CHAPTER IV

ANALYSIS ON WELFARE STATE PROVISIONS OF THE CONSTITUTION

4.1 The Directive Principles of the State Policy – Object of

The Directive Principles of the State Policy contained in Part IV (Arts. 36 to 51) of the Constitution of India set out the aims and objectives to be taken up by the States in the governance of the country. This novel feature of the Constitution is borrowed from the Constitution of Ireland which had copied it from the Spanish Constitution.

The idea of Welfare State envisaged by our Constitution can only be achieved if the States endeavour to implement these policies with a high sense of moral duty.

There was a time, known as the *laissez faire* era, when the State was mainly concerned with the maintenance of law and order and defence of the country against external aggression. Such a restrictive concept of the State no longer remains valid.

The makers of the Constitution had realised that in a poor country like India, political democracy would be useless without economic democracy. Accordingly they incorporated a few provisions in the Constitution with a view to achieve amelioration of the socio-economic condition of these masses.

Today we are living in an era of Welfare State which seeks to promote the prosperity and well-being of the people. The Directive Principles strengthen and promote this concept by seeking to lay down some socio-economic goals which the various Governments in India have to strive to achieve.

The Directive Principles are designed to usher in a social and economic democracy in the country. These Principles obligate the State to take positive action in certain directions in order to promote the welfare of the people and achieve economic democracy. These Principles give directions to the legislature and the executive in India regarding the manner in which they should exercise their power\(^1\).

\(^1\) *CAD VII*, 476, 493-4.
In a number of pronouncements, the Supreme Court of India has insisted that these Directive Principles seek to introduce the concept of a Welfare State in the country.  

The Directive Principle are the ideals which the Union and State Governments must keep in mind while they formulate policy or pass a law. They lay down certain social, economic and political principles, suitable to peculiar conditions prevailing in India. In the words of Mr. G.N. Joshi, “they constitute a very comprehensive political, social and economic programme for a modern democratic State”. Dr. B.R. Ambedkar aptly describes the objectives of a Welfare State. The underlying objectives of the Directive Principles can be better understood from the speech of Dr. Ambedkar in the Constituent Assembly. He said:

“…Our Constitution lays down what is called parliamentary democracy. By parliamentary democracy we mean ‘one man one vote’. We also mean that every Government shall be on the anvil, both in its daily affairs and also at the end of a certain period when the voters and the electorate will be given an opportunity to assess the work done by the Government. The reason why we have established in the Constitution a political democracy is because we do not want to install by any means whatsoever a perpetual dictatorship of any particular body of people. While we have established political democracy, it is also the desire that we should lay down as our ideal economic democracy.

The main object of incorporating the Directive Principles appear to have been to set the standards of achievements before the Legislature and Executive, the local and other authorities, by which their success or failure can be judged. It was also hopped that those failing to implement the directives might receive a rude awakening at the polls. It should, however, be noted that the Directive Principles do not impose any particular brand or pattern of economic or social order. They lay down the goals which may be achieved through various means and which have to be devised from time to time.

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4.2 Justifiability of the Directive Principles

The Preamble, the Fundamental Rights and the Directive Principles can be characterized as the trinity of the Constitution.

The Directive Principles seek to give certain directions to the legislatures and Governments in India as to how, and in what manner and for what purpose, they are to exercise their power. But, these Principles are specifically made non-enforceable by any Court of law. Art.37 of the Constitution states: “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”.

The reason behind the non-enforceability and non-justifiability of these Principles is that they have positive obligations on the State. While taking positive action, Government functions under several restraints, the most crucial of these being that of financial resources. The Constitution makers therefore, taking a pragmatic view refrained from giving teeth to these Principles. They believed more in an awakened public opinion, rather than in Court proceedings, as the ultimate sanction for the fulfilment of these Principles. Nevertheless the Constitution declares that the Directive Principles, though not enforceable by any Court, are ‘fundamental’ in governance of the country, and the State has been placed under an obligation to apply them in making laws and use its administrative machinery for the achievement of these Directive Principles.

The Courts do not however enforce a Directive Principle, as such as it does not create any justifiable right in favour of an individual. A Court will not issue an order or a writ of mandamus to the Government to fulfill a Directive Principle.

But the Courts are nevertheless, bound to evolve, affirm and adopt principles of interpretation which will further and not hinder the goal set out in the Directive Principles of State Policy. Again, the Supreme Court has observed in Meenakshi Mills that ordinarily any restriction so imposed which has the effect of promoting or effectuating a directive principle can be presumed to be a reasonable restriction in public interest.

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The Directive Principles guide the exercise of legislative power but do not control the same. However, the values underlying the Directive Principles, viz., welfare of the poor and weaker sections of the society, have crept in interpretation of economic legislation by the judiciary and this is a substantial gain.

4.3 Classification of the Directives

The Directive Principles may be classified into the following heads:

A. Social and Economic Charter.
B. Social Security Charter.
C. Community Welfare Charter.

These classifications are discussed separately and in detail as under:

4.3.1 Social and Economic Charter

(1) Social order based on Justice – Art. 38(1) provides that the State shall strive to promote the welfare of the people by securing and protecting as effectively as it may, a social order in which justice—social, economic and political shall inform all the institutions of national life. This directive only reaffirms what has already been said in the Preamble according to which the function of the Republic is to secure to all its citizens social, economic and political justice.

The Constitution (44th Amendment) Act, 1978 inserted a new Directive Principle in Art. 38 i.e., clause (2) to Art. 38 which provides that the State shall, in particular, strive to minimize inequalities in income and endeavor to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations. The new clause aims at equality in all spheres of life. It would enable the State to have a national policy on wages and eliminate inequalities in various spheres of life.

In Air India Statutory Corporation v. United Labour Union⁸, a bench of three judges of the Supreme Court has explained the concept of social justice in Art. 38 as follows:

“The concept of ‘social justice’ consists of diverse principles essential for the orderly growth and development of personality of every citizen. ‘Social Justice’ is an integral part of justice in the generic sense. Justice is the genus, of which social justice is one of its species. Social Justice is a dynamic device to mitigate the

⁸ AIR 1997 SC 645.
sufferings of the poor, weak, dalits, tribals and deprived sections of
the society and to elevate them to the level of equality, to live a life
with dignity of person. Social justice is not a simple or single idea of
a society but it is an essential part of complex social change to
relieve the poor etc. from handicaps, to ward off distress and to make
their life livable, for greater good of the society at large. The aim of
social justice is to attain substantial degree of social, economic and
political equality which is the legitimate expectation and
constitutional goal. In a developing society like ours, where there is
vast gap of inequality in status and of opportunity, law is a catalyst,
rubicon to the poor etc. to reach the ladder of social justice. The
Constitution, therefore, mandates the State to accord justice to all
members of the society in all facets of human activity. The concept
of social justice enables equality to flavor and enliven the practical
content of life. Social justice and equality are complementary to each
other so that both should maintain their validity. Rule of law,
therefore, is a potent instrument of social justice to bring about
equality”.

(2) **Principles of policy to be followed by the State for securing economic
Justice** - Art. 39 specifically requires the State to direct its policy towards securing
the following principles:

(a) Equal right of men and women to adequate means of livelihood.

(b) Distribution of ownership and control of the material resources of the
community to the common good.

(c) To ensure that the economic system should not result in concentration of
wealth and means of production to the common detriment.

(d) Equal pay for equal work for both men and women.

(e) To protect health and strength of workers and tender age of children and to
ensure that they are not forced by economic necessity to enter avocations
unsuited to their age or strength.

(f) That children are given opportunities and facilities to develop in a healthy
manner and in conditions of freedom and dignity and that childhood or youth
are protected against exploitation and against moral and material
abandonment.
Clause (f) was modified by the Constitution (42\textsuperscript{nd} Amendment) Act, 1976 with a view to emphasize the constructive role of the State with regard to children. In \textit{M.C. Mehta v. State of Tamilnadu}\textsuperscript{9}, it has been held that in view of Art. 39 the employment of children within the match factories directly connected with the manufacturing process of matches and fireworks can not be allowed as it is hazardous. Children can however be employed in the process of packing but it should be done in area away from the place of manufacturing to avoid exposure to accidents.

In another landmark judgment known as \textit{Child Labour Abolition case}\textsuperscript{10} a three judges Bench of the Supreme Court (comprising of Kuldeep Singh, B.L. Hansaria and S.B. Mazumdar JJ.) has held that children below the age of 14 years can not be employed in any hazardous industry or mines or other work. The matter was brought to the notice of the Court by public spirited lawyer M. C. Mehta through a public interest ligation under Art. 32. He told the Court about the plight of children engaged in Sivakasi Cracker Factories and how the constitutional right of these children guaranteed by Art. 24 was being grossly violated and requested the Court to issue appropriate directions to the Governments to take steps to abolish child labour.

The Court issued the following directions:

(i) The Court directed for setting up of Child Labour Rehabilitation Welfare Fund and asked the offending employers to pay for each child a compensation of Rs. 20,000/- to be deposited in the fund and suggested a number of measures to rehabilitate them in a phased manner.

(ii) The liability of the employer would not cease even if after the child is discharged from work. The Court asked the Government to ensure that an adult member of the child’s family gets a job in a factory or anywhere in lieu of the child.

(iii) In those cases where it would not be possible to provide jobs the appropriate Government would, as its compensation, deposit Rs. 5,000/- in the fund for each child employed in a factory or mine or in any other hazardous employment.

\textsuperscript{9}. (1991) 1 SCC 283.
The authority concerned has two options either it should ensure alternative employment for the adult whose name would be suggested by the parent or the guardian of the child concerned or it should deposit a sum of Rs. 25,000/- in the fund.

(iv) In case of getting employment for an adult the parent or guardian shall have to withdraw his child from the job. Even if no employment would be provided, the parent shall have to see that this child is spared from the requirement of the job as an alternative source of income, interest-income from deposit of Rs. 25,000/- would become available to the child’s family till he continues his study up to the age of 14 years.

(v) As per the Child Labour Policy of the Union Government, the Court identified some industries for priority action and the industries so identified are namely – The Match Industry in Sivakashi, Tamilnadu; Diamond Polishing Industry in Surat, Gujarat; The precious Stone Policing Industry in Jaipur, Rajasthan; The Glass Industry in Firozabad; The Brass Ware Industry, Moradabad; The Handmade Carpet Industry in Mirzapur; Bhadohi and the Lock making Industry in Aligarh, Uttar Pradesh; the State Industry in Manakpur; Andhra Pradesh and the State Industry in Mandsaur, Madhya Pradesh for priority action by the authorities concerned.

(vi) The employment so given in the industry where the child is employed would be a public sector undertaking and would be manual in nature inasmuch as the child in question must be engaged in doing manual work the undertaking chosen for employment shall be one which is nearest to the place of residence of the family.

(vii) For the purpose of collection of funds, a district could be the unit of collection so that the executive head of the district keeps watchful eye on the work of the inspectors. In the view of magnitude of the task, separate cell in the Labour Department of the appropriate Government would be created. Overall monitoring by the Ministry of Labour of the Union Government would be beneficial and worthwhile.

(viii) The Secretary of the Ministry of Labour of the Union Government is directed to file an affidavit within a month before the Court about the compliance of the directions issued in this regard.
Penal provisions contained in the 1986 Act\textsuperscript{11} will be used where employment of a child labour prohibited by the Act, is found.

In so far as the non-hazardous jobs are concerned, the Inspector shall have to see that the working hours of the child are not more than 4 to 6 hours a day and it received education at least two hours each day. The entire cost of education shall be borne by the employer.

The Court observed that the task is big, but not as to prove either unwieldy or burdensome. The financial implication would be such as to prove damper because the money after all would be used to build up a better India.

The verdict gives a new hope to the children of the country that a beginning is being made to honour the mandate in Articles 24, 39 (e) and (f), 41, 45 and 47 of the Constitution.

The expression ‘material resources of the community’ under Art. 39 (b) covers the land held by private owners also. Such private land can be acquired by Government for public purposes such as developing, constructing house, building and providing public amenities like shopping complexes, parks, roads, drains, playgrounds etc\textsuperscript{12}.

Articles 38 and 39 embody the jurisprudential doctrine of ‘distributive justice’. The Constitution permits and even directs the State to administer what may be termed as ‘distributive justice’. The concept of distributive justice in the sphere of law making connote inter-alia, the removal of economic inequalities rectifying the injustice resulting from dealings and transactions between unequals in society\textsuperscript{13}.

In \textit{State of Tamilnadu v. Abu Kavar Bai}\textsuperscript{14}, the Court upheld the validity of a law enacted for the nationalization of transport services in the State on the ground that it was for giving effect to the Directive Principles contained in Article 39 (b) and (c). A nationalization scheme meant for the purpose of distribution or preventing concentration of wealth, as in the instant case, must have sufficient \textit{nexus} to attract the operation of Article 39 (b) and (c). The Tamilnadu Act is valid as it subserves nationalization policy.

\begin{itemize}
\item \textsuperscript{11} The Child Labour (Prohibitation and Regulation) Act, 1986.
\item \textsuperscript{12} \textit{State of Maharashtra v. Bassantibai M. Khetan}, (1986) 2 SCC 516.
\item \textsuperscript{13} \textit{Central Inland Water Transport Corporation v. Brojo Nath Ganguly}, (1986) 3 SCC 156.
\item \textsuperscript{14} (1984) 1 SCC 516.
\end{itemize}
Pursuant to Art. 39 (d), the Parliament has enacted the Equal Remuneration Act, 1976. The Directive contained in Art. 39 (d) and the Act passed thereto can be judicially enforceable by the Court. In a landmark judgment\(^{15}\), the Supreme Court held that the principle of ‘equal pay for equal work’ though not a fundamental right is certainly a constitutional goal and therefore, capable of enforcement through constitutional remedies under Article 32 of the Constitution. The doctrine of equal pay for equal works equally applicable to persons employed on a daily wage basis. They are also entitled to the same wages as other permanent employees in the department employed to do the incidental work\(^{16}\).

However, the doctrine of ‘equal pay for equal work’ can not be put in a strait jacket. This right although finds place in Art. 39, is an accompaniment of equality of the Constitution. Reasonable classification, based on intelligible criteria having *nexus* with the object sought to be achieved is permissible. Accordingly, it has been held that different scales of pay in the same cadre of persons doing similar work can be fixed if there is difference in the nature of work done and difference as regards reliability and responsibility\(^{17}\). In an another remarkable judgement \(^{18}\) the Supreme Court observed that giving higher pay to a junior in the same cadre is not illegal and violative of Articles 14, 16 and 39(d), if there is rational basis for it.

4.3.2 Social Security Charter

(1) Participation of workers in management of industries — Article 43-A requires the State to take steps by suitable legislation or in any other way to secure the participation of workers in the management of undertakings, establishments or other organizations engaged in any industry.

(2) Right to work, education and public assistance in certain cases— Article 41 directs the State to ensure the people within the limit of its economic capacity and development: (a) employment (b) education and (c) public assistance in cases of unemployment, old age, sickness and disablement and in other cases of unreserved want.

(3) Just and human conditions of work— Article 42 directs the State to make provision for securing just human conditions and for maternity relief.

\(^{15}\) *R.K. Ramachandran Iyer v. Union of India*, AIR 1984, SC 541.


(4) **Living wage for workers**— Article 43 requires the State to try to secure the suitable legislation or economic organization or in any other way, to all workers, agricultural, industrial or otherwise, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and in particular, the State shall endeavour to promote cottage industries on an individual or co-operative basis in rural areas.

Article 43 refers to a ‘living wage’ but not ‘minimum wage’. The concept of ‘living wage’ includes in addition to the bare necessities of life such as food, shelter and clothing, provisions for education of children and insurance etc.

(5) **Provisions for early childhood care and education to children below the age of six years**— Article 45 requires the State to make provision within 10 years for free and compulsory education for all children until they complete the age of six years. The object was to abolish illiteracy from the country.

In *Unnikrishnan v. State of A.P.*, the Supreme Court held that the ‘Right to education’ up to the age of 14 years is a fundamental right within the meaning of Art. 21 of the Constitution, but thereafter the obligation of the State to provide education is subject to the limits of its economic capacity. The Court declared that the right to education flows directly from right to life.

The Constitution (85th Amendment) Act, 2002 has substituted a new Article for Art. 45 which provides that “the State shall endeavour to provide early childhood care and education for all children until they complete the age of six years”. This has been necessitated as a result of making the right to education of children up to the 14 years of age a fundamental right. The marginal heading of the new Article will be entitled as “provision for early childhood care and education to children below the age of six years”.

(6) **Duty to raise the standard of living and improvement of health**— Art. 47 imposes duty upon the State to raise the level of nutrition and the standard of living of its people and the improvement of public health. In particular, the State should bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.

(7) **Promotion of educational and economic interest of weaker sections**— Art. 46 enjoins the State to promote with special care for education and economic

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interest of the weaker sections of the people, and in particular of the Scheduled Castes and Scheduled Tribes and to protect them from social injustice and all forms of exploitation.

(8) Equal justice and free legal aid to economically backward classes –
This provision under Art.39A has been added by the Constitution 42nd Amendment Act, 1976. Art. 39A directs the State to ensure that the operation of the legal system promotes justice on a basis of equal opportunities 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. This Art. was added to the Constitution pursuant to the new policy of the Government to give legal aid to economically backward classes people.

‘Legal aid’ and ‘Speedy trial’ have now been held to be fundamental rights under Article 21 of the Constitution available to all prisoners and enforceable by the Courts. The State is under an obligation to provide lawyer to a poor person and it must pay to the lawyer his fee as fixed by the courts as it has been observed by the highest judiciary of our country in a number of landmark pronouncements such as Hussainara Khatoon v. Home Secretary, State of Bihar etc.

In Centre for Legal Research v. State of Kerela it has been held that in order to achieve the objectives in Art. 39A, the State must encourage and support the participation of voluntary organizations or social action groups in operating the legal aid programme. The legal aid programme which is meant to bring social justice to the people can not remain confined to the traditional or litigation oriented programme. It must take into account the socio-economic conditions prevailing in the country and adopt a more dynamic approach. The voluntary organization must be involved and supported for implementing legal aid programme and they should be free from Government control.

In a notable judgment in State of Maharashtra v. Manu Bhai Bagaji Bashi the Supreme Court has held that Art. 21 read with Art. 39A casts a duty on the State to afford grants-in-aid to recognize private law collages, similar to other faculties which qualify for receipt of the grant. The aforesaid duty cast on the State can not be

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22. AIR 1986 SC 1322.
whittled down in any manner, either by pleading paucity of funds or otherwise. The
right to free legal aid and speedy trial are guaranteed fundamental rights under Art.
21. Art. 39A provides ‘equal justice’ and ‘free legal aid’. The State shall secure that
the operation of the legal system promotes justice. It means justice according to law.

In a democratic policy governed by rule of law should be the main concern of the
State to have a proper legal system. The principles contained in Art. 39A are
fundamental and cast a duty on the State to secure that the operation of legal system
promotes justice on the basis of equal opportunities and further mandates to provide
free legal aid in any way by legislation or otherwise so that justice is not denied to any
citizen by reason of economic or other disabilities. The crucial words are ‘to provide
free legal aid by suitable legislation or by schemes or in any other way’. These words
used in Art.39A are of very wide import. In order to enable the State to afford free
legal aid and guarantee speedy trial a vast number of persons trained in law are
essential. Legal aid is required in many forms and at various stages, for obtaining
guidance, for resolving disputes in courts, tribunals or other authorities. It has
manyfold facets. The need for a continuing and well organized legal education is
absolutely essential in view of new trends in the world order to meet the ever-growing
challenges. For this purpose a vast number of persons trained in different branches of
law are needed every year. This is possible only when adequate number of law
colleges with proper infrastructure including expertise law teachers and staff are
established. As in this case, a sole Government Law College can not cater to the needs
of legal education or requirement in a city like Bombay. If the State is unable to start
colleges of its own it should allow private law colleges duly recognized by the
University or the Bar Council of India or other appropriate authorities should be
afforded reasonable facilities to function efficiently and in a meaningful manner. This
requires substantial funds. If under the level of self financing institution, the college
should not be permitted to hike the fees to any extent in order to meet their expenses.
The private law colleges may not afford the huge cost required for this purpose. The
standard of legal education and discipline is bound to suffer. The Court said that if
this is allowed the ‘free legal aid’ will only be a farce and therefore it is necessary to
afford them grant-in-aid by the State as it will facilitate and ensure the recognised
private law colleges to function effectively and in a meaningful manner and turns out
sufficient number of well trained or property-equipped law graduates in all branches
every year. This will enable the State to provide free legal aid and ensure State
opportunities for securing justice are not denied to any citizen on account of any
disability.

In the instant case, through public interest litigation the petitioners had prayed
to the Court to direct the Government of Maharashtra to extend the grants-in-aid
scheme to the Government recognized private law college, similar to other faculties,
viz. Arts, Science etc.

4.3.3 Community Welfare Charter

(1) Uniform Civil Code - Article 44 requires the State to secure for the citizen
a Uniform Civil Code throughout the territory of India.

In the historic judgment of Sarla Mudgal v. Union of India\textsuperscript{24}, the Supreme
Court directed the Prime Minister Narasimha Rao to take a fresh look at Art. 44 of the
Constitution which enjoins the State to secure a Uniform Civil Code. According to the
Court it is an imperative for the protection of the oppressed as well as for the
promotion of national unity and integrity. The Court directed to the Union
Government through the Secretary to Ministry of Law and Justice to file an affidavit
by August, 1995 indicating the steps taken and efforts made by the Government
towards securing a Uniform Civil Code for the citizen of India.

The above direction was given by the Court while dealing with the case where
the question for consideration was whether a Hindu husband married under Hindu
Law, after conversion to Islam, without dissolving the first marriage, can solemnize a
second marriage. The Court held that such a marriage will be illegal and the husband
can be prosecuted for bigamy under section 494 of the I.P.C., 1860.

In Pragati Varghese v. Cyril Varghese\textsuperscript{25}, the full Bench of the Bombay High
Court has struck down section 10 of the Indian Divorce Act, 1869 under which a
Christian wife had to prove adultery along with cruelty or desertion while seeking a
divorce on the ground that it violates the fundamental right of a Christian woman who
live with human dignity under Art. 21 of the Constitution. The Court also declared
Sections 17 and 20 of the Act invalid which provided that an annulment or divorce
passed by a District Court was required to be confirmed by a three Judges bench of
the High Court. The Court said that section 10 of the Act compels the wife to continue
to live with a man who has deserted her or treated her with cruelty. Such a life is sub-

\textsuperscript{24} (1995) 3 SCC 635.

\textsuperscript{25} AIR 1997 Bom 349.
human. There is denial to dissolve the marriage when the marriage has broken down irretrievably.

In another significant judgment in Noor Saba Khatoon v. Mohd. Quasim\(^{26}\), the Supreme Court has held that a divorced Muslim woman is entitled to claim maintenance for her children till they become major. The Court held that both under the Muslim Personal Law and under section 125 of the Criminal Procedure Code, 1973 the obligation of the father was absolute when the children were living with the divorced wife. This ruling was given by the Court while allowing an appeal by Ms. Saba Khatoon challenging the judgment of the Patna High Court which had reduced the amount of maintenance.

The Court made it clear that this right was not restricted, affected or controlled by the divorced wife’s right to claim maintenance for two years from the date of birth of the children under Sec. 3(1)(B) of the Muslim Women (Protection of Rights on Divorce) Act, 1986.

The children of Muslim parents are entitled to claim maintenance under Sec. 125 of the Cr. P.C. for the period till they attain majority or are able to maintain themselves, whichever is earlier and in case of female till they get married. The appellant Ms. Noor Sabha Khatoon was married with respondent husband Mohd. Quasim according to Muslim rites on Oct. 27, 1980. During the wedlock, three children – two daughters and a son were born and subsequently the husband divorced the appellant. The trial court granted the husband to pay at the rate of Rs. 200/- per month for the wife and Rs.50/- per month for each of the three children. The Appellate Court held that the wife was entitled to maintenance only for two years under the Muslim Women Act, 1986. The Patna High Court, further modified the Appellate Court’s order and held that only one child was entitled to maintenance for a period of two years.

The Supreme Court set aside the judgment of the High Court. The Court held that the High Court fell in complete error in holding that the right to maintenance of the children under Sec. 125 of the Cr. P.C., 1973 was taken away and superseded by Sec. 3(1)(B) of the Muslim Women Act, 1986. The Court directed the husband to pay the arrears of maintenance in respect of the children within one year in four equal

\(^{26}\) AIR 1997 SC 3280.
quarterly instalments. Any single default of payment of arrears would entitle the appellant to recover the entire balance amount with 12% interest as per law.

Again, the Punjab and Haryana High Court has directed a Muslim husband to pay alimony to his divorced wife and minor children even after the expiry of the iddat period.

The High Court rejected the plea of husband that his liability ceased immediately after the expiry of iddat period. The liability of the father to maintain his minor child as finally been settled by the Supreme Court in Noor Saba Khatoon’s case, the Court said. Under Sections 125 to 128 of the Cr. P. C., 1973 a self-contained procedure has been provided for a wife, divorced or not, to claim maintenance from husband or other relations. The High Court held that the purpose of these provisions were to provide immediate means of subsistence to the applicant before she withered away by hard way of life and realities for lack of minimum means and were applicable to all applicants irrespective of the community, caste or creed they belong to.

The Court said, “We have opted for a secular republic, secularism under the law means that the State does not owe loyalty to any particular religion and there is no State religion. The Constitution gives equal freedom to all religions and everyone has the freedom to propagate his own religion. But the religion of individual or denomination has nothing to do in the matter of socio-economic laws of the State”. The freedom of religion under the Constitution does not allow religion to infringe adversely on the secular rights of the citizens and the power of the State to regulate the socio-economic relations.

In another landmark judgment, Danial Latif v. Union of India27 a five Judges Bench of the Supreme Court upheld the constitutional validity of the Muslim Women (Protection of Rights on Divorce) Act, 1986 and held that a Muslim divorced woman has right to maintenance even after iddat period under the 1986 Act. The Court said that a Muslim husband is liable to make reasonable and fair provision for the future of the divorced wife which leally extends beyond the iddat period in terms of section 3(1)(a) of the Act. A divorced woman who has not remarried and who is not able to maintain herself after iddat period also can proceed as provided under Section 4 of the Act against her relations who are liable to maintain her in proportion to the properties

27. AIR 2001 SC 3262.
which they may inherit on her death according to Muslim law from such divorced
woman including her children and parents. If the relatives are found unable to pay her
maintenance the Magistrate may direct the State Wakf Board established under the
Act to pay such maintenance.

In *John Vallamatton v. Union of India*28 a three Judges Bench of the Supreme
Court consisting of C.J.V.N. Khare, S.B. Singha and Dr. A.R. Lakshmanan, JJ. has
once again expressed regret for non-enactment of Common Civil Code. In the instant
case the petitioners have challenged the validity of Section 118 of the Indian
Succession Act, 1925 on the ground that it was discriminatory under Art. 14 as well
as violative of Articles 25 and 26 of the Constitution. Section 118 of the Act, imposed
restriction on a Christian having nephew or a niece or any other relative as regards his
power to bequeath his property for religious or charitable purposes. The definition in
the Act did not include wife of a testator as near relative while an adopted son was
included as a relative. So, a Christian testator having a nephew or niece must execute
the will at least 12 months before his death and deposit it within 6 months otherwise
the bequest for religious or charitable use would be void. This restriction did not
apply to a person having wife. The Court held that Section 118 of the Indian
Succession Act is unconstitutional being violative of Art.14 of the Constitution. The
majority said that the Articles 25 and 26 have no application in this case as deposition
of property for religious and charitable uses is not an integral part of Christian
religion. Articles 25 and 26 only protect those ritual and ceremonies that are integral
part of religion. The Chief Justice of India in view of the facts of the instant case
forcefully reiterated the view that the Common Civil Code be enacted as it would
solve such problems. He said, “Article 44 is based on the premise that there is no
necessary connection between religion and personal law in a civilised society”.
Article 25 of the Constitution confers freedom of conscience and free profession,
practice and propagation of religion. The aforesaid two provisions viz., Articles 25
and 44 show that former guarantees religious freedom whereas the latter divests
religion from social relations and personal law. It is no matter of doubt that marriage,
succession and the like matters of a secular character can not be brought within the
guarantee enshrined under Articles 25 and 26 of the Constitution. It is a matter of
regret that Art. 44 of the Constitution has not been given effect to. A Common Civil

28. AIR 2003 SC 2902.
Code will enhance the cause of national integration by removing the contradictions based on ideologies.

(2) **Organization of agriculture and animal husbandry** — Article 48 directs the State to take steps to organize agriculture and animal husbandry on modern and scientific lines. In particular, it should take steps for preserving and improving the breeds and prohibiting the slaughter of cows and calves and other milk and draught cattle.

(3) **Protection and improvement of forests and wild life** — Article 48-A requires the State to take steps to protect and improve the environment and to safeguard the forests and wildlife of the country. In *M.C. Mehta (II) v. Union of India*, the Supreme Court, relying on Art.48A gave directions to the Central and the State Governments and various local bodies and Boards under the various statutes to take appropriate steps for the prevention and control of pollution of water.

(4) **Protection of monuments and places and objects of national importance** — Article 49 requires the State to protect every monument or place or object of artistic or historic interest (declared by or under law made by the Parliament), to be of national importance from spoilation, disfigurement, destruction, removal, disposal or export. Pursuant to this, the Parliament has enacted the Ancient and Historical Monuments and Archaeological Sites and Remains (Declaration of National Importance) Act, 1951.

(5) **Separation of Judiciary from the Executive** — Article 50 requires the State to take step to separate the Judiciary from the Executive in the public services of the State. Art. 50 is based on the bedrock of the principle of independence of the judiciary. There shall be a separate judicial service free from executive control. The separation of the judiciary from the executive is regarded as a very essential element for proper administration of justice in the country by promoting the rule of law.

(6) **Promotion of International peace and security** — Article 51 provides that the State should strive to (a) promote international peace and security, (b) maintain just and honourable relations between nation; (a) foster respect for international law and treaty obligations in the dealings of organized people with one another, and (d) encourage settlement of international disputes by arbitration.

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30. (1998) 1 SCC 471
Pursuant to the direction enshrined in Article 51 of the Constitution and International Commitments, the Parliament has passed the Protection of Human Rights Act, 1993. The Act provides for the setting of a National Human Rights Commission and Human Rights Courts to meet the growing concern for human rights in the country and abroad. Similar Commission may be set up in the State also. It would not be mandatory for the State Governments to constitute State Human Rights Commissions. The National Human Rights Commission has started functioning since September, 1993 when the Ordinance was promulgated by the President. The provisions of the Act will be applicable to the Armed forces and the States of Jammu and Kashmir. However, the action taken against the personal of the Armed forces for violation of human rights will not be made public as it will affect their morale in dealing with anti-social elements. The legislation would, the Home Minister said in the Parliament thwart the designs of some countries that sought to malign India in the United Nations and other international forums.

The Human Rights Commissions will have powers to go into instances of negligence on the part of public service personal in preventing violations.

The Commission will, if necessary, publish interim reports, annual reports, along with the action taken by the Government which will be presented in the Parliament.

(7) Organization of Village Panchayats - Article 40 directs the State to take steps to organize village panchayats and endow them with special powers and authority as may be necessary to enable them to function as units of self-Government. The object of this provision is to introduce democracy at the grass roots. These Panchyats are expected to be the training grounds for the development of democratic traditions. Village Panchayats have been introduced throughout the country. Many States have enacted laws for the organization and proper functioning of Panchayats. But, unfortunately these Panchayats were not functioning satisfactorily. Elections to Panchayats had been very irregular and uncertain. In order to revitalize the Panchayati-Raj institutions and urban local bodies Parliament enacted the Constitution 73rd and 74th Amendment Acts, 1992. The Constitution 73rd and 74th Amendment Acts, 1992, provide Constitutional sanction to democracy at grass root level by incorporating in the Constitution new parts – part IX and part IXA relating to Panchayats and urban local bodies. The 73rd Amendment provides for a three-tier of Panchayati-Raj system at the village, intermediate and district levels. The Amendment
envisages the Gram Sabha as the foundation of the Panchayati-Raj system. Gram Sabha is a body consisting of all persons of a village registered as voters. The 74th Amendment Act provides Constitutional sanction to urban self governing institutions. It provides for three types of Municipal Corporations for urban areas - Nagar Panchayats, Municipal Councils and Municipal Corporations according to population. The Panchyati-Raj and Nagarpalika Constitution Amendment Act provide Constitutional guarantee to basic and essential features of these self governing institutions in rural and urban areas. The Amendment ensures their regular elections and also provides for reservation of seats to SCs and STs and women in Panchayati-Raj bodies. Under these Amendments the Panchayati-Raj institutions shall have both financial as well as administrative powers.

4.4 Inter-Relationship between Fundamental Rights and Directive Principles

Literal Interpretative Approach of the Judiciary

The question of relationship between the Directive Principles and the Fundamental Rights has caused some difficulty and the judicial attitude has undergone transformation on this question over time. What if a law enacted to enforce a directive principle infringes a fundamental right? On this question the judicial view has veered round from irreconcilability to integration between the Fundamental Rights and Directive Principles.

Initially, the Courts have adopted a strict and literal legal position in this respect. Adopting the literal interpretative approach to Art. 37, the Supreme Court ruled that a Directive Principle could not override a Fundamental Right and that in case of conflict between the two, the Fundamental Right would prevail over the Directive Principle.

This point was settled by the Supreme Court in *State of Madras v. Champakam Dorairajan*[^32^], where a Government Order in conflict with Art. 29(2), a Fundamental Right, was declared invalid although the Government did argue that it was made in pursuance of Art. 46, a Directive Principle. The Court ruled that while the Fundamental Rights were enforceable, but the Directive Principles were not and so the laws made to implement Directive Principles could not take away Fundamental Rights. The Directive Principles should conform and run as subsidiary to the

[^32^]: AIR 1951 SC 226.
Fundamental Rights. The Fundamental Rights would be reduced to a mere rope of sand if they were to be overridden by the Directive Principles.

In course of time, a perceptible change came over the judicial attitude on this question. The Supreme Courts view as regards the interplay of Directive Principles and Fundamental Rights underwent a change. The Supreme Court started giving a good deal of value to the Directive Principles from a legal point of view and started arguing for harmonizing the two – the Fundamental Rights and Directive Principles.

The Supreme Court came to adopt the view that although Directive Principles, as such, were legally non-enforceable, nevertheless, while interpreting a statute, the Courts could look for light to the ‘lode star’ of the Directive Principles. “Where two judicial choices are available, the construction in conformity with the social philosophy of the Directive Principles has preference.” The Courts therefore could interpret a statute so as to implement Directive Principles instead of reducing them to mere theoretical ideas. This is on the assumption that the law makers are not completely unmindful or obvious of the Directive Principles.

Further, the Court also adopted the view that in determining the scope and ambit of Fundamental Rights, the Directive Principles should not be completely ignored and that the Courts should adopt the Principle of harmonious construction and attempt to give effect to both as far as possible. For example, as early as 1958, in re Kerela Education Bill Das, C.J., while affirming the primacy of Fundamental Rights over Directive Principles, qualified the same by pleading for a harmonious interpretation of the two, he observed that in determining the scope and ambit of the Fundamental Rights relied upon by or on behalf of any person or body, the Court may not entirely ignore these Directive Principles of State Policy laid down in Part IV of the Constitution but should adopt the principle of harmonious construction and should attempt to give effect to both as much as possible”.

Therefore, without making the Directive Principles justifiable, the Courts began to implement the values underlying these Principles to a practicable extent. The Supreme Court began to assert that there is no conflict on the whole between the

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33 Mumbai Kamgar Sabha v. Abdulbhai, AIR 1976 SC 1455
34 AIR 1958 SC 956.
Fundamental Rights and the Directive Principles. They are complementary and supplementary to each other\textsuperscript{35}.

Since then, the judicial attitude has become more positive and affirmative towards Directive Principles and both Fundamental Rights and Directive Principles have come to be regarded as co-equal. There is in effect a judicial tendency to interpret Fundamental Rights in the light of, and so as to promote, the values underlying Directive Principles.

This aspect of the Directive Principles was stressed upon by the Supreme Court in \textit{Golak Nath}\textsuperscript{36}. The Supreme Court there emphasized that the Fundamental Rights and Directive Principles formed an ‘integrated scheme’ which was elastic enough to respond to the changing needs of the society.

In \textit{Keshawananda Bharati v. State of Kerela}\textsuperscript{37}, Hegde and Mukherjea, JJ., observed:

“The Fundamental Rights and Directive Principles constitute the ‘Conscience of the Constitution...’ There is no antithesis between the Fundamental Rights and Directive Principles...and one supplements the other”.

The Supreme Court said in \textit{State of Kerela v. N.M. Thomas}\textsuperscript{38}, that the Directive Principles and Fundamental Rights should be construed in harmony with each other and every attempt should be made by the Court to resolve any apparent inconsistency between them.

In \textit{Pathumna v. State of Kerala}\textsuperscript{39}, the Supreme Court has emphasized that the purpose of the Directive Principles is to fix certain socio-economic goals for immediate attainment by bringing about a non-violent social revolution. The Constitution aims at bringing about synthesis between Fundamental Rights and Directive Principles.

The Directive Principles and Fundamental Rights are not now regarded as exclusionary of each other. They are regarded as supplementary and complementary to each other. In course of time, the judicial attitude has veered from irreconcilability

\textsuperscript{35} Chandra Bhavan Boarding and Lodging, Bangalore v. State of Mysore, AIR 1970 SC 2042.


\textsuperscript{37} AIR 173 SC 1461.

\textsuperscript{38} AIR 1976 SC 490.

\textsuperscript{39} AIR 1978 SC 771.
to integration of the Fundamental Rights and Directive Principles. The Directive Principles which have been declared to be ‘fundamental’ in the governance of the country can not be isolated from Fundamental Rights. An example of such relationship is furnished by the ‘Right to education’.

The State is under a constitutional obligation to create conditions in which everybody can enjoy Fundamental Rights. Art. 41, a Directive Principle lays emphasis on the State providing education to all. Until and unless the right to education becomes a reality, Fundamental Rights would remain beyond the reach of a large majority of people who are illiterate. The right to education, therefore, become concomitant with Fundamental Rights.

The Supreme Court has argued in Olga Tellis\(^{40}\) that since the Directive Principles are fundamental in the governance of the Country they must, therefore, be regarded as equally fundamental to the understanding and interpretation of the meaning and content of Fundamental Rights.

Chandrachud, C.J., in Minerva Mills\(^{41}\), said that the Fundamental Rights are not an end in themselves but are the means to an end. The end is specified in the Directive Principles. It was further observed in the same case that the Fundamental Rights and Directive Principles together constitute the core of commitment to social revolution and they together are the conscience of the Constitution. The Constitution of India is founded on the bedrock of the balance between the two. To give absolute primacy to one over the other is to disturb the harmony of the Constitution. This harmony and balance between Fundamental Rights and Directive Principles is an essential feature of the basic structure of the Constitution.

In Unnikrishnan v. State of Andhra Pradesh\(^{42}\), Jeevan Reddy, J., said that the Fundamental Rights and Directive Principles are supplementary and complementary to each other and not exclusionary of each other and that the Fundamental Rights are but a means to achieve the goals indicated in the Directive Principles and that Fundamental Rights must be construed in the light of the Directive Principles.

In Dalmia Cement\(^{43}\), the Supreme Court has emphasized that the core of the commitment of the Constitution to the social revolution through rule of law lies in

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\(^{41}\) Minerva Mills v. Union of India, AIR 1980 SC 1789.

\(^{42}\) supra note 19.

\(^{43}\) Dalmia Cement (Bharat) Ltd. v. Union of India, (1996) 10 SCC 104.
effectuation of the Fundamental Rights and Directive Principles as supplementary and complementary to each other. The Preamble to the Constitution, Fundamental Rights and Directive Principles—the trinity, are the conscience of the Constitution.

Since then it has now become a judicial strategy to read Fundamental Rights along with Directive Principles with a view to define the scope and ambit of the former. By and large, this administrative strategy has resulted in broadening and giving greater depth and dimension to, and even create more rights for the people over and above the expressly stated Fundamental Rights. At the same time, the values underlying the Directive Principles have also become enforceable by riding on the back of the Fundamental Rights. On the whole, a survey of the case laws shows that the Courts have used Directive Principles not to restrict, but rather to expand the ambit of the Fundamental Rights.

The theme that Fundamental Rights are but a means to achieve the goal indicated in the Directive Principles and that the Fundamental Rights must be construed in the light of the Directive Principles has been advocated by the Supreme Court time and again in Unnikrishnan. Thus, the integrative approach towards Fundamental Rights and Directive Principles or that the both should be interpreted and read together, has now come to hold the field. It has now become a judicial strategy to read Fundamental Rights along with Directive Principles with a view to define the scope and the ambit of the former. Mostly Directive Principles have been used to broaden and to give depth to some Fundamental Rights and to imply some more rights therefrom for the people over and above what are expressly stated in the Fundamental Rights.

The biggest beneficiary of the approach has been Art.21. By reading Art.21 with the Directive Principles, the Supreme Court has derived therefrom a bundle of rights. To name a few of these are:

(i) The right to live with human dignity. The Supreme Court has stated in Bandhua Mukti Morcha that right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of the State Policy.

44. supra note 19.
(ii) Right to life includes the right to enjoy pollution free water and air and environment.

(iii) Right to health and social justice has been held to be a Fundamental Right of the workers. It is the obligation of the employer to protect the health and vigour of his employed workers. The Court has derived this right by reading Art.21 with Arts. 39(e), 41, 43 and 48-A.

(iv) Right to shelter.

(v) Right to education implicit in Art. 21 is to be spelled out in the light of the Directive Principles contained in Arts. 41 and 45.

(vi) Right to Privacy.

Accordingly, the Directive Principles are regarded as a dependable index of ‘public purpose’. If a law is enacted to implement the socio-economic policy envisaged in the Directive Principles, then it must be regarded as one for public purpose. Thus, in State of Bihar v. Kameshwar Singh, the Supreme Court relied on Art. 39 to decide the law to abolish Zamindari has been enacted for a ‘public purpose’ within the meaning of Art.31.

On the same argument, Directive Principles have also come to be regarded as relevant for considering ‘reasonableness’ of restrictions under Art.19. A restriction promoting any of the objectives of the Directive Principles could be regarded as reasonable. Thus, Art.47 which directs the State to bring about prohibition of consumption of intoxicating drinks except for medical purposes could be taken into account while considering the reasonableness of a prohibition law under Art.19. Art. 47 relates the idea of prohibition to public health. Therefore, to enforce prohibition effectively, the law could define the word ‘liquor’ broadly so as to include all alcoholic liquids which might be used as substitutes for intoxicating drinks to the detriment of health. But, exemption of medicinal preparations from Art. 47 shows that prohibition of medical preparation containing alcohol would not be reasonable under Art. 19(6).

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48. supra note 19.
49. AIR 2000 SC 2306.
In *Laxmi Khandsari v. State of Uttar Pradesh*\(^{52}\), the Supreme Court has asserted that an important consideration which must weigh with the Courts in determining the reasonableness of a restriction is that it should not contravene the Directive Principles. The Directive Principles aim at establishing an egalitarian society so as to bring about a Welfare State and these Principles should be kept in mind in judging the question as to whether or not the restrictions are reasonable *vis-a-vis* Art. 19.

Prohibition of slaughter of cows, bulls and bullocks to enable the public to have a sufficient supply of milk and to ensure availability of sufficient number of draught cattle for agricultural operations was held reasonable under Art. 19(6) in view of the Directive Principles contained in Art. 47 and 48\(^{53}\).

The Wealth Tax Act was held reasonable in view of Art. 39(c) to prevent concentration of wealth in a few hands\(^ {54}\). Acquisition of agricultural land above the ceiling and its distribution among the landless fall under Arts. 39(b) and (c). Accordingly, it has been held that it is not possible to say that such a law would be outside the scope of entry 18, List II and entry 42 in List III\(^ {55}\).

While reading with various Directive Principles, Art. 21 has emerged into a multi-dimensional Fundamental Rights. Art. 14 and Art. 39(d), reading together, have led to the emergence of the principle of equal pay for equal work.

Similarly, reference may be made to Art. 31C. Art. 31C as inserted in 1972, through the Constitution (Twenty-fifth) Amendment Act does not bar judicial review to examine the *nexus* between impugned law and Art. 39\(^ {56}\). The Court emphasized that there is no disharmony between the Directive Principles and the Fundamental Rights as they supplement each other in aiming at the same goal of bringing about a social revolution and the establishment of a Welfare State which is envisaged in the Preamble. The Courts therefore have a responsibility to so interpreting the Constitution as to ensure implementation of the Directive Principles and to harmonise social objectives underlying therein with individual rights. Justice Mathew went

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\(^{52}\) AIR 1981 SC 873.
\(^{55}\) *L. Jagnannath v. Authorized officer*, AIR 1972 SC 425.
\(^{56}\) *Assam Silliminite v. Union of India*, AIR 1992 SC 938.
farthest in attributing to the Directive Principles a significant place in the Constitutional scheme. According to him\textsuperscript{57}:

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

\textbf{4.5 The Status of the Directive Principles – New Dimension}

In a number of decisions the Supreme Court has given many Directive Principles of the State Policy, the status of fundamental rights. In \textit{Unnikrishnan v. State of A.P.}\textsuperscript{58}, the directive principle contained in Art. 45 has been raised to the status of a fundamental right. It has been held that children from the age of 6 to 14 years have fundamental right to free and compulsory education. Similarly, ‘equal pay for equal work’ has been held to be a fundamental right in \textit{Randhir Singh v. Union of India}\textsuperscript{59} and therefore, enforceable by the Courts. In \textit{H.M. Hoskot v. State of Maharashtra}\textsuperscript{60} it has been held that ‘legal aid’ and ‘speedy trial’ are fundamental rights under Art. 21 available to all prisoners and can be enforced.

In \textit{Grih Kalyan Kendra Workers Union v. Union of India}\textsuperscript{61}, the Supreme Court has enforced the provision of Art. 39 (d) by giving the Directive Principles the status of Fundamental Rights. In this case the workers sought for a writ of \textit{mandamus} directing the Union of India to pay equal pay scale \textit{in parity} with other employees performing similar works. The Court held that equal pay for equal work is not expressly declared as a fundamental right, but in view of the Directive Principles of the State Policy contained in Art. 39 (d) of the Constitution, equal pay for equal work has assumed the status of fundamental right in service jurisprudence having regard to the constitutional mandate of equality in Arts. 14 and 16 of the Constitution. The Court made it clear that under the above circumstances it is trite that the concept of equality implies and requires equal treatment of those who are situated equally and

\textsuperscript{58} supra note 19.
\textsuperscript{59} AIR 1982 SC 879.
\textsuperscript{60} AIR 1978 SC 1548.
\textsuperscript{61} AIR 1991 SC 1173.
“issue of appropriate directions in the interest of justice. In *M.R.F. Ltd. v. Inspector of Kerela*\(^{62}\) the Supreme Court heavily relied upon the provisions of Art. 43 to uphold the validly of Kerela Industrial Establishment (National and Festival Holidays) Act, 1958 and held that the Act is a social legislation to give effect to the Directive Principles of the State Policy contained in Art.43 of the Constitution. In *Gujarat Agriculture University v. Rodhod Labhu Prachar*\(^{63}\), the Supreme Court considered the regularization, of daily wage workers, who continued for more than 10 years in Gujarat Agriculture University and their absorption on relaxation of the eligibility conditions on a compassionate ground and their absorption on relaxation of the eligibility conditions on a compassionate ground and held that the Court should exercise the discretion very cautiously. The Court observed that the Government who is a guardian of people and obliged under Art. 38 of the Constitution to secure social order for promotion of welfare of the people to eliminate inequalities in status, will endeavor to give maximum posts even at the first stage of absorption.

Elevated to inalienable fundamental rights they are enforceable by themselves. The Directives in our Constitution are forerunner of the UNO Convention of Rights to Development as inalienable human right and every person is entitled to participate in, contribute to and enjoy economic, social, cultural and political development in which all human rights, fundamental freedom would be fully realized. It is the duty of the State to take responsibility for further development of these human rights, fundamental freedoms. The State should provide facilities and opportunities to ensure development and to eliminate all obstacles to development by appropriate economic and social reforms so as to eradicate all social injustices. These principles are embeded as integral part of our Constitution in the Directive Principles. Therefore, the Directive Principles, now stand elevated to inalienable fundamental human rights. In this case the Court held that although right to work can not be claimed as fundamental right, yet once a person is appointed to a post or an office, be under the State or private agency it has to be dealt with as per public element. So, after the abolition of contract labour system, the workmen have right to regulation of their services. Right to means of livelihood is a constitutional right. Without employment the workmen will be denuded of their means of livehood and resultant right to life under Art. 21 of

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\(^{62}\) *supra note 50.*  
\(^{63}\) AIR 2001 SC 706.
the Constitution. It was held that though there is no provision in the Contract Labour (Regulation and Abolition) Act, 1970 for absorption of the employees whose contract labour system stood abolished under the Act, yet the Act does not prohibit the corporation to absorb them in regular service and that is the mandate of the Constitution in Art 21. The contractor stands removed and direct relationship of employer and employee is created between the principal employer and workmen. Although much has been achieved still much more is to be achieved. Political influences and economic and social disparities still exist, standard of living of the people is yet to be raised. Unemployment is yet to be eradicated. Thus, it can safely be concluded that efforts of Governments of the Union and the States are really very encouraging and substantial in the implementation of these objectives. In *Air India Statutory Corporation v. United Labour Union* 64, the Supreme Court has held that the Directive Principles now stand.

This new trend and the decisions show that it is difficult to draw a line between the Fundamental Rights and the directive principles when Courts are exercising the power of judicial review. These decisions indicate that at least in some areas of Directive Principles the rights of the citizens are vitally connected with Fundamental Rights and failure to discharge such obligations will involve the invalidation of legislation or executive action of the Government at the instance of aggrieved persons. The Government is thus bound to implement the Directive Principles.

4.6 Judicial Approach on Implementation of the Directives

Guided by the Directives the Central and the State Governments have tried to the best of their resources to implement a large number of Directives. Under Art. 39 (b) the Governments have abolished the old institution of hereditary proprietors, such as Zamindars, Jagirdars etc. and made the tillers of the soil real owners of the land. This reform has, by this time been carried out almost completely throughout India. Side by side with this, laws have been enacted in many States for the improvement of the conditions of the cultivators. In order to prevent concentration of land holdings even in actual cultivation many States have enacted legislation fixing a ceiling that is to say, a maximum area of land which may be held by an individual owner. Untouchability, the age-old curse of the Indian society, has now been made an offence.

64 AIR 1997 SC 645.
punishable by law. The Government has fixed minimum wages for the workers, modernized the labour laws and improved the conditions of labour. Panchayats have been established in the remotest village of our country. They have been vested with the powers of civil administration, such as, medical relief, maintenance of village roads, streets, tanks and wells, provisions for primary education, sanitation and the like. They also exercise some quasi-judicial powers. For the promotion of cottage industries the Government has established several Boards, viz., All India Khadi and Village Industries Board, Small Scale Industries Boards, Silk Board, All India Handicrafts Board, All India Handloom Board etc. Many States have passed laws for compulsory education.

A large number of laws have been enacted to implement the Directives contained in Art. 40. The objectives laid down in Art. 40 have now been fulfilled by enacting the Constitution 73rd and 74th Amendment Act, 1992, popularly known as the Panchayati Raj and Nagarpalika Constitution Amendment Act, 1992 which provide constitutional sanction to democracy at grass-root level.

In 1971, fourteen major banks of the country were nationalized. Privy purse and privileges of the princes were abolished. The privileges of I.C.S. officers were taken away. The Constitution was amended by the 25th Amendment Act, 1971, so as to enable the Government to implement more speedily socio-economic reforms. This Amendment added a new Article i.e., Art. 31C to Art. 31 of the Constitution which has been abolished by the Constitution (44th Amendment) Act, 1978. The new Art. Added by the 25th Amendment provides that no law which is intended to give effect to the Principles contained in Art.39(b) and (c) shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by Articles 14 or 19 of the Constitution. The validity of the 25th Amendment Act has been upheld by the Supreme Court in the *Fundamental Rights Case*.

The amendment, according to the Government was made to facilitate socio-economic reforms to be introduced by the Government. It was alleged that the Court was standing in the way of implementing the Directive Principles and hence the amendment becomes necessary.

Instead of becoming a stumbling block the judiciary has now taken itself the responsibility of implementing the Directive Principles. In its recent judgments the

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Court has declared many directives as fundamental rights and has enforced them such as, equal pay for equal work, protection of children from exploitation, abolition of child labour in hazardous works, free and compulsory education of children below the age of 14 years (under Arts. 39, 41, 45 and 47) and protection of working women from sexual harassment, free legal aid to poor and speedy trial of under trial prisoners (Art. 39-A), right to work and medical assistance to workers (Art.41) and protection of ecology and environmental pollution (Art. 48-A).