CHAPTER – V

ROLE OF DIRECTIVE PRINCIPLES IN INTERPRETATION OF THE CONSTITUTION

“There is a higher court than courts of Justice and that is the court of conscience. It supersedes all other courts.” ...

• MAHATMA GANDHI
CHAPTER – V

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OF THE CONSTITUTION

5.1 PRINCIPLES, RULES AND POLICY –
MODERN TEXT:

Perhaps in the post-modern condition, we must acknowledge the impossibility of escaping from our existential inadequacy we need to recognize the mystery of depth we can do little than to call the realm of the sacred. That we will always be defeated by our attempts to know it, is no reason not to live by its spirit. Thus the challenge of the post-modern is to continually ask the meaning of being human, in full consciousness of the fact that any answer offered, and any social order thereby constructed, is only a temporary respite, as embodiment of some of our desires, solace to our fears.

It has long been received opinions that judges filled in the gaps left by using their direction. Positivist jurisprudence from Austin to Hart placed emphasis on the part played by judicial discretion. Since succeeding to Prof. Hart, Ronald Dworkin has become by far the most tenacious and articulate critic of legal positivism. He has almost single handedly changed the face of contemporary legal theory. In a
wide range of essays, Prof. Dworkin provides not only a stimulating account of Law and legal system, but also an analysis of the place of morals in law, the importance of individual rights and the nature of the judicial function. This is a complex and settled account which makes unaccepted twists and turns into economics, politics and even literary theory. It has generated enormous critical response.

The theory is promised on Dworkin’s concern that the law ought to ‘take rights seriously’ if (as Hart claims) the outcome of a hard case turns on the judge’s own view or intuition or strong discretion, rights are rendered fragile things to be sacrificed by courts at the altar of community interests or other conceptions of goods. If individual rights are to be treated with the respect they deserve, they (i.e. an effect, principles) are to be accorded proper recognitions as part of the law. This leads Dworkin to reject the proposition that judges either do or should make law to argue that judges must seek ‘the soundest theory of law’ on which to decide hard cases; and to conclude that, since judges (who are unelected officials) do not make law, the judicial role is democratic and prospective.¹

The importance of Dworkin’s attack on conventionalism, in general, and legal positivism, in particular, lies in the failure of such theories to provide either a convincing account of the process of law making or a sufficiently strong defence of individual rights.

¹ Raymond Wacks; Jurisprudence (Ed.4th,1995) p. 117-118
Dworkin thus puts it “he knows that other judges have decided cases that, although not exactly like his case, deal with related problems; he must think of their decisions as part of a long story he must interpret and then continue, according to his own judgement of how to make the developing story as good as it can be.”

In Dworkin’s thesis in addition to rules there are ‘principles and policies’ which unlike rules have a dimension of weight or importance. A principle is a standard to be observed, not because it will advance or secure an economic, political or social situations, but because it is the requirement of justice or fairness or some other dimension of morality. A policy is that kind of standard that sets out a goal or be reached, generally an improvement in some economic, political or social feature of the community. Principle describes rights; policy describes goals.

Dworkin further says that even if a judge appears to be advancing an argument of policy, we should read him to be referring to principle because he is actually deciding individual rights of members of the community. He further argues that a society which accepts integrity as a political virtue does so, in large part, in order to justify its more authority to assume and deploy a monopoly of coercive force.

This echoes some aspects of Weber’s legitimate domination. Integrity

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3 Dworkin Ronald; Taking Rights Seriously (London): Duckworkth, 1978)p.239
4 Ibid p.100
including protection against partiality, deceit and corruption promotes the idea of self-government and participation in democracy. It is, in short, an amalgam of values which form the essence of the liberal society and the rule of law\(^5\).

Nozick Dworkin and Rawls regard utilitarianism and as an unsatisfactory means by which to measure justice. Rawls argues that questions of justice are prior to questions of happiness. While utilitarianism defines what is right in terms of what is good Rawls regards what is right as prior to what is good. Rawls theory of justice as fairness is rooted in the idea of a social contract. He expresses the objective of his project in his book ‘A theory of Justice’ as follows:

My aim is to present a conception of justice which generalises and carries to a higher level of abstraction the familiar theory of the social contract as found say, in Locke, Rousseau and Kant. In order to do this, we are not to think of the original contract as one to enter a particular society or to set up a particular form of Government. Rather, the guiding idea is that the principles of justice for the basic structure of the society are the object of the original agreement. They are the principles that free and rational persons are concerned to further their own interests would accept in an initial position of equality as defining the fundamental terms of their association. These principles are to regulate all further agreements;

\(^5\) Raymond Wacks; Op. cit n. 1. P. 125
they specify the kind of social co-operation that can be entered into and the forms of government that can be established. This way of regarding the principles of justice I shall call justice as fairness⁶.

5.2 POLITICAL LIBERALISM (WELFARE JUSTICE):

Rawls in his theory of justice propounds that people in the original position seeking each shrouded in a veil of ignorance debating the principles of justice, as rational individual, would choose the principles which guarantee that the worst condition one might find in one self, when the veil of ignorance is lifted it is the least undesirable of the available alternative.

The two principles of justice propounded by Rawls are as follows:

First Principle: ‘Each person is to have an equal right to the most extensive total system of equal basis liberties compatible with a similar system of liberty for all’.

Second Principle: Social and economic inequalities are to be arranged so that they are both:

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(I) To the greatest benefit of the least advantaged consistent with the just savings principles, and

(II) Attached to offices and positions open to all other conditions of fairness of equality of opportunity'.

The people in the original position put liberty above equality because of the ‘maximin’ strategy namely no one would wish to risk his liberty when the ‘veil of ignorance’ is removed and it is revealed that they are among the least well-off members of society. By the same token of ‘maximin’ reasoning they will opt for clause (a) of the second principle mentioned above – the so called ‘difference principle’. They will be better able to improve their lot in a society which places liberty above equality; this is because various ‘social primary opportunities, (income, wealth and especially self-respect) are more likely to be attained in a free society

Answering to his critics, Rawls in his book on “Political liberalism” (1993) mentions following significant points:

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7 Ibid p.287
1) His theory is meant to apply to modern Constitutional democracy.

2) He demonstrates that the idea of justice as fairness is a political rather than a metaphysical task. It is supposed to be philosophically neutral to transcend philosophical controversy.

3) In pursuit of an elusive ‘overlapping consensus’ Rawls posits his principles of justice as the terms under which members of a pluralistic. Democratic community with competing interests and values might achieve political accord. His conception of political liberalism acknowledges that this consensus may be challenged by the establishment by the state of a shared moral or religious doctrine. But the community’s sense of Justice would prevail over the state’s interpretation of the public good.

4) The first principle of justice which originally requires that each person has an equal right to ‘the most extensive total system of equal basic liberties’ now consists in an equal right to a ‘fully adequate scheme of equal basic liberties’.

5) He demonstrates how the two principles of justice might, following the ‘original position’, be adopted constitutionally (the first principle is enshrined in the Constitution),
legislatively (the second principle may be accepted by
democratic decision), and judicially (the courts ensure that
supreme law of the Constitution is defended against the
vagaries of legislative activity).8

According to certain critics of Rawls theory, justice is
about deserts: it is just that we should get what we deserve. But in
Rawls theory, hard work need to be rewarded in order only to secure
that the worst–off do as well as possible.

Although the actual activity of the ‘directive’ in the
Constitution has always been controversial issue and the critics have
gone even to the extent of calling them as pure window dressing or
pious superfluities yet these principles have a great significance. Far
from being mere wishful ideals or pious thoughts, the Directive
Principles of State Policy have served a useful purpose in visualizing
India as a welfare state. Some of the directives would not only serve
the cause of socialism but would also help in ensuring the real
enjoyment of Fundamental Rights in the context of the twentieth
century.

Rawls theory perhaps may not suit the Indian conditions
since equality cannot be sacrificed for the sake of liberty. Equality has
been time and again adjudged as a basic feature of Constitution.

8 Rawls John., Political Liberalism (New York: Columbia University Press
1993) p.168
Egalitarianism being the goal, Directive Principles are the means to achieve that goal.

It is true that the hard realities of an underdeveloped country like India make it extremely difficult to implement the admissible social principles enumerated as ‘Directives’ in Part IV of the Constitution, but then, they should not be dismissed as mere pious hopes which the government can never fulfill for generations to come. By implementing these Directive Principles, India is trying to achieve something that has never been attempted earlier in her history. “By giving effect to these principles India is trying to provide, on however modest a scale, measures of social welfare regarded as essential by Western Nations in twentieth century, but within the frame work of an economy without resort to force or violence.”

The core of the Directive Principles is to be found in the Article 38 of the Constitution. It reiterates the declaration contained in the Preamble of the Constitution and envisages a social order ensuing social, economic and political justice to the people of India. It is true that the ‘Directives’ in Part IV are transcendental in character and by their very nature are intact in their several imponderables. This is the reason as to why they are retained non-enforceable by law courts. Nevertheless, they are made fundamental in the governance of the country and a duty is imposed on the State to apply these principles in
making laws. If the State ignores these mandates, it in effect ignores the constitution.

The fallacy of conflict between Fundamental rights and Directive Principles are seen through the courts has been exploded on the ground that if the rights conferred by Part III are so fundamental for the life, liberty and security of the citizens, the directives contained in Part IV are equally fundamental in the governance of the country and Article 37 makes it obligatory on the part of the State to apply these ‘principles’ in making laws. Thus the provisions contained in either of these Parts are not designed to act as a barrier to progress but instead, both are intended to envisage a social order contemplated by the Preamble to the Constitution. They are, therefore, “complementary and supplementary to each other”.

The significance of the Directive Principles has been summarized by the Supreme Court of India in the following words:

“The provisions of Part IV enable the legislature and the Government to impose various duties on citizens. The provisions therein are deliberately made elastic because the duties to be imposed on the citizens depend on the extent to which the Directive Principles are implemented. The mandate of the Constitution is to build a welfare society in which the justice, social economic and political shall inform all institutions of our national life. The hopes and aspirations aroused
by the Constitution will be belied if the minimum needs of the lowest of our citizens are not met”

A closure scrutiny of Article 37 would, however, reveal that non-justiciable nature of the directive does not make them non-recognizable, the reason being that the non-enforceability is altogether different from non-cognizability. The former is narrower in scope than the latter. Article 37 does not say that the provisions relating to the Directive Principles are non-cognizable, it only makes them unenforceable. It is, therefore, clear that the judiciary can refer to these Principles and seek guidance from the provisions contained in Part IV in pronouncing judicial decisions. Thus it dispels the view that the Directive Principles are applicable only to the Legislature and the Executive and has nothing to do with the judiciary.

It has now been well settled that the judicial non-enforceability of the Directive Principles does not mean that the courts are completely excluded from taking into consideration these principles while deciding cases. The Court observed that the Directive Principles are not to be ignored completely by the courts but should be taken into consideration in giving effect to the Fundamental Rights. They should adopt the principle of harmonious construction and should attempt to give effect to the Fundamentals Rights as well as to the Directive Principles, as far as possible. It therefore follows that the

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9 Joshi G.N., Op. cit Chapt. II n.22 p.28
'directives’, though non-enforceable, are not wholly non-cognizable and the courts do take cognizance of these principles in deciding cases. Generally speaking, the courts take cognizance of the Directive Principles under the following circumstances.

1) Despite the fact that the Directive Principles have no direct operative effect, there would be no objection for the courts to refer to them for deriving the true meaning of the ambiguous or doubtful provisions of the Constitution. Their position is analogous to the Preamble of the Constitution in this regard.

2) As the Directive Principles of State Policy constitute a part of the scheme of the Constitution, the courts can refer to them while interpreting the scheme of the Constitution.

3) The Courts can also take cognizance of the Directive Principles while determining the reasonableness of restrictions imposed on Fundamental Rights which are guaranteed to the citizens of India under Article 19. Any restriction which seeks to fulfill an objective contemplated by the Directive Principles is deemed to be a reasonable restriction by the court.

4) The Courts while considering the restrictions on Fundamental Rights can also take cognizance of the Directive Principles in order to determine whether a certain
executive and legislative action is directed for a public benefit.

5) The courts also rely upon these principles in deciding the reasonableness of classification for the purpose of Article 14 of the Constitution.

6) Finally, it is the duty of the Court to apply Directive Principles in interpreting the Constitution. The Directive Principles should serve the court as a code of interpretation.

The Directive Principles have played and have been playing a significant role in influencing the decisions of laws courts in a number of cases. The succeeding pages of this Chapter contain a dispassionate exposition of the judicial decisions relevant to each of the above categories of cases. The case-law referred to under theses heads is by no means exhaustive but is merely illustrative indicating the manner in which the Directive Principles were handled by the courts.

In a democracy governed by the rule of law, any change can be brought about only through the process of law. The socioeconomic revolution is, therefore, to be brought about through the democratic process. The fundamental problems of the people are in fact group problems rather than individual problems and with the expansion of the doctrine of *locus standi* by the Supreme Court of
India and the development of public interest litigation the portals of the Courts have been thrown open to the people who are now using the process of judicial review is vested in the Supreme Court of India under the Constitution and it is in exercise of this power that the Supreme Court is called upon to decide whether any organ or instrumentality of the State has transgressed or exceeded the limits of the powers conferred upon it. The power of judicial review is a highly creative function and vital to the maintenance of the rule of law and the Supreme Court has held it to be a basic feature of our Constitution. It is in exercise of this power of judicial review that the judiciary is called upon to interpret the Constitution and the laws.

The Directive Principles of State Policy set out the goal of the new social and economic order which the Constitution expects us to reconstruct. The judiciary has drawn guidance and inspiration from the Directive Principles in interpreting and enforcing Fundamental Rights. Broadly speaking, Fundamental Rights embody civil and political rights while the Directive Principles enunciate social and economic rights. The Supreme Court has expanded the ambit and reach of the Fundamental Rights from the broad sweep of the Directive Principles and thus made the largest contribution to the development of human rights jurisprudence through judicial activism.
5.3 ROLE OF JUDICIARY IN INTERPRETING FUNDAMENTAL RIGHTS WITH THE HELP OF DIRECTIVE PRINCIPLES:

Under our Constitution the judiciary has great role to play in interpreting the social and other progressive legislation passed by the state to implement the policies in the Directive Principles. The question is: Has the Judiciary succeeded in discharging the Constitutional obligation or has it created any obstacle in the implementation of social and progressive legislation enacted by state in furtherance of Directive Principles through Fundamental Rights.

Soon after the Constitution came into force the conflict between the Directive Principles and the Fundamental Rights came before the Supreme Court for the first time in State of Madras v. Smt. Champakam Dorrirajan’s case. In this case the Supreme Court was called upon to consider the impact of the Directive Principles on some of the Articles in Part III of the Constitution.

The Court observed:

“.....The Chapter on Fundamental Rights is sacrosanct and not liable to be abridged by any Legislative or Executive set or Order except to the extent provided in appropriate Article in Part III. The Directive Principles of State Policy have to conform to and run

10 Supra Chapt. IV n.16
subsidiary to the Chapter on Fundamental Rights. In our opinion that is the correct way in which the provisions found in Part III and IV have to be understood. However, so long as there is no infringement of any Fundamental Right to the extent conferred by the provisions in Part III there can be no obligation to the State acting in accordance with the Directive Principles set out in Part IV, but subject again to the Legislative and Executive Power and limitations conferred on the State under different provisions of the Constitution.” The Fundamental Rights would be reduced to ‘a mere rope of sand’ if they were to be overridden by the Directive Principles.\footnote{Ibid}

H.M. Seervai supports the decision of the apex court in Champakam’s case and confirms the distinction drawn by the court between the Fundamental Rights and the Directive Principles. Seervai submits that a law implementing Directive Principles may confer rights on persons. But the rights so conferred are statutory rights and a repeal of the law would take them away. He maintains that Fundamental Rights are conferred by the Constitution and are Constitutional rights. Hence no ordinary law can take them away in view of the prohibition enjoined by article 13(2). He, therefore, find no conflict between part III and part IV because in his view, part III confers legally enforceable rights while part IV confirms no rights at all. The conflict, if at all, in Seervai’s view can be between Fundamental Rights

\footnote{Ibid}
and the statutory rights conferred by the legislature in order to implement the directive principle is so far as the former must prevail over the latter.\textsuperscript{12}

Criticizing the decision of Supreme court Mr. Justice K.S Hegde of the Supreme Court of India puts it:

“One might ask whether it was necessary for a decision in that case to hold that the Directive Principles should run subsidiary to Fundamental Rights as though there was a conflict between Article 46 and Article 29.\textsuperscript{13}"

The decision of Supreme Court in Dorrairajan’s case gave birth to the controversy about the supremacy of Fundamental Rights vis-à-vis Directive Principles. The question raised in the year 1950 is not at all solved. The Judiciary has evolved various principles and doctrines since 1950, but the uncertainty still prevails.

I may say that the court had never followed a policy of constituency on the issue of relationship of Fundamental Rights and Directive Principles. We have seen that for the first time it has subordinated Directive Principles to Fundamental Rights. For the second time the court has propounded the doctrine of harmonious construction, thirdly court adopted the doctrine of integrated scheme

\textsuperscript{12} H.M. Seervai., II Constitutional Law Of India (Ed. 2\textsuperscript{nd}, 1967) 1033
\textsuperscript{13} Justice Hedge., Directive Principles of State Policy in the Constitution of India
and finally it accepted the partial primacy of directive principles through article 31C.

The Judicial verdict about the role of Directive Principles in interpreting Fundamental Rights can be divided into following six divisions:

1) Beginning with Champakam Dorrairajan\textsuperscript{14} and ending with Chandra Bhawan’s case\textsuperscript{15}.

2) Chandra Bhawan’s case and ending with Keshvanand Bharti\textsuperscript{16}.

3) Keshvanand Bharti’s case to Minerva Mill’s case\textsuperscript{17}.

4) Minerva Mill’s case to Waman Rao’s case\textsuperscript{18}.

5) Waman Rao’s case to Bharat Coke Mfg. Co. Ltd.\textsuperscript{19}.

6) Bharat Coke Mfg. Co. Ltd.’s division case and thereafter.

\textbf{5.3.1 CHAMPAKAM DORRAIRAJAN TO CHANDRA BHAWAN’S CASE:}

In Champakam Dorrairajan to Chandra Bhawan’s case the Supreme Court ignored the fact that the Constitution framers made the Directive Principles unenforceable to discourage people to go to

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\textsuperscript{14} & Infra p.204-206 \\
\textsuperscript{15} & Infra p.216 \\
\textsuperscript{16} & Infra p.222 \\
\textsuperscript{17} & Infra p.224 \\
\textsuperscript{18} & Infra p.241 \\
\textsuperscript{19} & Infra p.245 \\
\end{tabular}
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court to compel to Government to enforce Directive Principles on this or that ground immediately just after the commencement of the Constitution. But this did not affect their relative place in the Constitutional scheme. The Constitution nowhere states that the Directive Principles shall be subsidiary to the Fundamental Rights. On the contrary, Part III of Fundamental Rights and part IV with Directive Principles should be treated equally while interpreting these Constitutional provisions.

Researcher is of the opinion that the court took the view purely on logical and technical basis. The Court’s views seem to go against the intention of framers of Constitution, who visualized the change from the State of serfdom to one of freedom, which can be completed only if court accords not more equal weight and value to Directive Principles. At the same time some other pronouncements were also made by the courts which were not in tuning of the intention of framer of Constitution. Several High Courts20 Allahabad21, Bombay22, Patna23 and Madras24 followed the policy of superiority of Fundamental Rights over the Directive Principles.

The judgment in Dorrairajan’s case and the cases that followed subsequently make it sufficiently clear that in early years of

24 Thomas v. State of Madras A.I.R. 1953 Mad.21
the working of the Indian Constitution, the attitude of Judiciary towards the Directive Principles vis-à-vis the Fundamental Rights was somewhat rigid. In case of clash between the two, the Fundamental Rights were to prevail over the Directive Principles as the latter could not be given effect to because of their non-justiciability.

Thus the series of the decisions that followed Dorrairajan’s case rendered it difficult for the State to implement the policies contained in Directive Principles of State Policy and to realize the object visualized in Part IV. In particular, it seriously hampered the upliftment of socially backward class of citizens including Scheduled castes and Scheduled Tribes. The hangover of the observation made in Dorrairajan’s case was that it stood in the way of many socioeconomic reforms.

Feeling aggrieved from these judgments on political platform the legislatures found themselves in doldrums and they decided to get the Constitution amended. Hence the 1st Amendment was placed before the Constitution in the statement and object of the amendment bill declaration was made to remove the confusion and to make the position clear with regards to Fundamental Rights and Directive Principles.

The Parliament passed the Constitution (First Amendment) Act, 1951 and amended article 15. A new Clause (4)
was added to this Article to enable the State to make any special provision for the advancement of any socially backward class of citizens or the Scheduled Castes and Scheduled Tribes. The effect of the amendment was that though non-justiciable in the courts of law, these Directive Principles of State Policy were in fact more important than the Fundamental Rights and in case of conflict between the two, the latter have to yield to the former. It further clarified that there should be no conflict between Legislature and Executive on the one hand and Judiciary on the other, on any matter relating to Part III which contain Fundamental Rights.

It is significant to note that after the Constitution (First Amendment) Act, 1951, there was no marked change in the attitude of Judiciary towards the Directive Principles in relation to Fundamental Rights and it continued to relegate Directive Principles to a subordinate positions compared to Fundamental Rights.

The question of Constitutional validity of 1st amendment came in the case of Sankari Prasad\textsuperscript{25} before Supreme Court. The court unanimously decided to resolve the conflict between Fundamental Rights and Directive Principles by placing the reliance on the line of doctrine of harmonious construction. The court held that the Fundamental Rights impose limitation over the legislature and

\textsuperscript{25} A.I.R. 1951 S.C. 458
executive power. They are not inviolable and parliament can amend them to bring in conformity to Directive Principles.

The judiciary subsequent to the decision of Champakam Dorrairajan’s Case modified its attitude and adopted the doctrine of harmonious construction. There was an increasing recognition of the fact that although the directives were not enforceable, the court were to recognize relevance of directives because of simple reason that those cover that vital part of the Constitutional document. The directives were no longer to be ignored when they came in conflict with the Fundamental Rights.

In its second phase of interpretation, the Supreme Court placed on the Directive Principles for validating a number of legislations that were found not violative of Fundamental Rights. The Directive Principles were regarded as a dependable index of (a) Public Purpose and (b) Reasonableness of restrictions on Fundamental Rights.

In State of Bombay v. F.N. Balsara26, the court expressly recognized that in Judging the reasonableness of the restriction imposed by the impugned Act on the Fundamental Rights guaranteed by Article 19(1) (g) the Directive Principles of State Policy set forth in Article 47 had to be borne in mind.

26 A.I.R. 1951 S.C. 318
In the case of State of Bihar v. Kameshwar Singh\textsuperscript{27}, the Court upheld the validity of zamindari ablation in view of Directive Principles. The Court held that where two judicial interpretations are acceptable then the interpretation favouring Directive Principles should be adopted. Thus, in Bihar v. Kameshwar, the Supreme Court relied on Article 39 to decide that the law to abolish zamindari had been enacted for a ‘Public Purpose’ within the meaning of Article 31.

In Bijoy Cotton Mills v. State of Ajmer\textsuperscript{28}, when the court had to consider the validity of sections 3, 4, 5 of the Minimum Wages Act, 1948, It was contended on behalf of the petitioner that these provisions interfered with the freedom of trade or business guaranteed under Article 19(1) (g) of the Constitution and were unreasonable and even oppressive with regard to one particular class of employees. Rejecting this contention of the petitioner, the court upheld the validity of the said provisions of the Act. Mukherjee J. speaking for the court observed: ‘It can scarcely be disputed that securing of living wages to labourer which ensure not only bare physical subsistence but also the maintenance of health and decency, is conducive to the general interest of the public\textsuperscript{29}. This is one of the Directive Principles of the State Policy embodied in Article 43 of our Constitution. Curiously enough, the judiciary’s approach to Directive Principles in the field of

\textsuperscript{27} A.I.R. 1952 S.C. 252
\textsuperscript{28} (1955) 1. S.C.R. 752
\textsuperscript{29} Ibid
industrial legislation was altogether different than what it was in the case of land reforms. The courts have often preferred to take a liberal view in giving effect to the policies contained in the Directive Principles while deciding cases relating to industrial laws. They showed great enthusiasm in guaranteeing a living wage to industrial and other workers—a directive contained in Article 43 of the Constitution although they did not specifically confess that in doing so they were enforcing the provisions contained in Part-IV.

In *M.H. Qureshi v. State of Bihar*\(^{30}\) the Supreme Court upheld the supremacy of Fundamental Rights and observed that anything done in furtherance of and giving effect to Directive Principles, would be void if it infringed or abridged any of the Fundamental Rights.

The Court reiterated its earlier stand and observed that.

“...The Directive Principles cannot override this category of restrictions imposed on the legislative power of the state.... The State should certainly implement the Directive Principle, but must do so in such a way that its law do not take away or abridge the Fundamental Rights.

The verdict of Supreme Court in *Re Kerala Education Bill Case*\(^{31}\) however reflects upon the changed attitude of judiciary towards the Directive Principles. It was in this case that The Supreme Court

\(^{30}\) (1959) S.C.R. 629

\(^{31}\) (1959) S.C.R. 629
had virtually admitted that the Directive Principles had been badly ignored in its earlier decisions but it would attach due importance to them in future. Emphasizing the need for application of the principle of harmonious interpretation in resolving the conflict between the Directive Principles and the Fundamental Rights, The Court held that the Judiciary should take cognizance of Directive Principles while determining the scope and ambit of Fundamental Rights. This in other words, means that the reasonability of restrictions of Fundamental Rights as envisaged under Article 19(2) could be tested in view of the policies contained in these directives.

Speaking over the relationship of Fundamental Rights and Directive Principles, Das, C.J. observed: The Directive Principles have to and run as subsidiary to the chapter on Fundamental Rights. Nevertheless in determining the scope and ambit of the Fundamental Rights relied on by or on behalf of any person or body the court may not entirely ignore these Directive Principles of State Policy laid down in Part IV of the Constitution but should adopt the principles of harmonious construction and should attempt to give effect to both as much as possible.\(^{32}\)

In a number of subsequent decisions, the Supreme Court has leaned in favour of Directive Principles if the implementation

\(^{32}\) Ibid P.1022
of the policy contained therein is justifies by Article 19(2) or for a public purpose.

Next came the *Sajjan Singh v. State of Rajasthan*\(^{33}\). In this case an argument was advanced before Mudholkar J., suggesting that if Fundamental Rights were made immune to the amending process of the Constitution, there was a danger that the dynamic development of the Indian Society would be hampered considerably. While accepting the argument the learned judge suggested that even if the Fundamental Rights could be taken as unchangeable, the needs of the viable dynamism would still be satisfied by properly interpreting the Fundamental Rights in the light of values and ideologies contained in Directive Principles of State policy. The learned judge, observed:

These principles are also fundamental in the governance of the country and the provisions of part III of the Constitution must be interpreted harmoniously with these principles\(^{34}\).

Supreme Court in the case of *Kasturi Lal v. State of U.P.*\(^{35}\) observed that every executive action of the Government, whether in pursuance of law or otherwise, must be reasonable. It should be in public interest. Hence, the yard stick for determining, both reasonableness and public interest, is to executive action is taken by

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\(^{33}\) A.I.R. 1967 S.C. 845

\(^{34}\) Ibid P.864

\(^{35}\) A.I.R. 1965 S.C. 1039
the Government for giving effect to a directive principle then it would by itself prima-facie be reasonable and in public interest.

In Golaknath v State of Punjab\textsuperscript{36} it was argued that if the provisions relating to Fundamental Rights could not be amended it would lead to revolution. Rejecting the contention Subba Rao, C.J., held that the Fundamental Rights could not be taken away or abridged by means of an amendment. He further remarked: “Nor can we appreciate the argument that all the agrarian reforms which parliament in power wants to effectuate cannot be brought without amending the Fundamental Rights”. In this context the learned judge pointed out:” The Fundamental Rights and the Directive Principles of State Policy enshrined in the Constitution formed an “integrated scheme and was elastic enough to respond to the changing needs of the society\textsuperscript{37}.

In this case, for the first time, the Supreme Court enunciated that the Parts III and IV constitute an “integrated Scheme” and even a “self-contained code”, to characterize the relationship between Fundamental Rights and Directive Principles. From this it can be reasonably inferred that the Supreme Court treated both the parts equally fundamental. The doctrine of integrated scheme in a way

\textsuperscript{36} A.I.R. 1967 S.C. 1643
\textsuperscript{37} Ibid P.1656
repudiated the theory of subordination enunciated by Supreme Court in Champakam Dorrairajan\textsuperscript{38} and M.H. Qureshi\textsuperscript{39}.

This judgment also indicated the elasticity of the Fundamental Rights to respond to the changing needs of the society. Thus the Fundamental Rights were to be construed in such a way as to enable the state to carry out the socioeconomic obligations contained in the Directive Principles. The majority construed that the Directive Principles can reasonably be enforced without taking away or abridging the Fundamental Rights.

5.3.2 CHANDRA BHAVAN TO KESAVANANDA BHARTI’S CASE:

In Chandra Bhavan Boarding v. The State of Mysore\textsuperscript{40} the question before the Supreme Court was whether different rates of minimum wages could be fixed for different industries and different localities. The court demonstrated to some extent its leaning in favour of Directives and upheld the minimum wages law by declaring that the Directives in Article 43 aim at securing living wages to the workers must be read into Fundamental Rights to carry on any trade or business guaranteed by Article 19(1) (g), even if the rates prescribed under the law would affect any industry and observed that “if they do”,

\begin{footnotesize}
\begin{itemize}
    \item \textsuperscript{38} Supra n.14
    \item \textsuperscript{39} Supra n.30
    \item \textsuperscript{40} Supra n.15
\end{itemize}
\end{footnotesize}
then the industry has no right to exist”. However, to justify the approach, Hegde J., had to say:

While rights conferred under Part III are fundamental, the directives given under Part IV are Fundamental, the directives given under Part IV are Fundamental in the governance of their country. We see no conflict on the whole between the provisions contained in Part III and Part IV. They are complementary to each other. The provisions of Part IV enable the legislature and the Government to impose various duties on the citizens. The provisions therein are deliberately made elastics because the duties to be imposed on the citizens depend on the extent to which the Directive Principles are implemented. The mandate of the Constitution is to build a welfare society in which justice; social, economic and political, shall inform all institutions of our national life. The hopes and aspirates aroused by the Constitution will be belied if the minimum needs of the lowest of our citizens are not met. 41

The learned judge further observed that “it is a fallacy to think, that under our Constitution there are only rights and no duties”. 42

But in series of cases decided subsequently the Supreme Court took the view that the Fundamental Rights were sacrosanct and transcendental and struck down the important legislations of the Bank

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41 Ibid p.2050
42 Id
Nationalisation\textsuperscript{43} and the Privy Purses\textsuperscript{44} abolition law. This led parliament to pass 25\textsuperscript{th} amendment providing in article 31C, that a law passed to give effect to the Directive Principles contained in clauses (b) and (c) of article 39 could not be held unconstitutional on the ground that it violated any of the Fundamental Rights contained in articles 14, 18 and 31.

The validity of article 31C was challenged in the famous case called \textit{Kesavananda Bharti}\textsuperscript{45} which is also known as Fundamental Rights case. The Supreme Court upheld the supremacy of economic and social Directive Principles over article 14, 19 and 31 of the Fundamental Rights. The decision of \textit{Kesavananda Bharti} is most important judgment of the Supreme Court and is still the foundation of the relationship between Fundamental Rights and Directive Principles.

The importance of the view upholding the substantive part of article 31C, but invalidating that part which precluded judicial review of Legislation under it was to maintain the balance between legislature and judiciary which is a fundamental feature of our Constitution.

1) The legislatures in India by upholding the first part of article 31C were provided with greater power to implement the socioeconomic programmes.

\textsuperscript{43} See R.C. Cooper v. Union of India A.I.R. 1970 S.C.569
\textsuperscript{44} See Madhav Rao Scindia v. Union of India A.I.R. 1971 S.C.530
\textsuperscript{45} Supra Chapt. IV n.33
2) Invalidation of second part of the article 31 C avoided the possibility of the State to immunize all kinds of laws from judicial scrutiny. This means the legislatures were prevented to enact review proof legislations in the name of article 39(b) and (c) so as to avoid socioeconomic chaos in the country. Chandrachud J., emphatically stated," Laws passed under article 31C can be upheld only and if there is a direct and reasonable nexus between the law and the Directive Principles of the State expressed in Article 39(b) and (c)". Mathew J., went further in attributing that the Directive Principles occupy a significant place in the Constitution and observed:

In building a just social order, it is sometimes imperative that the Fundamental Rights should be subordinated to Directive Principles.; the economic goals have an incontestable claim for priority over ideological ones on the ground that excellence comes only after existence. It is only if men existed that there can be Fundamental Rights\textsuperscript{46}.

\textsuperscript{46} Ibid p.1966
5.3.3 KESAVANANDA BHARTI TO MINERVA MILL’S CASE

This judgment has been further followed in the case of *Narendra Prasad v. State of Gujarat* 47 The court considered that no right of an organized society can be complete and absolute enjoyment of one’s right must be considered with the enjoyment of rights by other where in the free play of social forces, it is not possible to bring about voluntary harmony. The State has to set a right in balance s between the competing interest and their Directive Principles although not enforceable in court, but having definite and positive role introducing an obligation upon the State under Article 37 of Constitution in making laws for the affairs and conduct of man.

In *Mumbai Kamgar Sabha v. Abdulbhai* 48 Mathew j., observed that in the statutory interpretation the courts looked for light to the ‘Lode star’ of Directive Principles. And where two statutory choices were available, the construction in conformity with the social philosophy of the Directive Principles had to be preferred.

While again realizing its helplessness to favour the directive against the Fundamental Rights in *U. P. State Electricity Board*, 49 the court nevertheless demonstrated its anxiety for their implementation by declaring that even though the courts cannot direct

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47 A.I.R. 1974 S.C. 2098
48 A.I.R. 1976 S.C. 1455
49 A.I.R. 1979 S.C. 65
making of legislations implementing the directives they “are bound to evolve, affirm and adopt principle of interpretation which will further and not hinder the goals set out in the Directive Principles of State Policy.”

In *Kasturi Lal v. State of J & K*\(^{50}\), the Supreme Court observed that the yardstick for determining reasonableness and public purpose was to be found in the Directive Principles.

In *Hussainara Khatoon v. State of Bihar*\(^{51}\) provide the importance of free legal aid scheme and held that free legal service was essential element of reasonable and just provision Under Article 21 of the Constitution. The right to legal aid is prerequisite and not to be explicit in Article 21 of the Constitution.

The second stage in the history of Article 31C arose when the famous 42nd Amendment of the Constitution was passes by parliament in 1976. Article 31C was amended by this amendment which further widened the scope of Art 31 C so as to cover all Directive Principles. It substituted for the words “directives contained in Article 39(b) & (c)” the following words, “all or any of the principles laid down in Part IV”. The amendment thus gave complete Constitutional protection to laws passed not only to implement the principles specified in Article 39(b) & (c) but also the principles laid down in Part IV of the

\(^{50}\) (1980) 4. S.C.C. 1
\(^{51}\) Supra Chapt. III n.9
Constitution. Thus, whereas the 25th amendment gave primacy to directives contained in Article 39(b) & (c) only over the Fundamental Rights guaranteed by Arts. 14, 19 or 31, the 42nd amendment gave precedence to all Directive Principles over the Fundamental Rights guaranteed by Arts. 14, 19 or 31 of the Constitution.

The object and reasons appended with the said amendment read as under:

A Constitution to be living must be growing. If the impediments to the growth of the Constitution are not removed, the Constitution will suffer a virtual atrophy. The question of amending the constitution for removing the difficulties which have arisen in achieving the objective of Socioeconomic revolution, which would end poverty and ignorance, diseases and inequality of opportunity, has been engaging the active attention of the Government and the public for some years now. The democratic institutions provided in the Constitution are basically sound and the path for progress does not lie in denigrating any of these institutions have been subjected to considerable stresses and strain and that vested interest have been trying to promote their selfish ends to the great detriment of public good. It is, therefore proposed to amend the Constitution to spell out expressly the high ideals of socialism, secularism and the integrity of the nation, to make the Directive Principles more comprehensive and give them precedence over those Fundamental Rights which have
been allowed to be relied upon to frustrate socioeconomic reforms for implementing the Directive Principles⁵².

5.3.4 MINERVA MILL’S TO WAMAN RAO’S CASE

In Minerva Mills Ltd. v. Union of India⁵³, the validity of 42⁰ amendment was challenged in this case; the Supreme Court by 4:1 majority (Bhagwati, J. Dissenting) struck down Article 31C as amended by section 4 of the 42⁰ amendment, as unconstitutional on the ground that it destroys the “basic features” of the Constitution. The Court held that section 4 of the 42⁰ Amendment, as unconstitutional on the ground that it destroys the “basic features” of the Constitution. The Court held that section 4 of the 42⁰ amendment was beyond the amending power of the Parliament and was void since it damaged the basic structure of the Constitution by totally excluding from challenge to any laws giving effect to the Directive Principles of State Policy, even if they were inconsistent with rights guaranteed by Arts 14 and 19. The Indian Constitution is founded on the bedrock of the balance between parts III and IV. To give absolute primacy to one over the other is to disturb the harmony of the Constitution. The harmony and balance between Fundamental Rights and Directive Principles is an essential feature of the basic structure of the Constitution. The

⁵² Supra Chapt. I n.2
⁵³ Supra n.17
Directive Principles prescribe the goal to be attained and the Fundamental Rights lay down the means by which the goal is to be achieved. The goal set out in Part IV has to be achieved without abrogating the means provided for by Part III. Thus there is no conflict between the Fundamental Rights and Directive Principles. There are meant to supplement one another. The Court, however, held that Art 31 C as originally introduced by the 25th Amendment is constitutionally valid\textsuperscript{54}.

Thus, 42\textsuperscript{nd} Amendment sought to erase out article 31C in respect of all laws implementing any of the Directive Principles by amending and expanding article 31C. Chandrachud, C.J.; observed that the Fundamental Rights occupy a unique place in the lives of civilized societies and described them as “transcendental”, “inalienable” and “primordial”, thus once again resurrecting the metaphysical reasoning of 18\textsuperscript{th} century natural law philosophy. It was asserted that the goals laid down by the Directive Principles could not be allowed to be achieved if, that would mean the non-fulfilment of the aims laid down in Part III of the Constitution. It was said that apart from destroying one of the basic features of the Constitution, namely, the harmony between Parts III and IV, Section 4 of and 42nd Amendment denies to the people the blessings of a free democracy and lays the foundation for the creation of an authoritarian state. And where the

\textsuperscript{54} Ibid p.1806
togetherness or harmony between Fundamental Rights has to prevail, Chandrachud, C.J., developed the theme thus:

If they (Article 14 and 19) are a part of the basic structure, they cannot be obliterated out of existence in relation to a category of laws described in Article 31C or for the matter of that, in relation to laws of any description whatsoever, passed in order to achieve any of object or policy whatsoever. This will serve to bring out the point that a total emasculation of the essential features of the Constitution is by the ratio in Kesavananda Bharati not permissible to the Parliament\textsuperscript{55}.

In his dissenting judgment Justice Bhagwati has raised the question that if article 31C, as it stood before 42nd Amendment, giving absolute primacy to two of the Directive Principles over the two important Fundamental Rights to equality and property could be upheld in Kesavananda then it is difficult to understand as to why article 31C as amended by the 42nd Amendment and subordinating article 13 to the other Directive Principles, would have to be struck down\textsuperscript{56}.

Merely because the Directive Principles are non-justiciable, it does not follow that they are in any way subservient or inferior to the Fundamental Rights. The Directive Principles impose an

\textsuperscript{55} Ibid p.1803
\textsuperscript{56} See Justice A.M. Bhattacharjee. “Challenge to Social Justice in the Constitution and the Laws” in the Challenge of Social Justice (3\textsuperscript{rd} International Conference of Judges, New Delhi) 1985
obligation on the State to take positive action for creating socioeconomic conditions in which there will be an egalitarian social order with social and economic justice to all so that individual liberty will become a cherished value and the dignity of the individual a living reality, not only for a few privileged persons but for the entire people of the country.

It will thus be seen that the Directive Principles enjoy a very high place in the Constitutional scheme and it is only in the socioeconomic structure envisaged in the Directive Principles that the Fundamental Rights are intended to operate, for it is only then they can become meaningful and significant for the millions of our poor and deprived people who do not have even the bare necessities of life and who are living below the poverty level\textsuperscript{57}.

It is not correct to say that under our Constitutional scheme, Fundamental Rights are superior to Directive Principles or that Directive Principles must yield to Fundamental Rights. Both are in fact equally fundamental and the courts have therefore in recent times tried to harmonise them by importing the Directive Principles in the construction of the Fundamental Rights. If a law is enacted for the purpose of giving effect to a Directive Principles and it imposes a restriction on a Fundamental Right, it would be difficult to condemn such restriction as unreasonable or not in public interest. So also

\textsuperscript{57} Supra n.17 p.1847
where a law is enacted for giving effect to a Directive Principle in furtherance of the Constitutional goal of social and economic justice it may conflict with a formalistic and doctrinaire view of equality before the law, but it would almost always conform to the principle of equality before the law in its total magnitude and dimension, because the equality clause in the Constitution does not speak of mere formal equality before the law but embodies the concept of real and substantive equality which strikes at inequalities arising on account of vast social and economic differentials and is consequently an essential ingredient of social and economic justice.

The amended Article 31C does no more than codify the existing position under the Constitutional scheme by providing immunity to a law enacted really and genuinely for giving effect to a Directive Principles, so that needlessly futile and time consuming controversy whether such law contravenes Article 14 or 19 is eliminated. Parliament Therefore amended Article 31C with a view to providing that in case of conflict, Directive Principles shall have precedence over the Fundamental Rights in Articles 14 and 19 and the latter shall yield place to the former, the Positive Constitutional Command to make laws for giving effect to the Directive Principles shall prevail over the negative Constitutional obligation not to encroach on the Fundamental Rights embodies in Arts. 14 and 19.
The amendment in Article 31C far from damaging the basic structure of the Constitution strengthens and re-enforces it by giving fundamental importance to the rights of the members of the community as against the rights of a few individuals and furthering the objective of the Constitution to build an egalitarian social order where there will be social and economic justice for all, every one including the low visibility areas of humanity in the country will be able to exercise Fundamental Rights and the dignity of the individual and the worth of the human person which are cherished values will not remain merely the exclusive privileges of a few but become a living reality for the many.

Where protection is claimed in respect of a statute under the amended Article 31C, the court would have first to determine whether there is real and substantial connection between the law and a Directive Principle and the predominant object of the law is to give effect to such Directive Principles and if the answer to this question is in the affirmative, the court would then have to consider which are the provisions of the law basically and essentially necessary for giving effect to the Directive Principles and give protection of the amended Article 31C only to those provisions.

If the court finds that a particular provision is subsidiary or incidental or not essentially and integrally connected with the implementation of the Directive Principle or is of such a nature that,
though seemingly a part of the general design of the main provisions of the statute, its dominant object is to achieve an unauthorised purpose, it would not enjoy the protection of the amended Article 31C and would be liable to be struck down as invalid if it violates Article 14 or 19. Therefore Section 4 of the Constitution (Forty-second Amendment) Act, 1976 does not damage or destroy the basic structure of the Constitution and is within the amending power of Parliament and the amended Article 31C is Constitutional and valid.

The relationship between Fundamental Rights and Directive Principles has been stated by Justice P.N. Bhagwati as follows: "The genus of both is to be found in the freedom struggle which the people of India waged against the British rule. The leaders realized the supreme importance of the political and civil rights of the individual because they knew from their experience of the repression under the British rule that these rights are absolutely essential for dignity of men but at the same time they were conscious that in the socioeconomic conditions that were prevalent in the country only as small fraction of the people would be able to enjoy these rights.

There were millions of the people who were steeped in the poverty and destitution and for them these civil and political rights had no meaning. It was realized that to the large majority of the people who are living almost under subhuman existence and for whom life is one long unbroken story of want and destitution, notions of individual
freedom and liberty would sound and empty words banded about only in the drawing of bridge and well-to-do and the only solution for making these rights meaningful to them was to remake the material conditions in a new social order where socioeconomic justice will inform all institutions in public life so that the preconditions of fundamental liberties for all, may be secured. The national leaders therefore, laid the greatest stress on the necessity of insurance and economic justice\textsuperscript{58}.

Parts III and IV represent the core of the Indian Constitutional philosophy. Parts III and IV, in combined form, may be described from the following different perspectives;

1) political civil and economic
2) physical, intellectual and spectral
3) liberty, equality and security
4) human rights and Directive Principles, and
5) rights and duties of a man.

Both are fundamental for the governance of the country, both constitute an integrated scheme of a social goal, by the continuous interaction of the Fundamental Rights and the Directive Principles through the medium of judicial process. The Constitution envisaged and organic growth of socioeconomic justice in a free society. Indeed the main objective of the Directive Principles is to give

\textsuperscript{58} Ibid p.1853
a practical content to the Fundamental Rights and enlarge these contents, in the interest of society. They should be done by the process of harmonization and not by the creation of confliction between the two, for the permissible formula of a reconciliation to implement Directive Principles without unreasonably taking away the Fundamental Rights. Both together constitute the ideals of democratic welfare state and indeed its conscience. The Constitution reserved the minimum rights for the people and kept them beyond the unreasonable reach of parliament.

Prof. J. K. Pandey\textsuperscript{59} described that now the position today is that Champakam’s ruling, held that in case of a conflict between Fundamental Rights and Directive Principles, the former shall prevail and the Minority view in Minerva Mills’s case, held, that in such a case the latter shall prevail.

Hence, here, stand face to face two rival views. Now we shall examine the merits of these two views. Firstly, the Minority opinion says that from the fact that Fundamental Rights are enforceable by Court and Directive Principles are not so enforceable, inference could not be drawn in Champakam’s case, that Directive Principles are non-legal and, therefore, liable to the overridden by Fundamental Rights. According to it, enforceability by Court is not the

\textsuperscript{59} Editor, All India Reporter; Directive Principles Source of Power of Chart of Duties A.I.R. (April 1981)
essential quality of rule of law, which gives them the status of law or legality. However, it is not correct to say that Champakam's ruling held the Directive Principles inferior, because they were non-legal or equivalent to moral principles. It only held that Directive Principles are unenforceable. This has created an impression in some quarters that Directive Principles contain mere moral principles. For instance, in Kesavananda Bharti's case, Justice Mathew described them as embodying moral rights. But it is possible for the rights to be legal and remain unenforceable as is the case of right of a subject against Crown under Common Law of England or right to a time-barred debt; which are known as Imperfect Rights in Jurisprudence. This objection to Champakam's ruling is thus based on a misunderstanding.

The minority opinion suggests that since there is no provision in the Constitution to resolve this conflict, it should be resolved by reference to Social Justice which the Constitution wants to achieve. It holds that today the fundamental problem of Government has changed from conflict of Liberty and power to conflict of Liberty of few with Liberty of many, that provision for social justice is made in the Indian Constitution mainly, by Directive Principles alone, and that Fundamental Rights provide only for formal equality while the Constitution aims at equality in its total dimension. This argument clearly misunderstands the problem of Constitutional law viz. who to

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60 Supra Chapt. IV n.33
61 Supra n.14
reconcile liberty, which is essential for good life of an individual, on the one hand and power, without the protection of which, enjoyment of liberty is not possible, on the other hand.

The Minority opinion admits that Directive Principles also impose obligations on the state like Fundamental Rights. If this is true then the combination of the obligations under both, Fundamental Rights and Directive Principles, will make obligation double. But the Minority opinion holds that the combination of the second obligation with the first will exempt the state from its obligation and result in giving fresh powers to it. The truth however is that power and obligation are jural contradictions. Therefore, obligation can never give rise to power just as fire can never give rise to snow.

This interpretation will give rise to one more absurdity. It is, that if, accepted, it can also be used to defeat other provision of the Constitution that is Separation of powers. It may be contended that if there is a conflict between the obligation of the executive to act only in accordance with law and an executive action taken to implement a Directive Principle, the executive action should prevail. His would clearly convert our Democracy into Dictatorship; this interpretation must therefore be rejected.

Prop. Virendra Kumar has said that article 31C has robbed the Fundamental Rights of their supremacy and made them subordinate to the Directive Principles of State Policy. The amendment
of art 31C makes the Constitution "stand on its head instead of its legs".

In Minerva Mills, majority court has viewed amendment of article 31C as disturbing the balance and harmony of the Constitution. This argument suffers from two infirmities. One is that, fulfilling the obligation which is commanded by the Constitution itself cannot be held as upsetting the harmony and balance of the Constitution. Secondly, the court seem to think of balancing only in terms of the traditional scale which weigh say, five kilos of weight with like weight- a scale which is all right for an affluent society where there is not dearth of 'likes to be treated (alike). Whereas in a society shocked with inequalities, balancing between Fundamental Rights and Directive Principles has to be thought in terms of our "commitment to social revolution", else both would cease to be "the core of commitment", or "the conscience of the Constitution".

Bhagwati J. in his dissenting opinion, however, held, rightly, that the Directive Principles were not inferior or subordinate to the Fundamental Rights and that they occupied "a very high place" in the Constitutional scheme but that it is for the court to determine whether the object of the impugned legislation was to give effect to Directive Principles. But the last point may indirectly bring in the

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62 Virendra Kumar Harmony & Balance – A static or Dynamic process A.I.R. Journal Section
doctrine of 'colourable legislation' or the doctrine of 'pith and substance' in the spirit of confrontation, as distinct from constructive partnership with the legislature, this could be in conflict with the role intended for the court under the philosophy of the Constitution, a point grasped firmly and applied pioneering by Justice Gajendra Gadkar and later, imaginatively, albeit in vary degrees, by Justices Krishna Iyer and Bhagwati in their many judgments.

For this reason the judges ought to be concerned with how best the policy behind a law can be ascertained and whether such policy conforms to those demands. The courts must reconcile the demands of a welfare state with the rule of law (respect for the individual's right or interference with such rights only with the authority of the law.) But such reconciliation must, again, be viewed in the context of those demands of distributive principles, which under Constitutional law, are not in error or subordinate, Indeed, they are superior, than the Fundamental Rights and they are binding on the state in India.

We may say that the Fundamental Rights and Directive Principles were divided into two part for the sake of convenience, because, it was thought that the Directive Principles, by their very nature, cannot be made justiciable through courts. But his bifurcation between these two sets of rights has brought about an unfortunate competition for priority (It would not be appropriate to call it a conflict,
i.e., priority between the two fundamental values ingrained in the Constitution. Judicial enforcement of part III rights tends to get priority over the legislatively enforced part IV rights. It is for the court to decide which will have a preference over the other when both of them cannot have the same degree of promotion.

Now it is clear that the Constitution makes had one dominant objective in view to ameliorate and improve that lot of the common man and to bring about a socioeconomic transformation based on principles of social justice. Part III of the Constitution shows that it should be a society where the citizen will enjoy the various freedom and such rights as are the basic elements of those freedoms without which there can be dignity of individual. The art IV was designed to bring about social and economic revolution that remained to be fulfilled after independence. The aim of the Constitution is not with regard to guarantee of liberties to only a few of the citizens but to all. Hence to ignore Part IV is to ignore the substantial portion of the Constitution and then achievement of the welfare state would not be possible.
5.3.5 WAMAN RAO TO BHARAT COKE MFG. CO. LTD.'S CASE

In Waman Rao v. Union of India\textsuperscript{63}, the validity of Articles 31A, 31B and 31C and Schedule Nine was challenged on the ground that they were beyond the constituent power of Parliament as they damaged the basic features of the Constitution. It was held that these Articles did not destroy the basic feature of the Constitution and were therefore valid and Constitutional being within the amending power of the Parliament.

Regarding Article 31C it was held that this Article as it stood prior to the 42nd Amendment, does not damage any of the basic or essential features of the Constitution and is therefore valid. The Unamended portion of Article 31C gives protection to a defined and limited categories of laws for giving effect to the principles specified in clauses (b) and (c) of Article 39 of the Constitution. Those clauses of Article 39 contain Directive Principles which are vital to the well-being of the country and the welfare of its people. It is impossible to conceive that any law passed for such a purpose can at all violate Article 14 or Article 19. "In fact far from damaging the basic structure of the Constitution, such laws passed bonafide for giving effect to Directive Principles contained in Art. 39 (b) or (c) will fortify that structure."

\textsuperscript{63} Supra n.18
Justice V. R. Krishna Iyer, during the course of judgment of *A.B.S.K.S. v. Union of India*\(^{64}\) explained the relations of two set of rights in these words "It is now universally recognized that the difference between two sets of rights primarily lies in the fact that the Fundamental Rights are aimed to bring political freedom to the citizens by protecting them against excessive State Action, while the Directive Principles are meant for promoting social and economic freedom by appropriate state action while Fundamental Rights are intended to avoid and prevent the dictatorship rule to secure ideal political democracy, they are of no value unless they can be enforced through court. They are made justiciable. It is also evident but not frequently that they get importance but the Directive Principles in the very nature cannot be enforced in court of law and it is also unimaginable that no court can compel legislature to make law. If the court can compel legislature to make law that certainly parliamentary democracy shall be reduced to Anarchy of Judges".

It is in the interest of the Constitution that the Directive Principles should not be enforceable by court of law. It does not mean that Directive Principles are less important than Fundamental Rights or they are not binding on state at all.

It is duly of court to enforce Directive Principles while interpreting Constitution or law. The directive principle should serve

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\(^{64}\) Supra Chapt.IV n.30
the court as code of interpretation. The Fundamental Rights, thus, should be interpreted in the light of Directive Principles and the latter should be interpreted and read into the former whenever it is possible, by the court. If any law is attacked, on the ground of infringement of Fundamental Rights, it should be examined to find out along with over consideration if the law does or does not advance call or any of the Directive Principles or if it is not out of the discharge of the Constitutional obligation of the State, Constitutional or otherwise, towards the citizen or citizens, flowing out of the preamble or other relevant provisions of the Constitution including Directive Principles.

In *State of Tamil Nadu V. Abu Kuber Bai*, it was held that, on a careful consideration of legal and historical aspect of Directive Principles and Fundamental Rights, there appears to be complete unanimity of judicial opinion on the various decisions of Supreme Court that although Directive Principles are not enforceable but yet the court shall attempt to harmonise the relation between Fundamental Rights and Directive Principles of state policy and any collusion should be avoided as far as possible. The view that has crystallised is that the court should give a harmonizing interpretation between two set of rights. An attempt should be made at reconciling two important provisions of Constitution rather than to arrive at a conclusion which head towards collusion between two sets of rights.

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65 Id
66 A.I.R. 1984 S.C.326
The reason why our founding fathers did not advise to make these principles enforceable was perhaps due to the vital importance and considerations and giving sufficient latitude to implement these principles according to the circumstances, time and palace and situation, which may arise.

5.3.6 BHARAT COKE MANUFACTURING CO. LTD.'S DIVISION CASE AND THEREAFTER

In Sanjeev Coke Mfg. Co. V. M/s. Bharat Coking Coal, Ltd., the Supreme Court was asked to decide whether the Coking Coal Mines (Nationalisation) Act, 1972, was entitled to the protection of article 31C. It was held that the above said legislation was for giving effect to the policy of the State towards securing the principles specified in clause (b) of article 39 and was, therefore, protected by Article 31C. Chinnappa Reddy, J., speaking for the Bench observed, "We have some misgivings about the Minerva Mills decision despite its rare beauty and persuasive rhetoric".

The judge, therefore, suggested, that the decision in Minerva Mills on the validity of article 31C as amended by the Constitution (forty-second Amendment) Act, 1976 was as obiter dictum. The learned judge further observed that in view of the decision
of the court in Kesavananda Bharati, upholding the validity of article 31C as enacted by Twenty-fifth Amendment, the subsequent amendment made by the Forty-second Amendment also must be valid for the following reasons:

"the dialectics, the logic and the rationale involved in upholding the validity of Article 31C where it confined its protection to laws enacted to further Article 39(b) or Article 39(c) should, uncompromisingly lead to the same resolute conclusion that Article 31C with its extended protection is also constitutionally valid. No one suggests that the nature of the Directive Principles enunciated in the other Articles of Part IV of the Constitution is so drastic or different from the Directive Principles in Clauses (b) and (c) of Article 39, that the extension of Constitutional immunity to law made to further those principles would offend the basic structure of the Constitution"69.

The judge also pointed out that no argument showing how other Directive Principles were different from those embodied in clauses (b) and (c) of Article 39 so as to justify disallowance of Constitutional immunity in respect of them was advanced in Minerva Mills and no decision had been given thereupon.

It is submitted that the belief that only the Fundamental Rights and especially the rights contained in articles 14 and 19 constitute basic structure of the Constitution is a misconceived one.

69 Id
Directive Principles are equally embedded in the basic structure of the Constitution and are as important as Fundamental Rights. Therefore, the view that the implementation of Directive Principles violates the basic structure does not hold good, rather it strengthens the basic structure doctrine by upholding the philosophy of distributive justice. Justice Bhagwati emphasised the philosophy of distributive justice locked within the doors of Directive Principles by observing:

The Directive Principles, therefore, impose an obligation on the State to take positive action for creating socioeconomic conditions in which there will be an egalitarian social order with social and economic justice to all, so that individual liberty will become a cherished value and the dignity of the individual a living reality not only for a few privileged persons but for the entire people of the country. It will thus be seen that the Directive Principles enjoy a very high place in the Constitutional scheme and it is only in the framework of the socioeconomic structure envisaged in the Directive Principles that the Fundamental Rights are intended to operate, for it is only then they can become meaningful and significant for the millions of our poor and deprived people who do not have even the bare necessities of life and who are living below the poverty level.

Thus the majority view of the *Minerva* was severely criticised by the Supreme Court, but not overruled. The opinion of Waman Rao case also did not make anything clear but indirectly
forward Directive Principles. Thus nothing is clear. It is interesting to point out here that in the controversy between Fundamental Rights and Directive Principles, where the legislative and judiciary entered into the boxing ring, the court has shown its judicial wisdom by upholding certain legislation on the ground that Directive Principles are reasonable restriction on Fundamental Rights and the law giving effect to them are in public interest. The concept of reasonable restrictions runs like a golden thread through the entire fabric of the Constitution. We hope that the court shall do the needful and continue to do needful also in future. The clouds of uncertainly shall be made clear and pulled into water and fresh breath shall be given to the idea of the Constitution for harmonious human notes.

5.4 EMANATION THEORY:

The Supreme Court after experimenting and re-experimenting many doctrines and principles from early fifties till early nineties is applying the emanation theory now a days to implement Directive Principles through Directive Principles, mainly by reading majority of the Directive Principles under article 21 of the Constitution. As per the general rules of interpretation:

1) Generally a statutory enumeration excludes everything other than what is enumerated.
2) Nonetheless, a liberal or progressive interpretation is not debarred from being given to the express provisions of the Constitution, to meet the growing needs of civilization or the changes in the social background; for, a Constitution is an organic instrument for the governance of the country.

In India, the Supreme Court has propounded the theory of 'emanation' and has departed from the traditional view that part III of the Constitution provides an exhaustive list of Fundamental Rights. The theory basically means that, even though a right is not specifically mentioned in Part III, it may still be regarded as a fundamental right if it can be regarded as an integral part of a named fundamental right; in other words, "it 'emanates' from a named fundamental right or its existence is 'necessary' in order to make the exercise of a named fundamental right meaningful and effective".

In the light of emanation theory the relation between Article 21 and Directive Principles is dealt by the researcher elaborately and elucidated under chapter V called Article 21 and Directive Principles.

70 Infra Chapt.VI p.257