CHAPTER – VII

REFLECTIONS OF JUSTICE BHAGWATI’S CONCEPT OF SOCIAL JUSTICE IN THE INTERPRETATIONS OF DIRECTIVE PRINCIPLES OF STATE POLICY
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7.1. General

India is a welfare State. The ideals of a welfare state are to secure to its citizens Justice - Social, Economic and Political as enshrined in the Preamble of the Constitution. The idea of welfare state envisaged by the Indian Constitution can only be achieved if the States endeavour to implement the Directive Principles with high sense of moral duty. These Directive Principles are provided in Part IV of the Constitution containing from Article 36 to Article 51.

Article 37 provides that the provisions contained in this Part shall not be enforceable as a right, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws. Article 38 provides that the State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which Justice, Social, Economic and Political, shall inform all the institutions of the national life.

1. Draft Article 28 corresponding Article to 36 provides that, In this part, unless the context otherwise requires, the state has the same meaning as in part III of this constitution (which means the word 'state' mentioned under Article 12 in the Fundamental Rights). Shiv Rao, B., - The Framing of India's Constitution A Select Documents- The Indian Institution of Public Administration, New Delhi-1967; Printed In India, Government Of India Press, Nasic.p,527.
In the above context it is clear that the Directive Principles lay down the lines on which the state should work under the constitution. The directives emphasise, an amplification of the Preamble, that the goal of the Indian polity is not *laissez faire*, but a *Welfare State*, where the state has a positive duty to ensure to its citizens socio economic justice and dignity of the individual.

The Directive Principles lay down certain economic and social policies to be pursued by various governments (authorities) in India; further they impose certain obligations on the State to take positive action in certain directions in order to promote the welfare of the people and achieve economic democracy.¹

### 7.2. Scope, Nature and Object of Directive Principles

The scope of the Directive Principles is that it shall be the duty of the state to follow these principles both in the matter of administration as well as the making of laws. Most of these Directives aim at the establishment of the economic and social democracy which is pledged for in the Preamble. According to Sir Ivor Jennings², “the philosophy underlying most of these provisions is ‘*Fabian Socialism* without the Socialism, for, only ‘the nationalisation’ of the means of production, distribution and exchange is missing. The... Indian Constitution (as framed in 1949) sought to effect a compromise between Individualism and socialism by eliminating the views of unbridled private enterprise and interest by social control and welfare measures as far as possible.”³

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The underlying objectives of these provisions of Part IV of the Constitution can better be understood from the speech of the Chairman of the Drafting Committee Dr. Ambedkar in the Constituent Assembly. A few lines from his speech may be produced as under:

"...The reason why we have established in the constitution a political democracy is because we do not want to install by any means whatsoever a perpetual dictatorship of any particular body of people. 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 a mechanism to enable people to come and capture power. The constitution also wishes to lay down an ideal before those who would be forming the government that ideal is economic democracy... In any judgment, the Directive Principles have a great value; for they lay down that our ideal is economic democracy. Because we did not want merely a parliamentary form of government to be instituted through the various mechanisms provided in the constitution, without any direction as to what our economic ideal or as to what our social order sought to be, we deliberately included the Directive Principles in our Constitution".

Now it is clear that the main object in enshrining the directive principles appear to have been to set standards of achievements before the legislature and the executive, the local and other authorities by which their success or failure can be judged:

The recommendations of the Advisory Committee on Fundamental Rights submitted at the time of framing the constitution contains that "we have come to the conclusion that in addition to these Fundamental Rights, the constitution should include certain directives of state policy which

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though not cognizable in any court of law should be regarded as fundamental in the governance of the country."¹

Thus it is clear that the object of the Directive Principles is to embody the concept of a welfare state and the ideal of a welfare state is to establish an egalitarian society. They lay down the goals which may be achieved through various means which have to be devised from time to time.

7.3. Relation between Directive Principles and Fundamental Rights

The Directive Principles differ from the Fundamental Rights in Part-III of the constitution or the ordinary laws of the land in the following respects: The Directive Principles are in the nature of instruments of instruction to the government of the day to do certain ends by their actions while the Fundamental Rights constitute limitations upon state action.² In other words, the Fundamental Rights are enforceable by Courts³ and the courts are bound to declare any law void if it is inconsistent with any of the fundamental rights⁴, while the Directive Principles are not enforceable through the courts⁵, nor can the courts declare any law void on the ground that the said law contravenes any of the Directives.

Dr. Ambedkar stated⁶ in the Constituent Assembly that “We do not want merely to lay down a mechanism to enable people to come and capture power. If any government ignores them... they will certainly have to answer before the electorate.” Therefore, it is not correct to criticise as meaningless. There may not be the legal force behind them but the highest

¹ Report of the Advisory Committee on Fundamental Rights, Para 2.
³ Art.32
⁴ Art 13(2)
⁵ Art.37
⁶ Drafting Committee Chairman of the Indian Constitution- CAD, Vol.III, p.494-495
tribunal, the public opinion stands behind them. No Government can afford to ignore these directives, if it is not keen to doom its future, for all time to come.' Granville Austin described the Fundamental Rights and Directive Principles as the "Conscience of our constitution".2

It is true that "Lawmen are the missionaries. The testament is the Constitution especially its Preamble and Part-IV: the strategy is the dynamic rule of Law".3

7.4. Directive Principles and their implementation

The utility of directive principles is evident from the speech delivered by Dr. Ambedkar in the Constituent Assembly that the Directive Principles are not mere pious declarations, "In enacting this part of the constitution, the Assembly is giving certain directions to the future legislature and the future executive to show in what manner they are to exercise the legislative and the executive power they will have".4

Thus the directive principles have been a guide for the Union Parliament and State legislatures, they have been cited by the courts to support decisions, and governmental bodies have been guided by their provisions. Moreover, they have been held to supplement the fundamental rights in achieving a welfare state. For example, the Government of India Fiscal Commission5 of 1949, in its report said that a policy for the economic development of India should confirm to the objective laid down in the directive principles of State Policy.

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3. Krishna Iyer, V.R.: Law & social change - An Indian over review; Publication Bureau, Panjab University, Chandigarh, 1978, p.16

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Granville Austin\(^1\) considers these Directives to be "aimed at furthering the goals of the social revolution or to foster this revolution by establishing the conditions necessary for its achievement."

Though these directives are non justiciable, the working of the constitution during the last few years has demonstrated the utility of the directives in the courts. Further, the courts cannot declare a law to be invalid on the ground that it contravenes a Directive Principle; nevertheless the constitutional validity of many laws has been maintained with reference to the Directives. Moreover the Supreme Court is issuing directives in proper cases enjoining the government to perform their positive duties to achieve the goals envisaged by the Directives, for example People’s Union for Democratic Rights V. Union of India, \(^2\) Sheela Barse V State of Maharashtra\(^3\) – Because of these references made by the Courts, to the Directives, the provisions enshrined under directive principles are transforming in to Fundamental Rights, for example, Article 45 directs the state to provide free and compulsory education for children below the age of 14 years, now the right to education is a fundamental right guaranteed under Article 21A of the constitution\(^4\). It provides that the State shall provide free and compulsory education to all children of the age 6 to 14 years in such manner as the State may, by law, determine.

The Directive Principles are not enforceable yet the court should make a real attempt at harmonising and reconciling the directive principles and the fundamental rights and any collision between the two should be avoided as far as possible. The reason why the founding fathers of Indian constitution did not advisedly make these Directive Principles enforceable was, perhaps due to the vital consideration of giving the government

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\(^2\) AIR 1982 SC 1473
\(^3\) AIR 1982 SC 378
\(^4\) Inserted by the 86\(^{th}\) Amendment Act to the Constitution in 2002
sufficient latitude to implement these principles from time to time according to capacity, situations and circumstances.¹

The Preamble provided the objectives; Directive Principles provide the goals while the Fundamental Rights provide means to achieve the goals. Both² the Fundamental Rights and Directive Principles have been the source and inspiration of reform legislation, for under their aegis 'the Indian Parliament has been active in the matter of social legislation, whether it be called by the Hindu Code or by another name.

Further, the Supreme Court said that the courts are not free to direct the making legislation, but courts are bound to evolve, affirm and adopt principles of interpretation which will farther and not hinder the goals set out in the Directive Principles of State Policy. In case any conflict arises between the Fundamental Rights and Directive Principles that which shall prevail over the other is a question. Further, P.K. Tripathi³, suggests that the Directive Principles, they are, in fact, by their very origin and history, principles, which define and delimit the Fundamental Rights of the individual any conflict between a Fundamental right and a Directive Principle is apparent and resoluble when the two conflicting rules are properly interpreted. But the very first case in which the issue arose regarding this matter came before the Supreme Court was in the case of State of Madras v. Champakam Dorairajan⁴.

In the instant case, where the Madras government had reserved seats in State Medical and Engineering Colleges for different communities in certain proportions on the basis of religion, race and caste. The state defended the law on the ground that it was enacted with a view to promote

¹. State of Tamil Nadu v. L. Abu Kavur Bai; AIR 1984 SC 626.
². UPSEB V. Harishankar, AIR 1979 SC 65,69
³. Tripathi, P.K.; Spotlights on Constitutional Interpretation, p.293.
⁴. AIR 1951 SC 228
the social justice for all sections of the people as required by Article 46 of the Directive Principles of state policy.

The Supreme Court held the law void because it classified standards on the basis of caste and religion irrespective of merit. Further the court observed that: “The Directive Principles of state policy, which by Article 37 are expressly made unenforceable by courts cannot over ride the provisions found in Part III, not withstanding other provisions, are expressly made enforceable by appropriate writs, orders, or directions under Article 32. The Chapter on fundamental Rights is sacrosanct and not liable to be abridged by legislative or executive act or orders, except to the extent provided in the appropriate Article in Part III. The Directive Principles of State policy have to conform and to run as subsidiary to the Chapter on Fundamental Rights ... that is the correct approach in which the provision found in part III and IV have to be understood”.

In this case the apex court’s view is that the fundamental rights would prevail over the Directive Principles. But a year later when the court dealt with Zamindari Abolition cases its attitude was considerably modified. In the State of Bihar V. Kameshwar Singh, the court relied on Article 39 in deciding that a certain Zamindari Abolition Acts had been passed for a public purpose with in the meaning of Article 31. Again in re Kerala Education Bill, the Supreme Court observed that though the Directive Principles cannot over ride the Fundamental Rights, nevertheless, in determining the scope and ambit of fundamental rights the court may not entirely ignore the directive principles but should adopt “the principles of harmonious construction and should attempt to give effect to both as much as possible”.

2 AIR 1952 SC 352
3 AIR 1957 SC 956
Further, the Supreme Court upheld the validity of a state law which prohibits slaughter of cows and calves and other cattle capable of work on the ground that it was meant to give effect to Article 48 of the Constitution which provides that State should take steps for preserving....and prohibiting the slaughter of cows and calves....cattle.

The most significant case on the directive principles came before the Supreme Court is the *Minerva Mills Ltd. v. Union of India*. In which it has been held that there is a fine balance in the original constitution between the Directives and the Fundamental Rights, which should be adhered to by the courts, by a harmonious reading of the two categories of provisions, instead of giving any general preference to the directive principles, hence harmony and balance between these two is a basic structure of the constitution.

### 7.5. Justice Bhagwati's Judgements on Directive Principles

Article 31-C of the constitution was inserted by Section 8 of the Constitution (Twenty Fifth Amendment) Act, 1971 to give protection to some of the directive principles as stated in the objects clause of the Bill was enacted to get over the difficulties placed in the way of giving effect to the Directive Principles of State policy and this amendment has considerably enhanced the importance of the Directive Principles which runs as:

"Notwithstanding anything contained in Art. 13, no law giving effect to the policy of the state towards securing the principle specified in clause (b) or clause (c) of Article 39 shall be deemed to be void on the

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2 AIR 1980 SC 1789.
3 Article 39 provides that the state shall in particular, direct its policy towards securing,... (b) that the ownership and control of the material resources of the community are so distributed as best to sub serve the common good, (c) that the
ground that it is inconsistent with or takes away or bridges any of the rights conferred by Article 14 or Article 19, and no law containing a declaration that it is for giving effect to such policy shall be called in question in any court on the ground that it does not give effect to such policy.¹

The first part of the Article 31-C gave protection to a defined and limited category of laws which were passed for giving effect to the policy of the State towards securing the principle specified in clause (b) or clause (c) of Article 39. Directive Principles contained in Article 39(b) and (c) are vital to the well being of the country and the welfare of its people.

In the present case the Constitutional validity of 25th Amendment was challenged on the insertion of Article 31-C in the Constitution. The Amendment introduced by section 4 of the Forty-Second Amendment, provision is made in Article 31-C stating that no law giving effect to the policy of the state towards securing all or any of the principles laid down in Part IV shall be deemed to be void on the ground that it is inconsistent with or takes away or abridges any of the rights conferred by Article 14, 19 or 31 of the constitution².

In Minerva Mills case the issue came before the Supreme Court for consideration is the validity of Article 31-C as inserted in the constitution by sections 4 and 55 of the 42nd Amendment Act, 1976. In this regard the majority judgment was delivered by Chandrachud C.J. for himself, Gupta, Untwalia and Kailasam, JJ and Bhagwati, J. gave a dissenting judgment. The Supreme Court by a majority held that while the first part of Article

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¹ Article, 31-C ; Constitution of India. (As the constitutional validity of Twenty Fifth Amendment was challenged, Article 31-C was inserted in the Constitution).
² Minerva Mills Limited, Bangalore v. Union of India ; AIR 1980 SC 1789; 1980 SCC (3) 625.
31-C (as it stood prior to 1976) was valid, and its second part was invalid. This means that a law enacted to implement Article 39(b) and (c) would not be challengeable under Article 14 and 19 but the courts have the power to go into the question whether the law in question does really achieve these objectives or not.

Thus when a law is challenged, the courts would have the power to consider whether it could reasonably be described as a law giving effect to the policy of the state towards securing the said aims. The last part of Article 31-C being invalid, no legislature by its own declaration could make the law challenge proof.¹

In Minerva Mills case the question for consideration before the Supreme Court was whether the amendments introduced by section 4 and 55 of the constitution (42nd Amendment) Act, 1976 damage the basic structure of the Constitution by destroying any of its basic features or essential elements.

The Supreme Court observed that the Constitution is a precious heritage; therefore, you cannot destroy its identity. The majority conceded to the Parliament the right to make alterations in the constitution so long as they are within its basic frame work.

Further, the court held that section 4 of this amendment was beyond the amending power of the Parliament and was void since it damages the basic or essential features of the constitution and destroyed its basic feature by a total exclusion of challenge to any law on the ground that it was inconsistent with or took away or abridged any of the rights conferred by Art.14 or Article 19 of the constitution.

¹ Khan, SLA - Justice Bhagwati on Fundamental Rights and Directive Principles; Deep & Deep Publications; New Delhi-27p; (1996), P.205
In the instant case Justice Bhagwati, in his dissenting judgment expressed that: “if the exclusion of the Fundamental Rights embodied in Article 14 and 19 could be legitimately made for giving effect to the Directive Principles set out in clauses (b) and (c) of Article 39 without affecting the basic structure, I fail to see why these Fundamental Rights cannot be excluded for giving effect to the other Directive Principles if the constitutional obligation in regard to the other Directive Principles which stand on the same footings”. Further he observed that “I find it difficult to understand how it can at all be said that the basic structure of the constitution is affected when for evolving a modus vivendi for resolving a possible remote conflict between two constitutional mandates of equally fundamental character, Parliament decides by way of amendment of Art 31-C that in case of such conflict the constitutional mandate in regard to Directive Principles shall prevail over the constitutional mandate in regard to the Fundamental rights under Articles 14 and 19”.

The amendment in Article 31-C far, from damaging the basic structure of the constitution strengthens and reinforces 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. But so far as section 4 of the 42nd Amendment of the Constitution is concerned Justice Bhagwati said; “I hold that, on the interpretation placed on the amended Article 31-C by me, it does not damage or destroy the basic structure of the constitution and is within amending power of Parliament and I would therefore, declare the amended Article 31-C of the constitution as valid.” This approach of Justice Bhagwati clearly shows his concern to socio economic justice.

Similarly in *Waman Rao V. Union of India* the main challenge was made to the constitutionality of Articles 31-A, 31-B, and the unamended Article 31-C of the constitution. The Supreme Court expressly held that the unamended Article 31-C is valid and did not damage any of the basic or essential features of the constitution or its basic structure. On that basis Justice Bhagwati in his dissenting judgment said that it was difficult to appreciate how the amended Article 31-C could be said to be violative of the basic structure. In this aspect the majority judgement is on the lines of Justice Bhagwati’s opinion though he differed with the majority in other part of the judgment.

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1. 1980 SCC-3-587.
Again in *Sanjeev Coke Manufacturing Co. V. Bharat Coking Coal Ltd.*, a similar question arose and came before the Supreme Court for consideration to the five member constitution bench presided over by Bhagwati J. and other members are Chinnappa Reddy, Bharul Islam, Venkataramanaiah, and A.N. Sen, JJ. In this case the Supreme Court held that the question regarding the validity of section 4 of the 42nd Amendment was not directly at issue in *Minerva Mills case* and therefore, determination of that question was uncalled for and obiter and since the validity of Art.31-C, as originally introduced in the Constitution, had been upheld in Kesavananda Bharati's case... In this case, Justice Chinnappa Reddy, delivering the leading judgment said that he broadly agreed with Bhagwati, Bharul Islam and A.N. Sen JJ. He particularly referred the following observation of justice Bhagwati, that “No doubt, the protection of Article 31-C was at that time confined to laws giving effect to the policy of clauses (b) and (c) of Article 39. By the 42nd amendment the protection was extended to all laws giving effect, to all or any of the principles laid down in Part IV.

The dialects, the logic and the rationale involved in upholding the validity of Article 31-C when 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 31-C with its extended protection is also constitutionally valid. No one suggest that the nature of Directive Principles contained in other Articles of Part IV is so drastic or different from Articles 39(b) and (c) that the constitutional immunity to laws made to further those principles would offend the basic structure of the constitution”.

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These two Writ Petitions under Article 32 of the Constitution raise questions of some importance in the field of constitutional law but they are not abstract questions which can be divorced from the facts giving rise to them and in order to resolve them satisfactorily, it is necessary to state the facts in some detail.

The dispute in this Writ Petition relates to the validity of an Order passed by the government of Jammu and Kashmir, allotting to the 2nd respondents 10 to 12 lacs blazes annually for extraction of resin (is called "tapping"), from the inaccessible Chir forests in Poonch, Reasi and Ramban Divisions of the State on account of their distance from the roads and so were some forests in the Poonch Division near the line of actual control which were difficult to access.

Wherein the petitioner's contention is that the order is arbitrary, mala fide and not in public interest, inasmuch as a huge benefit has been conferred on the 2nd respondents at the cost of the State.

Justice examined these grounds in preface by making a few preliminary observations in regard to the law on the subject with previous cases and observed that 'where the State has, as a matter of policy, stopped selling resin to outsiders and decided to allot it only to industries set up within the State for the purpose of encouraging industrialisation, there can be no scope for complaint that the State is giving resin at a lesser price than that which could be obtained in the open market'.

Further he viewed that "If the State were simply selling resin, the State must endeavour to obtain the highest price subject to any other overriding considerations of public interest and in that event, its action in

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giving resin to a private individual at a lesser price would be arbitrary and contrary to public interest. The yardstick of price in the open market would be wholly inept, because in view of the State policy, there would be no question of any resin being sold in the open market. The object of the State in such a case is not to earn revenue from sale of resin, but to promote the setting up of industries within the State”.

It is in the circumstances impossible to see how it can at all be said that any benefit was conferred on the second respondents at the cost of the State.

In Bandhua Mukti Morcha v. Union of India1 Justice Bhagwati observed that ‘When the Directive Principles of State Policy have obligated the Central and the State governments to take steps and adopt measures for the purpose of ensuring social justice to the have-nots and the handicapped, it is not right on the part of the concerned governments to shut their eyes to the inhuman exploitation to which the bonded labourers are subjected. It is not uncommon to find that the administration in some States is not willing to admit the existence of bonded labour, even though it exists in their territory and there is incontrovertible evidence that it does so exist. We fail to see why the administration should feel shy in admitting the existence of bonded labour, because it is not the existence of bonded labour that is a slur on the administration but its failure to take note of it and to take all necessary steps for the purpose of putting an end to the bonded labour system by quickly identifying, releasing and permanently rehabilitating bonded labourers. What is needed is determination, dynamism and a sense of social commitment on the part of the administration to free these bonded labourers.

1 AIR 1984 SC 803 ,and AIR 1982 SC 1473
The State is under Constitutional obligation to see that there is no violation of any person, particularly when he belongs to the weaker sections of the community and is unable to wage a legal battle against a strong and powerful opponent who is exploiting him. The Central and State Governments are bound to ensure observance of various social welfare and labour laws enacted by the Parliament for securing the workmen a life of basic human dignity in compliance with the Directive Principles of State Policy enshrined under Part -IV of the Indian Constitution.

Hence, his directions in this judgment, for quickly identifying, releasing and permanently rehabilitating bonded labourers reveals the commitment of Justice Bhagwati not only as a Judge of the highest court of India but also as a human being to uplift the fellow human beings’ living conditions.

In Centre of Legal Research V State of Kerala¹, it has been held by Justice Bhagwati that ‘in order to achieve the objectives in Article 39-A of the Constitution², the state must encourage and support the participation of voluntary organizations or social action groups in operating the legal aid programme. It is now acknowledged throughout the country that the legal aid programme which is needed for the purpose of reaching social justice to the people cannot afford to remain confined to the traditional or litigation oriented legal-aid programme but it must, taking into account the socio-economic conditions prevailing in the country, adopt a more dynamic posture and take within its sweep what we may call Aid Schemes or the State Legal Aid and Advice Board, but we may make it clear that such voluntary organisation or social action group shall not be under the

¹. AIR 1986 SC 1322
². Art 39-A directs the state to ensure Equal Justice and Free Legal Aid to economically backward classes, this Article has been inserted to the Directive Principles by 42nd Amendment Act, 1976.
control or direction or supervision of the State Government or the State Legal Aid and Advice Board because we take the view that voluntary organisations and social action groups operating these programmes should be totally free from any Governmental Control'. Thus always Justice had strived to ensure equal and fair opportunity for both haves and have-nots in the country.

In *Peoples Union for Democratic Rights v. Union of India's¹ case*, where the workers are being paid less than minimum wages though there is the Minimum Wages Act, 1948, which is intended to fulfil the directive made under Article 43 for living wages. And in the case of women workers they are receiving less than wages paying to the male workers though there is the Equal Remuneration Act, 1976 to fulfil the direction provided under Article 39 (d) of the constitution.

In the above context Justice Bhagwati held that, the compulsion of economic circumstances which leaves no choice of alternative to a person in want and compels him for acceptance of less than minimum wages is a clear violation of constitutional safe guards...The Contract Labour (Regulation and Abolition) Act 1970 and the Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 are clearly intended to ensure basic human dignity to the workmen and if the workmen are deprived of any of these rights and benefits to which they are entitled under the provisions of these two pieces of social welfare legislation.... the Union of India, the Delhi Administration and the Delhi Development Authority which, as principal employers, are made statutorily responsible for securing such rights and benefits to the workmen.

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¹ AIR 1983 SC 339 (also known as Asiad Projects case)
Again in Sanjit Roy v. State of Rajasthan, Justice held that: "In my judgment, the workers employed in the construction of the Madanganj Harmara Road as a measure of relief in famine stricken area are entitled to a minimum wage of Rs7.00 per day, and that wage cannot be reduced by reference to the Rajasthan Famine Relief Works Employees (Exemption from Labour Laws) Act".

Thus, Justice Bhagwati had given importance to the protection of rights guaranteed under fundamental rights and also to implement the directive principles.

Article 39(e) directs the state to protect the health, strength... and tender age of children and to ensure that they are not forced by economic necessity to enter avocations unsuited to their age or strength. This directive has been effectively fulfilled by Justice Bhagwati through the judgments in Asiad Projects case and Salal Hydro Electrical works. While dealing with these cases, as far as concerned to the employment of children in the construction work, he held that 'the construction work is a hazardous work therefore no children below the age of 14 years shall not be employed in the construction and the government should include the construction as hazardous work in the Employment of Children act, 1938.

Thus, the objectives enshrined under Article 39(d) and (e) of the Indian Constitution has been upheld and accomplished by the adjudications of Justice Bhagwati.

A number of decisions of the Supreme Court pursued the observations made by Justice Bhagwati on directive principles, in Unni

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1. AIR 1983 SC 328
2. Article 39 (d) provides that, State shall strive to ensure Equal Pay for Equal work for both men and women
3. Article 39(e) requires the State to .... ensure that children are not forced by economic necessity to enter avocations unsuited to their age or strength.
Krishnan V. State of A.P\(^1\), it has been held that children from the age of 6 to 14 years have Fundamental Right to education. In M.R.F. Ltd., V. Inspecter of Kerala,\(^2\) the Supreme Court heavily relied up on the provisions of Art. 43 to uphold the validity of Kerala Industrial Establishment (National and festival holidays) Act, 1958 and held that the Act is a Social Legislation to give effect to the directive principles of State policy contained in Art. 43. Again in Gujarat Agricultural University V. Rodhad Labhu Prachar,\(^3\) the Supreme Court observed that the Government who is the guardian of the people and obliged under Art. 38 of the Constitution to secure social order for promotion of welfare of the people to eliminate un equalities in a status will endeavour to give maximum posts even at the first stage of absorption.

**Expansion of the Scope of Fundamental Rights**

![Diagram](image)

**Fig. 7.2 Expansion of the Scope of Fundamental Rights**

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1. 1993 (1) SCC 645.
2. AIR 1991 SC 188.
3. AIR 2001 SC 706.
Thus the Supreme Court through its judgments has declared many directives as fundamental rights. For example, equal pay for equal work, free legal aid to poor, speedy trial of under trial prisoners Art 39-A, protection of children from exploitation, protection of ecology and environmental pollution Art. 48-A. Free and compulsory education of children below the age of 14 years is a recent Directive Principle to as Fundamental Right by the 93 rd Amendment Act, 2002 under Article 21A.

The ratio applied by Justice Bhagwati in his decisions, protecting other directive principles, other than Article 39(b) and 39(c) is being followed by the Supreme Court. He justifies his adjudications by saying that “a Judge is a creative artist, he can not and should not blindly interpret the constitution or law1. And every judge should have before him a complete picture of the Constitution and the values that it embodies”. When a judge decides a case, there are competing social values before him all clamouring for acceptance. He must try to understand and give effect to the social purpose and the economic mission of the Constitution or the Law. Our Constitution itself is a wonderful document. It is the beacon light. He has to give effect to those values with all his heart and soul.

Thus, though, Justice Bhagwati had given his opinions by way of dissenting judgments, they are very effectively influenced the concept of Social Justice in India. The Supreme Court in its successive judgments also had some reflections of his judgments and he strived to promote social justice all the way his judicial career.

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1. Poornima Advani; Indian Judiciary – A Tribute; Harper Collins Publishers, India, (1997); pp., 33-34

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