Law is a science of social adjustments, its main object being to establish socio-economic justice and remove the existing imbalance in the socio-economic structure. The Constitution of India is the fundamental law of the land. The signature tune of our Constitution is the socio-economic justice. It is the cornerstone of people’s edifice. The whole scheme of the Constitution is aimed at to secure justice - social and economic. In fact the seeds of socio-economic justice were sown by the freedom fighters during the freedom struggle. Because they were convinced that political freedom is not and cannot be an end in itself. The political freedom has no significance or meaning to the teeming millions of this country who suffer from poverty and all social evils flowing from it unless the socio-economic content of history is assured to them.

The Preamble of the Constitution of India, which epitomize the aspirations of the people, inter alia, provides for securing justice - social, economic and political. This preambular promise finds its reflection in Part III of the Constitution dealing with fundamental rights and Part IV dealing with directive principles of state policy. Thus, one of the aspirations of the freedom fighters, that is, to bring into existence a social order wherein socio-economic justice is assured to all, became the part of constitutional scheme.

In this chapter, in order to study the subject in its proper perspective, first of all the concept and meaning of socio-economic justice will be studied. This will be followed by the discussion on the constitutional scheme of socio-economic justice as enshrined in the Preamble, the fundamental rights and the directive principles of state policy.

(B) The Concept and Meaning of Socio-Economic Justice

The expression 'Socio-Economic Justice' is not constitutional rhetoric or political claptrap meant for heroic sloganeering. It is the

conscience and soul force of the supreme law of the land. The concept of social and economic justice is a living concept of revolutionary import; it gives sustenance to the rule of law and meaning and significance to the ideal of a welfare state. This socio-economic justice is the cardinal concept of the constitutional edifice in India. It is a continuous process. It is the fighting creed and founding faith of the Constitution of India. In fact, social and economic justice are the kernel of the civilized human order itself.

In order to understand the true meaning and concept of socio-economic justice in its proper perspective, the meaning of 'justice' must be understood.

Fiat justitia ruat coelum, let heavens fall, justice had to be done was one of the most important quests of human society ever since its birth. The day men have begun to reflect upon their relations with each other and upon the vicissitudes of human lot, they have been preoccupied with the meaning of 'justice'. The idea of justice is so ancient that everything has been said about it and it is so modern that it constitutes an everchanging context of contemporary society.

The concept of 'justice' is pregnant with various diverse notions of right, morality, welfare and happiness. Justice is considered to be the primary goal of a welfare state and the very existence of it rests on the parameters of justice. The greatest contrast, however, between ancient and modern thinking about the social harmony of justice is in the changed conception of individual personality in relation to law.

Kelsen, while remarking on the indeterminate and everchanging

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4. Supra note 2.
concept of justice observed:

No other question has been discussed so passionately; no other question has caused so much precious blood and so many bitter tears to be shed; no other question has been the subject of so much intensive thinking by the most illustrious thinkers from Plato to Kant; and yet this question is today unanswered as it ever was. It seems that it is one of those questions to which the resigned wisdom applies that man cannot find a definitive answer, but can only try to improve the question.8

The term 'justice' has two aspects, namely abstract justice and concrete justice. In the abstract sense 'justice' means a course of conduct both legal and moral, which tends to augment human 'welfare'. The human actions which do not directly or indirectly affect the interest of mankind have no significance either for ethics or for jurisprudence.9

The term justice is currently used in two senses: as representing, on the one hand, the faithful realisation of existing law as against any arbitrary infraction of it; and as representing, on the other, the ideal element in all law—the "idea" which the law tends to subserve.10

It is only in the second sense that the term can have a separable and substantial meaning. But even in this second sense the idea of justice is often understood too broadly and is seen to merge with the entire content of morality.

Plato and Aristotle, while freeing the idea of justice from all connections with popular religion failed nevertheless to distinguish sufficiently between justice and morality. According to Plato:

Justice is the supreme virtue which harmonizes all other virtues.11

He identified 'justice' with 'happiness'.12

11.Ibid.
Aristotle modified this concept of justice by admitting that justice implies a certain degree of equality, this equality might be either arithmetical or geometrical, the first based on identity and the second on proportionality and equivalence. Arithmetical equality leads to commulative justice and geometrical equality to distributive justice. Aristotle recognized still a third aspect of justice, that is, justice as a moving equilibrium which seeks to reconcile the demands of distributive justice with those of cummulative justice. This concept recalls the antithesis in the popular mind between themis (justice inherent in the life of the group) and dike, (a justice external to life of the group, a justice operative as between groups, families and individuals).

The Christianity introduced into the concept of justice - love and charity. The complete secularization of the idea of justice could be accomplished only after the liberating effect of the Renaissance. But this could not be fully realised until the natural law school of the sixteenth and seventeenth century.

Locke, Rousseau and Kant find the content of justice in the synthesis of liberty and equality. Kant gave the definition of justice in the following terms:

Justice is the external liberty of each person, limited by the liberty of all others.

Lord Macmillan's notion of justice is also - 'justice and liberty' functioning in a mutual synthesis.

During the nineteenth century, socialist doctrine of justice came into existence. The most extensive work on the idea of justice was done by Proudhon. According to him, it is by means of justice that a conciliation is effected between the individual and the whole, which are equally real. He further said:

Justice demands the realisation of an order which is neither communism, nor despotism, nor anarchy, but liberty in order and independence in unity.

13. Supra note 10 at 509-10.
14. Ibid.
15. Id. at 511.
17. Supra note 10 at 512.
It consists in "rendering to every man the exact measure of his
dues without regard to his personal worth or merits, i.e., placing all
men on an equality."\(^{18}\)

Justinian in the Institutes has inscribed the wider connotation
of 'justice'.

Justice is the earnest and constant will
to render to every man his due.\(^{19}\)

To apply this conception of justice requires first of all a re-
establishment of equivalence, a re-alignment in the positions of the
various members of the society, which may be effected by the state
through social legislation and by the protection of the weaker section of
the society. Thus, by the end of nineteenth century a position analogous
with social justice was occupied in demanding the establishment of 'equality
of opportunity' and a 'minimum standard of living'.\(^{19a}\)

Ingrained notions of 'justice' slowly yield place to 'social
justice' taking notice of the inequality in the society. 'Social Justice'
is a compound word made up of the adjective 'social' and the noun 'justice'.
Social means relating to society; society is a group of men with a common
organization. Justice, as we have noted above, is the quality of being
just and fair to all the individuals in the group. It seeks to give every-
one what is due to him. The expression 'social justice' has a limited as
well as a wider meaning. In its limited sense, it means ratification of
injustice in the personal relations of the people. In its larger sense,
it seeks to remove the imbalance in the political, social and economic
life of the people. It is in the second sense that social justice should
be understood.\(^{20}\)

'Social justice' is sometimes confused with 'socialism'. The
expression 'socialism' may be looked at from two different angles. One,
the end and the other, the means to achieve that end. In the former sense,
it means the removal of inequalities and the ushering in of a just society; in the latter sense, it means the public ownership of all the means of production and distribution. Socialism in the first sense is equated with social justice whereas in the second sense it is equated with economic justice. Thus both social and economic justice are the objects of socialism.

C.K. Allen claims that the people who use the term 'social justice', very often, are not clear about the meaning. Some mean 'distribution or redistribution of wealth'; some interpret it as 'equality of opportunity'; some mean that 'it is unjust' that others should have more fortune than themselves. Others take it as something just.21

It is submitted that Allen is not right when he says that the people are not aware of the meaning of 'social justice'. He made this statement because perhaps he divorced the 'social justice' from 'economic justice', whereas in reality they are the two sides of the same coin—justice in general.

Under the constitutional provisions guaranteeing right to obtain justice, the justice to be administered by the courts, is not an abstract justice as conceived of by the judges but justice according to law or, as it is phrased in the Constitution, 'conformably to the laws'.22

Gajendragadkar views that social justice is not a 'blind concept' or an 'irrational dogma'.23 According to him, 'justice and liberty' blended together leads to the corollary of 'social justice'.24 He pursues that the claim of 'social justice' must be treated as 'paramount' and 'primary' and the freedom of individual if needed, should be sacrificed for the achievement of social justice.25 He claims that the goal of welfare state can be achieved only through social justice.26 So the concept of social justice takes within its sweep the objectives of 'removing all inequalities and affording equal opportunities in social affairs' and 'economic activities' to all citizens. Thus, Gajendragadkar's

21. Supra note 7 at 31.
22. Supra note 18 at 1003.
25. Supra note 23.
26. Supra note 24 at 25.
concept of social justice includes both 'social justice' as well as 'economic justice'.

Justice V.R.Krishna Iyer's concept of 'social justice' is not 'exact', 'static' or 'absolute concept'. It is 'flexible, dynamic and relative'. Its form varies from place to place and time to time. But unlike Gajendragadkar, he deals with social justice and economic justice separately. He summarizes his concept of social justice in the following words:

Social justice is a generous concept which assures to every member of society a fair deal. Any remedial injury, injustice inadequacy or disability suffered by a member, for which, who is not directly responsible, falls within the liberal connotations of social justice.27

Thus Justice Iyer sees social justice, as the basis of 'progressive stability in society' and 'human progress'. He agrees that poverty is a showpiece of injustice and if man cannot get justice 'peacefully', he must accomplish it 'violently'.28 Justice Krishna Iyer also concentrates on economic justice. His views on economic justice resemble with those of Nehru and Gandhi. Nehru talked of the aim of classless 'society' which can be achieved only through equal economic justice and opportunity to all.29 While economic justice of Gandhi's dream is such that 'no one under it should suffer from want of food and clothing'. He insisted that there should not be monopolization of God's air and water.30

To lay down a definite definition of social justice would be self defeating as it is bound to lose its utility in the vicissinating socio-economic conditions of the society in the fast developing society.

Seervai, an eminent scholar, also says that the expression 'Social Justice' is not easy to define.31 Justice Bhagwati in Muir Mills Co.Ltd. v. Suti Mills Mazdoor Union,32 described 'Social Justice' as "a very vague

29. Supra note 19 at 16.
30. Young India, November 15, 1928.
and indeterminate expression" and added that whatever it meant, "the concept of social justice does not emanate from the fanciful notions of any adjudicator but must have a more solid foundation." On the other hand, Chagla C.J., rejected the submission that the court should not import its own ideas of social justice in interpreting the statutory provisions by saying that social justice was an objective of the Constitution, and though difficult to define, it was an inarticulate major premise, which was personal and individual to every court and every judge depending upon the judges' outlook on society and life. Laws cannot be interpreted without reference to 'social justice' to the achievement of which our country was pledged. Both the judges agree that social justice is hard to define.

Economic justice means the abolition of those economic conditions which ultimately result in the inequality of economic value between men, viz. concentration of wealth and means of production in the hands of a few. Economic justice also means equality of reward for equal work. Every man should get his just dues for his labour. Lownstein rightly remarked that the economic justice is of no value if the Constitution does not promise 'bread and economic security the man yearns for.' And fortunately for the millions of Indians, our Constitution is the treasury of socio-economic justice.

The theme of socio-economic justice was imperative in the struggle for independence. Two revolutions, the national and the social, had been running parallel in India since the end of the First World War. With the independence, political or national revolution was completed but the social revolution was yet to continue. Connected with the social revolution was the economic one.

33. Id. at 1001-02.
35. Supra note 2 at 1001-02.
36. Ibid.
Indeed the massive privation of the masses made our leaders like Vivekananda, Gandhi, Nehru and Rajan Babu put the problem of poverty was material salvation of the millions in the forefront of the freedom struggle and eventually in pledging through the Constitution, the establishment of social order animated by social and economic justice.

The Freedom Movement - take Vivekananda, Tilak, Ambedkar, Gandhi, Bose, Nehru or other great leaders and parties - was more than political. Broadly speaking, especially with the emergence of Gandhi and Nehru, the politics of liberation was anti-imperialist and pro-socialist, anti-latifundist and pro-tiller, anti-feudal and pro-Harijan; pro-women and pro-workmen and its soul force was an egalitarian order. And social and economic justice, in its wider connotation, became the focal point of the mass upsurge. 39

The leaders of the freedom struggle also realised that in order to make the basic rights meaningful to the common man it was essential to bring about socio-economic regeneration to ensure social and economic justice. This theme finds its echo in the Karachi Resolution and in the Lahore Congress Resolution. 40

The imperatives of Indian independence inspired our founding fathers to fashion socio-economic revolution impressed with human and egalitarian ethos implicit in the Constitution. 41

It would be tragic if the law were so petrified as to be unable to respond to the unending challenge of evolutionary or revolutionary changes in the society. 42 Law is a flexible instrument of socio-economic adjustment and socio-economic revolution. The Constitution, which is the

39. Supra note 2 at 11-12.
40. The Congress Resolution of 1929 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 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." For details see supra Chapter II.
41. V.R. Krishna Iyer, supra note 19 at 55.
42. W. Friedman, Law in the Changing Society, 503 (1959).
fundamental law of the land, has undoubtedly significant role to play in the development of socio-economic progress.

All this was sought to be achieved by the historic Objectives Resolution, of which Jawaharlal Nehru was the Chief Architect. The Resolution formed the basis of various provisions of the Constitution including the provisions dealing with socio-economic justice. The Objectives Resolution, inter alia, stated:

The Constituent Assembly declares it firm and solemn resolve...to draw up for the future governance a Constitution....Wherein shall be guaranteed and secured to all the people of India justice, social, economic and political; equality of status, of opportunity, and before the law...and wherein adequate safeguards shall be provided for minorities, backward and tribal areas and depressed and other backward classes....43

This Resolution was a vital document and all the provisions dealing with socio-economic justice, that is, Preamble, the Fundamental Rights, the Directive Principles were based on this Resolution. But in order to see the actual intention and connotation of the framers of the Constitution for its incorporation, we have to anatomize the views expressed by the members of the Constituent Assembly.

Two different opinions were expressed during the course of discussion relating to the concept of socio-economic justice in the Objectives Resolution. According to the first view, the phrase relating to the concept of socio-economic justice should have been so framed as to express in clear terms the acceptance of the doctrine of socialism.44 This view was supported by the Chairman of the Drafting Committee, Dr. B.R. Ambedkar, and he stated that if the Resolution:

[H]as a reality behind it and a sincerity..., I should have expressed some provisions whereby it would have been possible for the state to make economic social and political justice a reality and I should have from that point of view expected the Resolution to state in most explicit terms that in order

43. I C.A.D. at 57. See clauses 1, 5 and 6 of the Objectives Resolution respectively.

that there may be social and economic justice in the country, there would be nationalisation of industry and nationalisation of land. I do not understand how it could be possible for any future government which believes in doing justice, socially, economically and politically, unless its economy is socialistic economy.45

There was a second view also. Some members thought that since the Constituent Assembly had no sufficient mandate to incorporate in the Constitution such as economic policy of doctrinaire character, so they did not share the view expressed by Dr. Ambedkar.46 Some members of the Constituent Assembly also felt that by incorporating such a doctrine in the Constitution, it might become rigid and hence will be a stumbling block in the smooth functioning of the democratic apparatus.47

Jawaharlal Nehru while speaking in favour of the Resolution Observed:

If, in accordance with my own desire, I had put in that we want a socialist state, we would have put in something which may be agreeable to some and we wanted the Resolution not to be controversial in regard to such matters. Therefore, we have laid down, not theoretical words and formulae, but rather the content of the thing we desire.48

While commenting upon social change, Nehru warned the Assembly:

[A]ll 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 will live....49

The eloquent and inspiring speech of Nehru commended the phrase dealing with socio-economic justice to the acceptance of the Assembly without any change.

45. I C.A.D., at 97-98.
46. Id. at 91. See the speech of M.R. Masani. It is worth noting here that Forty-second (Amendment) Act, 1976 has introduced the word 'socialist' in the Preamble of the Constitution of India. See infra.
47. Alladi Krishna Swami Ayyar particularly pointed out that the Constitution should not be rendered rigid by incorporating in clear terms a particular economic policy, and it should contain the necessary element of growth and adjustment needed for progressive society. See I C.A.D. at 138.
48. Id. at 60
49. II C.A.D. at 317-318.
From this it is very clear that the founding fathers made the socio-economic justice as the goal to be achieved by the future government in the country. They also rejected the idea of incorporating in the Constitution particular means to achieve it. Thus it is the dharma of every government that they should strive to secure socio-economic justice for all persons in the country. But what mode the government should adopt to achieve the goal is left to each government to decide in accordance with the particular mandate it received in election from the people. But the government can in no case ignore the constitutional mandate of securing socio-economic justice to all.

M.R. Masani's view as expressed earlier clearly rejects the present social structure and the social status quo. According to him:

It means that the people of the country so far as any Constitution can endow them, will get social security - the right to work or maintenance by the community.50

He also observed that the Resolution envisages far reaching social change - social justice in the fullest sense of the term - but it works for those social changes through the mechanism of political democracy and individual liberty.51

On the other hand, while taking into consideration the social conditions, Seth Govind Dass said:

Keeping in view the conditions of the world and the plight of India we can say that our republic will be both democratic and socialist ...if true peace is to be realised, it can only be realised through socialism. No other system can give us true peace.52

With regard to economic justice, N.V. Gadgil said that it could only be secured if the means of the production in the country ultimately came to be socially owned as against the private individuals.53

Dr. S. Radhakrishnan, while referring to the socio-economic justice as contemplated in the Objectives Resolution remarked that it intended to affect a smooth and rapid transition a state of serfdom to one of

50. I C.A.D. at 90.
51. Id. at 92.
52. Id. at 105-106.
53. II and III C.A.D. at 259.
freedom. This intention has been given a definite and particular content in certain articles of Part IV of the Constitution which expressly enjoin on the state a duty to implement certain socio-economic policies laid down therein and to secure a new social order in which socio-economic justice is assured to all. He emphasised such a need and observed:

'I]t is, therefore, necessary that we must remake the material conditions; but apart from remaking the material conditions we have to safeguard the liberty of the human spirit.'

Radhakrishnan also observed in the Constituent Assembly that India must have a 'socio-economic revolution' not only to bring about the real satisfaction of the fundamental needs of the common man, but to go much deeper and bring about a fundamental change in the structure of Indian society. In a welfare state sometimes there is a conflict between the clauses of individual liberty and socio-economic planning. But it should be remembered that the welfare state is dedicated to the cause of common citizen and establishment of socio-economic justice as its avowed objective. Sociological jurisprudence subscribes that without regulation of individual freedom socio-economic justice cannot be achieved.

The concept of socio-economic justice has a special significance in the context of Indian society because the Hindu social structure is based on the caste and communities which create barriers and walls of exclusiveness and proceed on the basis of inferiority. Harijan citizen as well as some other class of persons suffer the dual curse of economic inequality and social inequality. They constitute the large class of landless labourers who are treated as untouchable by the rest of the community. They have no house to live in, generally no clothes to wear. They do not get the food to eat and sometimes even decent drinking water is beyond

54. See article 38 of the Constitution of India.
55. Supra note 53 at 257.
56. Id. at 269-73.
57. See supra note 23 at 65-75.
their reach. For them the concept of individual freedom and liberty is of no significance. 58

The concept of socio-economic justice which is a revolutionary concept, takes within its sweep the objective of removing all inequalities and affording equal opportunities to all citizens in social affairs as well as in economic activities. It gives meaning and significance to the democratic way of life and makes the rule of law dynamic.

(C) Constitutional Scheme of Socio-Economic Justice

The dream of socio-economic justice which inspired generations of Indians to fight for political freedom took its shape on sonorous terms in the Preamble, the fundamental rights and the directive principles in the Constitution of India. The fundamental rights and the directive principles jurisprudence viewed in the perspective of the Preamble, underscore socio-economic justice as the warp and woof of constitutional order.

(i) Preamble

The first task of the Constituent Assembly was the formulation of the objectives and the guiding principles which were to form the basis of the Constitution. On December 13, 1946, Jawaharlal Nehru moved the Objectives Resolution in the Assembly from which the Preamble of the present Constitution was drafted. Thus the tryst to make the India's Constitution a viable instrument of the Indian People's salvation is implicit in the preambular promise which provides:

WE THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizens: JUSTICE, social, economic and political; LIBERTY of thought, expression, belief, faith and worship;

58. Id. at 78-79.
59. The wordings of the Preamble of the Constitution have been taken from clauses 1, 5 and 6 of the Objectives Resolution. The draft of the Preamble was considered by the Assembly in the end after considering other provisions of the Draft Constitution. This was done so as to see that it was in conformity with the Constitution. See B. Shiva Rao, The Framing of India's Constitution, A Study, 130(1968).
EQUALITY of status and of opportunity;
and to promote among them all FRATERNITY
assuring the dignity of the individual
and the unity and integrity of the
nation

IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, do HEREBY ADOPT,
ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.

Thus, the Preamble concisely sets out quintessence of socio-economic justice which represents the aspirations of the people, who have established the Constitution.

The Preamble indicates the general purposes for which the people ordained and established the Constitution but the rules of interpretation propounded by the judiciary do not permit the Preamble to qualify specific provisions. It may be resorted to only in cases of ambiguity when the intention of the framers does not clearly and definitely appear. The Preamble is regarded as the "Key to open the minds of the makers so as to the mischiefs which are to be remedied, and the objectives which are to be accomplished by the provisions of the statute." The words 'JUSTICE, social, economic and political' occurring in the descriptive part, which incidently, is a repetition of what had been stated in para 5 of the Objectives Resolution, constitute the key expression laying the foundation of an enduring, flexible and most desirable Constitution. The word 'Justice' or 'Social Justice' occurs as an objective in the Preamble or in the initial articles of many other Constitutions of the world, but no country has used in its continuation the expression 'Justice, social, economic and political'. In the Indian context, where the country was politically subjugated, economically exploited and socially a large section of the Indian society was suffering from disabilities of all sorts, there was no doubt a dire need for framing a constitution wherein justice pervaded in the social, economic and political fields. The words were put in that order to signify their relative importance, social justice being the most important followed by economic justice and

60. See Bhola Prasad v. King Emperor, (1942) 46 C.W.N.(F.B.)32 at 37.
61. See the Constitutions of Argentina, Columbia, Cuba, Ireland, Korea, German Democratic Republic and U.S.A.
political justice. The greater importance attached by the framers of the Constitution to the basic document, 'Objectives Resolution', indicates the pre-eminent position given to the Preamble of the Constitution. The Objectives Resolution was described by the founding fathers as 'something that breaths life in human minds', 'a pledge which is enshrined in the heart of every man', 'an expression of the surging aspirations of the people', 'a sort of spiritual Preamble which will pervade every section every clause and every schedule of the Constitution'.

Thus, unlike other Preambles in many other Constitutions, it is a sort of telescope through which one can perceive clearly the intentions of the framers engraved in various parts of the Constitution.

The constitutional commitment to the goal of socio-economic justice as envisaged by the original Preamble of the Constitution has been fortified by the Constitution (Forty-second) Amendment Act, 1976. By this amendment the word 'socialist' was added in the Preamble of the Constitution. Although the amendment does not add anything new to the already existing constitutional commitment to the 'social revolution', it is significant in that it emphasises the urgency of the achievement of the goal of socialism.

In Sanjeev Coke Mfg. Co. v. Bharat Coking Coal Ltd. Justice Chinnappa Reddy observed:

Though the word 'Socialist' was introduced into the Preamble by late amendment of the Constitution, the Socialism has always been the goal is evident from Directive Principles of State Policy. The amendment was only to emphasise the urgency.

Perhaps the framers of the Constitution justifiably avoided

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63. Ibid.
64. I C.A.D. at 57 (as per Jawaharlal Nehru).
65. Id. at 92 (as per F.R. Anthony).
66. Id. at 138 (as per Alladi Krishna Swami Ayyar).
67. II-III C.A.D. at 259 (as per N.V. Gadgil).
68. Supra note 44 at 4.
70. Id. at 251. See also Excel Wear v. Union of India, A.I.R. 1979 S.C. 25 at 36.
using terms that might create controversy. In this connection M.R. Masani observed:

It (the Objectives Resolution) does not provide socialism. It would be wrong to provide for such a thing, because this House has no mandate to go in for far-reaching changes in the country. These changes can be brought about by a popularly constituted Parliament when it comes into existence with the mandate of the people.71

Alladi Krishnaswami Ayyar expressed the same view in the following words:

There is no socialist fervour about the Constitution, while it does not commit the country to any particular form of economic structure or social adjustment, gives ample scope for future Parliament to evolve any economic order and to undertake any legislation they choose in public interests. In this connection, the various Articles which are Directive Principles of State policy are not without significance and importance.72

However, Prof. K.T. Shah was of the view that the word 'socialist' should be specifically mentioned in the Preamble.73 Explaining the meaning of the term 'socialist' and its necessity under the Indian Constitution, he observed:

The term 'socialist' I may assure my friends here that what is implied or conveyed...is a state in which equal justice and equal opportunity for everybody is assured, in which everyone is expected to contribute by his labour, by his intelligence...and everyone would be assured of getting all that he needs and all that he wants for maintaining a decent civilized standard of existence....Those who recognize the essential justice in this term, those who think...that socialism is not only the coming order of the day, but is the only order in which justice between man and man can be assured, is the only order in which privileges of class exclusiveness, property for exploiting elements can be dispensed with must support me in this amendment. If this ideal is accepted I do not see that there is anything objectionable...and calling our union a Socialist Union of States.74

71. I C.A.D. at 93
72. VII C.A.D. at 336.
73. Id. at 399 and 401.
74. Id. at 401.
From the above observations of Prof. Shah it is clear that the socialistic objective is already there in our Constitution, at least in the Part IV dealing with directive principles of state policy which are fundamental in the governance of the country. And it was for this reason that Dr. Ambedkar rejected the suggestion of Prof. Shah regarding the specific mention of the word 'socialism' in the Preamble. But unfortunately due to the unenforceable nature of the directive principles, the judiciary gave more importance to the fundamental rights over directive principles thus giving more recognition to the individual rights over socio-economic rights. And so long this interpretation remains, to put word 'socialist' in the obligatory objective part of the Preamble would not only not be a true reflection of the Constitution, but even improper. In other words, a pre-condition for making a specific mention of the term 'socialist' in the Preamble would be either by reformulating the directive principles of state policy, particularly making them enforceable in the court of law, so that they become fully obligatory or by changing the judicial interpretation. For this, Swaran Singh, who was the Chief Architect of the 42nd Amendment Act, 1976, suggested that the Preamble be first amended to spell out the purposes and objectives and consequential changes be made in the articles of the Constitution, thereafter.

Prof. Markandan has criticised the above view. According to him, the Constitution should be amended first and then the objective of the Constitution should be placed in the Preamble. Because Preamble is meant to reflect the contents of the Constitution and as such no amendment should be made first in the Preamble. It is submitted that the above view of Prof. Markandan is right.

While emphasising the necessity of adding the word 'socialist' in the Preamble, Shri Dinesh Chander Goswami observed:

Why is it that today it has become necessary to put 'socialism'? It has become necessary

75. Id. at 402. His first contention was what should be the policy of the state, how the society should be organised in its social and economic matters must be decided by the people themselves that will destroy the democracy. Second reason for rejection was that Part IV lays specific obligation on the legislature as to how the policies of state should be framed.
76. Supra note 62 at 121.
77. Id. at 126.
78. Ibid.
because the highest court of the land has completely forgotten the content and they have always interpreted the Constitution in favour of the vested interests and individual rights. Therefore, the time has come when the Preamble, which is the mirror of the Constitution, which shows the directives in which the country is going and which spells out the aspiration of the people, we have to lay down clearly that our is a socialist state and in future when we interpret any law it must be kept in mind that between community good and individual rights preference must be given to the community good.79

B.R.Shukla also while emphasising the need to amend the Preamble and to mention the objective of socialism in it, observed:

A developing country like India or any other developing country in the world cannot be emancipated from the centuries long poverty and ignorance...unless socialism is accepted as a goal. Therefore, if this goal was not clearly spelt out in the Constitution, although in quintessence it was contained, it is our duty to make it unmistakably clear to everybody in this country that socialism is the only system wherein lies the emancipation of the people from the centuries old shackles of poverty and ignorance and that no other system can deliver the goods.80

H.M.Seervai has criticised the addition of word 'socialist' as 'false'.81 According to him, it is false to say historically that India become socialist only after Forty-second amendment in 1976 which added the word in the Preamble and not before that.82

It is submitted that the view of the learned author is wrong because of following reasons. First, the Preamble of the Constitution is the part of the Constitution and can be amended like any other provision of the Constitution subject of course to the limitation of basic feature.83 Secondly, the word 'socialism' was not added in the original Preamble because there was no consensus as to the meaning of that word, nor were the Indian leaders agreed to copy western idea with its

80. Id. Col.142.
82. Ibid.
84. Ibid.
nomenclature. On the other hand, they had definite plans for providing specific remedies for the special ills of our country.85

The amendments made in the Preamble have been held to be constitutionally valid as they are not only within the framework of the Constitution but they give vitality to the philosophy of the Constitution; they afford strength and succour to its foundation.86

The addition of the word 'Socialist' in the Preamble may enable the courts to lean more and more in favour of nationalisation.87 The Constitution Forty-fifth(Amendment)Bill, 1978, sought to define the expression 'socialist' to mean 'a republic in which there is freedom from all forms of exploitation, social, political and economic', but the amendment was not accepted by the Council of States. The term 'socialist' thus remains undefined.88

In Atam Parkash v. State of Haryana,88a Chinnappa Reddy, J., speaking for the Court observed that the implication of the introduction of the word 'socialist', which has now become the centre of the hopes and aspirations of the people - a beacon to guide and inspire all that is enshrined in the articles of the Constitution, is clearly to set up a "vibrant throbbing socialist welfare society" in the place of a "feudal exploited society". The court while interpreting the statute must strive to give such an interpretation as will promote the march and progress towards a "Socialistic Democratic State".88b

The directive principles of state policy contained in Part IV of the Constitution are designed for the achievement of socialist goal envisaged in the Preamble. In particular, clause(l) of article 38 provides that the state shall strive to promote the welfare of the people

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85. Supra note 38 at 41-44.
88b.Id. at 864.
by securing and protecting as effectively as it may be social order in which justice, social, economic and political shall inform all the institutions of the national life. Incidentally, it should be pointed out that article 38 of our Constitution is an adoption, both in content and phraseology of article 45(1) of the Irish Constitution, except for the substitution of the words 'justice, social, economic and political' for the words 'Justice and Charity'. But, then, while the framers of the Irish Constitution chose to mention in the descriptive part of their Preamble not only the words 'Justice and Charity' but also attainment of 'true social order' and promotion of common good. Our founding fathers chose to reflect article 38 of the Constitution in the Preamble merely by words 'Justice, social, economic and political'. Certainly the expression 'Justice, social, economic and political' conveys more aptly, precisely and eloquently a 'true social order' than the expression 'Justice and Charity'. This is in keeping with the primacy given to the securing of a true 'social order' in the Indian context in a positive and more emphatic way than in the Irish Constitution in as the Directive Principles of State Policy in which the social order was stated made it more fundamental in the governance of the State', an expression which is not there in the Irish Directives.89

The word 'secular' was also added in the Preamble by Forty-second (Amendment) Act, 1976. The expression highlights that the state shall have no religion of its own and all persons shall have the right to profess, practise and propagate religion of their own and they shall be equally entitled to freedom of conscience. Before this change, the liberty of 'belief, faith and worship' was promised in the Preamble. This has been further guaranteed by the fundamental rights in articles 25 to 28.90

The Preamble also contains the promise of promoting 'Fraternity assuring the dignity of individual and unity and integrity of the nation'. The words 'and integrity' after unity were also added by the Forty-second (Amendment) Act, 1976. 'Fraternity' means brotherhood the promotion of which is absolutely essential for our country which is composed of many races and religions. This spirit of brotherhood assuring the dignity and integrity of the nation is sought to be achieved by abolition of untouchability, 91 abolition of titles, 92 prohibition of traffic in human beings.93

89. Supra note 62 at 132.
90. See infra under the sub-head of Fundamental Rights.
91. Article 17 of the Constitution of India.
92. Article 18.
93. Article 23.
and many other provisions\textsuperscript{94} in the fundamental rights. Having used the words 'Liberty and Equality', the framers of the Constitution felt that the use of the third word 'fraternity' in the Indian context would be more suitable and appropriate, particularly when they were thinking of a social order in which 'Justice, social, economic and political' would prevail. Further, the framers of the Constitution gave a new dimension to the concept of 'fraternity'. It was not only to raise the status of the many that were looked down on by the privileged castes but also to bring about harmony and understanding between the various segments of the Indian society so that the country appeared to be one for all intents and purposes.\textsuperscript{95}

The expression 'to promote among them all', preceding the word 'Fraternity', is, indeed, significant in this respect. 'Among them all' connotes, more particularly the word 'all' not only amongst the underprivileged classes but also amongst the entire people of India.\textsuperscript{96}

The Preamble also makes it clear that our is a 'Democratic Republic'. Democracy is the way of life and it must maintain human dignity, equality and rule of law. Preamble also seeks to secure to the people 'Liberty of thought, expression and belief \textit{etc.} This object has also been achieved by providing certain fundamental rights' in Part III of the Constitution.

The equality of status and opportunity is also assured by some provisions of Part III.\textsuperscript{98} In fact, equality is the faith and creed of our democratic republic.\textsuperscript{99}

Thus the Preamble, in short, contains the objective of socio-economic justice which has been translated into Part III and Part IV of the Constitution which deals with fundamental rights and directive principles respectively.

\textsuperscript{94} Articles 14,15,25-28 and 29-30.
\textsuperscript{95} Supra note 62 at 135.
\textsuperscript{96} Id. at 136.
\textsuperscript{97} See articles 19,20,21 and 22 of the Constitution of India.
\textsuperscript{98} See articles 14,15,16 and 17.
(ii) Fundamental Rights

The Indian Constitution is first and foremost a social document. The majority of its provisions are either directly aimed at furthering the goal of the social revolution or attempt to foster this revolution by establishing conditions necessary for its achievement. The core of commitment to the social revolution lies in Part III and Part IV dealing with fundamental rights and directive principles respectively. These are the 'conscience of the Constitution'.

Part III of the Constitution is also characterised as the Magna Carta of India. It embodies and sanctifies certain fundamental, individual, justiciable rights which are primarily meant to protect the individual against the state action by imposing negative obligations. Article 13 specifically prohibits the legislature from abridging or taking away of these rights. Now let us see in brief certain provisions of Part III which deals with socio-economic justice.

The doctrine of equality, which is provided in articles 14 to 18 of the Constitution is the foundation of social justice. It refuses to accept a state in which some men are more equal than others. It recognizes the equality between men and society.

The concept of equality is one of the main elements of socio-economic justice. The Preamble refers to 'justice in society' and not to 'individual justice' between the two parties. The scope and purpose of the first concept is socio-economic justice keeping in view the socio-economic structure of the society. The equality provisions only amplify and do not emasculate this object. This first concept is a 'broader concept' and has been analysed by John Rawls as follows:

(1) a person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others.

100. Supra note 38 at 50.
101. Magna Carta (1215) is one of the four great charters of liberty from which the liberties of the British citizens derive their protection.
102. Supra note 20 at 24.
(2) Judicial and economic equalities are to be arranged so that they are both(a) reasonably accepted to everyone's advantage (b) attached to position and offices open to all.103

This means that the socio-economic conditions in the society should be such that they provide opportunity to exercise liberty and equality. This so called conflict between the concept of liberty and equality is settled by the concept of socio-economic justice. Arguments in favour of distribution do not depend entirely on a moral basis. For example, Professor Thomas Grey suggests three reasons why distribution is necessary.104 He firstly supports Rawls' principle of equal opportunity; children and young people are clearly not the self-reliant individuals of the laissez-faire doctrine a fact which the state must by providing a decent minimum of food, shelter, medical care education which their parents may not be always in a position to provide. Secondly, it is obvious that there is considerable inequality of bargaining power in modern society, either between employer and employee or between seller and consumer. Society should provide protection against this for all individuals in the form of decent working conditions and consumer protection. Finally, it is desirable that society should have some of the features of a true community if it is to be a suitable setting for human life. It should have important fraternal values which include provision for those who cannot provide for themselves.105

The freedom which represent the desire and aspirations of human life are the freedom to have food, shelter, clothing, education, medical care during illness and provision for old age. These socialist aims are compatible with those of justice. Redistribution is required to fulfil these aims and hence achieve the greatest amount of justice.106

Rawls is a good example of a philosopher assuming to define a theory of justice, which must surely be a universal concept, yet arriving at one

106. Id. at 7.
which at the most is confined to the essentially capitalist society he 
lives in. His theory conveniently suits his own political philosophy. 
For example, Rawls argues that the agents in the original position 
will rationally place liberty above any desire for more social goods; 
their conscience will prevent them from choosing a utilitarian principle. 
But there is no reason why their conscience will rationally prevent them 
from realising an equal worth for all rather than the greatest total 
liberty in the system. Justice demands that those who need assistance 
in society are given it, that all people should be given equal opportunity 
to be able to accomplish what they desire. 107

The concept of social justice is primarily based on the idea that 
all men are equal in society without distinction of religion, race, caste, 
sex, colour, creed or place of birth. But unfortunately, the inequality-
social and economic, are the warp and woof of the Indian life's fabric.

In a caste ridden and economically imballanced society, like the 
Indian society, wherein due to historical reasons, certain castes and 
classes, socially depressed for decades, economically condemned to live 
the life of penury and educationally coerced to learn the family trade or 
occupation, it is impossible to make all men equal. So in order to make 
the doctrine of equality workable under these conditions following two 
principles have been accepted under the constitutional scheme:

(i) to give equal opportunity to every citizen of 
India to develop his own personality in the 
way he seeks to do; and
(ii) to give adventitious aids to the under­ 
privileged to face boldly the competition of 
life.

These two principles appear to be conflicting, the harmonious 
blending of both gives equal opportunities to all citizens to work out 
their way of life. Doctrine insistence of an abstract equality of oppor­ 
tunity leads in practice to inequality which the doctrine seeks to abo­ 
lish. 108

107. Id. at 8-9.
108. Justice K.Subha Rao, Fundamental Rights Under the Constitution of 
India, 23(Rt.Hon'ble V.S.Sastri Lectures,University of Madras W.D.)
The first above mentioned principle is based on 'social equality in law' and this has been ensured by articles 15(1), 15(2), 16(1), 16(2), 17 and 18 of the Constitution.

The second principle is based on the doctrine of 'equality in fact'. This has been characterised by Prof. C.H. Alexandrowicz as 'Protective discrimination.'

Realising the systematic inequalities suffered for long by backward classes, scheduled castes and scheduled tribes, the Constitution demanded benign discrimination in their favour as to level up the classes and make them equal in the democratic race for fulfilment. Meaningful equality, the framers of the Constitution felt, involved processes of equalisation as a pre-condition. Women too were the object of considerate treatment for a similar reason. Articles 15(3) and (4) and 16(3) and (4) and 29(2) drive home this point.

Article 15(3) enables the state to make special provision in favour of children and women. Article 15(4) makes it possible for state to make any special provision for the advancement of any socially and educationally backward class of citizens or scheduled castes and scheduled tribes. Similarly articles 16(3) and (4) provides protective discrimination in matters of services.

It is, therefore, manifest that the doctrine of equality has been so evolved that while it demands equal treatment between equals, it enables the under-privileged sections of the community to have equal opportunity with others. The concept of social justice not only implements the doctrine of equality but indeed it gives practical content to the letter. The doctrine of equality and social justice are complementary to each other and in order to maintain their potency, they should be so harmonized that both of them should maintain their vitality.

109. Doctrine of equality in fact was expounded by the Permanent Court of International Justice in two cases, that is, German Settlers in Poland and Albania case. See L.C. Green, International Law Through Cases, 340(1959).


111. See H.M. Seervai, Constitutional Law of India, 1588-1600(1984). He has beautifully summarised how fundamental rights promote social welfare.


113. Supra note 20 at 27.
Article 16 further helps the removing the economic inequality. Unless social and economic equalities are achieved, the idea of social justice will become a mirage.

The concept of social equality carries with it the idea that as far as possible, there shall be equality of social status. There are many social differences in our society based on caste, creed, race, sex etc. The Hindu society which constitute the majority of the people of our country is divided into castes, sub-castes and untouchables. There is social and economic disparity between the said castes and sub-castes. Untouchability is the greatest blot of the Indian society. Article 17 prohibits untouchability and any disability arising out of it shall be punishable in accordance with the law.

The semantic principle of social justice is also reflected in article 18 which directs the state not to distinguish one from another by conferment of a title.

Thus we find that articles 14 to 18 are the package of equality and socio-economic justice.

Individual freedoms and liberty are also part of socio-economic justice. In fact, they are the two sides of the same coin. They must go hand in hand and they cannot be compartmentalised for, one cannot exist without the other. Socio-economic justice is a concept of freedom and not of slavery. Indeed, freedom is its basis and its driving force. The apparently conflicting slogans that one does not live by bread alone and, that 'one cannot preach on empty stomach' are really two sides of the same coin.

The aspect of liberty as an integral part of social justice has been succinctly brought out by Lord Hailsham, Lord Chancellor of Great Britain in the following words:

Constitutional liberties, freedom of a person, of an association, equality before law, liberty of expression, precede and are the conditions of economic advance and social security, both are the result of constitutional freedoms and cannot be obtained without them. This is why those who throw away the constitutional

114. See clauses (3) and (4) of article 16.
115. Supra note 20 at 118.
safeguards in the name of economic advance are ultimately betraying the common man and depriv­ing him of chance of social progress and the very things they promise in the party manifesto.116

Indian Constitution, with its avowed welfare objective provides in articles 19 to 22 all aspects of freedoms and liberty.117 Sometimes there seems to be an apparent conflict between socio-economic justice and liberty and freedoms. But in fact these provisions attempt to harmonise the conflicting claims. Article 19 enshrines six freedoms to the citizens of India.118 These are the right

(a) to freedom of speech and expression;
(b) to assemble peaceably and without arms;
(c) to form association or unions;
(d) to move freely throughout the territory of India;
(e) to reside and settle in any part of the territory of India;
(f) to practice any profession, or to carry out any occupation, trade or business.

It may be mentioned here that the freedoms guaranteed by article 19(1) help to promote social, economic and political justice; perhaps article 19(1)(a) which guarantees the freedom of thought and expression including the freedom of press, is the most important in this context, for that freedom is a powerful instrument for bringing injustice to light, thereby promoting the cause of justice.119

But these fundamental freedoms are not absolute. Article 19 makes it perfectly clear that these rights are not absolute and cannot be treated as ends in themselves. They are correlated to certain inevitable obligations imposed on all the citizens of India by reason of the fact that Indian democracy has dedicated itself to the ideals of achieving socio-economic justice. In order to bring out the nature of these obligations subject to which the fundamental freedoms provided by

116. Quoted in Id. at 119.
117. Supra note 108 at 27-35.
118. The fundamental freedom to acquire, hold and dispose of property, provided in article 19(1)(f), has been taken away by the Constitu­tion Forty-fourth(Amendment) Act,1978.
119. Supra note 23 at 1599.
article 19(1) sub-clauses (a) to (g), can be enjoyed by the citizens, sub-articles (2) to (6) of article 19 specifically provide the manner in which the said fundamental freedoms guaranteed by article 19(1) sub-clauses (a) to (g) of article 19 enables the state to make laws in public interests imposing reasonable restrictions on the said freedoms. For example, the freedoms given in article 19(1)(d) and (e) can be restricted in the interest of the general public or for the protection of the interests of any scheduled tribe. The right guaranteed under article 19(1)(g) can be restricted in the interest of the general public and it can also be restricted in respect of matters covered by article 19(6) sub-clauses (i) and (ii). Thus, it is clear that the scheme of article 19 considered as a whole furnishes a very satisfactory and rational basis for adjusting the claims of individual rights of freedoms and the claims of public good and harmonizes the claims of socio-economic justice and fundamental freedoms.

Article 20 to 22 also deal with right to freedom and individual liberty. Article 20 provides protection in respect of conviction for offences whereas the right given under article 21 is that no person shall be deprived of his life or liberty except according to the procedure established by law. Article 22 gives protection against arrest and detention in certain cases. All these articles put together, define the scope and limits of liberty. A starving man, a pavement dweller, a naked man required to be fed, sheltered and clothed; but as soon as his physical requirements are met, he craves for freedom and does not want to be a slave, but by the time he wakes up, he will find himself tied hand and foot. Article 21 clearly points out that the right to life and liberty provided by it can be limited only by the 'procedure established by law'. And the minimum semblance of procedure to be followed in depriving the life or liberty is provided in article 20 and 22. The meaning and scope of 'procedure established by law' has changed since Maneka Gandhi v. Union of India. The judiciary through its activist approach has

120. Supra note 23 at 82-84.
121. See article 19(6)(i) and (ii).
122. Supra note 20 at 118.
evolved a new constitutional jurisprudence ethos the aim of which is to achieve socio-economic justice. Public interest litigation movement, legal aid jurisprudence, prison jurisprudence and undertrials, bonded labour and rehabilitation, right to livelihood and minimum wages and right to live with human dignity are some of the new areas to which the judiciary has tried to explore under article 21. From this approach it is clear that now judiciary is showing greatest interest in evolving a new constitutional jurisprudence based on socio-economic justice.  

The concept of socio-economic justice includes abolition of slavery and semi-slavery. Article 23(1) of the Constitution unequivocally states that traffic in human beings and begar and other similar forms of forced labour are prohibited. Any contravention of the same shall be punishable in accordance with the law. Clause(2) of article 23 enables the state to impose 'compulsory service for public purpose' without discrimination. This article thus provides right against exploitation and it is characterised a charter of liberty of the down-trodden people of India. But the painful gap between preachment and performance is best stated by Tolstoy in the following words:

The abolition of slavery has gone on for a long time. Rome abolished slavery, America abolished it and we did but only the words were abolished, not the things.  

The expression 'traffic in human beings' is wide enough to include slavery and traffic in women for immoral purposes. The expression 'begar' is an indigenous word denoting involuntary servitude. The two well known examples of involuntary servitude are (a) serfdom (b) peonage.

The 'peonage' is defined as "a condition of enforced servitude by which the servitor is compelled to labour in liquidation of some debt or obligation either real or pretended against his will." In India, the system of peonage is found under different names in different parts of the country. For example, the system of *Sagri* or *hali* found in Rajasthan

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124. See infra chapters VI and X.
125. See article 23(2).
corresponds to peonage. Under the system of sagri, it is said, a creditor gives a loan to a debtor on the condition that until the loan with interest is repaid, the debtor or any other member of his family shall render labour or personal service to the creditor or any other person nominated by him. There have been constant efforts by the various states to eradicate this economic evil and various states have passed debt relief and debt regulation laws to wipe out the system of peonage. All these measures are in consonance with the spirit of article 23 and are designed to ensure the socio-economic justice to the people who have been groaning under the system of peonage.

As pointed out earlier, serfdom is another kind of begar and it arises out of adherence to law. Article 23 of the Constitution purports to abolish serfdom also. And any land reform legislation the aim of which is to abolish serfdom can be justified on the basis of article 23 alone.

Article 24 prohibits the employment of children (boys as well as girls) below the age of fourteen years to any work or factory of hazardous nature. The genesis of this article is that the children below the age of fourteen years should not work in hazardous employment. Thus, this article also provides economic justice to children.

The provisions guaranteeing religious freedoms and the protection of the cultural and educational rights of minorities are designed to promote social and political justice. By fettering legislative power, they prevent the laws being passed, an executive action being taken, which would provoke social and political discontent arising among other things, from a sense of injustice. For, if the fetter of fundamental right were not there, legislatures could pass blatantly discriminatory laws, as also laws restricting religious minorities, and laws designed to suppress the cultural and educational rights of the minorities.

From the perusal of the above articles in brief, we come to the conclusion that various provisions of Part III of the Constitution

130. See articles 25 to 28.
131. See articles 29 and 30.
132. Supra note 111 at 1598.
promote socio-economic justice in one way or the other.

(iii) Directive Principles

In the directive principles, however, one finds an even clearer statement of the social revolution. They aim at making the Indian masses free in the positive sense, free from the passivity engendered by centuries of coercion by society and by nature, free from the abject physical conditions that had prevented them from their best selves. The directive principles of state policy set forth the humanitarian socialist precepts that were and are the aims of the Indian social revolution. One of the aspirations of the people of India is to bring into existence a new social order wherein socio-economic justice is assured to all.

The words 'social and economic justice' had acquired a wider meaning when our Constitution was enacted. That meaning is conveniently described by the phrase 'welfare state'. The welfare state provides for a larger number of social services like public medical service, employment, widows and orphans pensions, old age pensions, public assistance and protection of children. This enlarged concept of social, economic and political justice enables us to make a natural transition to the directive principles which have been described as the manifesto of a welfare state.

Though the fundamental rights in Part III of the Constitution are enforceable rights, but if a person does not have 'a minimum of material well being' so as to be able to exercise these rights, how can he think of enforcing them? Thus, for a common man the directive principles come first, and the fundamental rights later, because he must have first, 'a minimum of material well being' so as to be able to exercise these rights.

It may be appreciated that since the fundamental rights do not impose on the state any positive duty to create socio-economic conditions

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134. Supra note 38 at 51.
135. Id. at 75.
136. Supra note 111 at 1599.
137. See article 32 of the Constitution under which all the fundamental rights can be enforced.
139. Ibid.
necessary for the realisation and enjoyment of these rights, most of these rights are capable of realisation and enjoyment only by persons who are free from want, disease, ignorance and illiteracy. Therefore, for those who suffer from want and hunger, the fundamental rights would be meaningless and remain only as paper tigers. The Constitution makers were aware that in the context of socio-economic conditions it was not enough to guarantee a set of abstract democratic ideals and that it was necessary to secure to the people of India social and economic freedoms in addition to the political freedoms. This concern inspired the Constitution makers to incorporate a set of directive principles in Part IV of the Constitution. These directives are designed to guide the destiny of the nation by obligating three wings of the state, i.e. legislature, judicature and executive to implement these principles.\textsuperscript{140}

It will be thus seen that the directive principles enjoy a very high place in the constitutional scheme and it is only in the frame work of socio-economic structure envisaged in directive principles that the fundamental rights are intended to operate for it is only then they can become meaningful and significant for the millions of our poor and deprived people.\textsuperscript{141} And that is why article 37 accords these directive principles not only a place of permanence in the constitutional scheme but also makes them 'fundamental in the governance of the country'.

Article 37 of the Constitution provides:

> The provisions contained in this Part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the state to apply these principles in making laws.\textsuperscript{142}

Article 37 seems to have created a position of uncertainty as to the status of the directive principles,\textit{vis-a-vis}, the fundamental rights.\textsuperscript{143} But in fact there is no such uncertainty in view the fundamental nature

\textsuperscript{140} B.Erabbi, "The Constitutional Scheme of harmony between rights and directive principles of state policy in India:Judicial preception", in Ram Avtar Sharma(Editor), Justice and Social Order in India,175 at 179(1984).
\textsuperscript{141} Supra note 86 at 1847.
\textsuperscript{142} Emphasis is of the author.
\textsuperscript{143} For relationship between Fundamental Rights and Directive Principles, see infra Chapter IV.
of directive principles and constitutional duty put on the state to implement them. Article 37 specifically makes the directive principles as 'fundamental in the governance of the country' and makes it mandatory for the state to apply these principles in 'making laws'. Since it is the duty of the courts also to apply the directive principles in interpreting the Constitution and laws, these principles serve as the code of interpretation for the judiciary.

Article 38 constitute the special essence of the Constitution and core of directive principles and provides:

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

2. The state shall in particular strive to minimise the inequalities in income and endeavour to eliminate inequalities in status, facilities and opportunities not amongst individuals but also amongst people residing in different areas or engaged in different vocations.

Thus the imperative need envisaged by this article is the creation of the social order which would ensure socio-economic justice to all. A glance at the wordings of the provisions of this article could convince anyone that it signifies a clear translation of the goal of socio-economic justice which the people set before them in the Preamble of the Constitution.

Article 39 visualises a new social order in which social values will change according to the changing socio-economic conditions of the society. It lays down certain specific policies to achieve the much coveted goal of socio-economic justice. It provides:

The State shall in particular, direct its policy towards securing-
(a) that the citizen men and women equally have the right to an adequate means of livelihood;
(b) that the ownership and control of material

144. Article 36 says that in Part IV dealing with directive principles, unless the context otherwise requires, 'the State' has the same meaning as in Part III.


146. Art.38(2) was inserted by Constitution(Forty-fourth Amendment) Act, 1978.
resources of the community are so distributed as best to subserve the common good;
(c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;
(d) that there is equal pay for equal work for both men and women;
(e) that the health and strength of the 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 and strength;
(f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

The phrase in 'particular' in the beginning of article 39 denotes the particularisation of the socio-economic policies. It only prescribes the minimum programmes and not the exhaustive list, which are necessary to create the social order as anticipated in article 38 of the Constitution. It is submitted that the failure to implement them would be tantamount to dereliction of the duty. Article 39(b) and (c) have a higher status than even Part III of the Constitution to the limited extent to which article 31C has been upheld by the Supreme Court in Minerva Mills.

Article 39-A was added by Constitution(Forty-second Amendment) Act, 1976. This article enjoins on the state to make provisions for providing free legal aid to the weaker sections of the society and thus invest the legal process with functional relevance and promotion of social justice. The central theme of this article is that no one should be denied of justice by reason of economic or other disabilities. It is heartening to note that now the judiciary has started treating free legal aid as the part of 'just, fair and reasonable procedure' under article 21. Hence legal aid is a large tool of liberty and justice.

Article 40 emphasises on the decentralised democracy through full blooded Panchayats. It provides for organisation of Panchayats. It

147. See article 37 supra, which makes it the duty of the State to implement the directive principles in making laws. See also supra note 143.
148. Supra note 86.
placed responsibility for home rule on the rural poor.

Right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement and in other cases of deserved want, have been given prime importance in article 41 of the Constitution.

Article 42 pleads for just and humane conditions of work and maternity relief. And article 43 further directs that the state should endeavour to secure by suitable legislation or otherwise, a decent standard of life, and living wage for workers.

Article 43-A is also forward looking as it provides for participation of workers in the management of industries. The fraternal economies implicit in article 43-A constrain us to recognize the new social order and the new status of labour while moulding the laws to achieve socio-economic justice.

The conscience of socio-economic justice is also reflected in article 44 of the Constitution which provides that the State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India. The provision remained a frozen ambition until now but recently the Summit Court injected life into it in the case of Mohd. Ahmed Khan v. Shah Bano Begum and pleaded for the enactment of uniform civil code.

150. Id. at 954. See also Ms. Jorden Diengdeh v. S.S. Chopra, A.I.R.1985 S.C.935 at 940-41.
151. See articles 39(e), 39(f) and 24 of the Constitution of India.

In addition to the various other provisions, dealing with the amelioration of children, article 45 provides that the state shall make endeavour to provide free and compulsory education for all children until they attain the age of fourteen years. This objective was to be realised within the period of ten years from the commencement of the Constitution, but it remains only a paper promise for millions of children who are struggling to survive in this poor India.

Article 46 provides for the promotion of educational and economic interest of Scheduled Castes, Scheduled Tribes and other weaker sections
so that a true egalitarian social order is established where even Harijans, tribals and other backward classes are able to get socio-economic justice and participate in the fruits of freedom and democracy on equal basis. 152

Article 47 casts a duty on the state to raise the level of nutrition and the standard of living to improve public health. A new article 48-A was added by the Constitution (Forty-second Amendment) Act, 1976, which asks the State, inter-alia, to protect and improve the environment.

From the panaromic survey of the various provisions of Part IV dealing with the directive principles it is clear that they impose a positive obligation on the state to bring about an egalitarian social order with social and economic justice to all so that the individual liberty becomes a cherished value not only for a few individuals, who are privileged persons, but for the entire people of the country. 153 These directive principles very briefly, but eloquently, lay down a policy of action for the different state governments and the central government, and in a sense, they embody solemnly and recognize the validity of the charter of demands which the weaker sections of citizens suffering from socio-economic injustice would present to the respective government for immediate relief. 154

(D) An Appraisal

By anatomization of above discussion, it is evident that the poverty of millions of Indians can be removed through the Constitution by the establishment of social order animated by social and economic justice. The preambular concept of socio-economic justice has been translated by the framers of the Constitution into specific provisions of Part III and Part IV dealing with fundamental rights and directive principles. They form an integrated scheme which is an elastic enough to respond to the changing needs of the society and to provide socio-economic justice to all. The values given in Part III and IV, regardless of the Parts in which they appear, have equal emanence and compulsive force and they are not lifeless platitudes.

152. For other relevant provisions relating to the Welfare of Scheduled Castes and Scheduled Tribes, see articles 15(4), 16(4), 330-332, 334, 335, 338, 339 and 340.
153. Supra note 86 at 1847.
154. Supra note 23 at 86.
These constitutional provisions will merely shine as rhetorical legalities drained of life and effectiveness, if the state fails to translate them into realities. Today, for millions of Indians, social justice is still blood and tears plus hortative promises periodically 'manifestoed', followed by frustrations and turbulations and obstreperous repetitions by opposing politicians. It is in this context that the role of directive principles in the implementation of socio-economic justice becomes of paramount importance. Because they enjoin on the state a "duty" to apply these principles in "making laws" and that they are "fundamental in the governance of the country."

But the way to socio-economic justice is not all that easy. It is long, weary, hard road that we have to travel. There are pitfalls and hazards on the way and dangerous curves may have to be faced but the firm belief in the democratic way of life and the dynamic character of rule of law will guide and inspire us all to achieve our objective of socio-economic justice.

The working of the Constitution does not wholly depend upon the nature of the Constitution and the Constitution by itself may not be powerful enough to achieve the objective of socio-economic justice unless it receives the whole hearted co-operation of all the citizens of the country and the three wings of the state, i.e., executive, legislature and judicature. No wing of the State is meant to function except in conformity with the objective of socio-economic justice. This constitutional goal can be achieved only if pragmatic and sociological approach is adopted by all the wings of the state. The new emerging trends in directive principles and socio-economic justice shall be discussed in the following pages.

155. Supra note 2 at 22.
156. Supra note 23 at 149.