CHAPTER II

EVOLUTION OF DIRECTIVE PRINCIPLES OF STATE POLICY

(A) Prelude

The Constitution of India, which came into force in 1950, incorporated into it certain socio-economic principles in Part IV. These principles are also known as socio-economic rights. But that is not to say that there were no socio-economic rights before the Constitution of India came into force. If we study the history, we would come to know that socio-economic rights were recognised since the ancient days. After the French Revolution in 1789, it was realised that the political freedom would be impaired without the protection of socio-economic rights of the people.

It was during the British period that our country was economically exploited and the people were deprived of their social and economic rights. Due to the growth of political consciousness, the national struggle for freedom started in the nineteenth century to free the country from the British Empire and to provide the people their due socio-economic rights. The heroes of the freedom struggle were convinced that the solution to socio-economic ills of the country lay in the political freedom. Hence they demanded from the British not only political rights but also socio-economic rights which they wanted to include in the future Constitution of India. Although there was equal emphasis on both civil and political rights and socio-economic rights, yet there was explicit pledge to end the exploitation and secure real social and economic freedom. It was due to this reason that the Karachi Resolution was characterised as humanitarian socialist manifesto.¹

Throughout the national struggle, the national leaders of India drafted number of socio-economic rights to be given to the people of India.² This provided them the training of drafting the future Constitution of India with critical eye. The ultimate task of framing the Constitution was left with the Constituent Assembly. And it was in the Constituent Assembly that the socio-economic rights were separated from the civil and political rights. The former were made non-justiciable but fundamental in the governance of the country.³

². See Karachi Resolution of 1931.
³. Article 37 of the Constitution of India.
In this Chapter an attempt has been made to trace the evolution of directive principles in the pre-independence era and to see how they were shaped in the Constituent Assembly.

(B) Directive Principles in Historical Retrospection

Since the time of French Revolution, there has been growing awareness of close links between political freedom and social justice. The formulation of socio-economic objectives in the national constitution owes its origin essentially to the realisation that the content of political freedom is impaired by the absence of social justice, and that without protection of social and economic rights, constitutional guarantees of what are known as 'classical individual liberties', such as the right to equality, liberty of person and freedom of speech and association, may lose much of their significance. Since the end of the first world war, it was increasingly recognised that the peace in the world can be established only if it is based on social justice. After the world war, the atmosphere became turbulent and civil and political rights were the only bonanza essential for the dignity of man and development of his personality.

A number of constitutions in the world have embodied within themselves declarations of principles which emphasize the duty of the State to strive for social security and to provide work, education and proper conditions of employment for citizens. To satisfy the minimum needs and ensure social justice to all individuals is the duty of the State. According to Professor Laski:

The state, therefore, which seeks to survive must continually transform itself to the demands of men who have equal claim upon that common welfare which is its ideal purpose to promote.

Most of these social and economic rights are of such a nature that it is not considered feasible to provide for their enforcement through the machinery of Courts. The constitutional declarations is more or less in the nature of pledge on the part of the State that it would strive for attainment of the objective visualised in the principles. In dealing with the need to have such a declaration, it was stated in the Declaration of the Rights of Man and the citizen in 1789 that it is needed.

[I]n order that this declaration, being even present to all the members of social body, may unceasingly remind them of their rights and duties; in order that the acts of the legislative power and those of the executive power may be at each moment compared with the aim of every political institution and thereby may be more respected; in order that the demands of citizens, grounded henceforth upon simple and incontestable principle, may always take the direction and welfare of all.

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 agencies of India. B.A. Saletore points out that for the first time for the formula of what may be termed rights even in the modern sense can be found from the times of Kautilya. He classified them into 'civil rights', 'economic rights' and 'legal rights'. In the fourth century B.C., we find in Kautilya's Arthasastra a specific injunction to the effect that:

The King shall provide the orphan, the dying the infirm, the afflicted and the helpless with maintenance, he shall also provide subsistence to the helpless expectant mothers and also to the children they give birth to.

Thus in evolving the fundamental rights and the directive principles our founding fathers in addition to the experience gathered by them from the events of the other parts of the world, also drew on their experience in the past.

The idea of rights is canvassed as of modern origin and usually traced to the Magna Carta of 1215 of Great Britain. U.N. Ghoshal, an eminent historian, points out a number of 'civil rights', enjoyed by the individuals in ancient India and he says that they occupied an important place in the

10. The U.N. Declaration of The Universal Declaration of Human Rights, 1948 and International Covenant on Economic, Social and Cultural Rights in 1966 contains not only civil and political rights but also social and economic rights.
literature of Smritis. 13

It has been seen and observed that the rights were enjoyed by ancient Indians either expressly knowing them or as comprehended in dharma or inferred from the concept of duties. To the Indians the sense of enjoying rights had their roots from the ancient days. 14 There occurred long gap between ancient and modern history due to foreign invasion and assertion by political power. And this is the main reason that most of the contemporary scholars trace the origin of rights to the Indian freedom struggle. 15 Granville Austin also points out that fundamental rights and directive principles have their roots deep in the struggle for independence. 16 According to K.S. Hegde, the inclusion of fundamental rights in India's constitution had its beginning in the forces that operated in the national struggle during British rule when the British resorted to arbitrary acts such as brutal assaults on unarmed satyagrahis, internments, deportations, detention without trial and muzzling of the Press. 17 Fundamental rights and directive principles are not the brain child of any particular individual or group of individuals. They are mainly the product of history. They are the outcome of clash of ideas and ideals and social power. The philosophy underlying Parts III and IV was evolved from the experience of momentous events of the world in general, and India in particular, during the last three or four centuries. 18

The purpose of the directive principles is to fix certain goals, social and economic, for the immediate attainment by bringing about a non-violent social revolution. In the view of Austin, the Indian Constitution is first and foremost social document. Most of its provisions are either directly aimed at furthering the objective of social revolution or constitute and attempt to foster this revolution by creating conditions necessary for its establishment. "The core of the commitment to the social revolution lies in Part III and Part IV, in the fundamental rights and in the directive principles of state policy. These are the conscience of the Constitution." 19 In fact political freedom is of no meaning without social, and

400(1980) referring to B.A. Saletore, Ancient Indian Political Thought and Institutions, 248(1963).
14. S. Sundara Rami Reddy, supra note 11 at 400.
15. Ibid.
16. Supra note 1.
17. Supra note 6 at 38.
18. Id. at 22-23. See also Paras Diwan, "Three Decades of Constitutional Development: Keynote Paper "in Paras Diwan and Virendra Kumar (Editors), (conted.)
economic justice to common man. Professor Paras Diwan says that

[T]he directive principles of the state policy epitomise the ideals, the aspirations, the sentiments, the precepts, and the goals of our entire freedom movement.20

Thus, Austin has rightly pointed out that the directive principles were incorporated in our Constitution with the hope and expectation that some day the tree of true liberty would bloom in India.21 He further says:

The fundamental rights and directive principles... connect India's future, present and past adding greatly to the significance of their inclusion in the Constitution, and giving strength to the pursuit of social revolution in India....They aim at making the Indian masses free in the positive sense, free from the passivity engendered by the centuries of coercion by society and by nature...and by physical conditions that had prevented them from fulfilling their best selves.22

(i) Development After the Advent of the British till the Foundation of the Indian National Congress

After winning the battle of Plassey in 1757, the British filled the political vacuum created by the death of Aurangzeb in 1707. During the intervening period, a new legal and political order was established by the British. This new order was based on their own order in certain respects and it was modified to suit Indian conditions and their own interests in other respects. Mainly the British ruled the country and excluded the Indians from the influential positions.23

In fact, the British came to India to make profits out of Eastern trade but the attainment of political power led them to extract as much

---

19. Supra note 1.
21. Supra note 1.
22. Id. at 50-51. See also Hegede, supra note 6 at 17. Austin says that "although the fundamental rights and directive principles appear in the Constitution of India as distinct entities, it was the (Constituent) Assembly that separated them; the leaders of the Independence Movement had drawn no distinction between positive and negative rights. Both types of rights had developed as common demand, product of national and social revolutions, of their almost inseparable interwinding, and of the character of Indian politics itself." Id. at 52.
wealth from India as possible. So they started exploiting the country economically. This resulted into disintegration of rural economy and decline of trade and industry. The British Government recognised and regulated India's economy in the interest of British trade and industry. It also organized a modern administrative system to guarantee order and security. The Britishers did not interfere in the religious and cultural life of the country but after 1813 they started transforming the social and cultural life of the Indians.

Industrial revolution began in the middle of the eighteenth century. Due to this factor, the British wanted to make India a big market for their goods. Science and technology also opened new vistas of human progress. The eighteenth and nineteenth centuries witnessed the development of new ideas in Britain and Europe. These ideas changed the British outlook towards the problems of India. One of the sources of influence was the great French Revolution of 1789 which gave the message of liberty, equality and fraternity generating powerful democratic sentiments and unleashing the force of modern nationalism. The three main characteristics of new thought were nationalism or faith in reason and science, humanism or love of man, and confidence in the capacity of man to progress. Such humanistic outlook created the doctrine of individualism, liberalism and socialism. Nothing could be static, so according to the doctrine of progress, the societies must change with the changing times.

The conservatives realised that the Indian civilization was different from the European civilization but was not inferior to it. They favoured the social stability and opposed any programme of rapid modernisation. Raja Ram Mohan Roy and other like minded people who were aware of the low state of the country and society, believed that the salvation of India lay in the science and humanism. As a matter of fact, the policy of modernisation was abandoned rapidly after 1858 as by and large Indians shifted rapidly towards modernisation of their society, asserted their culture and demanded to be ruled by the principles of liberty, equality and nationality.

27. Ibid.
28. Ibid.
29. Id. at 115.
30. Id. at 117-118.
The British further abused the political power and strangulated the arts and crafts of Indians. The village craft and industry suffered a serious set back as the British threw open the village to foreign imports and rendered the village artisans as landless labourers. This increased the poverty.\textsuperscript{31} Other industries also suffered almost final extinction. There was a sharp decline in the export of cotton piece goods from India and Indian manufacturers were crippled in various ways. On the other hand, India was turned into a market for British goods. The ultimate result was that the Indian goods were put to many hazards and the Indians were turned into labourers. So the flourishing Indian industry was ruined.\textsuperscript{32} The Britishers were the greatest destroyer of Indian economy.

Trade in India also suffered along with the agriculture and industry. After the Indian trade was thrown open to all the Britishers, the British capitalists settled in the interiors of the country and invested their capital in the cultivation of land and plantations. The drain of wealth from India contributed to the wealth of Britain.\textsuperscript{33} By the end of 1858, as pointed out by Tara Chand:

\begin{quote}
Economic decline of the country was accomplished by a social revolution. The village community which fostered co-operative living, was destroyed. New economic relation based on the western ideas of individual property and enterprise, competition and market economy began to prevail ... in India ... Labour was released from industry but there was no development of industries or extension of agriculture to absorb that labour. The economic development of the country became an appendage of a foreign exploitative system.\textsuperscript{34}
\end{quote}

The British economic policies transformed India’s economy into a colonial economy whose nature and structure were determined by the needs of the British economy. The peasant was also progressively impoverished under the British rule. In spite of the fact he was not free of internal wars, his internal conditions deteriorated and steadily sank into poverty. They were all in the vicious circle of poverty. This also witnessed the ruin of old zamindars and rise of new landlordism. This was so particularly with Warren Hastings’s policy of auctioning the rights of revenue collection to the highest bidder. The Permanent Settlement of 1793 also had a similar effect. This led

\textsuperscript{31} Tara Chand, supra note 23 at 354. See also V.B.Singh, supra note 24 at 18-19.
\textsuperscript{32} Tara Chand supra note 23 at 363, 366-68-371.
\textsuperscript{33} Id. at 371-374, 376, 388.
\textsuperscript{34} Id. at 391-92.
to the growth of intermediaries. This resulted into over-crowding of agri-
culture and increase in sub-infeudation which led to sub-division and
fragmentation of land into small holdings, most of which could not maintain
their cultivators.\textsuperscript{35}

All the factors - the loss of territory, the establishment of the
foreign rule and the economic drain resulting in the impoverishment of the
people created discontentment and resentment among the people who made an
armed attempt to throw British out of India in 1857. The attempt, however,
failed and the government of India was transferred from Company to the Crown
in 1858. The Government of India was carried on in almost the similar way
as before but some changes were made in the legal and political set-up and
other areas.\textsuperscript{36}

On the other hand, social and cultural awakening was very much there
even during the first half of the nineteenth century. Moreover, the new
social groups - the capitalist class, the working class, the modern intelli-
gentia demanded modernisation because their own interest demanded it. Vedanta
College was established in 1825. In that college, both Indian and western
social and physical sciences were offered. Raja Ram Mohan Roy, the firm
believer in internationalism and in free co-operation between nations, was
the only person to realise completely the significance of modern age. He
keenly observed the international events and supported the cause of liberty,
democracy, nationalism and opposed injustice, oppression and tyranny in
every form.\textsuperscript{37} Vidya Sagar also contributed to the upliftment and emancipation
of India's down-trodden womanhood. The Bethune School founded in Calcutta
in 1849, was the result of the powerful movement for women's education that
arose in 1840's and 1850's.\textsuperscript{38} After the revolt of 1857, many administrative
changes also took place. For example, local bodies were first of all created
in 1864-1868, and the age for the public services was reduced from twenty-
one to nineteen years. Now the British changed their earlier attitude towards
the advancement of education and they started showing hostility towards the
educated Indians because they were analysing the imperialistic character of
the British rule and putting forward the demand of Indian participation. The
British also abandoned the policy of social reform. The condition of workers

\textsuperscript{35} Bipan Chandra, supra note 26 at 182, 184, 187, 189.
\textsuperscript{36} See B.Pattabhi Sitaramayya, The History of the Indian National Congress,
Vol.I, at 7(1946 reprint); Keith, supra note 23 at 164-225; Tara Chand,
\textsuperscript{37} Bipin Chandra, supra note 26 at 127-128.
\textsuperscript{38} Id. at 130-131. See also B.Pattabhi Sitaramayya, supra note 36,at 12.
in the factories was not good. The workers worked for twelve to sixteen hours a day and there was no provision for weekly day of rest. Their wages ranged from Rs four to Rs twenty per month. The working hours of women and children were also the same as were for men. The factories were unhygienic and badly lighted and aired. The factories being overcrowded and work on machine being hazardous, accidents were very common.  

The freedom of press which was granted in 1835, was again put to restrictions by passing Vernacular Press Act in 1878. The protest to this resulted in the repeal of the Act in 1882.  

The political event of 1858 was followed by some legal and constitutional change. The means of communication and transport were expanded. There was increase in the foreign trade of India and modernisation of her economy. Foundation of modern industry and mining was laid. As a result, the Indian capitalism started developing on the pattern of British type of business organisation. In particular, jute and textile industry and other industries made headway. The result was that the position of Zamindars and traders improved. On the whole, however, the pace of advance of trade and industry was slow. The important social consequences of even limited industrial development was the birth and growth of two near social classes in the Indian society. First, industrial capitalist class and secondly, the modern working class. However, the condition of agriculture remained the same and the plight of the peasant was deplorable. The periodic settlement in certain areas showing upward trend in the land revenue and small holdings added to their misery and indebtedness.

39. Id. at 151-163. The Government of India took inadequate measures to mitigate the sorry state of affairs in the modern factories. The first Indian Factory Act was passed in 1881 which dealt with the problem of child labour and laid down that the children below the age of seven could not work in factories and the children between seven and twelve would not work for more than nine hours a day. The Act also provided for the proper fencing off of the dangerous machinery. By the Factory Act of 1891, weekly holiday for workers and the fixed working hours, seven for women, were laid down. But these Acts were not applicable to British owned tea and coffee plantations.

40. Id. at 163-164. But the militant Swadeshi and Boycott movement after 1905 once again led to the enactment of repressive press laws in 1908 and 1910. See also J.K. Mittal, "Right to equality in the Indian Constitution", Public Law 36 at 39(1970); B.P. Pattabhi Sitaramayya, supra note 36 at 37.

41. Tara Chand, supra note 36 at 278-283, 306, 347; Keith, supra note 23 at 164-212; Bipan Chandra, supra note 26 at 193.

42. Tara Chand, supra note 36 at 285, 292, 294-296.
In spite of the overall progress, the country was in the grip of a series of calamities and millions died for want of food. During this period, the financial position of the government remained unsatisfactory. The economic distress, oppressive taxation, the decline of Indian handicrafts and lack of employment opportunities for the Indians caused the great discontent.

India could not achieve freedom due to poverty, the crushing burden of taxation, the wasteful expenditure and the drain of wealth. The analysis of the economy of India made it clear that poverty was due to the foreign rule and the system of administration introduced by the British in India. And the economic conditions of the people could not be improved without a "radical change" in the character of the government. So it was essential to agitate for a change in the system of government for the introduction of representative and dynamic system for the transfer of political power from British to the Indian hands. The solution of all the economic problems etc. depended only upon the attainment of self-rule by India. The objective of attainment of Swaraj, that is, self rule was to be achieved by the Indian National Congress which was perhaps the only organisation that fought for independence.

(ii) Development After the Foundation of Indian National Congress till the Common wealth of India Bill, 1925.

The Indian National Congress was founded in 1885. The Indian desire for civil rights was implicit in its formation. In the words of Austin:

Indians wanted the same rights and privileges that British masters enjoyed in India and that Britains had among themselves in England... and wanted to end the discrimination...of colonial regime.

In the beginning, the Indian National Congress demanded increased Indian participation in political affairs of the country.

43. Id. at 347.
44. Id. at 348.
46. Austin, supra note 1 at 52-53.
47. B.Pattabhi Sitaramayya, supra note 36 at 18.
a congress leader in Bengal, claimed that like born British subjects' Indians were also entitled to the rights and privileges guaranteed to the English by their Constitution. He stated that they were determined to have such rights through constitutional means.48

Perhaps the first explicit demand for fundamental rights appeared in The Constitution of India Bill 1895 probably issued under the inspiration of Lokmanya BalGangadhar Tilak and described as the Home Rule by Annie Beasant. A glimpse of the rights and directives may be found in the provisions. Article 16 of the Bill, inter alia, contained the right of free speech and imprisonment only by competent authority. The Bill also had provisions guaranteeing free state education and compulsory primary education.49

In 1897, Lokmanya Bal GandharTilak, an eminent Indian leader, was convicted under Section 124-A of Indian Penal Code of 1860, dealing with the offence of sedition though he was not the author of the published matter.50

In 1906, the Congress made a demand that the system of government operating in the self-governing British colonies should be extended to India. It was felt that Swaraj or self-government was the only remedy for the poverty of Indian people.51 The Congress also passed a resolution to boycott British goods and start Swadeshi movement to promote the growth of indigenous industries and to stimulate the production of indigenous articles. The object was to solve the economic problems.52

Home Rule movement was started by Annie Beasant and Tilak in 1916.53 Even before this movement, there was sufficient political and social awakening in the beginning of the century. As the national movement gained momentum, repression through law and other measures became more violent. By the end of 1911, four repressive Acts had been passed. The Criminal

48. See J.K.Mittal, supra note 40 at 39; B.P.Pattabhi Sitaramayya, supra note 36 at 37.
49. B.Shiva Rao, The Framing of India's Constitution:Select Documents, Vo.I. at 5,6 and 7(1966),
51. B.Pattabhi Sitaramayya, supra note 36 at 25-26; Tara Chand, supra note 36 at 571.
52. K.M.Munshi, History and Culture of Indian People, Vol IX in R.C.Majumdar and others (ed.) at 33 and 89(1969).
53. K.M.Munshi, Indian Constitutional Documents, at 6 and 7(1967).
Law Amendment Act 1908 provided for more speedy trial of certain offences and for the prohibition of association dangerous to public peace. Other Acts were the Newspapers (Incitement to Offences) Act 1908; The Press Act 1910 and Prevention of Sedition Meetings Act 1911.\textsuperscript{54}

A series of Congress Resolutions were passed between 1917 and 1919 and the demand for civil rights and equal status with those of Englishmen was repeated. The Resolution of 1917 called for equal terms and conditions in bearing arms, for a wider application of the system of trial by jury, and for the right of Indians to claim that no less than one half of the jurors should be their own countrymen.\textsuperscript{55} Another Resolution laid emphasis on the opinion that Parliament should pass a statute guaranteeing the civil rights of His Majesty's Indian subjects which would contain provisions relating to equality before the law, a free press and free speech etc. It was also demanded that the statute should lay down that political power belonged to the Indian people in the same manner as it belonged to any other people or nation in the British Empire.\textsuperscript{56} The demand for equality of rights and for self-government exemplifies not only the well-known desire for negative freedom, but also that aspect of positive freedom so perceptively described by Sir Isaiah Berlin as "the desire for the 'positive' freedom of collective self direction".\textsuperscript{57}

In the constitutional reforms of 1909 and 1919, the demands were not fully met with.\textsuperscript{58} It is evident that in the wake of the current century there was enough political awakening in India. By the mid-twenties, the Congress and other Indian leaders achieved a new consciousness of their Indianness and the need of the people.\textsuperscript{59} By now Gandhi had appeared on the political scene of the country. Now the demand was to assure liberty among Indians and not equality of rights of Indians vis-à-vis Englishmen which could be achieved through Independence Movement.\textsuperscript{60}

\textsuperscript{54} Sections 6 and 7 of the Act provided for penalties in cases of contravention. See J.K. Mittal, supra note 40 at 39.

\textsuperscript{55} Austin, supra note 1 at 53; referring to Chakraborty and Bhattacharya, at 6.

\textsuperscript{56} Id. at 53. See also BShiva Rao, supra note 49, Congress Resolution on Self-Determination (Dec. 1918) at 31.

\textsuperscript{57} Austin, supra note 1 at 53; referring to Berlin, The Concepts at 47-48.

\textsuperscript{58} See Keith, supra note 23 at 228-232 and 247-273.

\textsuperscript{59} Austin, supra note 1 at 53.

\textsuperscript{60} Id. at 53-54.
At that time, the prominent view was that the personal and political freedom would be impaired if not rendered nominal unless the enjoyment was made practicable by the reasonable guarantee of social and economic freedom. It was thought that the rights of personal liberty and political freedom might become a shame if not a mockery for those whom the existing social and economic order left starving, insecure in the livelihood, illiterate and deprived of their just share in the progress and well-being of the society as a whole. The result was that the new constitutional arrangement made after the World War I specifically declared constitutional principles regarding social and economical policy.

India, being a subject country under Britain which itself did not have either a written Constitution or a declaration of fundamental rights, did not have bill of rights for her people till she attained freedom and framed her own Constitution. Since political freedom preceds economic and social freedom, the question of enunciation of economic and social rights did not arise at all in the absence of declared fundamental rights.61

(iii) Commonwealth of India Bill, 1925 and Swaraj Constitution

Again by the mid-twenties a large section of nationalists opinion considered it vital that the Constitution of India should be framed by the Indians themselves. The next development was the drafting of Annie Beasant's Commonwealth of India Bill, 1925,62 which was adopted at National Convention and presented to the House of Commons by Lansbury. This bill sought to achieve for India a self-governing Dominion status except for Defence and Foreign Affairs. For the first time it contained an article relating to the grant of fundamental rights. Article 4 titled as 'Declaration of Rights' contained the following provisions: inviolability of the liberty of the person and of his dwelling and property; freedom of conscience and the free practice of religion subject to public order or morality; free expression of opinion and the right of assembly peacefully and without arms, and of forming Associations or Unions, subject to public order or morality; free elementary education as soon as practicable; the use of roads, places dedicated to the

62. B.Shiva Rao, supra note 49 at 43-50. See also Austin, supra note 1 at 54.
public, courts of justice and the like; equality before law, irrespective of consideration of nationality; and equality of sexes.  

Article 8 of the Bill, which was approved by the Indian National Convention, enumerated, *inter alia*, provision for education stating that 'all persons in Commonwealth of India have the right to free elementary education and such right shall be enforceable as soon as due arrangements shall have been made by the competent authority.'  

In November, 1927, just two years after the printing of the Bill, an Indian Statutory Commission was appointed under Sir John Simon to examine whether Indians were fit for being entrusted with a further instalment of responsible government. The Commission was appointed to study the possibility of constitutional reform in India.  

On 17 May 1927, at the Bombay session of the Congress, Motilal Nehru moved a resolution calling upon the Working Committee to frame a Constitution for India and in consultation with the elected members of the Central and Provincial Legislatures and Leaders of political parties. A *Swaraj* Constitution, based on a declaration of rights, was formed to give momentum to the fight for *Swaraj*, that is, self-government. It was said in its introduction that the declaration of rights of Indians as against others and of Indians themselves as against their government must indeed form the most important feature of the Constitution. The Preamble of the Constitution declared *Swaraj* as the inherent and inalienable right of people of India. The Constitution was welcomed all over the country and endorsed by the Motilal Nehru Committee in 1928.  

(iv) Nehru Committee Report, 1928  

The Working Committee of the Congress complied with the directions contained in the Congress Resolution of 1927 and convened an All Parties Conference to draft a *Swaraj* Constitution for India. It represented the views of Muslims, Hindu Orthodoxy, non-Brahmin, Labour and Liberals. The Conference appointed a small committee with Motilal Nehru as its Chairman.

63. Article 4 was divided into seven clauses(a) to (g). See B. Shiva Rao, *supra* note 49 at 44.  
64. Article 8(d).  
66. *Id.* at 55.  
67. J.K. Mittal, *supra* note 40 at 42.  
68. *Id.* at 42-43.
and seven other members. This Committee was constituted to determine the principles of the Constitution for India. The report of the Committee, which is known as 'The Nehru Report', was based on the principle of Dominion Status with full responsible government on the parliamentary pattern. It contained an explanation of its draft Constitution that the main concern of the Indians was to secure the fundamental rights which had been denied to them and which are not to be withdrawn in any circumstances.

The recommendations made in the Report contained number of fundamental rights. The report, inter alia, contained right of personal liberty, freedom of conscience and the freedom to profess and practice any religion subject to public order and morality, right of free expression of opinion, right to assemble peacefully without arms and right of equality. It also enumerated certain social and economic rights. For example, right of free elementary education without any distinction of caste or creed in the matter of admission into any educational institutions, maintained or aided by the state and such right shall be enforceable as soon as due arrangements shall have been made by competent authority; freedom of combination and association for the maintenance and improvement of labour and economic conditions was guaranteed to everyone and of all Corporations; maintenance of health and fitness for work of all citizens, securing a living wage for every worker, protection of motherhood, infirmity and unemployment. This Constitution was hailed by the Congress as great contribution towards the solution of India's political and communal problems.

The fundamental rights of the Nehru Report were reminiscent of the American and post war European Constitutions and in some cases they were word for word from the rights listed in the Commonwealth of India Bill. Several clauses had, however, Indian origin, e.g., no breach of contract of service or abetment thereof shall be made a criminal offence which related directly to the forced labour. The rights laid down by the Nehru

69. The other members of the Committee were Ali Imam, Taj Bahadur Sapru, M.S., Aney, Sardar Mangal Singh, Shuaib Qureshi, Subhash Chandra Bose and G.R. Pradhan, See B. Shiva Rao, supra note 49 at 58.
70. The Report was submitted on 10 August 1928.
71. B. Shiva Rao, supra note 49 at 58.
73. Id. at 101-103.
74. Article 4 of the 'Recommendations' of the Nehru Report which was divided into nineteen clauses, contained these rights.
75. Clauses (V), (XV) and (XVII) of Article 4 of the Report. See also B. Shiva Rao, supra note 49 at 59-60.
76. B. Pattabhi Sitaramaya, supra note 36 at 330.
77. Supra note 72 at 101-103.
Report were a close precursor of the fundamental rights of the Constitution; ten out of nineteen sub-clauses reappear materially unchanged and these are included as the directive principles.  

The demand for declaration of fundamental rights in the future Constitution of India gained impetus at the hands of political leaders with the passage of time. In the end of 1928, the Indian Legislature appointed the Indian Central Committee which supported the inclusion of fundamental rights in the proposed Government of India Act. The Report was presented to British but ultimately, however, the Commission did not recommend any declaration of fundamental rights to be included in the Constitution of India. The Report merely observed that "many of those who came before us have urged that the Indian Constitution should have contained definite guarantees for the rights of the individuals...and a declaration of the equal rights of all citizens...Experiences, however, have not shown them to be of any great practical value. Abstract declarations are useless, unless there exist the will and the means to make them effective."  

At the historic session of Lahore in 1929, of which Jawahar Lal Nehru was made the President, a new militant spirit was raised and a resolution declaring Purna Swaraj (complete independence) to be the Congress objective was passed. This resolution was the result of the failure of the Nehru Report. The Congress Resolution of 1929 also emphasised the theme of socio-economic reconstruction when it declared:

The great poverty and misery of the Indian people are due, not only to foreign exploitation in India but also to the economic structure of the society, which the alien rulers support so that their exploitation may continue. In order, therefore, to remove this poverty and misery and to ameliorate the condition of the Indian masses, it is essential to make revolutionary changes in the present economic and social structure of society and to remove the gross inequalities.

The newly adopted tricolour flag of freedom was hoisted on 31 December 1929 and 26 January was fixed as the first Independence Day, which was to be celebrated every year with the people taking the pledge that it was "a
crime against man and God to submit any longer" to British rule. The inalienable right of the Indian people to have freedom and equality was asserted. It was said that the British Government not only deprived the people of India of their freedom but based itself on the exploitation of masses and ruined them economically, politically, culturally and spiritually.

Subsequently, in all the three sessions of the Indian Round Table Conferences, efforts for the inclusion of a Chapter on fundamental rights in the Constitutional documental for India were made.

(v) Progress in the Three Round Table Conferences

In all the three Indian Round Table Conferences, discussions were made on the provisions on fundamental rights in the proposed Constitution which were designed to secure either to the community in general or specified sections of the people of India. Memorandums were submitted by individuals and groups for this purpose.

At the First Round Table Conference, N.M.Joshi, a representative of the Indian Labour Organisation, emphasised the need for incorporating certain fundamental rights (including economic rights also). B.Shiva Rao, another representative of the same organisation presented in fact, a draft of ten such rights.

B.R.Ambedkar also drew attention of the British Government towards the urgency of incorporating adequate provisions for the enforcement of fundamental rights in the Constitution. He pleaded that these rights also include a right of redress for the violation of any fundamental right. N.M.Joshi, however, could not find support for his plea especially for safeguarding the economic rights of the community.

82. B.Pattabhi Sitaramayya, supra note 36 at 363-364.
83. J.K.Mittal, supra note 40 at 45.
84. See Shariful Hasan, supra note 81 at 22-23.
85. The First Round Table Conference was held during the period from 12 November 1930 to 19 February 1931.
86. Indian Round Table Conference Proceedings, Comd.3778 at 11.
87. Indian Round Table Conference Proceedings, Sub-Committee III, Minorities at 81-82.
88. Markandan, supra note 61 at 35-36.
Despite various efforts of the Indian delegates, the attitude of the British Government towards the grant of fundamental rights to the people of India remained unchanged and the demand was rejected at the First Round Table Conference.  

During the Second Round Table Conference, the necessity of ensuring certain fundamental rights to Indians in the future Constitution of India was again discussed. A joint statement entitled as "Labour under the New Constitution" signed on 13 November 1931 by N.M. Joshi, B. Shiva Rao and V.V. Giri, included the same set of rights as put forward by Rao at the First Conference and concluded by saying:

The real problem of the future will be economic and social and it would be wrong to build the Constitution, in a manner which has no relation to the realities of tomorrow.

The Third Round Table Conference again echoed the discussion on fundamental rights. Dr. Ambedkar wanted to include an additional rider in the form Instrument of Instructions to the Governor-General and Governors. This view of Dr. Ambedkar is important to note because the same idea was expressed by him in the Constituent Assembly while justifying the inclusion of the directives in the Constitution of India.

Sir Tej Bahadur Sapru and M.R. Jayakar submitted a separate memorandum on 27 December 1932. The British Government admitted the importance of such rights but expressed the doubts about their feasibility. However the view was supported ultimately that, as the means of searching fair treatment for majority and minorities alike, some of the fundamental rights could be ensured through the 'special responsibilities' of the Governor-General and Governors, some other could be incorporated into the Constitution and

90. The Second Round Table Conference was held during the period from 7 September 1931 to 1 December 1931.
91. K.M. Munshi, supra note 82 at 492-494.
92. See Markandan, supra note 61 at 37.
93. This Conference was held during the period from 17 November 1932 to 24 December, 1932.
94. See infra, head 'Directive Principles Through Constituent Assembly'.
95. Third Round Table Conference Proceedings Report, 66.
such of them which were found unsuitable for statutory enactment could be
accommodated in the Royal Proclamation to be issued on the inauguration of
the new Constitution.\footnote{Ibid.}

The idea of enumerating in the Instrument of Instructions such as
those fundamental rights, which could not be embodied in the Constitution
Act, itself, also found a support in a memorandum submitted by Khan Bahadur
Hafis Hidayat Hussan and Shaja'at Ahmed Khan on 27 December 1932. The memo-
randum said:

While we hold that some of them should be drafted very
carefully, we are convinced that most of them are
necessary and should be embodied in the Constitution....
we are of the opinion that after such rights have been
embodied either in the Constitution Act or in the Instru-
ment of Instrument of Instructions, they should all be
restated in the Royal Proclamation to be issued on the
inauguration of the new Constitution.\footnote{See Markandan, supra note 61; referring to Third Round Table Conference —
Appendix-Memorandum submitted on 27 December 1932 at 195-196.}

Finally in March, 1933, the British Government issued a white paper
in which proposals for constitutional reforms in India were outlined but
no detailed declaration of fundamental rights was made. The white paper
did not mention any fundamental right including social and economic rights.
So, it was criticised in various resolutions adopted on the White Paper.
For the first time, a demand for the convening of a Constituent Assembly
to frame an acceptable Constitution for India was made.\footnote{B.Shiva Rao, supra note 49 at 76-78.} Witnesses before
the Joint Committee on Indian Constitutional Reform not only insisted upon
the declaration of fundamental rights in the future Constitution of India
but also presented a number of memoranda on the subject.

At a special session in April 1933, the National Trades Union Federa-
tion emphasised the view of a declaration of fundamental rights in the
Constitution Act. The Bengal Trades Union Federation in its memorandum to
the Sub-Committee of the Joint Committee also insisted upon the need to
include rights similar to those contained in Article 39(e) and (f), 41, 42
and 43 of the Indian Constitution.\footnote{Article 39(e) says that the health and strength of workers, men and
women, and the tender age of children are not abused and that citizens
are not forced by economic necessity to enter avocations unsuited to
their age or strength. Clause(f) says that children are given opportuni-
ties and facilities to develop in a healthy manner and in conditions of
(conted.)}

The socio-economic conditions of the poorer and working
classes in India are indeed depressing....It is necessary
for its protection that certain fundamental rights of the working classes should be specifically declared enjoining that Indian Parliament should make suitable laws to ensure fair rent and fixity of tenure to agricultural tenants from whom industrial workers are recruited, for the maintenance of the health and fitness of workers, securing minimum wages for them, the protection of motherhood, welfare of their children and the economic consequences of their old age, infirmity and unemployment. The Indian Parliament shall also pass laws to ensure housing for industrial workers. Nothing short of statutory obligations (Housing is a fundamental right in German and other post-war Constitutions) will remove the grave menace to the Indian workers health. In the framework of the future constitution, provision should be made for an organisation (the Industrial Council) which would enable representatives of employees, of employers of labour, and of the Government to meet regularly in Conference, to discuss labour measure and labour policy.

Disagreeing with the views expressed by the Secretary of State on the subject of fundamental rights at the end of the Third Round Table Conference, the memorandum observed that the British conception of Constitution will not hold water in an oriental country like India where socio-economic conditions of the working classes are different and where brutal practices exist that should be swept out of existence by statutory instruments. All post-war Constitutions like Germany, Czechoslovakia and even Ireland do include fundamental rights.

A spokesman of the sub-committee of the Joint Committee on Indian Constitutional Reform while clarifying the position in this respect, suggested that in the declaration of the fundamental rights for citizens of India the plan that had found favour in the Constitutions of the Soviet Union, Czechoslovakia, Germany and Ireland wherein economic rights were specially guaranteed could be adopted for India. He considered the grant of economic rights as more important and advisable for the citizens of

freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment. Article 41 relates to right to work to education and to public assistance in certain cases. Article 42 deals with the provision for just and humane conditions of work and maternity relief. And Article 43 deals with living wages etc. for workers.

100. Markandan, supra note 61 at 40-41; referring to Evidence Indian Constitutional Reform, 19 July 1933, No. 55 at 2226-2227.

101. Ibid.
India than the grant of political rights such as personal liberty and safety of property. He said:

As a matter of fact those political rights are the usual rigmarole of rights, if I may say so, but what we really need in India, are as you may say, the bonafide right, the right to have an old age pension, the right to have sickness benefit, the right to insurance, the right to have compulsory and free elementary education...102

Joshi also confirmed before the Sub-Committee that the grant of fundamental rights was for the protection of the economic interests of the people. 103

Discussions and the memoranda ultimately resulted in the embodying of section 298,12(i)(c) and 52(1)(b) in the Government of India Act,1935 apart from the instrument of instructions and the proclamation of Queen Victoria. 104

It is evident from the foregoing account that the British could think of a declaration of fundamental rights as nothing more than expression of political ideals. They could not think of incorporating into the body of the Constitution anything that was not susceptible of judicial decision and such of those that were unsuitable for statutory enactment but could be expressed verbally, if not included in the Instrument of Instructions. Obviously they could not be legally enforced.

It is intriguing to note that Sir Samuel Hoare, the Secretary of State for India, who could not think of a declaration of fundamental rights in any Constitution for India, eleven years later, made an appeal for a declaration of fundamental rights as necessary for the unification of Europe and preservation of European civilisation. 105

Although there was general appreciation of the basic proposition, but there was strong opposition to declaration of fundamental rights especially

102. Id. at 2235.
103. Id. at 2238.
104. The Proclamation stated:"We declare it to be our Royal will and pleasure that none will be in any way favoured, none molested or disquieted by reason of their religious faith or observances; but that all shall alike enjoy the equal and impartial protection of the law; and we do strictly charge and enjoin all those who may be in authority under us that they abstain from all interference with the religious relief or worship of any of our subjects or pain of our highest displeasure". See Markandan, supra note 61 at 42.
105. Markandan, supra note 61 at 43; referring to House of Lords Debates (Hansard), 19 December 1944 Cols.380-385.
(vi) The Karachi Resolution of 1931

Apart from the discussions and memoranda submitted on the subject of fundamental rights at the London Round Table Conference and meetings of the Joint Committee on Constitutional Reform, the Indian National Congress also passed a historic resolution on the declaration of fundamental rights at its forty-fifth Session held at Karachi on 29 March 1931. The resolution stated that the Congress was of the opinion that political freedom must include real economic freedom in order to bring an end to the exploitation of the masses. The Congress, therefore, declared that any Constitution to be agreed to on its behalf must provide or enable the Swaraj Government to provide for fundamental rights and duties and economic and social programme. According to Paras Diwan, in a sense directive principles of state policy epitomise the ideals, the aspirations, the sentiments, the precepts and the goals of entire freedom movement. Such ideas were articulated in the 1931 Karachi Resolution of Indian National Congress.107

The Karachi Resolution was subsequently modified in the All India Congress Committee meeting held at Bombay on 6 August 1931. The modified version of resolution was finally adopted under the Duties and Economic Programme at the 47th Session of the Indian National Congress held at Calcutta on 1 April 1933. There were in all Seventeen Articles in this resolution divided into four heads. First, fundamental rights and duties108 which, inter alia, stated that the culture, language and script of the minorities and of the linguistic areas shall be protected, the state shall provide for free and compulsory primary education. Second, Labour,109 which, inter alia, provided that the organisation of economic life must conform to the principles of justice, to the end that it may secure a decent standard of living; the State would safeguard the interests of industrial workers and secure them, inter alia, a living wage; protection of women workers and especially adequate provision for leave during maternity period; children of school going age shall not be employed in mines and factories. Third, taxation and expenditure,110 which, inter alia, laid down that the system of land tenure and rent and revenue would be reformed and an equitable adjustment made of

106. Id.Cols.388-389.
107. Supra note 20.
108. Article 1 with 14 sub-sections.
110. Articles 7 to 11.
burden on agricultural land, immediately giving relief to the small peasantry by a substantial reduction of existing agricultural rent and revenue paid by them, and in case of uneconomic holdings, exempting them from rents, so long as necessary with such relief as might be just and necessary to holders of small estate affected by such exemption or reduction in rent, and to the same ends, imposing a graded tax on net income from land above a reasonable minimum. Fourth, economic and social programme, which, \textit{inter alia}, stated that the state shall protect indigenous cloth, and for this purpose pursue the policy of exclusion of foreign cloth and foreign yarn from the country; intoxicating drinks and drugs shall be totally prohibited, except for medicinal purposes; the state shall own and control key industries and services, mineral resources, railways, waterways, shipping and other means of public transport; relief of agricultural indebtedness and control of usury-direct and indirect.

The provisions of Karachi Resolution were what we today have fundamental rights and directive principles of state policy. These were not separated because it might have been thought that all these had to constitute an integral whole to bring about social revolution in India. The Karachi resolution emphasised not only the state's negative obligations but also the positive obligations "to provide its people with economic and social conditions in which their negative rights would have actual meaning."\footnote{Ibid.} It was found that the provisions of the Karachi resolution were in some cases "antecedents of the Directive Principles".\footnote{Ibid.}

Granville Austin characterised the resolution as both "a declaration of rights and a humanitarian socialist manifesto."\footnote{Ibid.} Nehru liked the resolution because it represented a new outlook in the Congress and took a "short step in a socialist direction by advocating nationalisation of key industries and services and various measures to lessen the burden on the poor and increase it on the rich."\footnote{Jawaharlal Nehru, \textit{Towards Freedom}, 196 (1958 ed.).}

**(vii) Deliberations of Sapru Committee And its Report**

There was a radical change on the Indian politics during 1940's. The Indian national movement gathered momentum in the years 1941-42 and the British Government kept negotiating with the Indian leaders on the
issue of handing over political power to them.\footnote{116}{Paranjape, supra note 89 at 12.}

In 1945, the Sapru Committee,\footnote{117}{Appointed by Tej Bahadur Sapru under the authority of the Standing Committee of the Non-Party Conference. See Select Documents, supra note 49 at 151.} with Tej Bahadur Sapru as its Chairman, discussed at length the fundamental rights and the incorporation of the same in the future Constitution of India. A questionnaire was issued by the Committee to various associations, groups and individuals inviting their views on the desirability of inclusion of fundamental rights in the future Constitution of India and the machinery that could be suggested for the enforcement of those fundamental rights which were not justiciable. It was here that the separation of rights started first of all.

Several individuals and organisations responded to the questionnaire and some of them gave the details of fundamental rights which they wanted to include in the future Constitution of India. The All India Depressed Class League in its memorandum submitted a detailed list of fundamental rights including the social and economic rights.\footnote{118}{Markandan, supra note 61 at 45, referring to the Conciliated Committee Information Services Pamphlet No.6.}

Venkatarangaiah distinguished the civil rights from the economic rights. He wanted to incorporate two sets of rights in the Constitution, the former being enforceable in the courts of law and the latter not. He also gave reasons for the distinction between the two sets of rights and observed:

\begin{quote}
[C]ivil....rights are of a justiciable character and they can and ought to be enforced through courts of justice. Social and economic rights....cannot be enforced through courts because they involve positive action in the forms of new legislative measures, administrative organisation, accumulation of large financial and perhaps the total transformation in some cases of the economic system in the country. These cannot be accomplished through decrees issued by the courts...This does not, however, mean that rights not justiciable are ineffective as rights and that their incorporation in the Constitution serves no purpose. It only means that while for enforcing some rights we have to look to courts, for enforcing others we have to look to other political institutions.\footnote{119}{Id. Pamphlet No.8, at 8-9.}
\end{quote}
Thus, Venkatarangaiah anticipated the inclusion of non-justiciable economic and social rights in the framework of the Constitution of India.

The Sapru Committee in 1945 considered the suggestions received from various quarters on the subject of fundamental rights and reached the following conclusions. First, protection of minority rights was absolutely necessary. Second, there was a need for laying down adequate and appropriate standards for legislative and administrative actions and the courts. Third, that the justiciable and non-justiciable fundamental rights be discussed and pleaded for incorporation in the future Constitution.

Finally, the Sapru Committee in its "Constitutional Proposals" recommended that a declaration of fundamental rights in an Indian Constitution was absolutely necessary. It envisaged two sets of fundamental rights—one justiciable and the other non-justiciable. It did not suggest how the division was to be made. It left this task to be performed by the Constitution-framing body and observed that the task may be difficult but it was not impossible.

The proposals of the Sapru Committee were definitely a significant achievement and advancement on the earlier proposals because it made distinction between fundamental rights as justiciable and non-justiciable and recommended the inclusion of latter also in the Constitution.

As a result of second World War, the liberties granted in the Atlantic Charter, the U.N. Charter, and the Declaration of Human Rights by the Human Rights Commission, strengthened the demand for the incorporation of fundamental rights in our Constitution.

Finally, it was the Constituent Assembly which drafted the Constitution of India.

(C) Directive Principles Through Constituent Assembly

The Constituent Assembly was mainly an elected body and represented almost all shades of public opinion. Its deliberations began on 9 December

120. Pranjape, supra note 89 at 13. See also Markandan, supra note 61 at 48. 121. Markandan, supra note 61 at 48, referring to Constitutional Proposals of the Sapru Committee at 257. 122. This aspect was latter picked up by B.N. Rau, See infra under the sub-head 'Directive Principles through Constituent Assembly'. 123. Hegde, supra note 6 at 41. 124. This body was entrusted with the task of framing the present Constitution (conted.)
1946. It became a sovereign body on 15 August 1947 when India gained independence. Its broad ideological spectrum provided by the Indian National Congress was enlarged by the inclusion of non-Congress specialists from various disciplines and walks of life. Thus organised it settled down to the framing of a Constitution of free India in a pragmatic way with a view to bringing about the renascence of Indian society.

(i) Adoption of Objectives Resolution

The Constituent Assembly was first convened on 9 December 1946 and Rajendra Prasad was elected its permanent Chairman on 11 December 1946. The first great achievement was the adoption of the historic objectives Resolution on 22 January 1947. This resolution was moved by Jawaharlal Nehru on 13 December 1946. This Resolution formed the basis not only of various provisions of the Constitution but also its preamble. The relevant parts of the Resolution are:

(1) This Constituent Assembly declares its firm and solemn resolve to proclaim India as an Independent Sovereign Republic and to draw up for her future governance a Constitution;....

(5) Wherein shall be guaranteed and secured to all the people of India justice, social, economic and political;

(6) Wherein adequate safeguards shall be provided for backward and tribal areas and depressed and other backward classes; and....

(8) This ancient land attains its rightful and honoured place in the world and make its full and willing contributions to the promotion of world peace and the welfare of mankind.

It consisted of the representatives elected by the popular provincial legislatures and those of the princely states according to a scheme evolved by the British Cabinet Mission in consultation with Indian leaders in 1946. See The Constituent Assembly of India, compiled by A.C. Bannerjee, Introduction and at 38-174 (1947). The Indian Independence Act, 1947 had recognised the Constituent Assembly as the Constitution making body for India in its Section 19(3).


126. Austin, supra note 1 at 8-15, 19-21.

127. I, C.A.D., at 35-36. (conted.)
Nehru in his speech on the Resolution emphasised that the House should not consider this Resolution in its literal meaning but should look at its spirit. He reminded that the members of the Assembly have not to function for a party or a group but for whole of the India. Explaining the democracy and socialism in the Resolution he stated, "We have given the content of democracy in this Resolution and not only the content of democracy but the content, if I may say so, of economic democracy in this Resolution... stand for socialism and that India will go towards the Constitution of a socialist state and I do believe that the whole world will have to go that way." In the end of his speech, Nehru requested the House to consider the Resolution in the "mighty prospect of our past of the turmoil of the present and of the great and unborn future that is going to take place soon."

Many members of the Constituent Assembly participated in the discussion on the Objectives Resolution. There was great emphasis on what we call fundamental rights under the present Constitution. The emphasis on socio-economic rights also did not lag behind. The majority of the members considered the incorporation of social policy in the Constitution without undermining the importance of fundamental rights. It would be in the fitness of things to take into consideration a few observations of members during the discussion on Objectives Resolution and before its final adoption on 22 January 1947.

M.R. Jayakar, speaking on the importance of the Resolution said that it was a vital resolution and it laid down the essentials of the next Constitution. He highlighted the economic and socialistic importance of the Resolution and observed that it envisaged far-reaching social changes - social justice in the fullest sense of the term. The liberties of the individuals were restricted to the extent the people really desired it. The Resolution also emphasised that the development of the individual person-

128. See J.K. Mittal, "Concept of Equality in Constituent Assembly (Incorporation of Right to Equality in Indian Constitution), The Supreme Court Journal 65 (1965).
129. C.A.D., supra note 127 at 57.
130. Id. at 60.
131. Ibid.
132. Id. at 62.
133. Id. at 65.
134. Id. at 72. See also the speech of Krishna Singh, C.A.D., supra note 127 at 87.
Ambedkar particularly referred to clauses (5) and (7) of the Resolution and stated that he expected Nehru to go much further than he had done in that part of the Resolution. He wanted that the Resolution should have explained in explicit terms that in order to achieve social and economic justice in the country, there would be nationalisation of industry and land because no Government can do justice—social, economic and political without its economy being a socialist economy. So Ambedkar had no doubts in his mind as to the future evolution and the ultimate shape of the social, political and economic structure of this great country.

S. Radhakrishnan, visualising the importance of fundamental rights, emphasised that though state regulation for socio-economic revolution was necessary, it should not have been done at the expense of the human spirit. N.V. Gadgil spoke just after Radhakrishnan and said that these fundamental rights were the rights what were most cherished by the common man. He emphasised that the freedom contemplated is supported by the various principles which were incorporated in the Resolution and that has given balance and poise to the structure.

Vijaylakshmi Pandit observed that there were two aspects before them—negative and positive. She laid emphasis on positive aspect because while the negative aspect is concerned with the ending of imperialist domination, the positive aspect would perform the most important task of building up India as a social democratic state which enables her to free herself socially and economically and reach her destiny. Ranga observed that our countrymen are not socially and economically free to enjoy various liberties and privileges. According to him, "they need a ladder by which they can reach on to the stage when it will be possible for them to come to appreciate the value of the rights that we are placing before them and enjoy them." Devendranath Samanta felt the need of framing the Constitution in such a way that the interests of the masses could be protected. All these observations, in fact, referred to the present directive principles under the Constitution.

136. C.A.D., supra note 127 at 100.
137. Id. at 275.
138. Id. at 273.
139. Id. at 280.
139a.Id. at 278-279.
140. Id. at 293. See also the observation of V.D. Tripathi at 312.
Finally in the concluding speech Nehru said that the Assembly was to free India through a new Constitution, to feed the starving people and clothe the naked masses, and to give every Indian fullest opportunity to develop himself according to his capacity.141

It appears from the discussion of the members of the Constituent Assembly that the aim of the upliftment of the people was certainly predominant in their mind.

(ii) Rau’s Draft in the Constituent Assembly

After studying the Objectives Resolution, B.N. Rau, the Constitutional Adviser to the Government of India, suggested that the best way of embodying the assurances contained in Paras (5), (6) and (8) of the Resolution142 was to split two sets of assurances in the following manner: First, fundamental rights relating to personal liberty and political freedom and enforceable in the courts of law. Second, fundamental principles of state policy relating to social, economic and other matters and unenforceable in the courts.

Rau made an elaborate study of the various European Constitutions and his study, inter alia, revealed that most of the retained certain rights which are non-justiciable in nature. He felt that the enunciation of fundamental rights in general term and making them judicially enforceable may give benefit to the social and religious minorities but it could cause the following problems: First, for want of clear judicial attitude, the process of legislation will become difficult. Second, it would make the law uncertain and which can result into multiplicity of litigation. Third, the courts manned by irremovable judiciary will have a veto on legislation.143

The study further revealed two broad classes of rights. Some rights required positive action by the State and these could be guaranteed only if the action was practicable. Other rights merely required that the state should abstain from prejudicial action.144

Rau noticed that in certain Constitutions such as the Constitution of the U.S.S.R. and Weimer Constitution of German Reich, both classes of rights were covered under the head 'Fundamental Rights'. The reason was

141. Id. at 316.
142. C.A.D., Supra note 127.
144. Markandan, supra note 61 at 50.
that neither were intended to be enforced by legal action. But according to Rau there was difference in both the classes of rights that is, fundamental rights imposed a negative duty on the state while the others required a positive action on its part. He found this difference clearly in the Irish Constitution. The Irish Constitution had separated the fundamental rights from the directive principles of state policy. The former were to some extent enforceable by the courts, but the latter not at all. The principles of social policy set forth were intended for the general guidance of the Qireachtas(Irish Parliament) and were not to be cognizable by any court. There was no similar provision for fundamental rights express­ly excluding the jurisdiction of court. One of the reasons for attraction of Assembly members towards the constitutional socialism expressed in the Irish directive principles of social policy was the long standing aff­inity of the Indian National Congress with the Irish nationalist movement.

Rau also noticed a similar distinction recognised by Lauterpacht in his 'International Bill of the Rights of Man'. He provided for two articles dealing with social and economic rights and distinguished from the others relating to personal or individual rights. He observed that the latter could be enforced by judicial or administrative process but the same degree of enforceability was not possible regarding social and economic rights. The reason for such distinction can be best described in his own words:

These two articles represent the social and economic pro­visions of the bill of rights....The main difficulty connected with this category of rights is that of inter­national supervision and enforcement....(for), there is no specific test of observance, in an individual case of the obligation to secure just and humane conditions of work, or the right to work or adequate opportunities in education, and to public assistance in case of unemployment and old age, depends upon the economic conditions and develop­ment of each state. Moreover, while with regard to per­sonal rights of freedom the test is absolute...the social and economic rights are related to the predominant standard of life and a variety of social and economic factors in the country concerned.149

146. Markandan, supra note 61 at 51.
147. Austin, supra note 1 at 76.
148. Articles 15 and 16.
Rau, being influenced by this analysis, suggested the incorporation of similar provisions in the Constitution of India on Irish model. He separated the two classes of rights:Part A dealing with the fundamental principles of state policy which was non-justiciable and Part-B with fundamental rights strictly so called which was justiciable. He took assistance from various sources for drafting the provisions in Part A. The preliminary portion was taken from article 45 of the Irish Constitution with a difference that while the principles in the Irish Constitution were meant for the guidance of the Oireachtas (Irish Parliament) alone, these were to be for general guidance of the State under the Indian Constitution. The first and the third clauses were taken from Havana and Russian Constitutions respectively. The sixth clause pertaining to the standard of nutrition was modelled on the lines of recommendations of the United Nations Conference on Food and Agriculture 1943 and read as:

To raise the levels of nutrition and standard of living of its own people...153

The principles contained in clauses two, four and five were without any constitutional precedent and had their origin in the peculiar Indian conditions. The purpose for including these provisions was to ensure a stable working Constitution for India.155

So it is found that Rau did not attach any importance to the directives and that these were only for the general guidance of agencies concerned without any binding effect on them.156

Now the difficult situation arose before the Constituent Assembly as to how to implement the draft scheme of Rau in the Constitution of India. Somnath Lahiri stated that it was difficult to make distinction between justiciable and non-justiciable rights. For example, in the case of nationalisation of land, if it was said that the land belonged to the people and

150. Id. at 53-54.
151. The Constitution of Havana (1939) contained Declaration of Rights which were included in the first clause of Part A of the draft plan.
152. The objectives of social and economic policy in Articles 118 to 121 of the Russian Constitution of 1936 were embodied in the clause third of Part A of the draft plan.
153. See generally Markandan, supra note 61 at 54-55.
154. Ibid.
155. Pranjape, supra note 89 at 14.
156. Rau changed his opinion regarding the nature and character of the directives as a result of some alterations of his draft in the Constituent Assembly.
nobody else, that would be a social and fundamental right no doubt, but nevertheless, that would also be a justiciable right, to be given effect to it.

K. Santhanam explained the situation in terms of three revolutions: First, the political revolution that would end with independence. Second, the social revolution meant to get India out of medievalism based on birth, religion, custom and community and reconstruct her social structure on modern foundations of law, individual merit, and secular education. Third, the economic revolution - the transition from primitive rural economy to scientific and planned agricultural industry. S. Radhakrishnan also emphasised that there must be a socio-economic revolution not only to satisfy the fundamental needs of a common man but to bring about a fundamental change in the structure of Indian Society.

Nehru warned the Assembly:

If we cannot solve this problem soon, all our paper Constitution will become useless and purposeless... If India goes down, all will go down; if India thrives, all will thrive, and if India lives all live...

It is evident that the Constituent Assembly was mainly concerned with the welfare of the masses. There was considerable emphasis on the ameliorative role of the State.

The framers of the Constitution faced three-fold problem while framing the provisions relating to fundamental rights: First, the difficulty to define what fundamental rights were and to make the list of the same. Second, classification of rights into justiciable and non-justiciable. Third, providing effective protection for the rights defined therein.

The last problem could be solved by making easily definable rights enforceable in the ordinary courts and keep the rest out of their purview. When no solution could be found out regarding the first two problems, Govind Vallabh Pant moved a resolution in the Constituent Assembly on 24 January 1947 for the appointment of an Advisory Committee to bring out a solution to the problem. The first meeting of the Committee was held on 27 February 1947 and Vallabhbhai Patel was unanimously elected its Chairman.

157. III C.A.D. 403-404. The Sapru Committee had also expressed the same view on this point of dividing the rights.

158. Austin, supra note 1 at 26, referring to the Hindustan Times (of which K. Santhanam, was joint Editor) Magazine Section, New Delhi, 8 September, 1946.

159. II C.A.D. at 269-273.


161. Markandan, supra note 61 at 56.

162. C.A.D., supra note 159 at 328. See also B. Shiva Rao, supra note 145, at 56-63.
Subsequently, five sub-committees were set up, one of which was the Fundamental Rights Sub-Committee.

(iii) Deliberations of Fundamental Rights Sub-Committee and Report of the Advisory Committee

The first meeting of the Sub-Committee on fundamental rights was held on 27 February 1947 and J.R.Kripalani was elected its Chairman. Alladi Krishnaswami Ayyer and M.R.Masani suggested that only the enforceable rights of the citizens should be included in the Constitution and the inclusion of non-justiciable principles would be meaningless. To support their contention, the relevant provision from the United States Constitution was cited. K.T.Shah emphasised that alongwith rights, there must be some obligations on the citizens.

Harnam Singh taking support from the Russian Constitution emphasised the inclusion of both justiciable as well as non-justiciable rights in the new Constitution of India.

K.M.Munshi, in a note, submitted to the Sub-Committee, observed that most of the general declarations and international documents had proved ineffective to check the growing power of modern state. On the contrary, they created an unwarranted impression of progress and freedom. The fate of Weimer Constitution was an example. He thought that in India the general precepts which might be considered less than necessary by an advanced thinker on socialistic lines would not be looked at, much less understood or applied in some parts of the country where feudal options were still deeply ignored. He also felt that the Sub-Committee had to consider whether fundamental rights of the nature of mere precepts should be embodied in the Constitution and if not what should be the justiciable rights. He also emphasised on the inclusion of provision for writs to be issued by the Courts.

163. B.Shiva Rao, supra note 145 at 64.
164. Id.at 115. The Fourteenth Amendment of the United States Constitution prevented the state from depriving any person of his life, liberty or property otherwise than due process of law. A similar view was expressed by K.M.Munshi and B.R.Ambedkar.
165. Ibid.
166. Pranjape, supra note 89 at 14, referring to minutes of fundamental rights Sub-Committee meeting held on 27 February 1947.
167. B.Shiva Rao, supra note 145 at 69.
168. Id. at 115. Raj Kumari Amrit Kaur also agreed with his view.
In some of the drafts on fundamental rights, submitted to the Sub-Committee, not only all types of rights-political, economic and social but also precepts of policy were indirectly listed under the title 'Fundamental Rights', but a general feeling against giving constitutional expression to mere precepts was also discernible. For example, the Munshi's draft included right to work, a living wage, condition of work necessary to ensure the decent standard of life and the right of every citizen to have free primary education with a corresponding legal duty on every unit to introduce free and compulsory primary education. Ambedkar's draft also laid down an elaborate clause to establish state socialism in important fields of economic life by the law of the Constitution itself so that the implementation of the plan would not be left to the will of the Legislature.

In this meeting of the Sub-Committee, no decision could be made regarding inclusion of the non-justiciable rights in the new Constitution of India. However, the Sub-Committee resolved that a difference should be drawn between the fundamental rights enforceable by appropriate legal process and the rights which were fundamental principles of social policy to the governments concerned.

The second meeting of the Sub-Committee was held on 24 March 1947 and lasted till 31 March 1947 to consider the proposals and memoranda on fundamental rights which were reviewed by the various public bodies, individuals and the members of the Sub-Committee itself.

Alladi Krishnaswami Ayyer submitted a note on 14 March 1947 and emphasised on the distinction between justiciable rights and rights which were merely directing objectives to state policy. Gradually most of the other members of the Sub-Committee also reached the conclusion that it was not practicable to declare social and economic policies as justiciable rights.

After examining the various drafts on fundamental rights placed before it, the Sub-Committee finally resolved that a distinction between the justiciable rights and the principles of social policy for the guidance of the government to regulate their legislative and executive function was necessary before the inclusion of fundamental rights in the future.
Constitution of India. On 27 March 1947 the Sub-Committee had also decided not to include right to work, to secure living wages etc., as recommended by Munshi in the chapter of justiciable rights.

At the meeting of 30 March 1947, the Sub-Committee turned its full attention to the positive rights using Rau's draft, his collection of precedents and in particular the example of Irish Constitution, the members adopted in rapid succession provisions laying down that the state should promote social, economic and political justice. The members also drafted provisions based on Munshi's draft fundamental rights and based on articles in Lauterpacht International Bill of Rights of Man.

Some of the directive principles of social policy as framed by the Sub-Committee on 30 March, 1947 read as follows:

The Principles of social policy set forth in this Part are intended for the general guidance of the appropriate legislature and governments in India (hereinafter called collectively as the State). The application of these principles in legislation and administration shall be the care of the state and shall not be cognizable by any court.

1. The Union and every unit thereof shall, in particular, direct their policy towards securing:
   (i) that the citizens, men and women equally, have the right to an adequate means of livelihood;
   (ii) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;
   (iii) that the operation of free competition shall not be allowed so to develop as to result in the concentration of the ownership and control of essential commodities in a few individuals to the common detriment;
   (iv) that there shall be equal pay for equal work for both men and women;
   (v) that the strength and health of workers, men and women, and the tender age of children shall not be abused and that citizens shall not be forced by

pared by Alladi Krishnaswami, Ayyer, Munshi, Shah, Ambedkar and Harnam Singh were considered.

172. B.Shiva Rao, Supra note 5 at 322. See also B.Shiva Rao, supra note 145 at 67-69.
173. Pranjape, supra note 89 at 14.
174. B.Shiva Rao, supra note 5 at 322.
175. Austin, supra note 1 at 79, referring to Rau's Precedents, Third Series at 21-22.
176. B.Shiva Rao, supra note 145 at 135-136.
economically necessary to enter avocations unsuited to their age and strength.

(vi) that childhood and youth are protected against moral and material abandonment;

3. The Union and every unit thereof shall, within the limit of their economic capacity and development make effective provisions for securing the right to work to education and public assistance in case of unemployment, old age, sickness, disablement and other cases of undeserved want. (Lauterpacht,155).

4. The Union and every unit thereof shall endeavour to secure, by suitable legislation, economic organisation and in other ways, to all workers, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities.(Article VII,Clause (1) of Munshi's draft. The substance of Clause(2) of Munshi's draft is included in rule 3 above).

5. The Union and every unit thereof shall endeavour to secure for the citizens a uniform civil code.

6. The Union and every unit thereof shall endeavour to secure for the citizens a uniform civil code.

7. Marriage shall be based on the mutual consent of both sexes and it shall be maintained through mutual co-operation with equal rights of husband and wife as a basis.177 Motherhood has a claim upon the protection and care of the State.

In the next meeting held on 31 March 1947, the Sub-Committee decided to introduce the directive principles of social policy, as they were called, with a preamble explaining that they were for the general guidance of the government and were not cognizable in any court. This is how the break with the fundamental rights had been made.178

As some of the clauses of the draft had reference to Union alone, while other to the Union and Provinces, it was felt that the provisions approved by the Committee should go in two separate chapters and should be binding on the Union and the units alike. The Committee then considered certain portions of Part-A of Rau's draft.179 On 'Fundamental Principles of State Policy' as non-justiciable rights, with necessary modifications. The members adopted Rau's draft to the effect that the state should raise the

177. This provision was borrowed from Japanese Constitution(Article XXIV) which was later on dropped.
178. Austin, supra note 1 at 80.
179. Item(1),(2),(4) and (6) under Part A of Sir.B.N.Rau's Draft on 'Fundamental Principles of State Policy'.
level of nutrition and the standard of living of the people, and promote international peace and just dealings between nations.

The Sub-Committee, while explaining the nature of the recommenda-
tions, stated in its draft report that the rights, which could be enforced by the legal action, were put down as justiciable rights and other rights, which were neither capable of nor suitable for enforcement by legal action, were named as non-justiciable rights. The Sub-Committee gave the example by mentioning the clause requiring the State to endeavour to secure a decent standard of life for all workers. It was impossible, for a worker to prove and the court to find that general right of this kind has been infringed in a given case. The Sub-Committee made it clear that these rights were intended to be directions for the general guidance of the State and were not cognizable by any court.

On the basis of recommendation of Sub-Committee on fundamental rights, Rau prepared a draft of the report on April 3, 1947 which was to be submitted by the Sub-Committee to the Advisory Committee for their comments. The annexure to the Draft Report contained two chapters. The first chapter enumerated justiciable rights and the second chapter, non-justiciable rights.

Raj Kumari Amrit Kaur, Hensa Mehta and Shah spoke in favour of the principles and stressed that these directives though non-justiciable were very vital to the social progress of the country. It was, therefore, essential to mention either in the forward or in the end of clause 35 that the State was obliged to take necessary steps, as soon as possible, to assure the fulfilment of these directives. This view shows that even during the separation of these two kinds of rights the members of the Assembly wanted to give due importance to these directives. It is clear from the letter of Shah dated April 10, 1947, in which while appreciating the distinction between justiciable and non-justiciable rights, he felt that due to this distinction the latter were likely to be treated as mere pious wishes, which

180. B.Shiva Rao, supra note 5 at 324.
181. Ibid.
182. They corresponds to Part III and IV of the Constitution.
184. B.Shiva Rao, supra note 145 at 146-147.
185. B.Shiva Rao, supra note 145 at 153-154.
could have no binding effect in daily life. He observed:

There are, moreover, many so-called non-justiciable rights, which today may not admit any judicial remedy for infringement, nor permit of immediate realisation that can be made justiciable but if the collective conscience and the degree of political consciousness we have attained to....The principles included in the so-called non-justiciable rights are not mere "directions" of policy for their general guidance; they must be regarded as objectives of national activity, which must be the endeavour of every unit as well as of the Union to give concrete effect to so that every citizen may enjoy the fruits in his daily life.185

Thus, they wanted to make these so-called non-justiciable rights not merely for the direction or general guidance but much more than that so as to make it possible that every citizen of the country may enjoy its fruit.

It was due to this fact that the Sub-Committee, in finalising its Report on April 15, 1947 decided to place special emphasis on the fundamental character of these principles. Accordingly, the opening clause was redrafted as follows:

The principles of policy set forth in this part are intended for the guidance of the state. While these principles shall not be cognizable by any court, they are nevertheless fundamental in the governance of the country and their application in the making of laws shall be the duty of the State.186

Thus from the amended and redrafted opening clause, the intention of the Sub-Committee was clear that they wanted to make the directive principles as not mere pious wishes but as fundamental in the governance of the country and imposed a duty on the state to apply them while making laws. It can be said that this amended clause provided the binding force to the principles which otherwise would have had almost theoretical value.

On April 15, 1947, the Sub-Committee accepted the Clauses 24, 25 and 26 of the Draft Report187 relating to education and also decided that the

185. Ibid.
186. B. Shiva Rao, supra, note 5 at 325.
187. Clause 24 - "Every citizen is entitled as of right to free education, and it shall be the duty of the State to provide within a period of 10 years from the commencement of this Constitution for free and compulsory primary education for all children until they complete the age of 14 years!"
Clause 25 - "Every citizen is entitled, as part of his right to free primary education to have facilities provided for learning the national language either in the Devanagari or the Persian script at his opinion."
Clause 26 - "Equal opportunities of education shall be open to all citizens: provided that nothing herein contained shall preclude the (conted.)
provision relating to preservation of monuments should be transferred to the non-justiciable rights section as an obligation of the state. The final Report adopted by the Sub-Committee also contained a new provision, earlier suggested by Munshi placing on the State an obligation to protect, preserve and maintain monuments or objects of national importance. 188

While forwarding its Report to the Chairman of the Advisory Committee, the Sub-Committee stated that the distinction was based on the Irish Constitution model and adopted a middle course between the one adopted in the Constitution of the U.S.A. and one pursued in recent European Constitutions which had mixed up the two sets of rights. 189 At the same time, the peculiar conditions and complexities of Indian life were also borne in mind.

Some of the members of the Sub-Committee were still not fully satisfied with the Report. Shah expressed his fear that the whole scheme of directives might be reduced to a needless fraud, an excellent window dressing without any stock behind that dressing. 190

The framing of the provision of a uniform civil code provides an interesting oxide to the Sub-Committee work. 191 The idea of uniform civil code, therefore, struck at the heart of custom and orthodoxy, Hindu, Muslim and Sikh. Some members like Mrs. Mehta and M.R. Masani wanted that Clause 39 regarding uniform civil code should be transferred from Part II to I 192 with suitable modifications so as to remove religious impediment to marriage between citizens. 193 The Minorities Sub-Committee considered the various clauses and had one comment on the clause proposing a uniform civil code for all citizens and felt that the application of such a code should be made on an entirely voluntary basis. 194

On April 20, 1947, Shah stated in his note that he differed on the distinction between justiciable and non-justiciable rights made by the Fundamental Rights Sub-Committee. He said that there were many rights which it might not be possible all at once to give effect to. He illustrated it by

State from providing special facilities for educationally backward sections of the population.

188. See article 31, B. Shiva Rao, supra note 145 at 141.
189. B. Shiva Rao, supra note 145 at 169.
190. Austin, supra note 1 at 79.
191. Id. at 80.
192. Part II contained directives while Part I contained Fundamental Rights.
193. A provision similar to article 54 of the Swiss Constitution.
194. B. Shiva Rao, supra note 5 at 325.
giving example of justiciable right of citizens to a given standard of education, free of cost to the recipient, his parent or guardian. He admitted that such a policy might not be possible all at once for reasons of finance and personnel. In order to meet such difficulties that this right was made enforceable within a period not more than ten years. He further said that if no such responsibility is placed on those who were responsible for giving effect to it, then they might be inclined to avail themselves to justify their own inactivity in the matter, indifference or worse. 195

It is clear from this note that the distinction was made because at that time the State was at nascent stage and not in a position to carry out all its obligations. But at the same time it was suggested that a time limit must be fixed during which even the non-justiciable rights should also be made justiciable so as to subserve the common good of all the citizens.

The report of the Sub-Committee on fundamental rights and Interim Report of Minorities Sub-Committee was considered by the Advisory Committee on April 21, 22, 1947 and finally submitted its interim report to the President of the Constituent Assembly 196 on the next day. According to the suggestion made by the Chairman of the Advisory Committee on April 21, 1947, the scope of the Interim Report was restricted to the consideration of only those rights which could be enforced in the court of law. The Advisory Committee suggested that clause 23 concerning the compulsory free education 197 did not fit in Part I so it had to be transferred to Part II which contained fundamental principles of governance.

Munshi suggested that clause 35(1) relating to equality before laws should be transferred to Part I as justiciable right. This view was opposed by Alladi Krishnaswami Ayyar who pointed out that there would be difficulty in the enforcement of this provision by the law courts. Munshi replied to this objection that the above principle was accepted in other

195. See Markandan, supra note 61 at 72.
196. C.A.D., supra note 157 at 422-429.
197. Clause 23 -"Every citizen is entitled as of right to free primary education and it shall be the duty of the State to provide within a period of 10 years from the commencement of the Constitution for free and compulsory primary education for all children until they complete the age of 14 years."
198. Clause 35(1) -"The State shall, in particular, direct its policy towards securing - that all persons shall be equal before the law; ...." See, B.Shiva Rao, supra note 145 at 175.
Constitutions. This debate was concluded by Vallabhai Patel, Chairman of the Advisory Committee, who observed that the Report on non-justiciable fundamental rights was yet to be discussed by the Committee and the question of transferring certain clauses from one part to another could be discussed at the appropriate time.

On July 28 and 31 and August 23, 1947, the Advisory Committee considered Part II of the recommendations of Fundamental Rights Sub-Committee which contained non-justiciable rights. The Committee decided to delete clauses 40 and 44 which provided equality of matrimonial rights of husband and wife and promotion of international peace and security by elimination of communal discord respectively, from Part II. It was suggested that clause 23 which related to free education should be transferred from Part I to Part II. The Advisory Committee introduced two changes in clause 33 which was in the list of Non-justiciable rights. Clause 33 was given the sub-title 'Preamble' and the rest a sub-title 'Principles' and in the second sentence of clause 33 the words 'shall not be' were substituted for the words 'are not'. The supplementary report on Fundamental Rights was finally submitted by the Advisory Committee to the President of the Constituent Assembly on August 25, 1947. In that report, the Advisory Committee supported the inclusion of certain directives in the body of the Constitution along-with the justiciable rights.

The Fundamental Rights Sub-Committee had made a fundamental change in Rau's Draft by adding a clause which stated: "They are nevertheless fundamental in the governance of the country and their application in the making of laws shall be the duty of the State." The additional clause provided the binding force which was otherwise lacking. The rights contained in this part as well as in the Part relating to Fundamental Rights were important; the only difference being that whereas the former were not cognizable in the courts of law, the latter were.

The significance of this change becomes better appreciated on comparison with the Irish Directives. Ireland could not provide for, in the body of the Constitution, social and economic matters, which would have a binding character even on the Parliament for which it was to be a sort of guidance.

199. This clause finds place in article 37 of the Constitution of India.
200. Markandan, supra note 61 at 78. The Indian Constitution by making these provisions fundamental in the governance of the country and imposing (conted.)
Thus it is clear that the members wanted to give due importance to these directives under the new constitutional framework of India and did not at all want them to make them inferior from what we now call as fundamental rights. But doubts were again expressed by certain members of the Constituent Assembly regarding the utility and effectiveness of the directives in the form in which they were sought to be made part of this Constitution.

(iv) Directive Principles in Rau's Draft Constitution

The Constituent Assembly after a brief discussion on the Supplementary Report of the Advisory Committee on Fundamental Rights, Minorities etc., on August 30, 1947, sent it to the Constitutional Adviser, B.N. Rau for being adopted in the Draft Constitution and for further consideration by the Drafting Committee.

In the Draft Constitution of October 7, 1947, prepared by the Constitutional Adviser, B.N. Rau, all the provisions regarding fundamental rights and directive principles were included in Part III, which was entitled as 'Fundamental Rights including Directive Principles of State Policy'. This part was divided into three chapters, the first containing general provisions, the second fundamental rights and the third, 'Directive Principles' of 'state policy'. The 'Preamble' of the 'Fundamental Principles of Governance' found its place in Rau's draft in Chapter I as Clause 10 and the 'Principles' in Chapter III as clauses 31 to 41 and they read as follows:

Chapter I - General

10. The principles of policy set forth in Chapter III of this Part are intended for the guidance of the State. While these principles are not cognizable by any court, they are nevertheless fundamental in the governance of the country, and it shall be the duty of the State to apply these principles in making laws.

on the State the duty to apply them in the making of laws, had thus thrown open another way of providing for social and economic provisions in the constitutional framework.

201. See Article 45 of the Irish Constitution.

202. C.A.D., supra note 160 at 361-78. B.Dass expressed dissatisfaction in interpreting the function of Government as justiciable and non-justiciable because it was the primary duty of Government to render social justice to every citizen.

203. Pranjape, supra note 89 at 20.
Chapter II - Fundamental Rights
From Clause 11 to Clause 30.

Chapter III - Directive Principles of State Policy

31. The state shall strive to promote the welfare of the whole people by securing and protecting as effectively as it may a social order in which justice, social, economic and political shall inform all the institutions of the the national life.

32. The State shall in particular, direct its policy towards securing -

   (i) that the citizens, men and women equally, have the right to an adequate means of livelihood;

   (ii) that the ownership and control of material resources of the community are so distributed as best to sub­serve the common good;

   (iii) that the operation of free competition does not result in the concentration of the ownership or control of essential commodities in a few individuals to the common detriment;

   (iv) that there is equal pay for equal work for both men and women;

   (v) that the strength and health of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;

   (vi) that childhood and youth are protected against exploitation and against moral and material abandonment.

33. The State shall, within the limits of its economic capacity and development make effective provision for securing the right to work to education and to public assistance in case the unemployment, old age sickness, disablement, and other cases of undeserved want.

34. The state shall make provision for securing just and humane condi­tions of work and for maternity relief for workers.
35. The state shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities.

36. The State shall endeavour to secure for the citizens a uniform civil code.

37. Every citizen is entitled to free primary education and it shall be the duty of the State to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory primary education for all children until they complete the age of fourteen years.

38. The State shall promote with special care the educational and economic interests of the weaker sections of people, and, in particular, of scheduled castes and the scheduled tribes, and shall protect them from social injustice and all forms of exploitation.

39. The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties.

40. It shall be the obligation of the State to protect every monument or place or object of artistic or historic interest, declared by Federal law to be of national importance, from spoilage, destruction, removal, disposal or export, as the case may be, and to preserve and maintain according to Federal Law all such monuments or places or objects.

41. The State shall promote international peace and security by the prescription of open, just and honourable relations between nations, by the firm establishment of understandings of international law as the actual role of conduct among governments and by the maintenance of justice and the scrupulous respect for treaty obligations in the dealings of organised people with one another.204

No doubt, the fundamental rights and directive principles of State policy were incorporated in a single part by Rau in his draft of October 7, 1947, but he wanted that the directives to be retained only as a guidance

for State action. In the altered status and the importance given to the
directives, he foresaw the possibility of a conflict between the directive
principles and fundamental rights. He was not satisfied with clause 10.\footnote{205}
He suggested in a note on certain Clauses of October 7 Draft whether it
would not be worthwhile to provide for in the Constitution itself that an
enactment of State action under the 'Directives might not be invalidated
merely by reason of its contravening any fundamental right of Chapter II.\footnote{206}
To illustrate, the state might be required to take possession of insanitary
slums or demolish them in the interest of public health as directed under
clause 39.\footnote{207} But clause 25\footnote{208} might hinder this action of the State unless
adequate compensation was paid to the slum owners. The scheme of nationalisa-
tion\footnote{209} might also be impeded similarly as it would invade the
property right of persons. So he felt that at times it might be essential
to invade private rights on the discharge of fundamental duties, for example,
to raise the nation's standard of health, of living etc. But the fundamental
rights being justiciable and directive principles being without legal force,
the private right may override the public weal.\footnote{210}

Munshi Ambedkar and Shah would have gone even farther than Rau. They
would have made the directive principles or even more rigorous social pro-
gramme, justiciable.\footnote{211} Later Munshi included in his Draft the 'Right of
Workers' and 'Social Rights' and remarked:

\begin{quote}
Even the non-justiciable rights have to be announced in
order to form the basis of protest against arbitrary
legislation. They are body of doctrines to which public
opinion can rally.\footnote{212}
\end{quote}

Thus, all these members had in their mind that these principles
should prevent any arbitrary legislation. They wanted all the social rights
to be expressly incorporated in the Constitution of India.

On the completion of the draft of the Constitution for consideration
by the Drafting Committee, the Constitutional advisor, Rau visited the United
States of America, Canada, Ireland and the United Kingdom for personal
discussion with some of the leading personalities and constitutional experts

\begin{footnotes}
205. \textit{Ibid.}
206. \textit{Id. at 199.}
207. \textit{Id. at 14.}
208. Clause 25(1) provided that "No person shall be deprived of his property
save by authority of law."
209. B.Shiva Rao, \textit{supra} note 204 at 13.
210. \textit{Id. at 199. See also Austin, \textit{supra} note 1 at 77.}
211. Austin, \textit{supra} note 1 at 78.
212. \textit{Ibid. referring to Munshi's Notes on a Constitution.}
\end{footnotes}
on important features of India's Draft Constitution. At that time also he had in mind the danger of conflict between directive principles and fundamental rights. 213

In U.S.A., Rau discussed the issue with Justice Frankfurter and Justice Learned Hand of Supreme Court of America and also with John Hearne, the High Commissioner for Ireland in Ottawa. Justice Frankfurter agreed with Rau that there should be an express provision in the Constitution that when a law is made by the State in the discharge of one of the fundamental duties imposed upon it by the Constitution happens to conflict with one of the fundamental rights guaranteed to the individual, the former should prevail over the latter. 214 Hearne also expressed the similar view. Justice Hand, however, held a different view and said that it would be mistake to have any justiciable fundamental right at all in the Constitution. He preferred to retain all fundamental rights as moral precepts rather than as legal fetters in the Constitution. 215

It is clear from the above observations that the conflict between the fundamental rights and the directive principles was visualised by Rau at the time of the presentation of the Draft Constitution and he wanted to give more importance to the social welfare rather than to the individual right. And certain modifications in clauses 9(2) and 10 of his Draft Constitution prepared on October 7, 1947 are clear proof of his intention. The modified clauses read as follows:

9(2) Subject to the provisions of Section 10, nothing in this Constitution shall be taken to empower the State to make any law which curtails or takes away or which has the effect of curtailing or taking away any of the rights conferred by Chapter II of this Part except by way of amendment of this Constitution under section 232 and any law made in contravention of this sub-section shall, to the extent of the contravention be void. 216

The following new paragraph was added to clause 10:

No law which may be made by the State 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 the principles of policy set forth in Chapter III of this Part shall be void.

213. B. Shiva Rao, supra note 204 at 217.
214. Id. at 218.
215. Ibid.
216. Id. at 7,98,226.
merely on the ground that it contravenes the provisions of section 9, or is inconsistent with the provision of Chapter II of this Part.217

According to Rau, the object of these amendments was to clarify that in case of conflict between Chapter II which included fundamental rights and Chapter III containing principles of State policy which were intended for the welfare of the State, the general welfare should prevail over the individual rights. And that the courts in India might have been able to develop a similar doctrine but for the language of section 9 of the Draft Constitution.218

Thus, the only purpose of the amendment was to give binding effect to the principles which the State could apply irrespective of the fact that they might contravene fundamental rights. The proposed amendment of Rau was not incorporated in the body of the Constitution but it was realised that in case of conflict between fundamental rights and directive principles of state policy, the latter were to prevail. This was clear from Ambedkar's observation during the discussion of the Constitution(First Amendment) Bill 1951. He pointed out that by virtue of the directive principles, the State could enact laws for the general welfare of the community which might even contravene fundamental rights.

(v) Deliberations of Drafting Committee And Final Adoption of Directive Principles Provisions

Rau's Draft Constitution of October 7, 1947 was considered by the Drafting Committee on October 27, 1947 and it was decided that the Directive Principles of State Policy should be transferred from Part III to a new Part. It was further decided that the clause 10 of Chapter I entitled 'General' relating to the principles of policy set forth in Chapter III should also be transferred to a new Part containing the Directive Principles of State Policy.219

At the meeting of the Drafting Committee on November 1, 1947 directives were transferred to a new Part, namely, III-A and the new clauses

217. Ibid.
218. Ibid. See also B.Shiva Rao, supra note 5 at 327-328.
219. B.Shiva Rao, supra note 204 at 7.
namely, 30-A and 30-B were also introduced in this Part. The Drafting Committee in the subsequent meeting held on November 3, 1947 affected further changes in Clauses 36 and 40 of this newly introduced Part III-A of the Draft Constitution. Clauses 30-B, 34 and 37 of the directive principles were further modified by the Drafting Committee in its meeting held on 20 January, 1948.

The final Draft Constitution was prepared by the Drafting Committee. Subsequently, a number of suggestions were received and the Drafting Committee held meetings on March 23, 24 and 27, 1948 to consider these recommendations and certain amendments were made in the original Draft. The original Draft Constitution together with the proposed amendments was considered by a Special Committee in its meetings on April 10-11, 1948 and the final Draft was prepared for being approved by the Constituent Assembly.

The second stage in the framing of the principles took place in the Assembly in November and December 1948 during the debate on the Draft Constitution. An earlier debate held in August, 1947 on the occasion of Patel's presentation of the Advisory Committee's Supplementary Report was of little consequence.

221. Clause 30-A: "In this part unless the context otherwise requires, 'the State' has the same meaning as in Part II of the Constitution."

222. Clause 30-B: "The principles of policy set forth in this Part are intended for the guidance of the State, while these principles are not cognizable by any court, they are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws."

223. Clause 36: "The words 'throughout the territory of India' should be added in the end of Clause 36."

Clause 40 was modified to read as under: "It shall be the obligation of the State to protect every monument or place or object of artistic or historic interest, declared by Parliament by law to be of national importance, from spoilation, destruction, removal, disposal or export, as the case may be and to preserve and maintain according to law made by Parliament, such monuments or places or objects."

224. It was published on 26 January 1948.

225. The Special Committee was consisting of the most part of certain members of the Union Constitution Committee, the Union Powers Committee and the Provincial Constitution Committee.

226. See Markandan, supra note 61 at 87.

227. Austin, supra note 1 at 81.

228. C.A.D., supra note 160 at 333-375. The wording of the directive principles in the Draft Constitution was virtually that of the Supplementary Report.
The Assembly's reaction to the Draft Principles revealed two major opinions: One was that the directives did not go far enough towards establishing a socialistic state, and the other was that they should have placed greater emphasis on certain institutions and principles central to Indian practice and to Hindu thought, particularly those glorified by Gandhi's teaching.229 These two reactions became clear from the amendments being submitted before the Assembly Secretariat from March 1948 and by November 1948, there were scores of amendments to the principles.230 But it is not clear why the amendment suggested by Rau to strengthen the constitutional position of directive principles was not considered.

At the time of circulation of Draft Constitution for comments and opinions, there was again criticism of the unenforceable character of the directive principles and of the external source from which the idea of a declaration of State Policy was borrowed.231 Dealing with first criticism that the Constitution was not the place for moral precepts or sermons, Rau observed in an article published in the Hindu that many constitutions contained such moral precepts and it can not be denied that they had an educative value. Had it been in his power, "he would also have lifted the Principles above the level of precepts". According to him, it might be occasionally essential for the state to invade private rights in order to raise the nation's standard of health, of living etc.232

In an address delivered to the Indian Council of World Affairs on August 10, 1949, Rau responded to the second criticism that the directive principles were borrowed from other constitutions. He pointed out how some of the ancient Indian Shastras contained references to injunctions to Kings similar to the directive principles of State policy.233

On November 4, 1948, Ambedkar introduced the Draft Constitution in the Assembly and stated that though the directive principles had no legal force behind them, but he was not prepared to concede that they were useless simply because they had no binding force in law. According to him, the Draft

229. Austin, supra note 1 at 81.
230. Ibid.
231. B.Shiva Rao, supra note 5 at 328.
232. Austin, supra note 1 at 77; referring to reprint in Rau, India's Constitution, at 364-365.
233. B.Shiva Rao, supra note 5 at 329.
Constitution does not instal any particular party in power and who-so-ever comes in power has to respect this instrument of instructions that is the directive principles.\(^{234}\)

The consideration of the Draft articles commenced on November 19, 1948 and lasted for five days. The discussion on the 'Directives' began with an amendment moved by Sayad Karimuddin that in the heading under Part IV, the word 'Directive' be deleted and substituted by the word 'Fundamental' as the provisions contained in Part IV were important and fundamental in nature and the use of the former word would mean that they were not binding on the State. He felt that it was very necessary that all these principles should be made mandatory so that a scheme embodying these principles could be brought into operation within ten years. To support his argument, he quoted Ambedkar's booklet 'State and Minorities' submitted to the Advisory Committee on fundamental rights and Minorities etc.\(^{235}\) In the discussion of the title, H.V.Kamath also favoured replacement of the word 'Directive' in the title by the word 'Fundamental'. He pointed out that the Advisory Committee had given them the title 'Fundamental Principles of Governance' and the Chairman of the Advisory Committee had stated that though not cognizable in any court of law, they "should be regarded as fundamental in the governance of the country".\(^{236}\) This suggestion of replacement was opposed by Ambedkar who said that the object that these principles be treated as fundamental was already achieved by the words of draft article 29 and that it was necessary to retain the word 'Directive' because it showed that by enacting this Part of the Constitution, the Constituent Assembly was giving certain directions to the future legislature and executive. If the word 'Directive' was omitted, the intention of the members of the Assembly in enacting this part would fail in its purpose that the directives were meant to be fundamental principles which should be made the basis of all executive and legislative action that might be taken in future in the governance of the country.\(^{237}\) Finally, the Assembly rejected the amendment and adopted the title 'Directive Principles of State Policy'.\(^{238}\)

Five other amendments for the addition of new provisions were proposed in the Assembly and finally these were adopted by the Assembly.\(^{239}\)

\(^{234}\) VII C.A.D. at 41-42.
\(^{235}\) Id. at 473-474.
\(^{236}\) Id. at 474-476.
\(^{237}\) Ibid.
\(^{238}\) Ibid.
\(^{239}\) B.Shiva Rao, supra note 5 at 330.
Santhanam moved the first amendment and sought to add a new article:

The State shall take steps to organise village Panchayats and endow them with such power and authority as may be necessary to enable them to function as unit of self-government. 240

The task of the Constituent Assembly was to draft a Constitution that would serve the ultimate goal of social revolution, of national renascence. But this task was a far more complicated than the simple drafting of the fundamental rights or the moral precepts of Preamble. 241 Now the Assembly was to decide what form of political institutions would foster or at least permit a social revolution because any thought of social betterment for the nation would be mere romantic non-sense if the requisite conditions did not exist in the country. 242 If the Euro-American constitutional tradition was taken as the example, it would mean continuing in the direction India had taken during the colonial period. If the Assembly members searched the nation's rich heritage to find indigenous institutions capable of meeting her needs, it would most probably, result in basing the Constitution on village and its Panchayat and erecting upon them a superstructure of indirect decentralised government in the Gandhian manner. The village, therefore, was Gandhi's unit of social organisation. Resting on this village base would be a stateless classless society where prime ministers and governments would be unnecessary. 243 The village Panchayat came as a hierarchy of indirectly elected bodies. The word Panchayat did not appear in the Draft Constitution. 244

The members of the Assembly averred that Panchayats were an ancient institutions and they were in their blood. 245 Shibban Lal Saksena felt that if light and knowledge were brought to panchayats, they would become the most potent forces holding the country together and for its progress towards Ram Rajya. 246 The amendment was accepted by Ambedkar without any comment. 247

240. Ibid. See also C.A.D., supra note 234 at 520.
241. Austin, supra note 1 at 27.
242. Ibid.
243. Id. at 28; referring to N.C.Bhattacharya in Indian Concept of State edited by B.B.Majumdar at 30-31.
244. See supra note 224.
245. C.A.D., supra note 234 at 316.
246. Id. at 285.
247. Id. at 520-527. While introducing the Draft Constitution and referring to criticism thereof, Ambedkar had expressed himself strongly against the system of village panchayats.
The aim of the draft article has long been generally accepted: "If India is to progress, it must do so through reawakened village life." Thus, at last the Assembly incorporated the amendment of Santhanam into the Constitution under draft article 40 and it has been proved to have been less a gesture to romantic sentiments than a how to realist insight.

The second amendment was moved by T.A. Ramalingam Chethar, he proposed the addition of clause providing:

The State shall endeavour to promote cottage industries on co-operative lines in rural areas.

This amendment was made keeping in mind the support given by Gandhi to cottage industries during independence movement. This amendment was supported by several members. Ambedkar was also prepared to accept the amendment after some changes and add it to the article which dealt with the State’s obligation to secure to all workers a living wage, good condition of work and decent standard of life etc. The change which he proposed included the use of the phrase: "on an individual or cooperative basis", to satisfy the two schools of thought in the Assembly, one of which believed in the organisation of cottage industries solely on the co-operative basis, and the other which held that there should not be any such limitation. The Assembly accepted the amendment as suggested by Ambedkar and placed the promotion of cottage industries in the directive principles.

The third amendment, relating to the prohibition of intoxicating drinks and injurious drugs was moved by Maha Vir Tyagi and modified by Saxena to make their use for medical purposes permissible. The reason for this amendment was that Hindus relying on Gandhi’s teachings and Muslims deriving their authority from the Koran were all against the evils of drink. In many areas, especially in Harijan areas, underfed workers sought solace in liquor to the great detriment of their health. The advocates of prohibition were supported by the decade-old official delegation of Congress to the cause of prohibition. This amendment was also accepted by Ambedkar

248. Austin, supra note 1 at 38.
249. Id. at 81. Gandhi’s economic aims for giving importance to cottage industries were to attack village poverty and to provide an alternative supply of textiles to the hated foreign cloth.
250. B. Shiva Rao, supra note 5 at 331.
251. C.A.D., supra note 234 at 532, 535-536.
252. Austin, supra note 1 at 82-83; referring to R. Coupland, The Indian Problem, Vol. II at 141. In 1937, when the Congress ministries assumed office, the party high command ordered them to enforce prohibition within three years regardless of the loss of revenue.
as it had wide support. The amendment was adopted by the Assembly.  

The fourth amendment, which was proposed by Thakurdas Bhargava, sought the addition of the following article:

38-A- The State shall endeavour to organise agriculture and animal husbandary on modern and scientific lines and shall in particular take steps for preserving and improving the breeds of cattle and prohibit the slaughter of cows and other useful cattle, specially milch and draught cattle and their young stock.  

This provision was added to the directive principles for number of reasons. The need to improve agriculture was obvious and cattle generally; the cow particularly, held a special place of reverence in Hindu thought. Indian Muslims killed cows both for food and as a part of religious ceremonies which was resented by Hindu even at least sixty years prior to Assembly. During the British Raj, many Hindu revivalist had promised themselves that with the independence cow killing would stop. Those of this thought in the Assembly believed that the time for action was ripe and, as a result of agreement in Congress Assembly Party meeting, the measure was adopted without opposition.  

The fifth amendment, which emanated from the Drafting Committee, was moved by Ambedkar. It sought the addition of a new article enjoining the State to take steps to secure the separation of judiciary from the executive within the period of three years from the commencement of the Constitution. During the debate, Ambedkar agreed to drop three years time limit on the suggestion of T.T.Krishnamachari who stated that no useful purpose could be served by imposing three years limit when the provision of the article themselves were not enforceable. Although his suggestion had a limited object, his lack of enthusiasm for the directive principles was apparent from his description of Part IV as "a veritable dustbin of sentiments sufficiently resilient as to permit any individual of this House to ride his hobby-horse into it." The article, as modified, was finally adopted by the Assembly and added to the Constitution of India.  

---

253. C.A.D., supra note 234 at 498-499, 555-556 and 567-568. See also Article 47 of the Indian Constitution.  
254. B.Shiva Rao, supra note 5 at 331.  
255. Austin, supra note 1 at 82.  
256. C.A.D., supra note 234 at 578-60.  
257. Id. at 568.  
258. B.Shiva Rao, supra note 5 at 331.  
259. C.A.D., supra note 234 at 582-583.  
260. See Article 50 of the Indian Constitution: "The State shall take steps (conted.)
Some other amendments were also introduced to modify one or the other of the directive as formulated in the Draft Constitution. But Ambedkar, opposing all these amendments, said that the main object of incorporating the directive principles in the Constitution was to lay down that future government should strive for the achievement of the ideal of economic democracy, but not to prescribe any particular rigid method whether individualistic, socialistic or communist, to achieve it.  

The article enjoining the State to secure for the citizens a Uniform Civil Code throughout the territory of India evoked considerable controversy. A number of Muslim members - Mohd.Ismail, Mahboob Ali Baig, B.Pocker Sahib and Hussain Imam - opposed it on the ground that its enforcement would impinge on the right of a group or community to follow its own personal law. Replying to this criticism, Munshi said that, "We were in a stage at which we must unify and consolidate the nation by every means without interfering with religious practices." He wanted to divorce religion from personal law from what might be called social relations or from the rights of parties as regarding inheritance or succession.

On November 4, 1948, Ambedkar, while introducing the Draft Constitution in Assembly, observed in his speech that the criticism in so far it distinguishes fundamental rights from non-fundamental rights is not sound. It is not correct to say that the fundamental rights are absolute while non-fundamental rights are not absolute. The real distinction between the two is that non-fundamental rights are created by the agreement of the parties while fundamental rights are the gift of the law. Because fundamental rights are the gift of the State it does not follow that the State cannot qualify them.

The clause by clause consideration of the Draft Constitution, was taken up by the Constituent Assembly on November 15, 1948 and was concluded on October 17, 1949. The Draft Constitution, with the amendments adopted by the Assembly, was then referred again to the Drafting Committee with instructions to carry out such renumbering of the articles, clauses and sub-clauses and such revision and completion of marginal notes as might be necessary. The Draft Constitution as revised by the Drafting Committee was submitted to separate judiciary from executive in the public services of the State. See also C.A.D., supra note 234 at 582-593.

261. C.A.D., supra note 234 at 494-495.
262. B.Shiva Rao, supra note 5 at 332.
263. Ibid.
to the President of the Constituent Assembly on 3 November 1949. Part IV of this Draft contained 'Directive Principles of State Policy' and were enumerated in articles 36 to 51 of the Constitution as adopted on November 26, 1949.

The whole scheme of directive principles of this Part IV along with the fundamental rights, which are enunciated in Part III, form an integrated scheme to accomplish the objectives pronounced in the Preamble. In other words, both 'Directive' and 'Fundamental Rights' in the light of the 'Preamble' are intended to improve the social and economic conditions of the people in a democratic manner.

(vi) Views of Constituent Assembly on the Nature And Significance of the Directive Principles

There was a good debate on the nature and significance of directive principles in the Constituent Assembly. Some members considered them as just pious wishes devoid of any constitutional value. Others assigned them a place of real significance in the Constitution. In order to evaluate the nature and significance of the directive principles, it is necessary to analyse the views expressed on them by the members of the Constituent Assembly.

Naziruddin Ahmad opined that these were pious expressions, pious superfluities. Every constitutional principle should give a right and every right should be justiciable in the Court of law and in other places. If these principles were purely of directive character, without a binding force, then there are some other principles like "do not tell a lie" which should also be introduced and that such non-justiciable directive principles would be just like a resolution made on New Year's day which was broken on the end of January.

Sayed Karimuddin said that what was stated in Part IV was vague. In this Constitution, there was no promise for nationalization and for the abolition of Zamindari. It was nothing but a drift. Not to have a definite economic pattern in the Constitution of India was a great tragedy. K.T. Shah also expressed his concern on directive principles because of their...

265. Id. at 745.
266. Id. at 762-64.
267. It has become imperative under this heading to incorporate the view of some non-members also.
268. C.A.D., supra note 234 at 475-476.
269. Id. at 244.
non-justiciable and non-binding character and felt that every citizen must be given the right to compel the state to enforce these obligations by whatever effective means.\textsuperscript{270}

On the other hand, Thakur Das Bhargwa regarded them as the essence of the Constitution and justified it in the following words:

\begin{quotation}
They give us a target, they place before us our aim and we shall do all that we can to have this aim satisfied.\textsuperscript{271}
\end{quotation}

Shah regarded the Chapter on directives as "one of the most cardinal, important and creative chapter of the Constitution."\textsuperscript{272} Shibban Lal Saksena felt that these principles would govern the policy of the state and would, as a result ensure to the people the fulfilment of ideals enshrined in the Preamble. He also observed that mere inclusion of these principles would bind every legislature to respect them and any act which violated the Directives shall be ultra vires.\textsuperscript{273}

S.V.Krishnamurthy Rao considered the Directives as containing the germs of a socialistic government. He went to the extent of demanding that the Part Including these Directives should come immediately after the Preamble.\textsuperscript{274}

Some of the members criticised the distinction made between justiciable and non-justiciable and proposed to make these principles justiciable. Promatha Rajan Thakur felt that economic rights were essential while framing country's constitution and they must also be made justiciable.\textsuperscript{275} Shah observed that if these principles were not made obligatory, these provisions might never be realised in their life time.\textsuperscript{276} Hussain Imam went to the extent of stating that a political party could ignore these principles and there was no provision anywhere making it obligatory on any party to follow these principles. He felt that there was no need of having ineffectual directives at all. It was only when you provided a law or fix a standard that you had to provide for those who were not upto that standard.\textsuperscript{277}

\begin{itemize}
\item \textsuperscript{270} Id. at 479-480.
\item \textsuperscript{271} Id. at 277.
\item \textsuperscript{272} Id. at 479-480.
\item \textsuperscript{273} Id. at 482.
\item \textsuperscript{274} Id. at 583.
\item \textsuperscript{275} Somnath Lahiri considered this distinction as arbitrary because it was difficult to distinguish as to what constituted social and economic and non-justiciable rights. C.A.D., supra note 157 at 384.
\item \textsuperscript{276} Id. at 383.
\item \textsuperscript{277} C.A.D., supra note 234 at 479.
\item \textsuperscript{278} Id. at 491-492.
\end{itemize}
Some members suggested the ways to remove the difficulty. Krishna Chandra Sharma suggested the addition of a provision to the directives to the effect that "any law made in contravention of these principles shall to the extent be void." He also observed that such an addition would not affect the nature of the directives as such. It would give jurisdiction to court of law and a right, may be a negative right, to the people to move to a court that a law which went against the public interest should be declared void.\(^\text{279}\)

The Central Legislature could not bring forward any motion for the Government which ignored these principles to be dismissed or some alternative being adopted. In the instrument of Instructions issued to Governors under the Government of India Act, there was authority given to the Central Government or Secretary of State to see that those instructions were carried out. But in the Constitution of India nothing like that was provided. So there must be some superior authority to examine whether the directive principles were followed or not.\(^\text{280}\)

When the Supplementary Report on fundamental rights was presented, Biswanath Das observed:

> I consider that the fundamental principles of governance means - Dharma of the Government - the part of duty of the Government. But we do not lay down in the Constitution Act what the Government should do and what are the responsibilities of Government to the citizens and the people of India.\(^\text{281}\)

He was not satisfied with the opinion of legal servants and great authorities on law in the House who expected the functions of Government as justiciable. He observed that it was the primary duty of Government to remove hunger and render social justice to every citizen. In the principles there was nothing that made obligatory on the State to discharge its duties to the people about common welfare.\(^\text{282}\)

Alladi Krishna Swami Ayyar and Ambedkar clarified the above mentioned divergent view on the concept of directives on behalf of the Drafting.

\(^{279}\) Id. at 230.
\(^{280}\) Id. at 491-492.
\(^{281}\) C.A.D., supra note 160 at 367-368.
\(^{282}\) Ibid.
Committee. Alladi remarked:

The Constitution while it does not commit the country to any particular form of economic structure or social adjustment, gives ample scope for future Legislatures and the future Parliament to evolve any economic order and to undertake any legislation they choose in public interest.283

In this connection, various articles which are directive principles of social policy are not without significance. While from their nature they cannot be enforceable in a Court of Law, they are nevertheless fundamental in the governance of the country and it is the duty of the State to apply these principles in making laws.284

Ambedkar compared them with the Instrument of Instructions which were issued to the Governor-General, to the Governors of the Colonies and to those of India by the British Government under the Governor of India Act 1935. The only difference was that they are instructions to the Legislature and Executive. He said that such a thing was to be welcomed.285 Ambedkar explained the importance and significance of directive principles:

There are various ways by which economic democracy may be brought about, we have left enough room for people of different ways of thinking, with regard to reaching the ideal of economic democracy, to strive in their own way of reaching economic democracy, the fullest opportunity to acting the way in which they want to act.286

It cannot be said that the directive principles have no value. The need was not merely the parliamentary form of Government to be instituted through the various mechanisms provided in the Constitution, without any direction to economic ideals and about the social order which should be established. Therefore, directive principles were included in the Constitution.287 According to Ambedkar, the object of the framing of the Constitution was to lay down that our ideal was political democracy and to lay down that our ideal was economic democracy and to compel every Government to bring about economic democracy. He felt that if this was kept in mind, then much of the misunderstanding, which was in the mind of most of the members, would disappear.288

283. C.A.D., supra note 234 at 336.
284. Ibid.
285. Id. at 41-42.
286. Id. at 494.
287. Ibid.
288. Id. at 494-495.
Ananth Asyanam Ayyenger responded to the critics who viewed that the difference between justiciable and non-justiciable was arbitrary and the use of the word 'directive' in the heading was unnecessary. According to him, the object behind differentiating justiciable and non-justiciable rights was well-known. He supported his view by quoting article 36 which provided that the State should introduce free compulsory education within a period of ten years. Presuming that the State did not do so, could any Court of Law enforce it, And if so, against whom, In case the decree was granted by a court who would carry it out, If the Government did not carry it out, would the High Court or the Supreme Court enforce it, Could the Supreme Court charge such a Government. He further observed that these principles must be carried out by the Government and that the sanction of the court was not the real sanction but the real sanction was the public opinion which demanded the enforcement of these provisions. In the elections people will not elect the persons who were indifferent to public opinion.

Following conclusions can be drawn from the above discussion which took place in the Constituent Assembly: First, the directives are like the Instruments of Instrictions to the Legislatures and Executive and as such could be justified for including in the Constitution on two grounds, namely, one, instructions must be issued for regulating the exercise of power by a good government; and two, since the Draft Constitution only provided a machinery for the government of the country and not a contrivance to instal any party in power it was necessary to see that whoever captured power would not be free to do what he liked with it but followed certain instructions. Directives were the guidelines on which the government is to frame laws and conduct its administrative activities. Second, that the directives cannot and will not be ignored by any responsible government because the sanction behind them is not the court but the electorate. Third, the directives, wedded to the ideal of economic and social democracy, represent a dynamic move towards certain objectives. Fourth, the directives lay down the ideal of economic democracy which as a concept has no fixed or rigid form, varies from country to country depending upon its economic progress and even within the country changes from time to time with an alteration in

289. The corresponding provision in the Constitution is Article 45.
290. C.A.D., supra note 234 at 475.
291. Ibid.
292. Jawahar Lal Nehru, the first Prime Minister, made this observation while moving the Constitution(First Amendment)Bill 1951 in the Lok Sabha on 16 May 1951, See Lok Sabha Debates, Part II.
circumstances. Fifth, the language of the Directives laying down the eco-
nomic democracy in turn should be in the form it was otherwise it would
be lending rigidity to a thing which by nature was not fixed or rigid. 293
Sixth, the directive principles of state policy enumerated in Part IV and
the fundamental rights enshrined in Part III of the Constitution formulated
an integrated scheme, the former imposed positive duty on the State while
the latter contained negative restrictions on the state activities. Seven-
th, non-justiciability of the directives do not mean that they are non-
cognizable. The courts take cognizance of the directive principles in
determining the responsibility of restrictions imposed by the legislative
enactments on any of the fundamental rights of the citizen or to adjudge
whether a particular state action was for 'public purpose' or otherwise.
Finally, Part IV containing the directive principles does not confer any
power, bestow rights on or create remedies but it merely lays down the
policy through which social order, as contemplated by the Constitution, can
be secured. 294

It will not be out of place to examine the articles relating to
directives in brief and the relevance of the language used in these articles
to the nature and significance of directives. The nature and significance
of the directives can be well found in the words of Ambedkar:

Directive principles are nothing but obligations imposed
by the Constitution upon the various governments in the
country that they shall do certain things, although it
says that if they fail to do them, no one will have the
right to call for specific performance. But the fact
that they are the obligations of the government I think,
stands unimpeached. 295

Article 37 296 brings forth the following three-fold characteristics
of directive principles: First, the directives shall not be enforceable
by any court; second, the directives are fundamental in the governance of
the country despite their unenforceable character; third, it shall be the
duty of the state to apply these principles in making laws.

293. Markandan, supra note 61 at 142.
294. Pranjape, supra note 89 at 28-29.
295. See Markandan, supra note 61 at 143.
296. Article 37: "The provisions contained in this Part shall not be enfor-
cetable by any court, but the principles therein laid down are never-
theless fundamental in the governance of the country and it shall be
the duty of the State to apply these principles in making laws."
The contents of various articles relate to the specific economic or social objectives or objectives calling upon the state to promote social welfare by not only ushering in social order based on social, economic and political justice but also to see that such social order is protected from any inroads made upon it either from inside or outside.  

The language used in the articles seems to be in the nature of commands or constitutional order to the state pursuing it to perform social, economic and cultural functions. The exceptions are articles 43, 44, 45, 51, the latter part of article 47 and the first part of article 48, where the word 'endeavour' is used for the objectives to be pursued. The term 'primary duty' used in article 47 means that the directive imposes a sort of binding duty. The use of the word 'obligation' in article 49 indicates the nature of function to be performed by the State. Even the word 'strive' used in article 38 was interpreted by Ambedkar to mean that it had a binding character. The word 'endeavour' used in articles 43, 44, 45, 51 and parts of article 47 and 48, if judged in this context, would also mean that it is obligatory on the part of the State to make the best efforts to achieve the objectives mentioned therein.

Thus the nature of the directives presented in the Constituent Assembly has been considered. The purpose for which these principles were incorporated, must also be considered.

The purpose of the directives was to supplement fundamental rights for broad-basing democracy and securing for the collective well being certain rights different in nature and which the Chapter on fundamental rights by their nature cannot secure for the individual. Part IV confers on the people positive rights - rights connected with tangible benefits while part III gives to the people negative rights - rights not to be harmed and it is easier for the law to prevent the infliction of harm than to enforce positive benefits. Thus the reason for the introduction of the clause "shall not be enforceable by the courts" in article 37 was this difficulty of enforcement of positive rights and not the intention to provide judiciary with an inferior status. This practical difficulty becomes still more complex when the agencies by which these duties are to be enforced are legislative and executive branches of the Government. The court

Markandan, supra note 61 at 143.

Article 43: Living wages etc. for workers.
Article 44: Uniform civil code for the citizens.
Article 45: Provision for free and compulsory education for children.  
(conted.)
cannot issue any mandate to the State to enact a particular piece of legislation for conferring positive benefits.

It is submitted that the courts being the guardian of the Constitution must respect all the provisions of the Constitution equally. Whenever any legislation is passed giving effect to the directive principles then the Court must respect that provided it is in public interest.

Originally Part III and Part IV were drafted as fundamental rights, so it is incorrect to categorise them as 'rights', 'duties', 'obligations' or even 'principles' as the terms are understood in common parlance although they take the nature of each one of them. They are rights which the individual enjoys in his collective capacity not as a matter of right but by virtue of these being conferred by the state for the objective of promoting social welfare. They are duties also not in a legal sense being answerable in the court of law but in the constitutional sense that they have to establish a social order in which justice - social, economic and political would prevail. They are not wholly obligations as these confer certain rights on the people and they have a legal character being a part of the Constitution which is a legal document. Although the title states them as 'principles' but they are not merely so because, unlike principles, they are binding in character and their non-observance would mean breach of faith.

From the language of article 37 it is clear that these directives are fundamental in the governance of the country and that these principles are not enforceable in any court of law. Some critics have pointed out that the statement that the principles included in this Part are not enforceable by a court of law has stood in the way of appreciating the real nature and significance of the directives in the Indian Constitution. K.C. Markandan has replied to this criticism that in constitutional matters there are conventions which are not enforceable through courts but these constitutional conventions have the same value and effect as the legally enforceable principles have. Wheare has doubted "whether there is any gain, on balance

| Article 47: Duty of the State to raise the level of nutrition and the standard of living to improve public health. |
| Article 48: Organisation of agriculture and animal husbandry. |
| Article 51: Promotion of international peace and security. |

299. C.A.D., supra note 234 at 495.  
300. Id. at 422.  
301. Markandan, supra note 61 at 145.  
302. Ibid.  
303. Id. at 145-146.  
304. Ibid.  

...
from introducing these paragraphs of generalities into a Constitution.”

Ivor Jennings questioned the utility of Part IV. According to him the Indian Constitution is an individualistic document. But there was curious dichotomy between the individualism of the nineteenth century on one hand which has sought to limit the power of the government in the interest of liberty, and the collectivism of the twentieth century on the other hand which has sought to expand the powers of Government in order that the State may regulate economic life and incidently restricted liberty. He was of the opinion that the ideas of Part IV may be suitable during the nineteenth century, but the same may not be true in the future time.

K.S. Hegde responding to the criticism of Ivor Jenning pointed out that his view was only a British view and now even in England a new thinking as to the need for guaranteeing rights to citizens has started. He did not agree with Jenning's view regarding the curious dichotomy between fundamental rights and directive principles and felt that the conflict is more apparent than real. Jenning was not correct in his observation that our founding fathers wanted to bind the future of this country with their own philosophy of life because the founding fathers were aware of the changes which were likely to take place in future and that the programme envisaged under Part IV was to meet the immediate needs of the people.

The expression "justice, social, economic and political" occurring in article 38 is of great significance and it forms the foundation on which the whole structure of directive principles is built up. The directive principles in the Indian Constitution are flexible according to the changing times and that is why Nehru considered them as 'dynamic' as against the fundamental rights which he called 'static'. In fact, it is the dynamic character of these directives that warrants its exclusion from the judicial purview because the judiciary can easily enforce and preserve which is static as compared to what is changing.

305. See Austin, supra note 1 at 114.
308. Id. at 47-48. See also Austin, supra note 1 at 60.
310. Supra note 292.
The main question in the present concern is whether these directive principles helped to bring Indian society closer to the Constitution's goal of socio-economic justice for all? It will be discussed in the later chapters how these principles have been cited by the courts to support their decisions, how they have been a guide for the Union Parliament and the State Legislature in the enactment of laws and how the government bodies have been guided by these provisions. For example, the Government of India Fiscal Commission of 1949 recognised that its recommendations should be guided by these principles.311

Indeed, the balancing process between the individual rights and the social needs is a delicate one. It is primarily the responsibility of the 'state' and in the ultimate analysis of the 'Courts' as interpreter of the Constitution and the laws.

(D) An Appraisal

During the British rule over India, economic exploitation of country and its people was made. At the same time, spread of English education, impact of modern political thought and the idea of liberty and equality led to the growth of political consciousness among the Indian People. They were convinced that the solution of socio-economic ills of the country lay in the political freedom. During the national struggle, in order to achieve this goal, the Congress not only demanded certain rights but also pledged to secure these rights - social and economic in a Constitution of free India. At that time, the consideration was to have both negative 312 and positive rights.313 There was no emphasis on any distinction between two kinds of rights. But one feeling was definitely there that there must also be some means and will to enforce these rights.

The main formation of these ideals could be found, first of all, in the Karachi resolution. In this resolution, these rights were not separated and these were equally emphasised but an explicit pledge to secure real economic freedom could be found out. Austin rightly characterised this resolution as both "declaration of rights" and a "humanitarian socialist manifesto".314

311. Austin, supra note 1 at 114; referring to Fiscal Commission Report, Chapter relating to Fundamental Objectives of an Economic Policy at 9. See also First Five Year Plan a Draft Outline at 1 and Third Five Year Plan at 1-6.
312. Negative rights meant what are today fundamental rights incorporated in Part III of the Constitution.
313. Positive rights were the directed principles now incorporated (contd.)
In the Sapru Committee, for the first time, an attempt was made to separate civil and justiciable rights on the one hand and the socio-economic non-justiciable rights on the other hand. The reason for the such separation was regarding the difficulty involved in enforcing these socio-economic rights. But it could not be said that these non-justiciable socio-economic rights were inferior to justiciable rights. When the Committee observed that there must be some guidelines for the legislative and administrative action and the courts, the obvious reference was to the directive principles.

The task of giving effect to pre-independence pledges was completed by the Constituent Assembly. In the Objectives Resolution, the Assembly enumerated certain rights including socio-economic rights, the general emphasis of which was the well-being of all. In fact Part III and Part IV together with the Preamble form an integrated scheme to improve the social and economic well-being of the people in a democratic manner.

The Assembly distinguished between the justiciable fundamental rights and non-justiciable directive principles. This distinction was based on the Irish Constitution. There was a long debate in the Assembly on the issue of separation of rights. It was considered primary duty of the Government to remove hunger and secure social justice to every citizen. Thus, the emphasis was on the positive role of the State towards welfare of the masses. The difficulty of such separation was discussed in the deliberation of Fundamental Rights Sub-Committee also and finally separate principles were announced with a preamble that they were for the general guidance of the State. Though the principles were not cognizable by the court but their vital role was recognised. And their quick implementation was regarded as the objective of national policy so that people could enjoy the fruit of it. Therefore, the opening clause was redrafted so as to make the directive principles as "fundamental in the governance of the country" and to impose a duty on the State to apply them in making laws.

When these principles were made "fundamental in the governance of the country", a conflict between the fundamental rights and the directive principles was foreseen. It was observed that many a time it might be essential for the state to invade private rights in order to give effect to
Rau, in the draft prepared by him, stated that in case of such a conflict, general welfare should prevail. Due to this reason, an amendment was suggested that no law giving effect to these principles should be declared void if it violated the fundamental rights. It was also suggested that the title 'directive' should be replaced by the title 'fundamental'. But the amendment was not accepted as they had already been declared fundamental in the governance of the country. It is worth noting that at the time of introducing the Draft Constitution in the Assembly it was expressly stated that fundamental rights were absolute and non-fundamental rights were not absolute. The real distinction was that non-fundamental rights were created by the agreement of the parties whereas the fundamental rights were the gift of the law and they being the gift of law, the State could not qualify them.

The directives regarding animal husbandry, agriculture, prohibition and Panchayat etc. were incorporated in part IV to fulfil the pre-independence pledges and also keeping in view the socio-economic conditions of the country at that time.

While framing these rights and principles, the role of the judiciary was kept in mind that it was the courts which would give the rights force. In this context, Austin rightly says that the judiciary is an arm of social revolution upholding the equality the Indians had longed for during the colonial days.

The nature and significance of the directive principles was also discussed in the Assembly. One view considered them as mere pious wishes and the other accepted their significance. But the emphasis was on latter view. They were regarded as the germs of socialistic government and Part IV enshrining them was considered as the most cardinal, important and creative part of the Constitution. At the same time it was also realised that they were mere obligations of the State which might not be fulfilled in the life time. It was this reason why an amendment was suggested that any law made in contravention of these principles would to that extent be void. While realising that the Parliament might ignore them and that there was no provision in the Constitution to prevent that, it was thought that there must be some superior authority to see whether they had been followed or not. The obvious reference

315. Id. at 164.
was to the Courts. It was also felt that the real sanction behind them is the public opinion and the electorate. They may not be enforceable in any court of law but they are enforceable in the court of people. It would also not be correct that the courts also do not have any cognizance of these principles because the courts do take cognizance of particular enactment with regard to its restrictions and public purpose.

These directives enjoin the character of obligations, rights, duties and principles. The term 'endeavour' used in various articles, 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. Thus, Part IV confers these positive benefits which cannot be secured under Part III and due to this difficulty, the words "shall not be enforceable in the court of law" were added. 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 economic liberty. And in fact, the directive principles are more fundamental than the fundamental rights from the point of view of the Constitution because the ideals enshrined in it 'justice, social, economic and political' are loftier in conception and seek to secure to the individual tangible benefits of great significance than fundamental rights. Due to this reason, both in Objectives Resolution as well as in Preamble to the Constitution, the ideals of justice, social, economic and political is mentioned first and prior to the securing of the guarantees under fundamental rights.

It cannot be denied that the task of ensuring socio-economic justice which India has undertaken enthusiastically is bound to prove arduous. Selig Herrison has rightly warned India that "the most dangerous decades lie ahead of her but if the ideals contained in Part IV are properly implemented, it would virtually result into India's transformation, from a police state to a welfare state."316

PART-2

PHILOSOPHY, NATURE AND SCOPE OF DIRECTIVE PRINCIPLES AND FUNDAMENTAL RIGHTS