employment within a reasonable period have been unanimously accepted by this Court as a Constitutional goal to our socialistic polity. Article 141 of the Constitution provides how the decisions of this Court are to be treated and we do not think there is any need to remind the instrumentalities of the State, be it of

\textsuperscript{72} AIR 1982 SC 879.
\textsuperscript{73} Ibid.
\textsuperscript{74} AIR 1983 SC 130.
\textsuperscript{75} Supra note 69.
\textsuperscript{76} Supra note 72; supra note 74; R.K. Ramchandran Iyer v. Union of India, AIR 1984 SC 541.
\textsuperscript{77} AIR 1990 SC 883.
the centre or the State, or the public sector.

Thus, the Constitution makers wanted them to be bound by what this Court said by interpreting the law. The next decision in which the genesis and scope of the principle was stated is in the case of *State of Madhya Pradesh v. Parmod Bhartya*, decided by a three Judge, Jeeven Reddy, observed:  

Equal pay for equal work, it is self-evident, is implicit in the doctrine of equality.

Thus, the court converted what seemed a non-justifiable issue into a justifiable one by invoking the wide sweep of the enforceable Article 21. The Court performed a similar exercise when, in the context of Articles 21 and 42, it evolved legally binding guidelines to deal with the problems of sexual harassment of women at the workplace.

### 5.3.2 Right to Food

The right to food can be seen as an implication of the Fundamental Right to life, enshrined in Article 21 of the Indian Constitution. Indeed, the Supreme Court has explicitly stated (several times) that the right to life should be interpreted as a right to live with human dignity, which includes the right to food and other basic necessities. For instance, in *Francis Coralie v. Administrator, Union Territory of Delhi and Others*, the Supreme Court observed:

We think that the right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessaries of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing one-self in diverse forms, freely moving about and mixing and commingling with fellow human beings. Of course, the magnitude and

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78 AIR 1993 SC 286.
82 Ibid.
content of the components of this right would depend upon the extent of the economic development of the country, but it must, in any view of the matter, include the right to the basic necessities of life and also the right to carry on such functions and activities as constitute the bare minimum expression of the human-self.

The Supreme Court has in a number of cases recognized that the right to life includes the right to food, clothing and shelter.\(^83\) It also flows from Article 39(b), (e) and (f) and Article 41 and 47 of the Constitution.

In the series of orders under the petition *CERC v. Union of India*,\(^84\) the Supreme Court has emphasized that the right to food is an essential element of Article 21 of the Constitution of India and what is of utmost importance is that food is provided to the aged, infirm, disabled, destitute women, destitute men who are in danger of starvation, pregnant and lactating women and destitute children, especially in cases where they or members of their family do not have sufficient funds to provide food for them. The Supreme Court identified that there was a surplus of food grain which was going unutilized and the distribution of the same among the poor and the destitute was scarce. The problem was that though there were several schemes framed by the Government, they were not being implemented properly. Over a period of 66 years the Supreme Court has passed a number of directions to ensure compliance and implementation of the schemes. The Supreme Court has declared these schemes as entitlements of the poor and the Court also laid down very specific time-limits for the implementation of these schemes with the responsibility on the States to submit compliance affidavit to the Court. These include the Antyodaya Anna Yojna, the National Old Age Pension Scheme, the Integrated Child Development Services (ICDS) Programme, the National Midday Meals Program (NMMP), the Annapurna Scheme and several employment schemes providing food for work. Of eight schemes, the most significant is the order directing all State Governments to provide cooked midday meals in all Government schools by January 2002.\(^85\) In this case, the public interest litigation (PIL) initiated by the *PUCL* petition is

\(^{83}\) *Supra* note 65.
\(^{84}\) (1996) 2 SCC 549.
\(^{85}\) *People’s Union for Civil Liberties v. Union of India* (2003) 4 SCC 399.
known as the right to food case\textsuperscript{86}. The basic argument of this petition is that, since food is essential for survival, the right to food is an implication of the fundamental “right to life” enshrined in Article 21 of the Indian Constitution. The petition argues that Central and State Governments have violated the right to food by failing to respond to the drought situation, and in particular by accumulating gigantic food stocks while people went hungry. The Court has also directed the State Governments to ensure that public distribution shops are kept open with regular supplies. It is also within the power of the Court to direct the Government to apply its mind and frame appropriate schemes, though the exact nature of the scheme would be a matter of policy for the Government to decide.

It was observed in the order dated 2.5.2003 that Article 21 protects the right of every individual to live with dignity and the court asked that would the very existence of life of those families which are below the poverty line not come under danger for want of appropriate schemes and implementation thereof. As a matter of concern as outlined by the Court was that there was a surplus beyond the buffer required for food security and a substantial amount of funds were being spent in holding such amounts. It was thus observed that if the stocks are brought down to lower levels it would also release a substantial amount of funds. Another important order was the order dated 28.11.2001\textsuperscript{87} by which the Court directed the State Governments to implement the midday meal schemes by providing every child in every Government and Government assisted primary school with a prepared midday meal with a minimum content of nutritional content each day for a minimum of 20 days. The Supreme Court also directed the Central Government to prepare kitchen sheds. \textsuperscript{88}

So far, there have been two crucial Supreme Court orders on Mid-Day Meals: on 28th November 2001 and 20th April 2004, respectively. Further orders have been issued from time to time also. The landmark order of 28th November 2001 clearly directed all

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\textsuperscript{86} Ibid.
\textsuperscript{87} This order focuses on eight food-related schemes: (1) Public Distribution System (PDS); (2) Antyodaya Anna Yojana (AAY); (3) National Programme of Nutritional Support to Primary Education, also known as “Mid-Day Meals scheme”; (4) Integrated Child Development Services (ICDS); (5) Annapurna; (6) National Old Age Pension Scheme (NOAPS); (7) National Maternity Benefit Scheme (NMBS); and (8) National Family Benefit Scheme (NFBS).
\textsuperscript{88} Gopal Subramanium, “Contribution of Indian Judiciary to Social Justice Principles underlying the Universal Declaration of human Rights” 1 JILI 603 (2008).
State Governments to introduce cooked Mid-Day Meals in primary schools: 89

The State Governments/Union Territories to implement the Mid-Day Meal Scheme by providing every child in every Government and Government assisted Primary Schools with a prepared Mid-Day meal with a minimum content of 300 calories and 8-12 grams of protein each day of school for a minimum of 200 days.

This was supposed to be done within six months. But most State Governments took much longer, prompting the Supreme Court to issue stern reminders to them from time to time (e.g. on 2nd May 2003). A series of important follow-up orders were issued on 20th April 2004, to speed up the implementation of earlier orders, improve the quality of Mid-Day Meals, and address various concerns raised in the Commissioner’s’ reports.

In February 2006, a settlement was reached between the petitioner (PUCL), the Ministry of Rural Development and the Food Ministry, Government of India. According to this settlement, the Central Government shall continue allocation of food grains, under the Targeted Public Distribution System TPDS, on the basis of the 1993-4 poverty ratios (i.e. 36% at the national level), applied to projected State populations as on 1st March 2000. Meanwhile new names could be added and ineligible names deleted from the BPL List 2002, on a continuous basis during the period that the list will be applicable. After taking note of this settlement, the Supreme Court Order vacated the earlier stay order on the BPL list (dated 5th May 2003), in an order dated 14th February 2006. The Government of India was also directed by the Supreme Court to conduct a fresh BPL survey and finalise the content of the survey in consultation with the Supreme Court Commissioner’s. While the new survey was to be completed by April 2007, the Government of India is yet to initiate it. 90

5.3.3 Right to Shelter

The right to shelter has been seen as forming part of Article 21 itself. The Court has gone as far as to say that the right to life ... would take within its sweep the right to food ... and a reasonable accommodation to live in. 91 However, given that these

89 Supreme Court Orders on the Right to Food 15-45 (Right to Food Campaign Secretariat, New Delhi, 2nd edn., 2008).
90 Id. at 48.
observations were not made in a petition by a homeless person seeking shelter, it is
doubtful that this declaration would be in the nature of a positive right that could be said
to be enforceable. On the other hand, in certain other contexts with regard to housing for
the poor, the Court has actually refused to recognize any such absolute right.\textsuperscript{92}

In \textit{Olga Tellis v. Bombay Municipal Corporation},\textsuperscript{93} the Court held that the right to
life included the right to livelihood. The petitioners contended that since they would be
deprived of their livelihood if they were evicted from their slum and pavement dwellings,
their eviction would be tantamount to deprivation of their life and hence be
unconstitutional. The Court, however, was not prepared to go that far. It denied that
contention, saying.\textsuperscript{94}

No one has the right to make use of a public property for a private purpose
without requisite authorization and, therefore, it is erroneous to contend
that pavement dwellers have the right to encroach upon pavements by
constructing dwellings thereon ... If a person puts up a dwelling on the
pavement, whatever may be the economic compulsions behind such an
act, his use of the pavement would become unauthorized.

Later benches of the Supreme Court have followed the \textit{Olga Tellis} case\textsuperscript{95} dictum
with approval. In \textit{Municipal Corporation of Delhi v. Gurnam Kaur},\textsuperscript{96} the Court held that
the Municipal Corporation of Delhi had no legal obligation to provide pavement squatters
alternative shops for rehabilitation as the squatters had no legal enforceable
right. In \textit{Sodan Singh v. NDMC},\textsuperscript{97} a Constitution bench of the Supreme Court reiterated
that the question whether there can at all be a Fundamental Right of a citizen to occupy a
particular place on the pavement where he can squat and engage in trade must be
answered in the negative. These cases fail to account for socio-economic compulsions
that give rise to pavement dwelling and restrict their examination of the problem from a
purely statutory point of view rather than the human rights perspective.

Fortunately, a different note has been struck in \textit{Ahmedabad Municipal

\textsuperscript{92} \textit{Supra} note 69 at 287.
\textsuperscript{93} (1985) 3 SCC 545.
\textsuperscript{94} \textit{Ibid}.
\textsuperscript{95} \textit{Ibid}.
\textsuperscript{96} (1989) 1 SCC 101.
\textsuperscript{97} (1989) 4 SCC 155.
Corporation v. Nawab Khan Gulab Khan,\textsuperscript{98} in the context of eviction of encroachers in a busy locality of Ahmedabad city, the Court said:\textsuperscript{99}

Due to want of facilities and opportunities, the right to residence and settlement is an illusion to the rural and urban poor. Articles 38, 39 and 46 mandate the State, as its economic policy, to provide socio-economic justice to minimize inequalities in income and in opportunities and status. It positively charges the State to distribute its largesse to the weaker sections of the society envisaged in Article 46 to make socio-economic justice a reality, meaningful and fruitful so as to make life worth living with dignity of person and equality of status and to constantly improve excellence. Though, no person has a right to encroach and erect structures or otherwise on foot paths, pavements or public streets or any other place reserved or earmarked for a public purpose, the State has the Constitutional duty to provide adequate facilities and opportunities by distributing its wealth and resources for settlement of life and erection of shelter over their heads to make the right to life meaningful.

5.3.4 Right to Rehabilitation

The right to rehabilitation in multiple circumstances has been held as being a part of Article 21. A progressive development is the involvement of civil society non-governmental organizations (NGO’s) in the rehabilitation process, which has been given recognition by the Courts.\textsuperscript{100} In addition, the Court utilizes the services of the National Human Rights Commission (NHRC) to monitor the implementation of the Court’s directions and other statutory provisions.\textsuperscript{101}

Article 23 prohibits bonded labour. It has been held that when bonded labour is identified and freed, it is incumbent duty upon the State to rehabilitate them. The right under Article 23 would be of no use in the absence of rehabilitation, for being faced with hunger and starvation in the alternative would also be a violation of the dignity of the individual.\textsuperscript{102} For example, the bonded labor may be rehabilitated on a land basis or on a non-land but skilled craft basis depended on factors such as the choice of the bonded

\textsuperscript{98} (1997) 11 SCC 123.
\textsuperscript{100} \textit{PUCCL v. State of Tamil Nadu} (2004)12 SCC 381.
\textsuperscript{101} \textit{Supra} note 88 at 598.
laboure and their experience.

The rehabilitation aspect comes to the fore in cases where people are displaced as a consequence of development, such as the construction of dams and power projects. The national policy, packages and guidelines for resettlement and rehabilitation accepts the principle that right to rehabilitation is a Fundamental Right under Article 21 of the Constitution and that rehabilitation is mandatory and must go on side by side with the project. In Karjan Jalasay Yojana Assargrasth Sahkar & Sangarsh Samiti v. State of Gujarat, it was held that when land was acquired for the construction of a dam, it was the duty of the State to provide alternative land to the tribal and other people belonging to the weaker sections, and in case there was also a place of dwelling on the land, an alternative dwelling place was also directed to be provided. In N.D. Jayal v. Union of India, while making observations on the above decision, it was recognized that mere monetary compensation would be insufficient, as for such groups, monetary compensation in place of land would not provide a sustainable source of dignified living. Similarly, in the last mentioned decision, while dealing with the ousted of the Tehri Dam Project the Court held that thus:

When such social conflicts arise between poor and needier on one side and rich or affluent or less needy on the other, foremost attention has to be paid to the former group which is both financially and politically weak. Such a less advantaged group is expected to be given prior attention by a welfare State like ours which is committed and obliged by the Constitution, particularly by its provisions contained in the Preamble, Fundamental Rights, Fundamental Duties and Directive Principles, to take care of such deprived sections of people who are likely to lose their home and source of livelihood… The construction of a dam cannot be allowed to proceed and be completed leaving the oustees high and dry. Under Article 21, those displaced also have a right to lead a decent life and earn a livelihood at the resettlement locations.

103 1986 (Supp) SCC 350.
105 Ibid.
The Court further held:\textsuperscript{106}

Rehabilitation is not only about providing food, clothes or shelter. It is also about extending support to re-build livelihood by ensuring necessary amenities of life. Rehabilitation of the oustees is a logical corollary of article 21. The oustees should be in a better position to lead a decent life and earn a livelihood in the rehabilitated locations… The overarching projected benefits from the dam should not be counted as an alibi to deprive the fundamental rights of oustees. They should be rehabilitated as soon as they are uprooted.

In \textit{Narmada Bachao Andolan v. Union of India},\textsuperscript{107} it was laid down by the Court that the land which is to be allotted in the resettlement areas should be at least equal in quality if not better than the land from which they were displaced. It is also implicit in the said decision that any plan for the rehabilitation of the displaced people would have to be done after detailed enquiry and application of mind.

To deal with the social evil of immoral trafficking and its adverse consequences, in \textit{Prajwala v. Union of India},\textsuperscript{108} the Supreme Court issued directions concerning the rescue and rehabilitation of such workers and monitoring of the protective homes in which such rescued individuals would be housed. In \textit{Kranti v. Union of India},\textsuperscript{109} the Supreme Court concerned with the plight of the tsunami victims, ordered for rainwater harvesting and for measures to clean out existing water sources. Directions were issued to speed up the process of replacement of boats. It was further recommended that more doctors be appointed for the area and that where agricultural land lay submerged, for those individuals it was suggested that a job may be provided to one member of the family.

\textbf{5.3.5 Right to Health}

Health being one of the vital indicators reflecting quality of human life, and the right to life itself being considered one of the Fundamental Rights, it becomes one of the primary responsibilities of the State to provide health care services to all citizens. The

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\item\textsuperscript{106} \textit{Ibid.; supra} note 88 at 599.
\item\textsuperscript{107} (2000) 10 SCC 664.
\item\textsuperscript{108} (2005) 12 SCC 136.
\item\textsuperscript{109} (2007) 6 SCC 744.
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\end{footnotesize}
Constitution of India which is a vibrant document assures complete justice to the people in all manifestations especially in regard to the Fundamental Rights of the people. The most important of all these Fundamental Rights is the Fundamental Right pertaining to “life and personal liberty”. The judiciary, which has been assigned the task of interpreting the provisions of the Constitution to maintain its dynamism, has given a liberal interpretation to Article 21 in a zeal to make life worth living with dignity in the post-Maneka scenario. The Judiciary has played a significant role in fixing the liability of the doctors as well as the State. The right to health has been perhaps the least difficult area for the Court in terms of justifiability, but not in terms of enforceability. With the recognition that both the Preamble of the Constitution and Fundamental Right to life in Article 21 emphasize the value of human dignity, the Supreme Court began to address the importance of health as a Fundamental Right. In the Directive Principles in Part IV of the Constitution, Article 47 declares that the State shall regard the raising of the level of nutrition and the standard of living of its people and improvement of public health as among its primary duties. Thus, Article 47 of DPSP provides for the duty of the State to improve public health. The Court has always recognized the right to health as being an integral part of the right to life. The principle got tested in the case of an agricultural laborer whose condition, after a fall from a running train, worsened considerably when as many as seven Government hospitals in Calcutta refused to admit him as they did not have beds vacant. The Supreme Court did not stop at declaring the right to health to be a Fundamental Right and at enforcing that right of the laborer by asking the Government of West Bengal to pay him compensation for the loss suffered. It directed the Government to formulate a blue print for primary health care with particular reference to treatment of patients during an emergency.

A note of caution was struck when Government employees protested against the reduction of their entitlements to medical care. The Court said:

No State or country can have unlimited resources to spend on any of its projects. That is why it only approves its projects to the extent it is

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110 Article 21, the Constitution of India.
feasible. The same holds good for providing medical facilities to its citizens including its employees. Provision on facilities cannot be unlimited. It has to be to the extent finances permit. If no scale or rate is fixed then in case private clinics or hospitals increase their rate to exorbitant scales, the State would be bound to reimburse the same. The principle of fixation of rate and scale under the new policy is justified and cannot be held to be violative of Article 21 or Article 47 of the Constitution.

The Supreme Court in Consumer Education and Research Centre v. Union of India,\textsuperscript{114} for the first time explicitly held that the right to health… is an integral facet of a meaningful right to life. The Court, in a PIL, tackled the problem of the health of workers in the asbestos industry. Noticing that long years of exposure to the harmful chemical could result in debilitating asbestosis, the Court mandated compulsory health insurance for every worker as enforcement of the worker’s Fundamental Right to health. It is again in PIL that the Court has had occasion to examine the quality of drugs and medicines being marketed in the country and even ask that some of them be banned.\textsuperscript{115} In State of Kerala and Others v. Kendath Distilleries,\textsuperscript{116} Supreme Court held that Article 47 is one of the Directive Principles of State Policy which is fundamental in the governance of the country and the State has the power to completely prohibit the manufacture, sale, possession, distribution and consumption of liquor as a beverage because it is inherently dangerous to the human health. It was held that Article 21 of the Constitution casts an obligation on the State to take every measure to preserve life.\textsuperscript{117} More recently, in Occupational Health and Safety Association v. Union of India and others, the Supreme Court held thus:\textsuperscript{118}

Right to health \textit{i.e.} right to live in a clean, hygienic and safe environment

\textsuperscript{116} AIR 2013 SC 1812.
\textsuperscript{118} AIR 2014 SC 1469.
is a right flowing from Article 21. Clean surroundings lead to healthy body and healthy. But unfortunately, for eking a livelihood and for national interest, many employees work in dangerous, risky and unhygienic environment. Right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy, particularly clauses (e) and (f) of Articles 39, 41, and 42. Those Articles include protection of health and strength of workers and just and human conditions of work. Those are minimum requirements which must exist to enable a person to live with human dignity. Every State has an obligation and duty to provide at least the minimum condition ensuring human dignity. But when workers are engaged in hazardous and risky jobs, then the responsibility and duty on the State is double-fold.

The duty of State can be enforced through the Courts whenever a breach occurs. The Courts can play an effective role in saving the rights of citizens to prevent and cure diseases. Remedy lies in awareness of the citizens and enforcement of their health rights and through Courts.

5.3.6 Right to Education

The subject of ‘Education’ has always been of continues universal significance because it lays down the firm foundation of any politically organized civil society and its social order. Indeed, it is perhaps the most potent weapon which enables the State to fructify its public policies by molding and even unifying the understanding and resolve of its people on some rational scientific basis. Tony Blair, a distinguished British Labour Statesman in respect of public domain at the Labour Party Conference in 1996 said:

Ask me my three main priorities for Government, and I tell you:

Education; Education; and Education.

In India, the subject of right of children to free and compulsory education is of immense fundamental importance. Unarguably, it constitutes the very basis for the meaningful functioning of our democratic political system. Recently, Altamas Kabir CJI

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120 From the Speech at the Labour Party Conference, October 1, 1996.
addressed a seminar on “The Role of Youth in the Protection of Rights of Women, Children and Senior Citizens.” At the seminar, copious references were made to various schemes initiated by the Government for the benefit of society, the CJI, in response to those initiative stated emphatically that the benefit of all those schemes would not percolate to the people at the grass root level until free and compulsory education is provided to all children to least up to the age of 14 years.

As of 1991 there were 331 million children in India between the ages of 0-14, of these 179 million were between the ages of 6-14 and 90 million of these children do not go to school. A large number of them are child workers, street children or child labourers. Obviously, the State has failed in its “duty” to provide free and compulsory education and this was seriously taken by the Supreme Court. The Journey of the right to education – from being initially enumerated in the Directive Principles to being declared a Fundamental Right – has been a huge struggle and a triumph, for activist, child rights advocates, educationists and NGOs working on education all over the country.

In Mohini Jain v. State of Karnataka, the Court ruled that private institutions imparting education were amenable to the discipline of Part III. Declaring that the right to education was a Fundamental Right, the Court observed that the State was constitutionally obliged to provide educational facilities to its citizens at all levels. No citizen could lead a life of dignity ensured under Article 21 unless he was educated. Therefore, private educational institutions, receiving accreditation from the State, could not charge an exorbitant tuition fee for educational courses. Commercialization of education was both repugnant to the Indian culture ethos and violative of the Constitution. In Unni Krishnan v. State of Andhra Pradesh, the Court held that the right to education is contained in as many three Articles in Part IV, viz., Articles 41, 45, 46, which shows the importance attached to it by the founding fathers. Even some of the

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121 See The Sunday Tribune, Dec. 16, 2012; supra note 118 at 22.
122 This is how, much earlier than the insertion of Article 21A into the Constitution, it was propounded by the Supreme Court in Unni Krishnan case, (1993) 4 SCC 111 by reading the ‘right to education’ within the ambit of Article 21 which guarantees the Fundamental Right to ‘protection of life and personal liberty.’ And, this reading of the Supreme Court remained unaltered despite the overruling of Unnikrishnan (1993) by the majority Court in 11-judge bench decision in T.M.A. Pai Foundation (2002) 8 SCC 481.
124 AIR 1992 SC 1858.
125 AIR 1993 SC 2178.
Articles in Part III, viz., Articles 29 and 30 speak of education. The Court further held that that right to compulsory and free education up to the age of 14 years is a Fundamental Right of every child. The declarations of the right to education as a Fundamental Right, has been further up held and confirmed by the eleven-Judge Constitutional Bench of the Supreme Court in *T.M.A. Pai Foundation v. State of Karnataka*¹²⁶. In this respect, the reference was to the Constitutional commandment contained in Article 21A, which was introduced into the Constitution by 86th Amendment Act of 2002.¹²⁷ It makes right to education as the Fundamental Right by proclaiming that the State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine. Right to education flows directly from Article 21 and is one of the most important Fundamental Rights. In *Ashoka Kumar Thakur v. Union of India*,¹²⁸ while deciding the issue of reservation, this Court made a reference to the provisions of Article 15(3) and 21A of the Constitution, observing that without Article 21A the other Fundamental Rights are rendered meaningless. Therefore, there has to be a need to earnestly on implementing Article 21A.

Without education a citizen may never come to know of his other rights. Since there is no corresponding Constitutional right to higher education the fundamental stress has to be on primary and elementary education, so that a proper foundation for higher education can be effectively laid. The policy framework behind education in India is anchored in the belief that the values of quality, social justice and democracy and the creation of a just and human society can be achieved only through provision of inclusive elementary education to all. Provision of free and compulsory education of satisfactory quality to children from disadvantaged and weaker sections is, therefore, not merely the responsibility of school run or supported by the appropriate Government, but also of

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¹²⁶ (2002) 8 SCC 481.
¹²⁷ In pursuance of this Constitutional commandment of Article 21A, Parliament enacted the law, namely, The Right of Children to Free and Compulsory Education Act, 2009 (35 of 2009). This Act came into force with effect from April 1, 2010, the date on which Article 21A of the Constitution under which the said Act had been enacted, itself came into effect. To make the dates of the two enactments coterminous seems to indicate that there should be no time-lag between the Constitutional commitment and its concretion by the Parliament, implying thereby that the State should start acting without any more delay to fulfill its Constitutional commitment. Correspondingly, the provisions of Article 45 have been amended making it an obligation on the part of the State to impart free education to the children. See Justice Kurian Joseph, *supra* note 123.
schools which are not dependent on Government.\textsuperscript{129}

Hence, we see that education is an issue, which has been treated at length in our Constitution. It is a well accepted fact that democracy cannot be flawless but we can strive to minimize these flaws with proper education. Democracy depends for its very life on a high standard of general, vocational and professional education. Dissemination of learning with search for new knowledge with discipline all round must be maintained at all costs.

\textbf{5.4 UNIFORM CIVIL CODE AND GENDER JUSTICE}

The need and necessity for the enactment of a uniform system of civil laws can be felt throughout the length and breadth of our Constitution, which is the supreme law of the land. Starting right from the Preamble, this urge can be sensed. The Preamble of the Constitution States that India is a “Secular Democratic Republic” which clearly means that there is no State religion. A secular State shall not discriminate against any one on the ground of religion.\textsuperscript{130} It is not concerned with relation of man with God. The religion is the matter of individual faith and cannot be mixed with secular activities. Secular activities can be regulated by the State by enacting laws.\textsuperscript{131} Without a doubt, the most important provision of the Constitution of India in this respect is Article 44, which directs the State to endeavour to secure for the citizens a Uniform Civil Code throughout the territory of India. Though this provision is only a Directive Principle and not enforceable by any Court; they are nevertheless vital and fundamental in the governance of the country. Once Article 44 is interpreted in the light of the Preamble and the mandates laid down in Article 14 and 15, it emerges clear that the framing of a civil code is not just an ambitious directive given by the Constitution makers to the State, but a compulsory mandate – one which we can ill afford to sacrifice at the altar of political expediency.\textsuperscript{132}

The Apex Court has time and again lamented about the State’s lackadaisical attitude to bring a Uniform Civil Code into being. The issue became an open debate with

\textsuperscript{129} Bhartiya Seva Samaj Trust Tr. Pres. & Another v. Yogeshbhai Ambalal Patel & Another, AIR 2012 SC 3285.

\textsuperscript{130} Article 15 of the Constitution guarantees that the State shall not discriminate against any citizen on grounds of religion, caste, sex etc.

\textsuperscript{131} S.R. Bommai v. Union of India, AIR 1994 SC 1918.

the much celebrated Supreme Court decision in *Mohd Ahmed Khan V. Shah Banu Begun*.

The case arose out of an application for maintenance by Muslim divorced women under Section 125 of the Criminal Procedure Code. Her husband had refused to pay her maintenance on the ground that she was paid maintenance during the *iddat* period (interim period); and hence, under the Muslim Personal Law the husband is no longer obliged to maintain her. The Supreme Court held that even after the *Iddat* period, the Husband is obliged to maintain a divorced wife under Section 125; and that the Muslim Personal Law cannot stand as a bar. While upholding the Muslim wife’s right to protection under general law, Chandrachud J. remarked:

> It is also a matter of regret that Article 44 of our Constitution has remained a dead letter… There is no evidence of any official activity for framing a Uniform Civil Code for the country. A common civil code will help the cause of national integration by removing disparate loyalties to law which have conflicting ideologies. No community is likely to bell the cat by making gratuitous concession on this issue. It is the State which is charged with the duty of securing a Uniform Civil Code for citizens of the country and unquestionably it has the legislative competence to do so… We understand the difficulties involved in bringing persons of different faiths and persuasions on a common platform. But a beginning has to be made if the Constitution is to have any meaning.

The judgment in *Shah Banu’s case* created many commotions in the country, especially from some fundamentalist organizations. Yielding to the pressure, the then Government found a way to circumvent the Shah Bano decision by way of enacting the Muslim Women (Right to Protection on Divorce) Act, 1986 which had the effect of curtailing the rights of Muslim women for maintenance under Section 125. The explanation given for implementing this Act was that the Supreme Court’s observation on the need for enacting the Uniform Civil Code is not binding on the Government or the Parliament; and that there should be no interference with the personal laws unless the demand comes from within. The Act made the application under Section 125 Cr PC an

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133 AIR 1985 SC 945.
134 Ibid.
135 Ibid.
option, subject to consent of both the parties. Likewise, in *Mrs. Jorden Diengdish v. S.S. Chopra*, the Supreme Court while examining the provisions of law as applicable to Hindu-Christian-Mohammedan law relating to judicial separation, divorce and nullity of marriage, came to the conclusion that it is far from uniform and observed that the time had come for a complete reform of the law of marriage and to make a uniform law applicable to all people irrespective of religion or caste.

In 1995, the Supreme Court delivered a historic judgment in the case of *Sarla Mudgal v. Union of India*. In that case four Hindu wives separately moved the Supreme Court against their husbands who converted to Islam to have a second wife. The Court held that under Hindu law conversion to another religion does not dissolve the previous marriage and unless the existing marriage is dissolved, re-marriage is void and punishable under Section 494 of the I.P.C. It was observed by the Court that marriage, divorce and religion are in nature as much a matter of faith and conviction and not convenience. The Court held that the drafting of a Uniform Civil Code was imperative. To quote Justice Kuldip Singh from the judgment:

> Article 44 has to be retrieved from the cold storage where it is lying since 1949. Where more than 80 percent of the citizens have already been brought under the codified personal law there is no justification whatsoever to keep in abeyance, anymore, the introduction of the ‘Uniform Civil Code’ for all the citizens in the territory of India.

R.M. Sahai, J, in his separate concurring opinion emphasized the aspect of human rights for women under a Uniform Civil Code. He observed:

> A Uniform Civil Code is imperative both for the protection of the oppressed and promotion of national unity and solidarity. The Government would be well advised to entrust the responsibility to the Law Commission which may in consultation with the Minorities Commission examine the matter and bring about a comprehensive legislation in keeping with the

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136 However in 2001, the Supreme Court in the case of *Daniel Latifi and Another v. Union of India*, AIR 2001 SC 3262, held that, on a proper interpretation of the provisions of the Muslim Women (Protection of Rights on Divorce) Act, the Husband is obliged to maintain the wife for her life.

137 AIR 1985 SC 1531.

138 AIR 1995 SC 1531.

139 Ibid.

140 Ibid.
modern-day concept of human rights for women.

However, this decision evoked severe criticism from many quarters; mainly on the ground that the judges in directing the Government to draft a civil code overstepped their legitimate limits – by ordering the executive on policy issues. Seervai remarked that the issues involved in the case did not raise any question of the desirability of a Uniform Civil Code; but it was raised and discussed ‘gratuitously’ by Kuldeep Singh, J.\(^{141}\)

The impact of the criticism was clear in subsequent cases, where the Supreme Court had to retract its steps and stated that it never issued any directions for the codification of the civil code.\(^{142}\) For instance, in *Ahmadabad Women Action Group (AWAC) v. Union of India*,\(^{143}\) the AWAC, along with some other women’s organizations had filed a PIL before the Supreme Court seeking a declaration that certain statutory provisions were highly discriminatory towards women, and hence void. The Court refused to entertain the petitions on the ground that removal of gender discrimination in personal laws involves issues of State policies, with which the Court will not ordinarily have any concern.\(^{144}\)

However, later decisions of the Supreme Court also made it clear that gender discriminatory elements in personal laws will not stand the test of Constitutional validity. In *Pragati Varghese v. Cyril George Varghese*,\(^{145}\) the Supreme Court struck down Section 10 of the Indian Divorce Act, under which a Christian wife had to prove adultery, along with cruelty or desertion, while seeking divorce. The Court held that this provision derogates human dignity and hence violative of Article 21. The common trend that can be gauged from all the above decisions is that the Supreme Court was heavily in favor of the enactment of a common civil code.

Later, in 2003, The Supreme Court in the case of *John Vallamattom v. Union of India*\(^{146}\) reminded the legislature of its Constitutional mandate under Article 44 of the


\(^{143}\) AIR 1997 Bom 349.


\(^{145}\) AIR 1997 SC 3614.

\(^{146}\) AIR 2003 SC 2902.
Constitution to formulate a Uniform Civil Code, unifying all the diverse personal laws into one single code. Consequently, the judgment has revived the UCC debate altogether and has necessitated a discussion on the issue, in the quest of at least identifying the key concepts and arriving at some definite strategy towards attaining the desired code. In this case, pronouncing upon the validity of Section 118 of the Indian Succession Act, the Supreme Court partially regained its old stand, and exhorted the legislature to the cause of a common civil code. The appellant’s case was that Section 118 of the said Act was discriminatory against Christians as it imposed unreasonable restrictions on their donation of property for religious or charitable purpose by will. The three judge bench of the Supreme Court, from which V. N Khare J. holding the provision unconstitutional as being violative of Article 14, observed: 147

We would like to state that Article 44 provides that the State shall endeavor to secure for the citizens a Uniform Civil Code throughout the territory of India…It is a matter of regret that Article 44 of the Constitution has not been given effect to. Parliament is still to step in and frame a common civil code in the country. A common civil code will help the cause of national integration by removing the contradictions based on ideologies.

In *Seema v. Ashwani Kumar*, 148 the Supreme Court of India directed the Centre and States to amend the law or frame rules and notify them within three months. The Court directed the Government to provide for “Consequences of non-registration of marriages” in the rules which should be formalized after inviting public response and considering them. The Court said the rules so framed would continue to operate till the respective Governments framed legislations for the compulsory registration of marriages. The Court felt that this ruling was necessitated by the need of time as certain unscrupulous husbands deny marriages leaving the spouses in the lurch, be it for seeking maintenance, custody of children or inheritance of property. The ruling of the Court will itself facilitate the object of having of having a common civil code as most the problems relating to it are due to the non-registration of marriages. In other words, this is an

148 *AIR 2006 SC 1158.*
important step for gender justice. It will protect and empower the women. Its secular character unifies different religious communities who, in due course, would be prepared to accept the Constitutional mandate of a Uniform Civil Code.\textsuperscript{149} The term ‘Uniform Civil Code’, therefore, denotes a very small field of civil law relating to marriage, succession, maintenance and adoption and it is this field of personal law which is posing the problem because of its intimate relationship with religious injunctions, practices and beliefs.\textsuperscript{150} A Uniform Civil Code is necessary to ensure gender justice. But, various personal laws come in the way of Uniform Civil Code and gender justice. The Judiciary in India has made some contribution in ensuring gender justice towards a Uniform Civil Code.

Thus, as seen above, the apex court has on several instances reiterated the need to have a Uniform Civil Code in place and reminded the State of its duty to enact a unified civil code. However, none of these have been considered binding enough on the executive or the legislature. Former Chief Justice of India, Mr. Justice Gajender gadkar has observed:\textsuperscript{151}

> In any event, the non implementation of the provision contained in Article 44 amounts to a grave failure of Indian Democracy and the sooner we take suitable action in that behalf, the better”, and that “in the process of evolving a new secular social order, a common civil code is a must.

Surprisingly, there still seems to be a debate regarding the desirability of a common code. There no longer can be any argument as to whether Article 44 should be there or not. It is already there. Once we realize that Article 44 is in the Directive Principles of State Policy and the Directive Principles of State Policy are fundamental in governance of the country, we need not spend time on the question whether we should have a Uniform Civil Code or not. There is a directive and that directive binds us all and that directive being fundamental we have to accept the position as realists and positivists that a Uniform Civil Code is one of the desiderata of the Constitution. Therefore, it is

\textsuperscript{149} Article 44 of the Constitution provides that the State shall endeavor to secure for the citizens a Uniform Civil Code throughout the territory of India. At the very outset, let it be understood that since a larger part of the civil law in the country was already uniform in its content and application, when Article 44 came to be adopted by the Constituent Assembly, it was concerned with only a part of the civil law which we call the personal laws of different communities of India.


\textsuperscript{151} Gajendragadkar, Secularism and the Constitution of India 126 (University of Bombay, Bombay, 1971).
submitted that an endeavor should first be made towards the formulation of a draft code; let it be open to public and parliamentary scrutiny; and after the deliberations it may, if deemed fit, be enacted. It should also be understood that these strategies are not mutually exclusive but should operate at tandem towards the same goal. It may also be pointed out that any reforms relate to gender justice and Uniform Civil Code must be made simple and effective. Efforts have to be made to enable the people to comprehend the benefits of such reforms. For this, media have to give a large coverage. Effective steps have to be taken to allay the apprehension of all communities in regard to a Uniform Civil Code. It is necessary to examine both codified and non-codified laws and evolve gender just laws, through a democratic way and make efforts to secure the Constitutional mandate of a Uniform Civil Code.

5.5 ENVIRONMENTAL JUSTICE

Today, it is universally recognized that the degree of socio-economic development of any country depends upon the degree of measures taken up for the protection of environment. Environment plays a prominent role in the progressive development of man and other living beings. A country, which neglects the environment, will have to experience abnormal nature and natural calamities with disastrous consequences having direct but negative impact on the national economy and public health. Since environmental pollution has the characteristic nature of transgression from one country to other, it becomes a global problem adversely affecting the global economy.

As a result of the exemplary steps taken by the UNO at various successive International Conferences, commencing from that held at Stockholm in 1972 to that held at Johannesburg in 2002, the primary responsibility of prevention, control and

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152 Supra note 150.
155 Earth Summit was held at Johannesburg, South Africa, from 26th August to 4th September 2002. It was the consequential follow up action of the decision of the Earth Summit 1992. Johannesburg conference confirmed that significant progress has been made towards achieving a global consensus and partnership amongst all the people of our planet. Over 4000 delegates from about 100 countries participated in it. Stockholm Convention 2004 was held on May 17th aims at phasing out 12 dangerous pesticides and industrial pollutants. More than 150 countries have signed it and about 60 have ratified it.
abatement of environment is reposed on the individual States with due awareness and collective efforts of their citizens. Consequently, it is now universally recognized that exploitation of natural resources in a *sine qua non* for economic development and such exploitation should be allowed up to such point at which both the environment and the human society can sustain not only in present but also in future. This phenomenon is named as the “Doctrine of Sustainable development”. It is based upon two principles, namely, the “Precautionary Principle” and “Polluter Pays Principle”.  

In this process, the contribution of Indian Judiciary is exemplary. Indian judiciary has touched upon all aspects of protecting the environment from the clusters of pollution by means of various directions, guidelines and orders issued from time to time and declared pollution free environment is as a Fundamental Right falling under Article 21. It has put greater barriers on the vigor of the freedom of trade guaranteed under Article 19(1) (f) and religious freedom under Article 25 and 26 of the Constitution by expending horizons of the right to life and personal liberty assured under Article 21. But when it becomes a question of implementation, the results are discouraging. An analysis of the various decisions of the Supreme Court reveals that the Apex Court aspired to protect environment from clutches of pollution caused by industrial wastes and effluents, noise, smoke, dust and heat. It wanted to protect the polluted agricultural land, water and air, coastal areas, seashores, towns and cities, public health and safety, forests and wild life, and to prohibit cruelty to animals, environmental degradation, and what not, *inter alia* by means of protective justice. For achieving these aspects it wants to put control on the individual rights and freedoms assured under Articles 19 (1) (f), 25 and 26. It wanted the State to undertake its ostensible responsibility enshrined under Directive Principles of State Policy for the well being of mankind as well as environment protection. All these are essential for the socio-economic development of the country.

For achieving the above objectives, the highest Court had exercised its writ jurisdiction when there was leakage of hazardous gases like chlorine from the Shri Ram Fertilizer Industries, waste material of alcohol plant was thrown into the adjoining nala

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156 *Supra* note 154.

157 Article 48-A of Indian Constitution provides that the State to take steps to protect and improve the environment and to safeguard the forest and wild life of the country.

resulting in spreading of obnoxious smells being released apart from mosquito breeding,\textsuperscript{159} highly toxic effluents were discharged into River Ganga by tanneries,\textsuperscript{160} safety and insurance for the benefit of workers was required at the cost of employer,\textsuperscript{161} harmful drug were required to be banned,\textsuperscript{162} welfare of the children born with congenital defects as a consequences of leakage of MIC gas from the Union Carbide Plant at Bhopal, was at stake,\textsuperscript{163} awareness about the environment protection was felt essential,\textsuperscript{164} discharged untreated effluents have resulted in the land pollution of thirty five thousand acres in Tamil Nadu making the land unfit for cultivation,\textsuperscript{165} when there was compelling need for protecting the Taz Mahal from pollution due to emissions of chemical and hazardous industries,\textsuperscript{166} when use of loudspeakers, drums and other sound-producing instruments were causing noise pollution and disturbing the normal day life of the residents in and around places of worship,\textsuperscript{167} when there was need to protect the construction of Narmada dam\textsuperscript{168} and so on. Beside it, remaining concept of safeguarding of forest and wild life in achieving the object of protection of environment, our highest judiciary always awakened for this, as in \textit{T.N.Godavararam Thirumulpad v. Union of India},\textsuperscript{169} in a writ petition for directing to prepare rescue plan to save wild buffalo from extinction, the plea of the State Government that there was lack of funds to undertake various programs for protection of wild buffalo, was held to be not tenable. The State Government was directed to give full effect to centrally sponsored scheme for saving wild buffalo.

While environment aspects have concern with ‘life’, human rights aspects have concern with ‘liberty’. In the context of emerging jurisprudence relating to environmental matters, as in the case of human rights, it is the duty of the Supreme Court to render justice by taking all aspects into consideration.\textsuperscript{170} Where on account of human agencies, the quality of air and of environment are threatened or affected, the Supreme Court would

\textsuperscript{159} \textit{Ratlam Municipality v. Vardhichand}, AIR 1980 SC 1622.
\textsuperscript{160} \textit{M.C.Mehta v. Union of India & Others}, AIR 1988 SC 1037.
\textsuperscript{162} \textit{Vincent Panikulangara v. Union of India} (1987) 2 SCC 165.
\textsuperscript{163} \textit{Union Carbide of India v. Union of India}, AIR 1992 SC 248.
\textsuperscript{164} \textit{M.C.Mehta v. Union of India & Others}, AIR 1992 SC 382.
\textsuperscript{165} \textit{Vellore Citizens Welfare Forum v. Union of India & Others}, AIR 1996 SC 2751.
\textsuperscript{166} \textit{M.C.Mehta v. Union of India} (1997) 2 SCC 353.
\textsuperscript{168} \textit{Narmada Bachao Andolan v. Union of India & Others}, AIR 2000 SC 3751.
\textsuperscript{169} AIR 2012 SC 1254.
\textsuperscript{170} \textit{A.P.Pollution Control Board v. Prof. M.V. Naidu (Retd.) and Others}, AIR 1999 SC 812.
not hesitate to use its innovative power within its epistolary jurisdiction to enforce and safeguard the right to life and to promote public interest.\textsuperscript{171}

In \textit{Association for Environmental Protection v. State of Kerala},\textsuperscript{172} the Alva Municipality reclaimed part of Paeriyar River and the District Tourism Promotion Council, Ernakulam decided to construct a restaurant or the convenience of the public coming there on Shivaratri festival. The proposal was forwarded to the State Government which accorded permission to it. The project was cleared by the State Government contrary to the mandate of G.O. issued \textit{by} the State Government itself under which no project costing more than Rs. 10 lakhs could be executed and implemented without a comprehensive evaluation of an expert which could assess the possible impact of the project on the environment and ecology of the area including water-bodies, rivers, lakes etc. the project was held to be violative of right to life of people in the area. The Supreme Court held that the G.O. was illustrative of the State Government’s commitments to Article 48-A of the Constitution. Under Article 48-A, the State is burdened with the responsibility of making an endeavor to protect and improve the environment and to safeguard the forest and wild life of the country. Under Article 51-A, there is duty of citizens to protect and improve the natural environment including the forests, lakes, rivers and wildlife to have compassion for living creatures. Justice G.S. Singhvi of the Supreme Court in a two Judges Bench “case referred to a legal theory of “Doctrine of Public Trust” developed by the ancient Roman Empire that certain common properties such as air, sea, water and forests are of immense importance to the people in general and they must be held by the Government as a trustee for the free and unimpeded use by the general public and it would be wholly unjustified to make them a subject of private ownership. The doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial exploitation to satisfy the greed of the few.

Environmental issues are relevant and deserve serious consideration. But the needs of the environment require to be balanced with the needs of a developing country.\textsuperscript{173} Natural resources have got to be tapped for the purposes of social development but one

\textsuperscript{171} \textit{V.Lakshmipathy and Others v. State of Karnataka and Others}, AIR 1992 Ker 57.
\textsuperscript{172} AIR 2013 SC 2500; \textit{T.N Godavarman Thirumulpad v. Union of India & Others} (2014) 1 SCR 923.
\textsuperscript{173} \textit{BSES Limited v. Union of India}, AIR 2001 Bom 128.
cannot forget at the same time that tapping of resources have to be done with requisite attention and care so that ecology and environment may not be affected in any serious way. Preservation of the environment and keeping the ecological balance unaffected is a task, which not only the Governments, but also every citizen must undertake.\textsuperscript{174}

The forging discussion speaks volumes about the contribution of the Indian Judiciary not only for the protection of environment but also for the socio-economic development of the country in various ways. In fact, as consequences of the landmark judgments of the highest Courts of the country, the Executive and Legislative wings are activated effectively, and consequently many legislative measures and the executive policies have come into force for achieving the above aspirations.\textsuperscript{175} But what surprises everyone is that in spite of these measures, the environmental degradation is not controlled in the deserving manner. People are facing innumerable problems due to the adverse impact of environment and eco-system. Life and livelihoods are in stake. Growing population is threatening the economic progress and prosperity. Unemployment is not in control. Disparities in living standards are abnormally growing. The chances for an assured living for the future generation are apparently dim. The curing key is not visible. Sustainable development is only an arm foot ahead without allowing the citizen to reach it. People are committing suicide for want of livelihood. Law seems to remain locked in libraries. Judicial verdicts are haplessly evaded in most of the cases. The measures to curb the growing population in various forms remain fanciful slogans. All these developments require not only a review thereof by the competent authorities, but also for the constitution of an effective appropriate statutory machinery, at Centre and in each State, which will work for bringing parity between the environment and socio-economic development. Such a body should consist of experts from various fields like Law, Science, Engineering and Technology of all branches, Forensic Science, Public Grievance Societies, NGOs and Government Officials.

5.6 ACCESS TO FREE LEGAL AID

Legal aid to the poor and weak is necessary for the preservation of rule of law which is necessary for the existence of the orderly society. Until and unless poor illiterate


\textsuperscript{175} See Chapter IV.
man is not legally assisted, he is denied equality in the opportunity to seek justice. Therefore as a step towards making the legal service serve the poor and the deprived; the judiciary has taken active interest in providing legal aid to the needy in the recent past. The Indian Constitution provides for an independent and impartial judiciary and the Courts are given power to protect the Constitution and safeguard the rights of people irrespective of their financial status. Since the aim of the Constitution is to provide justice to all and the Directive Principles are in its integral part of the Constitution, the Constitution dictates that judiciary has duty to protect rights of the poor as also society as a whole. The judiciary through its significant judicial interventions has compelled as well as guided the legislature to come up with the suitable legislations to bring justice to the doorsteps of the weakest sections of the society. Public Interest Litigation is one shining example of how Indian judiciary has played the role of the vanguard of the rights of Indian citizens especially the poor. It encouraged the public spirited people to seek justice for the poor. For that Supreme Court relaxed procedure substantially. Apart from Public Interest Litigation and judicial activism, there are reforms in the judicial process, where it aims to make justice cheap and easy by introducing Lok Adalat system as a one of the methods to provide free legal aid and speedy justice at the door steps of the poor.\textsuperscript{176} In this heading the researcher highlights the importance of free legal aid in a Constitutional democracy like India where a significant section of the population has still not seen the Constitutional promises of even the very basic Fundamental Rights being fulfilled for them.

Legal Aid implies giving free legal services to the poor and needy who cannot afford the services of a lawyer for the conduct of a case or a legal proceeding in any Court, tribunal or before an authority. Legal Aid is the method adopted to ensure that no one is deprived of professional advice and help because of lack of funds. Therefore, the main object is to provide equal justice is to be made available to the poor, down trodden and weaker section of society. In this regard Justice P.N. Bhagwati rightly observed that:\textsuperscript{177}

\textsuperscript{177} Speaking through the Legal Aid Committee formed in 1971 by the State of Gujarat on Legal Aid with its Chairman, Mr. P.N. Bhagwati along with its members, Mr. J.M. Thakore, A.G., Mr. VV Mehta, Deputy Speaker, Gujarat Vidhan Sabha, Mr. Madhavsinh F. Solanki, M.L.A, Mr. Girishbhai C. Patel, Principal, New Lal College, Ahmedabad. His Lordship answered to the question of inequality in the administration of justice between the rich and the poor.
The legal aid means providing an arrangement in the society so that the missionary of administration of justice becomes easily accessible and is not out of reach of those who have to resort to it for enforcement of its given to them by law, the poor and illiterate should be able to approach the Courts and their ignorance and poverty should not be an impediment in the way of their obtaining justice from the Courts. Legal aid should be available to the poor and illiterate, who don’t have access to Courts. One need not be a litigant to seek aid by means of legal aid.

Therefore, legal aid is to be made available to the poor and needy by providing a system of Government funding for those who cannot afford the cost of litigation. Legal aid strives to ensure that Constitutional pledge is fulfilled in its letter and spirit and equal justice is made available to the poor, downtrodden and weaker sections of the society. It is worthy to mention that Article 39 A of the Constitution of India provides that State shall secure that the operation of the legal system promotes justice on a basis of equal opportunity, and shall in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disability. Constitution of India also makes it obligatory for the State to ensure equality before law and a legal system which promotes justice on a basis of equal opportunity to all.\(^{178}\) It is a statutorily recognized public duty of each great branch of Government to obey the rule of law and uphold the tryst with the Constitution by making rules to effectuate legislation meant to help the poor.\(^{179}\)

Subsequently, with the intention of providing free legal aid, the Central Government resolved (on 26 September, 1980) and appointed the Committee for implementing the Legal Aid Schemes. This committee was to monitor and implement legal aid programs on a uniform basis throughout the country in fulfillment of the Constitutional mandate. Experience gained from a review of working of the committee eventually led to enactment of the Legal Services Authorities Act, 1987. The Act provides, inter alia for the constitution of a National Legal Services Authority, a

\(^{178}\) Articles 14 and 22(1), *the Constitution of India*.

\(^{179}\) Order 33, Rule 9A, *Civil Procedure Code, 1908*. 

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Supreme Court Legal Services Committee, State Legal Services Authorities as well as Taluk Legal Services Committees.

The Supreme Court of India got a major opportunity to make an emphatic pronouncement regarding the rights of the poor and indigent in judgment of Hussainara Khatoon v. State of Bihar, 180 where the petitioner brought to the notice of Supreme Court that most of the under trails have already under gone the punishment much more than what they would have got had they been convicted without any delay. The delay was caused due to inability of the persons involved to engage a legal counsel to defend them in the Court and the main reason behind their inability was their poverty. Thus, in this case the Court pointed out that Article 39A emphasized that free legal service was an inalienable element of reasonable, fair and just’ procedure and that the right to free legal services was implicit in the guarantee of Article 21.181 Two years later, in the case of Khatri v. State of Bihar,182 the Court answered the question the right to free legal aid to poor or indigent accused who are incapable of engaging lawyers. It held that the State is Constitutionally bound to provide such aid not only at the stage of trial but also when they are first produced before the magistrate or remanded from time to time and that such a right cannot be denied on the ground of financial constraints or administrative inability or that the accused did not ask for it. Magistrates and Sessions Judges must inform the accused of such rights. The right to free legal services is an essential ingredient of reasonable, fair and just procedure for a person accused of an offence and it must be held implicit in the guarantee of Article 21 and the State is under a Constitutional mandate to provide a lawyer to an accused person if the circumstances of the case and the needs of justice so require…The State cannot avoid this obligation by pleading financial or administrative inability or that none of the aggrieved prisoners asked for any legal aid.

In Suk Das v. Union Territory of Arunachal Pradesh,183 Justice P.N. Bhagwati, emphasized the need of the creating the legal awareness to the poor as they do not know the their rights more particularly right to free legal aid and further observed that in India most of the people are living in rural areas are illiterates and are not aware of the rights

180 (1980) 1 SCC 98.
181 Supra note 176 at 235.
conferred upon them by law. Even literate people do not know what are their rights and entitlements under the law. It is this absence of legal awareness they are not approaching a lawyer for consultation and advice. Moreover, because of their ignorance and illiteracy, they cannot become self-reliant and they cannot even help themselves. That is why promotion of legal literacy has always been recognized as one of the principal items of the program of the legal aid movement in the country. I would say that even right to education would not fulfill its real objective if education about legal entitlements is not made accessible to people and our Constitutional promise of bringing justice to the door steps of the people would remain an illusion. Justice Krishna Iyer, who is crusader of social justice in India, had rightly said:\footnote{M.H. Hoskot v. State of Maharashtra (1978) 3 SCC 81.}

\begin{quote}
If a prisoner sentenced to imprisonment is virtually unable to exercise his Constitutional and statutory right of appeal inclusive of special leave to the Supreme Court for want of legal assistance, there is implicit in the Court under Article 142 read with Articles 21 and 39A of the Constitution, the power to assign counsel for such imprisoned individual for doing complete justice.
\end{quote}

Further, in \textit{Rajoo alias Ramakant v. State of Madhya Pradesh},\footnote{AIR 2012 SC 3034; Suresh & Another v. State of Haryana, 2014 Indlaw SC 815.} the Supreme Court held neither the Constitution nor the Legal Services Authorities Act makes any distinction between a trial and an appeal for the purposes of providing free legal aid to an accused or a person in custody. The High Court was under an obligation to enquire from appellant whether he required legal assistance and if he did, it should have been provided to him at State expenses.

Thus, Legal aid is not a charity or bounty, but is an obligation of the State and right of the citizens. The prime object of the State should be equal justice for all. Thus, legal aid strives to ensure that the Constitutional pledge is fulfilled in its letter and spirit and equal justice is made available to the downtrodden and weaker sections of the society. But in spite of the fact that free legal aid has been held to be necessary adjunct of the rule of law in Article 14, the legal aid movement has not achieved its goal. There is a wide gap between the goals set and met. The major obstacle to the legal aid movement in
India is the lack of legal awareness. People are still not aware of their basic rights due to which the legal aid movement has not achieved its goal yet. It is the absence of legal awareness which leads to exploitation and deprivation of rights and benefits of the poor.

The judiciary should focus more on Legal Aid because it is essential in this present scenario where gulf between haves and have-nots is increasing day by day. And elimination of social and structural discrimination against the poor will be achieved when free Legal Aid is used as an important tool in bringing about distributive justice.

Thus, the need of the hour is that one should need to focus on effective and proper implementation of the laws which are already in place instead of passing new legislations to make legal aid in the country a reality instead of just a myth in the minds of the countrymen. In providing Legal Aid, the Legal Aid institutions at all level should use proper ADR methods so as to speed up the process of compromise between parties to the case and with that matter will be settled without further appeal.

5.7 DIRECTIVE PRINCIPLES OF STATE POLICY: CONCEPT OF REASONABLENESS AND PUBLIC INTEREST

This chapter puts emphasis upon the role of judiciary in relation to the constitutionality of various socio-economic legislations enacted by the State to effectuate the policies enshrined in the Directive Principles of State Policy. This aspect relates to the technique developed by the Courts in construing Directive Principles as reasonable restrictions on Fundamental Rights in the public interest. How the Courts have demonstrated this technique will be shown by the fact that the Directive Principles, which the Courts used as reasonable restrictions upon Fundamental Rights have helped the Courts in exercising their power of judicial review in many cases.

The following discussion will show that the judiciary has shown a greater degree of concern for the implementation of these directives. In other words, the judiciary has been to a great extent responsive to the role played by the Directive Principle in implementation of socio-economic justice. This part of the chapter relates to this theme.

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Judicial concern to widen the concept of reasonableness and public interest further shown in *Laxmi Khandsari v. State of Uttar Pradesh*. In this case notification under the Sugarcane (Control) Order 1966, stopping the crushers for the period 10 October to 1 December 1980, was challenged. The Supreme Court held that it is in the public interest and bears a reasonable nexus to the object which is sought to be achieved namely, to reduce the shortage of sugar and ensure its more equitable distribution. Fazal Ali, J. speaking for the Court observed:

Fundamental Rights enshrined in Part III of the Constitution are neither absolute for unlimited but are subject to reasonable restrictions which may be imposed by the State in public interest…. It is difficult to lay down any hard or fast rule of universal application but in imposing restrictions the State must adopt an object standard amounting to social control by restricting the right of the citizens where the necessities of the situation demand. …another important consideration is that the restrictions must be in public interest and are imposed by striking a just balance between the deprivation of right and the danger or evil sought to be avoided …. One of the important considerations which must weigh with the Court in determining the reasonableness of a restriction is that it should not contravene the Directive Principles contained in Part IV of the Constitution which has a direct bearing on the question.

To present the subject in its right perspective the discussion is confined mainly to areas such as promotion of socio-economic interest of weaker sections, prohibition of slaughter of milch cattle.

5.7.1 Promotion of Socio-Economic Interests of Minorities and Weaker Sections of Society

Article 46 of the Constitution directs the State to promote educational and economic interests of the weaker sections of the people especially of Scheduled Castes and Scheduled Tribes and to protect them from social injustice. The Courts have interpreted the provisions liberally. In *State of Kerala v. N.H. Thomas*, Rule 13AA of

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188 AIR 1981 SC 873.
189 Ibid.
190 AIR 1976 SC 490.
the Kerala State Subordinate Services Rule, 1958, which exempted any member of Scheduled Caste or Scheduled Tribe who is already in service for a specified period, from passing the tests for promotion was in question. Upholding the validity of the rule, the Supreme Court held that it was permissible to give preferential treatment to Scheduled Castes/Tribes under Article 16(1) outside Article 16(4). While making reference to Article 46, the Court observed that giving preference to an unrepresented backward community in matters of public employment is perfectly valid and would not contravene Article 14, 16(1) and 16(2). The Court pointed out that Article 16(4) removed every doubt in this respect. In the words of Ray, C.J.: 191

The classification of employees belonging to Scheduled Castes and Scheduled Tribes for allowing them an extended period of two years for passing the test for promotion is just and reasonable classification having a rational nexus to the object of providing equal opportunity for all citizens in matters relating to employment or appointment to public office.

It is submitted that the decision of the Court in Thomas case reflects the new judicial trend towards the legitimization of the Governmental initiatives to level up the social, educational and economic status of the disadvantaged and the oppressed sections of the society. This ruling would give a free hand to the State to exhaust all possible ways to raise the social standard of the backward groups who because of their lack of resources, attainments and background cannot successfully compete with more advanced sections of the population.

In Madhaw Singh v. State of Bihar,192 section 12 of the Bihar Money Lender’s Act, 1975 was questioned. The Section imposed certain restrictions on the rights of money lenders in regard to usufructuary mortgages and their redemption. Upholding the provision as reasonable and in public interest the Patna High Court observed:193

Agricultural debtor being weaker section of the people section 12 must be considered to be in furtherance of the Directive Principle contained in Article 46, namely, protecting them from social injustice and all forms of exploitation.

191 Id. at 500.
192 AIR 1978 Pat 172.
193 Id. at 184.
The Patna High Court in *Amalandu Kumar v. State of Bihar*, 194 has reminded the State of its Constitutional obligation towards the society as a whole in matters of reservation. In this case the State of Bihar had reduced percentage of marks prescribed for Scheduled Castes and Scheduled Tribes for seeking admission to Medical College, from 45% to 40% and subsequently to 35%. The Court held that the action of the State violated Article 15(1). 195 While making reference to Article 46, the Court observed: 196

Article 46 only enjoins promotion with special care of the educational and economic interest of the weaker sections of the people, in particular, of the Scheduled Castes and the Scheduled Tribes. It does not enjoin upon the State sacrifice the Indian society as a whole for promoting the educational and economic interests of Scheduled Tribes and Scheduled Castes. Article 46 does not ignore the minimum primary needs of our society. The conclusion is therefore, inescapable that the reduction in minimum qualifying marks in regard to Scheduled Castes and Scheduled Tribes is arbitrary, not being based on any relevant consideration.

In the same case, S.K. Jha, J. observed: 197

In making reservation for socially and educationally backward classes, the Scheduled Castes and Scheduled Tribes, the State cannot ignore the fundamental right of the rest of the citizens. A reasonable balance has to be struck between the several relevant considerations and the reasonableness must stand the test of objectivity.

These observations make it clear that the State can certainly implement Directive Principles but it should do so in such a way that the interests of the society as a whole are not sacrificed while promoting educational and economic interest of weaker sections. This also shows that the action of the State which remains within the scope of a particular directive would always be upheld by the Court in the public interest. But if such an action goes beyond the scope of the relevant directive the same is likely to be struck down as

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194 AIR 1980 Pat1.
195 Article 15(1) of the Indian Constitution reads: The State shall not discriminate against any citizen on grounds of religion, race, caste, sex, place of birth or any of them.
196 *Supra* note 194 at 9, 11.
arbitrary.

In Re Krishnada Mondal, which is an interesting case on the point, the question related to the payment of grants to students belonging the Scheduled Castes and Scheduled Tribes who resided in the hostels. The grant in question was restricted to students whose parents income was below Rs. 3600/- per annum. This was challenged as contravening the provisions of Article 46 of the Constitution and also as an unreasonable restriction. Referring to the fundamental character of the Directive Principles contained in Article 37, the Court found that the State’s order complied with Directive Principles. It was held that the action of the State which implemented Article 46 was reasonable and in public interest.

These cases make it ample clear that the judiciary has been quite sensitive to the interests of the weaker sections of the society.

5.7.2 Hindu Ideals of Cow Protection and Prohibition of Slaughter of Milch Cattle

The Courts have also been quite caution about the role of the directive contained in Article 48, which inter alia, prohibits the slaughter of cows and calves and other milch and draught cattle. The dimension of the said directive has been defined in a number of judicial pronouncements. Let us discuss a few of them.

Defining the scope of the directive contained in Article 48, the High Court in Dulla v. State of Uttar Pradesh held that the object of the said Article was economic rather than religious. Similar view was expressed by the Supreme Court in M.H. Quareshi v. State of Bihar, wherein the petitioners who were engaged in the butcher’s business had challenged the Constitutionality of certain enacted passed by legislature of Bihar, Uttar Pradesh and Madhya Pradesh banning the slaughter of certain animals including cows. The Court observed that Article 48 contained two general directives - first, preservation and improvement of breeds and secondly, the prohibition of slaughter of certain specified animals. The protection accorded by the Article extends only to cows, calves and to those animals which are potentially capable of yielding milk or doing work

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199 In Re Krishnada Mondal, id. at 12.
200 AIR 1958 All 198.
as draught cattle and does not extend to those which were at one time milch or draught cattle but which have ceased to be so. The Court held that the ban imposed on slaughter of such animals was reasonable and in the interest of general public.\textsuperscript{202}

In \textit{Waman Bhai Hasan Bhai v. State of Gujrat},\textsuperscript{203} Section 5(14) and (3) of Bombay Animal Preservation Act of 1954 was challenged on the ground of violating the provisions of Articles 19(1) (g) of the Constitution. The Gujarat High Court very pertinently observed:\textsuperscript{204}

By virtue of the provisions of Article 48 of the Constitution any legislation prohibiting slaughter of cows and calves would be considered to be reasonable by Courts so far as challenge on the ground of Article 19(1) (g) is concerned.

Again in \textit{State of Gujarat v. Mirazpur Moti Kureshi Kassab Jamat},\textsuperscript{205} the petitioners, who were butchers, had challenged the Constitutional validity of the Bombay Animal (Preservation of Gujarat Amendment) Act, 1994 on the ground that, it was violative of their Fundamental Right to carry on trade and business under Article 19(1) (g) of the Constitution. Under the above legislation the Gujarat State had imposed a total ban on the slaughter of cows and calves and its progeny. The Seven Judge Constitutional Bench of the Supreme Court by 6:1 majority, following its number of earlier decisions held that Directive Principles are relevant in considering the reasonability of restrictions imposed on Fundamental Rights. It is a Constitutional mandate under Article 37 of the Constitution which provides that in making laws the State shall apply the Directive Principles. A restriction placed on Fundamental Rights will be held to be reasonable and hence valid subject only to two limitations: (1) it does not conflict with the Fundamental rights, and (2) the concerned legislature is competent to enact it. The Court held that the prohibition on slaughter of cow and her progeny does not amount to a total ban on business activity of butchers. They are left free to slaughter cattle other than those specified in the Act. They can slaughter animals other than cow progeny and carry on

\textsuperscript{202} In view of this ruling of the Supreme Court, Seervai submits that the decision in \textit{Bandhu v. Municipal Board}, AIR 1952 All 753 is no longer good law, to the extent that it held that Articles 47 & 48 justified Municipal Board in framing bye-law imposing a total ban on the slaughter of bulls, bullocks, and calves.

\textsuperscript{203} AIR 1981 Guj 40.

\textsuperscript{204} \textit{Id.} at 47; \textit{Darpan Kumar Sharma v. State of Tamil Nadu} (2003) 2 SCC 313.

their business activity. The banning on slaughter of cow progeny is not a prohibition but only a restriction. Only a part of their activity has been prohibited. The cow and her progeny constituted the backbone of Indian agriculture and rural economy as the cattle products and drought animal power in the field of nutrition and health, agriculture and energy (bio-pesticides, bio-gas plants and organic farming). In view of this the Government felt that it is necessary to formulate measures for their development in all possible way as to prevent their slaughter. The ban on slaughter of cow progeny imposed by the Act is, therefore, in the interest of general public within the meaning of clause (6) of the Article 19 of the Constitution. In *State of Haryana v. Rajmal and Another*, the Supreme Court speaking on importance of directive, Article 48 held that it is clear that the person contravening Section 3 of Punjab Prohibition of Cow Slaughter Act 1956 cannot put up a defense that the act of slaughter was being done in a place, of which he is not owner or in respect of which he does not have the conscious possession. Slaughter of Cows, subject to exceptions under Section 4, in any place, is prohibited under Section 3 and penalty for doing so is provided under Section 8. The Court further said that the said Act, which has been acted to give effect to the provisions of Article 48 of Directive Principles of State Policy and which is still in force, prohibits cow slaughter in Section 3 of the Act.

A review of the foregoing cases makes it clear that the Courts have shown their concern for preventing the slaughter of cows, calves and other milch and draught cattle. They have vehemently upheld legislation passed by various States to implement the

\[206\] AIR 2012 SC 779.

\[207\] “3. Prohibition of cow slaughter - Notwithstanding anything contained in any other law for the time being in force or any usage or custom to the contrary, no person shall slaughter or cause to be slaughtered or offer or cause to be offered for slaughter any cow in any place in Punjab:

Provided that killing of a cow by accident or in self defense will not be considered as slaughter under the Act.”

\[208\] “4. Exceptions – (1) Nothing in section 3 shall apply to the slaughter of a cow –

(a) whose suffering is such as to render its destruction desirable according to the certificate of the Veterinary Officer of the area or such other Officer of the Animal Husbandry Department as may be prescribed; or

(b) which is suffering from any contagious or infectious disease notified as such by the Government; or

(c) which is subject to experimentation in the interest of medical and public health research by a certified medical practitioner of the Animal Husbandry Department.

(2) Where it is intended to slaughter a cow for the reasons specified in clause (a) or clause (b) of subsection (1) it shall be incumbent for a person doing so to obtain a prior permission in writing of the Veterinary Officer of the area or such other Officer of the Animal Husbandry Department as may be prescribed.”
directive contained in Article 48. From judicial point of view, such laws are reasonable restrictions on the Fundamental Rights and have always to be presumed in public interest.

5.8 CONCLUSION

A review of the foregoing discussion makes it ample clear that the judiciary has been able to some extent to implement not directly but indirectly the Directive Principles of State Policy through Fundamental Rights especially by creative expansion of Article 21. And in determining the reasonableness of a classification under Article 14 or the reasonableness of a restriction under Article 19, the Court had regard to the directives and gave such interpretation to the order Articles of the Constitution which aimed at promoting the goal contained in the Preamble and the DPSP, envisaging a socialistic polity. In other words, the democratic socialism spelt out in the Preamble and the Directive Principles of our Constitutional is meant to provide the context in which the fulfillment of the Fundamental Rights has to be achieved. The demanding tasks of the day are dynamic legislative action, purposeful judicial reform and sensitive administrative streamlining so as to transform our conditions of socio-economic life and other human values. The evolution of socialistic jurisprudence under the Indian Constitution compels a reversal of the majority view refusing to give primacy to Directive Principles over Fundamental Rights even by an amendment of the Constitution. In 1971, through the Constitution 25th Amendment, which was enacted to get over the difficulties placed in giving effect to the DPSP, Article 31C was added to the Constitution. The first limb of Article 31C provided that no law, which is intended to give effect to the Directive Principles, contained in Articles 39(b) and (c) 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 or Article 19. This legislative effort in fact placed Part IV over some of the Fundamental Rights and in this fashion, the fourth stage namely primacy stage has been ushered in wherein at times supremacy has been given to Part IV and some Fundamental Rights were made subservient to Part IV. But the facets of the principle of equality could always be altered especially to carry out the Directive

Principles of the State Policy envisaged in Part IV of the Constitution.\textsuperscript{211}

The Court’s attitude in treating the amended Article 31C as damaging the basic feature of the Constitution is purely based on metaphysical reasoning of the eighteenth century natural law school.\textsuperscript{212} Indeed, it is a fallacy to treat Fundamental Rights in Part III of the Constitution as basic features. "The only basic feature" in the words of Krishna Iyer is that the omnipresent poverty, the rising cost of living, and the fall in the cost of life.\textsuperscript{213} Iyer maintains that the constitutionally guaranteed rights have less value today than when the Constitution began, even as the Indian rupee today has less purchasing power than when India became free.

These observations make it clear that these rights have to be reconciled with Directive Principles to make them basic in any sense. The Directive Principles which direct the State to promote the welfare of the people are no longer pious-wish package but a program of action.

The Court has interpreted the right to life expansively to include a right to live with dignity, which includes a range of socio-economic rights. However, the structure of the Indian Constitution clearly demarcates Fundamental Rights in Part III and Directive Principles in Part IV. More importantly, Article 37 of the Constitution states that Directive Principles “shall not be enforceable by any Court” even though these principles are “fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws. Unlike Article 32, which uses a flexible standard, Article 37 sets forth a clear rule. The text of Article 37 is unambiguous and does not permit any deviation. Indeed, no major theory of Constitutional interpretation would endorse a judicial interpretation of a bright line rule that deviates from the Plain meaning of the language of text. The Indian Supreme Court therefore has a heavy duty burden in justifying its deviation from the text of Article 37. In the seminal cases that transformed the meaning of Article 21 into a broader right to live with human dignity, the Court’s reasoning is adequate to provide socio-economic Justice and contributing in ascending on the platform of welfare State. The Court’s Path-breaking decision in Manaka Gandhi v.

\textsuperscript{211} Ashok KumarThakur, supra note 29.
\textsuperscript{212} K. Suba Rao, Fundamental Rights under the Constitution of India 15 (University of Madras, Madras, 1966).
Union of India\textsuperscript{214} was the critical moment in this transformation. The Seminal decision which has been the pillar of reform both in civil and political liberties and socio-economic justice has been the decision in Maneka Gandhi case\textsuperscript{215}. It was held therein that the Fundamental Rights are not island but have to be read along with the other rights. Hence, 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. Thenceforth, the Court resuscitated judicial activism, mainly to render Constitutional liberties a living reality for the most vulnerable and powerless sections of Indian Society. After 1978,\textsuperscript{216} the Supreme Court has shown a positive and marked tendency to take the principles of the interdependence of human rights seriously and to interpret the entrenched constitutional guarantees of Fundamental Rights in the light of Directive Principles.\textsuperscript{217}

The Supreme Court has interpreted the Preamble, Chapters on Fundamental Rights and Directive Principles to mean that the right to livelihood encapsulates a meaningful life, social security and disablement benefits which are integral parts of socio-economic justice. Right to health, free and compulsory education up to the age of 14 years, right to food, right to quality life, right to safe environment are considered as fundamental and thus basic human rights. The Court has also held that right to shelter is a Fundamental Right and to make the right meaningful to the poor, State is under a Constitutional duty, to provide facilities and opportunity to build a house.

Thus, the Courts are under a Constitutional obligation to uphold every State measure that translates into living law the Preambulary promise of social justice reiterated in Article 38 of the Constitution.\textsuperscript{218} Therefore, the judges must realize that they are not monks or scientists, but participants in the living stream of our national life. They must ensure that for a common man our State should mean a welfare State and not a farewell State –farewell to the poor, their prosperity and liberty.\textsuperscript{219} Considering the role

\textsuperscript{214} (1978)1 SCC 248.
\textsuperscript{215} Ibid.
\textsuperscript{216} Id. at 597.
\textsuperscript{217} Supra note 211.
and function of the judge, Chagla, a notable judge and a jurist observed:\textsuperscript{220}

Today, the judge and has to consider the social or economic policy of the State and to consider the law in the light of that policy, the judge should not forget that he is also a citizen of the country as interested as anyone else in the great social and economic adventure upon which we are launched and it is not enough that he should do legal justice, which he must do, but he must also try to do social and economic justice, if he can, without hurt to his judicial concerned.

\textsuperscript{220} Ibid.