“Good people do not need laws to tell them to act responsibly, while bad people will find a way around the Laws”...

• PLATO
CHAPTER – I
INTRODUCTION

The present era known as post modernism, reflects changes in the level of science and technology, in particular, the development of computers, mass communication and increasing emphasis upon language in social and cultural studies. Post modernity is characterized by a feeling of extreme ambivalence to the hopes and social structures of the last 200 years; a mood of nostalgia; cultural relativism; moral conventionalism; scepticism and pragmatism, dialectic of localism amidst globalism; ambivalence towards organised, principled political activity; and a distrust of all strong forms of ethical or anthropological foundations. Above all, it is the feeling of failure and deep confusion where next to go, either personally, or in terms of striving to create social project aiming at a just society.

As for law, it too partakes of the radical uncertainty of the rest of life, the what of firm external standards. But it is also a special kind of living on these conditions, a way of making standards internally, out of our experience, as we make ourselves in our talk. The law is in fact a method of cultural criticism and cultural transformation, as well as cultural preservation. Law is in structure multivocal, always inviting new and contrasting accounts and languages.
Our considerations of law reflect the ambiguities, hopes confusions and fears of the postmodern condition. The dialectic between the fear of alienating effects of law embedded in the critical legal studies movement, and the pride in law demonstrated by Ronald Dworkin, is daily reproduced between those who see the effect of globalization as entrapping the underdeveloped world in webs of western legal domination and those who see in globalization the spread of legal culture of human rights, equality of opportunity, and the opening up of the individual life projects for new subjects. Some point out the rise of the ‘Asian tiger economies’, which combine capitalism with social traditions of patriarchy and relative authoritarianism, and fear that in the new world economic order the benefits of western legal liberalism will increasingly come under fire and a new fascism emerge.

The diversity of modes of approaching law, Modes which also serve to constitute their domain of study – render impossible a settled definition of law. Law, for instances, has become a vital cultural manifestation – its language mediates the very forms of social construction it buttresses – and its instrumentality cannot be reduced to merely facilitating political or economic interests, or the enabling of desires to be satisfied, for expressive function is not more ideology.

Under the written Constitution of a democratic country, the judiciary is under Constitutional obligation to interpret the Constitution keeping in mind the policies and principles, aims, aspirations and
dreams of Constitution makers. The Constitution entrusts the judiciary for the adjudication of disputes between parties including state as a party, administration of justice and interpretations of laws between citizens to State inter se etc. The freedom under the Constitutional guarantee should not be taken to mean that judiciary is not accountable to the nation and society under the Constitution.

Like the other institutions, the judiciary is also accountable for country’s political, social and economic growth. It is an integral and a very important component in a democratic system. It has to share the blame for retarding, the country’s political, social and economic growth, if it is going haywire, one of the basic causes is the developing confrontation between it and the other two limbs of the State the executive and the legislature.

Pandit Jawaharlal Nehru said “Rule of law must run close to the rule of life”. Nobody can doubt the supremacy of law, but at the same time law cannot merely be treated as a means of enforcing static authority. ‘Law’, as echoed by Mrs. Indira Gandhi, “should be an expression of man’s wisdom and self-discipline through which societies can resolve their anomalies and their capacity to meet the challenge of time”. The role of law is thus to subserve the Rule of law which cannot go off at a tangent from life’s problems and be an answer to the problems which existed yesterday.
1.1 SIGNIFICANCE OF THE STUDY:

Under the Constitution of India, the judiciary has great role to play in interpreting the social and other progressive legislations 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 legislations enacted by state in furtherance of Directive Principles through Fundamental Rights? The answer to this question forms the main basis for the present research under the title “An Appraisal of Directive Principles of State Policy and Constitutional Interpretation”.

Initially, the Directive Principles of State policies enshrined in Part-IV of the Constitution were given only a cursory treatment as their value and practical utility were seriously doubted by the judiciary. Inevitably, the court as the guardian of the Constitution and the protector of Fundamental Rights has played a crucial role and at times found itself in an unpleasant situation when they invalidated legislation on important matters of public policy. The Legislature, on their part, resorted to Constitutional amendments to undo the effect of the Courts verdict on socio-economic legislation.

In the early fifties, the apex court emphasized the primacy of Fundamental Rights over Directive Principles of State Policy basing
its interpretation on the Justiciability of Fundamental Rights as distinguished from the non-Justiciability of Directive Principles. At the same time, court has ignored the importance of Directive Principles when it has used Directive Principles to justify the importance of reasonable restrictions on Fundamental Rights. The Supreme Court perhaps in the anxiety to protect the proclaimed Fundamental Rights gave more importance to the enforceability aspect. Judges, as we know, can declare the law and at the best make interstitial legislation through interpretation but it can never substitute its role for the legislatures. As the Constitution itself has left the implementation of the Directive Principles to the legislatures so did the judiciary. In course of time, the legislative pursued a course of action in which the Fundamental Rights have become a casualty for the purpose of implementing the Directive Principles.

Against the backdrop of legislative confrontation, the judiciary has no alternative but to protect against the onslaught of Fundamental Rights, irrespective of the fact whether such violation of Fundamental Rights fulfils the aspirations enshrined in Part-IV of the Constitution. It is in the exclusive domain of the legislatures that the Constitutional framers have reposed absolute trust for realizing the social and economic rights of the community. Faced with these types of situations, the apex court has no other go but to be satisfied with bringing harmony between Part-III and IV which the court deliberately
declared as a basic feature, so as to safeguard it from legislative onslaught. Against this background, the present thesis focuses the troubles and tribulations undergone by the Supreme Court in balancing the individual interests and emerging collective goals during the last five decades.

1.2 HYPOTHESIS:

The Directive Principles have played a very important role and were used as a tool by the Supreme Court in the interpretation of the Constitution particularly the Fundamental Rights. The earlier approach of the Supreme Court with regard to the value of Directive Principles has not been consistent and uniform. At present, the courts are paying increasing attention in adjusting the community rights with the individual interests. Broadly speaking the courts’ approach is nearly consistent in recent times in bringing harmony between Fundamental Rights and Directive Principles.

1.3 METHODOLOGY:

The present research work is both explorative and analytical in its approach and has explored the role of Directive Principles in the interpretation of the Constitution. The present work is a doctrinal study on the role of Directive Principles and hence the
research was more library oriented, collecting information from the primary and secondary sources, and analysis of case law and critical appreciation of the decisional law.

The Directive Principles are the *élans vital* viz. life giving principles of the constitution. These provisions contain the social and economic philosophy and the substance of the Constitution. They represent the pledge and promises of our Constitution which is not merely a document but a living instrument. Directive Principles of State Policy constitute the soul, the very spirit and the ethos of the Constitution. These principles are the epitomes of social policy whereupon the state has been enjoined to embark on the goals of distributive justice. These principles embody the ideals of freedom movement in India.

The Directive Principles of State Policy set out the goals 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. The Supreme Court has expanded the ambit and reach of the Fundamental Rights from the broad sweep of the Directive Principles and thus made substantial contribution to the development of human rights jurisprudence through its activist thrust.

Fundamental Rights are of great importance for individual freedoms but these Fundamental Rights are very minimal set of rights
and therefore, human rights, which are derived from the inherent
dignity of the human person and cover every aspect of life and not just
a small number of preferred freedoms against the state, have
tremendous significance. For the large number of people in a
developing country, who are poor, downtrodden and economically
backward, the only solution for making Fundamental Rights
meaningful would be to restructure the social and economic order so
that they may be able to realize their economic, social and cultural
rights.

However, the philosophy underlying the Directive
Principles has not been rightly appreciated by the courts. There has
been a growing conflict of opinion about the nature and position
occupied by them under the Constitution and a strange judicial
predicament has prevented the courts from adopting a consistent,
coherent and balanced approach towards the Directive Principles and
the Fundamental Rights. The Supreme Court began by saying that
the Directive Principles “have to conform to and run subsidiary” to the
Fundamental Rights and that the Directive Principles cannot override
the categorical restrictions imposed on the legislative power of the
state by the Fundamental Rights. In its later pronouncements, the
Supreme Court moved towards harmonious construction of the
Constitution and subsequently the Directive Principles came to be
regarded as a dependable index of public purpose and
reasonableness of the restrictions on the Fundamental Rights. Yet the Supreme Court has, consistently, failed to give primacy to the Directive Principles over the Fundamental Rights.

To resolve this tangle, the Constitution was amended several times and especially the 25th Amendment provided that the law passed in pursuance of economic directives contained in article 39(b) and (c) could not be held void on the ground that it was violative of the Principles of equality, freedoms and property rights. In Fundamental Rights Case¹, Mathew, J., enunciated that in building up a just social order, sometimes it is imperative that the Fundamental Rights should be subordinated to the Directive Principles as economic goals have an incontestable claim for priority over ideological ones on the ground that the excellence comes only after existence, it was only if men existed that there could be Fundamental Rights. This observation strengthened the claim of the government to give priority to the socio-economic values contained in the Directive Principles and the government manifested the same through 42nd amendment. The said provision of the amendment could not be held void just because it was violative of equality, freedoms and property rights. The Supreme Court in Minerva Mills² held sections 4 and 55 of the 42nd amendment as ultra vires the Constitution. The Supreme Court thus resurrected the philosophy of transcendental and inviolable nature of Fundamental

¹ A.I.R. 1973 S.C. 1461  
² A.I.R. 1980 S.C. 1842
Rights by giving metaphysical reasoning. Chandrachud, C.J. observed that ideals set out in Directive Principles could not become a pretext for tyranny and the human freedom should not be a price to be paid for achieving those ideals. The learned Chief Justice further remarked that anything that destroys the balance between Fundamental Rights and the Directive Principles is destructive of the essential features of the Constitution.

Justice V. R. Krishna Iyer, during the course of his judgment in *A.B.S.K.S. V. Union of India* 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 then certainly parliamentary
democracy shall be reduced to “Judicial Anarchy”. 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 the duty of court to enforce Directive Principles while interpreting Constitution or law. The Directive Principle should serve the court as norms of interpretation. 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 challenged, on the ground of infringement of Fundamental Rights, it should be examined to find out along with other considerations whether such law does or does not advance all or any of the Directive Principles.

This decision of the Supreme Court in ABSK Sangh⁴ is significant in defining the role of Directive Principles in the interpretation of the Constitution with particular reference to the Fundamental Rights. Subsequently, the Supreme Court in various similar cases followed the Directive Principles as norms of interpretation while expanding the scope, meaning, ambit and content of Fundamental Rights. Presently most of the rights incorporated

⁴ Ibid
under the Directive Principles are given the status of Fundamental Rights mainly under Article 21 through judicial activism. Sometimes it appears that Supreme Court is giving priority to the Directive Principles over Fundamental Rights. It also appears in some cases that the Supreme Court has assumed the role of legislature and the Courts interpretation tends to advance the judges personal philosophy instead of what was intended by the Constitution makers. Against this background the researcher attempted to evaluate the role of Directive Principles in the course of the interpretation of the Constitution. In the process of evaluation an attempt will be made to assess the Court’s role in expanding the contents of Fundamental Rights and in fulfilling the Court’s role as a sentinel on quivive.

1.4 RESEARCH DESIGN:

The research work is divided into seven chapters as delineated below:

Chapter I deals with Introduction of an outline of the research work, the significance of the study, the hypothesis formulated and the methodology followed in pursing the study.

Chapter II deals with the conceptual analysis of Directive Principles. In this chapter, the researcher has dealt with the concept of rights, evolution of Civil and Political rights as well as Socio and
Economic rights. It also deals with the concept of Human Rights. The idea of human rights has passed through three generations. The first generation rights were of the seventeenth and eighteenth century Civil and Political rights, mostly negative in nature. The second generation rights consist in essentially positive rights viz: concerned with economic, social and cultural rights. The third generation rights are primarily concerned with collective rights which are foreshadowed in Article 28 of the Universal Declaration of Human Rights which declares that ‘everyone is entitled to a social and international order in which the rights set forth in this Declaration can be fully realised’. These ‘solidarity’ rights include the right to social and economic development and to participate in the benefit from the resources of the earth and space, scientific and technical information, the right to a healthy environment, sustainable development, peace and humanitarian disaster relief.

In Chapter III, an authoritative and dispassionate account of origin, historical background and evolution of Directive Principles is given. This Chapter covers the deliberations of the Constitutional Assembly on Directive Principles and Fundamental Rights and it is found that both rights and directives were treated alike by the founding fathers and their division into two distinct categories was resorted just to obviate the administrative and other financial difficulties that might arise in future at the time of their implementation. Otherwise the status
of Fundamental Rights and Directive Principles is the same under the Indian Constitution. This Chapter also deals with the Justiciability of Directive Principles.

Chapter IV deals with relationship between Fundamental Rights and Directive Principles. Part III and Part IV of the Indian Constitution taken together can be safely described as containing the philosophy of the Constitution. They are rightly termed as conscience of the Constitution. This Chapter also deals with the judicial attitude towards Directive Principles. After initial opposition by the judiciary, now it is well settled that Part III and Part IV of the Constitution is the bedrock of the Constitution. To give absolute supremacy to one over the other will tilt the balance of the Constitution and it is violation of basic structure of the Constitution.

Chapter V deals with the role of Directive Principles in interpretation of the Constitution which is the main theme of the present research. It covers the role of Directive Principles envisaged by the Constitution makers and its application by the judiciary. The Judiciary has followed the divergent attitudes towards the Directive Principles from early fifties till today. The law in this regard is not yet completely settled, though the present judicial practice shows us that they are reading the Directive Principles in interpretation for expanding the scope of Fundamental Rights, consequently enforcing the Directive Principles through Fundamental Rights.
Chapter VI deals with relation between Directive Principles and Article 21. Article 21, which is the heart of all the Fundamental Rights, has received expanded meaning from time to time by its wider interpretation by the judiciary in the light of the Directive Principles. The various cases including the latest decision of Supreme Court are analysed in this Chapter. The Chapter also deals with the role of Directive Principles with particular reference to their reading into Article 21.

Chapter VII deals with conclusion as well as the suggestions made by the researcher on the basis of his research.