CHAPTER – VII

CONCLUSION AND SUGGESTIONS

“The truest test of a democracy is in the ability of anyone to act as he likes, so long as he does not injure the Life or Property of anyone else.” ...

● MAHATMA GANDHI
CHAPTER-VII

CONCLUSION AND SUGGESTIONS

In the present day context, law’s uniqueness flows more from its versatility and open endedness of the social forms it structures, than from its purity. Jurisprudence cannot ever be again, at least with good conscience, an abstract study of philosophical models. Its aim is wisdom as to law’s being and Law’s effects.

Hegel once stated that wisdom will only arrive when human activity has ceased; must this be so? It appears perhaps at this time more than ever before that this is the case, when the Directive Principles are read into Article 21 of the Indian Constitution so as to give a primary role to the policy over the principle. This approach of the Supreme Court no doubt has shown temporary sign of success. However the impact of such interpretation failed to appreciate the problems faced by the community when the court ordered the closure of certain industries in and around Delhi.

The legislature – apart from any Constitutional limitations is legally, if not de facto, free to make innovations as it sees fit and deal in an abstract way with all future cases; a court on the other hand is limited to the actual issues and the parties before it, and is to an extent
restricted by the scope of legal aid, and operates within a traditional framework and subject to the force of professional opinion of what is good law, and the possibility of being reversed on appeal. It is therefore, hardly surprising that courts are fairly reluctant to avow their own creative function, so limited does it appear to any particular court in any individual case. Even in a legal system where the legislative power of the judiciary is explicitly conceded, as with the provision of the Swiss civil code to the effect that the judge may, in the last resort, fill gaps in the law by applying the rule he would have laid down if acting as legislator it is significant that this provision has been hardly ever acted upon, the courts preferring to develop new law by interpretation of well-tried and established principles.

Yet, within the severely constricted field of judicial law making, there is scope for the broader or narrower approach. Accordingly, whether the courts are endeavoring consciously to develop the law relatively freely to meet new social and economic condition, or whether, in a spirit of conservation, the aim is to tie legal development pretty literally to the precise enunciation of previous judge? The contrast here is sometimes expressed as between judicial valor and judicial timidity and certainly we may contract the bold vision of Lord Mansfield with the outlook of some of his contemporaries or the black letter law of Baron Parke with the wide judicial sweep of Blackburn J; nor are similar contrasts lacking at the present day. Yet
even highest measure of judicial valor must nevertheless need the restraint to which we have previously referred, though it may find room even within those narrow limits for much useful creative work as witnessed, for instance, the effect of the great case of *Donoghue v. Stevenson*. It is sometimes said that today there is little or no scope for judicial creation of fresh common law principles. But whilst the scope is much diminished, there is always judicial creativity.

However with the down of Independence and with a written Constitution of our own the scope for judicial creativity has increased. Mere Constitutional text unaided by integrative or organic interpretation by the Courts may not lend support for the Socio-economic philosophy of the Indian Constitution.

In a democracy governed by the rule of law, any change can be brought about, only through the process of law. The socio-economic 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 Court 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 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 or 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.

Before the Indian Independence it was generally believed that the political dependence of the country was the causes of all ills and those ills would be remedied as soon as freedom is achieved. The political freedom, therefore, was considered as a panacea for all the socio-economic problems which India then faced. But, after India attained its freedom it was soon realized that the political freedom alone could not cure all socio-economic ills. In facts it could only be a precondition for the socio-economic development of any country and thus is a mere means and not an end in itself.

Thus the Fundamental Rights and the Directive Principles have their roots deep in the freedom struggle. They epitomize the ideals, the aspirations, the sentiments, the humanistic efforts made by the leaders of the independence movement who drew no distinction between the positive and negative obligations of the state. Both types of rights had developed as a common demand, products of the national and social revolution, of their almost inseparable intertwining, and of the character of the Indian politics itself. It was the Constituent Assembly that separated them.
The inclusion Directive Principles of State Policy in the Constitutional framework reflects the zeal of the framers to bring social and economic justice to the doors of common man. The framers of the Indian Constitution adopted specific provisions relating to the political rights as also the social and economic rights in the body of the constitution in the form of Fundamental Rights and Directive Principles respectively, both being “supplementary and complementary” to each other.

Dr. B.N. Rau, the constitutional adviser foresaw the danger of a conflict between the Directive Principles and Fundamental Rights. He, therefore, suggested that a provision should be incorporated in the Constitution to make it clear that no law made by Sate in discharge of its obligation contained in directives shall be deemed to be invalid merely because it contravenes the provisions of Fundamental Rights. But the founding fathers did not accept this proposal because they thought that, on a fair reading of the entire Constitution, it was amply clear that there existed no conflict between them. They were further said to be complementary to each other.

The framers of the Indian Constitution were deeply impressed by the Directive Principles as found in the Irish Constitution of 1937. They were inspired to incorporate a similar scheme of directives in the proposed Constitution of India. Nevertheless, they could correctly judge that wholesome adoption of Irish directives in the
framework of the Indian Constitution would not serve the political, social and economic needs of the two countries. They, therefore, adopted the provisions so as to suit the Indian conditions. Moreover, there are many directives in our Constitution which are of Indian origin. They are based on the Gandhian philosophy of *ahimsa* and self-help.

The former Chief Justice of India, Justice P.B. Gajendragadkar, however, preferred a fourfold classification of the various directives contained in Articles 36 to 51 of the Constitution of India. In his view, Part IV relating to the Directive Principles contains an amalgam of several subjects which can be classified under four principal groups:

1) The first group deal with general principles of social policy requiring the Governments in different States and at the Centre to Create a social order in which three fold justice (social, economic and political) will inform all the institutions of national life.

2) The second group deals with the socio-economic right of the citizens.

3) The third one sets out the principles of administrative policy for the Government.
4) The fourth group contains the international policy of the Republic\(^1\).

Thus Part IV gives a broad picture of the progressive principles on which the Constitution wants the governance of the country to be based.

Perhaps this classification of Directive Principles as advocated by Justice Gajendragadkar is more acceptable at least from two standpoints. Firstly, it covers a seriatim analysis of the provisions relating to the Directive Principles without any overlapping and secondly, it is more precise and lucid so as to be easily understood.

The Constitutional validity and usefulness of the Directive Principles has always remained a controversial issue and opinions have often differed on this point. Some critics regard these directives as unnecessary appendages to a written Constitution like ours because they are nothing more than a mere political manifesto devoid of any Constitutional value.

To sum up, the criticism against the inclusion of Directive Principles in the body of Constitution mainly ensure from the fact that such declarations would tend to remain a dead letter unless the Legislatures initiate effective measures for the transformation of the social and economic structure of the country in accordance with them.

\(^1\) Supra Chapt. III n.28
Trying to resolve the misunderstandings among the members of the Constituent Assembly as regards the nature, significance and phraseology of the Directive Principles of State policy, Dr. Ambedkar in his address before the Constituent Assembly on November 19, 1948 once again clarified as follows:

“…… While we have established political democracy it is also the desire that we should lay down as our ideal economic democracy. We do not want merely to lay down an ideal before those who would be forming the Government. The ideal is economic democracy whereby, so far as I am concerned, I understand ‘One man, one value’ ………. Having regard to the fact that there are various ways by which economic democracy may be brought about we have deliberately introduced in the language that we have used, in the Directive Principles….. something which is not fixed or rigid. We have left enough room for people of different ways of thinking, with regard to the reaching of the ideal of economic democracy, to strive in their own way, to persuade the electorate that it is the best way of reaching economic democracy, the fullest opportunity of acting the way in which they want to act.”

Explaining the reason for leaving the language of the Article in Part IV in the manner in which it appeared in the Draft, Dr. Ambedkar pointed out that it was deliberately so done as to avoid
rigidity in the implementation of Directive Principles in view of the changing needs of country.

The criticism against the Directive Principles seems to be unwarranted and even misconceived due to misinterpretation of article 37 which provides that the Directive Principles are not enforceable as against the Fundamental Rights which are justiciable. This leads to an erroneous impression that the provisions contained in part III and Part IV of the Constitution are diametrically opposed to each other. But in fact no such conflict ever existed between any of the Directive Principles and the Fundamental Rights. It is only the question of priority between the rights which depends upon the prevailing socio-economic conditions of nation.

The distinction between Fundamental Rights and the Directive Principles was made for the purpose of obviating the administrative and other practical difficulties that might have arisen if the directives were to be enforced at the behest of citizens.

It is said that the central theme of Indian democracy lies in part III and IV of the Constitution. While Fundamental Rights are in the nature of general duties which the state is obliged to perform for its continuance and for the good of its people, the Directive Principles are in the nature of specific as a whole. Perhaps the conflict between Fundamental Rights and the Directive Principles of state policy ensure out of the misconception about the word unenforceable used in article
37. This article expressly provides that the Directive Principles are made unenforceable, which simply means that no writ, order or direction under article 32 can lie for compelling the state to conform to any of the directives contained in part IV of the Constitution. This in other words means that no citizen can challenge in a court of law, the non-implementation by the state of any Directive which it is requires to do otherwise under any of the directives contained in part IV.

It is submitted that the non-justiciable nature of the directives does not make them non-cognizable. Non-enforceability is altogether different from non-cognizable, and the former is much narrower in scope than the latter. The Principles are not enforceable but they are cognizable by the court. It is, therefore, clear that the judiciary can refer to these principles and seek guidance from the provisions enshrined in part IV while pronouncing judgments.

Since the inception of the Constitution, there is a controversy about the nature and utility of Directive Principles when compared to the Fundamental rights. Initially judicial corridors were mostly wishful in playing glorious tributes to the Fundamental Rights and relegating to the Directive Principles to the inferior position. It might be due to lack of proper appreciation by the judiciary about the nature of Directive Principles and their true picture and significance.
The judgments in *Champakam Dorrairajan*² and the cases that followed subsequently make it sufficiently clear that in the early years of the working of the Indian Constitution the attitude of the judiciary towards the Directive Principles vis-à-vis Fundamental Rights was somewhat rigid. Thus the series of decisions that followed *Champakam Dorrairajan* rendered it difficult for the state to implement the policies contained in the Directive Principles of State policy to realize the objects visualized in part IV. In particular it seriously hampered the upliftment of socially backward classes.

Feeling aggrieved by these judgments on political platform the legislatures found themselves in doldrums and they decided to get the Constitution amended. This conflict of policy between judiciary and legislatures resulted into passing of several amendments to nullify the impact of Supreme Court decisions, till a situation that finally reached when all Directive Principles were made superior to Fundamental Rights enshrined in article 14, 19 and 31 by the Constitution 42nd Amendment Act.

Various Constitutional amendments viz; 1st, 4th, 17th, 25th, 39th, 40th, 42nd, 44th etc., where passed by the parliament for giving effect to the Directive Principles made it clear that the State always regarded Directive Principles as equally fundamental in the governance of the country. Other legislative and executive measures

² Supra Chapt. IV n.16
taken in the past five decades clearly indicate that the States always regarded these directives as principal instruments of providing social justice to the people.

Notwithstanding after initial hurdles by the judiciary, it has now been well settled that the judicial non-enforceability of the Directive Principles did not mean that the courts are completely excluded from taking into consideration these principles while deciding cases. This has been elaborately discussed by the Supreme Court in the famous In re Kerala Education Bill. In this reference 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 principles of harmonious construction and should attempt to give effect to Fundamental Rights as well as to the Directive Principles, as far possible. It, therefore, follows that ‘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 ascertaining the true meaning of the ambiguous or doubtful provisions of the Constitution. This
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. Thus, the restrictions imposed by the provisions of the Minimum Wages Act were held to be reasonable although they interfered to some extent, with the freedom of trade or business guaranteed under Article 19(g). The reason being that they carry the mandate underlying Article 43 regarding living wages to the workers⁴. Similarly, Article 47 under which the State is enjoined to bring about prohibition on the consumption of intoxicating drinks except for medicinal purpose may be taken into account while

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considering the reasonableness of the prohibition law under Article 194.

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. Thus, in *State of Bihar v Kameshwar Singh*5 the court relied upon the Preamble as well as the ‘directive’ contained in Article 39 to consider whether a certain Zamindari Abolition within the meaning of Article 31 of the Constitution.

5) The courts also rely upon these principles in deciding the reasonableness of classification for the purpose of Article 14 of the Constitution. Thus the classification between goods produced by petty power-loom weavers in moffusils was held to be valid excise duty as it was in furtherance of the objective mentioned in Article 43 of the Constitution.

6) Finally, the Courts while construing a Statute, interpret it in such a way that the implementation of Directive Principles is sought without reducing them to a mere theoretical ideology.

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5 A.I.R. 1952 S.C. 252
The Directive Principles have played and have been playing a very significant role in influencing the decisions of law-courts in a number of cases.

The basic issue in the controversy over the relationship of Fundamental Rights with Directive Principles ultimately boils down to the choice between human freedom and unfettered socio-economic development (as envisaged and implemented by the executive). The founding fathers have wisely answered the question as not being that of a choice and confrontation, but of accommodation, between the two.

The researcher feels that the court had never followed a policy of consistency on the issue of relationship of Fundamental Rights and Directive Principles. Once can easily discern that for the first time the Court has subordinated Directive Principles to Fundamental Rights, for the second time the court has propounded the doctrine of harmonious construction, and for the third time the Court adopted the doctrine of integrated scheme and finally it concede the primary of Article 39(b) and (c) article 14, 19 and 31 through Article 31-C. (vide Constitution 25th Amendment Act).

The decision of the Supreme Court in *Champakam Dorrairajan’s case* gave rise to the controversy about the supremacy of Fundamental Rights vis-à-vis Directive Principles. The question raised in the year 1950 is not yet solved. The Judiciary has evolved various principles and doctrines since 1950, but the uncertainty still prevails.
In its second phase of interpretation, the Supreme Court placed reliance on the Directive Principles for validating a number of legislations that were found not violative of Fundamental Rights. The Directive Principles were regarded as dependable index of: (a) Public purpose, and (b) Reasonableness of restrictions on fundamental rights.

Supreme Court in Kasturi Lal v. State of U.P.\textsuperscript{6} 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 be found in the Directive Principles and therefore, if any executive action is to be taken by the Government for giving effect to a Directive Principles then it would by itself \textit{prima facie} be reasonable and in public interest.

In Golaknath\textsuperscript{7} 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 characterise the relationship between Fundamental Rights and Directive Principles.

While in Chandra Bhuvan\textsuperscript{8}, the Supreme Court held that rights conferred under Part III are fundamental, the directives given under Part IV are fundamental in the governance of the country. We

\textsuperscript{6} Supra chapt. V n.35
\textsuperscript{7} Supra Chapt. V n.36
\textsuperscript{8} (1970) 2. S.C.R. 600
see no conflict on the whole between the provisions contained in Part III and Part IV. They are complementary to each other.

In *Mumbai Kamgar Sabha v. Abdulbhai*\(^9\), Mathew, J., observed that in 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.

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 like bank Nationalisation and the privy purses abolition law. This led parliament to pass the 25\(^{th}\) 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, 19 and 31.

The validity of Article 31 C was challenged in the famous case called *Kesavananda Bharati* which was also known as *Fundamental Rights* case. The Supreme Court upheld the supremacy of economic and social Directive Principles over Articles 14, 19, and 31 of part III. The decision of *Kesavananda Bharati* which is the most

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\(^9\) Supra Chapt. V n.48
important judgment of the Supreme Court is still the foundation of the relationship between Fundamental Rights and Directive Principles.

The second stage in the history of Article 31-C arose when the infamous 42nd Amendment of the Constitution was passed by parliaments in 1976. Article 31-C 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 Articles 39(b) & (c), but also the principles laid down in Part IV of the Constitution. Thus whereas the 25th Amendment gave primary to directives contained in Article 39(b) & (c) only over the Fundamental Rights guaranteed by Articles 14,19 and 31, the 42nd amendment gave precedence to all Directive Principles over the Fundamental Rights guaranteed by Articles 14,19 and 31 of the Constitution.

In Minerva Mills Ltd. V. Union of India10, the Supreme Court by 4:1 majority (Bhagwati, J. dissenting) struck down Article 31-C, as amended by section 4 of the 42nd Amendment, as unconstitutional on the ground that it destroyed the “basic features” of the Constitution. The Court held that section 4 of the 42nd Amendment

10 Supra Chapt. I n.2
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 Articles 14 and 19. The Indian Constitution is founded on the bed-rock 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 Directive Principles prescribe the goals to be attained and the Fundamental Rights lay down the means by while the goal is to be achieved. The goals set out in Part IV have to be achieved without abrogating the means provided for by Part III. Thus there is no conflict between the Directive Principles and the Fundamental Rights. These are meant to complement one another.

In his dissenting judgment Justice Bhagwati, as he then was, 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 Act and subordinating Article 13 to the other Directive Principles, would have to be struck down?
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.

**Prof Hohfeld’s Fundamental Legal Concepts**

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<td>Claim</td>
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<tr>
<td>Duty</td>
<td>No-Right</td>
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Justice Bhagwati, as he then was, was at pains in *Minerva Mills* case to explain that Hohfeldian concept does not provide a satisfactory answer in all kinds of Jural relationships and breaks down in some cases where it is not possible to say that the duty is one that create an enforceable right in another, after mentioning that we are so obsessed with Hohfeldian classification. This observation follows after the learned judge gave the classification as follows:

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A comparison of these two classifications given above, it is very clear that Justice Bhagwati has misconstrued the classification offered by Prof. Hohfeld. There was in fact no necessity to refer to Hohfeld’s classifications at all to support his argument.
Instead the learned judge should have adopted Dworkin’s classifications of rules, principles and policy analogy which could have been properly and justifiably articulated.

In *Waman Rao v. Union of India*, the validity of Articles 31-A, 31-V and 31-C and Schedule Nine were challenged on the ground that they were beyond the constituent power of Parliament as they damaged the basic feature 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.

Justice V.R. Krishna Iyer, during the course of judgment of *A.B.S.K.S. v. Union of India*\(^\text{11}\) explained the relation of two sets 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 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

\(^{11}\) A.I.R. 1981 S.C. 298
unimaginable that no court can compel legislatures to make law. If the court can compel legislature to make law certainly parliamentary democracy would be reduced to an Anarchy of Judges”. It is in the interest of the Constitution that the Directive Principles should not be enforceable by courts 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 duty of the court to enforce Directive Principles while interpreting Constitution or law. The Directive Principles should serve the court as guidelines 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.

In Sanjeev Coke Mfg. Co. v. M/s. Bharat Coking Coal Ltd.\textsuperscript{12}, 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”.

\textsuperscript{12} Supra Chapt. V n.19
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 an obiter dictum. But it did not overrule the decision given in *Minerva Mills* case.

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 legislations on the ground that Directive Principles are reasonable restrictions on Fundamental Rights and the law giving effect to them is in public interest. The concept of reasonable restriction 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 uncertainty shall be made clear and pulled into water and fresh breath shall be given to the idea of the Constitution for harmonious human notes.

### 7.1 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

Article 21, which is the heart of all the Fundamental Rights has received, expanded meaning from time to time by its interpretation by the judiciary in the light of the Directive Principles.

"Right to life" is the compendious expression for all those rights which the court must enforce because they are basic to the dignified enjoyment to life. It extends to the full range of conduct which the individual is free to pursue. If the term life is to be interpreted so it has to be interpreted in the light of Directive Principles.

The Supreme Court 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 or it can be regarded as an integral part of 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”.

Article 21 includes ‘right to live with human dignity’ Right to means of livelihood and the right to dignity, right to health, right to potable water, right to pollution free environment and right education
have been held to be a Fundamental Right and constitute an integral part of Article 21.

The jurisprudence of Directive Principles and the Constitutionalism of Fundamental Rights spring from the same spiritual source and finer values and it is false dilemma of exotic legalism to pit one against the other. The confrontational Constitutional culture must, if we are to survive, reincarnate as a consensual democratic order where the legislature, the judicature and the executive will not enter a boxing ring, punching and bleeding, but gnashing will start on orchestra of harmonious human notes.

The Courts are playing active role in the implementation of Directive Principles through Fundamental Rights. The Court is giving somehow, due importance to the Directive Principles at par with Fundamental Rights the Court fully aware of the need of common man of his social and economic development in future. Therefore, the real problem today is to see how far as the Court has enabled the achievement of social and economic justice goal. In the words of N. A. Palkhivala:. “Our Constitution is primarily shaped and moulded for the common man ... It is a Constitution not meant for the ruler 'but the ranker, the tramp of the road'.”
7.2 SUGGESTIONS:

In view of the above conclusions, the researcher submits the following suggestions:

1) While interpreting the Constitution the Courts are under Constitutional obligation to uphold any living law which tries to honour the preambular promise of social promise of social justice reiterated in Article 38 of the Constitution. Therefore, judges must realize that they are not super humans or scientists, but participants in the main stream of our State.

2) In present scenario judge has to consider the social and economic policy of the State and to consider the law in the light of that social and economic policy. The Judge should not forget that he is also the citizen of the country and entrusted with social and economic adventure upon which he has to march. And it is not enough that he should do justice according to law which he must do.

3) It is also not advisable that the non-elected body of few persons should be guided to his elected representatives of his nation, who are supposed to know the problem of his nation better that judges and remedy thereof. Nowhere in the world, is Judiciary a guiding factor to legislatures. None
should exceed his limits. Hence judges must also try to do social and economic justice without hurting their judicial conscience.

4) Directive Principles must be continued to be read as reasonable restrictions on fundamental rights.

5) To avoid conflict, while interpreting the Fundamental Rights. Directive Principles which embody the social philosophy of the nation cannot be ignored by the Court.

6) The Court should take into account the Directive Principles while determining the scope of phrases like “Public Interest”, “Due process”, “reasonable restriction” and “public purpose”.

7) Both set of rights should be made complementary and supplementary to each other to achieve the objective of preamble to Constitution. But this idea should also be made dynamic and static. It should change according to the time, place and circumstances.

8) Clauses (1) and (2) of Act 13 may be deleted from the Constitution. Their omission from the Constitution would not affect either the enforceability of Fundamental Rights or the power of judicial review as these have already been taken care of by Article 245 (1) and 372 (1). Article 13 has only
psychological impact and it was introduced in the Constitution only by way of abundant caution.

9) The first part of Article 37, which is the main source of the position of subservience of the Directive Principles may be omitted so that these directives become Fundamental in the governance with the attendant characteristics of non-enforceability. Such omission does not render the Directive Principles enforceable.

10) The first part of Article 37 viz; “The provisions contained in this part shall not be enforceable by any Court” should be omitted by means of a suitable Court so as to avoid the avoidable confusion. Because of this part, the Court in the past accorded a secondary role the Directive Principles. Hence, need for amendment.

11) It is high time that legislatures should fix time frame for the implementation of Directive Principles to realize the Constitutional goals of social and economic justice.

12) Keeping this in view the Courts should give up their positivist and legalist approach and adopt functional approach blending it with theological approach.

13) The directive principle that the State shall endeavour to foster respect for international law and treaty obligations has
a great potentiality of absorbing the international principles relating to guarantee as under of human rights, and thus influence the interrelationship doctrine.

14) Finally, there is a need to develop of a comprehensive set of methodologies for judges to employ in analyzing complex social conditions surrounding certain socio-economic rights that need to be clearly understood by judges for comprehensive analysis,

Law is a social phenomenon. Law is a social institution. Sumner says that an institution is the combination of a concept and a structure and Law as an institution is based on the concepts of justice and equity. Around other ideas were constructed Courts, statutory provisions, system of punishment and the like. Legal institution, as in the case of movement from states to contract are cursive i.e. grow slowly and spontaneously. It can be said that the epoch making decisions are not far sighted but their soothig breath can be felt therewith, at this particular moment of Indian, but for all such practical purposes, Judiciary will have to keep on riding the horse on the same pillion, raising the standards of the people of India and achieving far better measures of the protection and enforcement of the Rights, essential for an organised civilized society. Contrarily, they may be
enacted too, without undergoing the evolutionary process, as where they are deliberately planned by the group e.g. Directive Principles.

Law exists to ensure the fulfillment of community needs and division of labour as basic of cohesion in a modern society and the State is merely a machinery to that and. (The rise of law is due to social change that make informal social controls by themselves incapable of maintaining group unity) Law emerges when political organization is super imposed on the social cohesion of Kinship. As societies grow more specialized, law becomes more complex, democratization of law then emerged would enable citizens to act in a way so as to influence the content of legal doctrine and institution by means of which law is created, interpreted, applied and enforced.