CHAPTER IV: JUSTICIABILITY OF SOCIAL AND ECONOMIC RIGHTS IN INDIA

1. Introduction
The Constitution of India, adopted when the country emerged from colonial rule, sought among other aims to bring about a social revolution, a goal according to Austin, “transcendent among the many goals it sought to foster, one that would fulfil the basic needs of the common man and with it bring fundamental changes in the structure of Indian society.” Key for this goal were the fundamental rights in part III and directive principles in part IV. The directive principles of state policy contain most of the socioeconomic rights in the Indian Constitution, with only a few, the right to primary education among them, forming part of the justiciable fundamental rights. Although part IV has been expressly declared to be not justiciable, the Constitution imposes a duty on the State to apply the principles in making laws. The State has enacted various pieces of legislation giving effect to these principles in areas ranging from the rights of workers to more recently, basic needs. Additionally, various schemes have been introduced seeking to address issues concerned with socioeconomic rights of vulnerable sections. However, issues have arisen as to the poor implementation of both legislation and schemes, a consequence of poor administration, corruption, etc., and statutes remaining inadequately implemented. The Indian judiciary has however, taken on an active role in this regard, ensuring access to justice to those disadvantaged sections of society that could not access the courts earlier due to lack of awareness, resources, etc., as well as by widely interpreting the fundamental rights to protect social and economic rights of people. While the courts’ approach in this regard has been the subject of praise and has received popular support, it has also been criticised among other grounds, for encroaching on the functions of other branches. While the socioeconomic situation in the country has seen much improvement from the time India achieved independence, and even over the last few

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decades, many issues, poverty among them, continue to face the country, which along with emerging challenges make the effective protection of these rights of greater importance.

The present chapter focuses on the legal protection and justiciability of social and economic rights in India. The discussion is divided into six sections. The first provides an overview of the social and economic conditions in the country as social and economic rights, are essentially concerned with the betterment of these conditions, and with providing at least a minimum level of protection to ensure a decent standard of living. These issues are discussed through the analysis of various statistics and indicators on inter alia, life expectancy, employment, health, education, and poverty. The section following this examines major socioeconomic challenges facing the country as these situations highlight inadequate protection of social and economic rights. These include poverty, healthcare, and the hunger and malnutrition scenario in the country. The next two sections focus on the legal position of social and economic rights. First, the constitutional position of these rights is discussed in the fourth section. The inclusion of the directive principles, which address most socioeconomic rights, was supported by almost all the constitution framers, many even arguing for making them justiciable. However, article 37 made these principles not enforceable by courts. This section further discusses the change in the position of the directive principles sought to be brought by constitutional amendments.

As mentioned, various pieces of legislation have been enacted to give effect to these principles which are considered in the fifth section. These include legislation on the right to work and workers’ rights, social security and social assistance, standard of living, and health. This section points out the measures envisaged for enforcement such as penalties, audits, and other accountability mechanisms. It focuses on providing an overview of the legislation with a discussion of some important enactments and not an exhaustive discussion of all legislation in these areas. The sixth section focuses on measures taken towards the realisation of socioeconomic rights through various schemes and programmes adopted by the government for the weaker sections.
These programmes seek to improve access to food, employment, housing, etc. and some of these have a basis in, or have been incorporated into legislation.

The next section looks into the protection of social and economic rights by the judiciary through interpretation of the various provisions on human rights and fundamental rights. Some commentators have argued that while the directive principles may not be enforceable by courts, directions can still be given regarding them. The courts have in fact, given various directions and sought to enforce these rights. The interpretation by the courts of the interrelationship between the fundamental rights and directive principles has gone through various stages but the courts have recognised that they are complementary to each other and harmony and balance must be maintained between them. Based on this development, particularly after the landmark decision of the Supreme Court in Maneka Gandhi, the courts have also recognised many social and economic rights as justiciable by reading them into the fundamental rights, particularly the right to life. The section also discusses the standards of judicial review as well as some of the mechanisms evolved by the court in this regard, such as appointment of commissioners. Finally, it considers the implementation of decisions as it is only through adequate implementation that the rights can be realised. The concluding section highlights the major findings of the chapter.

2. Social and Economic Position
Economic and social rights are related to basic necessities such as food, shelter, health, and healthcare, as well as to education, work and access to livelihoods, and related rights. In considering the legal position of economic and social rights in India and South Africa, an understanding of the socioeconomic situation becomes imperative.

The World Bank classifies India as a “lower middle income” country with a per capita GNI of USD 6030 in 2015 compared to 1,980 in 2000. In 2015, India had a GDP of USD 2.089 trillion. The

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average population growth rate (2010–15) was 1.3 percent with the urban population recording a higher rate of 2.4 percent. While the sex ratio (males per 100 females) was 107.1 in 2013, and sex ratio at birth was 1.11 (male to female births) in 2015, many states in the country, even advanced ones record adverse sex ratios.

Life expectancy at birth in India in 2015 was 68.34, an improvement of 5 percentage points from 2000 (62.63) and 11 percentage points from 1990 (57.94), while infant mortality (per 1000 live births) in the same period reduced from 66.6 (2000) to 34.6 (2016), a saving of 28 infant lives per 1000 live births. In 2015, U5MR (per 1000 live births) was 47.7, while the maternal mortality ratio was 174 (per 100,000 live births) in the same year. Life expectancy at birth (2010–15) stands at 68.9 and 66.1 for females and males, respectively, and infant mortality rate per 1000 live births averaged over this period stands at 41.

Access to food and adequate nutrition are relevant indicators for socioeconomic rights, including health. In India, however, 15 per cent of the population is undernourished (2015). Also with reference to health, the availability of physicians per 1000 population was 0.7 in 2013, while health expenditure (2014) was 4.7 percent of GDP. The World Bank figures are, however, considerably lower at 1.4 percent of GDP. When considering socioeconomic rights issues

4 Department of Economic and Social Affairs, World Statistics Pocketbook 98 (United Nations, New York, 2016).
7 For instance, Punjab (893) and Haryana (877) as per the Census of India, 2011. See http://statemaps.org/india/state_sex_ratio/ (last visited 28 November 2017).
9 UNDP, supra note 6 at 228, 216.
10 Department of Economic and Social Affairs, supra note 4 at 98. As per the country’s 2015 report on the Millennium Development Goals, the infant mortality rate was expected to reach 39 (per 1000 live births) in 2015 as against the target of 27. Ministry of Statistics and Programme Implementation, Millennium Development Goals: India Country Report 2015 7 (Social Statistics Division, New Delhi, 2015).
12 Department of Economic and Social Affairs, supra note 4 at 98.
13 "Health Expenditure: Public (% of GDP)", https://data.worldbank.org/indicator/SH.XPD.PUBL.ZS?view=map (last visited 27 September 2017). For 2006, the health expenditure in the country was 3.6 percent of GDP lower than the
(particularly health and standard of living), statistics on population using improved water sources and sanitation facilities are also relevant. In India, the population using improved drinking water sources stood at 97.1 and 92.7 percent, respectively in urban and rural areas in 2015, and access to improved sanitation facilities at 62.6 (urban) and 28.5 (rural), for the same year. Much, thus remains to be done in the right to health context, despite improvements.

Education statistics similarly indicate satisfactory availability of rights in some respects and need for improvement in others. In 2014, primary completion rate (% of relevant group), school enrolment (primary), and school enrolment (secondary) (% gross) stood at 97.54, 107.92, and 74.27, respectively. As per another source, the secondary gross enrolment ratio was 69.2 and 68.6 for 2014 for females and males, respectively, indicating gender parity in education. Primary and lower secondary completion rates in 2015 for males and females were 95 and 100, and 83 and 88 percent, respectively. Literacy rates for 2005–15 stand at 72.1 percent among persons aged 15 and above.

Unemployment (as % of labour force) stood at 3.5 per cent in 2014 and in 2015. The World Bank estimates the gender breakup for unemployment (2013–16) for males (% of male labour force) at 3.3 and for females (% of female labour force) at 3.8. In 2014, labour force

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14 Department of Economic and Social Affairs, supra note 4 at 98.
16 Department of Economic and Social Affairs, supra note 4 at 98.
18 UNDP, supra note 6 at 232.
19 “India” in World Statistics Pocketbook, supra note 5.
20 UNDP, supra note 6 at 240. Unemployment rates have been noted to have decreased between the periods 1999–2000 and 2009–10 from 7.3 to 6.6 percent; this has been interpreted as demonstrating the impact of high growth rates. Institute of Applied Manpower Research, India: Human Development Report 2011 5 (Oxford University Press/Planning Commission, Government of India, New Delhi, 2011).
participation for adult women was 26.7 percent and for adult males was 79.1 percent. While much of the population is exercising its right to work, these figures do not indicate its adequacy of employment opportunities or conditions of work.

Human development indicates improvements in human life rather than economic growth alone: the Human Development Index (HDI), a "composite index of outcome indicators in three dimensions", namely life expectancy at birth (reflecting a long and healthy life); mean years of schooling and literacy rate (reflecting the acquisition of education and knowledge); and monthly per capita expenditure adjusted for inflation and inequality (reflecting the standard of living and command over resources), has increased between 1999–2000 and 2007–08 by 21 percent. The India Human Development Report notes a faster increase than the national average among poor states, besides convergence between states in terms of HDI. Improvements have been noted in both the education and income indices (more so in educationally backward and poor states, respectively), with overall upwards movement in the HDI attributed to a 28.5 percent improvement in the Education Index. The health index, however, remains well below the overall improvement in the HDI.

Internationally, the UNDP's Human Development Report for 2016 ranks India at 131, classifying it as a "medium human development" country. This report also provides figures on perceptions of individual well-being for the years 2014–15. In India, respectively, 76, 62, and 63 percent persons were satisfied with the education quality, healthcare quality, and standard of

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22 Department of Economic and Social Affairs, supra note 4 at 98.
23 Institute of Applied Manpower Research, supra note 20 at 2–3. It may be mentioned here that "human development" is concerned with improving the "richness" of human life rather than merely that of the economy. The approach has been developed by economist Mahbub ul Haq based on work by Prof. Amartya Sen. See "About Human Development", http://hdr.undp.org/en/humandev (last visited 26 September 2017).
24 Institute of Applied Manpower Research, supra note 20 at 3.
25 Id. at 3–4.
26 UNDP, supra note 6 at 266, 271.
living, while 80 and 69 percent persons believed they had an ideal job and feel safe. More than half the population is thus satisfied with its basic socioeconomic conditions.

In considering socioeconomic rights, the incidence of poverty is also a factor to be taken into account, as poverty is a situation wherein there is denial of human rights, including importantly economic and social rights. In conditions of poverty, people may not have access to even the basic necessities for survival. Prof. Pogge in fact, defines “a poor individual” in terms of the Universal Declaration of Human Rights (UDHR) as one who lacks “access to a standard of living adequate for the health and well-being of himself, and of his family, including food, clothing, housing and healthcare”.

Individuals living in poverty are denied not only these rights but also protection of family, right to privacy, recognition as a person before law, right to life and integrity, the right to participate in political affairs, and in social and cultural life. It is thus apparent that poverty is connected with both economic and social rights, such as a decent standard of living, housing, healthcare, work, education, etc., as also, civil and political rights such as privacy, participation in political affairs, etc.

In fact, as Prof. Pogge observes, “most of the current massive underfulfillment of human rights is

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27 Id. at 252.
30 Yogesh Atal, “Human Rights in the Context of Poverty”, 7(1) Journal of the Institute of Human Rights 1 (2004). The Law Commission of India, in its 223rd report enumerated a list of rights which it felt formed part of the right to be free from poverty. These included the right to an adequate standard of living; to work and receive wages that contribute to an adequate standard of living; to live in adequate housing; to be free from hunger; to safe drinking water; to primary healthcare and medical attention in case of illness; to education; to basic social service; to be free from gender or racial discrimination; among others. Law Commission of India, Need for Ameliorating the Lot of the Havenots: Supreme Court’s Judgments 12 (Government of India, Law Commission of India, 2009). A large section of these rights are what are classified as social and economic rights.
more or less connected with poverty”, and while the connection is direct in the case of social and economic rights, it is more indirect as regards civil and political rights. The Law Commission of India similarly recognised the connection between poverty and human rights denial noting in its 223rd report that “poverty is often a direct or indirect consequence of society's failure to establish equity and fairness as the basis of its social and economic relations. Extreme poverty is denial of human rights.”

In fact, the denial of economic and social rights is both a cause and consequence of poverty, and reinforces the "vicious cycle" of poverty. Still poverty is an issue not often considered from a human rights perspective: a human rights approach would focus on empowering people and extending their freedom of choice.

The India: Human Development Report, 2011 notes a sharp decline in poverty in the period 2004–05 and 2007–08 from 21.2 percent overall, to 14.9 and 14.5 percent in rural and urban areas, respectively, though among scheduled castes (SCs) and scheduled tribes (STs) incidence of poverty is much higher, being as much as 8.5 and 19.5 percentage points, respectively, above the national average in rural areas. Other poverty estimates are much higher standing at 37.2 percent (Tendulkar Committee) and 27.5 percent (2004–05), 29.8 percent (2009–10), and 29.5 percent (2011–12; as per the Rangarajan line). The accuracy of poverty estimates is, however, questioned on grounds of the poverty line being set relatively low, and excluding increased expenses on

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32 Law Commission of India, supra note 30 at 7.
34 Law Commission of India, supra note 30 at 13–14. A rights-based approach as is pointed out, "recognizes the interconnectedness of development objectives". Both sets of rights (civil and political, and economic and social) are important for those in poverty. Aasha Kapur Mehta, Andrew Shepherd, Shashanka Bhide, Amita Shah, and Anand Kumar, India Chronic Poverty Report: Towards Solutions and New Compacts in a Dynamic Context 106 (Indian Institute of Public Administration, New Delhi, 2011).
35 Institute of Applied Manpower Research, supra note 20 at 4.
education and health, among others. More recent World Bank estimates suggest higher incidence of poverty, with 21.2 percent persons living below USD 1.90 per day and 58 percent population falling below the USD 3.10 per day mark in 2011.

The statistics thus show a mixed position on socioeconomic rights in India with some areas such as life expectancy and infant mortality showing improvement, stronger statistics on primary enrolment and completion, improved access to clean water, and reduced unemployment, but much remains to be done in the areas of health (as evidenced by maternal mortality, no significant improvement in the health index, availability of physicians, and access to improved sanitation facilities), as well as persisting poverty (in percentage terms as well as actual numbers).

3. Major Social and Economic Challenges

The statistics and indicators discussed in the previous section show that while many socioeconomic rights areas have seen improvements and thus, improved enjoyment of rights, some require further action.

Poverty is one of the major challenges facing the country. As discussed, it represents a situation of denial of various human rights, with more direct violation of economic and social rights, though civil and political rights are also violated. Even seventy years since independence, and despite reduction in the percentage of people living below the poverty line, the number of persons living below the poverty line in India continues to be high. With about 29.5 percent of the

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37 Nick Robinson, ”Expanding Judiciaries: India and the Rise of the Good Governance Court", 8(1) Washington University Global Studies Review 1, 9 (2009); Kapur Mehta, et al., supra note 34 at 16. There have been several bases for identification of the extent of poverty in India, one of the earliest being Dadabhai Naroji’s estimate in the second half of the nineteenth century. Post-independence, some studies identifying poverty lines have included a working group set up by the Planning Commission in 1962, Dandekar and Roth’s study of 1971, a Planning Commission task force in 1977, besides others. The Tendulkar Committee Report of 2009 recommended various changes in methodology such including private expenditure on health, education, etc., and raised both rural and urban poverty lines. Kapur Mehta, et al., at 13–20. More recently, in 2012 the Rangarajan Committee was appointed which recommended further raising of poverty lines but the recommendations are yet to be acted upon. Task Force on Elimination of Poverty in India, supra note 36.


39 See, Planning Commission, supra note 36 at 5.
population still living below the poverty line in 2011–12, and over half the population below the USD 3.10 mark, the country has the highest number of poor persons in the world.40

A large section of the population continues to remain deprived of their basic social and economic rights. Newspapers repeatedly report cases of starvation deaths, and malnutrition in the country.41 A 2013 news report pointed out, that the Hunger Index for India improved from 24 in 2003–07 to 21 in 2008–12, yet nearly 210 million persons, about a quarter of the world’s hungry live in the country, which continues to be in the “alarming” category as far as concerns hunger.42

More recent data places India at 97/112 in 2016 in the Global Hunger Index indicating the still

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40 See, Task Force on Elimination of Poverty in India, supra note 36: Kapur Mehta, et al., supra note 34 at 10; See “World Development Indicators: Poverty Rates at International Poverty Lines”, supra note 38; PTI, “India has the Highest Number of People Living below the Poverty Line: World Bank”, Business Today, 3 October 2016, http://www.business today.in/current/economy-politics/india-has-highest-number-of-people-living-below-poverty-line-world-bank/story/238085.html (last visited 27 September 2017). The number of persons living below the poverty line in the country remains the highest despite significant reduction in actual numbers. About 138 million persons have been lifted out of extreme poverty as per India’s 2015 MDG Report, and it also met the targets for poverty head count ratio at 21.9 percent. Ministry of Statistics and Programme Implementation, supra note 10 at 5, 14.


critical situation in this regard. This issue has also been highlighted before the courts through various petitions such as Kishen Pattnayak, where a letter was addressed by two social and political workers highlighting the issue of starvation deaths in the Kalahandi and Koraput districts of Orissa, while People’s Union for Civil Liberties brought forth the issue of people dying of starvation despite overflowing grain stocks in the country which led to a series of orders for effective implementation of government food schemes. Hunger and malnutrition thus remain a major challenge for the country to overcome.

Another significant issue as seen in the previous section is the health and healthcare scenario in the country highlighted by low availability of doctors, poor access to sanitation, and high infant and maternal mortality rates. Health expenditure in the country stands at 4.7 percent of GDP in 2014, far below developed economies such as the United States at 17.1 percent of GDP, as well as below other developing economies such as South Africa at 8.8 percent. Infant mortality in the country has reduced considerably in the last two decades but remains above the world average (32), but below the average of lower-middle-income countries (40), and significantly below the best levels in the world (3 in the Euro area). The maternal mortality ratio of 174 (per 100,000 live births) was below the world average of 216 and that of lower middle-income countries at 224, but significantly above the best levels of 6 in the Euro area. Other issues pertaining to the right to

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44 People’s Union for Civil Liberties v. Union of India, CWP 196/2001, Supreme Court of India. It may be mentioned that the NITI Aayog has prepared a strategy to reduce malnutrition in the country by 2030. See Mahendra Singh, “By 2030 Niti Plans to Reduce Malnutrition”, The Times of India, 6 September 2017, https://timesofindia.indiatimes.com/india/by-2030-niti-plans-to-reduce-malnutrition/articleshow/60384673.cms (last visited 10 November 2017).

45 See “Mortality Rate, infant (per 1000 live births)” for 2015, https://data.worldbank.org/indicator/SP.DYN.IMRT.IN?name_desc=false&view=map (last accessed 27 September 2017). As far as U5MR is concerned, India only missed its MDG target of 42 (at 47.7) though it saw reduction of 60 percent between 1990 and 2013. Ministry of Statistics and Programme Implementation, supra note 10 at 64.

health have been highlighted by petitions in the courts such as lack of appropriate emergency healthcare and poor healthcare facilities.\textsuperscript{48}

The figures on primary education both in terms of enrolment and completion rates in the country are promising but universal primary education has not yet been achieved, and much is required to be done in the area of secondary enrolment.\textsuperscript{49}

According to Raj Kumar, most challenges facing third-world countries are violations of economic, social, and cultural rights,\textsuperscript{50} and as the above discussion shows, this is the case for India as well. The above mentioned issues are, however, only some instances of inadequate levels of socioeconomic rights in the country. These are also demonstrated by other instances such as of farmer suicides,\textsuperscript{51} and countless petitions before courts highlighting the plight of pavement dwellers, slum dwellers, bonded and child labour, inadequate working conditions, etc.\textsuperscript{52} These instances demonstrate the need for stronger socioeconomic rights protection.


In the Indian Constitution, most economic and social rights form part of the directive principles of state policy, which according to article 37 are not enforceable by courts though they are

\textsuperscript{48} For instance, *Paschim Bangh Kheth Mazdoor Samiti* v. *State of West Bengal*, AIR 1996 SC 2426 (Bench Strength: 2); *Parmanand Katara* v. *Union of India*, (1989) 4 SCC 286 (Bench Strength: 2); *Savelife Foundation and another* v. *Union of India and another*, Writ Petition (c) no 235 of 2012, Supreme Court of India, decided 30 March 2016 (Bench Strength: 2).

\textsuperscript{49} See, “India” primary completion rate, gross enrolment ratio (primary) and gross enrollment ratio (secondary), \textit{supra} note 14. Ministry of Statistics and Programme Implementation, \textit{supra} note 10 at 6.

\textsuperscript{50} C. Raj Kumar, “Human Rights Crisis of Public Health Policy: Comparative Perspectives on the Protection and Promotion of Economic and Social Rights”, 52(3) \textit{Indian Journal of International Law} 351, 355 (2012).

\textsuperscript{51} See for instance, news report “Over 12,000 Suicides per Year, Centre Tells Supreme Court”, \textit{The Times of India}, 3 May 2017, http://timesofindia.indiatimes.com/india/over-12000-farmer-suicides-per-year-centre-tells-supreme-court/articleshow/58546441.cms (last visited 27 September 2017) that 12,000 farmer suicides were reported per year since 2013; news report on suicide by 22 farmers in a period of three weeks in Maharashtra was reported in an NDTV report in March 2014, “In Maharashtra, 22 Farmer Suicides in Three Weeks” (18 March 2014), http://www.ndtv.com/article/india/in-maharashtra-22-farmer-suicides-in-three-weeks-report-497018 (last visited 10 April 2015); a 2013 report in \textit{The Hindu} notes that farmer suicides in India were 47 percent higher than they were for the rest of the population and that at 270,940 farmers had taken their lives since 1995. See, “Farmer Suicide Rates Soar Above the Rest” (18 May 2013), http://www.thehindu.com/opinion/columns/sainath/farmers-suicide-rates-soar-above-the-rest/article4725101.ece (last visited 10 April 2015).

\textsuperscript{52} See *Olga Tellis* v. *Bombay Municipal Corporation*, AIR 1986 SC 180 (Bench Strength: 5); *M.C. Mehta* v. *State of Tamil Nadu*, AIR 1991 SC 417 (Bench Strength: 2); *M.C. Mehta* v. *State of Tamil Nadu*, 10 December 1996, Supreme Court (Bench Strength: 3); People’s Union for Democratic Rights v. *Union of India*, AIR 1982 SC 1473 (Bench Strength: 2); *Bandhua Mukti Morcha* v. *Union of India*, AIR 1984 SC 802 (Bench Strength: 3).
“nevertheless fundamental in the governance of the country” and the state has a duty “to apply these principles in making laws”. Such Constitutions as those of India and Ireland, incorporating socioeconomic rights as “directive principles of state policy”, not enforceable by courts are termed by Tushnet as “early social democratic constitutions”.53 While keeping welfare entitlements within the ambit of statutory regulation rather than being enshrined as broadly enforceable rights has the advantages of flexibility to respond to changing circumstances and values, electoral accountability for measures taken, and a high degree of specificity on the scope of the rights,54 such an arrangement even if adopted with the best of intentions, effectively results in marginalising the centrality of social rights; the values, vindication of which is sought; and people for whom being part of society depends on these rights, one reason being that political processes cannot offer the kind of protection that individualised complaints mechanisms can.55 Prof. M.P. Singh points to the difference on justiciability, as leading the Supreme Court initially to hold that “the directive principles...have to conform to and run subsidiary to the ...fundamental rights”, though he clarifies that this does not imply that the directive principles cease to be law or part of the Constitution.56

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54 Tara Usher, “Adjudication of Socio-economic Rights: One Size Does Not Fit All”, 1(1) UCL Human Rights Review 154, 159 (2008). These arguments as she points out were raised extensively in discussions prior to the drafting of the Irish Constitution. Ibid.


56 He writes: “Directive Principles do not cease to be either the law or part of the Constitution. ...several other provisions of the Constitution also exclude some matters from the purview of the courts. Secondly, courts also decline to entertain constitutional issues on the ground of self-imposed limitation of justiciability. ...Thirdly a few fundamental rights by their very nature are judicially unenforceable unless suitable laws are made in support of them. Finally, the question whether directive principles are law has already been discussed in legal literature and ... disposed of and practiced without any doubt that the Directive Principles are as much a part of the Constitution and constitutional law as the fundamental rights.” Mahendra P. Singh, “The Statics and the Dynamics of the Fundamental Rights and Directive Principles: A Human Rights Perspective”, 5 SCC Jour 1 (2003). Saul, Kinley, and Mowbray, as discussed in Chapter II express a similar view in more general terms. Ben Saul, David Kinley, and Jacqueline Mowbray, “Introduction”, in Ben Saul, David Kinley, and Jacqueline Mowbray (eds), The International
This position of “subservience” was, however, disapproved through constitutional changes, juristic writings, and subsequent judicial decisions.\(^{57}\) Moreover, their inclusion even as non-justiciable rights has value, creating pressure for them to be considered in policy decisions.\(^{58}\)

The directive principles, in Granville Austin’s words, set forth, “the humanitarian social precepts that were, and are, the aims of the Indian social revolution”.\(^{59}\) Knowledge of various constitutions including of eastern European countries, where ensuring social well-being of citizens was among the chief functions of the state, and the Congress’ affinity with the Irish nationalist movement made the constitutional socialism expressed in the Irish directive principles, attractive to many congress members.\(^{60}\) While the fundamental rights and directive principles are different in their nature and effect in some respects, more broadly they can be seen as sharing the same aims.\(^{61}\) The framers of the Constitution were concerned with the vast inequalities existing in society in terms of wealth, education, healthcare, access to land, etc. which required urgent action, as was the case of the framers of the South African Constitution.\(^{62}\)

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57 Singh, id.
58 Rehan Abeyratne, “Socioeconomic Rights in the Indian Constitution: Towards a Broader Conception of Legitimacy”, 39 Brooklyn Journal of International Law 1, 50 (2014). On the role of the directive principles D.D. Basu points out (i) while the courts cannot declare a law invalid on the ground of contravening directive principles, the validity of laws has been “maintained” by reference to these principles; (ii) on fundamental rights other than articles 14 and 19, the principle of harmonious construction should be adopted; (iii) the directive principles must be borne in mind both for determining constitutional validity and in interpretation of statutes as they are complementary to the fundamental rights. D.D. Basu, Introduction to the Constitution of India 136–37 (9th ed., Prentice Hall, New Delhi, 1982).
59 Austin, supra note 1 at 75. “The very object and purpose of these principles is to embody the concept of welfare state…. according to Chandrah Ch, Parts III and IV together constitute the core of the commitment to social revolution and... conscience of the constitution.” Similarly, Robinson notes that the Indian Constitution “attempted to create an ongoing, controlled revolution by laying an architecture in which massive social and economic transformation could take place within the limits of a liberal democracy”. N. Dharmadan, “Directive Principles Manifestly Non-Justiciable but Truly Justiciable?”, AIR Jour 313, 313 (2001). Robinson, supra note 37 at 5. PIL has been seen as a “vehicle” for bringing about this revolution. Surya Deva, “Public Interest Litigation in India: A Critical Review”, 28(1) Civil Justice Quarterly 19, 31 (2009). Prof Baxi sees the founding values of the preamble, directive principles and fundamental duties as enunciating the idea of human rights and social development. Upendra Baxi, “The Judiciary as a Resource for Indian Democracy”, 615 Seminar (November 2010), http://www.indiaseminar.com/2010/615_upendra_baxi.htm (last visited 8 July 2017).
60 Austin, supra note 1 at 76.
61 Dharmadan, supra note 59 at 315.
initially envisioned in narrow terms was, however not congruous with the “Constitution’s transformative vision”.  

**Directive Principles and the Drafting of the Constitution**

At the drafting stage, there was general acclaim for the principles, with almost the only critical voices being of members who felt they ought to have been made justiciable. Advocates of the directive principles including Sh. K.M. Munshi, Dr Ambedkar, Prof K.T. Shah, and B.N. Rau were in favour of making them justiciable, but ultimately they were bifurcated as this could not be done until appropriate action was taken to bring about changes in the economy. The framers of the Indian Constitution supported the inclusion of the directive principles despite their non-justiciability, with those in favour of justiciability of the principles accepting “mere precepts”, as “half a loaf was better than none.” Some commentators also point out that the non-justiciability of the directive principles “predominantly signalled a concern with the relative institutional incapacity of judges to pronounce on these matters” and not their “lack of importance.” Political leaders of the time were part of the freedom struggle while judges were from elite sections of society and colonial appointees, and the general view was in favour of limited and closely defined judicial review. While making the directive principles justiciable may, according to Prof M.P Singh, bring problems including the courts’ suitability to enforce them, a consideration that weighed on

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64 Austin, *supra* note 1 at 75. There were also members opposed to particular principles.  
65 Jayna Kothari, "Social Rights and the Constitution", 6 SCC (*Jour*) 31, 33 (2004). As Basu also notes, the reason for making the principles non-enforceable was to give the government sufficient latitude to make them so in consonance with their capacity and circumstances. D.D. Basu, *Shorter Constitution of India* 447 (Wadhwa, Nagpur, 2004).  
66 Austin, *supra* note 1 at 78; Kothari, *id.* at 33. At least one member of the drafting committee had used the words “non-justiciable” in relation to the directive principles and the reference by Prof. K.T. Shah to the principles as “mere expression of vague desire on the part of the framers” may have been based on the idea of their non-justiciability. While in early drafts of the fundamental rights and directive principles, distinctions were drawn between “justiciable” and “non-justiciable” rights, in later drafts, “not cognizable” was used, and finally it was “not enforceable” that was adopted. Joseph Minattur, “The Unenforceable Directives in the Indian Constitution”, 1 SCC (*Jour*) 17 (1975).  
67 Pillay, *supra* note 62 at 340; see also Abeyratne, *supra* note 58 at 29: Abeyratne notes that one of the motivations for the separation between justiciable fundamental rights and non-justiciable directive principles was the scepticism around the judiciary and desire to minimise its interventions.  
68 Pillay, *id.* at 341. There were also concerns about their “unelected” status.
the minds of the Constitution framers, the kind of apprehensions that existed at the time of independence have been greatly weakened, if not eliminated.\textsuperscript{69} This has, in fact, been the case in international, regional, and domestic adjudication of these rights (including India), where the mechanisms adopted have set to rest or mitigated various objections to justiciability.

Framers believed that these principles, even if non-justiciable would be made the basis of legislative action, their inclusion of itself ensuring respect for them. Dr Ambedkar observed that, “it is the intention of [the Constituent] 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 executive and legislative action that may be taken hereafter in the matter of the governance of the country.”\textsuperscript{70} Prof. Shibhan Lal Saksena felt that the very fact of inclusion of these principles in the Constitution guaranteed that they would be respected by legislatures, which would point out if legislation was being introduced in conflict with them; while courts could not be approached for their enforcement, it would be open for Presidents of Assemblies to rule out a bill against the “fundamental directive principles” of the Constitution.\textsuperscript{71} No voice was raised against his “pointed reference” to the fact that a piece of legislation would be regarded as \textit{ultra vires} if passed in violation of directive principles.\textsuperscript{72} For Sh. Ananthasayanam Ayyangar, the principles found place in the Constitution due to their importance, and while they could not be enforced by a court of law, “the strength of public opinion...can enforce these provisions...That is the real sanction, not the sanction of any court of law”.\textsuperscript{73}

\begin{footnotesize}
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\item[69] Singh, supra note 56. He was also of the view that with time, courts may disprove their "unsuitability" to enforce such rights.
\item[71] Speech of Sh. Shibhan Lal Saksena, in Constituent Assembly Debates, id.
\item[72] Minattur, supra note 66.
\item[73] Speech of Sh. Ananthasayanam Ayyangar, in Constituent Assembly Debates, supra note 70.
\end{itemize}
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Directive Principles: Content and Justiciability

Part IV incorporates various economic and social rights including the equal right of citizens to an adequate means of livelihood [Article 39 (a)]; equal pay for equal work [Article 39 (d)]; the right to work, education, and public assistance in certain cases including unemployment, old age, sickness, disablement, and other cases of undeserved want [Article 41]; just and humane conditions of work and maternity relief [Article 42]; securing, inter alia, work, living wage, and conditions of work ensuring a decent standard of life [Article 43]; raising the level of nutrition and standard of living of people [Article 47]; and improvement of public health [Article 47]. One important socioeconomic right, namely primary education was made part of the fundamental rights in 2002, vide a constitutional amendment adding article 21-A;\(^{74}\) a right, earlier part of the directive principles as article 45.\(^{75}\) Some other socioeconomic rights in part III include protection against forced labour [Article 23] and prohibition of child labour [Article 24].

A number of the rights in the directive principles are comparable with provisions of the International Covenant on Economic, Social and Cultural Rights (ICESCR) such as the right to work,\(^{76}\) just and favourable conditions of work with equal remuneration for work of equal value,\(^{77}\) right to an adequate standard of living and the right to be free from hunger,\(^{78}\) and the right to education including free and compulsory primary education.\(^{79}\) Some aspects on the other hand, are unique to the Indian Constitution including provisions on the organisation of village panchayats [article 40], a uniform civil code for citizens [article 44], the promotion of educational and economic interests of the SCs, STs and other weaker sections [Article 46], and organisation of agriculture and animal husbandry [Article 48]. These issues are relevant to the specific social and economic conditions in

\(^{74}\) Article 21 A reads: “The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.”

\(^{75}\) Article 45, as it was originally, read: “The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years”.

\(^{76}\) Article 6 para (1) of the ICESCR comparable with article 41 of the Indian Constitution.

\(^{77}\) Article 7 of the ICESCR corresponding with articles 39 (d) and 42 of the Indian Constitution.

\(^{78}\) Article 11 of the ICESCR comparable with article 47 of the Indian Constitution.

\(^{79}\) Article 13 of the ICESCR corresponding to article 21A of the Indian Constitution.
India having reference to local self-governance, the different legal systems/provisions applicable to parties in matters of family law, protection of interests of disadvantaged sections and certain basic economic activities. Dr Ambedkar's observations that the fulfilment of these principles should be strived towards even in circumstances impeding or preventing the government giving effect to them, else it would be open for any government to plead bad circumstances or lack of finances as an excuse, are in consonance with the ICESCR's “progressive realisation” language, and the CESCR's interpretation of state obligations.

While many directive principles do not lead themselves to easy implementation, such as those containing limitations of resources and level of development or those obligating the state only to "endeavour", and may be difficult for courts to determine, this is not the case for all the principles. The qualifications in article 41 on “economic capacity and development” are comparable with those on "maximum available resources" and "progressive realisation". Moreover, the obligation to “endeavour” could be assessed in the same manner as “progressive realisation”, considering whether reasonable measures have been taken by the state.

It has been argued as to the justiciability of the directive principles, that a reading of the entire scheme of part III and relevant constituent assembly debates makes it apparent that the Constitution framers never wanted the fundamental rights to remain as they were at the time of its commencement, no finality having been given to part III, and it has been open to the legislature to make suitable changes to part III by amending the Constitution. Rather, a mandate has been given to the state to implement the directive principles when the time is ripe and appropriate, economically, socially and politically.

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80 Kothari, supra note 65; Radha D'Souza, "The Third World and Socio-legal Studies: Neoliberalism and Lessons from India’s Legal Innovations", 14(4) Social & Legal Studies 487, 498 (2005). D’Souza finds both the Indian Constitution and UDHR were products of the turmoil of the times. Ibid. Prof Baxi too sees the “divide” in rights in the Indian Constitution as anticipating the International Bill of Rights. Baxi, supra note 59.

81 Minattur, supra note 66.


83 id. at 57.
A change in the position of the directive principles was, in fact, sought to be brought about with the introduction by Parliament vide a constitutional amendment of article 31C in part III which sought to give primacy to certain directive principles [Articles 39(b) and (c)].\textsuperscript{84} The 42nd Constitutional Amendment in 1976 further amended article 31C so as to give primacy to all the directive principles over the fundamental rights under articles 14 and 19, and to exclude such provisions from judicial review. Both amendments were challenged in the Supreme Court. In \textit{Keshavanada Bharti},\textsuperscript{85} the validity of article 31C was partly upheld but the Court preserved its power of judicial review to decide whether a law made by the legislature had any nexus with the principles in article 39 (b) and (c).\textsuperscript{86} The amended form of article 31C was, however, held to be unconstitutional in \textit{Minerva Mills}.\textsuperscript{87} The constitutional amendments giving effect to the directive principles as well as other legislative and executive measures in this regard are seen as indicating that the State has always regarded the directive principles as fundamental in the governance of the country,\textsuperscript{88} in keeping with the constitutional mandate.

5. Major Legislation on Socioeconomic Rights Issues

While the Constitution of India does not recognise economic and social rights as justiciable rights, as discussed, it places them as directives, which the state is under a duty to apply in making laws.

\textsuperscript{84} 25th Constitutional Amendment, 1971. In fact, it may be mentioned here, that even at the drafting stage, Shri B.N. Rau had suggested that it may be carefully considered whether the Constitution might provide that no law made or action taken under the Directive Principles would be invalid merely by reason of contravening the provisions on fundamental rights. Austin, \textit{supra} note 1 at 76–77.

\textsuperscript{85} \textit{His Holiness Kesavananda Bharati Sripadagalvaru and Anr. v. State of Kerala and Anr.}, (1973) 4 SCC 225 (Bench Strength: 11).


\textsuperscript{87} \textit{Minerva Mills v. Union of India}, AIR 1980 SC 1769 (Bench Strength: 5). The Court held, inter alia, that the total deprivation of a fundamental right even in a limited area can amount to an abrogation of a fundamental right and that the fact that some laws may fall outside the scope of article 31C is no answer to the contention that the withdrawal of protection of articles 14 and 19 from a large number of laws destroys the basic structure of the constitution. See also S.N. Jain, "Accountability in Relation to Directive Principles", 29 \textit{Indian Journal of Public Administration} 488 (1988). Sharma argues in favour of the minority opinion of Bhagwati J, in Minerva Mills, noting that, "a ray of hope emerged out of the dissenting opinion of Justice P.N. Bhagwati who upheld the amended Article 31-C and said that the amendment in Article 31-C far from damaging the basic feature of the Constitution reinforces and strengthens it by giving fundamental importance to the members of the community against the rights of a few individuals. The dissenting opinion of Justice P.N. Bhagwati prevailed in 1983." Gokulesh Sharma, "Fundamental Rights Vis-à-Vis Directive Principles under the Indian Constitution", 5(4) \textit{Central India Law Quarterly} 509, 518 (1992).

\textsuperscript{88} Sharma, \textit{id}. at 520.
Parliament has enacted various pieces of legislation giving effect to various socioeconomic rights recognized in these principles, and also incorporated in the ICESCR. These include laws protecting the rights of workers to adequate wages and benefits, toward ensuring adequate working conditions, and protecting the health, safety, and well-being of workers, or in other words, enabling the enjoyment of the right to work. Legislation has also been enacted to provide social security to workers. Some recently enacted pieces of legislation reflect more directly, rights concerned with basic needs such as work, education, and food; and draft bills on water and health have been prepared. This section discusses legislation in four categories: right to work and workers’ rights; social security and social assistance; standard of living; and health.

In discussing legislation on socioeconomic rights, it is pertinent to mention the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016 which seeks to ensure transparency, efficiency, and good governance in the delivery of subsidies and benefits.89 This is to be done through unique identity numbers issued to each resident on submitting demographic and biometric information [Section 3] which may be required to be furnished for the receipt of certain subsidies [Section 7]. The Unique Identification Authority of India is empowered to inter alia, specify the manner of use of aadhaar numbers for “providing or availing various benefits, subsidies, services”, etc. [Section 23 (2)(h)]. The Aadhaar is however, seen as giving rise to privacy concerns including inter alia, on account of data security and violation of bodily integrity involved in submission of biometric information, besides issues such as overdelegation of powers, and whether the Act should have been passed as a money bill.90 A nine-judge Bench of the

89 See Preamble, the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits, and Services) Act, 2016.
Supreme Court recognised privacy as an element of human dignity, “protected as an intrinsic part of the right to life and personal liberty under Article 21” but the specific questions regarding Aadhaar were not considered, and remain to be determined by a smaller bench.

**Right to Work and Workers Rights**

Parliament has enacted a number of statutes seeking to ensure protection of wages and benefits. For instance, the Minimum Wages Act, 1948 seeks to provide for the fixing of minimum rates of wages for certain employments, such legislation being called for, as noted in its statement of objects and reasons, in view of the poor bargaining power of workers. The Act enables claims on various aspects of wage payment such as payment of wages less than minimum wages, overtime rates, remuneration in respect of days of rest, etc. by employees, or on their behalf by legal practitioners, authorised trade union officials, inspectors, or a person acting with the authority's permission, and provides for penalties including imprisonment for up to six months and fines (ranging from rupees 500 to 5000) for contraventions. Cognizance of offences can be taken by the court on complaints made within prescribed time, and on an application presented and granted wholly or in part, and sanctioned as provided, or on a complaint made by or with the sanction of an inspector.

Further, the Payment of Wages Act, 1936, provides for the regulation of payment of wages to certain classes of employed persons, being applicable in factories, railways, and industrial and other establishments. The Act imposes the primary responsibility for payment of wages on the employer, and contains provisions on fixation of wage periods, time of payment of wages, and

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91 *Justice K.S. Puttaswamy (Retd.) v. Union of India*, WP (Civil) 294/2012, 24 August 2017, Supreme Court of India (Bench Strength: 9), ¶113, ¶2(iii), Order.

92 Minimum wages are to be fixed by the appropriate government. Section 3, The Minimum Wages Act, 1948.

93 Section 20(2), id.

94 Section 22, id.; Section 22-A, id.

95 Section 22-B, id.
permissible deductions among others.\textsuperscript{96} It enables claims to be filed on deductions from wages or delay in payment and incidental matters,\textsuperscript{97} by the employee as well as other persons as mentioned in the Minimum Wages Act,\textsuperscript{98} with provision for claims to be filed on behalf of a group (where the establishment, causes, and time period are the same).\textsuperscript{99} Available remedies include refund of deductions or payment of delayed wages and compensation as the authority thinks fit (subject to a specified maximum amount).\textsuperscript{100} Appeals by both the employer and complainant are permitted in accordance with certain conditions as to amount and extent of liability.\textsuperscript{101} The requirements for cognizance of offences are similar to those under the Minimum Wages Act.\textsuperscript{102}

The Equal Remuneration Act, 1976, requires employers not only to pay equal remuneration to female and male workers for similar work or work of a similar nature, but also not to discriminate against women in recruitments, promotions, training, or transfer, except where the employment of women for such work is prohibited by or under any law.\textsuperscript{103} Its statement of objects and reasons specifies its object of giving effect to the directive principle of equal pay for equal work. Penalties in the form of fines and imprisonment are imposed on employers for recruitments in contravention of the Act; payment of remuneration at unequal rates to men and women workers for the same work or work of similar nature; discrimination between men and women in

\textsuperscript{96} Sections 3, 4, 5, and 7, Payment of Wages Act, 1936.
\textsuperscript{97} Section 15, id.
\textsuperscript{98} Section 15(2), id.
\textsuperscript{99} Section 16, id.
\textsuperscript{100} Section 15(3), id. The amount specified in the section is rupees fifty. Further, section 20 prescribes penalties for violations of other provisions of the Act in the form of a fine of not less than rupees two hundred but not more than rupees one thousand.
\textsuperscript{101} Section 17, id.
\textsuperscript{102} Section 21, id. These include an application to be made and granted wholly or in part and sanction of the complaint by the authority or appellate court.
\textsuperscript{103} Section 4, Equal Remuneration Act, 1976. Contravention of the Act for non-payment of equal wages to men and women doing similar work was found, for instance, in Mackinnon Mackenzie and Co Ltd. v. Audrey D’Costa, AIR 1987 SC 1281 (Bench Strength: 2). In this case it was held that the applicability of the Act does not depend on the financial ability of the management to pay equal remuneration; the management could not be permitted to pay a section of its workers doing same or similar work less pay contrary to section 4(1) only because it is not able to pay equal remuneration to all. Lady stenographers were entitled to same pay as male stenographers performing similar work. Again in Smt. Bimla Rani v. Appellate Authority, 113 (2004) DLT 441 (Bench Strength: 1), the petitioners were women working as packers while their male counterparts, also appointed as packers were appointed at a different pay scale despite similar work being performed which was held not permissible by the constitutional scheme and the Act.
contravention of the Act; or omission or failure to carry out any direction of the appropriate government.\textsuperscript{104} Offences may be tried\textsuperscript{105} on complaints made by the appropriate government, an officer authorised in this behalf, an aggrieved person, or any recognised welfare institution or organisation, and cognizance of offences may also be taken by the court on its own knowledge.\textsuperscript{106}

The Payment of Bonus Act, 1961, provides for the payment of bonus to persons employed in factories, and in establishments employing twenty or more persons during an accounting year.\textsuperscript{107} Employers are bound to pay a minimum bonus as specified in the Act from the date specified therein irrespective of whether or not there is any allocable surplus,\textsuperscript{108} and bonus up to a maximum of twenty percent of the salary or wage where the allocable surplus exceeds the amount of minimum bonus payable to employees in proportion to the salary or wage in lieu of the minimum bonus.\textsuperscript{109} Disputes as to bonus payable or the application of the Act are deemed industrial disputes, the mechanism for settlement of which is applicable.\textsuperscript{110} Penalties for contravention of the Act or Rules include imprisonment and fines.\textsuperscript{111}

Besides the aforementioned legislation on wages and payments,\textsuperscript{112} Parliament has also enacted various pieces of legislation concerned with the conditions of work at the factory or

\textsuperscript{104} Section 10(2), \textit{id}. Fines that may be imposed under the Act range between rupees ten and twenty thousand, while imprisonment may be between three months to one year and two years in case of subsequent offences. In addition, penalties of payment of fine and imprisonment are also prescribed for failure by the employer to maintain or produce records (register, muster roll, etc.) or for omitting or refusing to provide or preventing employees, etc. from providing evidence. Section 10(1), \textit{id}.

\textsuperscript{105} Offences cannot be tried by any court inferior to that of a Metropolitan Magistrate or Judicial Magistrate of the first class. Section 12(1), \textit{id}.

\textsuperscript{106} Section 12(2), \textit{id}.

\textsuperscript{107} Section 1, Payment of Bonus Act, 1961.

\textsuperscript{108} Section 10, \textit{id}.

\textsuperscript{109} Section 11, \textit{id}.

\textsuperscript{110} Section 22, \textit{id}.

\textsuperscript{111} Section 28, \textit{id}. Imprisonment imposed under the Act may be for up to six months and fines up to rupees one thousand. Cognizance of offences under the Act requires a complaint being made by or under the authority of the appropriate government or officer especially authorised in that behalf by such government. Section 30(1), \textit{id}. The section specifies that such officer is not to be below the rank of a regional labour commissioner in case of an officer of the Central Government and not below that of labour commissioner in case of an officer of a state government. Offences under this Act cannot be tried by courts inferior to that of a Presidency Magistrate or magistrate of the first class. Section 30(2), \textit{id}.

\textsuperscript{112} Another such legislation is the Payment of Gratuity Act, 1972 which provides a scheme for payment of gratuity to persons employed in specified establishments such as factories, mines, oil fields, railway companies, etc., when they have been continuously employed for at least five years on superannuation, retirement, or resignation, or on
establishment so as to ensure decent and healthy working conditions as well as the safety of workers, which reflect the directive principles in article 42 requiring the state to make provisions to secure "just and humane conditions of work", and article 43, whereunder the state is to endeavour to secure to all workers, a living wage, conditions of work ensuring a decent standard of life, and full enjoyment of leisure. For instance, the Factories Act, 1948 lays down provisions on various aspects of the working conditions of those employed in factories ranging from hours of work, holidays, and rest periods to protection of health, safety, and welfare. Occupiers of factories are required to ensure the health, safety, and welfare of all workers while at work in the factory through among others, provision and maintenance of plant and systems of work that are safe and without health risks; provision of information, instructions, training, and supervision necessary to ensure the health and safety of workers at work; and maintenance of all places of work in a condition that is safe and without health risks.\textsuperscript{113} Besides these general provisions, the Act contains provisions, inter alia, on health, safety, welfare, working hours, and hazardous processes.\textsuperscript{114} These relate, inter alia, to cleanliness, adequate ventilation, disposal of wastes and effluents, provision of drinking water and sanitation facilities, safety for work involving machines, provision of shelter, washing facilities, and maintenance of first aid boxes.\textsuperscript{115} Section 51 of the Act sets out a maximum limit of forty-eight hours per week for any adult worker employed in a factory while section 54 provides a limit of nine hours a day. The Act also requires workers to be given rest intervals between periods of work, weekly holidays, and annual leave with wages.\textsuperscript{116} There are detailed death due to accident or disease, the condition as to duration not being applicable in the last case. The Act sets out a mechanism for recovery of amounts due and prescribes penalties of imprisonment and fines. See preamble, section 4, and 9, \textit{id}.\textsuperscript{113} Section 7-A, Factories Act, 1948.\textsuperscript{114} Chapter III (Health), chapter IV (Safety), chapter V (Welfare), chapter VI (Working Hours of Adults), chapter VIII (Annual Leave with Wages), and Chapter IV-A (Provisions Relating to Hazardous Processes), \textit{id}.\textsuperscript{115} See, sections 11 (cleanliness), 13 (ventilation and temperature), 12 (disposal of waste and effluents), 18 (drinking water), 19 (latrines and urinals), 42 (washing facilities), 47 (shelters, restrooms, and lunch rooms), 45 (first aid appliances), 46 (canteens), and chapter IV (safety), \textit{id}.\textsuperscript{116} Section 54 (intervals for rest), section 52 (weekly holidays), chapter VIII, section 79 (annual leave with wages), \textit{id}.\textit{ id.}
provisions on hazardous processes ranging from maintenance of records, and adequate supervision, to availability of facilities and emergency standards.  

Contravention of the Act, rules made thereunder, or orders in writing under the Act are declared to be offences, liable to be punished with imprisonment for a term of up to two years, fine of up to rupees one lakh, or both, with additional fines for contraventions continuing after conviction. Where contravention of specified provisions of the Act, leads to an accident causing the death of or serious bodily injury to a worker, the fine is not to be less than rupees twenty thousand on death and rupees five thousand on serious bodily injury. Additionally, the court is also empowered to pass orders requiring measures to be taken for remedying matters in respect of which the offence was committed. Cognizance of offences under the Act can be taken only on a complaint filed by or with the previous sanction of an inspector and by a court not below the rank of presidency magistrate or magistrate of the first class. Appeal against the orders of an inspector lies to the prescribed authority, which may confirm, modify, or reverse the same.  

Similarly, provisions regulating working conditions, health and safety, welfare, hours of employment, leave with wages, etc. in the context of employees in mines are laid down under the Mines Act, 1952. The Contract Labour (Regulation and Abolition) Act, 1970 contains provisions for the health and welfare of contract labour, and the Building and Other Construction Workers’

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117 Provisions on hazardous processes include requiring the employer to take certain steps including maintenance of health or medical records of workers exposed to any chemical, toxic, or other harmful substances, manufactured, handled, or transported; appointment of adequately qualified persons to supervise handling; and provision of necessary facilities for protecting the workers in the prescribed manner. Section 41-C, id. Other provisions on hazardous processes include section 41-D (emergency standards), section 41-E (permissible limits of exposure of chemical and toxic substances), and section 41-D (workers participation in safety management), id.

118 Section 92, id. The additional fine imposed for contraventions continuing after conviction is to the tune of rupees one thousand for each day on which the contravention is continued.

119 Proviso, section 92, id. The provisions are chapter IV of the Act or rules thereunder. Enhanced penalties are imposed under section 94 for contraventions by persons already held guilty for contravention of the same provision. Such enhanced penalty is imprisonment for a term of three years or fine of rupees two lakhs or both and in case of contraventions of chapter IV or rules thereunder as mentioned, fine of rupees thirty-five thousand for death and ten thousand for grievous bodily injury.

120 Section 102, id.

121 Section 106(1) and (2), id.

122 Section 107, id.

123 Chapter V (Provisions as to Health and Safety); chapter VI (Hours and Limitation of Employment), and chapter VII (Leave with Wages), Mines Act, 1952.
(Regulation of Employment and Conditions of Service) Act, 1996, in respect of those employed in construction work.\textsuperscript{124}

A piece of legislation in the context of female workers is the Maternity Benefits Act, 1961, also reflective of the directive principle in article 42 which requires the state to make provisions inter alia, on maternity relief. The Act prohibits employment of women during six weeks following delivery, miscarriage, or medical termination of pregnancy.\textsuperscript{125} It recognises the right to payment of maternity benefit, and provides for payment of medical bonus and leave in certain circumstances, besides protection against dismissal from employment where a woman absents herself from work in accordance with the Act.\textsuperscript{126} Penalties in the form of fines and imprisonment are prescribed for contraventions by employers of the Act or rules thereunder.\textsuperscript{127} As under the other legislation discussed above, cognizance of offences under this Act cannot be taken by a court below that of a presidency magistrate or magistrate of first class, and prosecution cannot be undertaken except by or under the sanction of the inspector.\textsuperscript{128}

These enactments are also reflective of the rights of workers forming part of the ICESCR, under article 7 of which, states parties “recognise the right of everyone to the enjoyment of just and favourable conditions of work”, ensuring among other things, fair wages including equal remuneration for work of equal value, and a decent living for themselves and their families, besides safe and healthy working conditions; equal opportunity to be promoted in employment to an

\textsuperscript{124} Chapter V (Welfare and Health of Contract Labour), Contract Labour (Regulation and Abolition) Act, 1970, and chapter VI (Hours of Work, Welfare Measures and Other Conditions of Service of Building Workers), Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996. These Acts also prescribe punishments or penalties for contraventions of their provisions and rules. See chapter IX, the Mines Act, 1952; chapter VI, the Contract Labour (Regulation and Abolition) Act, 1970.

\textsuperscript{125} Section 4, Maternity Benefits Act, 1961.

\textsuperscript{126} Section 5 (right to payment of maternity benefit), section 8 (payment of medical bonus), section 9 (leave for miscarriage), section 9-A (leave with wages for tubectomy operation), and section 10 (other leaves), section 12 (dismissal during absence for pregnancy), \textit{id}. The Maternity Benefits Amendment Act, 2017 increased the duration of paid maternity leave for women to 26 weeks, 8 weeks before the expected date of delivery and the remaining post-delivery besides also requiring establishments with 50 or more employees to have a crèche facility. The maximum period is restricted to 12 weeks for women who have two or more surviving children.

\textsuperscript{127} Section 21, \textit{id}. The imprisonment that may be imposed is for a period of upto three months and fine of up to rupees hundred or both. This is in addition to the recovery of the maternity benefit or amount.

\textsuperscript{128} Section 23, \textit{id}. A limitation of one year from the date of alleged commission of the offence is prescribed for prosecution. Section 23, \textit{id}. 

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appropriate higher level; rest, leisure, and reasonable limitation of working hours and periodic holidays with pay, and remuneration for public holidays.

Other rights of workers recognised under the ICESCR include the right to form and join trade unions, the right of unions to function freely, subject to limitations prescribed by law and necessary in a democratic society in the interests of national security, public order, or the freedoms and rights of others; as well as the right to strike in accordance with the provisions of domestic law.\textsuperscript{129} In India, rights in respect of trade unions are given effect to under the Trade Unions Act, 1926, which provides for their registration, rights, and liabilities. Section 11 of this Act provides a right of appeal within a period prescribed to persons aggrieved by the decision of the registrar either refusing to register a trade union or withdrawing or cancelling the certificate of registration.

A more recently enacted piece of legislation, dealing more directly with the right to work is the 2005 Mahatma Gandhi National Rural Employment Guarantee Act (MNREGA). This Act, as its preamble declares, seeks to provide for the “enhancement of livelihood security” of rural households through providing at least 100 days of employment a year, for those who “volunteer to do unskilled manual work”. Such employment is to be provided by state governments in areas notified by the Central Government, for which state governments are to make a Scheme which may specify conditions applicable for providing guaranteed employment.\textsuperscript{130} In addition, the Central or state government may “within the limits of its economic capacity and development” provide for securing work beyond the 100-day period,\textsuperscript{131} reflecting the progressive realisation standard. Wage rates are to be specified by the Central Government for this Act, and subject to a minimum of rupees sixty per day.\textsuperscript{132} An “unemployment allowance” is payable to applicants who have not

\textsuperscript{129} Article 8, International Covenant on Economic, Social and Cultural Rights.
\textsuperscript{130} Sections 3, 4, and 5, MNREGA.
\textsuperscript{131} Section 3(4), id. The reference to economic capacity and development is also in line with article 41.
\textsuperscript{132} Section 6, id.
received employment within fifteen days of receipt of the application subject to terms and conditions of eligibility prescribed.\textsuperscript{133}

Monitoring and implementation of the Act, among other functions are entrusted to Central and State Employment Guarantee Councils;\textsuperscript{134} while planning and implementation of schemes under the Act fall within the responsibility of panchayats at the district, intermediate, and village levels;\textsuperscript{135} and monitoring of the execution of works within the gram panchayat is carried out by the gram sabha, which is also responsible for social audits of all projects.\textsuperscript{136} A grievance redressal mechanism is provided to deal with "any complaint by any person" as to the implementation of the Scheme.\textsuperscript{137}

Additionally, towards transparency and accountability, the Act places on the District Programme Officer and all agencies, the responsibility for the proper utilisation and management of funds at their disposal towards the implementation of schemes.\textsuperscript{138} Disputes or complaints on the implementation of a scheme by the gram panchayat are to be referred to the programme officer.\textsuperscript{139} On complaints of improper utilisation of funds as to any scheme, the Central Government may, if satisfied of a prima facie case, cause an investigation by a designated agency and, if necessary, order the stoppage of release of funds besides instituting appropriate remedial measures within a reasonable period.\textsuperscript{140} Non-compliance with the provisions of the Act invites a
fine of up to rupees one thousand. Non-payment of unemployment allowance is required to be reported by the District Programme Officer with reasons to the state government.

The MNREGA attempts to ensure a minimum level of the right to work, and thereby improve the standard of living of those in rural areas. This gives effect to the state's obligation to fulfil involving a positive action of creating/providing employment, and can thus be seen as a step towards fulfilling the "minimum core" obligation, with a progressive realisation standard for employment beyond that period having regard to resources and development. Remedial measures and penalties are prescribed for non-compliance, as well as liability of the state government to pay unemployment allowance, but there is no provision of appeal or judicial remedy, the rights thus not being "justiciable" as commonly understood. Other statutes discussed in this section regarding wages and conditions of work can be said to give effect to the state's obligation to "protect", the principal obligations being of employers (third parties) with the state providing enforcement mechanisms.

Social Security and Social Assistance

The ICESCR recognises the right of everyone to social security including social insurance, to some extent also recognised by article 41. One instance of legislation seeking to provide social assistance is the Workmen's Compensation Act, 1923. This Act provides for payment of compensation by certain classes of employers to employees for personal injury caused by an "accident arising out of and in the course of his employment", such injury not being confined to physical injury. Such liability arises not out of tort but out of the relationship of employer and

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141 Section 25, id. However, action or prosecution would not lie against the officers under this Act or public servants for acts done or intended to be done in good faith. Section 30, id.
142 Section 7(4), id.
143 Article 8, International Covenant on Economic, Social and Cultural Rights.
145 Preamble, section 3(1), Workmen’s Compensation Act, 1923; Mishra, id. at 303.
146 Indian News Chronicle v. Mrs. Lazarus, AIR 1951 Punj 102.
employee, and is independent of any neglect or wrongful act on part of the employer.\textsuperscript{147} Section 19 of the Act empowers the commissioner of an area to decide and settle questions regarding liability to pay compensation or as regards the amount or duration of compensation. The civil court does not have jurisdiction in such matters or in the enforcement of liabilities;\textsuperscript{148} however, appeal against specified orders of the commissioner lies to the High Court under certain conditions.\textsuperscript{149}

Among legislation enacted to provide social insurance is the Employees State Insurance Act, 1948, the first such measure to provide social insurance for labour, aimed at ensuring social and economic justice.\textsuperscript{150} It provides for insurance of all employees in factories or establishments, with contributions by employers and employees.\textsuperscript{151} The principal employer is responsible in the first instance to pay the contribution in respect of all employees, whether employed directly by him or through an immediate employer, though he may recover this amount from the immediate employer.\textsuperscript{152} The Act additionally provides for benefits for employees in case of sickness and disablement, as well as maternity benefits, dependants benefit, medical benefit, and funeral expenses.\textsuperscript{153} Employees contracting occupational diseases are deemed to have contracted an employment injury.\textsuperscript{154} Further, section 59 authorises the Employees State Insurance Corporation to establish and maintain in a state hospital, with approval of the state government, dispensaries or other medical and surgical services for the benefit of the insured persons or their families. Further, the Corporation is empowered to take steps to promote measures for the improvement of the health and welfare of insured persons; and to promote measures for the rehabilitation and re-employment of those who have been injured or disabled.\textsuperscript{155} The Act provides for the constitution

\textsuperscript{147} Mishra, \textit{supra} note 144 at 303–04.
\textsuperscript{148} Section 19 (2), \textit{supra} note 145.
\textsuperscript{149} Section 30, \textit{id}.
\textsuperscript{150} Mishra, \textit{supra} note 144 at 385–86.
\textsuperscript{151} See section 38 (All Employees to be Insured) and section 39 (Contribution), Employees State Insurance Act, 1948.
\textsuperscript{152} See sections 40 (Principal Employer to Pay Contribution in the First Instance) and 41 (Recovery of Contribution from Immediate Employer), \textit{id}.
\textsuperscript{153} Chapter V, \textit{id}. See, sections 46 (benefits), 49 (sickness benefit), 50 (maternity benefit), 51 (disablement benefit), 52 (dependents' benefit), and 56 (medical benefit), \textit{id}.
\textsuperscript{154} Section 52 A, \textit{id}.
\textsuperscript{155} Section 19, \textit{id}.
of an Employees’ Insurance Court to adjudicate specified questions and disputes such as liability to pay compensation, rates of wages, contributions, etc.,\textsuperscript{156} appeals against the decisions of which lie to the High Court where they involve a substantial question of law.\textsuperscript{157} Failure to pay contributions and other contraventions of the Act attract penalties including imprisonment and fines,\textsuperscript{158} and as in the other legislation discussed, prosecution can be initiated only by or under the sanction of the insurance commissioner or authorised officer.\textsuperscript{159} Although enacted prior to the coming in force of the Constitution, the Act can be seen as reflecting the directive principle in article 41 requiring the state to make effective provisions, inter alia, for social assistance in case of unemployment, old age, sickness, disablement, and other cases of undeserved want.

The Employees Provident Fund and Miscellaneous Provisions Act, 1952 provides for the institution of provident funds, pension funds, and deposit-linked insurance schemes for employees in certain factories and other establishments employing 20 or more persons in industries specified in schedule I or notified by the Central Government.\textsuperscript{160} The Central Government is authorised to frame the Employees Provident Fund Scheme,\textsuperscript{161} toward which the employer and employee are to make equal contributions,\textsuperscript{162} and may also frame an Employees Pension Scheme to provide for superannuation pension, retiring pension or permanent disablement pension; and widow or widower’s pension, children pension, or orphan pension;\textsuperscript{163} and an Employees’ Deposit-linked Insurance Scheme, providing life insurance for employees in establishments or classes of establishments to which the Act applies.\textsuperscript{164} Disputes as to the Act’s applicability and determination

\textsuperscript{156} See sections 74 (Constitution of Employees Insurance Court) and 75 (Matters to be Decided by the Employees Insurance Court), \textit{id}.  
\textsuperscript{157} Section 82, \textit{id}.  
\textsuperscript{158} Sections 84, 85, 85A–C, 86–A, \textit{id}.  
\textsuperscript{159} Section 86, \textit{id}.  
\textsuperscript{160} Section 1, Employees Provident Fund and Miscellaneous Provisions Act, 1952.  
\textsuperscript{161} Section 5, \textit{id}.  
\textsuperscript{162} Section 6, \textit{id}. This section also provides that while the employees’ contribution may exceed this amount, if he desires, the employer would not be required to pay any contribution over and above the amount specified.  
\textsuperscript{163} Section 6-A, \textit{id}.  
\textsuperscript{164} Section 6-C, \textit{id}. Schemes framed under the Act are required to be laid before the Parliament which may make modifications or agree that the scheme is not to be given effect to, and the scheme/s shall accordingly have or not be put into effect. Section 6-D, \textit{id}.  

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of amounts due from employers under the Act, scheme, family pension scheme, or insurance scheme may be decided by specified authorities. Appeals against these orders or notifications of the Central Government (as to the applicability of the Act to establishments), besides orders passed in review (under section 7-B) lie to the Employees’ Provident Funds Appellate Tribunal. Penalties may be imposed for the contravention of the provisions of the scheme, family pension scheme, or insurance scheme framed under the Act, where the scheme so provides, as well as for making or causing to be made false statements knowingly to avoid or enabling any person to avoid any payment under the Act, scheme, family pension scheme, and insurance scheme thereunder, with enhanced punishment in specified cases for those previously convicted under the Act. Damages may also be recovered for specified defaults and failure to pay contributions. Besides penalties, the court may also order the payment of the amount of contribution or transfer of accumulations.

The aforesaid pieces of legislation thus recognise rights to social assistance in different circumstances enforceable through mechanisms set out in the respective statutes, the state acting in accordance with its obligations to protect (imposing obligations on employers) and fulfil (framing/instituting various schemes). The focus is essentially workmen, particularly the more vulnerable and needy among these sections, such as those who have suffered injuries in the course of employment, are disabled, or no longer able to work for a living by reason of age.

**Standard of Living**
A major legislation pertaining to the standard of living is the National Food Security Act which seeks to ensure the right to food for vulnerable sections. A draft framework water bill has also been

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165 Section 7-A, *id.*
166 Section 7-I, *id.*
167 Section 14 (2) and (1), *id.*
168 Section 14-AA, *id.* Offences cannot be tried by courts inferior to that of a presidency magistrate or magistrate of the first class, and can be tried only on a written report of facts constituting the offence filed with the previous sanction of the Central Provident Fund Commissioner or authorised officer. Section 14-AC (1) and (2), *id.*
169 Section 14-B, *id.*
170 Section 14-C (1), *id.*
prepared. The National Food Security Act, 2013 seeks to ensure “access to adequate quantity of quality food at affordable prices to people to live a life with dignity.”\textsuperscript{171} It recognises the right of every person in priority households to a specified quantity of foodgrain per month at subsidised prices under the Targeted Public Distribution System (TPDS).\textsuperscript{172} Pregnant women and lactating mothers are entitled to free meals for a certain period, as well as maternity benefit, and children up to the age of fourteen to free meals at the local anganwadi or school as the case may be.\textsuperscript{173} Additionally, state governments are under a duty to identify children suffering from malnutrition and provide them free meals.\textsuperscript{174} The latter provision does not specify the number of meals per day to be provided to malnourished children. A food security allowance is to be paid by the state government to those entitled under the Act, who are not supplied foodgrains.\textsuperscript{175}

The Act also seeks to introduce certain reforms in the TPDS including doorstep delivery of foodgrains to TPDS outlets and transparency, besides empowering women by deeming the eldest woman above 18 years of age in a household, the “head of the household” for the purpose of ration cards.\textsuperscript{176} It does not, however, address all food schemes covered by the PUCL decision. Responsibilities of the state governments and local authorities with regard to food security are defined in detail. The state government is responsible for the implementation and monitoring of schemes and programmes of various ministries and departments of the Central Government

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\item Preamble, National Food Security Act, 2013.
\item Section 3, id.
\item Sections 4 (Nutritional Support to Pregnant Women and Lactating Mothers) and 5 (Nutritional Support to Children), id. Under section 4, meals are to be provided during pregnancy and for six months after childbirth at the local anganwadi, while minimum maternity benefit is rupees six thousand. Under section 5, children are entitled to: (a) a free, age appropriate meal, from the ages of six months to six years at the local anganwadi; and (b) from six to fourteen years or up to class VIII, one free mid-day meal every day except on school holidays in all schools run by local bodies, government, and government aided schools.
\item Section 6, id.
\item Section 8, id.
\item Sections 12 (Reforms in Targeted Public Distribution System) and 13 (Women of Eighteen Years of Age or Above to be Head of Household for Purpose of Issue of Ration Cards), id. The Act, in fact contains a separate chapter on transparency and accountability (Chapter XI), which includes section 27 which requires all records related to the TPDS to be placed in the public domain, open for inspection to the public, and section 28(1) which contemplates social audits on the functioning of fair price shops, TPDS and other welfare schemes, besides the setting up of vigilance committees under section 29.
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towards ensuring food security.\textsuperscript{177} Similarly, local authorities are responsible for the proper implementation of the Act within their respective areas.\textsuperscript{178} Special focus is to be given to the needs of vulnerable groups, especially those in hilly, tribal and remote areas, or other areas difficult to access.\textsuperscript{179} Responsibilities of the Central Government with regard to food security pertain broadly to the allocation of foodgrains to state governments towards ensuring supply to eligible households.\textsuperscript{180} Both the Central and state governments may continue with or formulate other food based welfare schemes or plans, in the case of the latter providing for higher benefits than those provided under the Act, from its own resources.\textsuperscript{181}

Chapter VII provides mechanisms at state and district level for resolving grievances as to entitlements under the Act. State governments are required by section 13 to put in place “internal grievance redressal mechanism[s]” including call centres, helplines, designation of nodal officers, and other prescribed mechanisms. At the district level, in terms of section 14(1), state governments are required to appoint or designate “District Grievance Redressal Officers” for “the expeditious and effective redressal of grievances...in matters relating to distribution of entitled foodgrains or meals...and to enforce the entitlements under this Act”.\textsuperscript{182} Both complainants and authorities have a right of appeal against the decisions, which lies to the State Commission.\textsuperscript{183} A public servant or authority found guilty by the State Commission hearing a complaint or appeal, of failing to provide the relief recommended by the District Grievance Redressal Officer without reasonable cause, or wilfully ignoring the same, is, subject to a reasonable opportunity of hearing,

\textsuperscript{177} Section 24(1), \textit{id.} Specific responsibilities of the state government include, for instance, taking delivery of foodgrains from designated depots of the TPDS, and organising intra-state allocation to ensure delivery of foodgrains to each fair price shop. Section 24(2)(a), \textit{id.}
\textsuperscript{178} Section 25(1), \textit{id.}
\textsuperscript{179} Section 30, \textit{id.}
\textsuperscript{180} Section 22(1), \textit{id.} More specifically, this involves procurement and transportation of foodgrains, assistance to state governments towards meeting expenses for movement and handling of foodgrains and margins towards fair price shops, creation and maintenance of modern and scientific storage facilities, as well as funds towards meeting obligations when there is shortfall in supply of foodgrains. Section 22(4), \textit{id.}
\textsuperscript{181} Section 32(2), \textit{id.}
\textsuperscript{182} Section 15(1), \textit{id.} The said officer is to hear complaints as to distribution of entitled foodgrains and meals and matters related thereto and take “necessary action for their redressal” in the manner to be prescribed by state governments. Section 15(5), \textit{id.}
\textsuperscript{183} Section 15(6), \textit{id.}
liable to a fine of upto rupees five thousand. Both the Central and state governments are liable for claims by persons entitled under the Act except in cases of “war, flood, drought, fire, cyclone or earthquake affecting the regular supply of foodgrains or meals”.

State Commissions established under section 16 of the Act are empowered, among other functions, suo motu or on receiving complaints to inquire into violations of entitlements under the Act, besides their appellate function and specified advisory functions.

This legislation once again seeks to ensure what can be seen as a step towards the “minimum core” obligation of the state to provide food security to vulnerable sections while leaving the option open for central and state governments to adopt further schemes though not incorporating a progressive realisation standard like the MNREGA. Remedies including appeals are available but before grievance redressal authorities and not courts.

The Central Government has also prepared a Framework Water Bill as water being a state subject, legislation cannot be enacted by the Centre except under certain circumstances. The Bill, which recognises the right of every person to “sufficient quantity of safe water for life” recognises water to be a common heritage and resource held in public trust. The Bill calls for people-centred, decentralised water management [Clause 7] and provides for a range of issues including wastewater treatment [Clause 9], integrated river basin development and management [Clause 12], water security plan preparation and adoption [Clauses 15–17], groundwater conservation [Clause 18], floods and droughts [Clauses 20–21], besides water regulation and pricing (besides water provided free of cost for drinking and sanitation) [Clause 22] and sectoral use [Clauses 23–

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184 Section 33, id. The liability to such penalty is to be adjudicated upon by a member of the State Commission authorised by it to be designated as adjudicating officer as per section 34.
185 Section 44, id.
186 Section 16(6)(b), id.
For conflicts, the Bill advocates a preventive approach followed by alternative dispute resolution mechanisms and avoidance of litigation as far as possible [Clause 30]. The provisions are based on protection of resources and sustainability. The Bill aims at comprehensively protecting water, recognising its importance as a resource and also specifically recognises the right to water of every person without discrimination in view of the Supreme Court’s recognition of water as a fundamental right.\textsuperscript{188}

\textbf{Health}

Another basic socioeconomic right, the right to health, was the subject of a bill proposed in the year 2009. The National Health Bill specifically recognises the right of every person “to a standard of physical and mental health conducive to live a life in dignity”.\textsuperscript{189} Clause 9 of the Bill further recognises the right of every person to access, use, and enjoy, all the facilities, goods, services, programmes, and conditions necessary for ensuring the right to health including the rights to food, water, sanitation, housing, and appropriate health care, besides protection from and mitigation during environmental disasters; protection from and abatement of hazardous substances; and health impact assessment of projects, in addition to other rights. The facilities, goods, services etc., must be available, accessible (physically, economically, etc.), acceptable, appropriate (scientifically and medically), and of good quality.\textsuperscript{190} This Bill thus seeks to ensure a number of socioeconomic rights concerned with basic needs in order to lead a life with dignity, implicitly recognising the interrelationship between and indivisibility of these rights, and adopting a comprehensive approach. The Bill provides for the obligation of the Central and state governments, inter alia, to “provide free and universal access to health care services” as well as to ensure that there is no

\textsuperscript{188} See Preamble, \textit{id.}
\textsuperscript{189} Clause 8(1), National Heath Bill, 2009. The Bill also recognises in its preamble that "health is a fundamental human right indispensable for, and intricately linked with the exercise of all other human rights". It also takes note of the various relevant fundamental rights and directive principles reflecting the right to health. These include articles 14, 15, 21, 23, 24, 38, 39, 41, 42, 47, 48A, and 51 of the Constitution of India.
\textsuperscript{190} Explanation, clause 9, \textit{id.}
denial of healthcare to any one by service providers, public or private, reflecting the “protect” and “fulfil” elements in the “respect–protect–fulfil” typology, and seeking to ensure a maximal standard. The Bill also lays down various core obligations of governments including ensuring equitable distribution and access to health care facilities, goods, etc., as well as ensuring adequate supply of safe water and sanitation, and access to basic housing with dignity. The Bill also affirms the right of every person to be treated with dignity, and to be free of inhuman, cruel, and degrading treatment, as well as to justice, that is, remedies and grievance redressal.

Another feature of this Bill is the enumeration of the rights and duties of users of health services. While rights include the rights to survival, integrity, and security; to seek/approach healthcare facilities and receive healthcare; to emergency treatment; to quality of care; to choice; to be treated by a named healthcare provider; and to terminal care, among others, their duties include furnishing healthcare providers with accurate and relevant information; compliance with healthcare prescribed; proper utilisation of the healthcare system and compliance with rules thereof; as well as respecting the rights of healthcare providers, treating them with respect, courtesy, and dignity and refraining from abuse or violent behaviour. The rights of healthcare providers vis-à-vis users include the right to be treated with dignity and respect; non-discrimination in employment and conditions of employment; and immunity and protection from adverse consequences where they have acted to the best of their professional capacity and judgment, in a bona fide manner, and exercised all reasonable care. The Act thus attempts to address health comprehensively and from a rights perspective seeking to protect the values of dignity and respect.

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191 Clause 3(c), id.
192 Clause 4, id. Other provisions under the Bill include the obligation on governments to take effective measures, to prevent, control, and treat epidemic and endemic diseases; ensuring women’s health including reproductive health; children’s health; effective measures in situations of public health emergencies, as well as measures towards occupational safety and industrial hygiene. Clause 5 (b), (g), (h), (j), and (k), id.
193 Clause 11(Right to Dignity) and clause 13 (Right to Justice), id.
194 Clause 14 (1), (2) & (3), (4), (6), (8), (9), (14), id.
195 Clause 15 (i), (ii), (v), and (iv), id.
196 Clause 16 (ii), (iv), and (i), id. It may also be mentioned here that a plethora of legislation has been enacted on health including pre-independence legislation such as the Vaccination Act of 1880 and the Dangerous Drugs Act, 1930 to legislation for specific aspects such as Mental Health Act, 1987 and those dealing with newer challenges.
Although several laws as discussed above have been put in place towards securing socioeconomic rights, as observed, "tardy implementation" may result in ineffective protection.197 For example, a study on the implementation of the Factories Act in three industries in Haryana found between 70 and 88 per cent awareness of provisions on health (cleanliness, waste and effluents, ventilation, etc.); 40–86 per cent on safety provisions; and 20–68 per cent on welfare provisions, illustrating insufficient awareness, due to which there was less than adequate implementation ranging from 41.9–65.5 percent for different provisions.198

In Swara j Ahbiyan (V) v. Union of India, the petitioners inter alia raised the issue of non-implementation of the National Food Security Act even four years after its enactment. State governments were found to have not complied inter alia with sections 15 and 16 of the Act including the appointment and designation of grievance redressal officers, or with regard to the appointment of State Food Commissions, with some states merely designating Consumer Disputes Redressal Commissions in this behalf. The Court "in keeping with its constitutional obligation" issued several directions including for the initiation of the process towards the establishment of state food commissions besides the establishment of vigilance committees as provided by the Act.199 A subsequent order noted that Commissions had been constituted by Madhya Pradesh,

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197 Law Commission of India, supra note 30 at 41.
198 Ashok Kumar Sheoran, "Implementation of Factories Act, 1948 in Haryana: A Comparative Study of Three Industries", 9(6) IOSR Journal of Business and Management 104, 106–07, 109 (2013). A much earlier study in the context of Maharashtra noted inadequacy of inspecting staff and number of inspections, and deterioration as regards implementation on many aspects as shown by increased numbers of accidents, and decrease in welfare facilities such as canteens and crèches. However, the majority of the complaints received by the inspectorate under the Factories Act as well as the Maternity Benefits Act, Payment of Wages Act, Workmen’s Compensation Act, etc. had been disposed of. A.M. Sarma, "Administration of the Factories Act in Maharashtra", XL(2) Indian Journal of Social Work 209 (1979).
199 WP 7857/2015 decided 21 July 2017 (Supreme Court of India) (Bench Strength: 2, two concurring judgments were delivered).
Karnataka, Andhra Pradesh, and Maharashtra while in Bihar, some members had been appointed.  

Other issues as to the implementation of the National Food Security Act and MNREGA have also come before the court. For instance, in Swaraj Abhiyan(I) v. Union of India, the petitioners sought timely payment for employment under MNREGA and release of foodgrains under the National Food Security Act in 9 states affected by drought irrespective of classification as per poverty line. In Swaraj Abhiyan (II) v. Union of India, the Court inter alia, directed that foodgrain not be denied in drought affected areas only on account of the household having no ration card, besides extending the benefit of the mid-day meal scheme during the summer vacations.

Poor implementation of statutes has also been pointed to by commentators noting that statutory remedies are hardly enforced, attributable both to lack of awareness and indifference of those charged with responsibility.

6. Government Schemes and Programmes on Socioeconomic Rights

Poverty alleviation has been a guiding principle for the planning process in India, while various schemes and programmes introduced by successive governments over time have sought to provide basic necessities to vulnerable sections, addressing poverty and improving standards of living or in other words realisation of socioeconomic rights.

Various five year plans have had as objectives improvement in living standards, employment, agricultural production, etc. so as to promote equality and social justice. The sixth five-year plan,  

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200 Swaraj Abhiyan v. Union of India, Writ Petition (C) 857/2015, 9 August 2017, Supreme Court of India.
201 Writ Petition (C) 857/2017, 11 May 2016, Supreme Court of India. This order also dealt with the Disaster Management Act 2005. This Act which provides for the effective management of disasters, contains socioeconomic rights provisions; for instance, in the context of minimum standards of relief which includes food, drinking water, medical cover, and sanitation, and among the functions of the State Executive Committee and District Authority in case of threatening disaster situations or prevention and mitigation of disasters. The Disaster Management Act, 2005, sections 12, 24, 33.
202 Writ Petition (C) 857/2017, 13 May 2016, Supreme Court of India (Bench Strength: 2), ¶13,17,23.
for instance, had as its primary objective, the removal of poverty, while the eighth five-year plan focused, *inter alia*, on generation of adequate employment, universalisation of elementary education, and growth and diversification of agriculture. Prioritising agriculture and rural development to generate adequate productive employment, providing minimum services of safe drinking water, primary healthcare, universal primary education, and the empowerment of women and socially disadvantaged groups were among the aims of the ninth plan. The process of planning has thus focused on the provision of minimum services or facilities to the people, as well as through creation of employment and provision of education, on generating opportunities for improvement in standards of living, which is in consonance with the progressive achievement of social and economic rights. The areas sought to be addressed by these plans have been essentially different aspects of socioeconomic rights. The eleventh five year plan also emphasised the need for rapid growth in view of the large number of poor in the country and envisaged in this regard, expansion in employment, investment in health, education, water, sanitation, and child nutrition, as well as targeted poverty reduction programmes. Similarly, the twelfth five year plan focused on “inclusiveness”, one of its aims being “poverty reduction”. Poverty being both a cause and consequence of human rights violation, involving lack of socioeconomic rights, and posing a major socioeconomic challenge in the Indian context has been an important target for planned development. From 2015, the Planning Commission was replaced by the NITI (National Institution for Transforming India) Aayog which attempts to foster cooperative federalism. The NITI Aayog has introduced a three-year action agenda and is in the process of preparing a fifteen-year vision, and seven-year strategy document. The three-year agenda includes among other development concerns, focus on education and skill development, health, and inclusivity [Chapters 20–22]. In the context of education, it seeks to orient the system towards outcomes, provide effective learning

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tools, and improvements in governance, besides measures in the context of higher education. Health goals are sought to be achieved inter alia, through increased investments and focus on and convergence with social determinants of health namely nutrition, drinking water, and sanitation. Inclusivity seeks to address the concerns of various vulnerable groups such as women, minorities, STs, youth, senior citizens, etc. including socioeconomic rights aspects such as health and education.

Specific schemes formulated by governments have a more direct impact in terms of providing access to basic necessities, education, and employment (or on the realisation of social and economic rights). Among these, for instance, one set of schemes seeks to address the issue of unemployment and lack of resources. From the Pradhan Mantri Rozgar Yojna which sought to provide employment to unemployed educated youth, the National Rural Employment Programme to provide employment opportunities to unemployed and underemployed rural youth, the Rural Landless Employment Guarantee Programme and the MNREGA, various schemes have been introduced from time to time for provision of employment opportunities. More recently, the Atal Innovation Mission seeks to promote self-employment and entrepreneurship.

The National Social Assistance Programme, administered by the Ministry of Rural Development, seeks to fulfil the directive principles, particularly article 41. The programme includes schemes for old age pension, family benefit, and maternity benefit seeking to provide assistance to the aged and below poverty line households in case of death of the breadwinner. A scheme for pensions for widows and the Annapurna scheme also form part of this Programme.

Further, numerous schemes focus on access to food. The mid-day meal scheme aims to provide at least one hot cooked meal a day to children attending schools, and as discussed, extends this to summer vacations in drought-affected areas. This programme also impacts on school enrolments and attendance. The TPDS provides a certain quantity of foodgrains at subsidised prices

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to households below the poverty line,\textsuperscript{209} while the \textit{antodaya anna yojana} provides 25 kilograms of foodgrain per month at highly subsidised rates to the poorest families. The mid-day meal scheme and TPDS are now part of the statutory scheme under the National Food Security Act. Another food-based scheme is the Annapurna Scheme, which provides free foodgrains to senior citizens not having an income, entitled to but not receiving old-age pension, and not covered by the TPDS.\textsuperscript{210} A Food for Work Scheme was introduced in 2001 in certain backward districts in the country, which later merged into MNREGA.\textsuperscript{211}

Other schemes such as the \textit{Pradhan Mantri Awas Yojna} (Urban) and \textit{Pradhan Mantri Awas Yojna} (Gramin) seek to address housing shortages through activities such as in situ slum rehabilitation, and subsidies for individual house construction led by beneficiaries aimed at housing for all by 2022.\textsuperscript{212} The Rajiv Awas Yojana seeks to bring slums into the formal system by provision of basic amenities, in the process enabling community participation.\textsuperscript{213}

In the context of health, the \textit{Rashtriya Swasthiya Bima Yojana} (RSBY) seeks to provide health insurance to below poverty line families so as to reduce out-of-pocket expenses on healthcare, and sought to cover 70 million beneficiaries in 2012–17.\textsuperscript{214} The National Rural Health Mission (NRHM), launched in 2005, aimed at inclusive health and improved healthcare for those in rural areas, through inter alia, decentralisation and community participation.\textsuperscript{215}

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\item See Pradhan Mantri Awas Yojna, http://mhupa.gov.in/Default.aspx (last visited 30 September 2017).
\item See National Health Systems Resource Centre, NRHM in the Eleventh Five Year Plan (National Health Systems Resource Centre, New Delhi).
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Despite the existence of a large number of legislative provisions and schemes, nearly 30 percent of the country’s population still lives in poverty.\textsuperscript{216} Moreover, as with legislation, inadequate implementation of various schemes hinders the realisation of socioeconomic rights. For instance, implementation issues in various food-related schemes was one of the issues in the “right to food” petition before the Supreme Court. The PDS for instance, requires reduction of corruption (for instance, leakages and diversion of foodgrain) and better targeting.\textsuperscript{217} The MNREGS has been noted to have enhanced livelihood security during lean periods, increased agricultural wages and productive community assets, among others, but also suffers problems such as lower wages than the specified minimum wage (in some cases) and planning and implementation failures, besides the 100-day guarantee being insufficient to move people out of poverty.\textsuperscript{218}

Again for the NRHM, despite progress made on some indicators such as MMR and infant mortality, it has been less than desired with India’s MDG targets not being met, and there also being instances of some children’s diseases increasing despite increased immunisations.\textsuperscript{219} While the NRHM has had overall positive impact, implementation issues such as poor progress on local participation, village health and sanitation committees not constituted in all states, equipment lying unutilised, besides issues in procurement and supply of medicines and equipment, and poor quality of infrastructure in some states are seen.\textsuperscript{220} Similarly, while there are high enrolments in

\textsuperscript{216} Planning Commission, \textit{supra} note 36 at 5. However, India’s MDG report notes reduction in the number of persons living in poverty by 138 million since 1990. Ministry of Statistics and Programme Implementation, \textit{supra} note 10 at 5, 14.


\textsuperscript{218} Kapur Mehta, et al., \textit{id.} at 90–94. Another critique assessing the state of Bihar found the impact of the scheme on poverty to be only one percentage point as against the 14 percentage points that could have been achieved in ideal conditions. See Martin Ravallion, “MNRGA is Unwell: But Tinkering with Labour Materials Ratio or its Coverage is Not the Right Medicine”, \textit{The Indian Express}, 24 October 2014, http://indianexpress.com/article/opinion/editorials/mgnrega-is-unwell/ (last visited 1 October 2017).

\textsuperscript{219} Kapur Mehta, et al., \textit{id.} at 96, 98. In maternal mortality, 50 percent reduction was noted in India’s MDG report of 2015 over two decades since 1990 but at 167 out of 100,000 live births in 2011–13, it was far above the MDG target of 109. Ministry of Statistics and Programme Implementation, \textit{supra} note 10 at 84. The infant mortality rate, similarly, though reduced from 80 to an estimated 39 in 2015 was above the target of 27. Ministry of Statistics and Programme Implementation, \textit{id.} at 7.

\textsuperscript{220} Kapur Mehta, et al., \textit{id.} at 98.
the RSBY, health expenditures have been seen to have increased steadily, besides the scheme not benefitting the marginalised sections.\textsuperscript{221}

Various schemes and programmes like legislation discussed in the previous section have had positive impacts on socioeconomic rights realisation, and can be seen giving effect to the obligations to fulfil but primarily towards the most vulnerable sections, and can be seen as steps towards fulfilling “minimum core” obligations. But in many cases, there have been implementation flaws or non-implementation. Some such situations (for instance, right to food) have also been brought before the courts, which have played a catalytic role towards improved and speedy implementation.

7. Role of the Judiciary: Justiciability of Socioeconomic Rights through Interpretation

As discussed, most economic and social rights under the Indian Constitution being included in part IV of the Constitution, are not as such directly enforceable by courts as stated by article 37. The judiciary has, however, contributed towards recognising these rights as justiciable rights, through its interpretation of the relationship between fundamental rights and directive principles, and its liberal interpretation of the right of life under article 21 of the Constitution, reading into it, elements necessary for a life with dignity namely, food, water, shelter, education, healthcare, and a clean and pollution free environment, among others, which for Prof Baxi’s involved the courts “chipp[ing] away the Constitution’s Berlin Wall”\textsuperscript{222}. This “tying” technique is seen as enabling the


\textsuperscript{222} Baxi, \textit{supra} note 59. In contrast, it may be noted that the Irish courts have not followed such an approach in relation to the very similar set of directive principles that inspired the Indian Constitution: the Irish Supreme Court has taken the view that the limited role of the courts in a system based upon a firm concept of the separation of powers prevents them making use of the non-enforceable principles. This emphasis on separation of powers has also prevented them from stretching the civil and political rights recognised in the Irish Constitution to protect socioeconomic entitlements. Colm O’Cinneide, “Bringing Socio-economic Rights Back in the Mainstream of Human Rights: The Case-law of the European Committee on Social Rights as an Example of Rigorous and Effective Rights Adjudication” (2009), http://ssrn.com/abstract=1543127 (last visited 28 August 2013).
court to give legitimacy to the view that socioeconomic guarantees should also be considered rights,\textsuperscript{223} with such use by courts of directive principles and other open-ended constitutional rhetoric to interpret civil and political rights seen as often possible only in societies generally accepting the legitimacy of judicial activism.\textsuperscript{224} Such broad interpretation which emphasises the creation of positive rights is noted to challenge "a conventional understanding of liberal democracy", besides empowering individuals through collective action, and blurring the traditional circumscriptions of the powers of the government, making it different from individual-centric remedies, and perhaps more conducive to social rights actions, better understood as collective or solidarity issues.\textsuperscript{225} However, the right to "life with dignity" having a potentially infinite scope, and the recognition of numerous rights without making any "real difference",\textsuperscript{226} has led to criticism.

Through public interest litigation (PIL),\textsuperscript{227} "the Supreme Court has refashioned its institutional role to readily enforce social rights and even impose positive obligations on the state".\textsuperscript{228} PIL has not only enabled access to courts but has also "had a dramatic impact on the

\begin{thebibliography}{99}
\item Madhav Khosla, "Making Social Rights Conditional: Lessons from India", 8 I.CON 739, 762 (2010).
\item O’Cinneide, supra note 222. Prof. Sathe is of the view that courts "must continuously strive to sustain their legitimacy" but this is done not by succumbing to populism but standing up to pressure, not sacrificing impartiality and objectivity". S.P. Sathe, "Judicial Activism: The Indian Experience", 6 Journal of Law and Policy 29, 106 (2001).
\item Zachary Holladay, "Public Interest Litigation in India as a Paradigm for Developing Nations", 19(2) Indiana Journal of Global Legal Studies 555, 565 (2012). For Deva, one of the objectives it achieves is facilitating "an effective realisation of collective, diffused rights for which individual litigation is neither practicable, nor an efficient method". Deva, supra note 59 at 20.
\item Abeyratne, supra note 58 at 53; Deva, id. at 36–37.
\item The groundwork for PIL in India was prepared by Justice Bhagwati and Justice Krishna Iyer in the Supreme Court between the mid-1970s and early 1980s. Deva, id. at 23. On Justice Iyer’s contributions, Prof. Baxi writes: "Justice Krishna Iyer enhanced the sensitivity of judges and lawyers to exploitation and suffering in a way no other justice of the Supreme Court had ever done". Upendra Baxi, "Taking Suffering Seriously: Social Action Litigation in the Supreme Court of India", 4 Third World Legal Studies 107, 112–13 (1985). Desai and Muralidhar trace the development of PIL to various factors including the recognition of the courts’ role of judicial review as part of the basic structure (Kesavananda Bharti); the judiciary’s refusal to protect basic fundamental rights during emergency; the adoption of the notion of due process in Maneka Gandhi; executive interference with judicial appointments; and reports on legal aid in the 1970s which highlighted the need for the law to reach the people, particularly the poor, whose problems remained unaddressed. Ashok H. Desai and S. Muralidhar, "Public Interest Litigation: Potential and Problems", in B.N. Kirpal, Ashok H. Desai, Gopal Subramanium, Rajeev Dhavan, and Raju Ramchandran (eds), Supreme But Not Infallible: Essays in Honour of the Supreme Court of India 159–62 (Oxford University Press, New Delhi, 2000). Another factor is transformation of the print media which enabled social action groups to transform local issues of injustice into those of national importance. Baxi, id. at 114. Baxi saw PIL, or what he termed "social action litigation" as "a distinctive by-product of the catharsis of the 1975–1976 Emergency", though "judicial populism had become pronounced" even before this period. Baxi, id. at 108, 111. Sathe finds the expression PIL a misnomer as all public law litigation is in public interest. Sathe, supra note 224 at 72.
\item Kothari, supra note 65 at 46.
\end{thebibliography}
Supreme Court's approach to constitutional interpretation". It is for Mehta, the courts' "great judicial innovation" and "most important vehicle for the expansion of its powers." It's most distinguishing feature is relaxation of locus standi, done both to ensure accountability of elected authorities and in view of the transformation in the purpose of law towards "foster[ing] social justice by creating new categories of rights". It was this that led Prof. Baxi to call the Supreme Court, the "Supreme Court for Indians", the “last resort for the oppressed and bewildered”. Furthermore, courts began to accept epistolary or letter petitions under which rights violations highlighted through letters addressed to the court are treated as petitions, and also to suo motu take up issues highlighted, for instance, in the media. Its nature as an inquisitorial and not adversarial process is another distinguishing feature, PIL being, in fact described by the court as “collaborative litigation”, where the court, government, and petitioners work together to identify

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229 Pillay, supra note 62 at 644.
231 Abeyratne, supra note 58 at 42, 45 ("one of the most significant innovations", p. 42); Holladay, supra note 225 at 558; Deva, supra note 59 at 24. In S.P. Gupta v. Union of India, AIR 1982 SC 149 (Bench strength: 9), the Court observed, "where access to justice is being restricted by social and economic constraints, it is necessary to democratise judicial remedies, remove technical barriers against easy accessibility to justice and promote public interest litigation so that the large masses of people belonging to the deprived and exploited sections of humanity may be able to realise and enjoy the socio-economic rights granted to them and these rights may become meaningful for them instead of remaining mere empty hopes" (¶13). For Prof Baxi, the Supreme Court has not merely relaxed “standing” but democratised it. Baxi, supra note 59.
232 Baxi, supra note 227 at 107. He further wrote that “through it [social action litigation] great and unending injustices and tyranny begin to hurt the national conscience and prod at least one major institution of governance to take people’s miseries seriously” and saw it as "nourish[ing] hope in an otherwise darkening landscape of Indian law and jurisprudence". Baxi, id. at 132. Elsewhere, Prof Baxi writes that activism seeks to empower victims. Upendra Baxi, "Activism at Crossroads with Signposts", in Noorjehan Bava (ed.), Non-governmental Organisations in Development, Theory and Practice 57 (Kanishka Publishers, New Delhi, 1996). His "romantic and optimistic" view of PIL which continued in the early 1990s, however, was tempered down in later writings. Khosla, supra note 223 at 66.
233 This according to Deva was a consequence of the Court’s view that “appropriate proceedings” in article 32 referred to the purpose and not the form of the proceedings (that is, to enforce fundamental rights). Deva, supra note 59 at 24. This process of letter petitions involves scrutiny and follow up of letters submitted to the court involving a more inquisitorial role seen as more conducive than adversarial proceedings where there are inequalities among litigants. Scott and Macklem, supra note 55 at 143. The guidelines issues by the Supreme Court in 1988 and subsequently modified specifies ten categories on which letters petitions will be entertained including bonded labour; neglected children; minimum wages, exploitation of labour, and labour law violations; pollution disturbance of ecological balance, food adulteration, etc. and other matters of public importance; and family pension. See Supreme Court of India, “Compilation of Guidelines to be followed for Entertaining Letters/Petitions received in this Court as Public Interest Litigation” (last visited 13 July 2017).
solutions to social problems. PIL thus involves dialogue with other branches, and “inject[s] a language of rights” into the debate on policy issues. In the court’s view, it must be seen as “a challenge and an opportunity to the government and its officers to make basic human rights meaningful to the deprived and vulnerable sections of a community and to ensure them social and economic justice which is the signature tune of our constitution”.

Its approach is seen as oscillating between deference and prescription, but unpredictably so, attributable to the Supreme Court’s size and composition, manner of sitting, and the volume of litigation, which leads to inconsistencies and lack of a principled basis for intervention. Guidelines have, however, been framed on PILs, indicating inter alia, categories of matters dealt with.

The strong exercise of judicial review has been argued to be justified in the Indian context, as elected branches fail to provide a “social minimum” to citizens, evidenced by chronic poverty and malnourishment, and rampant corruption at various levels of government. In other words, the justification behind the separation of powers that the legislature would be responsive to

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234 Upendra Baxi v. State of Uttar Pradesh, (1986) 4 SCC 106 (Bench Strength: 3); Robinson, supra note 37 at 44; Abeyratne, supra note 58 at 46. An instance of this as Gauri points out is the CNG decision which was an instance of collaboration between the judicial and executive branches rather than a “judicial fiat”. Varun Gauri, “Public Interest Litigation in India: Overreaching or Underachieving?”, Policy Research Working paper 5109 6 (The World Bank, November 2009). Another is the Azad Rickshaw Pullers Union case [(1981) 1 SCR 366] where detailed guidelines including on insurance and occupational health issues of rickshaw pullers were issued by the court in a mediated negotiated order envisaging an interactive relationship between branches of government to effectively provide justice. Scott and Macklem, id. at 124–25. See also Sathe, supra note 224 at 78.

235 Gauri, id. at 5.

236 Bandhua Mukti Morcha v. Union of India, supra note 52. As it further noted. PILs would enable the examination of whether poor and downtrodden sections were getting access to their social and economic entitlements. Desai and Muralidhar describe this mechanism as a “conscious attempt” to transform the constitutional promises of the fundamental rights and directive principles into reality, as with only adversarial proceedings, these would remain “empty promises”. Desai and Muralidhar, supra note 227 at 159.


238 Deva, supra note 59 at 38; Supreme Court of India, supra note 233.

239 Abeyratne, supra note 58 at 56–57. For instance, schemes on the right to food and health were noted to have failed due to corruption. Id. at 57. See also Kapur Mehta, et al., supra note 34 at 88; See also Center for Media Studies, supra note 217.
constitutional values and popular will, would not apply in the Indian context. For Scott and Macklem, the Indian approach shows that the judiciary may advocate solutions to prod other branches to debates and concrete responses that may emerge in the long run as more democratically legitimate and effective.

The Indian judiciary is one of the first to adjudicate on socioeconomic rights matters, its PIL jurisprudence and liberal interpretation of article 21 having “fundamentally transformed” its role under the Indian Constitution. Moreover, its jurisprudence is seen as instructive in illustrating that “judicial competence is a function of effort and will.”

In setting norms for government social interventions, the court is not necessarily competing with representative institutions but supplementing their actions, not engaged in judicial “rule” but “a new form of coexistence between democratic and good governance principles” in which it faces both enforcement and legitimacy concerns. Commentators point to its failure to explain the legitimacy of its actions, and source of its increasing powers and usurpation of functions in light of the especial need for it to give reasons, and also question the consonance of its actions with the rule of law. For others, however, the courts’ construction of part III, though beyond the

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240 Abeyratne, id at 58. The functions that the judiciary performs besides the traditional one of dispute resolution include participation with other branches of government in a network of actors in the public sphere, and protection of core constitutional values. Khosla, supra note 223 at 74–80. Moreover, as Prof. Sathe points out “judicial activism” is an essential aspect of a constitutional court and a counter-majoritarian check on democracy. Within the limits of the judicial process, it performs the function of both stigmatising and legitimising the actions of other branches, more often the latter. Sathe, supra note 224 at 106.
241 Scott and Macklem, supra note 55 at 130.
242 As Wesson writes, “there was once little socio-economic rights case law outside India”. Wesson, supra note 237 at 281. In the early 1990s, Scott and Macklem found the Indian experience provided factual support for the fact that the judiciary can and should adjudicate social rights. Scott and Macklem, supra note 55 at 16.
243 Abeyratne, supra note 58 at 50.
244 Scott and Macklem, supra note 55 at 114.
246 Mehta, supra note 230 at 72; Abeyratne, supra note 58 at 7–8. Sarkar proposes a solution in this regard arguing that while article 37 may not permit enforceability of the directive principles, it does not prohibit review and in this regard, a weaker form of judicial review may be adopted by courts promoting dialogue with other organs of state so
founding fathers’ intent, remains within constitutional parameters and its spirit of “social justice”, and is seen as necessitated by the country’s political and historical conditions. The expansion in the judiciary’s powers is also argued to be a “reconfiguration of decision-making authority more generally” as not only the judiciary, but a range of independent institutions such electricity authorities, telecom regulatory authorities, etc. are taking on governance functions, and are perceived to be outside the purview of political influence, though this is not necessarily the case.

The adjudication of social rights in India is nevertheless seen as “vibrant and dynamic”, the experience of the judiciary “bolster[ing] the vision of the constitution as a dynamic and evolving document”. Such “rights revolutions”, are seen to occur due to the presence of a “support structure”, in the form of institutions including NGOs supplying those seeking relief with access to lawyers, funds, and favourable publicity, and even the government.

While PIL was initiated and indeed, used to address the concerns of the poor and marginalised, more recent decisions are argued to demonstrate a bias against them. The court’s
activism is seen to increasingly manifest many biases—in favour of state and development; rich
against workers, the urban middle-class against rural farmers, and a “globalitarian class against the
distributive ethos of the Indian Constitution”, overemphasising civil and political rights at the cost
of socioeconomic rights—the “high watermark” of activism having been reversed by more cautious
case law. This change in trend, however, cannot be said to be across the board with positive
developments such as the Right to Food and Niyamgiri cases.

The court is also criticised for “attempting the impossible”, issuing abstract orders eroding its
authority but with little practical impact. While such litigation does highlight unacceptable
welfare standards and create pressure on the authorities to act, this may not sufficiently justify the
effort and resources involved.

The approach of the Indian judiciary is seen as having opened new avenues of exploration for
the implementation of social rights, demonstrating constitutional and human rights interpretation
to be a dynamic process involving the creativity and commitment of individuals to underlying
values in society; that language can be given widely different meanings depending on the goal to
be reached; and that judges have enormous potential to effect change in society when they so
desire. Moreover, it has played a role in finding space for issues that would not otherwise have

issues to include almost any subject with the judiciary showing more restraint in issuing directions, and also
showing approval for government policies of liberalisation even at the cost of the rights of the disadvantaged. In
other words, development and free market considerations “dominate” in this phase. Judicial reaction/ response to
PIL in his view is a response to what society expects of them at a given point in time. Deva, supra note 59 at 27–29.
D’Souza describes the three phases, respectively as, one, emphasising human rights and facilitating access to justice; two, shift in emphasis to governance issues; and three, developments in the context of neoliberalism.
D’Souza, supra note 80 at 488.

Rajagopal, id. at 158, 164; Wiles, supra note 53 at 59. Gauri finds from a sample study of PIL decisions of the
Supreme Court that there may not necessarily be as pronounced a middle-class bias as suggested by commentators,
the number of claimants from the “advantaged classes” having increased at the same rate as fundamental rights
cases. The absolute number of claims on behalf of the disadvantaged classes have however been increasing but due
to increased mobilisation by individuals rather than NGOs. Win rates were higher for people from advantaged
classes as compared to those who were not, however, but possible reasons behind this cannot be identified with
certainty; however, this did constitute a “social reversal” from the original objectives of PIL. Gauri, supra note 234
at 11–13.

People’s Union for Civil Liberties v. Union of India, supra note 45 CWP 196/2001; Orissa Mining Corporation Ltd.

Usher, supra note 54 at 165–66.

Id. at 166.

Kothari, supra note 65 at 47–48.
received attention; catalysing law and policy change on economic and social rights; besides developing a jurisprudence of human rights in line with developments in international law and using innovative judicial remedies for enforcing socioeconomic rights.  

The notion of judicial governance, however, limits the extent to which courts can be expected to actively participate in social movement struggles for the realisation of human rights, particularly those in conflict with statist and developmentalist ideologies. Additionally, other issues that may arise in enforcement include conflict of rights (for example, provision of water vis-à-vis livelihoods of those displaced by dam construction); legitimacy (for example, undermining the court’s authority by non-implementation of orders) and consequently, use by courts of contempt power; court not accounting in all instances for interests of sections of the public not before them (for instance, impact of closure of polluting industries on the workmen and their families (polycentricity)); and need to ensure continuity in treatment of issues for effective implementation.

In discussing the role of the judiciary in the field of economic and social rights, the approach of the judiciary towards these rights as incorporated in the directive principles, and the interpretation of the relationship between the fundamental rights and the directive principles are relevant and provide the basis for its broad interpretation of fundamental rights. The discussion
below thus first considers these issues before looking in detail into the Supreme Court’s interpretation of fundamental rights to protect socioeconomic rights.

**Directive Principles: Nature**

Article 37\(^{262}\) of the Constitution provides that the directive principles of state policy are not “enforceable by any court”, but nonetheless are fundamental to the governance of the country and are to be applied by the state in making laws. While the use of the expression “shall not be enforceable by any court” indicates that the directive principles are not justiciable, Minattur argues that it is not easy to understand how this view was reached.\(^{263}\) Proposing an interesting interpretation, he argues that “[t]he plain, ordinary meaning of the words ‘shall not be enforceable by any court’ does not preclude recourse to a court for a declaratory judgment. All that a court of law is restrained from doing is the enforcement of the Directive Principles.”\(^{264}\) Such judgment would constitute “an official, final, binding, and unchangeable” declaration of rights of the parties, and would constitute res judicata, in respect of which the plaintiff could have recourse to the court were the defendant subsequently to act contrary to the declaration; such declaration being a tool not only of curative but also preventive justice.\(^{265}\) While he acknowledges that a declaratory judgment cannot be enforced by courts and may not be recognised by public authorities as res judicata and enforced, he is of the view that being a declaratory pronouncement of a superior court, it would be accorded great respect and disarming effect by public authorities.\(^{266}\)

The Court too, has acknowledged that when called upon to enforce the directive principles, it would not refuse to act. In *Sachidananda Pandey*, it was observed,

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\(^{262}\) Article 37 reads: “The provisions contained in this part (Part IV) 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.”

\(^{263}\) Minattur, *supra* note 66.

\(^{264}\) *Id*. He also refers to Sh Shibhan Lal Saxena’s speech in the Constituent Assembly to argue that he did not say that a citizen was precluded from taking any legal action at all if there was contravention of a directive principle. *Id.*

\(^{265}\) *Id.*

\(^{266}\) *Id*. He notes that while instances have not been rare of even executor judgments being flouted by the executive for instance, re-arrest of a person released under orders of the court under preventive detention laws, there are more instances where the courts’ orders have been respected. *Id.*
[w]hen the court is called upon to give effect to the directive principles and fundamental duties, the court is not to shrug its shoulders and say that priorities are a matter of policy and so it is a matter [for the] policy making authority. The least that the Court may do is to examine whether appropriate consideration[s] are borne in mind and irrelevancies excluded. In appropriate cases, the Court may go further, but how much further must depend on the circumstances of the case. The Court may always give necessary directions. However, the Court will not attempt to nicely balance relevant considerations. When the question involves the nice balancing of relevant considerations, the Court may feel justified in resigning itself to acceptance of the decision of the concerned authority.\footnote{267}

As discussed in chapter II, consideration of relevant aspects and exclusion of irrelevant ones is an aspect of reasonableness in the administrative law context. In other words, while the court may not have gone to the extent proposed by Minnatur with regard to issuance of a declaratory judgment, it has made it clear that, non-enforceability would not mean non-intervention, and at least the considerations of the policy-making authority will be examined for appropriateness. Pillay notes in this observation the use by the Court of the idea of a minimum standard of protection, which she contrasts with the approach by the South African judiciary which has declined to use the minimum core concept.\footnote{268} While the \textit{Sachidananda Pandey} decision was concerned with a minimum standard that government action may be evaluated by, a 2014 judgment of the Delhi High Court, \textit{Mohd. Ahmed (minor) v. Union of India},\footnote{269} specifically held that core obligations under the right to health were non-derogable and although “minimum core” is not easy to define, it includes “at least the minimum decencies of life consistent with human dignity”.\footnote{270} The Court, while recognising that availability of finance was relevant and it could not direct all citizens of the

\footnote{267} \textit{Sachidananda Pandey v. State of West Bengal}, AIR 1987 SC 1109 (Bench Strength: 2); \textit{S. Vasudeva and D.P. Sharma v. State of Karnataka}, ILR 1989 Kar 39 (Bench Strength: 1). See also, Dharmadan, supra note 59 at 315.
\footnote{268} Pillay, supra note 62 at 346.
\footnote{269} W.P. (c) 7279/2013 decided on 17 April 2014 (Bench Strength: 1).
\footnote{270} \textit{Id.}, ¶ 67.
country to be given free medical treatment, took the view that financial constraint cannot be an excuse for the state to not treat patients with chronic and rare diseases. Here it may be also noted, in contrast with Soobramoney or Grootboom, the right of an individual was protected rather than merely considering the matter in the context of measures taken by the state towards securing the right to health.

While somewhat limited intervention was indicated in Sachidananda Pandey, it also stated that it may “go further” in appropriate cases. In practice the Supreme Court and High Court have intervened to protect directive principles to a greater extent through their interpretation of the fundamental rights.

**Fundamental Rights and Directive Principles: Interpretation of the Relationship between Them**

As mentioned, in examining the approach of the judiciary in dealing with economic and social rights, one important aspect is the interpretation of the directive principles vis-à-vis the fundamental rights. The interpretation of the relationship between the fundamental rights and directive principles has undergone different stages of development from the view that the directive principles must run subservient to the fundamental rights to the position that the harmony and balance between the two, forms part of the basic structure of the Constitution. As R.C Lahoti C.J. (as he then was) observed in his majority opinion in *Mirzapur Moti Qureshi Kasab Jamat*, these developments can be discussed in three stages. Initially, courts resorted to a strict or literal interpretation of article 37 holding not only that the directive principles of state policy were not enforceable but also that they were to conform to and run subservient to the fundamental rights.

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271 This approach is in line with the interpretation given by the CESC in its General Comment 14 and the Maastricht Guidelines, but the Committee’s interpretation has been criticised as states may be liable for denial of rights beyond their control. As far as the CESC is concerned, it has reverted to the position that non-availability of resource is a defence. Malcolm Langford and Jeff A. King, “Committee on Economic, Social and Cultural Rights: Past, Present, Future”, in Malcom Langford (ed.), *Social Rights Jurisprudence: Emerging Trends in International and Comparative Law* 493 (Cambridge University Press, New York, 2008).

rights. The Apex Court also observed that while the directive principles guide the exercise of legislative power, they do not control the same. One commentator attributes this relegation of the directive principles to a subordinate position to the conflict between “right-duty” and “power-liability” in the Hohfeldian sense, but also argues that although “non-compellable”, a departure from the duty can be prevented.

Thereafter, in Mohd. Hanif Quareshi, note was taken of the fact that the directive principles were certainly to be implemented although this must not be done so as to take away or abridge the fundamental rights. In Re Kerala Education Bill, along the same lines, the Apex Court, referring both to Champakam Dorairajan and Hanif Quareshi observed, that while the Bill in question may have been enacted to implement the directive principles, "it must, nevertheless, subserve and not over-ride the fundamental rights". In I.C. Golak Nath v. State of Punjab, the Court stressed on the need to avoid conflict and rather strike a balance between the fundamental rights and directive principles.

The emergency in the 1970s is seen as a turning point, there having since been a perceptible change in the attitude of the judiciary towards the relationship between the fundamental rights and directive principles, with the Supreme Court laying the foundation for the principle of social rights being complementary, interdependent, and indivisible from civil and political rights. The change had, however, begun to take place even before the emergency.

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277 (1959) 1 SCR 995, ¶14 (Bench Strength: 7).

278 (1967) 2 SCR 762 (Bench Strength: 11).

279 Kothari, supra note 65 at 34. In this regard, Sripati writes, “[t]he catalytic influence of the Emergency period seems to have contributed to the metamorphosis of the Supreme Court. Abandoning its hitherto deferential
In C.B. Boarding and Lodging v. State of Mysore, the directive principles and fundamental rights were recognised as complementary and supplementary to each other. Further, in Keshavananda Bharti v. State of Kerala, it was observed that fundamental rights and directive principles supplement each other, with directive principles setting out the goal to be achieved and fundamental rights laying down the means.

In fact, in Minerva Mills, harmony and balance between the fundamental rights and directive principles was held to be an essential feature of the “basic structure” of the Constitution, and it was held that giving absolute primacy to either part III or part IV over the other would amount to disturbing the harmony of the Constitution. These decisions are seen as providing the basis for the Supreme Court’s interpretation of the right to life as including many socioeconomic rights.

In Kesavananda Bharti, the Court took note of the need to take into account the directive principles while judging the reasonableness of the restrictions imposed on the fundamental rights. In fact, in Kasturi Lal, Bhagwati J found that the directive principles “concretise and give shape to reasonableness” as envisaged in the fundamental rights, actions of the government taken for giving effect to directive principles would ordinarily be seen as reasonable, and those running counter to them, “unreasonable”.

In Unnikrishnan, again, fundamental rights were seen as a attitude towards the executive, the Court adopted the role of a 'social auditor’. However, even prior to the emergency, it can be said that steps towards such an approach had begun to be taken.

For instance, in Rustom Cavasji Cooper v. Union of India, AIR 1970 SC 564 (Bench Strength: 11), the decision is Gopalan was held to not be good law. It was held that "Part III of the Constitution weaves a pattern of guarantees on the texture of basic human rights.” and that "one thread" runs through the rights which "seek to protect the rights of the individual or groups of individuals against infringement of those rights within specific limits" and which are not mutually exclusive. See also Atul M. Setalvad, "The Supreme Court on Human Rights and Social Justice: Changing Perspectives", in B.N. Kirpal, Ashok H. Desai, Gopal Subramanium, Rajeev Dhavan, and Raju Ramchandran (eds), Supreme But Not Infallible: Essays in Honour of the Supreme Court of India 242 (Oxford University Press, New Delhi, 2000).

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281 supra note 85, ¶634.
282 Minerva Mills v. Union of India, supra note 87.
283 Abeyratne, supra note 58 at 37. Illustrating this argument, Kothari argues that the recognition of the complementary nature and harmonious interpretation of fundamental rights and directive principles has been the foundation for the declaration of the right to education as a fundamental right. Kothari, supra note 65 at 40.
means to achieve the goals indicated in part IV. More recently, in *Charu Khurana v. Union of India*, the Supreme Court reiterating that the Court is required to interpret the fundamental rights in light of the directive principles, also observed that the status of the directive principles has been elevated by interpretation and they “have been regarded as the soul of the Constitution as India is a welfare state.” Earlier, in *Ashok Kumar Thakur v. Union of India*, it was held that in interpreting any constitutional provision, the directive principles were to be viewed as the “book of interpretation”.

The aforesaid developments demonstrate the change in the attitude of the courts towards the directive principles, and thus towards economic and social rights as incorporated in the Constitution from holding them to be subservient to the civil and political rights, that is, fundamental rights, to the present position where they are seen as not only complementary and supplementary to each other but also as the frame within which the fundamental rights must be interpreted, with neither of them having primacy over the other. This is in consonance with the international position on human rights, wherein it has been reiterated time and again that civil and political rights and economic, social, and cultural rights are indivisible, interrelated, and interconnected. One commentator notes in favour of this approach, that: “[t]hose who would give protection only to fundamental rights and give a subordinate place to the social rights in the directive principles of state policy are guilty of doing violence to the Constitution.” Moreover, this recognition has formed the basis for the liberal interpretation of the fundamental rights as discussed below.

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285 *Unnikrishnan v. State of Andhra Pradesh*, (1993) 1 SCC 645 (Bench Strength: 5), ¶41. Again in *Mohini Jain v. State of Karnataka*, (1992) 3 SCC 666 (Bench Strength: 2), it was held that the fundamental rights and directive principles are supplementary to each other and the directive principles which are fundamental in the governance of the country cannot be isolated from the fundamental rights and must be read into them. Sharma argues that the Court upholding legislation by viewing the directive principles are reasonable restrictions on fundamental rights has shown judicial wisdom. “The concept of reasonable restrictions runs like a golden thread through the entire fabric of the Constitution. Seen in this perspective, there is no conflict between the fundamental rights and the directive principles”, the two coexisting and serving their assigned roles towards “ushering in a new social order based on justice and equality.” Sharma, *supra* note 87 at 520.

286 *Charu Khurana v. Union of India*, (2015) 1 SCC 192, ¶30, 32 (Bench Strength: 2).


288 *Kothari*, *supra* note 65 at 48.
Directive Principles and Liberal Interpretation of the Fundamental Rights

The judiciary has significantly contributed to economic and social rights protection in India by its liberal interpretation of the provisions of part III, particularly the right to life in article 21, by reading some directive principles as part of the justiciable rights in part III. In fact, in a majority of cases, the Court has relied on the directive principles to extend the meaning of the fundamental rights, leading to a greater number of enforceable rights than when the constitution was first adopted. While some feel that in this process, courts have shown their awareness of remaining within the limits of justiciability, and have been careful to explain the legal basis of their intervention (tracing socioeconomic rights to extant fundamental rights or the interconnectedness of all human rights), others contend that while the courts’ wide interpretation of article 32 is consistent with the constitutional text and goal of social revolution, it seems to sidestep or ignore the heavier burden of the clear mandate of non-justiciability in article 37, and stretches rights to their conceptual limits. Article 37 makes the courts’ reasoning that directive principles define the contents of the right to life “flawed”; moreover, its interpretation is not confined to any minimum standards, reasonableness principles, standards of review, or clear limits of life with dignity but

289 Deva, supra note 59 at 25; Abeyratne, supra note 58 at 52.
290 Muralidhar, supra note 245 at 3; Scott and Macklem, supra note 55 at 129. Birchfield and Rossi too view such interpretation and activism as evidencing the constitutional synthesis between civil and political rights, and economic, social, and cultural rights in the Indian context. Lauren Birchfield and Jessica Corsi, “Between Starvation and Globalization: Realizing the Right to Food in India”, 31(4) Michigan Journal of International Law 691, 709 (2010). Robinson finds that the court has justified its interventions to protect socioeconomic rights on grounds of “the Constitution’s vision for controlled social and economic revolution” and “the principles of civilization or good governance” or, as he terms the latter, “the minimum core requirements of civilized governance”, alongside “civilization” increasingly appealing to both the directive principles and the preamble to support and define its right to life jurisprudence. Robinson, supra note 37 at 41, 46, 49.
291 Abeyratne, supra note 58 at 63; Wiles, supra note 53 at 41-42. While in the Bandhua Mukti Morcha case, the court does refer to legislation being passed by the state on socioeconomic rights issues which it can be obligated to implement, this according to Abeyratne is insufficient in light of article 37 which “flatly” prohibits the enforcement of the directive principles. Abeyratne, id. at 64. However, he finds that there is adequate and clear justification for the courts’ employment of fact-finding commissions and resort to detailed interim orders which satisfy the contractarian objection. Id. at 68.
enters the realm of policy-making inviting the “contractarian” objection. Furthermore, the intervention by courts in PILs in general, is seen as selective and without theoretical basis.

One of the earliest cases to refer to directive principles in interpreting fundamental rights was Olga Tellis. After the landmark decision in Maneka Gandhi, the scope of article 21 has been widened to protect a number of rights required for a meaningful life with dignity. The “doctrinal effervescence” [of the Supreme Court] in interpreting the directive principles is attributed to the change in the political landscape, and a need for it to redeem itself after “having so blatantly failed the people of India in [ADM] Jabalpur. In Francis Coralie Mullin v. UT of Delhi, the Apex Court held that the right to life meant not mere animal existence but a right to live with human dignity and all that goes with it, namely, bare necessities of life such as adequate nutrition

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292 Abeyratne, id. at 65–66. The contractarian objection relates to the view that a constitution is regarded as legitimate “if rational citizens acting rationally can understand its terms and conditions and agree to be bound by them”. Id. at 4. Sripati takes notes of a similar concern noting that the expanded interpretation of part III may well invite an “uncontrollable sprawl” of fundamental rights which may lead to a “grotesque result” but feels that the court has exercised caution in this regard by checking spurious claims in the guise of rights violations. Sripati, supra note 247 at 449–50.
293 Deva, supra note 59 at 37 (for instance, issuing guidelines on sexual harassment and arrest but not for instance, on the UCC or height of the Narmada dam); Anashri Pillay, “Revisiting the Indian Experience of Economic and Social Rights Adjudication: The Need for a Principled Approach to Judicial Activism and Restraint”, 63(2) International and Comparative Law Quarterly 385, 407 (2014). Pillay similarly comments on the lack of clarity in the courts acceptance of their having institutional capacity to act on some issues and not others. Pillay, id. at 400. See also Desai and Muralidhar, supra note 227 at 178 commenting on the lack of uniformity and consistency in the court’s approach. In Delhi Science Forum v. Union of India, (1996) 2 SCC 405, the Court refused to intervene in the telecommunications policy on account of it being a policy matter; similar was the case for the sale of liquor in Krishna Bhat v. Union of India, (1990) 3 SCC 65; in Tehri Bandh Virodhi Sangharsh Samiti v. State of UP, (1992) Supp 1 SCC 44 the court stated that it lacked the requisite expertise to pronounce on the rival contentions of experts. Ibid.
294 Pillay, supra note 62 at 345; O’Cinneide, supra note 222.
295 Maneka Gandhi v. Union of India, AIR 1978 SC 597 (Bench Strength: 7, dissent by Kailasam, J). While this decision is often considered activist, Khosla, who analyses the judgment on parameters proposed by Cohn and Kremin, finds that while it is so on some grounds such as departure from previous decisions, contrary to the original intent of the constituent assembly, and reference to a range of comparative sources among others, it does not qualify as “activist” on others such as hostility from the executive and legislature, measures to overturn, or public criticism, its “activist quotient” not being “as patently high as most have argued”. Khosla, supra note 223 at 85–86. From Maneka Gandhi, interference with article 21 was not only required to be in accordance with law, but the procedure was also required to not be arbitrary, unfair, or unreasonable. Pillay, supra note 62 at 344. One commentator views it as a “mini magna carta for the people of India”. D. Rajeev, “Impact of Maneka Decision: Growing Dimensions of Indian Constitutional Law”, 7 Cochin University Law Review 393, 421 (1983). As Prof Baxi points out, however, that the de facto and de jure conversion of article 21 into a due process clause was contrary to the framers’ intent. Baxi, supra note 227 at 108, 115.
296 Pillay, id. at 343. Similar views are expressed by Holliday who attributes the expansion of locus standi in the post-Emergency period to the courts’ efforts to recapture their legitimacy, and Mehta who in addition to this reason also attributes rise in the courts’ activism to the weakness of the political process. Holladay, supra note 225 at 559; Mehta, supra note 230 at 79.
The right to life moreover, covers "not only physical existence but quality of life as understood in its richness and fullness by the Constitution...". The Court went on to recognise, in a series of cases, various components of the right to life which include economic and social rights not expressly finding mention as fundamental rights. Its right to life jurisprudence came to encompass a range of functions, not restricted only to the right to life but which involved the broader protection of good governance. Such broader interpretation has also meant greater authority to strike down legislation for incompatibility with fundamental rights. As discussed in Chapter III, such an approach has also been adopted by other bodies such as the European Court of Human Rights (ECtHR) which has interpreted the civil and political rights provisions in the European Convention on Human Rights (ECHR) to protect various socioeconomic rights such as the right to housing and health while recognising the interrelatedness and interdependence of all human rights but has done so only in extreme circumstances. Like the ECtHR, the Indian Supreme Court has also so interpreted equality provisions to protect socioeconomic rights.

Livelihood, Work, and Workers' Rights

One element that makes the right to life meaningful is livelihood. In Olga Tellis v. Bombay Municipal Corporation, the Court recognised the right to livelihood as part of the right to life in article 21. It did not, however, elaborate its content. While the state may not be compelled to

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297 Francis Coralie Mullin v. Administrator, Union Territory of Delhi, AIR 1981 SC 746 (Bench Strength: 2). Similarly, in Board of Trustees, Port of Bombay v. Dilip Kumar, AIR 1983 SC 109 (Bench Strength: 2) it was held that "the expression life does not merely connote animal existence or a continued drudgery through life, it has a much wider meaning and takes within its fold, some of the finer graces of human civilization which makes life worth living".

298 State of Himachal Pradesh v. Umed Ram, AIR 1986 SC 847 (Bench Strength: 3).

299 Robinson, supra note 37 at 41.

300 Abeyratne, supra note 58 at 42.

301 This approach has been seen in other domestic contexts as well. In Canada, for instance, in Gosselin v. Quebec, [2002] 4 S.C.R. 429 (Can), the right to life was interpreted as including a positive duty to provide a means of livelihood. In this case, there was a challenge to welfare benefits as only beneficiaries over thirty were entitled to full benefits while those below thirty were given one-third of the benefits unless they participated in a designated work activity or educational programme. Dennis M. Davis, "Socioeconomic Rights: Do they Deliver the Goods?" 6 I.CON 687, 708 (2008).

302 AIR 1986 SC 180 (Bench Strength: 5). It observed that no person can live without a means of living, that is a means of livelihood.

303 Khosla, supra note 223 at 747.
provide adequate means of livelihood or work to citizens by affirmative action, a person unjustly
deprived of his right to livelihood except according to just and fair procedure established by law
can challenge the same as offending his right to life. Therefore, at least a negative duty was
recognised. However, while the decision’s impact is not wide-ranging with alternative
accommodation being suggested but not made a precondition to eviction, the decision nonetheless
illustrates the judiciary creating political dialogue over issues otherwise not falling within political
scrutiny. Similarly in *State of UP v. Charan Singh*, the right to livelihood was held to be
guaranteed by both articles 19 and 21 of the Constitution, while in *Charu Khurana v. Union of India*,
denial of access to employment was seen as offending article 21. In the latter case, the
petitioners who were make-up artists were denied membership of the Cine Costume Make-up
Artists’ and Hairdressers’ Association on account of their being women, and not remaining in
Maharashtra for five years. In the case at hand, domicile was also found to have no rationale
attracting the frown of articles 14, 15, and 21; the offending clauses were directed to be quashed
and the petitioners to be registered as members of the association.

The liberal interpretation of the provisions of fundamental rights is not, as seen in *Charan
Singh* and *Charu Khurana*, confined to article 21 alone. Other provisions of part III of the
Constitution have also been read together with the directive principles to recognise socioeconomic
rights, particularly with regard to the right to work. For instance, in *Grih Kalyan Kendra Workers*,
the Apex Court found the principle of “equal pay for equal work” to have assumed the status of a

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304 See also *Senior Divisional Commercial Manager v. SCR Caterers, Dry Fruits, Fruit Juice Stalls Welfare Association and Another*, Civil Appeals nos 610–20 of 2016, Supreme Court of India, 29 January 2016 (Bench Strength: 2). In this
decision, in rejecting the appeal against a decision of the High Court of Andhra Pradesh holding the respondents entitled to get their licences renewed under the Catering Policy, 2010, the Court took into account inter alia, the
chances of the respondents being deprived of their right to livelihood by the appellants’ policy. It observed that if
the appellants in the guise of the policy are permitted to deny renewal of licences, it would amount to deprivation
of their right to freedom of occupation under article 19(1)(g) and the right to livelihood and the action of the
appellant would be “diametrically opposed to their constitutional duty towards social justice as well as uplifting the
weaker sections of the society and the unemployed youth of the country”. See also *LIC of India and Another v. Consumer Education and Research Centre*, AIR 1995 SC 1811 (Bench Strength: 2).

305 Pillay, supra note 62 at 346; Scott and Macklem, supra note 55 at 121.

306 *State of UP v. Charan Singh*, Civil Appeal no 2381 of 2007, Supreme Court of India, decided on 26 March 2015
(Bench Strength: 2).

307 *Charu Khurana v. Union of India*, supra note 286.
fundamental right, in view of the directive principle in article 39(d) and the constitutional mandate of equality in articles 14 and 16. On the same principles, in *U.P. Land Development Corporation*, the Court observed that the equality clauses [Articles 14 and 16] would mean nothing to the people, if they were unconcerned with the work they do and pay they get; they will mean something if equal work means equal pay.

Another aspect of the right to work, the right to be considered for employment was before the Court in *Anuj Garg v. Hotel Association of India*, which involved challenge to a provision of the Punjab Excise Act, 1914, prohibiting the employment of men under 25 and women in any part of premises where liquor or intoxicating drugs are consumed by the public. The Court noted that in considering the validity of protective legislation, other provisions of the Constitution including part IV A should be taken into consideration, besides the equality clauses in articles 14 and 15. It found that in terms of articles 14 and 16, each person similarly situated has the fundamental right to be considered for employment though there may be no fundamental right to employment. Restrictions on the employment of men below 25 were also held to not stand up to judicial scrutiny in view of the right to be considered for employment, which is a facet of the right to livelihood.

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308 Grih Kalyan Kendra Workers’ Union v. Union of India, AIR 1991 SC 1173 (Bench Strength: 2). See also State of Punjab v. Surjit Singh, (2009) 9 SCC 514 (Bench Strength: 2), where the court observed that the principle of equal pay for equal work had a place in the constitutional scheme on a reading of article 39(d) with article 14. See also State of Punjab v. Jagjit Singh, Civil Appeal no. 10356/2016 decided 26 October 2016 (Bench Strength: 2).


310 AIR 2008 SC 663 (Bench Strength: 2).

311 The Court also stressed on the need to take into account changes in societal conditions when considering the validity of legislation which may have been valid and acceptable at the time it was originally enacted. It observed that criteria which, in the absence of any constitutional provision, pertained to societal conditions prevalent in the early twentieth century may not be rational criteria in the twenty-first century. Id., ¶24.

312 It also recognised that the law ended up victimising its subject in the name of protection. The Court took into account the fact that the tension between the autonomy in choosing an employment and security was difficult to resolve but observed that the measures to safeguard such autonomy should not be so strong that the essence of the guarantee was lost. In another decision, quoted in *Anuj Garg*, the right to employment was interpreted in terms of contract law. In *Kerala Samsthana Chethu Thozhilali Union v. State of Kerala*, (2006) 4 SCC 327, the Supreme Court held that when an employer gives employment to a person, a contract of employment is entered into and the right of citizens to enter into any contract cannot be restricted unless expressly prohibited by law or opposed to public purpose. Id., ¶26.
Protection of livelihoods or against deprivation of livelihoods has, however, not been uniformly extended, illustrated for instance by cases of forest dwellers reliant on forest produce for survival, whose rights have been restricted.\textsuperscript{313}

Besides these provisions, article 23 prohibiting forced labour falls within part III. The Court has held forced labour to include cases of person compelled to work for remunerations lower than the statutory minimum wage, and has in other decisions extended protection against the exclusion of labour law.\textsuperscript{314}

The trend in the right to work and workers’ rights has been noted however, to be moving towards deference and away from protection.\textsuperscript{315}

\textit{Standard of Living}

Food: In interpreting the right to life, basic necessities of life such as food, water, and shelter have been recognised as part of article 21. The right to food, for instance, was read into the right to life in a number of decisions.\textsuperscript{316} While the right to “food” does not expressly find mention in the directive principles, article 47 refers to “raising of the level of nutrition” as among the “primary” duties of the state.

The issue of starvation deaths, particularly in two districts of Odisha was raised before the Supreme Court through a letter petition by social activists in \textit{Kishen Pattnayak}.\textsuperscript{317} In view of the fact that the state Relief Code contained adequate provisions and of the constitution of a district-level committee to review progress of the relief work, and other measures (such as free feeding


\textsuperscript{314} In \textit{People’s Union for Democratic Rights v. Union of India}, supra note 52, article 23 prohibiting forced labour was seen as including those persons who were compelled to work for remunerations lower than the minimum wage, and force included force included compulsion of economic circumstance.

\textsuperscript{315} See Muralidhar, supra note 203 at 112.


\textsuperscript{317} \textit{Kishen Pattnayak v. State of Orissa}, supra note 44.
programme, fixing of minimum purchase price for paddy, etc.) being taken to mitigate the situation, the court did not give further directions.

In this regard, a turning point was marked with the filing of a writ petition by the People’s Union of Civil Liberties in 2001 raising the issue of improper implementation of various food-based schemes initiated by the government and the starvation and malnutrition deaths taking place in the country. This resulted in a series of orders issued by the Court directing the effective implementation of eight such schemes, appointing commissioners for monitoring implementation, as well as directing other measures. In one order, it emphasised the government’s responsibility to prevent the poor, destitute, and weaker sections suffering from starvation, observing that schemes without implementation were no use.  

This decision is seen as taking a “great leap forward in advancing the right to food” by specifically defining what the right to food entails, demarcating the beneficiaries, form, and those responsible for realising the right. Its orders have affirmed the authority of the court to order positive action, financial constraints not preventing orders for enforcement in drought-affected areas, thus demonstrating that social rights can be subjected to judicial determination. The court’s approach in the decision was “strong”, some orders such as on allocation of resources, timelines, and regulating licences to distributors, being criticised as close to law-making and constraining democratic decision-making.  

In Swaraj Abhiyan (II) v. Union of India, where inter alia, implementation of the National Food Security Act in drought-affected areas was in question, it was held that no direction can be issued to make available items beyond those specified in the Act, and that in matters involving

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318 People’s Union for Civil Liberties v. Union of India, supra note 45, order of 2 May 2003.
319 Birchfield and Corsi, supra note 290 at 718.
320 Kothari, supra note 65 at 39.
321 Wesson, supra note 237 at 291; Abeyratne, supra note 58 at 48, 50, 54; Birchfield and Corsi, supra note 290 at 700. The orders of the court included universalisation of the ICDS and continuance of the mid-day meal scheme in drought affected areas even during summer vacations. Birchfield and Corsi, ibid. It has also been argued that the Court could have drawn on recent advances made in the understanding of the right to food at the international level. Kothari, id. at 39. For Abeyratne, if, rather than indulging in policy-making, the court measured government steps against a reasonableness standard, as done in the South African context, the democratic objection would be mitigated. Abeyratne, supra note 58 at 55.
322 Supra note 202, ¶¶ 13,17,23.
financial issues and prioritisation of finances, the court must show deference to priorities determined by the state unless there is a statutory obligation to be fulfilled. However, it rejected the contention that fiscal constraints were an excuse for denial of benefit in drought affected areas.

In both PUCL and Swaraj Abhiyan, the court has essentially enforced pre-existing schemes or legislation, or what the government has already done, giving it more “democratic credibility”. Nonetheless, its orders been “quite radical both in [their] objective to make justiciable an affirmative right to food, and in [the] means and methods of enforcing that right.”

Besides starvation and malnutrition, the Supreme Court has also addressed food adulteration in its decisions, enforcing the element of quality, an important aspect of the right to food. Swami Achyutanand Tirth v. Union of India brought up the issue of adulterated and synthetic milk. In light of the impact of adulterated milk on health, the Court issued various directions including for better implementation of the Food Safety and Standards Act, 2006; more stringent action on those engaged in the same; measures for sampling and testing; constitution of a committee; and enhancing consumer awareness among others.

Water: Access to clean drinking water and provision of water sources, where not available, are similarly part of the right to life. In A.P. Pollution Control Board II v. Prof. MV Nayudu, “the right to

323 Robinson, supra note 37 at 51. This would also be the case where the court is protecting discriminated groups, requiring the parliament to enforce its laws, setting baselines for the public which may be insufficiently aware or unaware, or supporting the overshadowed preferences of the public. Id. at 53.
324 Birchfield and Corsi, supra note 290 at 701.
325 Special Writ Petition 1379/2011, Supreme Court of India, 5 August 2016, ¶22 (Bench Strength: 3). The Court noted that some states had enhanced the punishment for adulteration under the IPC to imprisonment for life, and directed other states to consider the same (¶12). See also Centre for Public Interest Litigation v. Union of India, Writ Petition 681/2004, Supreme Court of India, 22 October 2013 (Bench Strength: 2). In this case, the impact of soft drinks, and more generally of chemical additives in food on human health was in question before the court, the petitioner seeking the constitution of a committee to evaluate the same. The Court emphasising that hazardous or dangerous food articles can be a danger to the right under article 21, observed that a “paramount duty” was cast on the state to achieve an appropriate level of protection to human life and health and that the provisions of the Food and Safety Standards Act and Prevention of Food Adulteration Act were to be interpreted in light of these principles. While enjoyment of life includes enjoyment of food without pesticides and other harmful substances, there are food articles with harmful substances beyond tolerable limits. The Food and Safety Standards Authority was thus directed to conduct periodic inspections and tests of fruits and vegetables to ensure compliance with the Act.
access to drinking water” was held “fundamental to life”, recognising “a duty on the State under Article 21 to provide clean drinking water to its citizens”. In *Narmada Bachao Andolan v. Union of India*, water was seen as “the basic need for the survival of human beings” and “part of right of life and human rights as enshrined in Article 21 of the Constitution of India [which] can be served only by providing [a] source of water where there is none.”

Shelter: A third basic need, shelter, has similarly been read by interpretation into the right to life. In *Chameli Singh*, the court interpreted the right to shelter to mean not merely protection to life and limb but a home where a person has the opportunities to grow physically, mentally, intellectually, and spiritually and as including all the infrastructure necessary to enable individuals to live and develop as human beings. The connection with civil and political rights was specifically acknowledged recognising that this would also play a role in helping people develop as useful citizens and equal participants in democracy. In *Kapila Hingorani v. State of Bihar*, where the issue under consideration was arrears of salaries of employees of state owned corporations, the court also looked into the importance of the right to shelter among other basic necessities. More recently in *People’s Union for Civil Liberties v. Union of India*, the issue of shelter for the homeless was raised, with the Supreme Court directing the Delhi Government to set up more shelters for the homeless in winter.

However, some have noted that the Court has never recognised any positive obligation on the state to provide shelter to the homeless. Instances of slum clearance are often cited to

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326 (2001) 2 SCC 62 (Bench Strength: 2).
327 (2000) 10 SCC 664 (Bench Strength: 2).
329 *Kapila Hingorani*, id.; See also *Shanti Star Builders v. Narayan Khimalal Totame*, AIR 1990 SC 630 (Bench Strength: 3).
330 *Supra* note 45, order of 20 January 2010 in IA 94.
331 See Muralidhar, *supra* note 203 at 112.
illustrate the court’s approach in line with neoliberal principles and not with protection of socioeconomic rights of slum-dwellers, who are poor and lack alternative access to shelter.\textsuperscript{332}

In other instances too, courts have adopted a deferential approach in this regard.\textsuperscript{333} In \textit{Almitra Patel}, while steps to improve sanitation in slums were directed, providing “encroachers” with an alternative site was likened to “reward[ing] a pickpocket”, showing apathy to the slum dwellers plight.\textsuperscript{334} Similarly, in the \textit{Narmada Bachao Andolan}, showing deference to the state, the decision on an “infrastructure project” was held to be a policy matter, which courts were “ill-equipped” to adjudicate on,\textsuperscript{335} though the socioeconomic rights of those displaced were involved.

\textbf{Right to Health and Medical Care}

The right to health and in particular to medical care\textsuperscript{336} is another facet sought to be protected a plethora of decisions under article 21. In \textit{Paschim Bangh Kheth Mazdoor Samity},\textsuperscript{337} the Court

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\item \textsuperscript{332} Id. at 113–14; Anuj Bhuwania, \textit{Courting the People: Public Interest Litigation in Post Emergency India} (Cambridge University Press, 2017); Parmanand Singh, “Social Rights Good Governance: The Indian Perspective”, in C. Raj Kumar and D.K. Srivastava (eds), \textit{Human Rights and Development: Law Policy and Governance} 437–54 (Lexis Nexis, Hong Kong, 2006). The PIL filed in the context of the networking of rivers was seen as related to development aspirations and economic prosperity. D’Souza, supra note 80 at 495. Other instances of such a neoliberal “bent” include indifference to victims of the Bhopal Tragedy, and indifference to problems of the impoverished in the run-up to the commonwealth games, identified by Prof Baxi who terms it as structural adjustment of judicial activism. Baxi, supra note 59. D’Souza further notes that “democratic development” internalised in the country has meant that “the crisis introduced by neo-liberalism manifests as a constitutional and legal crisis that touches the basic structure of the constitution, so assiduously upheld and defended by India’s Supreme Court”. D’Souza, \textit{id}. at 500. Prof Baxi, who finds that the shifts that the constitution has undergone since its adoption imply a multiplicity of constitutions, specifically seven, identifies the seventh as being a neoliberal constitution defining the country as a vast global market at odds with most of the previous constitutions including the post-Emergency one of expansive judicial activism. Baxi, \textit{id}. See also the discussion of this issue in chapter VI in this study. On the other hand, the decision in the Niyamgiri case, \textit{Orissa Mining Corporation Ltd. v. Ministry of Environment and Forests}, supra note 254, the court took into account the tribal ethos, and recognised their contributions in environment management delegating the decision on forest clearance for mining to the Gram Sabha including the question of whether they had any religious rights and whether their religious rights to worship the hill-top Niyam-Raja would be impacted by the proposed mining areas.
\item \textsuperscript{333} Wesson, supra note 237 at 291.
\item \textsuperscript{334} \textit{Almitra Patel v. Union of India}, AIR 2000 SC 1256 (Bench Strength: 3). In this decision, slum-dwellers were not afforded opportunity of hearing. Pillay, \textit{supra} note 62 at 347; Muralidhar, \textit{supra} note 203 at 121.
\item \textsuperscript{335} \textit{Narmada Bachao Andolan v. Union of India}, \textit{supra} note 327. This decision is characterised as “restrained” and also falls into this category under the Cohn–Kremnitzer model, but on looking at separate parameters, failure to implement and adverse public reaction point to a more activist stance than a restrained one. Khosla, supra note 223 at 92–93. The dissent in \textit{N.D. Jayal v. Union of India}, (2004) 9 SCC 362, which related to the Tehri Dam, on the other hand, considered the social costs of displacement in more detail, though the majority opinion followed the Narmada decision. Muralidhar, \textit{id}. at 119.
\item \textsuperscript{336} See \textit{State of Punjab v. Mohinder Singh Chawla}, AIR 1997 SC 1225, 1227 (Bench Strength: 2); C. Ganesh v. \textit{The Central Administrative Tribunal}, W.P. 11583/2011, Madras High Court, Decided on 27 September 2011 (Bench
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traced the obligation of the state to provide adequate medical facilities to its being a welfare state with the primary responsibility to secure people's welfare. In Consumer Education and Research Centre v. Union of India, the Court read article 21 with the directive principles in articles 39(e), 41, and 43 to recognise the right to health and medical care, which makes the life of a workman meaningful and purposeful with dignity of person. An earlier decision, Calcutta Electricity Supply Corporation v. Subhash Chandra Bose, noted the relationship with civil and political rights holding the right to physical and mental health to be part of the right to life towards the aim of creating an egalitarian society with liberty available to all, including vulnerable sections.

In State of Punjab v. Ram Lubhaya Bagga, taking into account article 47, the Court defined the obligation of the state on the right to health, in effect stressing its duty to ensure the availability of quality healthcare facilities:

...the right of one is an obligation of another. Hence the right of a citizen to live under Article 21 casts an obligation on the state. This obligation was further reinforced under Article 47 wherein it is for the state to secure health to its citizens as its primary duty. No doubt, government is rendering this obligation by opening government hospitals and health centers, but in order to make it meaningful, it has to be within the reach of its people as far as possible or reduce the queue or waiting lists, and it has to provide all facilities.... Its upkeep, maintenance and cleanliness has to be beyond aspersion, it must employ the best of talents and tone up its administration...also bring in awareness in

Strength: 2). This recognition and the articulation of the right to health has been noted to have taken place from the mid-nineties. Kothari, supra note 65 at 44.

338 AIR 1995 SC 922 (Bench Strength: 3).
339 AIR 1992 SC 573 (Bench Strength: 3).
340 AIR 1998 SC 573 (Bench Strength: 3). In another case on health, faith healing for consideration was held violative of the constitutional and legislative scheme in Rajesh Kumar Srivastava v. A.P. Verma, AIR 2005 All 175, ¶19 (Bench Strength: 1). The Court observed: "No person has a right to make a claim of curing the ailments and to improve health on the basis of his right to freedom of religion. Every form and method of curing and healing must have established procedures, which must be proved by known and accepted methods, and verified and approved by experts in the field of medicines". The obligation of the state included providing adequate measures for treatment and protecting citizens against unauthorised medical practices. Rajesh Kumar Srivastava v. A.P. Verma, id., ¶16. At the same time, the Court observed that it was not concerned with the question of people's right to choose any form or method or to have belief and faith for curing his ailments.
hospital staff for their dedicated service, give them periodical medico-ethical and service oriented training, not only at the entry point, but also during the whole tenure of their service.

Another facet of this right, to emergency medical services has been specifically recognised by the Court. In *Savelife Foundation v. Union of India*,\(^ {341}\) while deciding a petition related to road safety and delay in medical help, the court recognised the right to safety on roads as part of the right to life and that “immediate medical assistance as a necessary corollary”.

Preventive health has also been addressed in decisions such as *Murli S. Deora v. Union of India*,\(^ {342}\) wherein smoking was prohibited in public places, and *M.C. Mehta v. Union of India*,\(^ {343}\) where in the context of vehicles not meeting the Bharat IV emission standards, the court observed that the health of the people is far more important than the commercial interest of manufacturers.

Access to medicines and treatment for rare and chronic diseases for poor individuals/sections was the subject matter of a petition before the Delhi High Court, in *Mohd. Ahmed (minor) v. Union of India*.\(^ {344}\) A child belonging to an economically weaker section was suffering a rare ailment requiring expensive treatment. The Court held that the state had a core “non-derogable” obligation and while difficult to define, it included at least the minimum decencies of life with dignity. “A reasonable and equitable access to life saving medicines is critical to promoting and protecting the right to health.”\(^ {345}\) At the bare minimum, the government must ensure that individuals have access to essential medicines even for rare diseases although the right to health may be progressively realisable.

\(^ {341}\) *Savelife Foundation and Another v. Union of India and Another*, supra note 48. The Court also stressed on the need to protect good Samaritans from harassment.

\(^ {342}\) (2001) 8 SCC 765 (Bench Strength: 2).

\(^ {343}\) Writ Petition (C) 13029/1985, 29 March 2017, Supreme Court of India (Bench Strength: 2), (2017) 4 SCALE 113.

\(^ {344}\) Supra note 269.

\(^ {345}\) Id., ¶68. The Court also emphasised encouragement of CSR and donations in towards provision of essential medicines.
The duties of doctors have also been emphasised by the court as far as concerns government doctors, who have been held duty bound to extend medical assistance for protecting life, which cannot be delayed or avoided on account of any law or state action.  

While it has been acknowledged that financial resources are required to provide health services, the notion of progressive realisation being reflected in some of the court’s decisions, the court has also not accepted that social rights (core obligations) cannot be enforced on this account.

Thus the court has not only recognised the right to health in broad terms as a part of the right to life but different facets in its decisions, such as emergency healthcare, preventive health measures, and access to medicines besides the role of financial constraints. The decisions on financial constraints discussed above are in line with the minimum core requirement and reflect the ICESCR’s “available resources” requirement. In Raj Kumar’s opinion, however, “rights-based jurisprudence for the right to health has not developed as strongly as it has in the context of the right to education”, and courts in the country have also not set out any content of the right, which at the minimum includes a person’s right to healthcare.

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As discussed previously in this section, the Courts’ approach to protection of socioeconomic rights has been praised, as well as criticised with some seeing it as justified due to failures of the executive and legislature in carrying out their functions. On the other hand, it puts fundamental

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346 Parmanand Katara v. Union of India, supra note 48.  
347 Paschim Bangh Kheth Mazdoor Samiti v. State of West Bengal, supra note 48. Noting that the observations in Khatri v. State of Bihar, AIR 1981 SC 928, that financial constraints cannot be an excuse for avoiding a constitutional obligation is applicable to the right to health, the court observed that: “In the matter of allocation of funds for medical services the said constitutional obligation of the State has to be kept in view. It is necessary that a time-bound plan for providing these services should be chalked out....”. State of Punjab v. Ram Lubhaya Bagga, supra note 340; Mohd. Ahmed (minor) v. Union of India, supra note 269. See also Kothari, supra note 65 at 44-45.  
348 Raj Kumar, supra note 50 at 371, 373.
notions of legal certainty and the separation of powers in jeopardy. Moreover, the courts’ approach as noted, has been criticised for not justifying its departure from article 37 sufficiently and its selective enforcement of rights. Others, however, find the judicial “dismantling” of the barriers between the directive principles and fundamental rights is supported by the “temporary nature of the distinction” and interdependence between the two sets of rights, while the “constitutional anchor” under which the Court has taken up the cause of the poor, articulates the boundaries for judicial action and would serve to protect against the roll back of human rights. In the long-term, however, express legal enforcement is seen as necessary for socioeconomic rights to have legitimacy, credibility and consistency as human rights.

Prof M.P. Singh, criticising the approach of the Supreme Court of “implementing” directive principles through the interpretation of fundamental rights, writes, “the mere fact that the courts are unable to do anything about the Directive Principles so long as they are Directive Principles, but could enforce them if they were Fundamental Rights, points out in the direction of ineffectiveness, if not inferiority, of the Directive Principles.” He also opposes the selective transfer of the directive principles to part III through constitutional amendments viewing this as “further weaken[ing] the position of the Directive Principles” and disturbing the harmony and balance between the two, which is part of the basic structure of the Constitution.

349 Wiles, supra note 53 at 58–59. The separation of powers envisaged by the Indian Constitution is not strict but the Court has recognised that no one branch can usurp the functions of the other but in practice the boundaries are narrowed considerably when it comes to PIL, with the court at times, even obliterating the distinction between law and policy, as illustrated in the Vishaka decision. Desai and Muralidhar, supra note 227 at 176–77.
350 Wiles, id. at 59; Deva, supra note 59 at 37; Abeyratne, supra note 58 at 64.
351 Birchfield and Corsi, supra note 290 at 709, 712.
352 Wiles, supra note 53 at 59. Reddy too supports the conversion of directive principles to fundamental rights. He writes: “The Directive Principles were never meant to be as such in perpetuity. The mandate of the Constitution is that they must be implemented when the time is ripe politically, economically and socially.... Thus if the right to education, health, pollution free environment, public assistance, etc. are incorporated as Fundamental Rights instead of impliedly reading them as part and parcel of Article 21, that would reduce the burden of the courts substantially and consequently, it would also give effect to most of the directive principles to secure a welfare state so that the state can regulate the life of its subjects from cradle to grave in the true spirit of a welfare state.” Further, “[u]nless and until the judicial activism of the courts in India in respect of the Directive Principles is matched by the equally active legislature, the very spirit of the Directive Principles would be diluted and the same would be at the cost of securing a welfare state.” Reddy, supra note 82 at 61–62.
353 Singh, supra note 56.
354 Id.
Khosla, however, explains the Indian courts’ approach differently, observing that this requires us to be sensitive to the distinction between systemic and conditional social rights; and that a study of the Indian constitutional practice reveals that the existence of social rights is conditional on the state action undertaken, and in several cases, the court enforces claims appropriately described as constitutional tort actions. This approach involves a weaker form of review than the systemic social rights approach, though in certain respects the intensity of review undertaken is greater. Numerous cases such as the “right to food” petition, Swaraj Abhiyan (II), etc. fall within this category.

In sum, though, as Pillay notes, irrespective of not having a clear but rather an oscillating approach on socioeconomic rights issues, the Supreme Court is seen as having made “an important contribution to the burgeoning acceptance that courts have a role to play in implementing rights to healthcare, housing, food, water, etc.”

Standards of Judicial Review

Judicial review of human rights is contentious and even more pronouncedly so in the case of socioeconomic rights which are seen as beyond the realm of the courts’ mandate and expertise. The “human rights record” of the Supreme Court, is “a product of the post-Emergency period in Indian politics”. It has, as discussed, extended to recognition and enforcement of socioeconomic rights, through liberal interpretation of the fundamental rights. In fact, as Dharmadan argues, it is increasingly difficult to draw a line between the fundamental rights and directive principles, while the courts are exercising the power of judicial review. Unlike initially, where failure to discharge a duty under the directive principles had only as a consequence political criticism and adverse

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355 Khosla, supra note 223 at 742. Both Paschim Bangh and Consumer Education and Research Centre, for instance, are in line with the conditional social rights approach focusing respectively on the inability of the state to effectively run hospitals, and inadequate statutory framework in place. Id. at 755–56.
356 Id. at 765. Tushnet finds Khosla’s analysis quite provocative, and likely to influence future discussions on these issues. Tushnet, supra note 53 at 185.
357 Pillay, supra note 62 at 356.
358 Pillay, supra note 293 at 386.
359 Rajagopal, supra note 252 at 159; See also Kothari, supra note 65 at 34; Sripati, supra note 247 at 441.
election results, now at least in some areas, the rights of citizens are seen as vitally connected with fundamental rights, and failure to discharge obligations may lead to invalidity of legislation or executive actions.\footnote{Dharmadan, supra note 59 at 316.} This activist stance is justified in the light of the non-responsiveness of other branches of the state as concerns their responsibilities in the realisation of rights. The Court itself has stressed that its intervention is warranted only where it finds a failure to perform by those charged by the Constitution or Statute to perform particular functions.\footnote{Murlidhar, supra note 245 at 3.}

While it is seen as reluctant to intervene where the issue is the realm of executive or legislative policy,\footnote{Murlidhar, ibid.} this is not always the case. For instance, \textit{Vishaka v. State of Rajasthan}, saw the Court issuing guidelines on prevention of sexual harassment at the place of work to be enforceable until a suitable law was enacted, thus entering the field of policy-making.\footnote{(1997) 6 SCC 241. This was, however, an area in which the legislature had failed to act. Desai and Muralidhar, supra note 227 at 178.}

While directive principles are not enforceable, the Court has indicated in \textit{Sachidananda Pandey},\footnote{Supra note 267.} that in the case of these principles, at the very least it will look into whether appropriate considerations have been taken into account and irrelevant ones excluded. Thus a minimum standard would have to be met, even if the right itself is not enforceable, where the Court would look into the considerations taken into account and may go beyond this when appropriate to an extent depending on the circumstances of the case. Also, as far as remedies are concerned, it may always give necessary directions. However, this standard does not appear to be consistently followed, though it can be said that stronger action has been taken recognising many socioeconomic rights as justiciable. In \textit{Gaurav Kumar Bansal v. Union of India},\footnote{Writ Petition (C) 536/2012, 9 September 2014, Supreme Court of India (Bench Strength: 2), ¶8.} it was recognised...
that the preamble of the Constitution along with articles 38, 39 and 39A enjoins the state to take all protective measures to which a social welfare state is committed. In Mohd Ahmed, the Delhi High Court expressly recognised the existence of a minimum core obligation in the context of health but acknowledged that it is difficult to define and did not lay down any specific parameters except of decencies of life consistent with dignity.

In the context of protective legislation pertaining to employment, in Anuj Garg v. Hotel Association of India, it was observed that, assessing the implications of legislation with the aim of protective discrimination (potentially, double-edged swords), requires employment of a strict scrutiny test, with the legislation to be tested on its proposed aims, implications, and effects. Such legislation should be justified in principle and proportionate in measure.

The court has also recognised that the directive principles and fundamental rights share a common goal, and that they must be read into the latter, when judging the reasonableness of restrictions on fundamental rights, the latter having to be interpreted in light of the former. While the court has liberally interpreted the right to life to include various aspects of the directive principles required for a life with dignity, it is unclear what the limits of a life with dignity are, and what standards are applied to determine intervention. As far as concerns these rights, no clear-cut test or standards emerge which have been consistently applied or would determine the likelihood of the courts’ intervention.

The conditional social rights analysis proposed by Khosla indicates that court intervention on social rights issues may be conditional on government action taken. This is illustrated for instance by Olga Tellis, where alternative accommodation to those being deprived of shelter was directed to be provided to those who held ID cards and were entitled to such accommodation under the government policy, and in Ahmedabad Municipal Corporation where only those persons were held

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366 Supra note 310.
367 Id., ¶ 48.
entitled to apply for the state scheme who were originally squatting on the land. In such a model, violations would occur where the state undertakes certain action but fails to fulfil the same. The "right to food" petition, Swaraj Abhiyan (II), Swami Achyutanand Tirth, Paschim Bangh, and Ram Lubhaya Bagga, were also concerned with existing legislation, schemes, or infrastructure. Such an approach may, as noted, involve a weaker though more intense form of review in some respects, but may have a downside of discouraging the state from initiating social programmes.

Pillay, however, finds that state action is only one factor that determines the extent of court intervention or deference in social rights cases. While "pre-existing governmental commitments" and limited resource implications are relevant to determine the success of claims, enabling courts to find the existence of a duty (as also identified by the "conditional social rights" explanation), this does not explain the lack of coherence in the courts approach, and guarantees no standards.

While the courts have set out various standards to determine their intervention in social rights matters or such standards emerge from the decisions in this regard, it is difficult to identify a fixed test or set of standards ordinarily applied in such cases (for instance, the reasonableness review in the South African context). Commentators too, have remarked on lack of a clear standard of review, in fact advocating a more principled approach so as to develop a more effective model for adjudication of socioeconomic rights.

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368 Khosla, *supra* note 223 at 748, 751. He draws further support from Unnikrishnan which merely required that the education provided from the ages of six to fourteen be free of charge and not that the state provide such education compulsorily to all students or even that it build schools for this purpose. *Id.* at 751. Bandhua Mukti Morcha too illustrates this approach where the Court based its intervention on legislation already enacted due to which the state could be obligated to ensure observance of the same. It took care as Scott and Macklem write, to not enforce the directive principles directly, rather holding the government to its own statutory promises. Scott and Macklem, *supra* note 55 at 118–19. Similarly, Achyutanand Tirth involved an implementation of existing legislation.

369 Khosla, *id.* at 764. Gauri points out though that the expansion of judicial activity into social and economic areas has catalysed more often than paralysed activity by the legislative and executive branches. Gauri, *supra* note 234 at 5.


371 As Khosla notes, while in the Indian Supreme Court's jurisprudence, one finds a passionate expression of the justiciable nature of social rights, little effort has been expended to elaborate on the standard of review or indeed their nature. Khosla, *id.* at 743. Pillay similarly remarks on the lack of clarity observing “[i]t is extremely difficult to ascertain when and how the court will make use of the directive principles”, as socioeconomic rights have not always been attributed to these principles. Pillay, *supra* note 293 at 399, 408.

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Mechanisms Evolved or Adopted by Courts

In the enforcement of basic human rights, including economic and social rights, courts have adopted a number of new mechanisms and remedies contributing towards ensuring better access to courts as well as improved enforcement.

One such development is the appointment of commissioners by the Court for ascertaining or independently verifying facts presented by parties, as well as at the stage of implementation to ensure enforcement of orders, and proposing remedies.\textsuperscript{373} Besides Commissioners, for fact-finding, the Court has also relied on empirical data, expert studies, and expert bodies, for instance, in \textit{Indian Council for Enviro-legal Action v. Union of India},\textsuperscript{374} where NEERI was required to report on soil pollution and groundwater in the area.\textsuperscript{375} Fact-finding commissions were appointed in \textit{Bandhua Mukti Morcha},\textsuperscript{376} and in \textit{Sheela Barse v. Union of India}.\textsuperscript{377} Another more recent case in which the mechanism of appointment of court commissioners has been employed is \textit{People’s Union for Civil Liberties v. Union of India},\textsuperscript{378} where two Commissioners were appointed for monitoring

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\item \textsuperscript{373} Murlidhar, \textit{supra} note 245 at 3; Abeyratne, \textit{supra} note 58 at 47.
\item \textsuperscript{374} (1996) 3 SCC 212 (Bench Strength: 3).
\item \textsuperscript{375} But as Desai and Muralidhar point out, this procedural innovation can also have a downside with the reports not being proved as evidence, with one case in which counter affidavits were not allowed to be filed against the report of an expert body. Desai and Muralidhar, \textit{supra} note 227 at 180. On the other hand, elsewhere Muralidhar notes that the Court does hear objections against reports before deciding on accepting or rejecting them. See Muralidhar, \textit{supra} note 203 at 110. Over a decade earlier, Prof. Baxi too had raised the issue of evidentiary and procedural questions being raised by such appointment of commissions, while holding the mechanism as such to be novel. Baxi, \textit{supra} note 227 at 126.
\item \textsuperscript{376} \textit{supra} note 52. The Court appointed a commission to inquire into allegations raised by the petition. It observed, “If the Supreme Court were to adopt a passive approach and decline to intervene...because relevant material has not been produced before it by the party seeking its intervention, the fundamental rights would remain merely a teasing illusion so far as the poor and disadvantaged sections...are concerned. It is for this reason that the Supreme Court has evolved the practice of appointing commissions for the purpose of gathering facts and data in regard to a complaint of breach of fundamental right made on behalf of the weaker sections of the society. The Report of the commissioner would furnish prima facie evidence of the facts and data gathered by the commissioner and that is why the Supreme Court is careful to appoint a responsible person as commissioner to make an inquiry or investigation into the facts relating to the complaint.”
\item \textsuperscript{377} (1995) 5 SCC 604 (Bench Strength: 2). In this case a senior advocate was given the charge of investigating and reporting on the conditions of detention of mentally ill women and children.
\item \textsuperscript{378} \textit{Supra} note 45, order dated 8 May 2002. The Commissioners also played a role in mediating and negotiating changes in laws, policies, and programmes directly with the central and state governments towards achieving implementation and inclusion of marginalised sections. Birchfield and Corsi, \textit{supra} note 290 at 728.
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implementation of the various interim orders and reporting to the court on the implementation of various schemes and measures.

Additionally, in such cases, courts often appoint amicus curiae to assist them in addressing the issue in legal terms, and sifting out relevant facts; and at times, the issue being more important than the person bringing it, it is not open to petitioners to withdraw the case, though the court may allow the petitioner to withdraw from the case.³⁷⁹

PIL cases are also not disposed of by a single final judgment; instead, a series of short orders are passed, and their implementation monitored before any final judgment is passed, described by the court as "continuing mandamus"; the court sometimes retaining the case even post the final judgment.³⁸⁰ Such a mechanism can be seen in the "right to food" petition of 2001. In Swaraj Abhiyan v. Union of India,³⁸¹ which was concerned with implementation of the National Food Security Act, continuing mandamus was observed to be "an integral part of our constitutional jurisprudence". Such supervision is seen in poorly governed nations, where the courts are more responsive to inertia.³⁸²

In cases, the court also builds into its orders, a forewarning of consequences of disobedience or non-implementation of the orders.³⁸³

The Supreme Court has also evolved unorthodox and unconventional remedies, intended to initiate affirmative action on the part of the state and its authorities.³⁸⁴ For instance, numerous

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³⁷⁹ Murlidhar, supra note 245 at 3. In regard to this aspect, it has been noted to be moot whether the appointment of amicus curiae prevents the petitioner from being heard by the court. Desai and Muralidhar, supra note 227 at 167.
³⁸⁰ Murlidhar, ibid. This process is termed by Baxi as the "creeping jurisdiction" of the court, which in his view can bring about "gradualist institutional renovation" but no answer to the questions raised by victims of repression. Baxi, supra note 227 at 122, 124. Deva, supra note 59 at 26 adopts the same expression. An instance of the retention of a case after the final judgment was D.K Basu which continued to be monitored for implementation of the directions therein for years after disposal of the main case. Murlidhar, ibid.
³⁸¹ Supra note 202.
³⁸² Khosla, supra note 223 at 760.
³⁸³ Murlidhar, supra note 245 at 3. In M.C. Mehta v. Union of India, Writ Petition (civil) 13028/1985, decided on 26 March 2001 (Supreme Court of India) (Bench Strength: 3) the court clearly directed that commercial vehicles would not be permitted to ply after the specified date unless converted to CNG.
³⁸⁴ Kothari, supra note 65 at 35.
directions were given in *Bandhua Mukti Morcha v. Union of India*,
including preparation of a scheme for rehabilitation of the freed workers; ensuring payment of minimum wages; addressing stone-dust pollution caused by the work; provision of wholesome drinking water, medical treatment, etc., besides surprise inspections, and monitoring implementation of directions. Again, in *People’s Union for Civil Liberties v. Union of India*, the court directed strict compliance with various government schemes specifying timelines, and measures for accountability. In contrast, in its initial post-emergency cases, the court is noted to have been keen to aid poor and vulnerable sections evident in the “tenor and outcome” of its pronouncements but not the remedies. But it is also the remedies stage, at which courts are noted to have afforded themselves “extensive leeway” that is most criticised on account of usurpation of the legislatures’ authority.

**Status of Implementation of Decisions**

Writing in 1982, Prof. Baxi noted that while students of the Supreme Court often considered the “meaning” of judgments, the impact of the decision/line of decisions was not asked. In the context of the judiciary’s role in economic and social rights, it is essential to consider the status of implementation of its decisions as, if decisions are not implemented, the rights remain paper protections, their recognition not translated into any real change for those aggrieved. Moreover, “if judgments remain unimplemented, or have less impact than intended, judicial power (and independence) is meaningless”, and questions are raised against the justification for the clear violations of the separation of powers.

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385 Supra note 52.
386 Supra note 45, order of 28 November 2001 (directing full compliance with schemes and distribution of foodgrains thereunder; setting out timelines for implementation of certain schemes such as the national family benefit scheme and Antodaya Anna Yojana; and certain measures for accountability such as displaying lists of beneficiaries and making them available for inspection.)
387 Pillay, supra note 62 at 356.
388 Holladay, supra note 225 at 562.
While impact is often understood as “effectiveness or the actual result”, this is a broad meaning, a large number of consequences resulting from a decision, not all relatable to what happened when the court gave its decision; with compliance being important but only a subset of impact.\footnote{Baxi, supra note 389 at 850.} It may include compliance, impact as hierarchical control by the judiciary; response of government agencies, and social impacts such as regulation of behaviour, besides unintended impacts which may accompany intended ones but cannot wholly be ignored.\footnote{Id. at 851.} Another “impact” of Indian judicial decisions, referred to by Deva as “second-tier” influence is that of Indian judicial decisions in areas such as environment in other South Asian courts including that of Hong Kong.\footnote{See Society for Protection of the Harbour v. Town Planning Board, [2003] HKEC 849, cited in Deva, supra note 59 at 32. Deva also contends that in terms of impact, judicial intervention may be criticised on the ground that it may result in reducing rather than enhancing accountability of the other two branches as they would see the judiciary as ready to step in if they failed to act. Surya Deva, “Public Interest Litigation in India: A Critical Review”, 28(1) Civil Justice Quarterly 19, 37 (2009).} Another “impact” of Indian judicial decisions, referred to by Deva as “second-tier” influence is that of Indian judicial decisions in areas such as environment in other South Asian courts including that of Hong Kong.\footnote{Sitapati, supra note 390 at 59–60; Baxi, supra note 389 at 855.}

In considering impact of judicial decisions, the factors that determine or affect impact must also be considered. Besides the civil society movements or litigating movements which play a vital role in this regard, factors include how the judgment has been written, and whether the state has the capacity to implement the judgment on the ground; the nature of the judicial system; prevalent social, economic, and political conditions; follow-up measures; political culture; and expectations of those sought to be impacted.\footnote{Baxi, id. at 856.} Time is another relevant factor for there may be instances of judgments (the most oft-quoted instance being of Marbury v. Madison), which may not have an immediate or short run impact but may prove crucial in the long run.\footnote{Baxi, supra note 389 at 856.}

For Prof. Baxi, the impact of social action litigation is difficult to assess in terms of compliance as much of it is at interlocutory or interim order stages though its normative or ideological impact may be measured; for instance, while Hussainara Khatoon led to the release of a
number of undertrials, for as long as three decades, cases still came up from the state of Bihar, involving undertrials.\textsuperscript{396}

Supporters of activism assume that judgments are immediately complied\textsuperscript{397} with as well as that there are other kinds of impact—indirect impacts, shaping public opinion, creating everyday rights consciousness, shaping government policy, and redefining social movements, besides the impact on lower court decisions.\textsuperscript{398}

The impact of judicial decisions, in some instances, is, as Prof Baxi points out, clearly discernible, and may result in consequences such as constitutional amendments to nullify the impact of the decision; supersession of justices; and retrospective amendments and validation Acts, such actions also discernible in other democracies.\textsuperscript{399} Sitapati classifies such consequences as “legal” and “illegal” non-compliance, with the former including constitutional amendments to nullify impact, and the latter, instances of bureaucracy simply not enforcing the judgment or politicians subverting the judgment through informal means, being easier to understand though harder to measure.\textsuperscript{400}

Clarity is an important factor in compliance, greater clarity leading to greater compliance, and incorrect comprehension to inadvertent non-compliance.\textsuperscript{401} Pillay attributes the “huge backlog” of cases in the country, to among other reasons, the need for cases to repeatedly be brought before the courts for “fine-tuning” or due to non-implementation due to inaccurate

\textsuperscript{396} \textit{Id.} at 860–61.
\textsuperscript{397} As Sitapati explains, while a simple way to define compliance is whether what the judge has unambiguously asked for, has taken place on the ground, it needs to be borne in mind that there is often a gap between the intention of the judge and the textual order or operative part of the order and the general principles set out. Further, compliance and legality need to be distinguished as there are many ‘legal’ ways to avoid compliance with judgments, such as a constitutional amendment. Sitapati, \textit{supra} note 390 at 58.
\textsuperscript{398} \textit{Id.} at 55, 58.
\textsuperscript{399} Baxi, \textit{supra} note 389 at 849. The frequency of such constitutional amendments is however distinctive to India. \textit{Id.} at 849.
\textsuperscript{400} Sitapati, \textit{supra} note 390 at 58. Baxi too finds that evasion may also be direct, as human groups find it difficult to carry out effective acts for which they do not have underlying beliefs. Baxi, \textit{id.} at 850.
\textsuperscript{401} Baxi, \textit{id.} at 850, 853. Ebadolahi too finds that even if mandatory orders of the court are framed too generally, the government’s obligations will remain imprecise. Mitra Ebadolahi, “Using Structural Interdicts and the South African Human Rights Commission to Achieve Judicial Enforcement of Economic and Social Rights in South Africa”, 83 \textit{New York University Law Review} 1565, 1588 (2008). As Baxi writes, an important aspect of judicial power, is the ability to communicate decisions to those sought to be influenced or impacted by the decision. Baxi, \textit{id.} at 852.
assessment of the wider implications of their orders.\textsuperscript{402} As Prof. Baxi writes, another effect of ambiguity is forcing people to return to the court to clarify what the court meant which would increase the control of the judiciary over the policy making process for clarity in the judgment would lead to decentralisation of the caseload and self-administration by lower courts or counsel.\textsuperscript{403}

Furthermore, in India, the Supreme Court comprising multiple benches (and not sitting as a whole as it did in the past, and as does the South African Constitutional Court) is seen as adding to difficulties in socioeconomic rights cases giving rise to inconsistencies due to the high volume of litigation, which is an issue required to be addressed on priority.\textsuperscript{404}

In the Indian context, as has been observed, despite activism, “the impact of the Court on ground reality has not been consistent” and as shown by studies, its seminal rulings have not translated to reality, many decisions not being implemented and rampant violations continuing.\textsuperscript{405} The Law Commission has in fact recommended in its 223\textsuperscript{rd} report, implementation of the Supreme Court’s judgments in “letter and spirit” as a priority so as to address the rights-deprivations and injustices faced by the “have-nots.”\textsuperscript{406} There are, however, instances where the court’s orders have been noted to have been implemented or at least a serious effort in that direction made by the government, central or state, with there also being instances where despite no immediate impact, decisions foster a “political space” in which its orders may be implemented in future or may lead to

\textsuperscript{402} Pillay, supra note 293 at 399.
\textsuperscript{403} Baxi, supra note 389 at 854.
\textsuperscript{404} Pillay, supra note 62 at 353, 356. The issue of inconsistency is highlighted by referring to the Novartis case, in the context of which it is pointed out that besides the patents considerations in the case, the need to ensure access to life-saving drugs to the poor was borne in mind by the court, and that another bench could as likely as held in favour of Novartis had these public interest considerations not weighed as strongly as they did. Id. at 354.
\textsuperscript{406} Law Commission of India, supra note 30 at 42. Various problems that may arise in the context of litigation that has received positive response from the judiciary including poor response by the administration, political backlash, even reduced spending in other areas due to polycentricity besides lengthy litigation, fragmentation of policy efforts, uncertainty, and disruptions which make the activism of courts such as in India “a false promise”. Wesson, supra note 237 at 295.
changes in policy. The judgment in the CNG case is cited as one of the few instances of decisions being unambiguously complied with; the measurement of compliance also being unusually easy in terms of an explicit endgoal, mandated method, and clarity on measurement of compliance. While the right to food judgment has yielded positive results with improvements in both nutrition and education, those on the right to health have had limited impact and directions on bonded labour have also not been fully implemented. Additionally, there is the question of the costs at which these results have been achieved or as to the fairness of distribution achieved.

Analysis of social action litigation should include political responses to it and whether it is perceived as an aid or threat to their legitimation, as this could indicate the actual or potential impact of social action litigation. In discussing longer-term impacts and political responses, one example is of the link between the judgment of the Supreme Court in Unnikrishnan and the Right to Education Act, 2009, on the right to free and compulsory primary education. While some have questioned the impact of the court judgment on the legislation ultimately enacted, others argue that the judgment increased pressure on the government to pass the legislation. The Supreme Court however, views article 21-A as a codification of Unnikrishnan. The case is similar for the right to information. Again the National Food Security Act emerged after food security concerns were raised before the Supreme Court.

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407 Robinson, supra note 37 at 55. Mehta too finds the executive trying to respond to court rulings by making provisions on socioeconomic rights "to one degree or another". Mehta, supra note 230 at 71.
408 M.C. Mehta v. Union of India, supra note 383; Sitapati, supra note 290 at 53.
409 Mehta, supra note 230 at 81; See Muralidhar, supra note 203 at 111.
410 Mehta, ibid.
411 Baxi, supra note 389 at 862.
412 Sitapati, supra note 390 at 59 (noting that there is a question as to the impact of the judgment on the enactment of the RTE Act); Robinson, supra note 37 at 56; Muralidhar, supra note 203 116; Raj Kumar, supra note 50 at 363. For Raj Kumar, another factor in this regard was pressure from the international community on India to honour her ICESCR obligations.
413 Avinash Mehrotra v. Union of India, Writ Petiton (C) 483/2004, Supreme Court of India, Decided on 13 April 2009 (Bench Strength: 2).
414 Robinson, supra note 37 at 57.
Non-implementation has, however, been noted to have only had a marginal impact on the legitimacy of the judicial interventions in this context.\textsuperscript{415} Moreover, PIL has made the courts a “space for democratic deliberation among equal citizens rather than a place of interest group bargaining, which prevails in the legislature”. \textsuperscript{416}

However, as discussed, courts have been taking steps in their judgments as well as in the process of hearing cases itself, to ensure that its orders and directions are given effect to including through appointment of commissioners for monitoring, continuing mandamus, and specifying consequences of non-implementation. To some extent, such steps can be said to have contributed towards improving implementation such as in the right to food case,\textsuperscript{417} though as mentioned, directions on bonded labour have not been fully implemented. Many have pointed to the involvement or backing of strong civil society movements in a PIL as having led to more positive responses such as in the right to food case.\textsuperscript{418} But institutional challenges have been noted to deter NGOs from approaching courts.\textsuperscript{419} A downside of civil society involvement is, moreover, the time spent by relevant government departments in responding to complex cases for years rather than focusing on implementation of programmes besides the complexity of the issues.\textsuperscript{420} Besides involvement, the quality of litigant movements, importantly, also affects judicial impact, as Sitapati notes, viewing these movements as the “glue that both produce a favourable judgment as well as

\textsuperscript{415} Id. at 58. Mehta too points out that despite the mixed success of PIL as far as poverty reduction or the correction of injustices is concerned, providing a forum for “citizens marginalized by the corruptions of routine politics...has arguably given serious moral and psychological reinforcement to the legitimacy of the democratic system”. Mehta, supra note 230 at 71–72.
\textsuperscript{416} Gauri, supra note 234 at 5.
\textsuperscript{417} For instance, Kothari observes that the orders of the Supreme Court in the “right to food” petition are already being implemented at ground level as demonstrated by the compliance with orders on the mid-day meal scheme in Rajasthan, both providing food and resulting in an increase in attendance, sharp increase in enrolment of girls as well as reduction in gender bias. Kothari, supra note 65 at 38–39.
\textsuperscript{418} Kothari, id. at 48; Pillay, supra note 62 at 351. In the right to food case, the Right to Food Campaign has been noted to influence “the concrete revision of policy as directed by the Supreme Court”. It has filed several specific interlocutory applications, provided necessary data, and highlighted the need for attention to disadvantaged groups, besides playing a role in implementation. Birchfield and Corsi, supra note 290 at 720–23. Further as Holladay notes, there was emphasis by lawyers in the litigation on issues of gender equality and LGBT rights on the need to build public opinion when approaching the Court, which also demonstrates the stress on the collective. Holladay, supra note 225 at 569. See also, Singh, supra note 332.
\textsuperscript{419} Pillay, supra note 293 at 399; Pillay, supra note 62 at 353.
\textsuperscript{420} Robinson, supra note 37 at 57.
enforce the judgment”, thereby playing a “dynamic” role. However, despite being effective in “producing” the judgment, civil society movements are unable to implement it. Thus, despite the positive steps, implementation of judicial orders still remains a big issue.

8. Conclusion
Socioeconomic indicators in India, have seen much improvement in the last two decades, in areas such as life expectancy and infant mortality, and promising statistics in areas such as primary enrolment and completion rate, population having access to improved drinking water sources, employment, and even on the HDI. However, certain areas require further improvements, still being much behind even millennium development goals’ (MDG) targets. Among these are access to improved sanitation facilities, particularly in rural areas where the percentage in 2015 was only 28.15, physicians per 1000 population, secondary enrolment rates (significantly lower than primary), secondary completion rates, and the incidence of poverty. As per World Bank estimates, a significant proportion of the population lives below both the USD 1.90 and USD 3.10 per-day mark, the latter category including over half the country’s population. Even taking internal assessments of poverty where the figures are lower in percentage terms, the very size of the country’s population makes the number of persons living in poverty considerable.

Poverty thus is one of the major challenges facing the country and when considered from the perspective of human rights, represents a condition of lack of human rights including basic needs such as a decent standard of living (food, water, housing, etc.), healthcare, and education in turn, impacting work, health, and exercise of civil and political rights. The denial of socioeconomic rights is a cause and consequence of poverty, besides reinforcing the problem and increasing vulnerability of those affected. This view of the issue highlights the importance of effective

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421 Sitapati, supra note 390 at 59–60.
422 Id. at 60. In this light, social activists’ perceptions of social action litigation decisions, how they plan their strategies, what they see as the strengths and weakness of such litigation, and how they relay its message to beneficiaries, are important factors to be studied. Baxi, supra note 389 at 862.
423 Kothari, supra note 65 at 48.
protection of social and economic rights towards addressing poverty as, unless these rights are available, people would be denied both a life with dignity and participation in democratic society.

Another related issue of concern is that of hunger, malnutrition, and starvation deaths all pertaining again to denial of socioeconomic rights, particularly the right to food, and clean water, besides livelihood, health, work, and education. Despite improvements in statistics on poverty as indicated for instance by the India: Human Development Report and India’s MDG report, the position of the country in the World Hunger Index still remains very poor at 97/112 falling within the "serious" category of the index, and not in line with the country’s economic growth, with 15 percent of the population being malnourished. The issue of starvation deaths highlighted in the mass media, and in petitions before the Supreme Court (for instance, Kishen Pattnayak, People’s Union of Civil Liberties), further highlight the need for intervention, particularly in light of poor implementation of even the existing schemes and legislation in this regard as highlighted by recent petitions by Swaraj Abhiyan (both in the context of the National Food Security Act and MNREGA).

Absence of adequate healthcare is also a challenge facing the country, highlighted inter alia, by the numerous petitions filed before courts, demonstrating inadequacies in emergency healthcare, poor conditions in state hospitals or care provided, and access to medicines for poorer sections, among others. Moreover, the availability of physicians as against the population remains low as does expenditure by the government on health, while infant and maternal mortality figures remain a matter of concern. In considering the issue of health and healthcare, the allied issue of sanitation to which access remains poor, particularly in rural areas, also requires attention.

While the directive principles of state policy are not enforceable by courts, the state has enacted a plethora of legislation on socioeconomic rights issues including work and workers’ rights, social security and social assistance, standard of living and health, among others, in keeping with its constitutional duty under article 37. Various pieces of legislation enacted to protect the rights of workers for instance, such as the Minimum Wages Act, Maternity Benefits Act, Equal
Remuneration Act, Factories Act, among others, reflect not only the rights enshrined in the directive principles in articles 39, 42, 43 but also those in the ICESCR on wages, non-discrimination in wages and appointments, hours and conditions of work, etc. These seek to ensure that workmen can exercise their right to work in conditions of dignity, have adequate remedies to enforce these rights, and that their vulnerable position is not taken advantage of.

Other pieces of legislation, particularly the MNREGA and National Food Security Act which seek to give effect to the right to work, and right to food for disadvantaged sections in society can also be seen as steps towards giving effect to what the CESCR terms as the minimum core obligation as they seek to ensure a basic or subsistence level of employment or food, for those who lack the resources and opportunities to provide these basic needs for themselves. Beyond the subsistence level, the MNREGA employs a progressive realisation standard in consonance with available resources. These enactments can also be seen as being in pursuance of the state’s duty to fulfil or to provide, that is to say, its positive obligation in regard to these rights. This is distinguished somewhat from the statutes on workers’ rights, which impose duties on, inter alia, third party employers and can be seen as part of the duty to “protect” though it may be said to include some positive elements such as the provision of avenues or mechanisms for dispute settlement. The social security and social assistance legislation discussed, again can be said to be in pursuance of both the state’s duties to protect and fulfil, in the latter category including facilitating the right (establishing schemes, etc.) and providing mechanisms for remedies.

While nearly all the legislation discussed, provides in some form or other remedies to persons affected, all the remedies provided are not essentially judicial. The Employees State Insurance Act for instance, establishes an Employees State Insurance Court against whose orders appeals lie to the high court and complaints under the Factories Act lie to a magistrate. On the other hand, under the MNREGA and the National Food Security Act, grievance redressal is entrusted to authorities/officers appointed under those statutes and not a judicial authority,
making the rights therein not justiciable in the commonly understood sense. Furthermore, under some of these pieces of legislation such as the Minimum Wages Act, and Payment of Wages Act, fine amounts remain very low and require revision.

Also, implementation issues have been observed in case of many of these statutes. For instance, the inadequate implementation of the MNREGA and National Food Security Act brought out in the Swaraj Abhiyan petition. Even older statutes like the Factories Act in effect for over six decades have seen issues of lack of sufficient awareness and only partial implementation.

In the Indian context, the judiciary has played an important role in protecting socioeconomic rights and making them justiciable. In this regard, three important developments are the Supreme Court’s interpretation of the relationship between the fundamental rights and directive principles; the relaxation of locus standi and development of PIL; and the liberal interpretation of the fundamental rights, particularly the right to life and equality provisions to include socioeconomic rights such as food, shelter, healthcare, equal remuneration, etc. While the directive principles were initially viewed as subservient to the fundamental rights, the two are now seen as complementary and supplementary to each other, and the harmony and balance between them as part of the Constitution’s “basic structure”, in keeping with the principle of interdependence and indivisibility of all human rights.

Second, the mechanism of PIL has played a key role in this regard enabling access to the courts by those sections of society, who due to their socially and economically disadvantaged position could not do so. While under the South African Constitution and Optional Protocol to the ICESCR (both adopted decades after the Indian Constitution), the mechanism of enabling a person to approach the court representing other individuals or groups or acting in public interest is incorporated in the text, in the Indian context, this was a judicial innovation, and later extended to include letter petitions and suo motu cognizance by the court of issues of public interest. This mechanism has been used to address various human rights issues (and others such as governance)
including social and economic rights. Moreover, the mechanism is not adversarial but inquisitorial and also involves collaboration in identifying solutions. These changes seek to “transform into reality” the promises of the fundamental rights and directive principles, and have also impacted the courts’ approach to interpretation.

The third aspect that has contributed to the justiciability of socioeconomic rights is the interpretation by the courts of the fundamental rights to include various socioeconomic rights, making them effectively justiciable. While this approach has acknowledgedly played an important role in ensuring social justice, it has also been criticised on account of being contrary to the express language of article 37. However, it is certainly in line with the intent of the framers to bring about a social revolution. Besides this constitutional goal, "civilisation" and "good governance" have also been put forth as justifications for this approach. Life is understood by the courts as not “mere animal existence” but life with dignity including the basic needs such as food, shelter, etc. Other rights such as healthcare, education, clean water, clean and pollution-free environment etc. have also been read into the right to life, and aspects such as equal remuneration, equal right to be considered for employment, livelihood, protection against sexual harassment at the workplace, etc. in the right to life and equality provisions of the Constitution. The approach is comparable to that adopted by the ECtHR, HRC, Inter-American Court, etc. which have also interpreted civil and political rights provisions to protect socioeconomic rights on many occasions. This approach has been adopted to protect the rights of groups (e.g. beneficiaries of various government schemes in the “right to food” petition) as well as individuals.

The court has clarified with regard to the directive principles that non-enforcement does not imply non-intervention and it may at least consider whether relevant considerations have been taken into account and irrelevant ones excluded, though further intervention would depend on the circumstances of the case. The Delhi High Court has in fact, in one decision recognised that a minimum core obligation (in the context of the right to health) exists and financial constraint could
not be pleaded with regard to core obligations. Moreover, the court has pointed out that fundamental rights must be interpreted in light of the directive principles and that in considering limitations on fundamental rights, it must be considered whether the limits are justified by the directive principles, these principles giving shape to reasonableness.

It is however, difficult to identify any specific standards or form of review adopted by the courts. Their approach has been described as oscillating between the strong (such as in the right to food case, where a series of mandatory orders were issued and strict monitoring of implementation was ensured or Vishaka where the court framed guidelines to apply in the context of sexual harassment at the workplace till adequate legislation was enacted) to the weak (with, in some cases such as Narmada Bachao Andolan, insufficient consideration of the interests of those being displaced). In Sachidananda Pandey, the court indicated a minimum standard to be met by government measures. It also indicated that it would not decide on balancing of considerations which is for the state to decide. But there is no clarity on the limits of “life with dignity” and no clear cut test or standards consistently applied in all socioeconomic rights (or even human rights) cases. While the conditional rights model explains the courts’ approach in many decisions such as Olga Tellis, the right to food case, etc. whereby the government is essentially directed to adequately implement existing schemes or legislation, some point out that this does not explain the court’s approach in all its decisions, not does it identify a standard. The standard of review thus remains unclear.

The failure by the court to justify its departure from article 37 along with lack of clarity on the limits of its interpretations of the right to life, and the absence of any standards of review make it difficult to determine what rights will be protected by the court and what falls outside its purview.

Another issue of concern is the trend of decisions in line with more neoliberal ideas such as Narmada Bachao Andolan, where "development" was given a preference over the rights of the
displaced and decisions relating to slum clearance, where although eviction is directed, no provisions are directed for alternative accommodation for sections of society which lack basic rights. A clear change in focus has been noted in many cases on the middle-class, law and order, and development as opposed to issues affecting the destitute. Alongside there are heartening developments such as the Niyamgiri case, where the tribal ethos was given due consideration in a case involving mining interests.

The mechanisms evolved or adopted by Indian courts, particularly for ascertaining facts and monitoring implementation, besides ensuring better access to justice, can be said to have played a role in both more effective protection of socioeconomic rights, and addressing some of the criticisms levelled against the enforcement of these rights. The appointment of commissions and reliance on expert reports for fact finding ensures that the relevant information is available before the court, and that it need not rely only on information presented by parties. This aspect is important from the perspective of social and economic rights whose justiciability is opposed on ground of lack of information, among others. The appointment of commissioners to monitor implementation, on the other hand, such as in the right to food case has played a role towards stronger implementation. This is in combination with the use of “continuing mandamus” whereby the court continues to monitor progress in cases through issuing interim orders and monitoring compliance, at times even after the final judgment.

Implementation of decisions on socioeconomic rights issues has been mixed, with some seeing more effective implementation than others, though non-implementation has not been seen as adversely impacting the legitimacy of decisions. In ensuring effective implementation, appointment of commissioners and use of continuing mandamus can be said to have played a role. Another factor in this regard is the role of NGOs, their involvement ensuring more positive responses. Another positive impact, albeit not immediate, has been legislation resulting from such issues being raised in litigation (for instance on right to education, sexual harassment at the
workplace, and food security). The impact of decisions has also been seen to include its influence on other jurisdictions trying similar rights.

The Indian judiciary has thus made significant contributions as concerns socioeconomic rights leading to these rights not only becoming justiciable but more effectively realised (though not always) in practice, and in ensuring that the disadvantaged sections who lack these rights can avail suitable remedies. While the judiciary in India is often commended and rightly so for these developments, they are essentially the contribution of an activist judiciary not acting on any determinable standards, its actions being at times ascribed to its whim. 424

Furthermore, the inconsistency in implementation of decisions, even if positive, may lead to uncertain results, and even these may not suffice (for instance, the example of undertrials discussed by Prof. Baxi). Also, Raj Kumar observes in the context of the right to health, litigation by itself “cannot bring about the structural and systemic changes necessary to ensure adequate and good quality healthcare for all”, and thus advocates constitutionalisation of the right to health as a necessary step. 425 This can be said of other areas as well. Other commentators have also made similar proposals. 426 Although the judiciary has played an important and essential role in this regard, the inclusion of these provisions as justiciable rights can bring more specificity and lead to the development of standards of review besides addressing the possibility of the courts acting on “whims”. In the face of courts deciding in line with neoliberal principles (although this is also seen in jurisdictions with justiciable social rights), justiciability can ensure that at least minimum levels of

424 As Mehta writes, an assertive judiciary can be seen as a “shield and sword of sorts for democracy” where it is using its “powers to restore integrity to the democratic process, to make our rights (including social and economic ones) more meaningful, and to advance the public interest” but there is no guarantee that judges would protect people’s liberties any more than politicians. Mehta, supra note 230 at 80.
425 Raj Kumar, supra note 50 at 373, 375. He supports the inclusion of a provision in the constitution on the right to health of children up to the age of fourteen, particularly in view of the poor state of healthcare of children in India. Id. at 375–76.
426 Subhash Chander Sharma, "Directive Principles of State Policy: Has the Time Come to Make Them Enforceable?" AIR 2001 Jour 185 (particularly the right to work, education, and to public assistance in case of undeserved want); Reddy, supra note 82. For Prof Singh, while directive principles conferring rights on individuals may be made enforceable, the rest may be left as they are. Singh, supra note 56.
protection would be available. Such a development and performance of the requisite functions by other branches can together ensure effective availability of these rights to all.