PART - 4

EPILOGUE
CHAPTER XII

EPILOGUE

The Constitution of India preambled with luscent solemnity, pledged itself to secure socio-economic justice to all its citizens. The preambular promise of socio-economic justice was translated by the founding fathers into the various provisions of Parts III and IV dealing with fundamental rights and directive principles respectively. The incorporation of fundamental rights and directive principles in our constitution was the result of our struggle for independence. In fact, the history of our country's struggle for independence was the story of a battle between the forces of socio-economic exploitation and the deprived people of varying degrees.

With the advent of the British Raj, the Indian economy deteriorated day by day. On the other hand, with the political consciousness among the Indian political leaders, the idea of equality, liberty and socio-economic justice was regenerated in them. They were convinced that the solution to socio-economic ills of the country lay in the political freedom. Therefore, leaders demanded not only the political rights and civil liberties but also socio-economic rights so as to create a just social order. At that time, no distinction between the two kinds of rights was made. The main focus was the welfare of the society as a whole and not of a few individuals. This was so because it was realised that the lot of the down-trodden was to be improved if the nation was to progress. The pre-independence freedom struggle carried the pledges to end exploitation of the Indian masses which meant that political freedom must include the socio-economic freedom of the starving millions of Indians. The hopes, aspirations, ideals and precepts of social policy precipitated first in the famous "Karachi Resolution", which was not only the declaration of rights but the first "humanitarian socialist manifesto" of India.¹

Independence opened a new chapter in the history of India. The political revolution was completed but the social revolution was yet to continue. In order to fulfil the pledges and commitments of pre-independence era, the Constituent Assembly came into existence in 1946. The task of framing the Constitution was entrusted to this body. The Objectives Resolution adopted by the Assembly enumerated socio-economic rights, the emphasis of which was the well being not only of a few individuals but of all. The Constituent Assembly separated the justiciable fundamental rights from the non-justiciable

directive principles and emphasised the significance of both. The separation was made because of the difficulty involved in enforcing the socio-economic rights. The enforcement of socio-economic rights depended upon the resources of a country and at that time our nation was at a nascent stage. It was not possible to fulfill all socio-economic obligations immediately. On the other hand, fundamental rights of Part III were made enforceable so as to prevent the state from encroaching the individual liberties which were essential for the development with full human dignity. But in order to highlight the importance of the directive principles of Part IV, they were made "fundamental in the governance of the country" and it was further provided that "it shall be the duty of the state to apply these principles in making laws". The state was required to achieve most of the directives in the shortest possible time and all the directives were to serve as "goals" for making laws. It was considered the dharma of the government to secure socio-economic justice to every citizen. Thus, the emphasis was on the welfare of masses and the positive role of the state to ensure the same.

The founding-fathers did not see any conflict between the justiciable fundamental rights and non-justiciable directive principles. These were considered as complementary and supplementary to each other. They were satisfied that there is no antithesis between them.

The nature and significance of the directive principles was also debated in the Assembly. They were rightly regarded as the "germs of socialistic government" and Part IV enshrining them was rightly considered as the most cardinal, important and creative part of the Constitution. These directives enjoin the character of obligations, rights, duties and principles. The term "endeavour" used in various articles of Part IV is in the nature of command and the phrase "primary duty" as binding duty. Even the word "strive" has been expressed in the nature of binding character. But it is the justice-social, economic and political which forms the foundation stone for all the directive principles. It is the dynamic character of the directives which warranted their exclusion from the judicial purview because it is easier for the judiciary to enforce something which is static.

It is very easy to confine to fundamental rights only but the real liberty will have no meaning unless there is social and economic liberty. In fact, the directive principles are more fundamental than fundamental rights. Because what is fundamental in the governance of the country cannot
be less fundamental to what is fundamental to an individual. Also the ideals enshrined in directive principles, that is, 'justice, social, economic and political' are loftier in conception and seek to secure to the individual tangible benefits of great significance than fundamental rights. It is due to this reason that both in Objectives Resolution as well as in Preamble to the Constitution, the ideals of justice - social, economic and political are mentioned first and prior to the securing of the guarantees under fundamental rights. Directive principles represent the goals of an egalitarian social order which the state is required to achieve.

The concept of socio-economic justice has a special significance in the context of Indian society. Social injustice is a chronic, pervasive pathology of Indian society. The concept of socio-economic justice is a revolutionary concept and takes within its sweep the objective of removing all inequalities and affording equal opportunities to all citizens in social affairs as well as in economic activities. It gives subsistence to the rule of law. It gives meaning and significance to the socialistic welfare state. Social and economic justice have been given a place of pride in our constitution. Law to dialogue with socio-economic justice, must suffer a sea change. In this regard the role of all the three organs of the State, that is, executive, legislature and judicature becomes all the more important. If there is any rule of law which impairs the doing of justice, then it is the province of the judge to do all he legitimately can to avoid that rule - or even to change it - so as to do justice in the instant case before him. He need not wait for the legislature to intervene, because that can never be of any help in the instant case. Austin was right when he said that "the judiciary was to be an arm of the social revolution, upholding the equality that Indians had longed for during the colonial days." 3

Various provisions of Part IV will shine as rhetoric legalities drained of life and effectiveness, if the state fails to translate them into realities. The fundamental rights will remain only as paper tigers for those who do not have the bare necessities of life like food, clothes and shelter. The sole aim of directive principles is to provide socio-economic justice to all and create such conditions in which the enjoyment of fundamental rights can become a living reality for not only few but for all.

The non-justiciable nature of the directive principles leads some

3. Supra note 1 at 164.
people to think that they are having inferior status as compared to the fundamental rights. H.M. Seervai, a leading jurist of the country, went to the extent of saying that directive principles are not a part of the Supreme law and hence they should be deleted from the Constitution. It is submitted, that this view of Seervai is not tenable, because he has not viewed the directive principles in the historical context and the purpose for which they were enacted. The very fact that they were incorporated in the Constitution, by the founding fathers, makes them a part of the Supreme law of the land. If any law is passed by the legislature which contravenes any of the directive principles, then that law can be declared as unconstitutional on the ground that it is repugnant to the Supreme law of the land. And if we apply 'only' the test of enforcement as the test for determining the nature of constitutional mandates, then we are left with too narrow a view of the constitutional law. Whether or not a particular mandate of the Constitution is enforceable by court, has no bearing on the importance of that mandate. It would be wrong to say that the mandates of Part IV are of lesser significance than the mandates under Part III of the Constitution. In fact both Parts III and IV are fundamental and they fertilize each other.

Immediately after the commencement of the Constitution, both the legislature and the judicature entered in the boxing ring and could not keep them out of the status controversy of fundamental rights and directive principles. During the first phase, the Supreme Court followed a purely technical and legalistic approach. In Champakam Dorairajan, the Supreme Court subordinated the directive principles to fundamental rights. Thus, it gave almost a death blow to the most dynamic part of the Constitution. The Parliament passed the first amendment to undo Champakam Dorairajan. It also brought number of other changes in the Constitution which were in consonance with the social philosophy of Part IV. During the second phase there was change in the judicial attitude towards directive principles. In M.H. Quareshi and re Kerala Education Bill, the Supreme Court admitted the fact that although directive principles were non-justiciable in character, the courts were to recognise their importance for the simple reason that they formed a

vital part of the constitutional document. The Supreme Court propounded the theory of harmonious construction of Parts III and IV. But again certain judicial pronouncements came in the property and other areas which came in the way of economic legislations and seriously affected the implementation of socio-economic policies of Part IV. In order to nullify these pronouncements, the Parliament had to pass number of constitutional amendments. The validity of these amendments was upheld by the Supreme Court in Shankri Prasad and Sajjan Singh.

The Supreme Court in Golak Nath again made fundamental rights as "transcendental", "inalienable", and "sacrosanct". The period following immediately after Golak Nath saw a highly technical and legalistic approach of the judiciary towards the socio-economic policies of Part IV.

Consequently, in the third phase, the Parliament enacted series of constitutional amendments and established supremacy to the economic directives contained in article 39(b) and (c) by adding a new article 31C into the constitution. This was the first parliamentary direct attempt to give primacy to certain directives over certain fundamental rights. This change was brought with the objective of providing socio-economic justice to millions of Indians by implementing socio-economic policies. The Supreme Court responded well to the clarion call of the time by endorsing the constitutional changes made by the Parliament and by overruling Golak Nath in Kesavananda Bharti. Thus, it was for the first time that the Supreme Court expressly recognised the supremacy of the socio-economic directives over the fundamental rights. Justice Mathew rightly reminded the Court of its role in the implementation of socio-economic principles by observing that "judicial process" is also "state action" and the judiciary is duty bound to apply directive principles in making laws. The recognition of the directive principles got further impetus by the judiciary in Mumbai Kamgar Sabha.

The Parliament felt encouraged by these judicial pronouncements. In the fourth phase, the Parliament passed forty-second amendment to the constitution and amended article 31C thereby providing that if a law is made to give effect to "all or any of the directive principles", then that

13. Id. at 1952.
shall not be declared as unconstitutional on the ground that it violated fundamental rights given in articles 14, 19 and 31. This amendment could have served as an eye-opener to the judiciary. But the hopes generated by the Court and the Parliament were belied by the majority judgement in *Minerva Mills*,¹⁵ which declared that the amendment made in article 31C by the forty-second amendment is unconstitutional. However, hope emerged out of the minority opinion of Bhagwati, J. (as he then was) in *Minerva Mills*, who upheld the amended article 31C and said that to say that amended article destroyed the basic structure of the constitution was based on the metaphysical reasoning. It is submitted that Justice Bhagwati was right when he maintained that a law giving effect to socio-economic justice in pursuance of directive principles might conflict with a formal and doctrinaire view of "equality before the law" guarantee and yet it would almost always conform to the principle of equality before the law in its magnitude and dimension, because this guarantee did not speak of mere formal equality but embodied the concept of real and substantial equality which struck at inequalities arising on account of vast social and economic differentials and was consequently "an essential ingredient of social and economic justice".¹⁶

It is further submitted that in Part IV, all the directive principles are of equal importance and if two of the directives could be given supremacy over certain fundamental rights, why the remaining directives can't be given the same status. In other words, the majority committed an error in restricting the scope of article 31C. The amendment of article 31C was far from damaging the basic structure of the Constitution. In fact, the amendment strengthened and reinforced it by giving fundamental importance to the rights of the members of the community as against the rights of individuals and by promoting socio-economic justice for all where everyone was able to exercise fundamental rights and where the dignity of the individual and the worth of human person became a living reality for many.¹⁷ The evolution of the socialistic jurisprudence under the Indian Constitution compels the reversal of the majority judgement refusing to give primacy to the directives over fundamental rights even by an amendment to the constitution. It is submitted that the fundamental rights should not be treated as the

¹⁶. *Id*. at 1850.
¹⁷. *Id*. at 1852.
sanctum sanctorum of the constitutional temple thereby placing them beyond the reach of the Parliament.

However, the damage done by the majority in Minerva Mills was cured to some extent in Sanjeev Coke, where the Supreme Court pointed out that the judgment in Minerva Mills was only an obiter dicta. Fortunately, the decisions subsequent to Sanjeev Coke, recognised the importance of the directive principles. The Supreme Court rightly pointed out in Central Inland Water Transport Corpn. that the Court can, if the State commits a breach of its duty by acting contrary to directive principles, prevent it from doing so. The judiciary has also shown its wisdom in treating the directive principles as reasonable restrictions in public interest. Since the concepts of reasonable restriction and public interest run like a golden thread through the entire fabric of the constitution, it is suggested that whenever any law is made in furtherance of any of the directive principles, then that law should be considered as reasonable restriction on fundamental rights and in the public interest and hence valid. If this approach is followed by the courts, then the so called status conflict between fundamental rights and directive principles will disappear and Parts III and IV will be translated into a living law and the preambular promise of socio-economic justice will be fulfilled for all. It is only then that the dream of the father of our Nation - "wipe every tear from every eye" will become true.

Now the situation has reached when the state must launch a vigorous programme of implementation of the directive principles. In fact, the directives constitute the manifesto of the constitution which the state is obliged to carry out. Unless, these are honestly and faithfully implemented, the civil liberties will not be enjoyed by all. Without satisfying the minimum needs of the under privileged, the object of human rights cannot be achieved and they would be of no value. With the new role which the legislature and the judicature have ordained, new trends are emerging in regard to the directive principles and different aspects of socio-economic justice. Recently, the judiciary has given meaning and content to articles 38 and 39(b) and (c). It has played an important role in the prevention of concentration of wealth in the hands of a few and has further shown that it is alive to and aware of the purpose of agrarian reforms. The creative attitude of the judiciary

is helping in creating a social order based on socio-economic justice.  

Various aspects of industrial jurisprudence are also based on the values of socio-economic justice which is an integral part of our Constitution. The socio-economic rights of the workers in the industry and labourers in the farm require protection against the various forms of exploitation at different levels. The basic aim of our welfare state is to provide decent standard of life to people and especially provide security from cradle to grave. Right against exploitation, Begar and other similar forms of forced labour has been secured in article 23 as a fundamental right. In addition to this, there are various other social welfare legislations which have been passed in pursuance of the various directive principles and they are aimed at protecting the interests of the workers and labourers in various vocations. But inspite of this, the workers and labourers are being exploited and deprived of their rights. The judicial response in protecting the socio-economic rights of the workers and labourers has been in the positive direction. The courts have evolved such interpretations which further and not hinder the goals of Part IV.

Inspite of this, the malidy of bonded labour, which is the concept of feudalistc age, crept into our social milieu. The prohibition against begar and all other similar forms of forced labour, enshrined in article 23, is not only against the state but also against the private individuals. This is so because it is against human dignity and human values. In the popularly known case of Asiad Workers, the Supreme Court gave a new meaning and content to article 23 of the constitution. While expanding the wings of article 23, the Supreme Court rightly pointed out that article 23 strikes at forced labour of all forms and not only such forms of forced labour which resemble with begar. The Supreme Court rightly pointed out that the force may be in any form. It may be physical, may be exerted through legal provisions or it may be compulsion arising out of hunger and poverty, want or destitution. Thus, it includes compulsion arising out of economic circumstances. This new interpretation of the term "forced labour" in Asiad Workers


as well as in Sanjit Roy\textsuperscript{22} includes "bonded labour" as well. It was pointed out by the Supreme Court that payment of less than minimum wage also amount to forced labour. In this way the Supreme Court not only made a distinct contribution to workers oriented jurisprudence but also displayed the creative attitude to protect the socio-economic interests of the weaker sections of the society.

The Bonded Labour(Abolition)Act, 1976 was enacted to prevent economic and physical exploitation of the workers. One of the most important aspects of this enactment is that it has made provisions regarding the enforcement machinery to implement the provisions of the Act. Periodic evaluation, socio-economic rehabilitation of the bonded labourers and giving this Act overriding effect over any other enactment, agreement or custom are some of other striking features of the Act. But in spite of this, the Act failed to achieve its object. One of the reasons for its failure is that there is no proper identification of the bonded labourers. Even the state denies the existence of the bonded labour. For this, it is suggested that as pointed out in Bandhua Mukti Morcha,\textsuperscript{23} that legal aid camps, special task force to identify labourers from more prone areas, investigative journalism and social organisations can play an important role. It is an established fact that for the proper implementation of the Act, an awareness among the affected persons has to be generated and strict punishment has to be imposed on those who violate the labour laws. People who have vested interests in the non-implementation of the social welfare legislations have to be identified and punished without any concession. Another important aspect which is closely connected with the liberation of bonded labourers is their proper socio-economic rehabilitation. The Supreme Court in Neeraja Chaudhry\textsuperscript{24} rightly pointed out that the rehabilitation of the bonded labourers is the plainest requirement of articles 21 and 23 of the constitution. There is no use of identification and release of labourers from bondage if after attaining so called freedom from bondage they are again consigned to the life of another bondage, namely, bondage of hunger and starvation.

Humane conditions of work is yet another goal of the directive principles. Judiciary in our country has played a very important role by laying down in various judgements that workers and labourers should have just and humane condition of work. The ratio of all these pronouncements is required

to be implemented in true spirit. It is only then that the contribution made by the judiciary in this regard can become useful for the have-nots. Everything remains incomplete unless there is a right to adequate means of livelihood. Fortunately, there is a change in the judicial attitude from \textit{re Sant Ram}\textsuperscript{25} to \textit{Olga Tellis}\textsuperscript{26} and now right to adequate means of livelihood is considered as an integral part of article 21. It is submitted that in this way, the Supreme Court has read the provisions of directive principles into the fundamental rights so as to enable the persons to enforce them in the court of law. This trend of the court establishes the fact that the socio-economic principles of Part IV are not of any less importance as compared to the fundamental rights of Part III. The Supreme Court has rightly maintained that workers should be paid the minimum statutory wage which is also consistent with the directive principles.

The addition of article 43-A into Part IV by the forty-second amendment brought about a new equation in industrial relation. The worker is now regarded as a partner of the industry. This addition was made to herald industrial democracy and to promote good relations and amity among the employers and the workers and to mark the "end of industrial bonded labour". The Supreme Court in \textit{National Textile Workers Union}\textsuperscript{27} (majority view) gave impetus to article 43-A by holding that the workers have right to be heard in the winding up proceedings. However, the minority view, it seems, failed to appreciate the true place of article 43-A.

Thus, both legislature as well as judicature have shown keen interest in protecting the workers and labourers from socio-economic exploitation. If these two organs are also given a helping hand by the executive, then the day is not far off when in a free India, every Indian will feel free from socio-economic exploitation and socio-economic justice would become a living reality for them.

The directive principles also aim at providing socio-economic justice to women and children. Though the struggle to put an end to the discrimination against women started during the British regime, it took final shape after independence. Parliament has passed number of statutory enactments to end the socio-economic exploitation of women and children and to secure them socio-economic justice. The judiciary, by following the course of positive

\textsuperscript{25} A.I.R.1960 S.C.932.
\textsuperscript{27} National Textile Workers Union v. P.R.Rama Krishnan, A.I.R.1983 S.C. 75.
interpretation of the various provisions of law, has responded well to provide socio-economic justice to women and children. The decision of the government entitling unmarried women in government services to maternity leave is in consonance with the changing social attitude and with the canons of equality and fair play.

The judiciary through its interpretative process has secured socio-economic justice to women in matters of employment, jails, prisons or protection homes. The Suppression of Immoral Traffic in Women and Girls Act and the Supreme Court decision in C.J.Vaswani both aim at prohibiting traffic in human beings. Mary Roy is yet another momentous decision of the Supreme Court where it liberated the women from the clutches of Christian Personal Law and provided them equality in the intestate succession. Shocked by the Roop Kanwar tragedy, who became the victim of the social evil of sati, the legislative wing responded well to pass the Commission of Sati(Prevention) Act, 1987. Rajasthan High Court also gave a clarion call by upholding the anti sati law and declaring the sati was not a part of the religious practices. It is suggested that all those who help in propagating the social evil such as sati should be severely punished and they should be debarred permanently from holding any office of profit.

Anathema of dowry is yet another social evil which is a reflection on the Cinderella status of women. Though the central legislation to prohibit this social evil came in 1961, yet it has many loopholes in it due to which it has not proved effective in eradicating the social evil of dowry from Indian social milieu. It is suggested that the nature of the presents and the value upto which they can be given to the bride, should be defined in the Act and they should not be of "customary nature". It is further suggested that the definition of dowry should be amended and all expenditure incidental to marriage such as Thaka, Sagai, Tikka and Milni etc., should be included in it and the maximum limit of marriage expenditure should be fixed. The role of social organisations and other social workers in eradication of dowry should be recognised. Amendment of 1986 into the Principal Act of 1961 has rightly banned the advertisements for dowry which in fact are the "open tenders" for

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the purchase and sale of young girls. Government has also taken the bold step by issuing the orders that if any officer is found guilty under the Dowry Prohibition law, then he should be suspended from service. It is suggested that along with his suspension a strong penal action should also be taken against such a guilty person. The most salutory and innovative provision of the Act is section 6 which enables the wife to get back her articles from her in-laws within three months of her marriage. It is suggested that where a wife dies due to dowry harassment, then in the absence of her heirs and parents, her property should go to legal aid cells and other social organisations who are busy in the eradication of dowry. In no case her property should go to her husband or his family.

The Supreme Court in Pratibha Rani,33 rightly overruled Vinod Kumar34 and held that the dowry articles of the wife constitute her stridhan and anybody refusing to return the same would be guilty of an offence of criminal breach of trust even in the absence of any specific agreement in that regard. This case was a major judicial step dismantling the massive age old apparatus of injustice to the matrimonial world. The judiciary is also alive to the incidence "bride burning" and has shown its deep concern for it. This is evident from Laxman Kumar,35 and Surinder Kumar.36 It is suggested that all those who are found guilty of "bride burning" should be awarded death sentence and suitable amendments in this regard be made in the Dowry Prohibition Act, Criminal Law and Evidence Act. Special dowry cells should be created by the government to investigate the dowry deaths.37 The Supreme Court in Shoba Rani,38 while upholding the dignity of women in the matrimonial home has gone to the extent of holding that the demand of dowry amounts to cruelty entitling the wife to get a decree of divorce. However, the judgement has left a great lacuna by holding that the demand for "personal expenses" of the husband is beyond its scope.

Section 125 of the Code of Criminal Procedure is secular in character, uniform in its application, prophylactic in nature and cuts across all the barriers of religion. This has a social object of preventing wife(including divorced wife), parents and children from destitution and vagrancy. The

Supreme Court has rightly interpreted this provision in the light of its social object and applied it in providing maintenance to Muslim women. The most important interpretation of the Supreme Court is that husband can't be absolved of his duty to maintain his wife by paying merely an illusory amount by way of personal or customary law requirements. Shah Bano Begum gave further impetus in widening the scope of section 125 of the Code. It was rightly pointed out that there is no conflict between the personal law and section 125 of the code. And in case any conflict arises, the secular provision of section 125 of the Code should prevail.

It is suggested that section 125 of the code be amended and husband should also be made entitled to the protection of section 125 of the Code if he is unable to maintain himself and the wife has sufficient means to maintain. It is further suggested that in view of Shah Bano judgment, section 127(3)(b) of the Code should be deleted.

The prosilient development in the maintenance jurisprudence suffered a serious set back when the Parliament passed the Muslim Women(Protection of Rights on Divorce)Act, 1986. This Act is clearly violative of articles 13(2), 14,15,21, 25 and 44 of the Constitution and it is hoped that the Supreme Court will strike it down in a petition already pending before it.

The daughters were rightly reminded, by the Supreme Court in Vijaya, of their duty to maintain their parents who are unable to maintain themselves. But the Supreme Court missed the great opportunity of evolving the concept of "joint matrimonial duty" when it observed that the daughter should have her "independent sufficient means of her income". It is suggested that "independent means" criterion should be done away with.

In another outstanding judgment of Subanu alias Saira Bano, the Supreme Court interpreted the maintenance provision positively and allowed the first Muslim wife to claim maintenance as well as separate residence if her husband contracted second marriage. This judgement is an important gain for the Muslim women who are the worst victims of inequitous family laws. However, in Yamuna Bai Anant Rao Yadav the Supreme Court has once again

followed the literal interpretation of the word "wife" on the basis of personal law and denied the second Hindu wife the benefits of section 125 of the Code. This amounts to denial of social justice to women and negation of the intentions of the legislature and spirit of the constitution.

Uniform civil code for different communities in the country for securing social justice to people in spheres of marriage, divorce, custody adoption and maintenance etc., is yet to come into existence even after four decades of independence. This amounts to great failure of Indian democracy. Due to the religion based personal laws, the society has been compartmentalized into different sections. A secular uniform civil code will not only solve the communal problems but will also be in the interest of unification of the country. The application of different personal laws to different communities on the basis of religion only is discriminatory and is also violative of fundamental rights in articles 14 and 15(1). In an epoch-making judgements of Shah Bano and Jorden Diengdeh the Supreme Court rightly highlighted the importance of having uniform civil code. Unless it is enacted, article 44 will become a dead letter.

It is suggested that the legislature should immediately enact a uniform civil code keeping the positive characters of each personal law intact and omitting the discriminatory features of all personal laws. The socio-economic principles incorporated in the Constitution should serve as guidelines for enacting the uniform civil code. It is also suggested that the uniform civil code should not be a "voluntary code", otherwise, it will cease to be uniform and it will lose its efficacy. For moving the public opinion for having a uniform civil code, it is suggested that legal aid camps should be organised in those areas where the people are not aware of the benefits of the uniform civil code. Free literature in this regard should be distributed among the people so as to make them aware of the need of the uniform civil code. Publicity should also be given to some of the Supreme Court judgements, like that of Shah Bano, on radio and television.

"Equal pay for equal work" for both men and women was there in the constitution from the very commencement of it. The Parliament enacted Equal Remuneration Act in the year 1976. But this concept was translated into reality by the judiciary in the recent years for millions of Indians. Right

from Randhir Singh, to P.L.Singh, the Supreme Court has interpreted the concept of "equal pay for equal work" enshrined in article 39(d) as a part of articles 14 and 16. Thus, once again the judiciary gave due importance to the directive principles by interpreting them into fundamental rights. The Supreme Court has evolved the following principles:

First, "equal pay for equal work for both men and women" means equal pay for every one as between the sexes.

Secondly, this principle may be applied to cases of unequal scales of pay based on no classification or irrational classification, though those drawing different scales of pay do the identical work under the same employer.

Thirdly, this concept is also required to be applied to persons employed on daily wages basis and they should get the pay equivalent to the minimum of what regular employee in that cadre, doing the same work, gets.

Fourthly, if a person serving on daily wage basis or ad-hoc basis is absorbed permanently into the service, then his salary and allowances are to be fixed on the same basis as are paid to permanent employees from the date of continuous employment.

Lastly, it has been laid down that once the nature, functions and the work of two persons are not shown to be disimilar, the fact that the recruitment was made in one way or the other would hardly be relevant from the point of view of "equal pay for equal work".

However, the maximum resistance in implementing the new dimensions of the concept of "equal pay for equal work" is coming from the various departments of the government. It is suggested that uniform instructions should be sent to all the departments of the centre and the state and they be directed to implement the Supreme Court judgements immediately. It is an unfortunate thing to desist the implementation of such an important socio-economic principle by the government itself. It is suggested that if there is non-implementation of the Supreme Court judgement by any of the department of the Centre or State, then the head of the such department should be held personally liable. Because the denial of the implementation of a constitutional mandates amounts to the violation of the constitution itself.

Amelioration of children and providing them socio-economic justice is yet another goal of directive principles. Article 45 of the Constitution mandated the state to provide free and compulsory education to all the children below the age of fourteen years within ten years from the commencement of the Constitution. But this goal has not been fully achieved even today. One of the main reasons why children do not go to school or why parents do not send them to school is their socio-economic condition or poverty.

It is suggested that the government should provide mid day meals, free uniform, free books and stationery to all the children up to primary standard. It is further suggested that the government should also provide some scholarship as an incentive to the children who came from socio-economically poor and backward families. This would serve as an incentive for them and will also encourage more and more parents to send their children to schools. The government should also encourage the establishment of schools by the private persons in the localities of the poor by providing financial assistance and recognition as was directed by the court in D.M.K. Public School. The schools should also be established near the sites of construction work which is to last for some time so as to enable the children of labourers to go to school and have the benefit of their constitutional right.

Children also require protection from employment in hazardous employments. The judiciary has rightly expanded the meaning of the phrase "hazardous employment" in Asiad Workers. The Parliament has also responded well by enacting Child Labour (Protection and Regulation) Act, 1986 which regulates the employment conditions of the children. The enhanced penalty for the violation of this Act would definitely operate as deterrent in future.

Directive principles are also aimed at protecting the children from moral and material abandonment. In order to fulfil this constitutional objective the judiciary has played the most important role. In Lakshmi Kant Pandey, the Supreme Court laid down the detailed norms and guidelines to be followed in inter-country adoption in the absence of any such law by the Parliament. Thus, where one organ of the state, that is, legislature in this case, failed to protect the children from moral and material abandonment, the

other organ, that is, judiciary, protected them. Let us wish that in future also the judiciary will not turn down the demands of the claimants of twenty-first century and hibernate itself into lofty palaces and finally disappear like dinosaurs under the pretext that "since there is no legislation by the Parliament so we cannot give justice, we cannot protect this solemn document - the constitution of India". The judicial concern for the children in jails is evident from Sheela Barse. The Parliament has also taken timely action by enacting Juvenile Justice Act, 1986. It is suggested that the spirit of Sheela Barse and Juvenile Justice Act, should be implemented without any further delay. The children of tender age should not be kept in jails and they should always be kept away from the hardened criminals. They should be detained, whenever required, in the observation homes and remand homes. Special Juvenile Courts should be established all throughout the country for their separate and speedy trial. There should be a separate cadre of magistrates to man all the juvenile courts. If the legislative and judicative concern for juveniles is taken care of by the executive wing also, then the children can be protected from the moral and material abandonment and from all kinds of exploitations. 

Equilibrium, in human terms, emerges from release of handicapped and primitive from persistent socio-economic disadvantage, by determined creative and canny legal manoeuvres of the state, not by horatative declarations of arid equality. Keeping in view the socio-economic disparities of the people of our country, the framers of the Constitution provided special provisions for the amelioration of the weaker sections of the society. Articles 14,15,16 read with directive principles contained in articles 37,38 and 46 provide guidelines for the classification of society for the purposes of law. The fundamental rule which is incorporated in the above mentioned provisions is that weaker sections should be given legal push and pull to make them come to the level of equality with other sections of the community. The purpose is to create the socio-economic conditions that the law may do equal justice to all. The specific mention of the phrase "educational and economic interest" in article 46 makes it amply clear that educational interest and economic interest of the weaker sections and their advancement go hand in hand. 

In a caste ridden and economically imbalanced society, like India, social justice would become meaningful only if the initial advantage is

given as an equaliser to those who are too weak socially, educationally and economically. In order to do so the "merit criteria" in giving advantage to such people has to be replaced by the "need criteria". From the perusal of the various beneficial provisions of the constitution it is clear that there are three categories of beneficiaries of preferential treatment. They are, Scheduled Castes, Scheduled Tribes and other backward classes. The first two categories are explained in the Constitution, but who are "other backward classes" is not mentioned in the Constitution. The two Commissions appointed to identify the "other backward classes" relied on the "caste criterion" to identify the backward classes thereby covering almost 75% of the total population of the country. It is submitted that it is wrong to identify the "other backward classes" on "cast criterion", the emphasis should be on the need of an individual and his social and economic backwardness.

Judiciary has played a very important role in laying down the criteria for identification of "other backward classes". There had been judicial vacillation from case to case. Caste and poverty were the two main criteria which dominated the judicial scene for the identification of "other backward classes". Even in K.C.Vasanth Kumar, 51 where the Supreme Court was specifically required to lay down the guidelines for the identification of "other backward classes" all the five judges constituting the bench failed to speak in one voice and laid different stress on different criteria for the identification of "other backward classes".

It is submitted that due to the failure of the various Commissions and judiciary to lay down the specific criterion to identify the "other backward classes", the real needy persons have been left out of the benefit of the constitutional provisions and only a few among them have shared the major part of the cake. There is also social stratification among the weaker sections including other backward classes. What is happening at present is that only the upper layer among these weaker sections are taking the benefit every time, making the poor, poorer and the weak, weaker.

It is suggested that those people who have improved their lot by taking the benefit of the state action under the constitutional provisions should be refused the preferential treatment for future. Only then the benefit will pass on the other sections of the weaker class. Also the policy of reservation should be reviewed after every five years and there

should be a permanent National Commission to review the conditions of the backward classes. It is further suggested that instead of "caste criterion", the "economic criterion" should be made the basis for the identification of "other backward classes".

The extent to which the reservation on preferential treatment is to be given, is yet another question which requires serious consideration. The Supreme Court in *Balaji*, 52 rightly laid down that the limit of preferential treatment should be below 50%. But the later pronouncements of the Court in *N.M.Thomas* 53 and *A.B.S.K.Sangh*, 54 diluted this rule. However, the rule regarding the "carry forward" has rightly been laid down in *A.B.S.K.Sangh* that it should not in any particular year reserve more than 50% of the total seats.

It is suggested that the preferential treatment should be confined only to the initial stages of appointments or admissions in educational institutions and it should not be allowed to continue in the promotion level. Administrative efficiency is yet another constitutional requirement which is required to be considered while making the reservation.

It is also suggested that the quota system of reservation should be abolished. The emphasis, on the other hand, should be for more developmental facilities to the weaker sections of the society. The weaker sections should be given extra facilities and grants at the school level. This will enable them to compete with the people of higher classes. While granting the various facilities in the schools, a care has to be taken that the benefit is not taken by the creamy layers of the weaker sections. It is suggested that if the socio-economic conditions of the weaker sections is improved by providing them various developmental facilities, then the quota system of reservation can be withdrawn in phases.

While giving the preferential treatment to the students of the professional colleges, it is suggested that there should not be complete relaxation of the minimum qualifying marks. This dilutes the academic standards and also ultimately affects the efficiency.

With regard to the reservation in the Legislative Assemblies and House of People, it is suggested that there should be no extension of time period

further, otherwise, it would defeat the intentions of the framers of the Constitution. In the post-independence era, it has been established that the political reservations have only strengthened the casteism and created an elite class amongst them. It has not resulted in the appreciable benefits to the members of the scheduled castes and scheduled tribes. The political reservations have failed to serve any purpose of socio-economic justice to the weaker sections.

Regarding conversion of the persons from one religion to another, it is suggested that if it is proved that a person has ceased to be a Hindu after conversion, then he should not be allowed to contest from the reserved seat. However, it is suggested that the conversion should not debar the scheduled castes and scheduled tribes from other benefits to which they were entitled before their conversion to another religion. Otherwise, the secular spirit of the Constitution will be violated. Thus, a workable synthesis between the nation's commitment to render socio-economic justice to the segments of society subjected to centuries of exploitation and the vital rights of the individuals has to be evolved.

With the transformation from the laissez faire state to the modern socialistic welfare pattern of society, one of the essential duties of the state is to provide citizens with healthy environment. Alcoholism is one of the social problems and in a socialistic welfare state, the state is required to pay more attention to the social problem than on any individual problems. It is for this reason that the raising the standard of people and improvement of public health were considered as the primary duties of the state. In article 47 there is a specific emphasis on the prohibition of intoxicating drinks. There is no justification for not carrying on this obligation by the state on the moral, economic and administrative basis. If we prepare the balance-sheet of the revenue which the state earns from the sale of liquor and the expenditure which it has to incur to face the consequences of intoxication, the result would be, less revenue and more expenditure.

The judiciary has also shown its deep concern for the implementation of the directive contained in article 47. This directive principle has rightly been considered by the Court as reasonable restriction on the fundamental right of the individual under article 19 of the Constitution.

In Gidhey Club, the Court made an important contribution by holding that the directive principle contained in Article 47 can be enforced even by the administrative action. The Supreme Court in Vincent, rightly pointed out that the non-enforceability of the directive principles does not make them less important than fundamental rights.

In order to make the prohibition of intoxicating drinks effective, it is suggested that awareness should be created among the most vulnerable groups through the mass media. It is further suggested that immediate steps should be taken for the identification, treatment and rehabilitation of the addicts with priority attention to vulnerable areas and groups. The treatment facilities for drug addicts should be expanded. There should be uniform law for the prevention of drug trafficking so that the problem could be tackled more firmly. In those areas where the intake of alcohol and drug is treated as part of their social culture, greater stress should be laid on the preventive education, moderation and temperance as ultimate goal. In order to meet the financial difficulties in the implementation of policies of prohibition, it is suggested that the revenue earned from the present sale of liquor should be used in establishing centres to curb alcohol and drug use. The supply of liquor in the hotels and restaurants should be stopped. Reduction of liquor shops in rural and urban areas is yet another step which is required in this direction. The liquor shops should also remain close for more number of days. There should be no liquor shop near the industrial area, living quarters, educational institutions and place of worship.

For good health, healthy environment is yet another important requirement. Article 48-A puts an obligation on the state to make an endeavour to protect and improve the environment and Article 51A(g) puts a duty on every citizen to protect and improve the natural environment. It was through the Stockholm Conference of 1972, that the awareness for the environment protection was generated among all the nations. India was signatory to this conference as well as to all other international conferences which emphasised on the importance of protection of environment from pollution. Hence, India is also under an obligation to implement the recommendations of these conferences. In India, there were many provisions in various laws and statutes which directly or indirectly related to the environment protection.

but all of them remained ineffective by and large for one reason or the other. In order to deal with the general problem of the environment, the Parliament enacted the Environment(Protection)Act, 1986.

It is suggested that in consonance with the spirit of the Act, National Environmental Protection Authority, Environmental Impact Assessment Group and Standards and Enforcement Division should be created without any further delay. An attempt should be made to involve more and more representatives of social groups and non-governmental organisations so that these authorities do not become merely dummy authorities.

It is further suggested that more stress should be laid on the public awareness and their participation in the environment protection. Section 24(2) of the Act which reduced the "deterrent effect" of the Act should be deleted. It is also suggested that the environmental courts should be established without any further delay in all parts of the country. This will not only help in reducing the burden of the cases in regular courts but also in the proper implementation of the environmental law.

Judicial concern for the protection and improvement of environment is worth appreciating. Govinda and Ratlam Municipality have provided flesh and blood to the skeletal provisions of section 133 of the Criminal Procedure Code. Krishn Gopal gave a new life and vigour to this provision in protecting public health and environment. R.L.& E.Kendra is a significant landmark in the evolution of law and judicial practice on environmental issues in India. However, it is submitted that the practice of the Court in giving the 'order' first and the 'judgement' later should be avoided.

A monumental judgement was delivered by the Supreme Court in M.C. Mehta (popularly known as Oleum Gas Leak Case). This case is an example of the prosilient development of the court in protecting the environment and public rights. The suggestion of the court for establishing a National Authority of Ecological Sciences Research Group and Environmental Courts strengthens the Environment(Protection)Act, 1986. The interpretation of

the scope of article 32 in this case is in consonance with the evolving constitutional jurisprudence of exemplary costs. But leaving the question undecided that whether private enterprises, like Shriram Chemicals, are state or not, is not a positive step. However, the most important contribution of M.C.Mehta is the laying down of a new principle of "absolute liability" of the enterprises engaged in hazardous industries and that measure of compensation should be correlative with the magnitude and capacity of the enterprise.

The recent trend of the various High Courts in treating that slow poisoning by the polluted atmosphere caused by environmental pollution and spoilage amounts to violation of article 21 of the constitution is yet another significant development.

In order to make the environmental law more effective, it is suggested that the legal aid should be made available to all those who bring the matter of environment protection before the Court. Special incentives should be given to all those who help in the protection of environment. In order to make public aware of its importance, the role of social action groups, legal aid camps, investigative journalism and mass media has to be highlighted. Special incentives in the form of tax deduction and others could be given to those industries which adopt the modern safety measures. Environment protection and public health should be made a part of curricular activities. A uniform law to protect the noise pollution should also be enacted. It is also suggested that private enterprises which are carrying the activities of hazardous nature having the potential to cause threat to public health and environment should be considered "other authorities" under article 12 and the right to public health and pollution free environment as implicit in article 21 should directly be enforced against them.

In M.C.Mehta (popularly known as Ganga Water Pollution Case), the Supreme Court has taken a step forward by ordering the closure of certain tanneries which were polluting the Holy river Ganga by discharging effluents from them. It was rightly pointed out that the financial capacity of the tanneries should be considered as irrelevant while requiring them to establish primary treatment plants. The judicial reminder to the central and state authorities to properly implement the various provisions of law for


64. M.C.Mehta v. Union of India (Ganga Water Pollution case), A.I.R.1988 S.C.1037 at 1045.
the control and prevention of pollution is also a positive step in the right direction.  

Equality in dispensation of justice is the cardinal principle on which the entire system of our administration of justice is based. The dynamic concepts of legal aid, *lok adalats* and public interest litigation play an important role in providing equal justice to all and infusing rule of law into the constitutional order. With the development of the concept of strategic legal aid, it has come out of the embryonic stage and shed away the legal positivism. Legal aid is no longer a charity or benevolence of the government. It is a constitutional right and an essential requirement of administration of justice. Preamble read with articles 14, 21, 22(1) in Part III and articles 37, 38 and 39-A in Part IV constitute the basis for socio-economic justice and legal aid as its operational arm.

It is suggested that an amendment should be made in section 304 of the Code of Criminal Procedure and the free legal aid should be made available at all stages of trial and not only at the stage of sessions trial.

It was in *Maneka Gandhi* that the Supreme Court expanded the wings of personal liberty and provided that the procedure to deprive a person of his life or personal liberty should be "just, fair and reasonable". This decision acted as a catalyst in the development of legal aid jurisprudence. The Supreme Court in its various judgments read the directive principle of 39-A as a part of "just, fair and reasonable procedure" of article 21. Hence, no trial would be a fair trial unless the accused is represented by a lawyer.

It is suggested that the legal aid should not become a programme for briefless lawyers. In providing a lawyer at state expense, equal professional competency of *amicus curiae* is of utmost importance. From *Khatri* to *Suk Dass*, the Supreme Court has given impetus to the development of strategic legal aid. However, in *Ranjan Dewivedi*, the Supreme Court, by refusing to issue a *mandamus* to the Union government for providing a "lawyer of his choice" at the state expense, moved in the backward direction. It is submitted that right to have a counsel of one's choice is now part of the just

67. See supra Chapter X.
and fair procedure and hence it is enforceable through the writ of mandamus.

Court fee is yet another dilemma of our administration of justice. In a socialistic welfare state which establishes an egalitarian society with socio-economic justice as its primary goal, the abolition of court fee could be one of the symbolic acceptance of poor man's right to justice. The attitude of the judiciary has been encouraging in this regard.  It is suggested that there should be complete abolition of the court fee.

Public participation in the legal aid programmes is absolutely essential. The state must encourage and support those social action groups and voluntary organisations which are recognised by the Committee for Implementing Legal Aid Schemes and State Legal Board, or which are engaged in organising legal aid camps or lok adalats. It is suggested that more lok adalats should be arranged particularly in the rural areas where the majority of the people are unaware of the development of such an institution. Though the Parliament responded well to the clarion call by passing the Legal Services Authorities Act, 1987, yet there are number of lacunae in this Act. It is suggested that all the lacunae in the Act should be removed at the earliest by amending the Act.

Public interest litigation has proved as a strategic arm of legal aid movement and to correct the administration of justice and in promoting socio-economic justice. In India, the public interest litigation jurisprudence has developed through the various judicial decisions. The public interest litigation serves as a potent weapon in the judicial armoury to ensure not only the observance of rule of law but also to secure socio-economic justice to the weaker sections. The court entertains cases of public interest not in a confrontational mood or in a cavilling spirit or with a view to encroach upon the jurisdiction of the executive or the legislature but with a view to see the observance of the various socio-economic programmes for have-nots.

It is suggested that in public interest litigation, whenever any letter is written to an individual judge of the court, then the concerned judge should not place that letter before himself. It should be forwarded to the registrar of the court who would place it in accordance with the normal procedure. The experience in the past has proved it beyond any doubt.

that the criticism of opening the flood gates of litigation through public interest litigation is misplaced. The judiciary has also decided questions of complex nature in the sphere of public interest litigation. The judiciary has also laid down the guidelines in various cases regarding the entertaining of public interest litigation and putting restraint on it from making abuse of this new potent weapon. Since the public interest litigation in India is judge made and judge led, it has to be further developed in its proper perspective by the judges. In Sheela Barse, the Supreme Court has laid down some principles and guidelines with regard to the role of those who initiate public interest litigations in different courts.

During the recent years, the courts in discharge of its duty, have evolved new strategies and processual measures like affirmative action and exemplary costs, which are implicit in articles 37 and 38 of the constitution. It is submitted that whenever the government acted contrary to socio-economic principles, the court has rightly granted exemplary costs and whenever the government failed to implement the directive principles, the court has rightly adopted the course of affirmative action. The community orientation of the judicial function, so desirable in the third world remedial jurisprudence, transforms the Court's power into affirmative structuring of redress so as to make it personally meaningful and socially relevant. However, through affirmative action, the judiciary should not compel the government to initiate any particular legislation under the guise of redressing public grievances or ensuring socio-economic justice to people. The affirmative action of executive inaction is permissible but it depends on the facts and circumstances of each case. Its dimension is never closed and must remain flexible. Affirmative action in the form of remedial measure "activises" and "energises" the executive action. In an administrative action if the government is alive to the various considerations requiring thought and deliberations and has arrived at a conscious decision after

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73. See supra Chapter X.
taking them into account, it may not be proper for the court to interfere in the absence of malafides. 77

The judiciary in the recent years has granted exemplary costs in "appropriate cases" to do "complete justice". 78 In M.C.Mehta, 79 the Supreme Court rightly pointed out the true scope of article 32 of the Constitution and held that the power of the Court is not only injunctive in ambit, that is, preventing the infringement of a fundamental right, but it is also remedial in scope.

It is submitted that though the court has rightly evolved the new principle of granting exemplary costs, yet it has failed to evolve some uniform basis for quantifying the amount of exemplary costs. It is suggested that the Supreme Court should evolve some uniform base for quantifying the amount of exemplary costs or it should lay down certain guidelines for determining this amount. It is only then that the new principle evolved by the Supreme Court will become a good precedent for future development of law.

Law to dialogue with justice must suffer a sea change. The times have changed and the "new orientation of judicial justice, of social justice", is gradually coming to stay in our country. Thanks to the preamble to the Constitution and the directive principles of state policy. Law must change with the changing social values and social concepts. If the law is to play its allotted role of serving the needs of the society, it must keep pace with the heart beats of the society and with the needs and aspirations of the people.

Whenever the legislative programme or executive action falls short in measuring the demands of social change, the court should assume the responsibility of initiating and prompting that social change which envisages socio-economic justice to all. Directive principles serve the guidelines for the judiciary in such actions. It is only then the Supreme Court of India will become the Supreme Court of Indians.

If the symbiosis of law and socio-economic justice is to be achieved, then the directive principles have to be implemented in their true spirit. Though, the judicial pen has made socio-economic justice a current coin in Indian legal literature and fresh winds of human rights and socio-economic justice blow from the court rooms these days as a result of judicial mutation of directive principles jurisprudence, yet the way to the temple of socio-economic justice is not strewn with roses. It is a long, weary, hard road that we have to travel. There are pitfalls and hazards on the way. But the firm belief in a socialistic welfare state, dynamic character of rule of law and socio-economic objectives of Part IV will guide and inspire us all to achieve our objective. Therefore, the demanding tasks of the day are, dynamic legislative action, purposeful judicial reform and sensitive administrative streamlining on the wave length of directive principles so as to transform our conditions of socio-economic life and other human values and to secure socio-economic justice to all.