PART IV

INDIVIDUAL RIGHTS AND SOCIAL JUSTICE
CHAPTER VIII

INDIVIDUAL RIGHTS AND SOCIAL JUSTICE

The Constitution of India reflects the sense of justice that rallied in the minds of its makers. This is evident from the Preamble, and the importance given by the makers of the Constitution to the Fundamental Rights and Directive Principles of State Policy. It is rightly opined that the fundamental rights and directive principles explain the concept of Justice contained in the Preamble and could be characterized as elements constituting the conscience of the Constitution of India.

However, there are some basic differences between the rights and the directives. The fundamental rights contained in Part III deal with justice in its dimensions as individual, political and civil rights, while directive principles contained in Part IV, spell out justice at the social level and deal with social and economic justice.

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1 See, The Constitution of India, Preamble. The relevant portion reads, We the people of India, having solemnly resolved ... to secure to all its citizens; JUSTICE, social, economic and political;...


4 Seervai, Constitutional Law of India (1993), p. 1937. He observes, “The thing to note is that fundamental rights are conferred on each and every person or on each and every citizen or on each and every specified community or denomination.”


economic progress. Fundamental rights operate as a source of restriction on the powers of the ‘State’. The powers of the state, whether legislative, executive or administrative, are subject to those rights. Directive principles, on the other hand, are incorporated in the Constitution to guide the State in matters of legislation and administration. They can be treated as provisions that streamline the legislative and administrative activities of the State. That may be the reason why Dr. Ambedkar compared the Directive Principles with the Instruments of Instructions. Like Instruments of Instructions they are directions to the future legislatures and executives to show in what manner they should exercise their powers. Ambedkar therefore observed that directive principles were the ready index for the legislatures of the future. It is opined that they can be treated as

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8 See, Constitution of India, Article 12. It reads, “In this Part, unless the context otherwise requires, “the State” includes the Government and Parliament of India and the Government and the Legislatures of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.”


11 See, C.A.D. Vol VII p. 476. He said, “In enacting this part of the Constitution, the Assembly is giving certain directions to the future legislature and the future executive to show in what manner they are to exercise the legislative and the executive power they will have. Surely it is not the intention to introduce in this part these principles as mere pious declarations. It is the intention of the Assembly that in future both the legislature and the executive should not merely pay lip service to these principles but that they should be made the basis of all legislative and executive action that they may be taking hereafter in the matter of the governance of the country.” (Emphasis supplied). See also R.B. Sreevasthava, op. cit. at p. 181. See also Ram Jeth Malani, “Fundamental Rights v. Directive Principles”. 8 J.B.C.I. 392 at p. 397. (1981).
guidelines for the courts also. Incorporation of a provision in the Constitution that directive principles are "fundamental in the governance of the country" implies that they are normative in character setting before the State the goals to be achieved. Fundamental rights and directive principles represent the negative and positive aspects of State obligations. As a sequel to such a difference, the Constitution also provides that the fundamental rights are enforceable through courts of law while the directive principles are outside the pale of judicial enforcement. Moreover, it can be said that fundamental rights are static in nature while directive principles are dynamic in character. In short, fundamental rights and directive principles differ in colour, content and character.

In spite of all these differences between them there is a common thread running through fundamental rights and directive principles. They have a common

12 Austin, op. cit., at p. 114. "...the Directive Principles have been a guide for the Union Parliament and state legislatures; they have been cited by the courts to support decisions; governmental bodies have been guided by their provisions. "The Government of India Fiscal Commission of 1949, for example, recognized that its recommendations should be guided by the Principles."

13 Constitution of India, Article 37. It reads, "The provisions contained in this Part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws." (Emphasis supplied).


15 Austin, supra, n.3 at p. 50.

16 The Constitution of India, Article 32.

17 Supra, n. 13.

18 P B Gajendragadkar, The Indian Parliament and the Fundamental Rights (1972). He observes (at p. 43) that the directive principles set out the goal of bringing about an egalitarian society in India. The adoption of the concept of welfare State, fighting of poverty, ignorance, squalor, disease and unemployment raise hopes and aspirations in the minds of the people. Though legitimate, at all times they remain unsatisfied. Their horizon expands along with that the contents of economic concepts. In this theoretical sense, directive principles are dynamic. Since these features are lacking in the case of fundamental rights, though important and significant, they are static.
origin and share common objectives, viz., 'to ensure the welfare of the society envisaged by the Preamble'. It cannot be disputed that both strive for justice. Directive Principles deal with the concept of justice at macro level while fundamental rights lay down the concept at micro level. Further, directive principles form the distributive aspect of justice while fundamental rights constitute its corrective aspect.

A question remains unanswered in the structural arrangement of the fundamental rights and directive principles in the Constitution. What is the relationship between the fundamental rights and directive principles? Even the members of the Constituent Assembly could not reach a consensus on this issue.

The relation between the fundamental rights and directive principles was a matter of heated debate over the years before the judiciary. The judiciary had to struggle, formulating different versions to figure out a sensible content to their relationship. In the interpretation of the relationship between the fundamental rights and directive principles and explanation of the contents of the former in the light of the latter, the judiciary has been highly creative. For a proper understanding of the

20 For a discussion on the distributive and corrective aspects of justice, see, Fitzgerald (Ed.) Salmond on Jurisprudence (1966), p. 63. See also W. Friedmann, Legal Theory (1949), p. 9 where he observes, "...distinction between 'distributive' and 'corrective' justice still forms the basis of all theoretical discussion on the subject. The former directs the distribution of goods and honours to each according to his place in the community; it orders the equal treatment of equals before the law. ... The second form of justice is essentially the measure of the technical principles which govern the administration of law. In regulating legal relations a general standard of redressing the consequences of actions must be found."

21 There was a view in the Assembly itself that there were some elements of conflict between the fundamental rights and directive principles. See, infra, n. 68.
creative process, a glance into the genesis and evolution of fundamental rights and directive principles is essential.

1. EVOLUTION OF FUNDAMENTAL RIGHTS AND DIRECTIVE PRINCIPLES

A study of different Constitutions reveals that almost all of the written constitutions have incorporated certain rights which are considered as either essential, inviolable or sacred and therefore beyond the reach of the powers of the ‘State’. Such rights are accorded a status higher than the ordinary legal rights and are therefore called the Bill of Rights, Fundamental Rights or Basic Rights. The origin of such basic rights inviolable even by the State can be traced to the contents of Magna Carta 1215, Petition of Rights 1628 and Bill of Rights 1688 in England. The Constitution of the United States introduced certain rights by constitutional amendments. Following suit, different nations incorporated certain important rights into their Constitutions. India is also no exception to this.

In India, the concept of rights beyond the reach of legislature was there in the minds of the freedom fighters right from the early stages of the freedom movement. The demand for minimal rights is as old as the formation of the Indian

22 Amendments I to X to the Constitution of the U.S. contain what is called fundamental rights. Hence those amendments together are called the Bill of Rights.

23 See, for instance, Constitutions of German Democratic Republic, Articles 6-18; Constitution of France 1946 which reaffirmed the Declaration of the Rights of Man and Citizens adopted in 1789.

National Congress in 1885. However the idea of fundamental rights as such was embodied for the first time in the Constitution of India Bill, 1895. The demand was repeated in various Congress resolutions between 1917 and 1919. The Common Wealth of India Bill 1925 presented to the House of Commons contained some provisions dealing with fundamental rights. Recommendations for incorporating social and economic rights were made for the first time in the All Parties Conference 1928. This view continued in the I. T. R. First Session, where grant of economic rights and conferment of political rights were claimed by the Indian Labour Organization. Later in 1931, Indian National Congress in its 47th session adopted a resolution with four topics in which Fundamental Rights and Economic Programme had a prominent place. However, the peculiarity of the concept of such fundamental rights during that period was that they envisaged no distinctions between individual, political and civil rights on the one hand and social and economic rights on the other. In other words, there was no distinction between what is presently contained in Parts III and IV of the Constitution of India. The Commonwealth of India Bill 1925, for instance, incorporated liberty of persons, free expression of opinion, free elementary education and use of roads as

26 Austin, op. cit. at p. 53. Article 16 of this Bill laid down a variety of rights including those of free speech, imprisonment only by competent authority, and of free state education. For an authentic summary of the Bill, see, Shiva Rao, The Framing of India's Constitution-Select Documents I (1966), pp. 43 et seq.
27 Article 8.
28 For the Text of the Bill, see K.C.Markandan, op. cit. at pp. 28-29.
29 Id. at p. 30. They included rights for primary education and for improvement of labour conditions.
30 Id. at p. 32.
31 Id. at p. 43.
fundamental rights. Similarly, the Nehru Report 1928 also made no such distinction and we find in it a conglomeration of topics under the rubric Rights, which we presently find as fundamental rights and directive principles.

It was the Sapru Committee 1945, which for the first time drew such a distinction between civil rights on the one hand and social and economic rights on the other. The criterion for such a distinction was the enforceability through courts of law. The Committee opined that the civil rights were judicially enforceable while the others were not. Later, at the time of the framing of the Constitution of India, the Sub-Committee on Fundamental Rights divided the concept of Fundamental Rights into two. They were those "which require positive action by the State and which can be guaranteed only if such an action is practicable, while the other merely requires that the State shall abstain from prejudicial action... It is obvious that rights of the first type are not either capable of, or suitable for, enforcement by legal action, while those of the second type may be so enforced." Hence the Sub Committee proposed that the judicially unenforceable part of rights might be called as Fundamental Principle and the enforceable ones as Fundamental Rights. Such a difference between the two was maintained by the makers of the

32 The Commonwealth of India Bill, 1925. Sec. 4. For the text, see B Siva Rao, Framing of India's Constitution, Vol. I (1966) p. 44.
33 The Nehru Committee Report, 1928. Clause 4. For the text, see, Shiva Rao, op. cit at p. 58.
34 Sapru Committee was constituted for the purpose of eliciting information regarding future constitutional set up. See, Markandan, op. cit. at p. 46.
35 Ibid.
36 Ibid. The unenforceable rights would include the duty of the State to secure the citizens' right to work, maintenance in old age and sickness, free education, protection of economic
Constitution on the ground of the fundamental difference between them. According to them the fundamental rights had negative contents while the directive principles were positive in nature. Such a distinction implies that enforcement of fundamental rights calls only for a restraint on the part of the State while implementation of the directive principles requires a positive action on its part which may cause huge expenditure of state funds. That is why they held fundamental rights alone as justiciable in nature permitting individuals to enforce them through courts of law and to approach the courts for preventing and prohibiting their violation and considered Directive Principles of State Policy as not enforceable through courts of law. Such a bifurcation is seen to have been effected in some other Constitutions also. It is on the basis of such logic that the concept of directive principles came to have a place in the Constitution of India. The idea of incorporation of directive principles in our Constitution is said to be based on the declarations in the Constitution of Ireland 1937, which can be accepted as the precursor of the Constitution of India in this respect. Provisions in Part IV in our Constitution have much in common with the contents of Article

318

interests of the weaker sections and State protection of the culture, language and script of various communities and linguistic areas in India. (at p. 34).

38 See, Constitution of India, Articles 13 (2) and 32.

39 Id. Article 37.

40 See for instance, the Constitution of Ireland. Article 45.

41 For the text, see, Amos J. Peaslee, (Ed.) Constitutions of Nations Vol. II

42 Incorporation of the directive principles has been ascribed also due to the Irish-Congress relationship dating back to the nineteenth century and the consequent long standing affinity of the Congress to the Irish nationalist movement. See, Granville Austin, op. cit., at p. 76.

45 of the Irish Constitution. However, some Constitutions do not provide for anything like our directive principles while some other Constitutions which contain concepts similar to those in Part III and Part IV of our Constitution make no such distinction between and among the concepts.

It reads, “The principles of social policy set forth in this Article are intended for the general guidance of the Oireachtas. The application of those principles in the making of laws shall be the care of the Oireachtas exclusively, and shall not be cognisable by any Court under any of the provisions of this Constitution.

(1) The State shall strive to promote the welfare of the whole people by securing and protecting as effectively as it may a social order in which justice and charity shall inform all the institutions of the national life.

(ii) That the ownership and control of the material resources of the community may be so distributed amongst private individuals and the various classes as best to subserve the common good.

(iii) That, especially, the operation of free competition shall not be allowed so to develop as to result in the concentration of the ownership or control of essential commodities in a few individuals to the common detriment.

(iv) That in what pertains to the control of credit the constant and predominant aim shall be the welfare of the people as a whole.

(v) That there may be established on the land in economic security as many families as in the circumstances shall be practicable.

3 (1) The State shall favour and, where necessary, supplement private initiative industry and commerce.

(2) The State shall endeavour to secure that private enterprise shall be so conducted as to ensure reasonable efficiency in the production and distribution of goods and as to protect the public against unjust exploitation.

4 (1) The State pledges itself to safeguard with especial care the economic interests of the weaker sections of the community, and, where necessary, to contribute to the support of the infirm, the widow, the orphan, and the aged.

(2) The State shall endeavour to ensure that the strength and health of workers, men and women, and the tender age of children shall not be abused and that citizens shall not be forced by economic necessity to enter avocations unsuited to their sex, age or strength.”

For instance, the Constitution of the United States of America.

See for example, the Constitution of the erstwhile Union of Soviet Socialist Republic. Chapter 7 deals with “the Basic Rights, Freedom and Duties of Citizens of the U.S.S.R.” which includes the rights of citizens to rest and leisure (Article 41); health protection (Article 42); education (Article 45); cultural benefits (Article 46); to profess or not to
It is clear that in India, both Fundamental Rights and Directive Principles share a common origin though the conceptual background of these two is different. It is also evident that they have a common target to achieve. They in general can be identified as the attempt of the Constitution-makers to assure justice and secure progress at the individual and collective (social) levels simultaneously. The fundamental rights represent the political freedom of individuals while the directives identify their social and economic freedoms. They together constitute a comprehensive whole. Therefore in the absence of one, the other may become meaningless and ineffective. The directives contain the social and economic aspects of individual rights without which the political and civil liberties as contained in Part III cannot be realized.47 That may be the reason why it was observed that in the absence of the directives, revolution might take place.48 Similarly, without proper enjoyment of fundamental rights, it cannot be said that the objects for which directives exist are satisfied.49 In other words, enforcement of fundamental rights against directive principles is meaningless and

profess religion (Article 52d); not to be arrested without court order or warrant of a prosecutor (Article 54); and to privacy (Article 56). See also the Constitution of the Weimer Republic.

47 Cf. Upendra Baxi, (Ed.) K. K. Mathew on Democracy, Equality and Freedom (1978), p. 55. See also People’s Union for Democratic Rights v. Union of India, A.I.R. 1982 S.C. 1473. The Court observed, (at p. 1486) “Political freedom had no meaning unless it was accompanied by social and economic freedom and it was therefore necessary to carry forward the social and economic revolution with a view to creating socio-economic conditions in which every one would be able to enjoy basic human rights and participate in the fruits of freedom and liberty in an egalitarian social and economic framework. It was with this end in view that the Constitution makers enacted the Directive Principles of State Policy in Part IV of the Constitution setting out the constitutional goal of a new socio-economic order.”

48 See, Austin, op. cit. at p. 51. For a contrary view, see, Seervai, op. cit. at p.1644.

49 See, Minerva Mills v. Union of India, A.I.R. 1980 S.C. 1789. Chandrachud J. speaking for the majority observes (at p. 1807) “But just as the rights conferred by Part III would be without a radar and a compass if they were not geared to an ideal, in the same manner, the attainment of the ideals set out in Part IV would become a pretence or tyranny if the price to be paid for achieving that ideal human freedoms.”
implementation of directive principles contrary to fundamental rights is constitutionally not envisaged. It is a truism that the individual rights guaranteed by the Constitution might either lose their content or become unenforceable when directive principles are absent. In this sense, fundamental rights can be considered as that built upon the background of directive principles. In such a context, fundamental rights and directive principles can be considered as complementary and supplementary to each other and they derive their life breath from each other.

It is clear that the makers of the Constitution had certain specific objectives in their mind in introducing the directives into the Constitution. They attempted to lay down (a) the limits within which the State should work, (b) the ideals, particularly economic and social, which the state should strive to achieve, (c) the directions to the future legislature and executive about the manner in which they should work and (d) the ground for proper enjoyment of the individual rights

50 This idea is reflected in the following observations, “The formulation of social and economic objectives in national constitution owes its origin essentially to the realization that the content of political freedom is impaired by the abuse of social justice and that without adequate protection for social and economic rights, constitutional guarantees of what are known as “classical individual liberties” such as the right to equality, liberty of persons and freedom of speech and association may lose much of their significance.” B. Siva Rao, Framing of India’s Constitution- A Study (1968), p. 319.

51 This idea is reflected in the following words of Roosevelt, “We have come to the clear realization of the fact that true individual freedom cannot exist without economic security and independence. Necessitous men are not free men... In our day these economic truths have become accepted as self-evident.” B. Siva Rao, supra, n. 36 at p. 46.


popularly called Fundamental Rights.\textsuperscript{54} Hence it may not be wrong to say that in every respect the directive principles of state policy simulate the \textit{Rajadharma}\textsuperscript{55} of ancient India.\textsuperscript{56} It is therefore improper for the Government to ignore the directive principles while administering the nation.

(a) Nature of Directive Principles

What is the nature and status of the directive principles contained in the Constitution? There is a view that the directives contain mere pious wishes or declarations,\textsuperscript{57} ideals, goals or principles of constitutional morality rather than reality of government.\textsuperscript{58} In view of Article 37 of the Constitution,\textsuperscript{59} judiciary cannot interfere with questions relating to implementation of the directives. It rests fully with the pure will and pleasure of the ‘State’ to decide whether the mandates contained in the directives should be looked into for framing legislative policies and discharging executive functions. There is no assurance that the various governments would implement them through legislative and executive actions. On such a view, they are characterised as constitutional ideals. However, there is a contrary view that they are not mere ideals and that any law against them is
ultravires. The directives are sufficient to give protection against arbitrary legislation. Non-implementation of the directives would be questioned by the people and the government would be answerable to the electorate. The holders of this view therefore assert that directive principles serve a definite constitutional purpose.

Notwithstanding such a difference of opinion over their effectiveness, and the existence of completely contrary views that they are bereft of any force of law, and that non-compliance with the directives brings forth unconstitutionality, it is undisputed that the directive principles adorn a very important place in the administration of the nation. Directive principles are important for more reasons than one. Proper implementation of the directives is very much necessary for the social and economic progress of the nation. In them lie the secrets of upliftment of the masses. They are the talismans for the social and economic progress of the downtrodden. Moreover, only a proper implementation of the directive principles would enable realization of the fundamental rights

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60 C.A.D. Vol. VIII p. 482.
conferred by the Constitution. It, therefore, is constitutionally inappropriate on the part of the administrators to ignore the directive principles.

(b) Relation Between Fundamental Rights And Directive Principles

Examination of some crucial questions is necessary for a proper understanding of the constitutional status of the directive principles. What is the relationship between the fundamental rights and directive principles? Is there any conflict between them? In case of such a conflict, can directive principles prevail over the fundamental rights? Or, in such a case, will fundamental rights prevail over directives? Is there any remedy against non-implementation or wrong implementation of directive principles by the State while carrying out administration? Neither constitutional history nor provisions in our Constitution does provide a satisfactory answer to these questions. However, these are some of the questions to which the Indian judiciary particularly the Apex Court, has addressed itself. What is the contribution of the judiciary in making a proper alignment between the rights and the directives? Has the judiciary played any significant role for the proper implementation of the directives? A study of the

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64 Supra, n. 47.

65 One may find many instances in which the governments carry out administration of the country either in a manner contrary to or in ignorance of the mandate of the directive principles. There are innumerable occasions in which law was enacted and administration carried out by the government without taking the directives into account. For example, enacted law has not been sufficient for giving effect to Article 45, which provides for free and compulsory education. Similarly, it is doubtful whether enacted law has been sufficient to protect the interests of the workers by stipulating a living wage as required by Article 43 and their participation in management as contemplated by Article 43-A. Similar is the case with protection of environment and wild life warranted by Article 48-A. Likewise, there are instances in which the mandates of the directives have remained dead letters even after 50 years of independence. Thus even in the wake of Article 44, no law has been enacted for uniform civil code.
judicial response on these issues is very important for many reasons. Indiscriminate exercise of power by the State for implementing directives may override the fundamental rights. This may lead in some of the cases to virtual deprivation of the constitutionally guaranteed rights. Such cases open up much scope for judicial review of state action against abridgment of fundamental rights. Since fundamental rights are established on the bedrock of directive principles, failure on the part of the legislature or the executive to implement the directives may make realization of fundamental rights difficult. The role the judiciary has played in cases of non-implementation of the directives by the State also assumes significance in such a context.

The approach of the judiciary in classifying the relationship between fundamental rights and directive principles fall into two stages. In the first stage, the Court was considering the two Parts as in conflict. In the second, on the other hand the rights and directives were considered as supplementary and complementary to each other and on that basis the Court began to explain fundamental rights in the light of directive principles. It is in this second stage that the Court exhibited remarkable innovation. For a proper evaluation of the role played by the Court in this stage, an analysis of the cases touching upon the relationship between Part III and Part IV is necessary.

66 Supra, n. 47.
In the early stages, the Court had the approach that in some cases steps to implement the directive principles may amount to violation of fundamental rights. At the time of bifurcation of the rights into fundamental rights and directive principles, the Constituent Assembly was warned by the constitutional Advisor B.N. Rau about the possibility of such an understanding of those two parts. The Supreme Court had to deal with cases in which legislation in furtherance of directive principles was impugned on the ground that it infringed the fundamental rights conferred by the Constitution and therefore unconstitutional. In the earlier stages, the Court held that in case of such a conflict, the fundamental rights would prevail over the directives. In *State of Madras v. Champakam Dorairajan* the Court held that the unenforceable directive principles could not override the judicially enforceable fundamental rights. Reiterating the stand, later in *Mohammed Hanif Quareshi v. State of Bihar* the Court held that the directives could not override the fundamental rights in so far as there is a categorical statement in Article 13(2) that nothing contrary to Part III rights could exist. Hence

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64 He said, “There is a danger which ought to be pointed out. It may be necessary for the State for the proper discharge of one of its fundamental duties...to invade private rights. In other words, there may be a conflict between the Directive Principles of State Policies and of the rights or freedom of the individual guaranteed in the fundamental rights.” See K.C. Markandan, op. cit. at p. 81.

65 A.I.R. 1951 S.C. 226. In this case, a government order reserving seats in medical colleges on communal lines was challenged as violative of Article 29 (2). The order was sought to be justified on the ground that it was for implementing the directive contained in Article 46.

70 Id. at p. 228. The Court observed, “The directive principles ... which by Article 37 are expressly made unenforceable by a Court, cannot overrule the provisions found in Part III which notwithstanding other provisions, are expressly made enforceable by appropriate writs... The directive principles of State policy have to conform to and run as subsidiary to the Chapter on Fundamental Rights.”

71 A.I.R. 1958 S.C. 731. That was a bunch of writ petitions under Article 32 challenging the validity of certain enactment banning slaughter of certain animals by some States as violative of Article 19 (1) (g). The States sought to justify the legislation on the ground that they were in furtherance of Article 48.
the Court advocated a harmonious construction whereby the State could implement directive principles without abridging fundamental rights.\textsuperscript{72} In \textit{Re Kerala Education Bill, 1957}\textsuperscript{73} the Court recognized that the enactment referred for consideration was in furtherance of Article 46 but observed that such legislative power should not be exercised in a manner overriding and subversing Part III of the Constitution.\textsuperscript{74}

A significant change is visible in the attitude of the Court in the subsequent period. During that term, the Court began to construe the directive principles as on par with fundamental rights. This trend was inaugurated by the decision in \textit{C & B. Boarding and Lodging v. State of Mysore}.\textsuperscript{75} Discarding the attitude of finding an intrinsic imbalance between fundamental rights and directive principles, the Court in this case, tried to confer equal status to fundamental rights and directive principles. The Court was on its way to find co-existence of rights and directives on the ground that they were supplementary and complementary to each other. Justice Hegde speaking for a five Judge bench held,\textsuperscript{76}

\textsuperscript{72} \textit{Id}. at p. 739.

\textsuperscript{73} \textit{A.I.R.} 1958 S.C. 956. The Kerala Legislature passed the Kerala Education Bill and it was sent for the assent of the President. The President sent it to the Supreme Court under Article 143 (1) seeking its advice whether the provisions of the Act violated the Constitution. The Court held that some of the provisions of the Act violated the minority rights under Article 30.

\textsuperscript{74} \textit{Id}. at p. 966.

\textsuperscript{75} \textit{A.I.R.} 1970 S.C. 2042. A bunch of cases were filed as Writ Petitions and appeals by certificate challenging the validity of a notification under the Minimum Wages Act 1948, fixing minimum wages for different classes of employees in different residential hotels and eating houses on the ground that the provision in the Act empowering the government to issue the notification confers unguided and arbitrary powers on the government. The notification was challenged as violative of the fundamental rights of the petitioners under Article 14 and Article 19 (1) (g).

\textsuperscript{76} \textit{Id}. at p. 2050.
"While rights conferred under Part III are fundamental, the directives given under Part IV are fundamental in the governance of the country. We see no conflict on the whole between the provisions contained in Part III and Part IV. They are complementary and supplementary to each other."

A changing note is thus visible in the judicial approach towards the relationship between fundamental rights and directive principles. The Court identified the rights and directives as the media for attaining social and national welfare, and observed that the provisions of the Constitution could not be treated as barriers to progress but were on the other hand instruments which proposed orderly progress. The Court therefore held that there was no fundamental right to carry on a profession to the extent of exploitation which directive principles sought to prevent. In short, the Court was reaching a conclusion that the rights and directives were pointers to the same direction.

This approach was given further colour and content a decade later in Minerva Mills v. Union of India. This case further explained the supplementary and complementary nature of fundamental rights and directive principles. Holding that Parts III and IV of our Constitution constitute the core of the commitment for a social revolution, the Court observed.

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77 Ibid. Speaking for the Court, Justice Hegde observed, "The provisions of the Constitution are not enacted as the barriers to progress. They provide a plan for orderly progress towards the social order contemplated by the preamble to the Constitution. They do not permit any kind of slavery, social economic or political."


79 Id. at p. 1806. (per Chandrachud J.)
“(T)hey together, are the conscience of the Constitution to be traced to the deep understanding of the scheme of the Indian Constitution. . . . Parts III and IV are like two wheels of a chariot, one no less important than the other. You snap one and the other will lose its efficacy. They are like a twin formula for achieving the social revolution, which is the ideal which the visionary founders of the Constitution set before themselves. In other words, the Indian Constitution is the bedrock of the balance between Parts III and IV.”

The Court placed emphasis on the point that Parts III and IV of the Constitution were only a means for achieving certain ideals and not ends in themselves. Those ideals would be realized only if the rights set out in Part III are fulfilled and the duties laid down in Part IV are discharged. Such a point of view calls for conferment of equal status and importance to the provisions in Parts III and IV. Both share the same responsibility in building up a society in which ‘Justice, Equality Fraternity and Liberty’ exist. In other words, there is a duty on the State to ensure that the fundamental rights of the people are not breached and that the directive principles are implemented. This undoubtedly is a new trend in the attitude of the Apex Court. The Court gave up thinking in terms of competition and conflict between directive principles and fundamental rights. The Court stopped the approach of putting one category as superior to the other. From experience, the Court understood that for the welfare of the society and progress of the State both are equally required. Can the State in such a situation avoid implementation of the socially relevant directive principles? Will not non-implementation of the directive principles adversely affect the progress of the nation and the enjoyment of fundamental rights? Is not implementation of the
directive principles as necessary as the enforcement of fundamental rights? Answers to all these questions are in the affirmative.

It is clear from the decisions in cases like Re Kerala Education Bill, Chandrabhawan and Minerva Mills that the Court realized the necessity of checking wrong implementation of directives as well as the necessity of proper and timely implementation of the directives by the State. What would happen if the legislature and the executive refuse to implement the directives? Will the Court in such cases remain helpless, as directives are not justiciable? Apart from this aspect, will not such non-implementation restrict the scope of judicial review under Article 32 if the Court could not do anything to implement the directives so as to give effect to fundamental rights? What role could the judiciary play in protecting the enjoyment of fundamental rights in such a context? Can the Court prepare the background by implementing the directive principles without violating the constitutional provision prohibiting justiciability of the directive principles?

2. THE CREATIVE JUDICIAL APPROACH

It is in a context of such complex questions that the second stage in judicial approach reflecting a new trend in interpreting the relationship between Parts III and IV is developed by the Supreme Court. The changed approach is developed by a new judicial technique of construing the provisions contained in Part III of the Constitution. The technique was of giving fundamental rights wider content with the help of the concepts contained in directive principles. The Court started
construing fundamental rights by reading them in the light of the constitutional guidelines for legislation contained in the directives. The Court so engaged itself in an act of creativity by a more progressive interpretation of the law through adoption of a new judicial technique. In this process, the Court infused the concept of social justice into fundamental rights and gave a go by to the earlier view that they contained only individual rights.

The change in the judicial approach will be clear from the decisions dealing with the construction of the constitutional provisions relating to the concepts of equality and the right of life. The right to equality is contained in Articles 1480 and further explained by Articles 15 to 18 and the concept of right to life is contained in Article 2181 Some facets of these two concepts are discernible in different provisions contained in Part IV. Facets of the concept of equality are perceivable in Articles 3882, 39 (a), (b), (c) and (d)83.

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80 Article 14 reads, "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."

81 Article 21 provides, "No person shall be deprived of his life or personal liberty except according to the procedure established by law.

82 Article 38 (1) reads, "The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life."

(2) The State shall, in particular, strive to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst group of people residing in different areas or engaged in different vocations."

83 39 (a) to (d) reads as follows:

"The State shall, in particular, direct its policy towards securing:

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

(b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;"
43 narrative, 44 narrative and 46 narrative. Similarly, some of the basic requirements of a decent human right to life can be seen in Articles 39A, 41, 42, 43, 45, 47. An examination of the cases dealing with these two concepts reveal how the Supreme Court explained fundamental rights in the light of social justice by reading directive principles into them.

(c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;

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

(e) (f) ....

Article 43 reads, "The State shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunity and, in particular, the State shall endeavour to promote cottage industries on an individual or co-operative basis in rural areas."

Article 44 runs, "The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India."

Article 46 reads, "The State shall promote with special care the education and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation."

Article 39-A reads as follows, "The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities."

Article 41 reads, "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 case of unemployment, old age, sickness and disablement, and in other cases of undeserved want."

Article 42 reads, "The State shall make provision for securing just and humane conditions of work and for maternity relief."

Article 45 reads: "The State shall provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years."

Article 47 reads: "The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of the public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the
(a) **The Concept of Equality**

The concept of equality enshrined in Part III of the Constitution has ever been a matter of judicial discourse. The Court had occasion to have a thorough excursus into the concept of equality contained in Article 14 when in the various instances the right to equality was alleged to have been violated by State action. The concept of equality means equal treatment of equals and unequal treatment of unequals. Hence, right to equality is violated when there is discrimination among persons who are equally placed. The fundamental right to equality is violated when the State discriminates individuals who are equally posited. This leads us to a question of classification of persons through legislation. If the State classifies or categorizes individuals on certain wrong and unacceptable principles, the right to equality under Part III would be deemed to be violated. It means that there are certain principles on which classification or discrimination of individuals could be effected by State without violating the right to equality. But, what are those principles on which such classification could be made? To be valid, such classification effected by the state action should be reasonable. There are two tests judicially laid down to evaluate whether the classification is reasonable. A valid classification, the Apex Court held, must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and that differentia must have a rational nexus with the object sought.

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93 For a discussion, see Mahendra P. Singh (Ed.) *V.N.Sukla's Constitution of India* (1990), p. 32.
to be achieved by the state action. The right to equality is violated, if the impugned state action failed to satisfy the requirements of the judicially evolved twin tests. It means that all cases of unequal treatment by classification of persons or things would not be struck down as violative of equality. The biped test of valid classification determines the scope and extent of the right to equality under Article 14. However, determination of the concept of equality on such tests reflects a purely legalistic and positivist approach of the Court. The concept of right to equality and the validity of state action revolve in such a circumstance only around the technical, logical and semantic aspects of law.

Later, the Supreme Court recognized the need to concentrate on the content of the concept of equality. In *E.P. Royappa v. State of Tamilnadu*, the Court observed the concept should not be subjected to a narrow, pedantic or lexicographic approach. The Court observed that the concept of equality envisaged by Article 14 is a dynamic one with many aspects and dimensions. The concept of equality cannot therefore be “cribbed, cabined and confined” within traditional and doctrinaire limits. It was observed that the concept of equality was

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94 *Budhan Choudhary v. State of Bihar*, A.I.R. 1955 S.C. 191, 193. The Court held, “In order, however, to pass the test of permissible classification two conditions must be fulfilled, namely, (I) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (ii) that that differentia must have a rational relation to the object sought to be achieved by the statute in question.”

95 (1974) 4 S.C.C. 3. This was a petition under Article 32 of the Constitution. The petitioner was a member of the Indian Administrative Service. He was posted to act as Chief Secretary. The Government of the State had made the posts of Additional Chief Secretary, Chief Secretary and the Revenue Member on par. However, later the petitioner was appointed as Deputy Chairman of the State Planning Commission and later still as Officer on Special Duty. The government posted his junior as the Chief Secretary. This petition was filed on the ground *inter alia* that the act of the State was violative of Article 14 and 16

96 *Id* at p 38. (per Bhagawati J.)
antithetic to arbitrariness and hence every instance of arbitrariness should be considered violative of equality. Hence Article 14 was emphasized to strike at the root of arbitrariness of state action. The Court widened the scope of the concept of equality in accordance with the changed demands of time and gave a new dimension to the concept with a view to controlling arbitrariness. The decision is certainly the evidence of rejection of a mere positivist approach in the interpretation of the concept.

In spite of the progressive interpretation rendered by the Court in Royappa, certain questions regarding the concept were left unanswered. Though the Court held that the concept of equality was dynamic in nature and antithetical to arbitrariness, it did not clarify what were the contents of equality and what were the instances of violation of equality? How can arbitrariness be determined? These questions are related to social facts and hence the scope and content of the right and the instances of violation have to be determined in relation to the social ideals. It is in such a context that the Court introduced the concept of social justice into the concept of equality and read the concept of equality contained in Part III in the light of and in accordance with the directive principles in Part IV of the Constitution, which contain some aspects of equality.

One of the most creative attempts of the Court in this respect is found in the matter of protection of the interests of employees. It is well established that payment of wages to workers is correlated to the volume and nature of work undertaken by them. If the power, duty, responsibility and functions of different persons are similar, they all should be paid on par. There cannot be differential
treatment between and among them. Or, in other words, discrimination among employees who have same responsibility and duty under an employer for purposes of payment of wages would be violative of the concept of equality. However, this aspect of equality has not been explicitly covered by Article 14, or Article 16(1).  

The Supreme Court had occasion to deal with that issue in _Randhir Singh v. Union of India_. The Court observed that though not a fundamental right, without the right to equal pay for equal work, the concept of equality as a fundamental right would be meaningless. Dealing with the plea of equal pay for equal work, the Court observed,

"But, it certainly is a constitutional goal... Directive Principles, as have been pointed out in some of the judgements of this Court have to be read into fundamental right as a matter of interpretation.... To the vast majority of the people ... the equality clause will have some substance if equal work means equal pay."

The Court therefore held,

"Construing Articles 14 and 16 in the light of the Preamble and Article 39 (d), we are of the view that the principle of equal

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97 Article 16 (1) reads, "There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State."

98 A.I.R.1982 S.C. 879. A petition under Article 32 of the Constitution was filed by a driver-constable in the Delhi Police Force alleging that there was disparity between his scale of pay and that of other drivers in the services of the Delhi Administration. The petition is filed against such disparity.

99 Id. at p. 881. (Emphasis supplied).

pay for equal work is deducible from those Articles and may be applied properly applied to cases of unequal scales of pay based on no classification or wrong classification…”

The Court clarified that the fundamental right to equality was wide enough to include the right to equal pay for equal work. The creativity of the decision lies not simply in widening the concept of equality but also in the technique adopted in widening it namely, the projection of the relevant provision in Part IV to the relevant provision in Part III of the Constitution making equal pay for equal work a facet of right to equality in Part III. The creativity of the decision becomes clear when it is compared with the earlier view the Court has taken in *Kishsori Mohanlal Bakshi v. Union of India*\(^{101}\), where the concept of the concept of equal pay for equal work was held to have no nexus with the concept of equality as enshrined in Article 14.\(^{102}\)

The Court had an occasion to deal with another aspect of equality in *Atam Prakash v. State of Haryana*.\(^{103}\) The issue raised in that case was the validity of the Punjab Preemption Act 1913, which was in operation in the State. It was challenged as violative of the fundamental right to equality.\(^{104}\) The Court observed that while expounding the Constitution, or while checking up the constitutional validity of a statute, the cardinal rule was to look up to the Preamble as the guiding

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2. \(^{102}\) *Id.* at p. 1141. The Court observed: “The abstract doctrine of equal pay for equal work has nothing to do with Article 14.”
3. \(^{103}\) (1986) 2 S.C.C. 249.
4. \(^{104}\) The petitioner challenged the constitutional validity of the archaic right to preemption based on consanguinity contained in the Punjab Pre-emption Act, 1913 as violative of Articles 14 and 15.
light and the directive principles as a Book of Instruction. The directive principles embody the hopes and aspirations of the people. Hence, when constitutionality of a statute is evaluated under Article 14, it should be checked whether the classification effected by it is consistent with "the socialistic goals set out in the Preamble and the directive principles." It was further held that a classification not in tune with the Constitution *per se* was unreasonable and invalid. The consequence of such a holding is that if any classification was made contrary to the mandate contained in Part IV of the Constitution, it is a sufficient ground for striking it down as violative of equality. The Court construed the concept of equality in Part III in the light of the directive principles in Part IV. It was made clear that validity of a classification is to be determined not only with reference to Part III but also to Part IV. Though no reference was made to any specific provision in Part IV for explaining the concept of equality, the Court widened the horizons of the concept of equality by holding that the concept of reasonable classification should be consistent with the socialistic goals set out in the Directive Principles. The decision transforming the legalistic tests of classification into socialistic ones can be considered as a clarification by the Court that Directive Principles will also form the criteria for determining constitutionality of state action and hence the concepts in Part IV could be treated on par with fundamental rights.

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105 *Id.* at p. 257

106 *Ibid*

107 The Court held that the doctrine of preemption was a relic of the feudal past and that it was inconsistent with the constitutional scheme. It was further held that the concept effected no reasonable classification. (*Id.* at p. 263).
Sri Srinivasa Theatre v. Government of Tamil Nadu is another example where the Court construed and developed the concept of equality in the light of directive principle. The validity of classification of theatres for the purpose of taxation was challenged as violative of equality in Part III. The Court clarified that the concept ‘equality before law’ was a dynamic one and it had many facets and that a more equal society envisaged in Article 38 was one such facet. The Court held, "A facet which is of immediate relevance herein is the obligation upon the State to bring about, through the machinery of law, a more equal society envisaged by the preamble and Part IV of our Constitution. For, equality before law can be predicted meaningfully only in an equal society i.e. in a society contemplated by Article 38 of the Constitution..."

The Court held that taxation was not only a means to raise revenue but also a method to reduce inequality and hence, it could be employed for the goals adumbrated by Article 38. It means that when taxation is challenged as violative of fundamental right to equality, decision as to its validity is to be taken

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108 A.I.R. 1992 S.C. 999. The Tamilnadu Entertainment Tax Act 1939 provided for levy of entertainment tax on admission to cinema theatres. The percentage of tax varied from locality to locality. In 1978, the Act was amended changing the method of collection of tax. But the change was applied to the areas not within certain municipal corporations and special grade municipalities. In 1989, the Act was again amended and the old method of collection of tax was reintroduced to some of the theatres situated in the municipal areas and those within a radius of five kilometers. This amendment was challenged before the High Court on the ground that it violated rights under Articles 14 and 19(1)(g). The High Court dismissed the petition. Appeal was filed before the Supreme Court. The Supreme Court dismissed the appeal on the ground that there was no violation of Article 14 nor was there any unreasonable restriction on the right to trade.


110 For the text of Article 38, see, supra, n. 82.

111 Supra, n. 108 at p. 1004. (Emphasis added).

112 Ibid.
with reference to what is contained in Part IV. In this case the Court refused to construe the concept of equality in an independent and isolated manner and proposed to explain it in the light of and in relation to the corresponding ideas in Part IV. It was in fact an attempt of the Court to explain the concept in the light of the provision in Article 38(2) that the State should strive to minimize the inequalities in income, status, facilities and opportunities among individuals and groups of people residing in different areas or engaged in different vocations. The holding that classification of individuals for the purpose of attaining the goals contained in Article 38 would in no way violate Article 14 means that the directive principle in Article 38 nurtures the concept of equality contained in Part III.

The makers of the Constitution had never believed in numerical equality. They instead advocated the right to proportional equality. That may be the reason why from its very inception the Constitution of India permitted classification on certain reasonable criteria. It thus contained provisions for discrimination in favour of socially and educationally backward classes of people including Scheduled Casts and Scheduled Tribes and provided that such a favour to backward classes would not be violative of the concept of equality. In

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113 Numerical equality means identical amounts be distributed or identical burden be imposed.

114 Proportionate equality indicates distribution according to merit. For a discussion of numerical and proportional equality, see, Uplendra Baxi (Ed.), *K K Mathew on Democracy, Equality and Freedom* (1978), p. 53.

115 Articles 15(4) and 16 (4).

116 Article 15(4) reads, "Nothing in this Article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Casts and the Scheduled Tribes."
other words, the concept of equality contained in Part III of the Constitution is inextricably inter-linked with the concept of protective discrimination in favour of certain sections of the people. The Court had occasion to highlight the importance of the scheme of reservation extended in favour of such classes and to hold that such a discrimination would also be in accordance with the concept of equality. The Court in very many cases held that the right of members of the backward classes for reservation in various government posts is a facet of the fundamental right to equality. The scope and extent of the right to reservation is a multi-dimensional question. It, for instance, includes issues like the extent of reservation, the persons and classes eligible for such a consideration, the criteria to be adopted for extending reservation and also the instances and stages in which reservation is to be effected. The Supreme Court had to grapple with these questions from the very early stages of the Constitution. One of the serious issues that arose in this respect was whether reservation is to be adopted and extended at the stage of promotion also. The Supreme Court had to decide this issue on more occasions than one. In General Manager, Southern Railways v. Rangachari, the Court held that the right included the right to be reserved in matters of promotion. The Court held that the right to reservation even at the stage of promotion was part and parcel of right to equality envisaged by Part III of the Constitution. Later, in Indraw Sahney v. Union of India, the Court held that the right to promotion was

Article 16(4) provides, "Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State."


118 A.I.R. 1962 S.C. 36

limited to initial posting and it did not extend to promotions. In the earlier cases the Court reached the conclusion simply by hanging on the idea of protective discrimination contained in Article 16(4). The issue was re-agitated before the Court in the later 1990's. In *Viswas Anna Sawant v. Municipal Corporation of Greater Bombay*, the Court confirmed that the right to reservation in matters of promotion for the backward classes was an aspect of their fundamental right to equality. However, in this case the Court had a different reason for the conclusion. The Court held that the right to be considered for promotion was also a fundamental right guaranteed to the Scheduled Castes and Scheduled Tribes by virtue of the provisions contained in Article 16(1) *read with Article 46* of the Constitution for rendering socio-economic justice to them.

In *State of Uttar Pradesh v. Dr. Dina Nath Sukla*, Court pointed out that the right to reservation in matters of promotion was a feature of equality. But to reach the conclusion, the Court reasoned that the concept of legal equality has to be understood and read in the light of the concept of social equality and held that the idea of social equality is to be deduced from what is contained in Part IV of the Constitution. The Court observed thus,

104 (1994) 4 S.C.C. 434. That was an appeal by Special Leave. The respondents decided to provide reservation for backward classes in matters of promotion also. Later it took the decision to promote such persons on the basis of interview. The High Court of Bombay held that the backward classes should be given promotion as per the earlier decision without an interview. Implementation of the order has led to the of the special leave petition before the Supreme Court.

121 *Id.* at p. 436. The Court held, "The right to consideration for promotion is a fundamental right guaranteed to Scheduled Castes and Scheduled Tribes in fulfillment of the mandate under Article 16(1) read with Article 46 to render socio-economic justice."

122 (1997) 9 S.C.C. 662

123 *Id.* at pp. 666-667. (Emphasis added)
"When there is a clash of interests and competing claims there is a craving for equality of opportunity amongst the people and for emancipation from the pangs of absolute prohibition, Articles 15(2) to (4), 16(4) and 4-A read with Directive Principles, poured forth practical content, softened the rigour of legal equality and gave practical content of equality in opportunity resulting through distributive justice in favour of unequals to hold an office or post under the state in the democratic governance"

A common feature of these decisions dealing with the concept of equality is that in construing the concept they lay down a path different from the earlier cases where the Court expounded the concept of equality on the basis of what is called 'legal equality' which did not recognize the social aspect of the idea of equality. The creative element of the decisions is that the Court shifted the thrust of the concept of right to equality from a purely legal and logical one to a social terrain. For giving the concept of equality such a social content and thus to provide flesh and blood, the Court sought the help of the directive principles in Part IV which in some way or the other championed the cause of equality at a larger social level. The attempt of the Court to explain the concept of equality in the light of provisions contained in Part IV as one including reservation is very sensible. For, the mandate in Part IV to extend reservation to socially and educationally backward classes envisages a social aspect while the right under Articles 15 and 16 deal with reservation at an individual level. Undoubtedly, in these cases the view of the Court was formed after taking into account the aspect.

124 Supra, nn 98,103,108,120 and 122.
125 Supra, nn. 94 and 101.
126 Article 46. For the text of the Article, see, supra, n. 86.
of social welfare envisaged by the makers of the Constitution. In other words, these decisions reveal the creative judicial technique adopted with a view to give up a formal approach in matters of interpreting the concept of equality contained in Part III of the Constitution and adopting an alternative approach of defining in terms of the ideals contained in Part IV.

As a result of these decisions, the Court was able to give a more sensible content to the concept of equality.

(b) Concept of Life Under Article 21

Another aspect of construction of the fundamental rights in which the Court exhibited creative response was the interpretation of the concept of right to life contained in Article 21. Maneka Gandhi v. Union of India,\(^{127}\) inaugurated a new era in understanding the concepts in Part III, especially Article 21. As a result of the decision in Maneka Gandhi, the Court was able to figure out new concepts in fundamental rights. In Maneka Gandhi, the Court held that fundamental rights were not distinct and mutually exclusive and that legislative and executive acts should satisfy the test of validity under different Articles.\(^{128}\)

The post Maneka decisions reveal new trends in the construction of the concepts of rights to ‘life’ and to ‘personal liberty’ in Article 21. Finding that the

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\(^{127}\) (1978) 1 S.C.C. 248.

\(^{128}\) Id. per Ray C.J. (at p.394-395), Chandrachud J. (at p. 323), Bhagawati J. (at pp.282-283) and Krishna Iyer J. (at p.374-375).
contents of the provision were ill equipped to meet the requirements of society, the Court started pouring into them the contents of social justice. Two trends of constitutional construction are perceivable in this respect. In some cases the Court interpreted the provision in Article 21 without reference to any other provision in the Constitution. In these cases we find the Supreme Court adding more aspects to Article 21. In some others, questions relating to the scope and violation of right to life were dealt with by the Court in the light of similar concepts in directive principles contained in Part IV of the Constitution. The earliest instance in which latter kind of interpretation was given was Bandhua Mukti Morcha v. Union of India. An important question that came up before the Court in that case was whether violation of the provisions of the Bonded Labour System (Abolition) Act 1976 could be dealt with under Article 32. The Court held that it could be. Dealing with the concept of right to life under Article 21, Justice Bhagawti speaking for the Court observed,

"This right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and particularly Clauses (e) and (f) of Article 39 and Articles 41 and 42 and at the least, therefore, it must include protection of the health and strength of workers, men and women, and of the tender age of children against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief. These are the minimum requirements which must exist in order to enable a

129 A.I.R. 1984 S.C. 802. The petitioner was an organisation dedicated to the cause of release of bonded labourers in the country. It conducted a survey in the various States and sent a letter to the Supreme Court regarding the inhuman condition of those working in the mines. The Court considered the letter as a writ petition and issued notice.

130 Id. at pp. 811-812. (Emphasis added).
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.

The peculiarity of the holding is that the Court tried to give content to the fundamental right to life enshrined in Article 21 in Part III of the Constitution in the light of some of the directive principles contained in Part IV. It is a clear instance of reading fundamental right to life in accordance with social justice. This can be treated as an attempt of the Court to link the concepts contained in Part III with the social ideals envisaged in Part IV. The holding is certainly innovative. It laid down a principle, which became the guideline for the future.

In *State of Himachal Pradesh v. Umed Ram*, the Court held, construing the right to life under Article 21 in conjunction with Article 19 (1) (d) and in the background of Article 38(2), that it included the right to travel throughout the territory of India. The right, according to the Court, does not mean a mere right for simple physical existence. It, on the other hand, includes the right to a quality of life for the residents of the hilly areas. A road confers right to communication and hence the Court held that denial of that right to road means denial of the right

131 The creative feature of the holding will be more clear when it is compared with the holding of Justice A.N.Sen who simply held that wrongful and illegal employment of a person in violation of the Bonded Labour System (Abolition)Act 1976 was deprivation of his liberty under Article 21.

132 A.I.R. 1986 S.C. 847. Construction of a road was delayed or abandoned due to the resistance of some persons. A letter sent to the High Court was treated as writ petition. The High Court directed the State to allot sufficient fund for the construction of the road. An appeal was filed in the Supreme Court by the State against the decision of the High Court.
to life in its richness and fullness. The Court therefore held that "(A)ccess to road is access to life itself."\textsuperscript{133}

The repercussions of the decision in \textit{Maneka Gandhi} in the interpretation of Article 21 were multi-dimensional. While dealing with the rights of accused persons and prisoners, the Court held that the right to life envisaged by Article 21 was available to persons who face the legal procedure. One finds a significant contribution of the judiciary in the incorporation of the right to speedy trial and free legal aid\textsuperscript{134} as part and parcel of the right to life under Article 21. However, in those cases, the Court was incorporating the concept without seeking any assistance from the directives. The rights of free legal aid and speedy trial as part of the right to life under Article 21 got a new dimension in \textit{State of Maharashtra v. Manubhai Pragaju Vashi}.\textsuperscript{135} The question that came up for consideration before the Court was whether the government could be directed to pay grants-in-aid to law colleges in the private sector. The Court observed that for free legal aid and speedy trial guaranteed under Article 21,\textsuperscript{136} vast number of legally trained persons are required for protecting them. Only if students are able to study in private law colleges, without paying high fees, the fundamental right to free legal aid and speedy trial of masses would be ensured.\textsuperscript{137} Thus, the Court concluded that

\textsuperscript{133} \textit{Id.} at p. 851.


\textsuperscript{135} (1995) 5 S.C.C. 730.

\textsuperscript{136} \textit{Id.} at p. 743. The Court observed, "In the light of the above, we have to consider the combined effect of Article 21 and Article 39-A of the Constitution of India. The right to free legal aid and speedy trial are guaranteed under Article 21 of the Constitution."

\textsuperscript{137} \textit{Id.} at pp. 743-744.
effective protection of the right to free legal aid and speedy justice, which form part of "life" under Article 21, calls for payment of grants-in-aid to private law colleges by the government irrespective of its financial capacity.\textsuperscript{138} Though the reasoning of the Court appears to be very round about, the holding echoes the pain the Court takes to infuse fundamental rights with social justice in the light of directive principles.

Equality itself is a fundamental right. But, can it be said that any aspect of that concept is an ingredient of the right to life under Article 21? The concept of equality is correlated to the idea of economic empowerment of the people. Hence, conferment of equality with social content would mean equality in economic matters. Disparity in economic matters may defeat the very object of enacting the right to life in the Constitution. The concept of right to life would be meaningless unless there is equality in the economic sphere. Therefore it is quite natural that the right to life would be considered as violated in the absence of economic equality. In such a context, can a law, which furthers the cause of equal economic empowerment of people, be treated as violative of the fundamental rights to equality and life? Such a question was posed before the Supreme Court in *Muralidhar Kesekar v. Viswanath Borde.*\textsuperscript{139} In that case, constitutional validity of a law, which prohibited transfer of immovable property by members of Scheduled

\textsuperscript{138} *Id.* at p. 745. The Court held, "In this perspective, we hold that Article 21 read with Article 39-A of the Constitution mandates or casts a duty on the State to afford grants-in-aid to recognized private law colleges, similar to other faculties,..."

\textsuperscript{139} 1995 (Supp.) 2 S.C.C 549. The appellant purchased a land belonging to the respondent who was a member of the tribal community. The property was transferred to the respondent by the government. The purchase of immovable property from the tribal community had been legally prohibited for the protection of the tribal community. The purchase by the appellant was therefore held invalid. In this case, the constitutionality of that law was challenged by the purchaser.
Tribes, was challenged on the ground that it violated the concept of equality. The Court observed that economic empowerment to the poor was an integral constitutional scheme of socio-economic democracy which therefore is a basic human fundamental right as part of rights to equality, life, status and dignity to the poor, weaker sections, dalits etc. The Court therefore held that legal restriction on the right to purchase the property owned by the members of the Tribes was one to protect their rights to life and equality in the light of the Directive Principles contained in Articles 38, 39 and 46.

This view was re-emphasized by the Court later in Ahmedabad Municipal Corporation v. Nawabkhan Gulab Khan. In that case, while explaining the right of certain pavement dwellers not to be evicted, the Court held that the right to life in Article 21 included the right to live with human dignity. The Court sought the help of the provisions contained in Part IV of the Constitution and held,

"Articles 38, 39 and 46 mandate the State, as its economic policy, to provide socio-economic justice to minimise inequality in income and in opportunity and status. It positively charges the State to distribute its largesses to the weaker sections of the society envisaged in Article 46 to make social and economic justice a reality, meaningful and fruitful so as to make life worth living with dignity of person and equality of status."
Clearly, the decisions in Muralidhar and Nawabkhan are attempts of the Court to raise the ideals of socio-economic justice, equality of opportunity and dignity to the weaker sections of the population to the level of fundamental rights by reading the right to life in the light of Articles 38, 39 and 46. It certainly is a creative step of the Court. The creative content of the decision can be properly appreciated only when it is viewed against the decision of Francis Corellie v. Union of India\(^4\) where the Court had held that the right to life under Article 21 encompassed the right to decent existence.\(^4\) In Francis Corellie the Court did not seek the help of the provisions contained in Part IV of the Constitution to construe and widen the scope of right to life under Article 21. Muralidhar Kesikar and Nawab Khan Gulab Khan set a different line in the sense that they tried to widen the concept of right to life in the light of the directive principles.

Recognition of rights of workers to humane conditions of work find a place in Part IV of the Constitution.\(^4\) Being directive principles they were left judicially unenforceable. It is unfortunate that even after five decades of independence, the State could not take effective steps to protect these rights of the workers. Naturally, it became a matter of judicial concern. It was in such a context that the Supreme Court in Bandhua Mukti Morcha\(^4\) declared that in the light of Articles

\(^4\) A.I.R. 1981 S.C. 746. A writ petition was filed under Article 32 by a detainu of British national challenging the validity of some of the provisions in the Conditions of Detention Order which restricted her right to have interviews with lawyer and members of her family as violative of right to life under Article 21.

\(^4\) The Court held, “Now obviously, the right to life enshrined in Article 21 cannot be restricted to mere animal existence. It means something much more than just physical survival . . . 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 . . .” (Id. at pp. 752-753).

\(^4\) Article 39 (e), supra, n. 83, and Article 42, supra, n. 89.

39, 41 and 42, Article 21 included rights of workers to health and strength, just and humane conditions for work and maternity relief. In Consumer Education and Research Centre v. Union of India, the Court developed the concept of right to life as including workers' right to health, in a more innovative style. The Court held that the right of workers to health was "an integral facet of meaningful right to life." The reason for reaching such a conclusion by the Court was that lack of health would denude workers of their livelihood. In the context of Olga Tellis v. Bombay Corporation, in which the Supreme Court recognized right to livelihood as a right to life under Article 21, it is clear that denying workers their right to health amounts to denial of their right to life. The Court concluded that the facilities mentioned under Articles 38 should be provided to workers to enable them to protect their health. Therefore the Court held that the right to health and medical aid would form fundamental right under Article 21 read with Articles 39(c), 41 and 43 and 48A. The decision can be considered as another instance of high creativity. The Court was construing the concept of right to life under Article 21 as one, which encompasses the right of the working class to health and medical care on the ground that their absence may destroy their right to livelihood.

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147 Supra, n. 130.
148 A.I.R. 1995 S.C. 922. A writ petition was filed under Article 32 seeking directions from the Court to maintain records of health and certain standards for protection of the health of workers in the asbestos industries, who are open to fatal occupational diseases like cancer of the respiratory organs.
149 Id. at p. 940.
150 Ibid.
152 Supra, n 148 at p. 940. The Court held, "Therefore, we hold that right to health, medical aid to protect the health and vigour of a worker while in service or post retirement is a fundamental right under Article 21 read with Article 39(c), 41,43 and 48A and all related Articles and fundamental human rights to make the life of the workman meaningful and purposeful with dignity of person."
which is part and parcel of right to life. This case therefore can be considered as the extension of the holding in *Olga Tellis*. The impact of the decision is very clear. The right of workers to have humane conditions for work provided in Article 42 and protection of their health envisaged in Article 39 (e), which were mere guidelines for legislation got as a result of the decision transformed as fundamental right. It may be the lethargy on the part of the State in initiating appropriate legislation that prompted the Court to raise the directives to the status of fundamental rights enabling workers to approach the Court under Article 32 for enforcement. But for the decision, there would not have been a constitutional duty for the State to protect these rights of workers. The decision in effect infuses the concept of social justice into Article 21 enabling the weaker sections of the population to enjoy right to life in a more meaningful manner. In *State of Punjab v. Ram Lubhaya Bugga*, in a different fact situation the Court held that the concept of right to life under Article 21 cast an obligation on the state to secure health to its citizens in view of Article 47.

The view that fundamental rights cannot be enjoyed without proper implementation of the directive principles is perfectly true in relation to primary education. Without primary education, it may not be possible for an individual

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153 (1998) 4 S.C.C. 117. As a result of the change in the policy of the government of Punjab in 1995, government employees were denied sanction to be treated in non-government hospitals with a right to reimbursement for treatment expenses unless the facility was not available in government hospitals. This was challenged before the Supreme Court as violative of the right to life under Article 21.

154 The Court observed, “When we speak about a right, it correlates to a duty upon another, individual, employer, government or authority. In other words, the right of one is an obligation on another. Hence, the right of a citizen to live under Article 21 casts obligation on the State. This obligation is further reinforced under Article 47, it is for the State to secure health for its citizen as its primary duty.” (*Id.* at p. 129).
even to realize that there are certain rights guaranteed to them in the Constitution.
The stipulation that the State shall endeavour to provide free and primary
education within ten years of enactment of the Constitution therefore gains
much importance. Despite such constitutional provisions we find that there is a
continued lethargy and inaction on the part of the State in assuring free and
primary education. It is against such a background that the decision of *Mohini Jain v. State of Karnataka* is to be analyzed. In this case, the Court had to deal
with the status of the right to education under the Constitution. The question was
whether it formed part of the fundamental right to life or not. The Court held that
directive principles, which were fundamental in the governance of the country,
were to be read into the fundamental rights. The right to education flows directly
from the right to life under Article 21 as the latter could not be enjoyed without the
former. The Court therefore concluded that the State was under an obligation to
provide education to citizens. Without making the right to education guaranteed

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155 Article 45. *Supra*, n. 91.

156 "Universal primary education and opportunity for employment are inscribed as principles fundamental in the governance of the country. But this directive, in the decades after Freedom, has proved a Dead Sea Fruit, Educational justice and employment justice, facets of human dignity and personality, are in crisis, whatever the periodical national Plans and hyperbolic budget speeches may paint in fine phrases." V.R. Krishna Iyyer, *Justice at Crossroads*, (1992) at p. 9. See also, Sirajul Islam Laskar, *op.cit.* at p. 80.

157 A.I.R. 1992 S.C. 1858. The State of Karnataka passed the Educational Institutions (Prohibition of Capitation Fee) Act 1984 for regulating the tuition fee to be charged by private medical colleges in the State. The State issued a notification in 1989 under section 5(1) of the Act thereby fixing the tuition fee and other deposits to be made by students. The notification created three categories of students namely those admitted against "Government seats", "the Karnataka Students" and the "Indian students from outside Karnataka." The fee structure of these categories also varied. The petitioner being a person from Meerut, outside Karnataka had to pay high fees for getting admission. She was not able to pay such a high fee. Hence she was denied admission. She challenged by a writ petition under Article 32 the notification permitting the private Medical Colleges to charge exorbitant fees from students from outside the State.

158 *Id* at p. 1864. The Court held, "The directive principles which are fundamental in the governance of the country cannot be isolated from the fundamental rights guaranteed under Part III. These principles have to be read into the fundamental rights...."
by Article 41 a reality, fundamental rights would remain beyond the reach of the majority of the people. Such a constitutional position means that an individual had a right to call upon the State to provide educational facilities within its economic capacity and development as the State is under a constitutional obligation to create conditions in which fundamental rights would be enjoyed by all. The Court therefore held that the right to education was concomitant to the fundamental rights and so every citizen has a fundamental right to education.

The holding in Mohini Jain was reconsidered by the Court in J.P. Unnikrishnan v. State of Andhra Pradesh. Observing that fundamental rights get their life breath from directive principles the majority of a constitutional bench consisting of five Judges held that the concept of right to life in Article 21 should be explained and understood in the light of what is life" is the compendious expression for all those rights which the Courts must enforce because they are basic to the dignified enjoyment of life. The right to education flows directly from right to life. The right to life under Article 21 cannot be assured unless it is accompanied by the right to education."

Supra, n. 88.

Id. at p. 1864. The Court held, "The State is under a constitutional mandate to create conditions in which fundamental rights guaranteed to the individuals under Part III could be enjoyed by all. Without making right to education under Article 41 of the Constitution a reality the fundamental rights under Chapter III remain beyond the reach of large majority."

Id. at p. 1866. The Court went to the extent of holding that the State was under obligation to establish educational institutions to enable citizens to enjoy the said right to education and that charging of capitation fee was denial of that right.

A.I.R. 1993 S.C. 2178. In a bunch of writ petitions filed under Article 32 by private educational institutions engaged in or proposing to engage in medical or engineering education the correctness of Mohini Jain v. State of Karnataka, A.I.R. 1992 S.C. 1853 was challenged. It was alleged that if the decision was implemented, the petitioners would have to close down their institutions.

Id. at p. 2191 (per Mohan J.); and at p. 2230 (per Jeevan Reddy J.)

Id. at p. 2234.
contained in directive principles. The Court concluded that right to education was implicit in the right to life under Article 21. The right, according to the holding of the Court implied the right of citizen to call upon the State to provide educational facilities to him. In other words, if the State failed to provide education, people would be able to approach the Court for enforcing it a la fundamental right. It is a fine instance of reading fundamental rights in the light of the directives. However, the decision in *J.P. Unnikrishnan* has not approved the decision of *Mohini Jain* in toto. It is a modified version of the holding in *Mohini Jain*. In *Unnikrishnan*, the Court held that only primary education up to the age of 14 envisaged in Article 45, which formed part of the fundamental right to life under Article 21. Right to higher education would therefore be there only subject to the economic capacity of the State as envisaged in Article 41. Such a construction of right to life would be possible only when the directives contained in Articles 41 and 45 are read into Article 21.

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165 Justice Mohan held, "If really Art. 21, which is the heart of fundamental rights has received expanded meaning from time to time there is no justification as to why it cannot be interpreted in the light of Art. 45 wherein the State is obligated to provide education up to 14 years of age, within the prescribed time limit. This right to live with human dignity enshrined in Art. 21 derives its life breath from the Directive Principles of State Policy and particularly clauses (e) and (f) of Art. 39 and Arts. 41 and 42 ...." (id. at p. 2191)

Jeevan Reddy and Pandian JJ held, "The right to education which is implicit in the right to life and personal liberty guaranteed by Article 21 must be construed in the light of the directive principles in Part IV of the Constitution." (at p. 2231).

166 While rendering the decision, Justice Jeevan Reddy clarified that by such transformation of the right to education as a fundamental right, all the provisions in Part IV do not get transformed to Part III. It just implied that the Court was "merely relying upon Article 41 to illustrate the content of the right to education flowing from Article 21. It was observed that such incorporation was out of the inherent fundamental importance of the right. The Court further clarified that the decision did not mean that each and every obligation referred to in Part IV got automatically within the purview of Article 21.

167 *Supra*, n. 162 at p. 2232 (Justices B.P. Jeevan Reddy and Pandian).
an instance where the Court explained the right to life in accordance with what is contained in the directive principles for championing the cause of social justice. *Unnikrishnan* therefore is an improvement of *Mohini Jain* in the sense that it develops the concept of right to life in the context of social justice in a more realistic way and strictly in tune with the contents of the directives of Article 41 Article 45, making education beyond primary level subject to economic capacity of the government.

It is clear that *Unnikrishnan* is another illustration for the interpretation of the fundamental right in view of social justice for which the Court sought the help of directive principles. The decision exemplifies the opinion of the Court that directive principles give fillip to the fundamental rights. The significance of such a construction need not be over emphasized. Incorporation of fundamental rights in the Constitution becomes fruitful only when people are literate and educated. The postulate that fundamental rights depend upon the implementation of directives is absolutely true in the matter of Article 45.

The holding that right to life under Article 21 encompasses within it the right to education was subject to judicial analysis again in *State of H.P. v. H.P. State Recognized and Aided Managing Committee.*\(^{168}\) The questions were whether teachers working in different schools were entitled to parity of pay and whether the

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\(^{168}\) (1995) 4 S.C.C. 507. The respondents were teachers in various recognized aided private schools in the State of Himachal Pradesh. Those schools received aid from the State for payment of salary to the teachers in such schools. Though the government had agreed to extend help up to 95% of the total expenditure on salary, limits were fixed by the government for such payment. The teachers filed a writ petition before the High Court for having parity of payment, with the teachers of the State schools from state funds. The High Court allowed the same. The State filed appeal before the Supreme Court.
State was bound to extend grants-in-aid for payment of salary of teachers of schools recognized and aided by the State. The Court held that after *Unnikrishnan*, right to education up to the age of 14 has been declared as an essential ingredient of fundamental right to life. If the State were not meeting the expenses for paying salary of teachers of schools recognized and aided by the State, the students in such schools would have to pay more fees. Such a situation may amount to circumvention of the decision in *Unnikrishnan* and denial of the fundamental right to free primary education. The Court therefore held that the State was duty-bound to meet the expenditure for payment of salary to the teachers of the various recognized and aided schools. The teachers in such schools were entitled to receive parity of pay scales with that of school teachers of the State as well as grants-in-aid from the State. This decision confirms that in view of social justice, the Court has conferred a full-fledged status of fundamental right to the right to education at the primary level.

Another aspect of judicial creativity is the attempt of the Court to expound the contents of Article 21 in the light of international covenants. It is well accepted that principles, agreements and covenants at the international level would not be enforced *qua* law unless enacted in the form of law. There is need for a specific

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169. *Id.* at pp. 512, 514 & 515. The issue had another aspect also. The teachers in the government and aided schools were having the same amount of work. Both have the same conditions of service. Moreover all the schools in the State have the same syllabus. Therefore, disparity in the payment of salary by the government leads to violation of right to equal pay for equal work, which is recognized by the Court in many cases as an aspect of fundamental right to equality under Article 14. (*Id.* at p. 511). However, the Court did not deal with this aspect in detail in this case.

legislation for enforcing what is contained in such agreements. In *Peoples Union for Civil Liberties v. Union of India*, the specific question the Court had to decide was whether right to life under Article 21 included within its fold the right to privacy. The question whether international covenants can be used as an aid for construction of constitutional provision in Article 21 was posed before the Court in this case. Article 51 of the Constitution provides *inter alia* that the State shall endeavour to foster respect for international law and treaty obligations in the dealings of organised peoples with one another. Casting a positive glance at that provision and approving the observation of Chief Justice Sikri in *Kesavananda* that Article 51 of the Constitution recognizes incorporation of international law to India, the Court held that assistance from international law could be sought in so far as it does not go counter to the municipal law. The Court therefore, held that the concepts of right to life and personal liberty could be explained in the light of International Covenants to which India is a party. Accordingly, it was held that

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171 That may be the reason why Article 253 has been enacted in our Constitution. It reads thus, "Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or covenant with any other country or countries or any decision made at any international conference, association or other body."

172 (1997) 1 S.C.C. 301. A public interest litigation was filed under Article 32 by the petitioners challenging the tapping of telephones of politicians by the Central Bureau of Investigation. The petitioner challenges the constitutional validity of section 5(2) of the Indian Telegraphs Act 1855, which permitted tapping of telephones. The petitioner contended that such tapping violated Article 21.

173 Article 51 reads "The State shall endeavour to-

(a) promote international peace and security;
(b) maintain just and honourable relations between nations;
(c) foster respect for international law and treaty obligations in the dealings of organized peoples with one another, and
(d) encourage settlement of international disputes by arbitration."
Article 17 of the International Covenant on Civil and Political Rights\textsuperscript{174} does not run counter to our municipal law\textsuperscript{175} and hence Article 21 could be interpreted in conformity with the international law.\textsuperscript{176} The Court therefore concluded that the language of the Constitution should be interpreted in the light of the U. N. Charter and the solemn declarations subscribed by India. It is significant to note that this is an attempt of the Court to raise the fundamental right in Article 21 to the international standards. For making Article 21 of contemporary relevance, the Court relied on the directive contained in Article 51(c) and used it as a device to read the right to privacy contained in the international covenants into the fundamental right in Article 21 of the Constitution. The innovative creativity of the decision lies not in reading privacy as an ingredient of right to life, for, it already had found a place in the concept of right to personal liberty under Article 21 by virtue of judicial decisions.\textsuperscript{177} It, on the other hand, lies in using the directive principles contained in Article 51 to give the Article 21 the contents of international covenant.

\textsuperscript{174} For the text of the Covenant, see, Ian Brownlie, Basic Documents on Human Rights (1992), pp. 125 et seq.

\textsuperscript{175} Article 17(1) and (2) of the International Covenant on Civil and Political Rights 1966 reads, (1) "None shall be subject to arbitrary or unlawful interference with his privacy, family or human or correspondence, nor to lawful attacks on his honour and reputation.

(2) Every one has the right to the protection of the law against such interference or attacks."

\textsuperscript{176} Supra, n. 172 at pp. 312-313.

Construction of Article 21 reached sky high limits in *Vishaka v. State of Rajasthan,* where the Court held that sexual harassment of women in the places of work amounted to violation of rights to gender equality and life under Articles 14, 15, 19(1) (a) and 21. Since there is no right mentioned in those Articles against sexual assault, the Supreme Court fell back upon Article 51(c) to interpret fundamental rights contained in them and held that in the absence of domestic law, contents of international conventions and norms were significant to interpret provisions in the Constitution guaranteeing gender justice and human dignity to women. Judicial innovation in these cases lies in the method of incorporating the concepts found in the international treaties and conventions into Articles 14 and 21 by relying on and reading in the directive contained in Article 51(c). The prime motive of the Court to read the contents of international law into fundamental rights was nothing but its wish to make it vivacious with the presence of social justice in them.

*Bandhua Mukti Morcha v. Union of India,* is another instance in which the Court used the directive principle for interpreting Article 21. Observing that

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178 (1997) 6 S.C.C. 241. This writ petition under Article 32 was spurred by a gang rape of a woman social worker in the State of Rajasthan on the ground that it amounted to violation of her fundamental rights under Articles 14, 19 and 21.

179 Id. at p. 248.

180 Ibid. For reading those rights into Articles 14 and 21, the Court relied upon Article 11 of the Convention on the Elimination All Forms of Discrimination against Women. It provides that the States should take appropriate steps to eliminate discrimination against women in the filed of employment to ensure right to work as an inalienable right of all human beings and right to protection of health and safety in the working conditions. For the text, see, Ian Brownlie, *op.cit.* at pp. 169 et seq.

181 (1997) 10 S.C.C. 549. A writ petition was filed under Article 32 praying for a mandamus directing the government to take steps to prevent employment of children in carpet factories. Employment of children in carpet industry was challenged mainly as violative of Article 24.
child cannot develop without a benign environment, the Court held that deprivation of the rights of children has a deleterious effect on democracy and rule of law. In the wake of Articles 21 and 24 read with Articles 39(e), (f) and 45 every child is entitled to health, well-being, education and social protection. Convention on the Rights of the Child, ratified by the Government of India recognizes the rights of children for full and harmonious development. The directive principles under Articles 39 (e) and (f), 45 and 46 read with Articles 21, 23 and 24 cast a duty on the State to render socio-economic justice to children, their empowerment and full growth of their personality. Observing that various statutes extend only unreal protection, the Court directed the State governments to take steps to provide compulsory education and periodic health check-up to all children. By this decision, the Court proved that a glance to Article 21 in the light of the directives would enable it to render assistance to poor children.

The concept of environment and Article 21 have a very thick bond. The Indian judiciary responded very positively to the clarion call of the international community for protecting environment. The Supreme Court incorporated by judicial interpretation the right to clean environment as part and parcel of right to life. By the early nineties the Court clearly construed Article 21 to include

182 Id. at p. 553.
183 Id. at pp. 553-554.
184 Id. at p. 556.
185 Id. at pp. 557-558.
within it the right to pollution free environment. However, in these cases, the Court held the concept of right to life under Article 21 inclusive of right to pollution free environment without the help of any other constitutional provision. As a corollary of such decisions, the Court held in the subsequent cases that person who pollutes the environment and violates the fundamental rights of another had a responsibility to make good the loss paying damages. The Court began to evolve certain rules through adjudicatory process for effective protection of the environment not found specifically in any statute. ‘Polluter pay principle’ and ‘precautionary principle’ are some of such judicially evolved rules. In *M.C. Mehta v. Union of India*, the Court held that the ‘Precautionary Principle’ has been accepted as part of the law by Articles 21, 47, 48-A and 51-A (g) which mandates the State to protect and improve the environment and to safeguard it. The holding thus makes it mandatory for the State government to anticipate, prevent and attack the causes of environmental degradation. Where there are threats of serious and irreversible damage, lack of scientific certainty should not be

189 It means that the polluter of environment is absolutely liable to compensate for the harm caused by him to villagers, soil, water and the like and is also liable to remove all pollution. This principle was accepted as a sound one in *Indian Council for Enviro-Legal Action v. Union of India*, (1996) 3 S.C.C. 212.
190 The principle says that where there are serious and irreversible damage, lack of scientific certainty should not be used as a reason for postponing measure to prevent environmental degradation. This principle was accorded international recognition when it was incorporated in the Rio Declaration 1992. See, P. Leelakrishnan, *Environmental Law in India* (1999), p. 59. See also *Vellore Citizen’s Welfare Forum v. Union of India*, (1996) 5 S.C.C. 647.
191 (1997) 3 S.C.C. 715. This was a continuation of the decision in *M.C. Mehta v. Union of India*, (1996) 8 S.C.C. 462. In that case the Court was concerned with control of pollution and preservation of environment from mining operations within 5 k.m. of the tourist resorts of Badkhal Lake and Surajkund in Haryana.
192 Id. at p. 720.
extended by the State as a reason for postponing the prevention of environmental
degradation. The Court imposed a duty on the State to protect the environment as a
correlative of fundamental right to life under Article 21 by reading it in the light of
the directives in Part IV which enabled State action for the protection of the
environment. The right to be protected against environmental degradation was
read into Article 21 by the Court, in the light of directives dealing with the duty of
the State to raise the level of nutrition, and standard of living and to improve
public health, \(^{193}\) to protect and improve environment, to safeguard forests and
wild life \(^{194}\) and the fundamental duty to promote international peace and
security. \(^{195}\)

A discussion of the above cases gives rise to certain questions. What
prompted the Court to render such an interpretation of fundamental rights? Was
the Court justified in embarking upon such a construction of those rights? It is
clear from some of the holdings of the Court that the failure of the State organs in
implementing directive principles has irked the conscience of the Court. \(^{196}\) The
Court at many times highlighted the importance of the directive principles in the
administration of the State and extended support to their implementation. \(^{197}\) Still
the State did not take much care in carrying out the administration in accordance
with the principles, which are fundamental in nature. In many instances, such

\(^{193}\) Article 47.

\(^{194}\) Article 48-A

\(^{195}\) Article 51-A (g).

\(^{196}\) See, for instance, the decisions in Mohd. Ahamad Khan v. Shah Bano Begum, (1985)

\(^{197}\) See, for instance, State of Bombay v. F.N.Balsara, A.I.R. 1951 S.C. 318; Bijay Cotton
inaction on the part of the State led to denial of social and economic justice to the people. Moreover, the Court realized that without timely implementation of the directives, fundamental rights would become empty promises. It may be in such a context that the Court began to read the contents of Part IV into the provisions of Part III. In other words, it is the inaction of the legislature and the executive that led to the judicial process of implementing directive principles in the form of fundamental rights. Even if the State had taken timely action to implement directive principles, through legislative and executive measures, they would have remained mere statutory rights which require a lengthy process for enforcement. But their incorporation into the fundamental rights by the judiciary paved the way to a situation in which they became enforceable as fundamental rights under Article 32. Though directive principles are not enforceable through courts of law, unlike Ireland, in India directive principles are not outside the pale of judicial cognition. Therefore, the modern approach of taking directives into account in interpreting fundamental rights does not run counter to what is contained in the Constitution. It is only a creative juristic technique to give effect to the directives without violating constitutional provisions. Further, it would be unwise to categorize all the directives under one rubric and hold that all are equally unenforceable. They contain mandates of different nature. Some deal with the general principles of social policy, some with principles of administrative policy, while the third category nurtures the concept of socio-economic rights.

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198 Article 37.
200 For example, Article 38.
201 For instance, Articles 40 and 50.
202 See, Articles 38 to 39-A, 41 to 43 and 45 to 49.
implementation of which is absolutely necessary for the protection of individual
rights and liberties and some others contain a statement of the international policy
of the Republic. The directives that promulgate the constitutionally desired
social order are considered as fundamental while others are treated as directive.
It would therefore be incorrect to appraise them all as of equal importance and to
make a sweeping statement that judiciary should not take any directives into
account for rendering decisions. Those dealing with social policy and socio-
economic justice deserve much attention by the administrators. When there is total
inaction on the part of the government in taking them into account, the judiciary
has a duty to make use of them whenever found necessary for enforcing
fundamental rights. Whereas in the past the Court had seen the directives as
subservient to fundamental rights, or as reasonable restrictions on the Part III
rights, the modern trend in judicial creativity is one of reading directive
principles into the fundamental rights with a view to securing social justice. Such a
judicial approach gives sensible contents to the fundamental rights.

During the pre-emergency era, the cases in which the Court had to deal
with the relationship of fundamental rights and directive principles were cases in
which the issue was proprietary rights. Therefore, while interpreting such rights,

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205 For different uses of directive principles, see, Rajeev Dhavan, Supreme Court of India, Its Socio-juristic Techniques (1977), p. 90.

the Court utilized directive principles as restrictions of those rights. But the post-emergency period witnessed attack on the very person of the people and it called the Court to interpret the personal rights vis-à-vis directive principles. It was in such an occasion that the Court developed the technique of reading directive principles into the fundamental rights with a view to achieve social justice. In other words, such a revolutionary and creative approach of the Supreme Court corresponds to the shift in emphasis from proprietary fundamental rights to personal ones.

The interpretation of the provisions in Part III adopted by the Court in the above cases has many consequences. As a result of such a construction, fundamental rights, which mainly have negative contents, were provided with positive contents on an objective basis in the light of the directive principles. Consequently, the State was imposed with positive obligations to implement the directives. Directive Principles, which once were mere guidelines for the State, got transformed themselves as limitations on the power of the state. Thus, the State became duty bound to protect many concepts mentioned in Part IV such as the rights to equal pay for equal work and health of workers, rights of backward classes and right to primary education only because the Court read them into the rights contained in Part III. Non-implementation of a directive by the State considered by the Court, as part of the fundamental right would justify invocation of Article 32. Consequently, the power of the Supreme Court under Article 32 to enforce fundamental rights got widened to include enforcement of the directive
principles. Moreover, by such a construction, the Court was able to overcome the limitations imposed on it by Article 37 in enforcing such directives. By such an innovative interpretation, the nature of directive principles got changed from mere guidelines to constitutional obligations. Enforcement of such directives thus became the duty of the State and hence the right of the people.

As a result of these decisions, the Court established that casting a blind eye to certain directive principles by the State leads to violation of fundamental rights. It implies that the State should be as vigilant in the implementation of those directives as in the enforcement of fundamental rights. By the innovative interpretation of the rights enshrined in Part III, the Court on the one hand was advancing the cause of social justice and on the other was providing more colour and content to the life of individuals. This judicial approach seems to support the cause cherished by the makers of the Constitution, viz., social justice.

Analysis of the above decisions indicates that in the late eighties and in the nineties, the Supreme Court exhibited very creative outlook in interpreting some of the vital fundamental rights. The Court in those cases while explaining the contents of those fundamental rights transfused similar ideas contained in Part IV into them. The creativity of the Court lies in the identification of uniformity of ideas in Parts III and IV and explaining fundamental rights in accordance with the

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directive principles. Such an innovative trend can be said to be out of the development and extension of the view of the Court that neither fundamental right nor the directive principle be given precedence over the other and that they are supplementary and complementary to each other. This creative interpretation of the provisions of the Part III represents the modern, ideal version of the relationship between fundamental rights and directive principles. By such a construction, the Court was able use the directive principles for protecting the rights of the people and thus to circumvent the limitations on the justiciability of the directive principles. These decisions are creative in many ways. Discarding the earlier trend of understanding them as negative mandates, they emphasize the latest version that the rights impose positive duties on the State. Further, these decisions exemplify how fundamental rights could be given effect to in accordance with the contents of directives by raising them from the level of individual rights to the plateau of social justice. In short, they also show how fundamental rights could be given content and sense without sacrificing the moral mandates contained in Part IV. They reflect a novel approach to define the inter-relationship between fundamental rights and directive principles.

Perhaps, the following words of a distinguished constitutional expert were prophylactic, "...whenever our judges perform their creative function through the interpretation of the fundamental rights it is very natural that the presence, in the same Constitution, of the directive principles should exert an inexorable influence and control on their judgement as to the scope of the fundamental rights." P.K.Tripathi, "Directive Principles of State Policy: The Lawyers' Approach to Them Hitherto Parochial, Injurious and Unconstitutional," in Spotlights on Constitutional Interpretation (1972), 291 at p. 316.