CHAPTER THREE

MAINTENANCE AS A CONSTITUTIONAL OBLIGATION

India represents a mosaic of humanity consisting of diverse religious, linguistic and caste groups. The human right value is dominant in the country and is well reflected in its national charter. The incorporation of human rights in the Constitutional enactment had its origin from the American and French Constitutions. The demand for human rights in India traces back to the 19th Century and by the developments that took place later. The patriotic flame has been kindled by the formation of the Indian National Congress in 1885. The Constitution of India Bill was introduced in 1895. A series of Congress Resolutions reiterated the demand between 1885 and 1919. The emergence of Mahatma Gandhi on the political scene gave the freedom movement a new impetus. The movement which till then remained as one morally anti-British has become a movement for the organization of rights of liberty for the Indian masses. The events that followed later paved way for liberation of Indian sub continent to be declared an indo-pendent dominion with the Constitution of India as its national document.

3.1 THE CONSTITUTION OF INDIA

The Constitution of India is the basic, fundamental and supreme law. It has given a place of pride for human rights. The Preamble sets the goal to be achieved by the new government. The Fundamental Rights and Directive
Principles remain as dual modes of realization of human rights value in India. The Directive Principles lay down the basic socio-economic policy of the government and provides the guiding principles for the governance of a country. The Indian Constitution which reflects the British system has the unique characteristic of uniting a population of over three-hundred million who are non-homogenous belonging to varying communities and speaking various languages. The Preamble, Fundamental Rights and Directive Principles constitute the more important features of our Constitution and they together remain as saviors of the basic human rights in India.

3.1.1 The Preamble

The Preamble speaks of the goals the Constitution is set to realize. An important goal of the Constitution as specified by the Constituent Assembly is 'building of an egalitarian social order and to bring a radical socio-economic transformation based on Justice-Social, Economic and Political'. The Preamble reflects the sentiment of the Constitution builders. The basic human needs are food, clothing, treatment in disease, education and participation at the grassroots level in the governance of the country. The path to realize these basic needs is propounded by the Constitution as achieving a socialistic state which could be for providing Justice-social, economic and political; liberty of thought, expression, belief, faith and worship; and equality, of status and opportunity. The makers of the Constitution preferred and adopted a socialistic democratic state on the ideals taught by Mahatma Gandhi. The socialistic spirit of the Constitution had been

1. Quoted by Smt. Indira Gandhi in her Inaugural address at the seminar on 'Dynamic of Social Justice' on 31st October 1980 at New Delhi.
made explicit further by incorporation in 1976 of the words 'Socialist' and 'Secular' in the Preamble.2

3.1.2 Fundamental Rights

The Indian Constitution protects varying rights of the individual and is the charter on human rights. The chief among the rights protected vide the Constitution are described under Chapter III and termed as Fundamental Rights. They are the moral or natural rights.3 The whole conception of the rights is the protection of the individual liberty and freedom which has its root from the days of French Revolution.4 The very motive of incorporating these rights in the articles is to guarantee them in such a way that they are not deprived even under special circumstances. The chapter provides a number of rights to the individual. The expression 'fundamental' denotes that these rights are inherent in all the human beings and are essential for the individual for developing the human personality. They reflect the basic values of a civilized society and the Constitution makers have given them a place of pride in the Constitutional Charter.

Of the many rights provided under the Constitution in Part III, the right made available under Article 21 is paramount to human existence.5 It guarantees the twin freedoms of protection against deprivation of life and personnel liberty. The later part of the same provision lays down that an

2. Words inserted by the 42nd Amendment Act in 1976, Section 2.
4. Observed by Jawaharlal Nehru, Lok Sabha Debates, Part II.
individual can be deprived of both of these rights by a procedure established by law. The right of life which is the most fundamental of all basic rights is also the most difficult one to be defined. It is not only a fundamental right, but a basic human right also. It is not confined merely against taking away of human life but has a wider application. In the words of Field, J., the term life means not mere animal existence. The inhibition against its deprivation extends to all these limbs and faculties by which life is enjoyed. The Supreme Court in Kharak Singh held that the word 'life' as it occurs in 5th and 14th Amendment of the U.S. Constitution corresponds to Article 21 of the Indian Constitution. It means much more than animal existence.8

The word 'life' now is meant to include the right to basic necessities of life. Bhagwati, J., explains the right as one that includes the right to live with human dignity and all that goes along with it, namely, the basic necessaries of life such as adequate nutrition, clothing and shelter over the head inclusive of other facilities.

8. Id., - p.1302.
11. Francis Corolie v. Union Territory of Delhi, AIR 1981 SC 748 at 753.
The right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and more particularly Clause (e) and (f) of Article 39, Article 41 and Article 42.\textsuperscript{12} It includes protection of health and strength of the workers, men and women, the tender age of children against abuse, opportunities and facilities for children to develop in a healthy manner and in condition of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief. The global development in the sphere of human rights had given varying interpretation to the term 'right to life'.\textsuperscript{13}

No person can live without the means of living. Hence right to life guaranteed under Article 21 includes the right to livelihood. If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation. This would not only denude the life of its effective content and meaningfulness but it would make life impossible to live.\textsuperscript{14}

3.1.3 Directive Principles

Dharma is the supreme law of laws. It is Raja Dharma in which all living creatures take refuge. Raja Dharma denotes the obligations of the

\begin{itemize}
\item \textbf{12.} Bandhaua Muktimorcha v. Union of India, AIR 1984 SC 802.
\end{itemize}
state and demarcates the fundamental social and political principles. The Directive Principles of State Policy enumerated in Part IV of Indian Constitution are nothing but principles of Raja Dharma.

Many of the rights described as fundamental are primarily meant to protect persons who are already free from want and necessity. They are of little practical value and have no meaning to the hungry masses and homeless. The Constitution makers realized that mere adherence to an abstract democratic idea will not be enough and that if the Constitution was to survive it was necessary to secure to the people economic and social freedom in addition to political and civil freedom. Hence the Directive Principles are enunciated in the Constitution.

The Directive Principles impose a duty upon the state to perform its function. The provisions incorporated under Part IV of the Constitution, as per Article 37 reflects the objectives set forth in the Preamble of the Constitution. It serves as a key opener to Directive Principles and Articles 39, 44 and 45 impose specific obligations which the state has to fulfill towards the people of India. In a sense these are the moral duties for they are unenforceable directives. But their relevance cannot be simply disregarded.

Article 39 provides that the state shall direct its policy towards securing the citizen, men and women equally, the right to an adequate means of livelihood. Article 41 which is yet another directive principle provides that the state shall within the limits of its economic capacity and development make effective provision for securing the right to work in case of
unemployment and of undeserved want. The principles set forth in Articles 39(A) and 41 though not enforceable must be regarded as equally fundamental in the content of interpreting the fundamental rights.

Article 44 directs implementing a homogenous civil code that could be applied commonly on the varying communities speaking varying languages in India. Article 45 intends to educate the younger generation, a must for social and economical development. Indirectly it provides the right to education to a class of people in India.

The Directive Principles are not the whole but are some of the whole. The whole is the complete socialism which was made the goal for the country under Preamble. True the principles narrated here under are not to be enforceable before the court of law. But they are principles undertaken for implementation and should be the guideline in state policy. Even the principles which are undertaken remain still as 'pious wishes.'

The germ of socialistic government imposes a positive duty on the state to perform its functions fully in confirmation of the principle. The very nature of the principle are such they are non-justiciable and not enforceable as legal rights before the court of law. But it is not that they have no force at all before law. Dr. Ambedkar himself asserts those who disrespect the instruction have to answer before the electorate. The capture power policy


has meant his words unrealistic. The Directives under Part IV of the
Constitution are not enforced to the satisfaction by any government. They
show neither the will nor tendency towards achieving the principles
directed thereunder. This warranted courts interruption which interpreted
the principles such a line to further and not to hinder the goals set out in the
Directive Principles. They now show a desire to convert the Directive
Principles into fundamental rights. Recognition of the right to education\textsuperscript{17} and
the right to health\textsuperscript{18} are best instances on this line of thinking by the judiciary.

3.2 FUNDAMENTAL RIGHTS VIS A VIS DIRECTIVE PRINCIPLES

Fundamental Rights and Directive Principles elaborate the objective
specified in the Preamble of the Constitution. Fundamental Rights are
concerned with the freedom of the individual, whereas the Directive
Principles embody the promise towards achieving a socio-economic set up
for development of the nation. Both need to be in mutual harmony. While
the rights described as fundamental are enforceable before the courts,\textsuperscript{19} the
rights which are sought to be achieved by the Directive Principle,
though proclaimed fundamental in the governance of the country are not
enforceable by any court.\textsuperscript{20} Any law inconsistent with any of the Fundamental
Rights are declared to be void,\textsuperscript{21} but not so in the case of Directive Principles.

\begin{thebibliography}{99}
\bibitem{17} Unni Krishnan J.P. v. State of Andhra Pradesh, AIR 1993 SC 2178.
\bibitem{18} Consumer Education and Research Centre v. Union of India, J.T. 1995(1)
SC 636.
\bibitem{19} Articles 32 and 226.
\bibitem{20} Article 37.
\bibitem{21} Article 13.
\end{thebibliography}
The sincerity of governments in adhering to the principles was ever in doubt which necessitated judicial intervention. The courts have shown a change in their approach towards Directive Principles. Now that both the parts of the Constitution are attempted to be implemented without sacrificing one for the another. The rights and principles adumbrated under two different parts of the Constitution are seem to be mutually adjustable and defined not to be superior over the other. None of the part is subservient to other. To ensure the liberty and dignity of the individual and as well as a cohesive socio-economic development of the society as a whole, a balance has been struck between both the parts of the Constitution. The concerted effort is towards giving effect to the Directive Principles of the Constitution. The recognition of right to education and right to health of a worker marks the trend towards this line of thinking by the judiciary. Still going a step further, views are also expressed suggesting interpretation of the Fundamental Rights in the light of the Directive Principles. M.P. Dube asserts that if at all one of the two species is to conform, it is the Fundamental Right that should be made to conform to and seek their synthesis with the Directive Principles of state policy and not vice-versa.22

3.3 TOWARDS SOCIAL JUSTICE

The Preamble of the Constitution recites in sonorous words to establish a 'socialist' society based on socio-economic justice. Independence from hunger privation, disease and ignorance are minimal human rights. Political independence without economic independence will be meaningless.

The rights guaranteed under Part III can serve its purpose only when the people are endowed with socio-economic justice. A socialistic society can be established if only we honestly implement the socio-economic policy enumerated under Part IV of the Constitution. If not, rights guaranteed under Articles 14, 15 and 19 will be mere paper guarantees. Common man's interest is in the implementation of such principles that will serve him his basic needs and this without least doubt can be achieved through a socialist secular democratic state. The rights that are enshrined under Part IV of the Constitution are still under the process of its achievement even after 50 years of independence.

Fundamental Rights and Directive Principles of the Constitution reflect the differing dimensions of human right. Both intend to protect the basic right of human beings. For large masses of starving population assurance of socio-economic right is the prime necessity. An adequate standard of living to him is more precious than the rights protected as fundamental. A surviving population alone can enjoy the rights protected under Part III of the Constitution. Again the right to life assured to one under Article 21 imbibes within it the right to secure an adequate means of living.

India had fully realized significance and has incorporated this as a goal in the Preamble. Towards achieving this, the ways and means are directed under Part IV, which is no less than a mandate to the rulers. The Constitution imposed this directives as a positive duty to be adhered to in the policy of the governance. The Constitution drafters reposed full confidence that these rights will be enjoyed by the masses at the earliest possible time. But we cannot but admit the failure on this front. Lack of
seriousness on the part of rulers, warranted judicial intervention to uphold the validity of the principles. The rights specified in the Directive Principles are now recognized towards achieving the goal proclaimed vide the Preamble. In short the Preamble, Fundamental Rights and Directive Principles serve as guardian of basic human rights and can best be termed as conscience of Constitution. 