CHAPTER II

RELATIONSHIP BETWEEN PART III AND
PART IV OF THE INDIAN CONSTITUTION

1. INTRODUCTION

The Constitution of India has issued two broad mandates to the Parliament, the Legislatures of the States and to all Institutions of the Government:

(1) not to take away or abridge certain rights described as Fundamental Rights; and

(2) to apply certain principles described as Directive Principles of State Policy.

The Fundamental Rights are mostly of individual character and are primarily meant to protect individuals against arbitrary state action. They are intended to foster the ideal of a political democracy and are meant to prevent the establishment of authoritarian rule. Several of these Fundamental Rights are ordinarily capable of enjoyment only by persons who are already free from want and necessity. They are of little practical value and have no meaning to the hungry and the homeless. The Constitution makers realised that mere adherence to an abstract democratic ideal was not enough and that if the Constitution was to survive it was necessary to secure to the people economic and social freedoms in addition to political freedom. So the Directive Principles came to be enunciated in the Constitution.
A perpetual traditional war is going on between these fundamental rights and directive principles. The question has been raised whether directive principles, on account of their non-justiciability, are non-fundamental part of the Constitution? Whether these are inferior to the fundamental rights? The question has often come before the Supreme Court as to whether a legislation which was alleged to be violative of fundamental rights could be upheld on the basis of one or more directive principles. In this chapter, the relationship of Part III (fundamental rights) with Part IV (directive principles) has been dealt in two parts:

(I) Position up to 1973 when Justice V.K. Krishna Iyer was elevated to the Supreme Court.

(II) Position as it emerges from Justice Iyer's judicial pronouncements and writings.

Before dealing with the relationship between the two it would be relevant to examine the historical background of fundamental rights and directive principles in order to ultimately understand and appreciate the relationship as it emerged under the Constitution.

Historical Background of Fundamental Rights:

The demand for the fundamental rights during the freedom struggle can be traced with the formation of Indian National Congress itself. First of all the demand for the fundamental

rights appeared in the Constitution of India Bill, 1886. Between 1917 and 1919, the Indian National Congress passed a series of resolutions demanding civil rights and equality of status with the Englishmen. The next demand for the fundamental rights was Annie Besant's Commonwealth of India Bill, 1925. The assertion was reiterated firmly by the Nehru Committee in 1928 which stated that the guarantee of fundamental rights should be in such a manner that it would not permit their withdrawal under any circumstances. The Indian leaders pressed for the inclusion of the Bill of rights at the Round Table Congress in the proposed Constitution.

The Sub Committee on Minorities held detailed discussions on the subject and at the first meeting of the Sub Committee held on December 23, 1930, Kaja Narendra Nath pointed out the need to make the question of declaration of rights unassailable by the majority in the Constitution of India. A.T. Paul also emphasised the need for the inclusion of fundamental rights and to provide for some machinery to ensure that they were not violated.

B. Shiva Rao, a representative of the Labour Organisation of India to the Round Table Conference, placed before the Minorities Sub Committee meeting on December 23, 1930, a

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3. Id. at 88.
comprehensive enunciation of a draft declaration of Fundamental Rights. During the discussion at the Sub Committee meeting, Dr. B.R. Ambedkar also pointed out the need for the inclusion of sanctions in the Constitution for the enforcement of Fundamental Rights, including a right of redress in case of their violation.

After the concluding session of the Indian Round Table Conference, a Report was presented by the Secretary of State for India to Parliament. The Report observed that the Government recognised the importance attached by the Indian leaders to the idea of making a chapter on Fundamental Rights, a feature in the Indian Constitution. It also pointed out that some of their propositions discussed at the Conference could find their place in the Constitution. The idea of enumerating such of those fundamental rights which could not be embodied in the Constitution Act itself in the Instrument of Instructions also found support in a memorandum submitted by Khan Bahadur Hafiz, Hidayat Hussain and Dr. Shafs'at Ahmad Khan on December 27, 1932 and also in the one submitted by Sir Tej Bahadur Sapru on December 27, 1932. As a result of the discussions and memoranda for a declaration of Fundamental Rights, certain concessions were made. SS.12(1)(C) 52(i)(b), 275, 298 were embodied in the Government of India Act, Act, 1935 providing for a few Fundamental Rights.

Then came the Sapru Report which was published in 1945. The Sapru Committee recommended that the declaration of

4. Ibid.
Fundamental Rights was absolutely necessary, for not only giving assurances and guarantees to the minorities, but also for prescribing a standard of conduct for the legislatures, Government and the Courts. The Sapru Committee envisaged two kinds of rights, namely, justiciable rights and non-justiciable rights. However, the Committee did not suggest a list of Fundamental Rights to be included in the future Constitution. The issue was left to be decided by the Constitution-making body.

Thus it is clear that even prior to Independence, there was a concerted effort and awareness for the recognition of the important Fundamental Rights.

**Drafting of Fundamental Rights in the Constitution of India:**

Fundamental Rights incorporated in Part III of the Constitution of India are the embodiment of the aspirations of the people for Constitutional recognition of civil rights. The first step towards the framing the provisions relating to Fundamental Rights and allied subjects was the appointment of an Advisory Committee, consequent on adoption of a resolution moved by Pandit Govind Ballabh Pant in the Constituent Assembly on January 24, 1947. Subsequently, five sub-committees were set up one of which was the Fundamental Rights Sub Committee.

The first meeting of the Sub Committee on Fundamental

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Rights was held on February 27, 1947 and on being proposed by K.M. Munshi and seconded by Sardar Harnam. At this meeting, several members of the Committee gave their opinions. Sir Alladi Krishna-Swami Ayyar made a reference to the Fundamental Rights incorporated in the Eire, and American Constitutions and said that citizen's rights embodied in a Constitution should be justiciable. K.M. Munshi was of the view that the Committee should concentrate on the justiciable rights and the courts should be empowered to issue prerogative writs. 3

Before the next meeting of the Sub Committee which met on March 24, 1947, members formulated their own proposals and submitted notes on Fundamental Rights. Sir Alladi Krishnaswami Ayyar submitted two notes, one entitled "Notes on Fundamental Rights" and other 'Justiciable and Non-justiciable Rights'. The Sub Committee decided that a difference should be made in the list of Fundamental Rights, between Justiciable Rights and non-justiciable principles. In the Draft Report, submitted by the Sub Committee, to the Advisory Committee by Sir B.N. Bau, a clear classification was made between justiciable rights and non-justiciable rights. The Fundamental Rights Sub Committee considered the Draft Report and incorporated 'Fundamental Rights' and Fundamental Principles of Governance under one heading

8. Supra note 5 at p.12.
'Fundamental Rights' and divided it into two parts: Part I relating to justiciable rights and the other relating to non-justiciable rights. The Report was considered by the Minorities Sub Committee which submitted an Interim Report to the Advisory Committee on April 9, 1947. The Report of the Fundamental Rights Sub Committee and the Interim Report of the Minorities Sub Committee were considered by the Advisory Committee and the Chairman submitted an Interim Report to the President of the Constituent Assembly on April 29, 1947. The Constituent Assembly adopted the supplementary Report of the Advisory Committee on Fundamental Rights, Minorities etc. on August 30, 1947.

The Draft Constitution was taken up for consideration by the Drafting Committee on October 27, 1947 and on October 30, 1947, the Committee decided that the Directive Principles of State Policy should be transferred from Part III to a new part. The Draft Constitution was published on February 26, 1948 and it recommended that certain amendments be made in the original draft. The original draft together with the amendments was considered by a Special Committee which prepared the final Draft Constitution.

From the study made above, now it is quite clear that different fundamental rights envisaged in the Constitution of India is the result of the concerted work of several leaders of the country.

Directive Principle:

It is the ancient Indian practice of laying down policies by Dharamsasatra for the State. In ancient India, the State used to undertake many functions which socialists, ancient and modern, are advocating, yet these went hand in hand with the enlargement of rights and freedom. There is the illusion that the correct economic thought is only of recent growth and exclusively of European origin. But the concept of a declaration of policy in regard to social and economic obligations of the State cannot be said to be foreign to the genus of India. Kautilya recorded specific injunctions in his Arthasastra as that "the king shall provide the orphan, the dying, the infirm, the afflicted and the helpless with maintenance, he shall also provide subsistence to helpless expectant mothers and also the children they give birth to." 

Dharma is the supreme law of laws, king of kings. It is 'Raja Dharma' in which all living creatures take refuge, Yudhistra

11. P.K. Tripathi, Spotlights on Constitutional Interpretation 291(1972), has chronologically traced the directive principles to the American Constitution of 18th century and its interpretation by judiciary, then to British experience, explicit expression in Weimar Constitution and then through Irish Constitution of 1937 come to inclusion of directive principles of state policy in the Indian Constitution, Quoted in R.J.I. L.I. 402(1980).
13. B.N. Rao infers in his address to the Indian Council of world Affairs, 10 August 1949, Quoted by Shiva Rao at 319-320.
observed. Raja dharma or the principles of the state can also, in a way, include western concept of natural law. It is the obligations of the State to implement them. Raja dharma in effect is the fundamental social and political principle exposing complete fulfilment of human ends as well as universal security.

The directive principles of State policy enunciated in Part IV of the Indian Constitution are nothing but principles of Raja dharma. Fundamental principles of governance means dharma or the path of duty of the government. Thus these principles can be traced either to divine will or right reason. The idea to have such principles incorporated in the Indian Constitution can be traced to the Karachi Resolution of 1931. Then, the Sapru Committee Report of 1944-45 envisaged the idea of justiciable and non-justiciable rights. B.N. Rau recommended the classification of rights into two parts, one dealing with the fundamental principles of state policy and other with fundamental principles of state policy and other with fundamental rights as such. At first there was staunch opposition for the

14. U.N. Ghosal, A History of Indian Political Ideas 189 (1959)
15. Id. at 181.
16. Raja dharma includes variety of activities of kings, including personal character and his public relations. It is a comprehensive phrase to which no equivalent can be found in English literature. 22 JILI 401 (1980).
inclusion of non-justiciable rights in the sub committee on fundamental rights. Speaking about the nature of the two parts B.N.Rau observed that "there are certain rights which require positive action by the State and which can be guaranteed only as far as such action is practicable, while others merely require that the State shall abstain from prejudicial action." He gave two examples as typical one: for each type. For the former, the example is right to work, which cannot be guaranteed except directing the policy of the State in that direction, for the latter life and liberty of the person, wherein the State can restrain from interfering. Hence, the distinction was made between the fundamental rights and the directive principles of State policy for the purpose of obviating the administrative and other practical difficulties that might arise if the directives were to be enforced at the behest of citizens.

Some were pessimistic and others were optimistic towards the directives. Some called them as 'a veritable dustbin of sentiments' attaching no value. Jennings referred to Part IV of the Constitution as the expression of the Fabian Socialism without socialism.

But to B.R. Ambedkar, the directives were like the 'Instruments of Instructions'. They were also hailed as the essence of the Constitution and also as the most cardinal, important and creative provision.

Professor P.K. Tripathi points out that all the twentieth century constitutions have given a definite place in their systems to the provisions of social welfare and these provisions have gathered larger sweep, greater emphasis and more definite legal obligations as the lapse of years brought in more of governmental experience to bear.

The idea of embodying a code of Directive Principles of State policy has evidently been borrowed by our constitutional makers from the Irish Constitution of 1937 which contain a number of similar provisions called 'Directive Principles of State Policy'. These principles require a careful and imaginative approach and faithful adherence. They connect India's future, present and past and give strength to the pursuits of the social revolution in our great and ancient land.

23. Id. at 126.
24. Id. at 127.
Directive principles aim at making the Indian masses free in the positive sense, free from the passivity engendered by centuries of coercion by society and by nature, free from object physical conditions that had prevented them from fulfilling their best selves. The Directive Principles embody the philosophy of the Indian Constitution and contain a system of values, some of which are borrowed from the liberal humanitarian tradition of the West, some are peculiar to and have grown out of the Indian milieu and yet some others represent an attempt to fuse the traditional and modern modes of life and thought.

The first and the paramount principle enjoins that the state shall secure a social order in which social, economic and political justice shall inform all the institutions of national life. The other injunctions go into specifics, following which would help realise the central goal. These provide wealth and its source of production shall be distributed so as to subserve the common good, and there shall be adequate means of livelihood for all and equal pay for equal work. The state shall endeavour to secure the health and strength of workers, the right to work, to education and to assistance in cases of want, just and human conditions of work, and a living wage for workers, uniform civil code, and free and compulsory education for children. The other directives seek to secure the organization of village

27. Granville Austin, The Indian Constitution: Cornerstone of a Nation 50-51 (1972)
panchayats, promotion of the educational and economic interests of the weaker sections of the people, raising of the level of nutrition and standard of living, improving of public health, organization of agricultural and animal husbandry, separation of the judiciary from executive and promotion of international peace and security. Thus the directives are in the nature of duties which the Constitution calls upon the state to perform to achieve the welfare state. 28

RELATIONSHIP BETWEEN THE TWO

Position unto 1973 when Justice V.R. Krishna Iyer was Elevated To The Supreme Court:

Soon after the commencement of the Constitution, an undue emphasis was laid on the un-enforceability of directive principles without taking into consideration their fundamentality and the constitutional duty imposed upon the State to implement them. It gave rise to the belief that the directive principles were merely pious aspirations of little legal force and had to conform to and run subsidiary to fundamental rights.

Conflicts between the Directive Principles and the Fundamental Rights may arise due to various reasons. Cl. (2) of Article 13 stipulates:

"The State shall not make any law which takes away or abridges the right conferred by this part and any law made in contravention of this clause shall, to the extent of contravention, be void."

It is possible that the State may, while implementing the Directive Principles, enact legislation contravening the Fundamental Rights. Similarly, a citizen may also cite the Directive Principles in support of his claims under the Fundamental Rights.

Pandit Jawaharlal Nehru, speaking on the Constitution (First Amendment) Bill, pointed out, how there could arise a conflict between the Directive Principles and the Fundamental Rights. He observed:

The Directive Principles of State Policy represent a dynamic move towards a certain objective. The Fundamental Rights represent something static to preserve certain rights which exist. Both again are rights. But somehow and sometime it might so happen that, that dynamic movement and that static standstill do not quite fit into each other. (29)

Hence, in case of conflict between the Directive Principles and the Fundamental Rights, the judiciary has to take due notice of the Directive Principles. B.N. Kau, the Constitutional Advisor to the Constituent Assembly had discussions in Dublin with President De Valera on the wording of the Directive Principles in relation to Fundamental rights under the Irish Constitution. (30) He suggested the following amendments in the draft Constitution:

(1) At the beginning of Col.9(2) now art.13(2), insert the words "subject to the provisions of Cl.10 (which emphasized the fundamental nature of directive principles).

29. LSD (1951) I Cols.882-8823.
30. B. Shiva Rao, Framing India's Constitution 223(1971)
(2) To clause 10 add the following: No law which may be made in the discharge of its duty under the first paragraph of this section, and no law which may have been made by the State in pursuance of policy now set forth in Chapter III of this part shall be void merely on the ground that it contravenes the provisions of Cl. 9, or is inconsistent with the provisions of Chapter III of this Part. The object of these amendments was to make it clear that in a conflict between the Fundamental Rights and the Principles of Policy set forth for the welfare of the State, the general welfare should prevail.\(^{(31)}\)

The leading cases in this sphere of conflict may be studied to evaluate the role of the judiciary in this regard.

The first important case after the commencement of the Constitution of India on this issue was State of Madras v. Champakam Dorairajan.\(^{(32)}\) In this case, Champakam Dorairajan, a brahmin made an application to the High Court at Madras under Article 226 of the Constitution for protection of her fundamental Rights under article 15(1) and Article 29(2) of the Constitution as she was denied a seat in the Medical College on the ground that the 2 seats reserved for brahmins were already filled by 2 meritorious brahmin students. She prayed for the issuance of the writ

\(^{31}\) Id at 226.

\(^{32}\) AIR 1951 SC 226.
of mandamus or other suitable prerogative writ restraining the State of Madras and all officers and subordinates thereof from enforcing the order generally referred to as the Communal Government Order in and by which admissions into the Madras Medical College were sought or purported to be regulated in such a manner as to infringe or involve the violation of her fundamental rights. The High Court by its judgement allowed the application of ChampaKam. The State of Madras appealed to the Supreme Court.

The learned advocate General appearing for the State contended that the provisions of Article 29 (2) have to be read along with other articles in the Constitution. He argued that Article 46 charges the State to promote with special care the educational and economic interests of the weaker sections of the people and in particular of the scheduled castes and the scheduled tribes, and to protect them from social injustice and all forms of exploitation. He said, although this article finds place in part IV of the Constitution and though the provisions contained in that part are unenforceable by any court, the principles laid down therein are however fundamental in the governance of the country. Article 37 makes it obligatory on the part of the State to apply those principles in making laws. So according to the argument in regard to Article 46, State is

33. Cl. 2 of Article 29 reads as follows:

"No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them."
entitled to maintain the communal Government Order fixing proportionate seats for different communities and if because of that order, the petitioners are unable to get admissions into the educational institution, there is no infringement of their fundamental rights. (34)

The Supreme Court held that the Chapter of Fundamental Rights is sacrosanct and not liable to be abridged by any legislative or executive act or order, except to the extent provided in the Article provided in Part III. The Directive Principles of State Policy cannot override the provisions found in part III but have to conform to and run as subsidiary to the chapter on Fundamental Rights. Hence, the argument that having regard to the provisions of Article 46, the State is entitled to maintain the Communal Government Order fixing proportionate seats in State Colleges for different communities and if as a result certain individual citizens are unable to get admissions into the educational institutions, there is no infringement of their fundamental rights cannot be sustained. The classification in the said communal G.O. proceeds on the basis of religion, race and caste and is opposed to the Constitution and constitutes a clear violation of the Fundamental rights guaranteed to the citizen under Article 29(2).

However, so long as there is no infringement of fundamental rights as conferred by Part III of the Constitution, there can be no objection to the State acting according to the Directive

34. Supra note 32 at 228.
Principles set out in Part IV subject to the legislative and executive powers and limitations conferred on the State under different provisions of the Constitution. (35)

It is submitted that constitutionality of the government order was rightly decided because it is not necessary to be communal to promote the educational interests of the weaker sections of the society. However, the Supreme Court's view that the Directive Principles have to conform to and run subsidiary to the chapter on Fundamental rights cannot be considered wholly correct. This view is based on the view that fundamental rights have been expressly made enforceable by the court, whereas directive principles have been expressly made unenforceable by any court. But nowhere in the Constitution it has been laid down that the Directive Principles shall be subsidiary to fundamental rights or nowhere it has been written that the courts could give more weight to fundamental rights than to directive principles. On the contrary, Part III and Part IV of the Constitution are to be given equal position while making constitutional interpretation. Perhaps directive principles have been made unenforceable to prevent the individual to claim the advantages, privileges etc. in it against the State but not the least to reduce their importance. Professor P.K. Tripathi says that this is the most damaging opinion expressed by the Supreme Court on the value and effectiveness of the directive principles. (36)

35. Id at 226.
36. Supra note 25 at 291.
The companion case of Dorariajan is B. Venkataraman V. State of Madras in which once again the Madras Communal Government Order came up for consideration. In this case, the petitioner, a member of the Brahmin Community, held that the Public Service Commission had not considered his application for the post of District Munsiff on merits but applied the rule of communal rotation. The Supreme Court allowed the petition but declared that under Article 16, the order was valid in so far it gave preference to backward classes and Harijans to enter Government service, though it was unconstitutional in so far as it discriminated in relation to other than backward classes.

The aforesaid judgements bring out the relationship between the fundamental rights and the Directive Principles. The purpose of the Madras Communal Government Order was to give special protection to backward classes and to provide for reservation of seats in educational institutions. But in Article 15 (1) and 29 (2) equality prevails over adequate guarantees secured to backward classes. Hence, the Supreme Court declared the order as violative of Articles 15(1) and 29 (2). As a result of these judgements, the Constitution (First Amendment) Act 1951 was enacted by which Clause 4 was added to Article 15. This clause reads:

Nothing in this article or in cl. (2) of Art. 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the scheduled castes and the scheduled tribes.

37. AIR 1951 SC 229.
It is quite clear from this Amendment that directive principles are more important than the fundamental rights.

Despite this amendment the courts did not give much importance to directive principles and continued to hold that directive principles are subordinate in character.\(^{(38)}\)

The judicial decisions made it quite clear that:

(i) Directive principles are non-judiciable and these cannot override fundamental rights.

(ii) Directive principles have to conform and run subsidiary to the fundamental rights.

(iii) Fundamental rights envisaged in Part III of the Constitution are sacrosanct and cannot be abridged by the legislature or executive except to the extent provided in the appropriate articles in Part III.

(iv) Any action of the State under directive principles is subject to the legislative and executive powers.

Thus the courts held that if there is any conflict between fundamental rights and directive principles, it is the directive principles which should be subordinated to the fundamental rights.

To bring harmony between the Directive Principles and the Fundamental Rights, it is essential that the Courts should give

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    Jagwant Kaur Kesar Singh Dang and others v. the State of Bombay AIR 1952 Bom. 401.
    In Re Thomas AIR 1953 Mad. 21.
due consideration to the Directive Principles in the interpretation of the provisions relating to the Fundamental Rights. Directive Principles which embody the social and economic policy of the country cannot be ignored by the courts. The appropriate Directive Principle should be made use of to determine the implications of phrases like 'Public interest' 'Public-purpose' and reasonable restriction used with reference to the fundamental rights. For instance what is 'Public purpose', for which expropriation laws may be enacted according to Article 31 may be determined with the aid of the Directive Principles embodied in Article 39 according to which the State should counteract the concentration of wealth in the hands of private individuals.

It may be noted that in a few cases subsequent to Champakam Dorairajan's case the courts have taken cognizance of the Directive Principles. They have tried to achieve the ideals embodied in the Directive Principles like enforcement of prohibition, constitution of village panchayats and assurance of


41. Supra note 32.
adequate wages. We may examine a few leading cases in this regard.

In *State of Bihar v Kameshwar Singh*,⁴² the Supreme Court relying upon the Directive Principles incorporated in Article 39(b)⁴³ held that certain zamindari abolition laws had been passed for a public purpose within the meaning of Article 31(2). It was held that the state ownership or control over land was a necessary preliminary step towards the implementation of Directive Principles and it could not but be a public purpose. It was further held that the Directive Principles were not merely the policy of any particular party but were intended to be principles fixed by the Constitution for directing the State Policy whatever party might come into power.

In *Budhu v. Municipal Board, Allahabad*,⁴⁴ the Allahabad Municipality was equally with the State Government under a duty as provided in Article 47, to take steps for raising the level of nutrition and standard of living of the people and with a view to this end, might prohibit the slaughter of cows, calves, bulls and bullocks within the municipality to enable the public

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⁴² AIR 1952 SC 52.
⁴³ Art. 39 (b) Provides: The State shall, in particular, direct its policy towards securing that the ownership and control of the material resources of the community are so distributed as best to subserve the common good.
⁴⁴ AIR 1952 All. 753.
to have sufficient supply of milk and also to ensure that a sufficient number of draught cattle were available for agricultural operations. It was also held that if such prohibition affected the Fundamental Rights of persons under Art. 19(1)(g) to carry on any trade, business or occupation they chose, such restriction on Fundamental Rights was justified in view of the Directive Principles in Arts. 47 and 48 as 'reasonable restriction' under Art. 19(5).

In Sashibhusan Pati v. Mangala Biswas, the Orissa High Court observed:

"Any piece of legislation which implements one of the Directive Principles of State Policy set forth in Part IV of the Constitution would, prima facie, be reasonable unless it could be further shown that there was arbitrary or excessive invasion of the Fundamental Right to property."

In Rameshwar Prasad v. District Magistrate, the Directive Principles were resorted to for determining the scope of 'reasonable restrictions' provided in Article 19(5). In this case, Sapru, J. of the Allahabad High Court emphasised that it was necessary to keep in mind the Directive Principles embodied in Articles 38 and 39 "as the Directives represent the political philosophy underlying the Constitution."

In Bijay Cotton Mills Ltd. v State of Aimer, the validity of the Minimum wages Act, which provided for the

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45. AIR 1953 Ori. 171.
46. AIR 1954 All. 144.
47. (1955) 1 SCC 752.
fixation of minimum rates of wages and challenged as contravening the right to freedom of trade guaranteed by Article 19(1)(t). The Allahabad High Court held that fixation of minimum rates of wages was challenged as contravening the right to freedom of trade guaranteed by Article 19(1)(g). The Allahabad High Court held that fixation of minimum rates of wages was a reasonable restriction and also observed that the Directive Principle embodied in Article 43, justified restrictions upon freedom of contract by fixation of minimum rates of wages.

The Supreme Court took a little uncertain and complicated view in Mohammad Hanif Qureshi v. State of Bihar. In this case, the validity of U.P., M.P. and Bihar legislation which banned slaughter of certain animals including cows was challenged. It was contended that this ban prevented the petitioners from carrying on their butcher's trade and its subsidiary undertaking and, therefore, infringed their fundamental rights, inter alia, guaranteed under Article 19(1)(g). The states maintained:

(i) that the legislations were enacted in pursuance of the directive principles contained in Article 48 which provided inter alia prohibition of slaughter of cows, calves and other milch and draught cattle;

(ii) that the laws having been made in discharge of the fundamental obligation imposed on the states, the
fundamental rights conferred on the citizens and other by part III must be regarded as subordinate to those laws;

(iii) and that the directive principles were equally, if not more, fundamental and must prevail.

The Supreme Court, in this case, could not agree with the contention of the state. S.R. Das, CJ said:

"We are unable to accept this argument as sound. Article 13 (2) expressly says that state shall not make any law which takes away or abridges the rights conferred by Chapter III which enshrines fundamental rights. The directive principles cannot override this categorical restriction imposed on the legislative power of the state. A harmonious interpretation has to be placed upon the Constitution and so interpreted, it means that the state should certainly implement the directive principles but it must do so in such a way that its laws do not take away or abridge the fundamental rights for otherwise the protecting provision of chapter III will be a mere rope of sand"(49)

S.R. Das, CJ., in accordance with this view held:

(i) that the total ban on slaughter of cows of all ages, cows, calves and of she-buffaloes, male and female, is quite reasonable and valid and is in consonance with the directive principles laid down under article 48.

49. (1959) SCR 629 at 648.
(ii) that a total ban on the slaughter of the buffaloes or breeding of bulls or working bullocks as long as these are a milch or draught cattle is also reasonable and valid; and

(iii) that a total ban on the slaughter of she-buffaloes, bulls and bullocks after they cease to be capable of yielding milk or of breeding or working as draught animals cannot be supported as reasonable.\(^{(50)}\)

This decision is also on the lines of the judgement given in Champakam's case, that the directive principles cannot override the categorical restrictions imposed by Article 13(2) on the legislative power of the state. Thus, if the directive principles cannot override this categorical restriction, a logical conclusion would be that they must then remain subservient to fundamental rights as envisaged by the Supreme Court in Champakam Dorairajam's case. The court, however, for the first time, in this case introduced the doctrine of harmonious construction as a new technique of interpretation in this field. But this new technique according to S.R. Das, CJ. has to be applied in such a way as not to take away or abridge fundamental rights. This new technique seems to lead nowhere. A kind of uncertainty and complication has been created. A legislation which does not take away or abridge fundamental rights will be valid whether or not it is in consonance with

\(^{(50)}\) Id. at 688.
a directive principle, but the problem will arise when a legisla-
tion with a view to implement the directive principles came in
conflict with fundamental rights. This new technique of
harmonious construction will be of no help, in such situation,
in solving the problem. This judgement created a further
problem in the constitutional interpretation. The earlier
part of the judgement which upheld the legality of the acts
as in consonance with Article 48 in fact violated the other
part of the directive principles enshrined in Article 41, 45
and 47. Article 41 speaks of the state making effective
provision for securing right to work. The prohibition would
destroy the right to work of lacs of people and their families
engaged in the business of butchering. Article 45 deals with
free and compulsory education. It was observed in this case
that Rs. 19 per head were needed to preserve useless cattle
whereas the expenditure on national education was Rs. 5 per
capita. Thus, upholding the legislation in accordance with
article 48, violated Article 45 because money which can be spent
on providing free education was illogically and extravagantly
spent on maintaining useless cattle. Article 47 speaks of
raising the level of nutrition and living standards of people.
Beef and buffalo meat, because of its cheapness, were the
principal source of much needed protein consumed by the poorer
people of certain communities who would be deprived of essential
protein by such prohibition. Thus the implementation of Article
violated Article 41, 45 and 47 of the same part i.e. Part IV. This aspect of the directive principles did not attach much attention but is not less important for that reason.\(^{(51)}\)

In re Kerala Education Bill,\(^{(52)}\) the Supreme Court was called upon to give its opinion, inter alia on the question of relationship between fundamental rights and directive principles. One of the issues before the court related to the validity of clause 20 of the Kerala Education Bill, which prohibited the government and private schools from collecting any tuition fee from the students in primary classes. This clause sought to make education free up to primary classes within the state. Clause 3 (5) of the Bill extended the provisions of the Bill including clause 20 to new schools also. The schools established otherwise than in accordance with the provisions of the Act shall not be entitled to be recognised by the government. It was contended that clause 20 violated the right of minorities to establish and administer educational institutions of their choice guaranteed to them by Article 30. The State, on the other hand, maintained that the Bill sought to implement the directive principles embodied in Article 45 which enjoined on the state to provide free and compulsory education for all children below the age of fourteen years. S.R. Das, CJ, observed:

\[^{51}\] H.M. Seervai, *Constitutional Law of India* 1579-1580 (3rd ed. 1983);

\[^{52}\] (1959) SCR 955.
Although the legislation may have been taken by the State of Kerala in discharge of the obligation imposed on it by the directive principles, it must nevertheless, subserve and not override the fundamental rights. He further observed, in determining the scope and ambit of fundamental rights relied on by or on behalf of any person or body the court may not entirely ignore these directive principles but should adopt the principles of harmonious construction. (53)

It is submitted that no innovation was made to introduce the doctrine of harmonious construction. The rule of construction in this case is not different from the rule adopted in Hanif Qureshi case i.e. the doctrine of harmonious construction has been applied in permitting the state to implement directive principles in such a way that its laws do not take away or abridge the fundamental rights. Thus, this doctrine of harmonious construction has been applied innocuously in both the cases.

The implications of In re Kerala Education Bill case seem to be very dangerous. Firstly, in effect education can never be free for all, because those who attend education institutions established and maintained by the minority communities will have to pay the fees charged by them. Thus it would result that the directions embodied in Article 45 can never be implemented. (54) Secondly, the directive

53. Id at 1022
54. K.P.Krishna Shetty, Supra note 19 at 101.
principles cannot be implemented if the implementation of them affects the fundamental rights of a few individuals. If this carry into effect socio-economic policies laid down in part IV i.e. if the provisions of Article 39(b) (i.e. the State shall direct its policy towards securing distribution of ownership and control of the material resources of the community in such a way as to subserve the common good) and of article 39(c) (i.e. securing an economic system, operation of which does not result in the concentration of wealth and means of production to the common detriment) are sought to be implemented, that would affect the right to property of a few individuals in whose hands material resources of the community, wealth and means of production are concentrated. As the court suggested i.e. if the directive principles are to be implemented without affecting the fundamental rights, or for that matter without affecting the existing property rights, it virtually would amount to laying down a rule which makes the implementation of the socio-economic policy impossible as against the rights of a few individuals. (55)

A change in the judicial attitude can be perceived in Sajjan Singh v. State of Rajasthan. (56) It was argued in this case that if the chapter on fundamental rights was not made subject to the amending process of the Constitution, there was danger that the much needed dynamic change or development in the

55. Id at 102.
56. AIR 1965 SC 845.
Indian society would be hampered. Mudholkar, J., opined that even if the fundamental rights were taken as unchangeable, the much needed dynamism may be achieved by properly interpreting the fundamental rights in the light of the directive principles. He said that these directive principles "are also fundamental in the governance of the country and provisions of Part III must be interpreted harmoniously with these principles." 57

Here in this case, Mudholkar, J. has not only taken cognizance of fundamental nature of the directive principles, but also emphasized that to resolve the conflict if any between fundamental rights and directive principles, the former should be interpreted in the light of the latter. This is surely a new way suggested in this case.

In *Golak Nath v. State of Punjab* (58) the State argued that if the provisions relating to fundamental rights could not be amended, it would lead to revolution. But Subba Rao, CJ observed that fundamental rights cannot be abridged or abrogated by means of amendment. He did not appreciate the argument that all the agrarian reforms which Parliament in power wants to affectuate cannot be brought without amending the fundamental rights. In this context, he observed:

"The fundamental right and the directive principles of state policy enshrined in the Constitution formed 'integrated scheme' and was elastic enough to respond to the changing needs of the society". (59)

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57. Id at 864.
58. AIR 1967 SC 1643.
59. Id at 1656.
It is seen that in this case Supreme Court for the first time enunciated the doctrine of 'integrated scheme' to characterise the relationship between fundamental rights and the directive principles. Thus, it can be concluded that the Supreme Court treated both the parts equally. The doctrine of integrated scheme in a way disowned the theory of subordination enunciated by the Supreme Court in Champakam Dorairajan and M.H. Qureshi cases. It can be safely inferred that this case (Gola Nath) shows that fundamental rights are elastic and can respond to the changing needs of the society. The desired change in the socio-economic order can be brought about in consonance with the aspirations of the people laid down in part IV of the Constitution by legislative measures that the fundamental rights are to be construed in such a way as to enable the state to carry out its socio-economic obligations imposed on it by part IV.

The Supreme Court gave a historic judgement in C.B. Boarding and Lodging v. State of Mysore. In this case, Section 5(1) of the Minimum Wages Act, 1948 was challenged under Article 14 as conferring unguided and arbitrary power to choose between two procedures, one which was less beneficial to the employers. He de J. dealing with the position of fundamental rights vis-a-vis directive principles made the following observations:

60. Supra note 32.
61. Supra note 4a.
"we see no conflict on the whole between the provisions contained in Part III and Part IV. They are complementary and supplementary to each other. The provisions of Part IV enable legislatures and the government to impose various duties on the citizens. The provisions therein are deliberately made elastic because the duties to be imposed on the citizens depended on the extent to which the directive principles are implemented. The mandate of the Constitution is to build a welfare society in which justice, social, economic and political shall inform all the institutions of our national life. The hopes and aspirations aroused by the Constitution will be belied if the minimum needs of the lowest of our citizens are not met." (63)

H.M. Seervai is of the view that directive principles do not enlarge legislative powers. He has given the following reasons:

(i) There are no express words in Article 37 which have that effect.

(ii) Articles 33 to 51 unlike the Articles on fundamental rights confer no rights on any one. A law implementing Directive Principles may confer rights on persons. These rights will be statutory rights whereas the fundamental rights are conferred by the Constitution. These fundamental rights are conferred by the Constitution. The fundamental rights cannot be taken away by any law in view of Article 13(2). Thus in a conflict between fundamental rights and statutory rights, the former will prevail. (65)

63. Id at 2050.
65. Ibid.
The cases examined above make it quite clear that directive principles though made complementary and supplementary to fundamental rights but they never got a supremacy over them. However, the Parliament was aware of the importance of the directive principles so to give primacy to it, Parliament made several amendments i.e. 1st, 4th, 25th and 42nd to give primacy to directive principles. The First Amendment gave primacy to the directive principles in respect of agrarian reforms by inserting Articles 31A and 31B nullifying Champakam's case by amending Article 15. The Fourth Amendment gave primacy to the laws specified in article 31A (1)(b) to (e) and to three specified laws included in schedule 9. Article 31 gave supremacy to laws whatever their subject matter, so long as they implemented directive principles in Article 39(b) and (c).

The 25th Amendment inserted Article 31 C which laid down that in case of conflict between a law enacted in implementing directive principles in Article 39(b) and (c) and the fundamental rights conferred by Article 14, 19 and 31, former shall prevail over the latter.

This Article 31C was of a drastic character. It has two parts:

(1) The first part protected a law giving effect to the policy of the State towards securing the principles specified in Article 39(b) and (c) from challenging on the ground of infringement of rights under Article 14, 19, 31.
Thus this article left it to the Parliament and State Legislatures to select any topic or adopt any measure which might purport to have same nexus with the objectives underlying Article 39(b) and (c). Article 31C, thus, dealt with objects with unlimited scope.

(2) The second part of Article 31C sought to oust the jurisdiction of the courts to find out whether the law in question gave effect to the principles of Article 39(b) and (c). Thus, this new position debarred the courts in reviewing the law even if that may not in reality be concerning Article 39(b) and (c). (60)

The avowed objective underlying Article 31C was to usher in the country at an early date the era of socialistic pattern of society. In Keshwanand Bharati v. State of Kerala (67), the Supreme Court by a majority held that while the first limb of Article 31C was valid its second limb was invalid. That is, a law enacted to implement Article 39(b) and (c) would not be unchallengeable under Article 14, 19 and 31. The Courts would be empowered to go into the question whether such a law did really achieve these objectives. The decision laid down that no legislature by its own declation could make the law challenge proof. (68) This ruling has the following positive aspects:

66. Idia.
68. Id. 1472.
The legislatures in India by upholding the first part of Article 31C were provided greater power to implement the socio-economic programmes;

Invalidation of the second part of Article 31C avoided the possibility of the State to immunize all kinds of laws from judicial scrutiny that is, every legislature was prevented to enact review proof legislation in the name of article 39(b) and (c) so as to avoid socio-economic chaos in the country.

Article 31C was confined in its scope not only to industrial sphere but it also covered agrarian sphere. Mathew J. went further in attributing the directive principles, in this case, a significant place in the constitutional scheme. He observed:

"In building up a just and social order, it is sometimes imperative that the fundamental rights should be subordinated to Directive Principles.... Economic goals have an uncontestable claim for priority over ideological ones on the ground that excellence comes only after exercise. It is only if men exist that there can be fundamental rights.(69)

He thus, came to the conclusion as regards Article 31C that if Parliament, in its capacity as amending body, decides to amend the Constitution in such a way as to take away or abridge a Fundamental Right to give priority value to the moral claims embodied in Part IV of the Constitution, the court cannot adjudge the Constitutional amendment as bad for

69. Id at 1460.
the reason that what was intended to be subsidiary by the Constitution makers has been made dominant.\(^70\)

H.M. Seervai considers this conclusion correct, because express provisions giving primacy to a law implementing two of the six directives in Article 39 over the fundamental rights conferred by Articles 14, 19 and 31 was necessary.\(^71\)

Mathew, J. while giving importance to the Directive Principles in *Fundamental Rights* case\(^72\) observed that the fundamental rights themselves have no fixed content. Most of them are empty vessels into which each generation must pour its content in the light of its experience. Restrictions, abrogation, curtailment, and even abrogation of these rights in circumstances not visualised by the Constitution makers might become necessary. Their claim to supremacy or priority is liable to be overborne at particular stages in the history of the nation by the moral claims embodied in Part IV.\(^73\)

It is submitted that by ignoring the directive principles, one ignores the future fundamental rights. There cannot be any fixity regarding untouchability (Art.17) and special provisions regarding backward and scheduled castes and classes. And the directives like right to work, right to equal wages, right to an adequate means of livelihood, right to education and maintenance in old age, sickness, etc. may be incorporated in chapter III after making suitable amendments. Moreover, these

73. (1973) 4 SCC 225 at 880-881.
rights are as important as the existing fundamental rights, such as the right to free and compulsory education under Article 45 is certainly as important as freedom of religion under Article 25. Freedom from starvation is as important as the right to life.

Position as emerged From Justice V.R. Krishna Iyer's Judicial Pronouncements and Writings:

Justice Krishna Iyer has also concentrated on this concept in his writings and judgements. (74)

According to Justice Chinappa Reddy, Krishna Iyer is keenly alive to the great importance of the Directive Principles and that he has accepted them as a code of interpretation to construe the Constitution and the laws. And, Fundamental Rights have never meant to him constitutional barriers to

V. Krishna Iyer, 'The Legal Process and Planned Development' (7 JCPS 1-10. (1973)
V.R. Krishna Iyer, 'Perspective on Democracy' 10JCPS 20-26 (1976)
V.R. Krishna Iyer, Justice and Beyond (1980);
recognizing the importance of Directive Principles, Krishna Iyer says:

"Indian humanity, having given to itself a Constitution, has, by that act, dedicated itself to progress through law, the content and conscience of which in the contemporary context is gathered from Part IV thereof". (76)

Welfare of the people is the main and highest duty of the Constitution. And Part IV ensures this idea. That is why Krishna Iyer says, that the Directive Principles of State Policy which mandate the Administration to promote the welfare of the people by securing a progressive social order are no longer a pious-wish package but a programme of action. (77)

Krishna Iyer holds that 'the larger purposes of our constitutional directives in Part III and IV, the higher values which are the finer strands of our composite cultural heritage and the fulfilment, by determined legal direction, of the revolution of rising expectation of the masses — these alone make jurisprudence sociologically valid and legislation communally legitimate. (78)

The Constitution sets out the Directive Principles fundamental to the governance of the country and spells out a social order in which justice, social, economic and political, shall inform all the institutions of national life. So Krishna Iyer holds, 'Our national mind should not be split on this goal.

If there is broad consensus of this, the demanding tasks of the day are dynamic legislative action, purposeful judicial reform and sensitive administrative streamlining so as to transform our conditions of socio-economic life and other human values.'

But he pathetically finds that when part IV openly takes sides with the weaker sections of the people, the Supreme Court weakens its potency by making part III dominant. He says that the tragic irony of Indian Penury is that in our sick society of desperate inequality, the judges, by a borrowed constitutional doctrine, reduced this militant mandate into a pulp declaration by arguing themselves into the conclusion that equality before the law merely meant a platitudinous proposition that among equals there shall be equality. By this simple device, all unequals - the vast numbers who hunger for equality - were put out of the pale of the disturbing doctrine of equality covered by Articles 14 to 16 of the Constitution. So law can make all Pariahs equal to some Pariahs but no Pariah equal to any prince; Legal equality is thus distances from social justice, as Justice have expounded.

80. `Id. pp.70-71.
He further says that likewise in our country of penniless millions, compensation for acquisition of private property from the proprietariat has a socialist angle and a historical perspective beyond the parameters of legalist pedantry. Nevertheless, the judiciary focussed its learning on the agonies of property owners whose excess wealth was sought to be taken away for less than the 'market value'. But in Harijan litigation and injustice to the backward sections, the court has been strict by injecting the conceptions of excellence and efficiency to water down the demands of equality. (81)

Indirectly, Krishna Iyer views that Fundamental Rights mainly help the proprietariat and it is only the Directive Principles which protect the weaker sections.

Here Roosevelt can be quoted:

"The decision of the Court on economic and social questions depend on their economic and social philosophy". (82)

Krishna Iyer feels that 'Scientific Socialism' implicit in Part IV and explicit in 42nd amendment is being grotesquely caricatured by state capitalism and fake socialism. (83)

In case decided in 1976, Krishna Iyer held that where two judicial choices are available, the construction in conformity with the social philosophy of Part IV has preference. (84)

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81. Id at 71.
82. Ibid.
83. Supra note 79 at 63.
In another case, in the same year, he held that Article 46 has to be given emphatic expression while interpreting Article 16 (1) and (2).

While talking of importance of the Directive Principles, he also recognizes the significance of Fundamental rights. He feels that the expensive role of the state under part IV is not always played at the expense of the cherished rights of the people entrenched in part III because 'both the sets of imperatives are complimentary and co-exist harmoniously'. He feels that Part III should not be sacrificed at the alter of Part IV, save where the constitution specifically says so.

Krishna Iyer lays down:“The Directive Principles jurisprudence and Fundamental Rights constitutionalism spring from the same spiritual source and finer values and it is a false dilemma of exotic legalism to pit one against the other. The confrontational constitutional culture must, if we are to survive, reincarnate as a consensus democratic order where the legislature, the judicature and the executive will not enter a boxing ring, punching and bleeding and gnashing but will start an orchestra of harmonious human notes”.

This view can be supported by the words of Lord Macaulay:“All structural changes necessitous for making Indian Democracy functional must be undertaken if our Republic is not to be handed over to undertakers. The Constitution must be a promise, not a menace”.

86. Supra note 74. Som Parkash v Union of India AIR 1981, SC 212 at 221-22.
87. Supra note 79 at p.110.
88. Id at p.111.
Krishna Iyer also favours the change which must be brought for the welfare of the masses. He says that Constitutions are means to an end and cannot remain mummified. They must change when the world and the nations change to subserve stark realities.\(^{(89)}\)

In a case decided in 1978\(^{(90)}\) hundreds of merchants of intoxicants were hit by an amended rule declaring a break of two dry days in every wet week for licensed liquor shops and other institutions of inebriations in the public sector. So in this case, Justice Krishna Iyer while referring to the relationship between fundamental rights and directive principles observed that the tragic irony of the legal plea is that Articles 14 and 19 of the very constitution, which, in Article 47, makes it a fundamental obligation of the State to bring about prohibition of intoxicating drinks. He held that 'reasonableness and arbitrariness are not abstractions and must be treated on the touchstone of principled pragmatism and living realism'.\(^{(91)}\)

In 1979, he decided in a case\(^{(92)}\) that Section 10 of payment of Bonus Act is not \textit{ultra vires} Articles 19 (1) (g) and 301 of the Constitution. The restrictions imposed by the Bonus

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90. P.N. Kaushal v Union of India, AIR 1978 SC 1457.
91. Id at pp. 1458, 1473.
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Act in compelling the employer to pay the statutory minimum bonus even in years where there has been a loss sustained by the management is reasonable or in Public interest within the meaning of Article 19(6) and 302. He held, 'what is reasonable depends on a variety of circumstances, but what is important is that the Directive Principles of State Policy in part IV of the Constitution are fundamental to governance of the country. Therefore, what is directed as State Policy by founding fathers of the Constitution cannot be regarded as unreasonable as contrary to public interest even in the context of article 19 or 302. (93)

42nd Amendment:

The newly inserted Article 31C was perhaps, found to be falling short of the amendments suggested by B.N. Rau (94) because his amendments gave privacy to all laws implementing any directive principle over all fundamental rights. Article 31C gave primacy only to the law implementing two out of six directives in Article 39. Therefore, Section 4 of the 42nd Amendment gave primacy to all the directive principles over fundamental rights guaranteed under Article 14, 19 and 31. This was again challenged in Minerva Mills case. (95) The majority declared this provision as unconstitutional. They are of the view that the

93. Id at 234.
94. B. Shiva Rao, Framing India's Constitution 223 (1971)
fundamental rights occupy a unique place in the lives of civilised societies. They constitute the ark of the constitution. Thus we find that the majority differed from the views of Justice Krishna Iyer who always gives more importance to Part IV of the Constitution. In this case CJ Chandrachud held:

"To destroy the guarantees given by Part III in order purportedly to achieve the goals of Part IV is plainly to subvert the constitution by destroying its basic structure." (96)

Because

"Fundamental Rights occupy a unique place in the lives of civilised societies and have been variously described in our Judgements as 'transcendental', 'inalienable' and 'primordial'. (97)

However, the majority did not want to undermine directive principles. They viewed that the Indian constitution is founded on the bedrock of balance between parts III and IV. To give absolute primacy to one over the other is to disturb the harmony of the Constitution. (98)

But we see in the next case that reliance was again placed on Part IV of the Constitution by Justice Iyer. In this case, he finds that no higher duty or more solemn responsibility rests upon this court than to uphold every State measure that translates into living law the 'Preumbular promise' of social

96. _Ia. 1806._
97. Supra note 67.
justice reiterated in Article 38 of the Constitution. He exclaims:

"Had part IV energised and sublimated Part III in the Court, one set of difficulties in shaping a social order for the promotion of the welfare of the people could have been obviated." (99)

He continues:

"And it is reasonable to organise a constitutional ensemble in such manner as to give primacy to the collective human rights of the community over the personal rights of the individual where all efforts at reconciliation have failed." (100)

Nehru long ago stressed the same point when he said that our final aim can only be a classless society with equal economic justice and opportunity to all, a society organised on a planned basis for the raising of mankind to higher material and cultural level. Everything that comes in the way will have to be removed, gently if possible, forcibly if necessary. He further said that there seems to be little doubt that coercion will often be necessary. (101)

Justice Krishna Iyer reiterated his views again in Bhim Singh Ji v. Union of India (102) decided in 1981, where he held that Part IV which seeks to build a 'social Justice Society' is basic to our constitutional order. According to him any transgression of Article 39(b)(c) by any statute would not be valid.

99. Supra note 76.
100. Ibid.
101. Supra note 79, at p.63.
102. AIA 1981 SC 234.
The same views were given by Justice Iyer in *Waman Rao's Case.* Justice Iyer constituted the bench with Chandrachud CJ. (as he then was), P.N. Bhagwati J. (as he then was) V.D. Tulzapurkar and A.P. Sen, JJ, and held that Article 39 (b) and (c) contain Directive Principles which are vital to the well being of the country and the welfare of its people. So it is impossible to conceive that any law passed for such a purpose can at all violate Articles 14 and 19.

Krishna Iyer finally calls upon all men of law to have 'allegiance' to the 'socialist humanist constitution' with its clear assertion of the primacy of Part IV and to re-evaluate our legal heritage and creatively to reconstruct a jural order upholding the updated values and voicing the urges of the unspeaking masses.

Krishna Iyer's concept can be summed up in his own words, when he says that parts III and IV of the Constitution are the warp and woof of the fabric of our National Charter and project the radical ideology of a system of activist equalism, human dignity and fundamental freedoms in the setting of a dynamic, participative democracy with an egalitarian social milieu in which the 'full and free development of every individual is basic. Broad socio-economic humanism eradicating poverty,

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103. AD 1981 SC 271.
anathematizing concentration of wealth and natural resources ensuring fair living conditions for everyone and exploitive and authoritarian manipulation of the State and Society - these are our fabian, yet militant ambitions. (105)

It is submitted that every case decided by Justice Iyer regarding the relationship between fundamental rights and directive principles takes the law little further. It is quite clear from his writings and judgements that mostly he gives preference to Part IV over Part III of the Constitution. At certain places he has approved of the doctrine of harmonious construction. (106)

It is further submitted that it would be erroneous to give primacy to all the directive principles over all the fundamental rights. At best, the supremacy of the former may be agreed to the extent it is sanctioned by Article 31C (as prior to the 42nd Amendment Act, 1976). Anything beyond this would distort the sanctity of the Constitution. It would be certainly better if an effort is made to reconcile both part III and Part IV of the Constitution with each other. This is what has been decided by the Supreme Court in most of the cases. For if the country's problems are what they are made out to be, the solution it is submitted does not lie in making formal laws and regulations. Rather it lies in the effective implementation of the existing

system itself. In this context, an approach characterized by the famous doctrine of harmonious construction enunciated by the Supreme Court seems to be an acceptance solution to the current debate. But one thing must be kept in mind that by ignoring the directive principles, one ignores the future fundamental rights. A time may come when due to favourable socio-economic conditions many of the fundamental rights have to be deleted such as the right regarding untouchability (Article 17) and special provisions regarding backward and scheduled castes and classes. And the directives like right to work, right to equal wages, right to an adequate means of livelihood, right to education and maintenance in old age, sickness etc. may be incorporated in chapter III after making suitable amendments.

In considering the entire controversy relating to the exact relationship between fundamental rights and directive principles, H.M. Seervai - the constitutional writer has raised another significant point: He holds the view that in view of the fact that directive principles are non-justiciable, therefore, they are not part of the supreme law of India. He says this because law violating directive principles is not void. If this view is accepted, the net result of this would be that the directive principles can be easily ignored and there is as

such no controversy between fundamental rights and directive principles. It is submitted that on the one hand the fundamental rights are part of the supreme law whereas on the other directive principles are not. Surely in such a situation one cannot envisage any conflict but this whole position taken up by Seervai is not well-founded. It is because we cannot read the directive principles as not being the part of the supreme law. No doubt they are not justiciable this only means that if the state does not take any steps to implement the directive principles one cannot move the court for an order against the State to translate the directive principles. This does not mean that the state is at liberty to violate the directive principles in the discharge of his legislative and executive actions. If the state happens to enact a law which is in direct conflict with directive principles, such a law cannot be treated to be constitutional. This view is supported by recent pronouncement of the Supreme Court made in the case of ClwTC. In this case, Rule 9 of the Corporation stipulated as follows:

"The employment of a permanent employee shall be subject to termination on three months notice on either side. The company may pay the equivalent of 3 months basic pay and dearness allowance, if any, in lieu of notice or may deduct a like amount when the company has failed."

This view has been held to be violative of clause (0) of Art. 39, which provides that the state shall in particular direct its policy towards "securing that the citizens men and women, equally have the right to adequate means of livelihood", and article 41 which requires that the state within the limit of its economic capacity and development is to "make effective provisions for securing the right to work. The Supreme Court justifies by recording that an adequate means of livelihood cannot be secured to the citizen by taking away without any reason the means of livelihood. Therefore, such a rule is also violative of the above mentioned directive principles.

This judgement of the apex court clearly lays down that any action of the state which is violative of a directive principle is not constitutionally valid. In this background, Seervai's view is not sustainable. His entire basis was that any law which violates the directive principle cannot be declared unconstitutional. This is completely nullified by this recent judgement. In fact this might provide a supporting hand in holding that in the process of implementing the fundamental rights, the state in its legislative or executive actions cannot act contrary to the directive principles. Therefore, it would mean that in determining the relationship between the two the rule of harmonious construction is the most appropriate one. Justice Iyer also had been emphasising that these two parts of the constitution should be construed harmoniously. Recent trend definitely seems to be in that direction.