PART-1

INTRODUCTION AND EVOLUTION

OF DIRECTIVE PRINCIPLES
CHAPTER-I

INTRODUCTION

The Indian Constitution is first and foremost a social document\(^1\) and socio-economic justice is its signature tune. Socio-economic justice is the cornerstone and an emblem of peoples' constitutional edifice. The directive principles enshrined in Part IV of the Constitution epitomise the ideals, the aspirations, the sentiments, the precepts and the goals of our entire freedom movement.\(^2\) In fact the seeds of socio-economic justice were sown by the freedom fighters during the freedom struggle. It was the focal point and an imperative of the entire independence movement which inspired our founding fathers to fashion socio-economic revolution impressed with human and egalitarian ethos implicit in the Constitution.\(^3\)

The freedom fighters were convinced that political freedom is not, and cannot be, an end in itself. The political freedom has no significance or meaning to the teeming millions of this country who suffer from socio-economic evils unless socio-economic content of history is assured to them. Therefore, they demanded the civil liberties and socio-economic rights so as to create a just social order where there will be justice; social, economic and political for all. Influenced by materialistic interpretation of the history and in order to fulfil the pledges of pre-independence era, they gave us a trinity of commitments, justice—social, economic and political. All this was sought to be achieved by the historic "Objectives Resolution" which formed the basis of various provisions of the Constitution including the provisions dealing with socio-economic justice.\(^4\) The fighting faith of our Constitution is socio-economic justice which finds its solemn expression in preamble, fundamental rights and directive principles of state policy. In fact fundamental rights and directive principles constitute the "conscience of the Constitution" and they were included in the Constitution with the hope and expectation that "one day the tree of true liberty would bloom in India.\(^5\) They were incorporated into the Constitution to promote

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4. I.C.A.D. at 57. See Clauses 1, 5 and 6 of the Objectives Resolution, respectively.
5. Supra note 1.
the welfare of common man and to bring about socio-economic changes in the structure of our country so that the country's all-round advancement could be accelerated. The directive principles represent the goal towards which the people expect the "State" to march and they aim at making the millions of Indians free in the positive sense; free from passivity engendered by centuries of coercion by society and by nature, free from abject poverty and physical conditions that had prevented them from fulfilling their best selves.\^6

The expression "socio-economic justice" is not constitutional rhetoric or political claptrap meant for heroic sloganeering.\^7 It is the conscience and soul force of the supreme law of the land. The concept of socio-economic justice is not "static" or "absolute". It is "flexible" and "dynamic". It is a revolutionary concept which takes within its sweep the objective of removing all inequalities and affording equal opportunities to all citizens. It gives meaning and significance to the socialistic welfare and democratic way of life. It makes the rule of law dynamic.\^8 Thus, it is the dharma of every organ of the state that it should strive to secure socio-economic justice for all the people in the country.

In a socialistic welfare state, sometimes there is a conflict between the clauses of individual liberty and socio-economic planning. But it should be remembered that a socialistic welfare state is dedicated to the cause of common citizen and establishment of socio-economic justice as its avowed objective. Sociological jurisprudence subscribes that without the regulation of individual freedom, socio-economic justice cannot be achieved.\^9

The Constitution of India came into force in 1950 but since then, the solemn tryst of socio-economic justice remains partly fulfilled and partly betrayed. And for this, the legislature, the executive and the judicature have to share the blame jointly. There are many provisions in Part III of the Constitution dealing with fundamental rights which promote socio-economic justice in one way or the other.\^10 But for a common man directive principles enshrined in Part IV come first and fundamental rights later, because he must have first, "a minimum of material well-being" so as to be able to exercise these rights. Excellence comes only after

\^6. Id. at 51.
\^10. For detail of these provisions see infra Chapter III.
existence. Socio-economic justice envisaged in Part IV and the preamble, constitute the warp and woof of our national character but it has been jettisoned right from the very beginning. The directive principles have been taken as mere platitudes and not positive mandates of commitments by the various organs of the State irrespective of the fact that they are "fundamental in the governance of the country." The ideals, the aspirations, the commitments and the ambitions of our founding fathers which were incorporated into the viable instrument with the hope that they will be realised soon are still to be achieved.

Socio-economic justice is the flame of the Constitution and the courts being the guardians of the Constitution, are catalyst of social revolution. It is the duty of the courts to apply directive principles in interpreting the Constitution and laws. The directive principles serve as the code of interpretation for the judiciary. But in the very first few years of independence, the apex court entered into exotic dilemma of status-relationship and supremacy of fundamental rights over the directive principles. Many legislative measures were declared as unconstitutional by the judicature due to the conservative interpretation. This led to the various amendments of the Constitution.

The Supreme Court followed an inconsistent, incoherent approach starting from State of Madras v. Champakam Dorairajan to Minerva Mills Ltd. v. Union of India. Though in re Kerala Education Bill, the Supreme Court adopted the rule of harmonious construction, yet in later cases, in regard to right to property, the judiciary ignored the importance of the directive principles. In Mumbai Kamgar Sabha v. Abdulbai, while recognising the importance of directive principles, the Supreme Court observed, and rightly so, that "Where two judicial choices are available, the construction in conformity with the social philosophy has preference." Perhaps influenced by this observation of the apex court, the Parliament enacted

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11. Article 37.
17. Id. at 1465.
Constitution (Forty-second Amendment) Act, 1976 and amended article 31-C thereby giving some importance to directive principles over fundamental rights. But this change also suffered a serious blow in the hands of judiciary in Minerva Mills, in which the majority opinion declared the above change in article 31C as unconstitutional. But a ray of hope generated by the minority opinion of Bhagwati J.(as he then was) in Minerva Mills and full bench decision in Sanjeev Coke Mfg. Co. v. Bharat Coking Coal Ltd. for millions of Indians for whom the individual liberty is yet to become meaningful as they are struggling for one meal a day, clothes to wear and shelter to live in. No doubt, the Court showed its judicial wisdom in number of other cases, like Pathumma v. State of Kerala, and Kasturi Lal v. State of J&K where it applied the directive principles as reasonable restrictions in the public interest on the fundamental rights. Though the court may not be able to actively enforce the directive principles by compelling the State to apply them in the governance of the country or in the making of laws, the court can, if the state commits a breach of its duty by acting contrary to these directive principles, prevent it from doing so. But still much remains to be done. The success of socio-economic democracy will come only after the Part III and Part IV of our Constitution are interpreted harmoniously and people be the main focus.

Directive principles are not enforceable in the court of law, but they have an important position under the scheme of the Constitution. Article 37 says that it shall be the duty of the State to apply these principles in making of laws. It must be noted that the Summit Court while interpreting the Constitution also makes law. Thus, there is a constitutional obligation upon it to see that while interpreting any provision of law, the goals enunciated in Part IV are kept in view. In fact, legislature, judicature and executive are the organs of the State and they all have to fulfil the socio-economic mandates of the suprema lex which are not merely pious wishes but a plan militant. Article 38 has a mandate that the State shall endeavour to bring about a social order in which justice, social, economic and political

23. See article 141 of the Constitution.
shall inform all the institutions of national life and minimise the inequalities of income and status.

The most bizarre aspect of Indian jurisprudence is that during the first two decades of the commencement of the Indian Constitution, our apex court subscribed to the outmoded dogma of analytical school. They treated the fundamental rights as sanctum sanctorum of the constitutional temple and placed them beyond the reach of the Parliament. Thus, the pace of socio-economic justice was halted.

We have not gone very far from where we were in 1950. The right to livelihood postulated in article 39(a) is more distant today than it was four decades ago. The ownership and control of material resources is still in the hands of a few and tightening further with the passage of time.\textsuperscript{24}

Due to social and economic inequalities large classes of labourers do not have food to eat, clothes to wear and shelter to live in. For them the individual liberties have no meaning. The problem of bonded labour and the discrimination on the basis of rich and poor are some of the glaring examples of social realities which make the socio-economic justice only a paper parchment and a constitutional anathema. Though the participation of workers in the management is one of the directives enshrined in article 43-A, but it is yet to be implemented in its full perspective.

Womanhood, which constitute almost half of the Indian population and the childhood and youth, on which depends India’s future, still continue to be the down-trodden segments of the society. The constitutional guarantee of "equal pay for equal work"\textsuperscript{25} is yet to become meaningful to many of Indians. For millions of men and women there is neither work nor pay and the question of equal pay for equal work remains in mysticism. The masculine superiority of Manu’s age still prevails. Anathema of sati and dowry reflects the Cinderella status of women in India. The social evil of dowry is yet to be eradicated in spite of the Dowry Prohibition Act, 1961. This is because of the fact that there are many lacunae in the Dowry Prohibition Law and its provisions have not been

\textsuperscript{24} See article 39(b) and (c) of the Constitution.

\textsuperscript{25} Article 39(d).
fully implemented by the government in their true spirit. Recently the enactment of the Commission of Sati (Prohibition) Act, 1987 by the legislative wing of the state and the upholding of the substantial part of the Act by the judiciary are the steps in the right direction. The secular provision of section 125 of the Criminal Procedure Code, 1973 was enacted with a social purpose of preventing vagrancy and destitution and securing socio-economic justice, inter alia, to women and children. The judicial grammar of interpretation of this secular provision helped even the Muslim divorced women to claim maintenance from their husbands. Mohd. Ahmed Khan v. Shah Bano Begum, 26 and Subanu alias Saira Bano v. A.M. Abdul Gafoor, 27 are examples of judicial concern to apply the provision of section 125 of the Code for the benefit of the Muslim women. However, the positive development of the judiciary was thwarted by the Parliament by enacting Muslims Women (Protection of Rights on Divorce) Act, 1986. Codification of the uniform civil code, which is the need of the time, is yet another distant goal to be achieved by the State. This remains so even after the judicial reminders to the legislature to enact the uniform civil code without any further delay. Special concern has been shown in the Constitution to protect the childhood and youth from moral and material abandonment. But they do not get such protection in reality so as to develop themselves in a condition of freedom and dignity. The constitutional goal of free and compulsory education to the children below the age of 14 years within the period of ten years from the commencement of the Constitution, as required by article 45, remains unfulfilled even after four decades of independence.

Scheduled castes, scheduled tribes and other weaker sections constituted another segment of the society who suffer from the dual curse of social and economic inequality. The constitution benefit meant for the promotion of educational interests of the scheduled castes, scheduled tribes and other weaker sections of the society is enjoyed by the upper layer of these weaker sections. Thus, the system of reservation has operated in such a way so as to make the weaker sections still weak and the benefit of it has been enjoyed by the upper creamy layers of the weaker actions.

The dream of our father of the nation to introduce total prohibition is yet to be translated into a reality by the State. Raising of the level of nutrition and the standard of living of its people and the improvement of public health is considered as among the primary duties of the State under article 47 of the Constitution. In spite of this, large segments of Indian population have low standard of living and nutrition. In 1976, the Parliament specifically introduced article 48-A for the protection of environment and safeguarding of forests and wild life. The executive wing of the state has failed to implement this directive principle. However, the legislature responded well by enacting the Environment Protection Act, 1986. The judiciary has also shown its deep concern for the protection and improvement of pollution free environment. Particularly, the judicial wisdom of treating the right to live in a pollution free environment as part of the fundamental right to life and liberty under article 21 of the Constitution is the most important development.\(^28\)

It is heartening to note that in the post Maneka era, the judiciary has changed its grammar of interpretation with social awareness and thus generating new thoughts of judicial activism. The judiciary has shown a progressive approach in the areas of dispensation of justice. Right to free legal aid as contained in article 39-A has been read into the fundamental right to life and liberty as a part of just, fair and reasonable procedure and hence made enforceable. The concept of "aggrieved person" for determining the locus standi was done away with and the apex court recognised the epistolary jurisdiction through public interest litigation. The development of strategic legal aid, the establishment of Lok adalats and the role of social welfare organs in the various parts of the country have made justice "cheap, handy, speedy and substantial" and within the reach of a common man. Though the judiciary has shown its deep concern


towards the prisoners and undertrials, but the legal aid has yet to become meaningful to those who are sluggishing and languishing in Tihar and Bihar jails. If the activist approach of the judiciary is given support by the legislative and executive wings of the State, then it will bring forensic mutation and socio-economic justice generated under the Indian Constitution will thus be within the easy reach of every man in this country.

The judicial activism in the field of socio-economic justice, has made the Supreme Court as the sentinel of peoples right. Responding well to the clarion call of the day, the judiciary has played an important role in regard to the executive and legislative inactions in pursuit for socio-economic justice. The judiciary has asked the executive to take affirmative action for securing socio-economic justice. It has gone to the extent of awarding compensation where it failed to take proper action. But this has given rise to an unwanted conflict between the judiciary and the executive.

In the light of the foregoing discussion, the main issues and problems, which deserve query in the context of directive principles jurisprudence and socio-economic justice, have been divided into the following parts:

Part I of the present study relates to introduction and evolution of directive principles. It consists of Chapters I and II. Chapter I is introductory and highlights the general scheme of directive principles and socio-economic justice.

Chapter II deals with the evolution of directive principles of state policy. An attempt has been made to examine as to how and why directive principles were incorporated in the Constitution of India, Why these principles were enunciated into a separate part, that is, Part IV of the Constitution? The evolution of the directive principles, right from the advent of British Raj to the famous Karachi Resolution of 1931 and Sapru Committee Report, has been discussed. An attempt has also been made to discuss the evolution of the directive principles through Constituent Assembly from the adoption of the "Objectives Resolution" to their final adoption in the Constitution. The different views of the Constituent Assembly members on the nature and significance of the directive principles have also been discussed in this Chapter.
Part 2 of the present study pertains to the philosophy, nature and scope of directive principles and fundamental rights. This part consists of Chapter III and IV.

Chapter III examines the concept and meaning of socio-economic justice. An attempt has been made in this Chapter to analyse the constitutional scheme of socio-economic justice as enshrined in the preamble, the fundamental rights and the directive principles, respectively.

Chapter IV seeks to evaluate the relationship between directive principles and fundamental rights. The fundamentalness and bindingness of the directive principles has been discussed in this Chapter. It has been shown that due to the non-justiciable nature of the directive principles, they do not become inferior to fundamental rights. The directive principles being "fundamental in the governance of the country", are of equal importance, if not more, as that of fundamental rights. They are as much part of the Constitution, as the fundamental rights are. This Chapter gives deep insight to the various questions dealing with the status relationship between fundamental rights and directive principles. What is the constitutional status of the directive principles and what are their socio-economic values? Is there any anti-thesis between fundamental rights and directive principles or is it only a false dilemma of exotic legalism? How far the question of non-justiciability of directive principles relegates them to the justiciable fundamental rights? Is it necessary to violate any of the fundamental right so as to achieve the goals of socio-economic justice through the implementation of directive principles? How the judiciary has applied the directive principles as reasonable restrictions in public interest on fundamental rights, so as to achieve the objective of socio-economic justice. These are some of the important questions which have been answered in this Chapter.

Part 3 is devoted to the emerging trends in directive principles and socio-economic justice. This part seeks to evaluate as to how far the legislature, the executive and the judiciary and other social welfare organisations have been influenced by the directive principles in achieving socio-economic justice? Is there any confrontation between the legislature, the executive and the judicature in the fulfilment of socio-economic justice? How the concept of socio-economic justice can become meaningful not only for
millonaires but for millions? How long the verbal jugglery of Sarvodya, Antyodya and Garibi Hatao will remain as national slogans. All these different questions have been anatomised in Chapter V to Chapter XI.

Chapter V pertains to agrarian reforms and prevention of concentration of wealth so as to secure socio-economic justice not only to millionaires but millions. An attempt has been made to discuss the judicial deflections and legislative corrections in the realm of property rights due to which the so called conflict between fundamental rights and directive principles came into existence.

Chapter VI seeks to evaluate the role of directive principles in providing socio-economic justice to labourers and workers. Various aspects like right against exploitation and bonded labour; right to work and humane conditions of work; right to living wages and participation of workers in the management of industries have been discussed in this Chapter. An attempt has also been made to make an assessment of the Bonded Labour (Abolition) Act, 1976 and the role of judiciary to abolish the bonded labour system.

Chapter VII deals with the socio-economic justice to women and children. This Chapter presents an analytical study of various judicial decisions through which socio-economic justice has been ensured to women and children. The legislative attempts and judicative role in eradicating the social evils like sati and dowry have been discussed in detail. The role of judiciary in making "equal pay for equal work" a reality for millions of Indians has also been discussed. It has been stressed that the uniform civil code is the need of the time. Amelioration of children, by protecting them against exploitation, moral and material abandonment, by prohibiting the employment of children in hazardous concerns and by providing free and compulsory education to them, is yet another area covered in this Chapter.

The focus of Chapter VIII is on the promotion of educational and economic interests of scheduled castes, scheduled tribes and of other weaker sections. The question of preferential treatment to the above mentioned categories in admissions to the educational institutions,
employments and legislative constituencies has been discussed in detail. The impact of conversion and reconversion of scheduled castes and scheduled tribes on the preferential treatment has also been discussed.

Chapter IX relates to prohibition, public health and healthy environment. In this chapter, the role of the judiciary in implementing the directive principles by reading them into the fundamental rights has been analysed.

Chapter X deals with equality in dispensation of justice. The role of free legal aid, public interest litigation and social action groups in providing socio-economic justice for all has been discussed. The contribution and the need of lok adalats in providing cheap, handy and substantial justice has also been examined.

Chapter XI presents the analytical examination of the judicial role in regard to the legislative and executive inactions in pursuit of socio-economic justice. The concepts of affirmative action, exemplary costs and the proposed perspectives in this regard have been discussed.

Part 4, contains only one Chapter, that is, Chapter XII dealing with conclusion. In this Chapter the panoramic survey of the whole discussion is summarised and it incorporates suggestions for securing socio-economic justice for all by implementing directive principles enshrined in the Constitution of India.