CHAPTER-IV
RELATIONSHIP BETWEEN DIRECTIVE PRINCIPLES AND FUNDAMENTAL RIGHTS: THE JUDICIAL AND LEGISLATIVE APPROACH TOWARDS CONSTITUTIONALLY PROCLAIMED GOALS OF SOCIO-ECONOMIC JUSTICE

(A) Prelude

The constitutional history of several countries records the struggle of conflicting forces at work, resulting ultimately in the transition of the state from 'police state' to 'welfare state' or social service state. In the twentieth century, it is firmly established that a state exists for the welfare of the community, and the legal institutions have been deployed accordingly. Law being the foundation of the society, must be changing to suit the needs of the time.\(^1\)

The Indian Constitution in its preamble envisages the establishment of a sovereign, socialist, secular and democratic republic, promoting among its citizens, justice - social, economic and political. This promise is established in the fundamental rights and directive principles of state policy enshrined in Part III and Part IV of the Constitution.\(^2\) In other words, the preamble, the fundamental rights and the directive principles are all part of the same constitutional scheme and aim at the establishment of a free and an egalitarian social order based on the rule of law.\(^3\) They aim at the betterment of the individual as an integrated component of the society. Part III of the Constitution which embodies and sanctifies certain fundamental individual justiciable rights are primarily meant to protect the citizens against the state action by imposing negative obligations. The State has been prohibited from abridging or taking away of these rights.\(^4\) Justice Mathew eloquently expressed the scope of States' obligations under Part III in the following words:

Fundamental rights as embodied in Part III of the Constitution are by and large, essentially negative in character. They mark off a world

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4. Article 13(2) of the Constitution of India.
in which the government has no jurisdiction. In this realm, it was assumed that citizen has no claim upon government except that to be let alone.5

But these fundamental rights would be meaningless and remain only as paper tigers if the people who are to enjoy these rights are not free socially and economically. Therefore, for those who suffer from hunger, disease, ignorance, illiteracy and do not have shelter to cover their head, these are meaningless. The makers of the Constitution were aware that in the context of socio-economic conditions which existed at the time when the Constitution was framed were not enough to guarantee the people mere civil and political rights. Hence they incorporated certain socio-economic rights in Part IV dealing with directive principles which embody the promise given to the present and future generations of the country as to the future social and economic set up and development of the country.

The avowed aim of the preamble of the Constitution recited in sonorous words is to establish a 'socialist society'. This 'socialist society' cannot be established unless we implement the socio-economic policies adumbrated in Part IV of the Constitution. Unfortunately, from the very commencement of the Constitution of India, the judiciary, which is the guardian of the Constitution, and the legislature, which is to make its policies in accordance with the spirit of the Constitution, entered into false conflict of superiority of one part dealing with fundamental rights over the other Part dealing with directive principles. The judiciary did show wisdom when it applied the directive principles as reasonable restrictions to fundamental rights and in the public interest.5(a)

In this Chapter, an attempt is made to see the nature of the directive principles and to further see as to how the legislature and the judicature have applied the fundamental rights and directive principles in achieving the primary goal of the Constitution.

(B) Nature of Directive Principles: Their Fundamentalness and Bindingness

(i) General Nature of Directive Principles

The sole aim of the directive principles specified in Part IV of

the Constitution is to achieve the socio-economic justice and real
equality in the country by peaceful revolution. The 'democratic
socialism', spelt out in the preamble and the directive principles of
our Constitution is meant to provide the context in which the fulfilment
of the fundamental right has to be achieved. On the other hand, those
rights which every individual must be guaranteed for the full development
of his personality, which are innate in human nature, in short which are
not given to the individual by the welfare activity of State, were put in
Part III as enforceable rights. Directive principles in Part IV though not
enforceable, indicate the way in which the State should frame its laws to
ensure socio-economic justice. They aim at the betterment of the individ­
ual as an integrated component of the society. They exhort the state
to take positive action by protecting the minimum or individual's right
and by reducing the number of those whose share of utilities of life fall
below the minimum level. In short they aim at the betterment of the weaker
sections of the society ensuring human rights to the lowliest.

Thus, we find that both fundamental rights and directive
principles possess a stature of constitutional significance. The basic
distinction between those two fundamental mandates of the Constitution is
that the former are enforceable in the court of law, while the latter
are not enforceable in the court of law. The second difference between
these two Parts III and IV is that while Article 37 asserts positively
the fundamental nature of the directive principles in the governance of
the country but no article in Part III lays emphasis on the fundamental
nature of the provisions contained therein.

At this place, it is worth noting that article 13 provides
that:

(1) All laws in force in the territory of India
immediately before the commencement of this

7. V.S. Deshpande, "Opening Address", in Paras Diwan and Virendra Kumar
8. Article 32 of the Constitution provides remedies for the enforcement
of rights conferred by Part III by issuing directions, orders or writs
in the nature of habeas corpus, mandamus, prohibition, quo warranto
and certiorari, which ever may be appropriate. See also article 226 of
the Constitution.
9. Article 37 says that the provisions of Part IV are not enforceable
through the Court of Law.
10. Ibid.
Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void.

(2) The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this Clause shall, to the extent of the contravention, be void....

This article, thus, gives teeth to fundamental rights and directs the state not to make any law which takes away or abridges fundamental rights. On the other hand article 37 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.

It is due to these two provisions that an impression has been generated in the minds of some jurists that fundamental rights are superior in status as compared to directive principles. Even the judiciary and the legislature could not prevent themselves from entering into this conflict and thus negated the concept of socio-economic justice anticipated in Part IV of the Constitution. The fact that one is enforceable and the other is not, does not affect adversely their relative importance. It may be pointed out here that directive principles are not excluded from the cognizance of the courts of law. They are merely made non-enforceable by the court of law. T. Devidas suggests that clear opposition to the directives can be prevented by the court action, for, what is contemplated by article 37 is only non enforcement. It is conceivable to think of State action in furtherance of the directives, neutral, vis-a-vis, the directives and opposed to the directives. Preventing the State action, which is opposed to the directives would not amount to the enforcement of the directives. It would indeed promote the chances of realising the constitutionally recognised socio-economic values.

11. Art.13(1) and (2) of the Constitution of India.
12. Article 13(4), which was added by Twenty-fourth(Amendment)Act, 1972, provides that nothing in this article shall apply to any amendment to this Constitution made under article 368.
14. Supra note 9.
It is submitted that very often undue emphasis has been laid on unenforceability of the directive principles without taking into cognizance the fundamental nature of the directive principles stipulated in, and the constitutional duty cast on the state to implement them by the latter part of the article, which inevitably led to the conclusion that directive principles are merely pious wishes and aspirations of little legal force. If this is the correct view, then the preambulary provisions which postulate socio-economic justice as an end, and the provisions of Part IV which stipulate specific policies to realise the end, would become redundant. 16

In order to know the real nature of article 37, it is necessary to compare it with the corresponding provision of the Irish Constitution which provided an inspiration to the founding fathers to incorporate directive principles into our Constitution. Article 45 of the Irish Constitution provides:

The principles of social policy set forth in this Article are intended for the general guidance of the Oireachtais(Irish Parliament). The application of these principles in the making of laws shall be the care of the Oireachtais exclusively, and shall not be cognizable by any court under any of the provisions of this Constitution.

The meaning of the words here is not in any way ambiguous. The provision is intended to inhibit judicial enquiry in the implementation of directive principles of social policy. In Murtagh Properties v. Cleary, 17 Kenny J., however, had no difficulty in taking cognizance of one of the directive principles to help implement a personal right.

Murtagh Properties case arose out of a situation in which a trade union objected to the employment of women as waitresses in a public house contending that such employment was a breach of an agreement between an employees' association and the trade Union. The defendant Michael Cleary who was the secretary of the trade union authorised members of the union to 'picket the plaintiff's public house in furtherance of the dispute. The

plaintiff after having sued the defendant applied to the High Court for an interlocutory injunction to restrain the defendant from authorizing further picketing of the public house pending the hearing of the suit. Kenny J., granting the injunction, held, that although article 45 of the Constitution precluded the courts from questioning the application of social policy, it was permissible for them to examine the provisions of that article to discover whether they recognized any relevant personal right. One of the personal rights of the citizens was a right to earn livelihood. Kenny J., observed in the course of his opinion that the right relied on in the case (that is, the right to earn livelihood without discrimination of sex) was admittedly derived from article 45 which was headed by directive principles of state policy. The defendants argued that the court could not have regard to this article because it is expressed to be for the guidance of the ‘Oireachtas’ only. Quoting the first two sentences of Article 45, the learned judge stated:

This passage does not mean that the courts may not have regard to terms of the Article but that they have no jurisdiction to consider the application of the principles in its making of laws. This does not involve the conclusion that the court may not take into consideration when deciding whether a claimed constitutional right exists.19

However, it is worth noting that article 37 of the Indian Constitution makes departure from the language of article 45 of the Irish Constitution. Following are the main departures:

First, article 45 says that "the application of these principles of social policy shall not be cognizable by any court" whereas article 37 says that directive principles shall not be enforceable by any court.

It is submitted that this change in article 37 does not prevent the Indian Courts from examining the provisions of law adopted in violation of directive principles and declaring them unconstitutional as being in contravention of the constitutional provision.20

18. Article 40 Section 3(1) of the Irish Constitution reads: "The State guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate the personal rights of the citizen."
19. See supra note 17.
The second difference is that article 45 provides that the "Social principles are for the general guidance of the Oireachtas", whereas article 37 makes them "fundamental in the governance of the country".

It is submitted that by making them "fundamental in the governance of the country", the Constitution makers have given them prime importance.

Thirdly, under article 45 "the application of principles of social policy in the making of laws shall be care of the Oireachtas whereas article 37 says that it shall be the duty of the State to apply the directive principles in making laws. The judiciary being one of the important organs of the State is under a constitutional obligation to see and ensure that the state is enabled and not impeded, through the court's function under the Constitution, to perform its constitutional duty in the best possible manner."

According to G.N. Joshi:

It seems that the very title of the principles - directives principles of State policy indicate that the legislatures are directed to give effect to principles by legislation or to implement them by legislation. It may have also been intended that the courts in deciding cases relating to the subject matter of these principles should, by virtue of the fundamental character of the Constitution, take cognizance of the general tendency, even when no legislative effect has been given to them.23

It is submitted that it was on the basis of these affirmations of their intended scope that they were incorporated in the Constitution.24

However, there are some jurists who still doubt the true nature of these directive principles and consider them either inferior to fundamental rights or insignificant. Professor Upendra Baxi contends that

"the directives are subordinate to the fundamental rights". According to him there are certain directives which are attainable over a specified period of time and once they are attained, they will cease to be "fundamental in the governance of the country". He maintains that the courts cannot declare as void any law which contravenes directive principles and secondly, the courts are not empowered to compel the state action in pursuance of the directive principles whereas they can do so when fundamental rights are involved.

It is submitted that the approach of Professor Baxi in relegating the directive principles inferior to the fundamental rights is wrong in view of the interpretation of the language of article 37. Article 37 makes all the directive principles fundamental in the governance of the country and do not differentiate them as regard to their importance. Thus he is wrong when he says that it is "non-sensical" to assert equality between fundamental rights and directive principles.

(ii) Seervai's Views Regarding Directive Principles And Their Constitutional Position

To begin with, H.M. Seervai, the notable jurist and constitutional lawyer was of the opinion that directive principles cannot be equated with fundamental rights. They enjoy inferior status. Now he has gone a step further to take the extreme view that:

If directive principles had not been enacted nothing would have happened. For, although non-justiciable principles are a part of our constitution, they are not "law" at all, and, a fortiori, not part of the Supreme law of India.

According to him the test of a provision of the Constitution being

26. For example, articles 40, 44, 45 and 47 etc.
27. Supra note 25.
28. Ibid. (emphasis added)
part of the supreme law is that any law violating such provision is, protanto void. A law violating directive principles is not void. Thus he maintains that

Primacy cannot be given to directive over fundamental rights, and in the case of a direct and insoluble conflict between fundamental rights and directive principles, fundamental rights must prevail, since they possess the character of law, and fundamental law, which directive principles do not possess.32

It is clear from these observations of Seervai, that he has taken the extreme position. It is, therefore, reasonable to consider the points raised by him in support of his position on directive principles. What is thus required is a teleo-contextual approach to constitutional interpretation, i.e., a teleological view influenced by the context, including the historical context, and purpose of the Constitution in relation to the policy and principles underlying the legislation under review.33 Seervai has raised five questions while considering the nature and effect of fundamental rights vis-a-vis directive principles. The questions are:

(a) Do the words "fundamental" and "duty" have the same meaning when we are considering fundamental rights and directive principles? If not, what is the practical effect of the difference in meaning?

(b) Is the position different, if in place of the word "duty" we speak of a constitutional "mandate" which is "binding"?

(c) What is meant when it is said that "the fundamental rights and directive principles are complementary and they supplement each other"?

(d) Are fundamental rights robbed of their content or meaning if the State fails to implement, or fails to make a genuine effort to implement, directive principles? What are practical consequences of such failure?

31. Ibid. in Foot-note 1.
32. Supra note 30 at vi.
33. See A.S. Miller, The Supreme Court: Myth and Reality, Ch. 3 (1978).
(e) Do fundamental rights prevent the State from making laws implementing directive principles?35

No doubt all these questions are connected, but a clear understanding of the nature and effect of fundamental rights requires that we consider them separately in the first instance, and then sum up the total result of our discussion later.36

The first premise of Seervai's argument is that the word "fundamental" in "fundamental rights" in Part III and in Part IV in article 37 declaring directive principles, "fundamental in the governance of the country", is used in two different senses.37 According to him, the word "fundamental", as qualifying rights, means that the rights are basic to, or essential for, liberal democracy set up by Constitution and their protection cannot be left to the sense of duty, or good faith, of those who run the State. Any law offending them is pro tanto void and the injured party can seek the redress from the court. On the other hand he maintains that the word "fundamental" in article 37 is used in the "normative sense" of setting before the State the goals which it should try to achieve. He further says that the word "duty" used in Part III and Part IV is also not used in the same sense because the duty imposed on the State by fundamental rights is a legally enforceable duty whereas the duty imposed by the Directive Principles is only a "moral duty" and hence not legally enforceable.38

It is submitted that the conclusion reached by Seervai are not well founded. Even the word "strive" used in article 38 was interpreted by Ambedkar to mean that it had a binding character.39 It will not be an exaggeration to say that some of the directive principles are even more fundamental than the fundamental rights.40 While stressing that a social order where social, economic and political justice permeates all the institutions of national life must be established,41 the constitution is

35. Supra note 30 at 1601.
36. Ibid.
37. Ibid.
38. Id. at 1602.
39. VII C.A.D., 495
40. See supra note 3 at 160. See also article 39(b) and (c).
41. Article 38 of the Constitution of India.
even more emphatic in categorically expressing the point that "principles are nevertheless fundamental in the governance of the country and that it shall be the duty of the State to apply these principles in making laws." This shows that the directive principles are superior to fundamental right and they enjoy a very high place in the constitutional scheme and it is only in the socio-economic framework envisaged in the directive principles that the fundamental rights are intended to operate, for, it is only than they can become meaningful and significant for millions of our deprived Indians who do not have bare necessities of life and are living below poverty line. We should not forget the fact that these principles contained and condensed aspirations of our people and are the result of the struggle which we had to carry on to get our independence.

It is submitted that it is significant to note here that each of the articles from article 38 to 51 except article 49 which uses the expression "obligation" laying down particular directive principles the Constitution emphasises the relevant duty of the State by providing that the State shall perform such and such duty, while the provision relating to fundamental rights do not expressly refer to any duty of the state to respect such rights by using "shall" or similar expression. Jagat Narain, thus, summarises the true position in the following words:

In such a situation to say that the word "fundamental" in the context of fundamental rights has been used in a legal sense while the same word and the words "duty" in article 37 and "shall" in each of the relevant articles have all been used in non-legal sense, is to pre-judge the issue and also to fly in the face of facts, to refuse to read what is most clearly, unequivocally and emphatically laid down by the Constitution and to put a gloss on the Constitution according to one's desires or in the light of a particular legal tradition or culture.

He further observes:

One naturally wonders what other terms the founding fathers should have employed to make the duty of the

42. Id. article 37.
43. Supra note 22 at 202-203.
44. See supra Chapter II.
45. Supra note 22 at 219-20.
46. Id. at 220
state under the directive principles as legally binding on the state in order to satisfy those who seek to make arbitrary distinctions, based on the supposed legal element, or the lack of it, between the parts on fundamental rights and directive principles. The answer clearly is that no stronger terms could have been employed; the directive principles are fundamental in the legal sense.47

It is submitted that after doing indepth study of the above observation of Jagat Narain, the only conclusion to which we arrive at is that Seervai is wrong when he says that the words "fundamental" and "duty" used in Part III and Part IV have different meanings. In fact, directive principles are equally fundamental with fundamental rights. 48

Seervai also maintains that if the duty imposed by directive principles is ignored, violated or neglected then it will involve no consequences.49 He admits that non-fulfilment of the duty may expose the defaulting government to public and political criticism but to tell the people, for whose benefit the directive principles were formulated, that if the government do not discharge the duty of implementing the directive principles, they violate the Constitution, must appear to the people as a cruel mockery.50

It is submitted that Seervai is again wrong when he says that no consequences would follow if the law is passed by the legislature which violates the 'duty' imposed in the directive principles. In this context what the Indian Courts are prevented from doing is the enforcement of the provisions of Part IV of the Constitution; they are not precluded from declaring that the law passed in contravention of any of these provisions is unconstitutional as it is contrary to the constitutional provisions. If such a declaration results in the non-enforcement of the law, the judicial role in this sphere is in consonance with the duty and undertaking

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47. Ibid.
49. Supra note 30 at 1602, 1611, 1612 and 1614. This is because if the objectives behind the fundamental rights are violated by the State, a clear remedy is available to nullify such violation and thereby secure the above objective. If the objectives behind the directive principles are violated and the people are deprived of the benefit intended for them, the people are without a remedy in any practical sense. Id. at 1612.
50. Supra note 30 at 1602.
of the judiciary to uphold the Constitution which include all the provisions of the Constitution, not excluding the provisions of the Part IV. The language of article 37 that "these principles shall not be enforceable by any court" does not prevent the Indian Courts from examining the provisions of law adopted in violation of the directive principles and declaring them unconstitutional as being in contravention of constitutional provisions.\(^{51}\)

Jagat Narain also supports the above view and has observed:

> The directive principles are...legally binding on the State in India in view of article 37 which declares that they are "fundamental in the governance of the country" and that it "shall be the duty of the State to apply...(them) in making laws." This provision is at least as much a part of the Indian Constitution as other parts since no Constitution making body can be deemed to incorporate superfluous or redundant provisions in the Constitution.\(^{52}\)

Justice P.N. Bhagwati (as he then was) arrived at the same conclusion in his dissenting judgement in Minerva Mills Ltd. v. Union of India,\(^{53}\) by holding that the non-compliance with the directive principles by the State would be unconstitutional.\(^{54}\)

According to S. Sundar Rami Reddy, the consequences for not following the directives will be two-fold. First, the constitutional crisis, and secondly, the dethronement of the party in power. Whether these consequences are legal or not, Reddy says that the violation of fundamental right entails no legal consequences as the capacity to enjoy them is violated. But the dethronement of the party in power, which fails to realise the directive principles entails legal consequences. Hence the directive attach,

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51. Supra note 20. See also L.K. Koolwal v. State, A.I.R.1988 Raj.2 at 4. Justice Mehta speaking for the court observed that Article 51A can ordinarily be called as the duty of the citizen, but in fact it is the right of the citizens as it creates right in favour of citizens to move the Court to see that the State performs its duties faithfully and in accordance with the law of the land.

52. Supra note 22 at 219.


a definite legal consequences to a definite detailed state of facts" and are rule of law.\textsuperscript{54(a)}

Even the continuous legislative silence on the part of the legislature to implement the directive principles has not gone unnoticed by the judiciary. Recently the Supreme Court in the case of Mohd Ahmed Khan v. Shah Bano Begum,\textsuperscript{55} regretted over the non-implementation of the directive principles in article 44 dealing with the uniform civil code. The Supreme Court observed:

It is also a matter of regret that Article 44 of our Constitution has remained a dead letter...It is the state which is charged with the duty of securing a uniform civil code for the citizens of the country. A counsel in the case whispered somewhat audibly, that legislative competence is one thing, the political courage to use that competence is quite another. We understand the difficulties in bringing persons of different faiths and persuasions on a common platform. But, a beginning has to be made if the Constitution is to have any meaning. Inevitably, the role of the reformer has to be assumed by the Courts because it is beyond the endurance of sensitive minds to allow injustice to be suffered when it is so palpable...\textsuperscript{56}

After the decision of this case a countrywide controversy was raised\textsuperscript{57} which ultimately led to the passing of Muslim Women(Protection of Rights on Divorce)Act, 1986.\textsuperscript{58} This Act has been challenged before the Supreme Court of India on the grounds, \textit{inter alia}, violating Article 44 of the Constitution of India. The final disposal of the case is still pending.\textsuperscript{59} There are many other instances where the judiciary has taken cognizance of the directive principles. These instances shall be studied when we discuss the legislative and judicial conundrum later in this chapter.

With regard to the second question of Seervai,\textsuperscript{60} that the position is the same if for the word "duty" we substitute the expression the "mandate" of the Constitution, and say, by reference to jurisprudential thinking that the 'mandate' is 'binding' on the state. It is submitted

\textsuperscript{54(a)} See S.Sundra Rami Reddy, supra note 48 at 405-06.
\textsuperscript{56} Id.at 572-73(Emphasis is of the author)
\textsuperscript{57} This case in detail will be discussed later in Chapter VII under the heading Uniform Civil Code.
\textsuperscript{58} This was passed by the Lok Sabha on 6th May, 1986.
\textsuperscript{60} Supra note 35.
that he again committed an error and this is clear from the two illustrations suggested by him.\footnote{61} According to him, the negative illustration is that article 45 relating to free and compulsory education to the children below the age of 14 years, directed that the State shall endeavour to provide such education within ten years after the commencement of the Constitution. But it remains to be fulfilled even after thirty-six years of the commencement of the Constitution. And he narrates the positive illustration by saying that if article 14 regarding equality could have been in Part IV dealing with directive principles, the state could have passed grossly arbitrary and discriminatory legislations, with executive acts to match, thus producing an unjust society.\footnote{62}

It is submitted that both the above mentioned illustrations do not help Seervai’s argument. There are many provisions in Part III dealing with fundamental rights, e.g., article 17 dealing with untouchability, article 23 and 24, dealing with rights against exploitation etc. remain yet to be fulfilled in their true spirits. Article 21 is yet to become meaningful to the millions of Indians. In spite of the fact that article 14 dealing with equality and article 21 dealing with life and personal liberty are mentioned in Part III but they were violated to the maximum extent during the emergency and the Congress government ultimately lost in the people’s court.

It is submitted that even if article 14 could have been there in Part IV and if the laws were passed by the legislature in contravention to right to equality, the courts could have declared that law as unconstitutional. If a law is passed which is discriminatory in nature and violates articles 24 and 25 it still violates right to equality under article 14. The Supreme Court has very rightly clarified the position in Central Inland Water Transport Corpn. v. Brojo Nath,\footnote{62(a)} that if a law is passed by the legislature which violates the directive principles in Part IV of the Constitution, the Court can declare that law as unconstitutional.

\footnote{61} Supra note 30 at 1602-03.
\footnote{62} Ibid.
\footnote{62(a)} A.I.R.1986 S.C.1571 at 1587.
The reason for the division of directive principles and fundamental rights into two parts making one enforceable and other as non-enforceable has been best explained by the Planning Commission in the following words:

The non-justiciability clause only provides that the infant State shall not be immediately called upon to account for not fulfilling the new obligations laid down upon it. A State just awakened to freedom with its many pre-occupations might be crushed under the burden unless it was free to decide the order, the time, the place and the mode of fulfilling them.\(^63\)

Justice P.N. Bhagwati, (as he then was) in the case of Minerva Mills Ltd. v. Union of India,\(^64\) referred to the following observations of K.S. Hegde:\(^65\)

Since the directive principles are fundamental and a duty is imposed on the State to implement them in making laws, (those) who are entrusted with certain duties and functions will fulfil them in good faith and according to the expectations of the community.\(^65\)

Seervai has also criticised these observations of Hegde.\(^66\) In his views, the people who are entrusted with the task of fulfilling the obligations of directive principles are so corrupt that to preach a gospel of the directive principles to such politicians is, as a Gujrati proverb says, "like reading the Bhagwat Gita to a buffalo."\(^67\) To support his argument Seervai mentions the Antuley's episode.

It is not understandable that our political representatives can be brushed with the entire Constitution minus the Directive Principles. It is beyond reasonable comprehension that they cannot be the trustees of Directive Principles but they can be trustees of rest of the Constitution.

Now let us examine the third question of Seervai,\(^68\) namely, "What is meant when it is said that the Fundamental Rights and the

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64. Supra note 53.
65. Supra note 63 at 50.
66. Supra note 30 at 1604-08.
67. Id. at 1606.
68. See supra note 35.
Directive Principles are complementary and supplement each other?" In the opinion of Seervai directive principles cannot be equated with fundamental rights. They are inferior to fundamental rights, rather he goes to the extent of saying that since the directive principles are not binding, they are not 'law' at all and a fortiori, not the part of the Supreme Law of India. He feels that they can be acted upon or not as the State pleases. In his opinion, law in the modern state must have sanction behind it. Since the directive principles lack this sanction, they are not law. To support his arguments, he quotes the following observations of Sir Frederick Pollock:

In one sense we may well enough say that there is no law without a sanction. For a rule of law must at least be a rule conceived as binding; and a rule is not binding when any one to whom it applies is free to observe it or not as he thinks fit. To conceive of any part of human conduct as subject to law is to conceive that the actor's freedom has bounds which he oversteps at his peril. ... On the whole the safest definition of law in the lawyers sense appears to be a rule of conduct binding on members of commonwealth as such.

It is submitted that after going through the above observations of Sir Frederick Pollock, the argument of Seervai declaring directive principles as not 'law', seems to be right but in fact it is not so. Here, he has once again taken wrong view of the relationship between fundamental rights and directive principles and regarding the "binding nature" or "sanction" as necessary element for any law. It is not necessary that every rule of law should be backed by sanction. It is "authoritativeness" and not "coercion" which is the real test of law.

69. Supra note 30 at 1612-13. Here Seervai based his conclusion on the argument that any law or executive action which violates fundamental rights is pro tanto void; vide article 13(1) and (2). But in his opinion the same is not true in case of directive principles. We have already examined this question while dealing with the first question of Seervai and finally reached the conclusion that Seervai is wrong in this regard. See supra note 50-59.


71. It is worth noting here that Upendra Baxi speaks of 'institutionalised coercion' as a necessary condition of law. See Upendra Baxi, supra note 25.
It is in this sense that Jagat Narain observes:

A law, especially a rule or principle of constitutional law, as Dicey, Pollock, Goodhart and Fuller have argued, does not cease to be legal simply because it cannot be enforced judicially. The important test is whether a rule of principle is regarded as binding. There is no doubt that since the inception of the Constitution, the State in India has consistently and at all times regarded directive principles as binding on it and fundamental in terms of article 37, though it has sought to implement some directive principles more enthusiastically than others due to financial or administrative services.\footnote{72}

It is submitted that it is not right to dismiss, disparingly, directive principles merely as aspirations in Bentham's sense of pious wishes or delusions or consider them as mere moral precepts.\footnote{73} For, they are real on any definition of reality and much more real than fundamental rights because the whole national independence movement had fought hard, albeit non-violently for them with great passion and because, operationally, they alone could give a real meaning and real content or substance to fundamental rights so that they can grow with vitality. Without them, most of the rights appear valueless. Jagat Narain is very right when he observes:

Without them most rights appear valueless. One is, therefore, led to doubt the value of the right to free expression...to a person who is so poor that he does not know when and where he will have next meal and has no property worth speaking about, i.e., who does not have adequate means of livelihood contemplated by article 39(a). Could the founding fathers ever have intended to incorporate in the Constitution a single right which would be empty (devoid of substance) for millions of citizens and thus to believe in the philosophical myth -"a starving man is nevertheless free to exercise his rights if he so chooses"?\footnote{74}

It is submitted that the obvious answer to the above raised question is that the directive principles proceed on the basis of Human Rights and representative democracies and fundamental rights will have no meaning without social and economic justice to common man. These directive

\footnote{72}{\textit{Supra} note 22 at 219.}
\footnote{73}{\textit{Supra} note 30 at 1613.}
\footnote{74}{\textit{Supra} note 22 at 220.}
principles were not incorporated into the Constitution merely as moral precepts and this was made clear by Dr. Ambedkar when he said:

It is the intention of the Assembly that in future both the legislature and the executive should not merely pay lip service to these principles but they should be made the basis of the legislation and executive actions that may be taken hereafter in the matter of governance of the country.75

The trend of the opinion which holds that directive principles are not binding since they are not enforceable in the court of law, has its origin and foundation in the theories of jurists like John Austin who conceived 'law' as a 'command of sovereign' emanating from a determinate source which is backed by sanction, and Kelsen who defines law as a primary norm which stipulates sanctions.76 But these theories have been seriously challenged and are not universally accepted. There are number of obligations which though not enforceable and to which no sanction is attached, still remain binding obligations.77 There are some jurists who hold the view that sanction is not an essential or even important element of law and its function. Roscoe Pound has laid down certain jural postulates which form the foundation of the functioning of the civilized societies. According to these who are entrusted with duties and functions will fulfill them in good faith and according to the expectation of the society.78 According to Goodhart, "If a principle is recognised as binding on the legislature then it can correctly be described as a legal rule even if there is no court that can enforce them."79 Friedman is also of the opinion that a rule of law is a norm of conduct set for a given community and accepted by it as binding which the authority making them can enforce by a variety of sanctions.80

75. VII C.A.D. at 41.
77. K.S.Hegde, supra note 34 at 50.
78. Roscoe Pound, Social Control Through Law, 112-16(1942). However, Professor Upendra Baxi has taken the support of the distinction between rules and policies as drawn by Roscoe Pound in Jurisprudence, Vol.II at 124(1959), to deny the term 'law' to the directive principles in supra note 25 at 259. But Professor Baxi's thesis has been demolished by S.Sundra Rami Reddy by observing that the directive principles are definite and definite legal consequences are followed if they are not obeyed. See S.Sundra Rami Reddy, supra note 48 at 405-406.
80. W.Friedman, Legal Theory, 16(1967).
The Hohfeldian classification which thinks of rights, liberties, powers and privileges as being invariably linked with the corresponding concept of duty, no right, liability and immunity no longer holds good and do not remain sacrosanct, rather it has failed to explain the several kinds of jural relationships where it is not possible to say that duty in one creates corresponding right in another. Chhatrapati Singh has rightly pointed out that:

Hohfeld's scheme of jural relations has succeeded in attracting a great deal of attention to underlying structural properties of legal notions. This is its virtue. But its vice, although unintended, is more significant. Hence despite the fact that Hohfeld called his scheme of jural relations "fundamental", it does not seem to be basic enough to allow one to draw significant conclusions about the appropriateness of jural relations expressed in actual legislation or judgements.

While pointing out the reason for its inadequacy he has pointed out that Hohfeld's scheme is deceptive because it disguises the fact that basic legal relationship are often triadic and some times complex. In order to illustrate this point he has given two illustrations. He points out that it is consistent to have a right to vote in a state in which voting is legal duty. Or, that the policemen have both a right and a duty to arrest criminals. Thus Hohfeld's analysis was a semantical one based on the meanings of the words, rather than a logical one, that is based on their propositional.

If we seriously apply the test of enforcement in a court of law, we are left with too narrow a view of the constitutional law. In some systems, the courts of justice are not the law enforcement agency. Public International law, is an obvious instance. Once we accept that the essence of legal right is not its enforceability, then there cannot lie any difficulty in comprehending the true import of directive principles.

81(b). Id. at 118. See also Sarla Kalia, "In Defence of Hohfeld's Analysis of Fundamental Legal Conceptions", 27 J.I.L.I., 110-16(1985).
83. See Sudesh K. Sharma, supra note 24 at 191-92.
Justice Bhagwati (as he then was) made the following observations in the Minerva Mills case.

There may be a rule which imposed an obligation on an individual or authority and yet it may not be enforceable in a court of law and therefore, not give rise to a corresponding enforceable right in another person. But it would still be a legal rule because it prescribes a norm of conduct to be followed by such individual or authority. The law may provide a mechanism for the enforcement of this obligation but the existence of the obligation does not depend upon the creation of much mechanism. The obligation exists prior to and independent of the mechanism of enforcement. A rule imposing an obligation or duty would not therefore, cease to be a rule of law because there is no regular judicial or quasi judicial machinery to enforce its command. Such a rule would exist despite of any problem relating to its enforcement. Otherwise the conventions of the Constitution and even the rules of International Law would no longer be liable to be regarded as rules of law.

It is, thus, submitted that from the analysis of the functions of law and State, it is clear that it is the solemn duty of a welfare state for its very existence, the well-being and progress of the people to strive for the establishment of an egalitarian society wherein socioeconomic justice will prevail. In the final analysis, a Constitution draws its strength from the public. The sanction behind the Constitution is primarily public opinion. It is in this spirit that M.V. Pylee made the following observation:

The agents of the State at a given time may not be answerable to the Court of law for the breach of these principles, but they cannot escape facing a higher and more powerful court which will at regular intervals do the reckoning.

Justice Hegde has brought out the clear picture regarding the true nature of the directive principles by the following observation:

Whether or not a particular mandate of the Constitution is enforceable by Court, has no bearing on the

84. Supra note 53.
85. Id. at 1848-49.
importance of that mandate. The Constitution contains many mandates which may not be enforceable by the courts of law. That does not mean that those articles must run subsidiary to the chapter on Fundamental Rights...It would be wrong to say that those positive mandates are of lesser significance than the mandates under Part III.87

It is submitted that from the above observations, it is clear that the non-enforceable nature of the directive principles does not make them less important than fundamental rights. Like any other provision of the Constitution, they are also important and part of the Supreme law. And hence, H.M. Seervai is wrong when he says that Part IV lacks the character of a supreme law. In fact the above view of Seervai can be negated by another reasoning also.

The admitted position under the Constitution is that whatever is declared by the Supreme Court, that becomes the law of the land and that is binding on all the courts within the territory of India.88 The Supreme Court has declared the Directive Principles as a part of the supreme law and hence Part IV of the Constitution is the supreme law because it is binding on all the courts within the territory of India. There are number of instances where the judiciary has tried to read both fundamental rights and directive principles as supplementary and complementary to each other. Rather sometimes the judiciary has applied these directive principles as reasonable restrictions on the fundamental rights in the public interest.89

It seems very strange that how we can apply the directive principles as reasonable restrictions on the fundamental rights unless they are also considered as the part of the same supreme law - the Constitution of India. So much so that in the case of Laxmi Kant Pande v. Union of India,90 the

88. Article 141 provides: "The law declared by the Supreme Court shall be binding on all courts within the territory of India."
apex court went to the extent of laying down certain norms and guidelines for the inter-country adoption to protect the children from exploitation and against moral and material abandonment. In other words, the Supreme Court in the absence of legislative norms protected the interests of the children and implemented the directive principle given in article 39(f). So can we say that the Supreme Court of India enforced a directive principle which is not even law? The answer is obviously no. In the above mentioned case the Supreme Court has rightly discharged its duty of applying the constitutional provision and to see that these mandates of the Constitution become meaningful even when the legislature has failed to do so. Now if any executive action is taken which is in contravention to the directions of the Supreme Court based on Directive Principles in this case then that would become unconstitutional. Hence the directive principles in Part IV are 'law' and also the part of the supreme law of India - the Constitution of India.

It is further submitted that Seervai is not justified when he says that nothing would have happened if directive principles had not been enacted. He has supported his argument by saying that there are many Constitutions of the world where there are no directive principles but still they have established a welfare state. If this reasoning of Seervai is to be accepted, then why to have a "written Constitution" at all! In England there is no written Constitution, and there are no written Fundamental Rights and Directive Principles as such but still the 'State' discharges the welfare functions. It would not be desirable to overlook the peculiar set up of each system within which the Constitution is worked out.

Professor Blackshield while stressing on that both Part III and Part IV are supplementary to each other made it clear that the significance of Parts III and IV does not lie in the fact that one is justiciable

91. Article 39(f) provides: "that the children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that the childhood and youth are protected against moral and material abandonment."


94. Seervai has made reference to the Constitution of England, United States and Canada, see Ibid.

95. Id. at 1601. Fourth and Fifth questions of Seervai have also been answered while answering the first three questions.
and the other is not, nor the rights in Part III are more important than the provisions of Part IV. They are the responsibility of all the organs of the State. \footnote[96]{See A.R. Blackshield, "Fundamental Rights and the Economic Viability of the Indian Nation", 10 J.I.L.I. 1-40 (1968).}

In a sense the enforcement of fundamental rights is based on positive law, that is, the enforceable provisions of Part III. The task of the Court, therefore, is to give full effect to the letter of law, of course for a greater purpose of extending liberty and equality. Interpretation of the fundamental rights is in a sense a search for truth. Whatever is protected by the Constitution must be given to the individual subject to reasonable restrictions. Truth in this sense, however, accords only with individual justice. But beyond this is social justice which is given the very first place in the Preamble and in Part III of the Constitution. If the law is a system of norms, if the Constitution is framed to achieve progress and uplift of the downtrodden, then justice has to be the first consideration guiding the judicial process; social justice as distinguished from individual justice between the parties. The experience of three decades of the working of the Constitution and specially of the directive principles in Part IV shows that the only reason why individual liberty is at times seem to rival social justice is the argument of fear. If the fear could be dispelled, social justice would win hands down. \footnote[97]{See V.S. Deshpande, supra note 7 at 8-9.}

It is in this sense that Krishna Iyer tells us that in India, law and justice are not in talking terms with each other and therefore, pleads for "cross-fertilization of law and justice", which he thinks "is the demand of the people of India". \footnote[98]{V.R. Krishna Iyer, Law Versus Justice, 9 (1981).}

From the foregoing analysis regarding the nature of the directive principles and their place \textit{vis-a-vis} the Constitution, the following points may be summarised.

(1) Our Constitution is the supreme law and both fundamental rights and directive principles are part of the fundamental law. It is wrong to say that directive principles are not law.

(2) Any action of the legislature or executive or for that matter any administrative action which is in contravention with the
directives are to be declared unconstitutional.

(3) The words 'fundamental' and 'duty' used in parts III and IV have been used in the same legal sense and not in different senses.

(4) The phrase "shall not be enforceable" has been used in article 37 only to save the state from the embarrassment of being called upon by the citizens to implement the directive principles immediately or at a time when their implementation would not be feasible economically, administratively or otherwise.

(5) Although the attempt should be made to harmonize the fundamental rights with directive principles, yet in certain cases directive principles become more important because they are fundamental in the governance of the country as compared to the fundamental rights of the individual.

(6) All the organs of the state, including the judiciary are under an obligation to act in consonance with the directive principles.

(7) It is wrong to say that nothing would have happened if the directive principles had not been enacted.

(8) The judiciary has rightly read fundamental rights subject to directive principles as reasonable restrictions in the public interest.

From the above analysis, it is clear that in order to achieve the preambular goal of socio-economic justice, the directive principles have to be given full effect by all the three organs of the State as soon as possible and only then the individual fundamental rights would become meaningful for millions of Indians. Though inevitable, the bifurcation between Part III on the one hand and Part IV on the other hand brought an unfortunate competition for priority between the most fundamental values ingrained in the Constitution. Judicial enforcement of Part III rights tends to get priority over the legislatively enforced Part -IV principles. For, both of them seek the imprimatur of the Courts. It is for the courts to decide which will have primacy over the other when both of them cannot be enforced simultaneously. In the following pages an
attempt would be made to examine the role of the legislature and judiciary in relation to the implementation of the directive principles.

(C) Status Relationship: Legislative and Judicial Conundrum

Both fundamental rights and directive principles being integral component of the same organic constitutional system - no conflict between them could have been intended by founding fathers. But the views of the Supreme Court on the relationship between fundamental rights and directive principles have not been uniform throughout. There are three possible views on the relationship between fundamental rights and directive principles. The first view is that the former are superior to the latter and so the latter must give way to the former in case of repugnancy or irreconcilable conflict between the two. This view is based on the quasi-natural law premise that certain rights, symbolised in India by fundamental rights, are sacred and transcendental and are so basic to the existence of any constitution that they must prevail over any other part of the Constitution. Another variant of this view insists on giving a literal interpretation to the provision in directive principles that they are not enforceable in the court and so no court can declare a law in conflict with them as void, because that would be to enforce them. The second view is that fundamental rights and directive principles are equal in importance and, hence, in cases of conflict between the two an attempt must be made to harmonise them with each other. The third view is that the directive principles are superior to fundamental rights mainly because the Constitutional provides that the former are "fundamental in the governance of the country" and it shall be the "duty" of the State "to apply these principles in making laws" and that the binding nature of law does not cease to be so merely because it cannot be enforced. These different views regarding the relationship between fundamental rights and directive principles have been pronounced by the judiciary at different times. Now let us examine the judicial trend at different times.

99. Article 37 of the Constitution of India.
100. See supra note 22 at 205. See also supra note 30 at 1612-13.
101. Ibid.
102. Ibid.
The first occasion of confrontation of the Supreme Court with the issue of relationship between fundamental rights and directive principles was presented by State of Madras v. Champakam Dorairajan. The facts of this case were as follows:

The Government of Madras issued an order popularly known as communal Government Order under which the seats in the Engineering and Medical Colleges were apportioned on a communal and religious basis. For every fourteen seats to be filled up by the Selection Committee, candidates were to be selected on the following basis. Non-Brahmins (Hindus) - 6; Harijans - 2; Backward Hindus - 2; Anglo Indians and Indian Christians - 1 and Muslims - 1 and Brahmins - 2. The petitioner, a Brahmin lady contended that the Madras Communal Government Order violated her fundamental right under articles 15(1) and 29(2). The order was attempted to be justified by the State of Madras on the ground that it implemented the directive principle contained in article 46 of the Constitution which imposes a duty on the state to promote the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and Scheduled Tribes. The Supreme Court rejected the above mentioned contention of the State and held:

The directive principles of State policy, which by Article 37 are expressly made unenforceable by a Court, cannot override the provisions found in Part III which notwithstanding other provisions, are expressly made enforceable by appropriate writs, orders or directions under Article 32. The Chapter on Fundamental Rights is sacrosanct and not liable to be abridged by any Legislative or Executive Act or Order except to the extent provided in the appropriate article in Part III. The directive principles of State Policy have to conform and run as subsidiary to the Chapter on Fundamental Rights.

104. Article 15(1) provides: "The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them."
105. Article 29(2) provides: "No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State Funds on grounds only of religion, race, caste, language or any of them."
106. See article 46.
107. Supra note 103 at 531.
The above conclusion was supported by Das, J., by observing that if a law made in implementing article 46 could override fundamental rights, article 16(4), which conferred a power to reserve seats in public employment for any backward class of citizens, would be redundant. 108

It is submitted that the argument of the State that the Communal Government Order was meant to promote the educational and economic interests of the weaker sections of the society is hardly convincing. The Communal Government Order which classified the people purely on the religious basis for the purpose of distributing seats in the professional colleges can hardly be construed to have been intended to promote the educational and economic interests of the weaker sections of the people as envisaged in article 46 of the Constitution. 109 At the same time it is difficult to agree with the Supreme Court judgment, particularly with its views on directive principles. From the judgement of the Supreme Court it is apparent that it gave a literal construction to the provisions of article 37 which declare that the directives shall not be enforceable by the Court. It is submitted that the conclusion drawn by the Supreme Court on the status of the directive principles vis-a-vis the fundamental rights seems to be erroneous on the following grounds:

Firstly, whether or not a particular mandate of the Constitution is enforceable by Courts, has no bearing on the importance of that mandate. The Constitution contains many important mandates which may not be enforceable by the Court of law, that does not mean that those provisions must run subsidiary to the Chapter on Fundamental Rights. To put in the words of Hegde: "One might ask whether it was necessary for a decision in that case to hold that the directive principles should run subsidiary to the fundamental rights as though there was a conflict between Articles 46 and 29 (2)." 110

Secondly, the view taken by the Supreme Court has ignored the fact that the framers of the Constitution made the directive principles unenforceable only to prevent the State from being compelled to implement them

108. Id. at 532. It may be mentioned here that at the time of this decision, article 15(4) was not there in the Constitution as it was added by the Constitution(First Amendment) Act, 1951, which was passed after the decision of Champakam Dorairajan Case.

109. See also supra note 16 at 87.

immediately, as at the time of independence or at the time of commencement of the Constitution, the nation was at a nascent stage and it did not have the sufficient resources to implement at once all the directive principles. But this was done not to reduce the importance of directive principles, nor to allot them inferior status in the Constitution *vis-a-vis* the fundamental rights.

Thirdly, the Supreme Court while stressing on the unenforceable nature of the directive principles as mentioned in article 37, ignored their fundamental nature. Article 37 of the Constitution makes all the directive principles "fundamental in the governance of the country". It may be noted that unlike article 37, no where in Part III dealing with fundamental rights, the fundamental nature of the rights embodied therein has been expressly emphasised or asserted. Therefore, the directive principles are not less important, if not more than, the fundamental rights.

Finally, as pointed out by K.P. Krishna Shetty, it is worth pondering over the problem whether the courts could give more weight to Part III (which embody the existing values) than to Part IV (which enshrines aspirations of the people). Social values are not static. They reflect socio-economic conditions and thinking of the people on socio-economic matters, and, therefore, bound to change with the change in the socio-economic conditions and structure of the society. Aspirations of the people not only represent a goal to be reached but also signify the intention of the people to march from 'is' to 'ought' from the 'real' to the 'ideal'. One of the aspirations is to bring into existence a new social order wherein socio-economic justice is assured to all. Such a change in social values can be thwarted, and an attempt to achieve the set goal of new social order can be stifled only by freezing, and attaching sanctity to, the present values, and by ignoring or giving lesser importance and weight to the aspirations of the people embodied in Part IV.111 The view of the Supreme Court seems to go against the avowed intention of the framers of the Constitution who visualised a march or a change from the "state of serfdom to one of freedom", which can be accomplished only if the Court accords equal, if not more, importance and weight to directive principles.112

111. Supra note 16 at 88.
112. Id. at 89.
Criticising the judgement, Professor G.S.Sharma, pointed out that the approach of the Court was purely logical and technical which reminded one the Watson-Heldane Era of the Privy Council decisions with reference to the Canadian Constitution. In the words of Professor Tripathi, this was perhaps "the most damaging opinion" expressed by the Court. In our submission this case gave a death blow to the most dynamic part of the Constitution.

At the same time some other pronouncements were made by the judiciary in the area of agrarian reforms which were not in tune with the intention of the framers of the Constitution. As a result of this, the task of regulating property rights and abolition of zamindaris, which had been undertaken by the various state legislatures, came to standstill. Appeals from these judgements were taken by the aggrieved parties to the Supreme Court in State of Bihar v. Kameshwar Singh. These litigations

117. A.I.R. 1952 S.C. 253. For the detail of the decision, see infra Chapter V.
were obstructing and delaying the move for agrarian reforms and the infant Republic got restive.\textsuperscript{118} In the post independence period one of the problems which engaged the serious attention of the government was related to agrarian reforms on a massive scale and social upliftment of backward classes.\textsuperscript{119}

At this stage Parliament had to intervene and it passed the Constitution(First Amendment) Act, 1951. In the statement of objects and reasons appended to the Amendment Bill, it was mentioned that during the preceding several months of the working of the Constitution, certain difficulties had been brought to light by some judicial decisions especially in regard to fundamental rights.\textsuperscript{120} The Constitution(First Amendment) Act, 1951, \textit{inter-alia}, brought the following changes in the Constitution.

First, it added a new clause(4) to article 15.\textsuperscript{121} This was done obviously to supersede the decision of Champakam Dorairajan.\textsuperscript{122}

Secondly, it added two new articles 31A and 31B and the Ninth Schedule, so as to make, \textit{inter-alia}, law dealing with agrarian reforms unchallengeable in view of fundamental rights.\textsuperscript{123} Article 31B validated laws, thirteen in number, specified in the Ninth Schedule, passed by the various state legislatures.\textsuperscript{124} They could not be deemed to be void on the ground that they were inconsistent with, or took away or abridge fundamental

\textsuperscript{120} Speaking on the Constitution(First Amendment Bill), Jawaharlal Nehru made it clear that there could arise no conflict between directive principles and fundamental rights. In his view, the directive principles represent a dynamic move towards certain objectives and the judiciary has to take due notice of these principles. See \textit{L.S.D. Vol. II}, Cols. 8822-3(1951).
\textsuperscript{121} Clause(4) of article 15 provides:"Nothing in this article or in clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.
\textsuperscript{122} See \textit{supra} note 103.
\textsuperscript{123} See \textit{infra} chapter V, note 67, 68 and 69.
\textsuperscript{124} See Ninth Schedule, Serial Nos. 1 to 13.
rights guaranteed in Part III. The Ninth Schedule was an interesting innovation in the area of constitutional amendments. This amendment made it clear that the State considered the directive principles more important than fundamental rights. The Amendment also aimed at achieving the objectives of article 39(b) and (c) of Part IV of the Constitution.125

However, those who had vested interest in property challenged the First Amendment. The question regarding the validity of this Amendment came before the Supreme Court in Shankri Prasad v. Union of India.126 In this case, the court unanimously decided to resolve the conflict between directive principles and fundamental rights by placing reliance on the doctrine of harmonious construction. The Court further held that though fundamental rights conferred by Part III impose limitation on the legislative and executive power, they are not inviolable and the Parliament can amend them under article 368 to bring them in conformity with the directive principles of the state policy. The result was that generally all the laws providing for acquisition of estates or interests therein and specifically certain statutes including the ones passed by the legislatures of Bihar, Madhya Pradesh and Uttar Pradesh, were precluded from attack based on article 13 read with other relevant articles of Part III.127

In the subsequent years, as before, certain judicial pronouncements interpreted the property rights so as to hamper the economic progress.128 The judicial approach to article 14, 19 and 31 came in the way of the government to implement the directives relating to social welfare legislation. In other words, this hampered the economy and obstructed the fulfilment of the objective of land reform as contemplated by article 39.

125. Article 39(b) provides: "that the ownership and control of the material resources of the community are so distributed as best to subserve the common good". Article 39(c) provides: "that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment."
127. However, some provisions of the Bihar Act were declared unconstitutional in State of Bihar v. Kameshwar Singh, A.I.R.1952 S.C.252 at 275, 284.
Therefore, in order to achieve its objective and overcome this difficulty, the Parliament enacted the Constitution (Fourth Amendment) Act, 1955. The Amendment, inter-alia, brought the following changes:

First, it amended article 31(2) and the Court’s power to determine the adequacy of compensation was withdrawn. Thus, the adequacy of compensation became the exclusive concern of the legislature.  

Secondly, the Amendment also made some changes in article 31A whereby certain types of laws were protected against articles 14, 19 and 31 and not against all the provisions of Part III as had been done by the First Amendment of the Constitution.

Thirdly, it also added seven more Acts to the Ninth Schedule of the Constitution making them immune from challenge for violating any of the provisions contained in Part III. This in effect meant recognition of directive principles in the area of property legislation.

(ii) Second Phase: From Doctrine of Harmonious Construction to Seventeenth Amendment

There was change in the attitude of the judiciary towards the directive principles subsequent to the Champakam Dorairajan case. In view of the increasing recognition of the fact that although directive principles were non-justiciable in character, the courts were to recognize their importance for the simple reason that they formed a vital part of the constitutional document. The directives were no longer to be ignored when they came into conflict with fundamental rights.

In M.H. Quareshi v. State of Bihar, 132 the question raised before the

129. In regard to the social philosophy of the Amendment, Nehru explained that the object was to bring about a social change for the benefit of the largest number of people doing the least harm to any class or group. In a matter of this kind where social, economic and political factors had to be considered, the judiciary was not the competent authority. See L.S.D. Part II at 1951 (14th March, 1955).

130. See Ninth Schedule, Serial Nos. 14 to 20.

131. In Waman Rao v. Union of India, A.I.R. 1981 S.C. 271, the Supreme Court has again reaffirmed the constitutional validity of First and Fourth Amendments.

Supreme Court related to the validity of enactments of Bihar, Uttar Pradesh and Madhya Pradesh legislatures banning the slaughter of certain animals including cows. These enactments were challenged mainly on the ground that they violated the rights of the petitioners to carry on butcher's business under article 19(1)(g) and also offended articles 14 and 25 of the Constitution. Here the petitioners who were Muslims by religion were engaged in butcher's trade and its subsidiary undertakings. The State argued that the impugned Acts were passed by it in discharge of its obligation contained in article 48 of the Constitution. It was further argued that directive principles though not enforceable by any court were nevertheless fundamental in the governance of the country and the State owned a duty to give effect to them. The laws so enacted were in discharge of the fundamental obligation imposed on the State under Part IV. The directive principles were equally fundamental and therefore, must prevail, and since these enactments were made in consonance with the directive principles, they were perfectly valid.

The Supreme Court, however, rejected the contention of the State. S.R. Das, C.J., who delivered the opinion of the Court observed:

We are unable to accept this argument as sound. Article 13(2) expressly says that the State shall not make any law which takes away or abridges the rights conferred by (Part) III of our Constitution which enshrines the fundamental rights. The directive principles cannot override this categorical restriction imposed on the legislative power of the State. A harmonious interpretation has to be placed upon the Constitution and so interpreted.


134. Article 19(1)(g) provides that all citizens shall have the right to practise any profession, or to carry on any occupation, trade or business.

135. Article 14 provides: "The State shall not deny to any person equally before the law on the equal protection of the laws within the territory of India." The relevant part of article 25 reads: "...all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion...".

136. Article 48 provides: "The State shall endeavour to organise agriculture and animal husbandry on modern and scientific lines and shall, in particular, take steps for preserving and improving the breeds, and prohibiting the slaughter, of cows and calves and other milch and draught cattle.

137. See article 37 of the Constitution.

138. Supra note 132 at 739.
it means that the State should certainly implement the directive principles but it must do so in such a way that its laws do not take away or abridge the fundamental rights, for otherwise the protecting provisions of (Part) III will be 'a mere rope of sand'.

He further observed:

That the total ban on the slaughter of she buffaloes, bulls and bullocks (cattle or buffalo) after they cease to be capable of yielding milk or of breeding as draught animals could not be supported as reasonable in the interest of general public.

It is submitted that the change in the attitude of the judiciary from its earlier stand on fundamental rights, vis-a-vis, the directive principles is evident from the above case, for although this decision states categorically, in a language almost reminiscent of the language used in Champakam Dorairajan,\textsuperscript{141} that the directive principles cannot override the categoric restriction imposed by article 13(2) on the legislative power of the State. In other words, the directive principles must run subsidiary to fundamental rights.

However, the Court introduced the doctrine of harmonious interpretation or construction as a new technique of interpretation in this field. In other words, the directive principles should be implemented by the State in such a manner that they do not abridge or take away the fundamental rights. The Court while admitting the importance of the directive principles called upon the State to be cautious in their implementation and that due care be taken in the process of their implementation. The fundamental rights of the individuals, the safeguarding of which the judiciary was constitutionally obliged to secure, were not thrown into jeopardy.

It is further submitted that the doctrine of harmonious construction presupposes the existence of conflict between two provisions of equal force. In the instant case, since the conflict is between the legislation enacted in pursuance of the directive principles and the fundamental rights, the court indirectly treated them as two provisions of equal force. Once it is admitted that they are provisions of equal importance or force, it

\textsuperscript{139} Id. at 739.
\textsuperscript{140} Ibid.
\textsuperscript{141} supra note 103.
is immaterial how the court would resolve the conflict applying doctrine of harmonious construction. It may resolve the conflict either by giving weight to the legislation which is intended to benefit the society as a whole or by treating every such legislation as reasonable restriction on the fundamental rights.\textsuperscript{142} Generally in matters of social and economic importance the legislature should have a greater say and the judiciary must refrain from turning itself into a third chamber unless the law made by the legislature is not in consonance with the spirit of the Constitution.

In re Kerala Education Bill, 1957,\textsuperscript{143} however, the Supreme Court gave better status to the directive principles. It was this decision where the court had virtually admitted that the directive principles had been badly ignored in its earlier decisions but it would attach due importance to them in future. Here, the State of Kerala had banned charging of any fees from students in the primary classes without assuring at the same time that there would be compensation through grants for the loss of revenue to the schools. The object of the Bill was to provide for better organisation and development of educational institutions in the State. Its provisions raised a bitter public controversy in the State. The Governor reserved the Bill under article 200\textsuperscript{144} for the consideration of the President who sought the advisory opinion of the Supreme Court under article 143 of the Constitution.\textsuperscript{145} It was argued before the Supreme Court that the Bill violated the right of the minorities to establish and administer educational institutions of their choice so solemnly granted to them by article 30 of the Constitution.\textsuperscript{146} On the other hand, it was argued on behalf of the State that, in effect, Bill was brought forth to implement the directive principles embodied in article 45 of the Constitution.\textsuperscript{147} Thus, the Supreme Court was faced with the problem of resolving the alleged conflict between the impugned Bill made in pursuance of a directive principle and the fundamental right of the minorities granted under article 30(1) of the Constitution.

\textsuperscript{142} See supra note 16 at 97-98.
\textsuperscript{143} A.I.R.1958 S.C.956.
\textsuperscript{144} Article 200 enables the Governor to reserve a particular Bill for the consideration of the President.
\textsuperscript{145} See article 143.
\textsuperscript{146} See article 30.
\textsuperscript{147} See article 45.
Once again S.R. Das, C.J., speaking for the Court observed:

Although this legislation may have been undertaken by the State in discharge of the obligation imposed on it by the directive principles enshrined in Part IV of the Constitution, it must, nevertheless, subserve and not over-ride the fundamental rights conferred by the provision of Articles contained in Part III of the Constitution....148

He further observed:

Nevertheless, in determining the scope and ambit of the fundamental rights relied on by or on behalf of any person or body the court may not entirely ignore these directive principle of state policy laid down in Part IV of the Constitution but should adopt the principles of harmonious construction and should attempt to give effect to both as much as possible.149

So, the inevitable conclusion of the Court was that the Bill so far as it affected educational institutions established and administered by minority communities was violative of article 30(1) of the Constitution.

It is submitted that the Supreme Court while striking down the Part of the Bill reiterated the views expressed in Champakam Dorairajan when it said that the directive principles must "subserve and not over-ride the fundamental rights." And while stressing on the doctrine of harmonious construction, it followed M.H. Quareshi. Thus, though the doctrine of harmonious construction has been put forward in these two cases, it has been rendered innocuous by the way it was applied. Another conclusion which can be drawn from this case is that the directive principles shall not be implemented if the implementation of them affect the fundamental rights of a few individuals. If this is the correct position it is well nigh impossible to carry into effect socio-economic policies laid down in Part IV of the Constitution.150 But the use of the word 'nevertheless' pointed out that the Court was coming out with a rule which it expected to be mandatory in practice, that the Courts might not ignore

148. Supra note 143 at 966.
149. Id. at 967.
150. For example, in implementing the socio-economic policies of Part IV and agrarian reforms etc., the rights of the few individuals will be affected and the socio-economic justice to the greater number of people can't be given if it is affecting the rights of a few individuals. See K.P. Krishna Shetty, supra note 16 at 101-102.
these directives. It is further submitted that the judiciary can contribute greatly towards the principles of rule of law and the principles of a welfare state through the doctrine of harmonious construction.  

Again, certain judicial pronouncements came in the way of economic legislations. These decisions seriously affected the implementation of socio-economic policies mentioned in article 39(b) and (c) of Part IV of the Constitution. This eventually led to the passing of Constitution (Seventeenth Amendment) Act, 1964. The purpose of this Amendment was to enable the State to have a greater say in the matter of land acquisition, its distribution and to save the various Land Reforms Act from being struck down on the ground of their being violative of the fundamental rights contained in articles 14, 19 and 31 of the Constitution of India. This Amendment Act, brought some changes in article 31A(2)(a) and also inserted forty-four more Acts in the Ninth Schedule in order to remove uncertainty in the area of land reform.

The validity of the Constitution (Seventeenth Amendment) Act, 1964 was, however, challenged before the Supreme Court in Sajjan Singh v. State of Rajasthan. An argument was placed before the Court that the Chapter on fundamental rights was not made subject to the amending process of the Constitution and that there was a danger that dynamic development of Indian society would be hampered considerably. While accepting the weight of this argument, Mudholkar, J., suggested that even if the fundamental rights could be taken as unchangeable, the need for viable dynamism would still be satisfied by properly interpreting the fundamental rights in the light of values and ideologies contained in directive principles of state policy. Supporting the theory of harmonious construction the learned Judge observed:

These principles are fundamental in the governance of the country and the provisions of Part III of

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153. For the contents of articles 39(b) and (c), see supra note 125.

154. See infra Chapter V.

(conted....)
the Constitution must be interpreted harmoniously with these principles.157

In I.C. Golak Nath v. State of Punjab158, which became a classic decision in the realm of property legislation, the validity of the first, fourth and seventeenth amendments to the Constitution was challenged. The Supreme Court was called upon to consider its earlier decisions. The Supreme Court observed that the validity of the above amendments and any action taken thereunder would not be affected even though they might take away or abridge the rights conferred by Part III. But the Parliament would have no power in future to amend any of the provisions of Part III so as to take away or abridge the fundamental rights enshrined therein. In other words, the decision of the Supreme Court was only prospective in operation and did not affect any past legislation. The Court also made a reference to the directive principles of state policy and observed that fundamental rights and directive principles formed an integrated scheme and a self-contained code and were elastic enough to respond to the changing needs of the society. It was further pointed out that these directives could be implemented without violating the fundamental rights. But the Court was reluctant to give a position of parity to the directive principles by making it clear that the fundamental rights occupied a transcendental position in the constitutional scheme.160

It is submitted that the Supreme Court once again failed to place the directive principles in their true position. It is worthwhile to note that in Sajjan Singh,161 Hidayatullah, J., (as he then was) in his dissenting

155. See Ninth Schedule, Serial Nos. 21 to 64.
157. Id. at 864.
159. Shankri Prasad v. Union of India, Supra note 126; Sajjan Singh v. State of Rajasthan, supra note 156.
160. Five Judges, that is, Subba Rao, C.J. Shah, Sikri, Shelat and Vardialingam, JJ., took the view that according to the Constitutional scheme the laws passed by the Parliament and State legislatures in implementation of directive principles have to be tested by the higher judiciary on the objective criteria of legislative competence. These judges considered the above scheme to be so elastic that all the directive principles can reasonably be enforced without taking away or abridging the fundamental rights. The Minority consisting of three judges, that is, Wanchoo, Bhargava and Mitter, JJ., observed that fundamental rights are protected, but the directive principles of state policy are not. Hidayatullah, J., (as he then was) specifically pointed out that directive principles are not more potent than the fundamental rights. see supra note 158 at 1699.
161. Supra note 156.
opinion had aptly observed:

[T]he rights of society are made paramount and they are placed above those of the individual.162

These observations of the learned judge made it clear that the fundamental rights have to be read in the context of directive principles. It appears that these observations were not brought to the notice of the Court at the time when Golak Nath was being argued.

It is submitted that the decision of the Supreme Court in Golak Nath was erroneous which was subsequently overruled in Kesavananda Bharti v. State of Kerala.163 The decision of Golak Nath has been criticised as a political decision,164 a wrong decision,165 and an obstacle in the way of socio-economic progress.166

(iii) Third Phase: From Twenty Fourth Amendment to Kesavananda Bharti

The period immediately after Golak Nath, saw a highly legalistic and technical approach of the judiciary towards the constitutional provisions and the domination of the individual rights. The judicial attitude favoured the fundamental rights and failed to give due importance to directive principles of state policy. The Supreme Court interpreted the property rights in such a way that it virtually defeated the provisions contained in article 39(b) and (c).167 The Election Manifesto, issued in 1971 in respect of the election to the House of the people, contained a reference to the directive principles in articles 38 and 39(b) and (c). It was pointed out that they could not be implemented effectively because of certain judicial

162. Id. at 862.
164. See, for example Seervai, supra note 29 at 1511-18; opinion of M.C. Setalvad and Rasheed Talib, "An Opening Unexplored" The Hindustan Times, 9 August, 1971.
166. See, for example, speech of Indira Gandhi, The Hindustan Times, 5 August, 1971; Speech of H.R. Gokhle, The Hindustan Times, 4 August, 1971.
167. For the contents of these articles, see supra note 125.
pronouncements. Thus, the whole gamut of the national policy of socialisation to avoid the concentration of wealth to the common detriment was frustrated as a result of the conflicting judicial pronouncements. Consequently, the relationship between fundamental rights and the socio-economic values of the Part IV became turbulent.

However, In Chandra Bhayan v. State of Mysore, the socio-economic values of Part IV got new light from the judiciary. Regarding the relationship of fundamental rights and directive principles, Hegde, J., made the following observations:

The provisions of the Constitution are not erected as barriers to progress. They provide a plan for orderly progress towards the social order contemplated by the preamble to the Constitution. They do not permit any kind of slavery, social, economic or political... We see no conflict on the whole between the provisions contained in Part III and Part IV. They are complementary and supplementary to each other... The mandate of the Constitution is to build a welfare society in which justice, social, economic and political shall inform all institutions of our national life. The hopes and aspirations aroused by the Constitution will be belied if the minimum needs of the lowest of our citizens are not met.

Inspired by the above observations of Justice Hegde and after having obtained a clear mandate from the people in 1971 election, the Parliament thought of amending the Constitution so as to remove the constitutional hurdles in regard to the implementation of socio-economic


170. Id. at 2050. (Emphasis is of the author). Seervai has criticised this decision on the ground that it did not answer the crucial question that is, "What happens if there is a direct conflict" between Part III and Part IV. See Seervai, supra note 30 at 1583. It is submitted that the views of Seervai are not well founded.
policies of Part IV. Thus, it enacted twenty-fourth, twenty fifth and twenty sixth Amendments to the Constitution.

One of the changes made by the Constitution(Twenty-fifth Amendment) Act, 1971 was the insertion of a new article 31C which provided:

Notwithstanding anything contained in article 13, no law giving effect to the policy of the State towards securing the principles specified in clause(b) and (c) of article 39 shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by article 14, article 19 or article 31; and no law containing a declaration that it is for giving effect to such policy shall be called in question in any court on the ground that it does not give effect to such policy.

Provided that where such law is made by the Legislature of a State, the provisions of this Article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent.

This was the first direct parliamentary attempt to give primacy to certain directive principles over certain fundamental rights. The avowed objective of this article was to provide socio-economic justice to millions of Indians by implementing socio-economic directives, to which the Parliament is duty bound to implement.

However, this article has been criticised as "too sweeping in its amplitude". It is difficult to agree with this view. The purpose of this article is limited, though very important. The Government justified this article on the ground that it desired to protect only those laws which restricted the growth of monopoly and concentration of wealth and ensuring equitable distribution of the material resources of the country.

171. The Constitution(Twenty fourth Amendment)Act, 1971 was passed to nullify the effect of Golak Nath. It added a new clause(1) to article 368 which provides:"Notwithstanding anything in this Constitution, Parliament may in exercise of its constituent power amend by way of addition, variation or repeal any provision of this Constitution in accordance with the procedure laid down in this article." It also inserted a new clause(3) in article 368 which provides:"Nothing in article 13 shall apply to any amendment made under this article". Similar addition was also made in article 13(4).

172. The Constitution(Twenty-fifth Amendment)Act, 1971 was passed to surmount the difficulties placed in the way of the implementation of directive principles by the decision of the Supreme Court in R.C.Cooper. See the Statement of Objects and Reasons for Constitution(Twenty-fifth Amendment) Act, 1971.


Criticising the insertion of article 31C in the Constitution, Palkhiwala, a renowned jurist, observed:

In the entire history of liberty, never were so many hundreds of millions deprived of so many fundamental rights at one fell swoop as by the insertion of Article 31C.176

He described article 31C as a monstrous outrage on the Constitution. It is submitted that this view is untenable and goes contrary to the basic philosophy enshrined in Part III and IV of the Constitution. It is, further submitted that this approach of Palkhiwala was based upon the eighteenth century jurisprudence. His whole contention was to uphold the rights of the individual ignoring the interest of the society or that of the public.

As it was expected, twenty-fourth, twenty-fifth, twenty-sixth and twenty-ninth178 Amendments were questioned in the Supreme Court in the most historical case of Kesavananda Bharti v. State of Kerala.179 The Supreme Court upheld the constitutionality of these amendments and struck down only the second part180 of article 31C. The following, amongst other reasons were mentioned for challenging the validity of article 31C.

(a) Article 31C subordinates fundamental rights to directive principles, destroying thereby one of the foundations of the Constitution.

(b) Every fundamental right is an essential feature of the Constitution and article 31C purports to take away a large number of those fundamental rights.


177. Palkhiwala, Id. at 58.

178. This Amendment added The Kerala Land Reforms (Amendment) Act, 1969 (Kerala Act 35 of 1969) and the Kerala Land Reforms (Amendment) Act, 1971 (Kerala Act 25 of 1971) to the Ninth Schedule.

179. A.I.R. 1973 S.C. 1461. This case is popularly known as "fundamental rights case". In this case the full Court, consisting of thirteen judges dealt with various issues of constitutional importance. The Supreme Court discussed the scope of amending power and expounded a new doctrine of "basic structure" of the Constitution. For comments on the scope of article 368 and basic structure, see Seervai, supra note 30 at 2641-2705. In the present part of this Chapter, emphasis is placed on the relationship between fundamental rights and directive principles. See also Indira Nehru Gandhi v. Raj Narain, A.I.R. 1975 S.C. 2299.

180. Second part of article 31C which was struck down by the Court provided: "and no law containing a declaration that it is for giving effect to such policy shall be called in question in any Court on the ground that it does not give effect to such policy".
(c) It destroys by conclusiveness of the declaration the salient safeguard of judicial review and right of enforcement of fundamental rights.

(d) That it enables the legislature, under the guise of giving effect to directive principles, to take steps calculated to affect the position of certain fundamental rights and abrogate the most cherished rights of the individuals which are the basis of the principle of republicanism. 181

Six Judges 182 upheld the validity of article 31C in toto. Five Judges 183 held article 31C to be invalid in toto. Reddy, J., held that substantive part of article 31C after severing certain words was valid, but the conclusive declaration clause was invalid. Khanna, J., held that the substantive part of article 31C was severable from the conclusive declaration clause and that substantive part was valid whereas the conclusive declaration clause was invalid. Thus, in effect eight judges upheld the validity of substantive clause of article 31C whereas seven judges held the conclusive declaration clause to be invalid. 184

Thus, the exclusion of conclusive part of article 31C paved the way for the courts to enquire into the question about the existence of any rational nexus between the law and object intended to achieve by the legislature. 185 In other words, the majority held that precedence could be given to the said directives of Part IV over fundamental rights contained


182. Mathew, Beg, Palekar, Dwivedi, Chandrachud and Ray, JJ.

183. Sikri, C.J., Shelat, Grover, Hegde and Mukherjee, JJ.

184. See supra note 181. The reasons stated by various judges for upholding the substantive part of Article 31 were as under: (i) Article 31C protects only law passed by the legislature in accordance with the procedure prescribed. (ii) Article 31C was not excluding the application of certain fundamental rights for the first time for giving effect to directive principles. The process was initiated by the first amendment itself by introducing articles 31A and 31B. (iii) It is in the nature of proviso to Article 13(2). (iv) The exclusion of article 14 is justified because of the some inherent safeguards, i.e., (a) the good sense of the legislature and the innate good sense of the community. (b) the justiciability of the nexus between the law and the directive principles sought to be achieved. (v) The exclusion of article 19 was justified on the ground that the laws giving effect to directive principles will constitute reasonable restrictions on the individual liberty; (vi) The exclusion of article 31 was justified on the consideration of social justice in matters of acquisition.

in articles 14, 19 and 31 of the Constitution. Since in this case, the relationship of fundamental rights and directive principles was discussed in detail and different judgements were delivered by the different judges, it is pertinent to quote the relevant portions of various judgements which would help to understand the real controversy between Part III and Part IV of the Constitution.

According to Shelat and Grover, JJ., both Part III and Part IV have to be balanced and harmonised. They observed:

> While most cherished freedoms and rights have been guaranteed, the Government has been laid under a solemn duty to give effect to the Directive Principles. Both Parts III and IV which embody them have to be balanced and harmonised - then alone the dignity of the individual can be achieved. It was to give effect to the main objectives in the preamble that Parts III and IV were enacted. \(^{187}\)

They further observed that our Constitution makers did not contemplate any disharmony between the fundamental rights and the directive principles. They were meant to supplement one another. The directive principles of state policy prescribed the goal to be achieved and fundamental rights laid down the means by which the goal was to be achieved. \(^{188}\)

Hegde and Mukherjee, JJ., were also of the same view regarding the relationship and status of fundamental rights and directive principles. They pointed out that our founding fathers were satisfied that there was no antithesis between the fundamental rights and directive principles. One supplements the other. The directives lay down the end to be achieved and Part III dealing with fundamental rights prescribes the means through which the goal is to be reached. \(^{189}\) They also observed:

> Part IV of the Constitution is designed to bring about the social and economic revolution that remained to be...
fulfilled after independence. The aim of the Constitution is not to guarantee certain liberties to only a few of the citizens but for all....To ignore Part IV is to ignore the substance provided for in the Constitution, the hopes held out to the Nation and the very ideals on which our Constitution is built. 190

It is submitted that Hegde and Mukherjee, JJ., rightly appreciated the values enshrined in the directive principles of state policy. Without implementing the directive principles faithfully, it is not possible to achieve the Welfare State contemplated by the Constitution. A society like ours steeped in poverty and ignorance cannot realise the benefit of human rights without satisfying the minimum economic needs of every citizen of this country. Any government which fails to implement the socio-economic pledges of Part IV of the Constitution, cannot be said to have been faithful to the Constitution and to its commitments. 191

Justice A.N.Ray,(as he then was), elaborated the concept of social justice as embodied in the directive principles of state policy. He observed:

Social justice will determine the nature of the individual rights and also the restrictions on such rights. Social justice will require the modification of restrictions of rights under Part III. The scheme of the Constitution generally discloses that the principles of justice are placed above individual rights and whenever or wherever it is considered necessary, individual rights have been subordinated or cut down to give effect to the principles of social justice. Social justice means various concepts which are evolved in the Directive Principles of the State. 192

Reddy, J., gave meaning and content to article 37 of the Constitution. He pointed out that the directive principles enshrined in Part IV of the Constitution are "fundamental in the governance of the country" and that it shall be the duty of the courts to interpret the Constitution and other laws so as to further the directive principles and not to hinder them. 193

The true nature and scope of Part III and Part IV of the Constitution vis-a-vis the role of judiciary was explained by Justice Mathew. He observed:

[T]he Constitution was enacted by the people to secure justice, political, social and economic.

190. Ibid.
191. Ibid.
192. Id. at 1715.
193. Id. at 1755.
Therefore, the moral rights in Part IV of the Constitution are equally an essential feature of it, the only difference being the moral rights embodied in Part IV are not specifically enforceable as against the state by a citizen in a court of law in case the state fails to implement its duty but, nevertheless, they are fundamental in the governance of the country and all the organs of the State, including the judiciary, are bound to enforce these directives.194

It was further observed:

The significant thing to note about Part IV is that, although its provisions are expressly made unenforceable, that does not affect its fundamental character...Judicial process is also state action under Article 37 and the judiciary is bound to apply the Directive Principles in making its judgements.195

It is submitted that Justice Mathew has rightly explained the nature and scope of directive principles vis-a-vis judiciary. Article 37 specifically says that it shall be the duty of the State to apply these principles in the making of laws. And the judiciary being one of the organs of the State, is duty bound to apply these principles in interpreting the laws. The non-enforceable nature of directive principles does not preclude the judiciary from declaring any law unconstitutional which is in violation of the directive principles.196 The non-enforceable nature of directives also does not preclude the right of citizens to move to the Court to see that other organs of the State, that is, the executive and legislature, perform their duties faithfully and in accordance with the law of the land.197

Justice Beg, described the directive principles as laying down the path which was to be pursued by the Parliament and state legislatures in moving towards the objectives contained in the preamble. According to him, fundamental rights were like the banks of a flowing river, which could be mended or amended by displacements, replacements and curtailments or

194. Id. at 1952(emphasis supplied)
195. Ibid.(emphasis supplied)
197. In L.K.Koolwal v. State, A.I.R.1988 Raj.3 at 4 explained the nature and scope of article 51A which incorporates the fundamental duties. They are also, like directive principles, not enforceable in the Court of Law. Explaining the scope of article 51A, D.L.Mehta,J., observed:"Art.51A gives a right to citizens to move the Court for the enforcement of the duty cast on State instrumentalities, agencies, departments, local bodies and statutory authorities created under the particular law of the State." Ibid.
enlargements of any part according to the needs of those who had to use the path laid down by the directives.198

While explaining the fundamental character of directive principles: Chandrachud, J., (as he then was), observed:

What is Fundamental in the governance of the country cannot surely be less significant than what is Fundamental in the life of an individual.... The freedom of a few have then to be bridged in order to ensure the freedom of all. It is in this sense that Parts III and IV, as said by Granville Austin,199 together constitute 'the conscience of the Constitution'...

I say that the Directive Principles of State policy should not be permitted to become 'a mere rope of sand'. If the State fails to create conditions in which the Fundamental Freedoms could be enjoyed by all, the freedom of the few will be at the mercy of the many and then all freedoms will vanish. In order, therefore, to preserve their freedoms, the privileged few must part with a portion of it.200

From the perusal of the observations of various judges in Kesavananda Bharti, it is clear that the Court has tried its best to come out of the controversies of the past. According to the majority of the judges, the directive principles are not of less significance as compared to fundamental rights because they are "fundamental in the governance of the country" and their aim is to provide socio-economic justice to millions of Indians. The Court no longer regarded the individual rights above the socio-economic principles of Part IV. Professor Laski has rightly pointed out that:

[W]e are concerned here, not with the defence of anarchy, but with the condition of its avoidance. Men must learn to subordinate their self interest in the common welfare. The privileges of some must give way before the rights of all.202

It is submitted that in order to bring socio-economic liberty for all citizens and to make socio-economic changes in the structure of the society, the directive principles are to prevail over the fundamental

198. Supra note 179 at 1970.
200. Supra note 179 at 2050 (emphasis added).
rights of the few, and to subserve the common good and not to allow the
economic system to result to the common detriment. It is the duty of the
State to promote the common good. From the various observations made
by the learned judges of the highest court of the land it is amply clear
that the Supreme Court no longer treated fundamental rights above social
order envisaged in the directive principles as had been done by Golak
Nath. This further meant that Parliament could amend the provisions of
Part III to bring them in conformity with the declarations in the preamble
and also with the precepts of the directive principles of State policy.
Though Mathew, J., was very clear in his mind that with the passage of
time fundamental rights may have to be subordinated to the directive prin­
ciples yet the majority appeared to be reluctant to endorse this view.Mathew,
J., expressed the above view while he was drawing his conclusion about arti­
cle 31C. He observed:

If Parliament, in its capacity as amending body decides
to amend the Constitution in such a way as to take away
or abridge a Fundamental Right to give priority value
to the moral claims embodied in Part IV of the Constitu­
tion, the Court cannot adjudge the constitutional amend­
ment as bad for the reason that what was intended to be
subsidiary by the Constitution makers has been made
dominant.

It is submitted that the Court very rightly upheld the validity
of the first part of article 31C which gave power to the legislature to
pass laws to implement the directives contained in article 39(b) and
39(c), even if those laws violate articles 14, 19 or 31. The Supreme Court
realised that the concentration of wealth and the means of production
was a social evil and it hampered the realisation of goal of equality
and socio-economic justice to all. This was, in fact, the first step, and
rightly so, by the judiciary to bring the socio-economic revolution
visualised by the directive principles. By upholding the validity of the
first part of article 31C, the Supreme Court, to a certain extent, recogni­
sed the supremacy of some of the directives over certain fundamental
rights. The earlier concept that the fundamental rights are 'inviolable',
'eternal', 'transcendental' or 'paramount' survived no longer after
Kesavananda Bharti. This new judicial trend was also in consonance with

203. Supra note 179 at 1707.
204. Id. at 1966. See also supra note 29 at 1035.
The legislative intentions. 205

(iv) Fourth Phase: From Forty-second Amendment to Minerva Mills

The directive principles of state policy, after getting recognition in Kesavananda Bharti, got further impetus in the subsequent judgements of the Court. In Narendra Prasad v. State of Gujarat, 206 the Supreme Court explained the role of the directive principles. It was pointed out that no right in an organised society can be absolute. Enjoyment of one's rights must be consistent with the enjoyment of rights by others. Wherein for a free play of social forces it is not possible to bring about a voluntary harmony, the State has to step in to set right the imbalance between the competing interests and there the directive principles of state policy have a definite and positive role introducing an obligation upon the State under article 37 in making laws to regulate the conduct of men and their affairs. 207 The Court observed:

A particular fundamental right cannot exist in isolation in a water-tight compartment, one fundamental right of a person may have to co-exist in harmony with the exercise of another fundamental right by others and also with reasonable and valid exercise of power by the State in the Directive Principles in the interest of social welfare as a whole. The court's duty is to strike a balance between competing claims of different interests. 208

It is submitted that the Court has rightly pointed out the definite and positive role of the directive principles in case of competing interests. In the light of this judgement the directive principles have a definite and positive role to bring about socio-economic changes in the society.

205. Because now the legislature could pass any law in furtherance of directive principles given in article 39(b) and (c) and that law could not be declared as unconstitutional if it violated certain fundamental rights like articles 14, 19 and 31. Before this judgement was given, if any law was passed by the legislature and if that happens to contravene any of the fundamental rights then that was declared as unconstitutional, unless it was otherwise protected by articles 31A or 31B.


207. Id. at 2105.

208. Ibid.
In Mumbai Kamgar Sabha v. Abdulbai, the balance was, however, further shifted in favour of the directive principles of state policy. Recognising the importance of the social philosophy of Part IV, the Court observed:

Statutory interpretation, in the creative Indian context, may look for light of the load-star of Part IV of the Constitution...Where two judicial choices are available, the construction in conformity with the social philosophy has preference.

It is submitted that the above observation of the Court was a pointer in the right direction. The competing conflict between fundamental rights and the directive principles could be resolved by giving preference to the interpretation which was in conformity with the directive principles. Thus, the court gave due importance to all the directive principles vis-a-vis all the fundamental rights.

In State of Kerala v. N.M.Thomas, the status relationship between the fundamental rights and directive principles of state policy was explained by Fazal Ali, J., in the following words:

The directive principles contained in Part IV constitute the stairs to climb the high edifice of a socialistic state and the fundamental rights are the means through which one can reach top of the edifice.

It is submitted that from the perusal of the judgements of the Supreme Court given after Kesavananda Bharti, it is evidently clear that the judicial milieu was definitely in favour of the directive principles. The Parliament got inspiration from this judicial milieu and thought that it was the best time when it could introduce some constitutional changes through which the supremacy could be given to all the directive principles over the fundamental right.

Thus, the Parliament passed the Constitution (Forty-second Amendment)

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209. A.I.R.1976 S.C.1455. The main question before the Court in this case was whether there was any customary bonus or bonus as a condition of service, apart from the profit based bonus? The Court answered this in the affirmative.
210. Id. at 1465 (Emphasis supplied).
212. Id. at 546.
Act, 1976. This Amendment was the lengthiest amendment of the Constitution and it made significant changes in the various provisions of the Constitution. Among those one was the dominant position assigned to the directive principles. This was done by amending article 31C, which in the altered form provided:

Notwithstanding anything contained in Article 13, no law giving effect to the policy of the State towards securing (all or any of the principles laid down in Part IV) shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by article 14, article 19 or article 31.

In short, by amending article 31C, this Amendment established the supremacy of all the directive principles over the fundamental rights contained in articles 14, 19 or 31. The whole object of subordinating these fundamental rights was to secure socio-economic justice to all which is the high ideal and aspiration contained in the preamble. It may be pointed out here, though at the cost of repetition, that these fundamental rights were interpreted in the early days by the Supreme Court in such a way that they operated as stumbling blocks against the socio-economic legislations passed by the legislature. The Amendment, thus, set at rest the controversy of status relationship between fundamental rights and directive principles of state policy and made it clear that "times have changed in the world, the conditions have altered in India, the residence of power having shifted from Raj to Republic". In other words, the social philosophy embodied in Part IV should be taken as a guide in the interpretation of the Constitution and it was this theme which was adumbrated by the Supreme Court in _Mumbai Kamgar Sabha_. The Constitution (Forty-second Amendment) Act, 1976, also added three more articles, that is article 39-A,

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213. This Amendment was based on the recommendations of the Swarn Singh Committee. The Committee was appointed in pursuance of Congress Revolution passed at Kama Gata Maru Nagar in 1975. The Committee which functioned under the Chairmanship of Shri Swaran Singh undertook a comprehensive review of the working of the Constitution and to provide solution to the problems inherited from the past, those of the present and those likely to arise in future. See R.C.S. Sarkar, "Some aspects of Constitutional Reforms: Judicial Review and Directive Principles", _X J.C.P.S._, 347(1976).

214. Thus, for the words "the principles specified in clause(b) or clause(c) of article 39", the words "all or any of the principles laid down in Part IV" were substituted.


216. See supra note 210.

article 43-A\textsuperscript{218} and article 48-A,\textsuperscript{219} in Part IV of the Constitution. The inclusion of these directives was a welcome step.\textsuperscript{220} It is, however, interesting to note that the Forty-second amendment though established the supremacy of all the directive principles over fundamental rights, yet it did not tear off the fundamental character of property right. It was this fundamental right which earlier had come in the way of implementation of the directive principles of state policy. This was, however, done later by the Constitution(Forty-fourth Amendment)Act, 1978. This Amendment deleted the right to property from the fundamental rights given in Part III and incorporated it in a new article 300-A of the Constitution.\textsuperscript{221} This amendment also instituted a new clause(2) to article 38 in Part IV of the Constitution.\textsuperscript{222} This new clause was added with a view to ensure that the State removes all kinds of inequalities and provide socio-economic justice to all. The dominance of all the directive principles over the fundamental rights given in articles 14 or 19 continued even after this amendment.\textsuperscript{223}

Thus, regarding the status relationship between fundamental rights and the directive principles, the legislature and the judiciary moved with the same wavelength. However, the judicial attitude regarding the status of directive principles was once again changed in Minerva Mills Ltd. v. Union of India.\textsuperscript{224} This case is of cardinal importance as to the status relationship between fundamental rights and directive principles of state policy. This case was heard by a Constitution Bench,\textsuperscript{225} and regarding the question of the validity of amended article 31C, which dealt with the status relationship of fundamental rights and directive principles, two

\textsuperscript{218} Article 43-A deals with participation of workers in management of industries.

\textsuperscript{219} Article 48-A deals with protection and improvement of environment and safeguarding of forests and wild life.

\textsuperscript{220} For the details of these directives see infra Chapters VI, IX and X.

\textsuperscript{221} The Constitution(Forty-fourth Amendment) Act, 1978 repealed article 19(1)(f) which read: "to acquire, hold and dispose of property and" article 31 dealing with compulsory acquisition of property. The new article 300-A introduced by this amendment provided: "No person shall be deprived of his property save by authority of law." For the details of this article see infra Chapter V.

\textsuperscript{222} See article 38(2).

\textsuperscript{223} For the words "Article 14 or Article 19 or Article 31", the words "Article 14 or Article 19" were substituted in article 31C as article 31 was deleted by this amendment. It may be noted here that the Constitution(Forty-fifth Amendment)Bill, 1978, which later became the Constitution(Forty-fourth Amendment) Act, 1978, had envisaged the amendment of article 31C so as to restore it to its pre-forty-second amendment position. This, however, could not be done because the Janata Party did not get the support of Rajya Sabha on this issue.

\textsuperscript{224} A.I.R.1980 S.C.1789.

\textsuperscript{225} Chandrachud, C.J., Bhagwati, Gupta, Untwalia and Kailasam, JJ., constituted the Bench in Minerva Mills.
opinions were delivered. The majority opinion consisting of four judges was delivered by Chief Justice Chandrachud and the Minority opinion was given by Justice Bhagwati (as he then was) in his separate judgement. Before anatomising the majority and minority opinion, it is pertinent to mention the facts of the case which were as under:

The petitioner No.1 was a limited company and owned a textile undertaking called Minerva Mills situated in the State of Karnataka. This undertaking was nationalised and taken over by the Central government under the provisions of the Sick Textile Undertakings (Nationalisation) Act, 1974. Petitioners No.2 to 6 were shareholders of Petitioner No.1, some of whom were secured and some unsecured creditors. Respondent No.1 was the Union of India, Respondent No.2 was the National Textile Corporation Limited in which the undertaking of the Minerva Mills came to be vested under section 3(2) of the Nationalisation Act, 1974. Respondent No.3 was a subsidiary of the Respondent No.2. As a result of the report of a Committee appointed by the Central government on 20 August 1970, the Central government passed an order on 19 October 1971 under section 18-A of the Industries (Development and Regulation) Act, 1951, authorising the respondent No.2 to take over the management of the Minerva Mills Ltd. on the ground that its affairs were being managed in a manner highly detrimental to public interest. The petitioners challenged the constitutional validity of the Sick Textile Undertakings (Nationalisation) Act, 1974 and the order dated 19 October 1971. The petitioners further challenged the constitutional validity of the Constitution (Thirty-ninth Amendment) Act, which inserted the impugned Nationalisation Act as entry 105 of the Ninth Schedule of the Constitution. That raised the question as to the constitutional validity of article 31B of the Constitution. Finally, the petitioners challenged the constitutional validity of sections 4 and 55 of the Constitution (Forty second Amendment) Act, 1976. That challenge, inter alia, raised the question as to the constitutional validity of the amended article 31C of the Constitution.

226. Chandrachud, C.J., Gupta, Untwalia and Kailasam, J.J.
227. Supra note 224 at 1795-96. It may also be pointed out at this place that article 31C was amended for the second time by section 4 of the Constitution (Forty-second Amendment) Act, 1976. And section 55 of the Amendment had added clauses (4) and (5) in article 368.
In order to understand the majority and minority opinions in their proper perspectives, it is also essential to state the arguments of Mr. Palkhiwala, who appeared on behalf of the petitioners, and the contentions of learned Attorney General and the Additional Solicitor General of the Union of India. Mr. Palkhiwala submitted the following arguments.

(1) The amendment introduced by section 4 of the forty-second amendment into article 31C of the Constitution destroyed the harmony between Part III and Part IV by making fundamental rights subservient to directive principles of state policy.

(2) The Constitution-makers did not contemplate the disharmony or imbalance between the fundamental rights and directive principles and indeed they were both meant to supplement each other.

(3) The basic structure of the Constitution rested on the foundation that while directive principles were the mandatory ends of government, those ends were to be achieved only through the means permitted by fundamental rights set out in Part III of the Constitution.

(4) If the amended article 31C was allowed to stand, it would confer an unrestricted licence on the legislature and the executive to destroy democracy and establish an authoritarian regime, both at the centre and in the states.

(5) All legislative and government actions purports to be related directly or indirectly to some directive principles of state policy. The protection of amended article would, therefore, be available to every legislative action under the sun.

(6) The amended article 31C abrogated the right to equality guaranteed by article 14, which is the very foundation of a republican form of government and is by itself a basic feature of the Constitution.

(7) It is impossible to envisage that a destruction of fundamental rights guaranteed by Part III of the Constitution is necessary for achieving the objects of some of the directive principles. [228]

228 Id., at 1800. Mr. Palkhiwala mentioned that for achieving the objects of directive principles like equal justice and free legal aid, organising Village Panchayats, providing living wages for workers and just and humane conditions of work, free and compulsory education for children, organisation of agriculture and animal husbandry, and protection of environment and wild life, no destruction of fundamental rights is required.
(8) What the Constituent Assembly had rejected, by creating a harmonious balance between Parts III and IV, was brought back by the forty-second Amendment.

(9) And finally, the enforcement of fundamental rights could be suspended only during an emergency under article 359 whereas article 31C virtually abrogates and destroys fundamental rights in normal times.\footnote{Ibid.}

These contentions were stoutly resisted by the learned Attorney General and he submitted that

(1) Securing implementation of directive principles by the elimination of obstructive legal procedures cannot ever be said to destroy or damage the basic feature of the Constitution.

(2) Laws made to implement the objectives of Part IV would necessarily be in the public interest and would fall under article 19(5) of the Constitution in relation to clauses(d) and (e) of article 19(1) and they would be saved in any case.

(3) The history of the Constitution, particularly the incorporation of articles 31(4) and (6), the introduction of articles 31A, 31B and unamended article 31C, which were all upheld by the Supreme Court establish the scope of amending power under article 368 and the said section 4 of the Amending Act falls within the scope of amending power.

(4) A law complying with article 38 was incapable of abrogating fundamental freedoms except certain economic rights, and that too for the purpose of minimising the inequalities.

(5) A law which complies with article 38 cannot conceivably abrogate the fundamental freedoms otherwise it would bring socio-economic injustice and would fall outside the protection of article 38. In any event, each and every violation of articles 14 and 19 does not damage the basic structure of the Constitution.\footnote{Id. at 1801.}

The Additional Solicitor General submitted that

possible impact of amended article 31C on cases where this Court had held provisions of certain statutes to be violative of article 14. He further submitted that on the basis of his tabulated analysis there can be many cases which are not relatable to directive principles and will not, therefore, be saved by the amended article.

(2) The binding ratio of Kesavananda Bharti and the majority decision in respect of the unamended article 31C showed that every article could be amended so long there was no total abrogation of fundamental rights which constitute the essential feature or basic structure of the Constitution.

(3) A harmonious and orderly development of constitutional law requires that the phrase "inconsistent with" or "takes away or abridges" which occur in articles 31B and 31C should be read down to mean "restrict" or "abridge" and not "abrogate".

(4) Finally judicial review was not totally excluded by the amended article 31C because it would still be open to the court to consider:

(i) whether the impugned law has 'direct and reasonable nexus' with any of the directive principles;

(ii) whether provisions encroaching on fundamental rights are integrally connected with and essential for effectuating the directive principles or at least ancillary thereto;

(iii) whether the fundamental right encroached upon is an essential feature of the basic structure of the Constitution; and

(iv) if so, whether the encroachment, in effect, abrogate that fundamental right.

Both the Attorney General and the Additional Solicitor General also raised a preliminary objection to the consideration of the question raised by the petitioners as regards the validity of section 4 of the forty-second


233. Supra note 224 at 1802.
Amendment. The preliminary objection as stated by Chandrachud, C.J., ran as under:

It is contended by them that the issue formulated for consideration of the Court; "whether the provisions of the Forty-second Amendment of the Constitution which deprived the Fundamental Rights of their Supremacy and, inter alia, made them subordinate to the directive principles of State policy are ultra vires the amending power of Parliament?" is too wide and academic.234

It was further urged that since it is the settled practice of the Court not to decide academic questions and since property rights claimed by the petitioners under articles 19(1)(f) and 31 do not survive after Forty-fourth Amendment, the Court should not entertain any argument on the points raised by the petitioner.235

The Supreme Court in its majority opinion, speaking through Chandrachud, C.J., declared section 4 of the forty-second Amendment unconstitutional on the ground that it destroyed the basic structure of the Constitution.236 However, in his forceful dissenting judgement, Bhagwati, J., (as he then was) held section 4 of the forty-second Amendment as constitutional and observed that it is far from damaging the basic structure of the Constitution.237 Thus, according to Justice Bhagwati, the amended article 31C was constitutionally valid. The net result of the Court's decision was that the article 31C was restored to the position in the pre-forty-second Amendment. And the attempt of the legislature to enlarge the scope of all the directive principles by amending article 31C was nullified. In order to understand completely the socio-legal implications of this judicial pronouncement on the socio-economic structure envisaged in Part IV of the Constitution, it would be better to analyse the majority and minority opinion of the Court in the light of the arguments and the contentions raised by the Petitioners and Respondents.

Chandrachud, C.J., rejected the preliminary objection raised by the Attorney General and Additional Solicitor General.238 According to him,

234. Ibid.
235. Ibid.
236. Id. at 1811.
237. Id. at 1853 and 1857.
238. Id. at 1803.
the question raised by the petitioners as regards the constitutionality of section 4 was very much there for anyone to see. He further observed that there were two other relevant considerations which must be taken into account while dealing with the preliminary objection. First, there is no constitutional or statutory inhibition against decision of questions before they actually arise for consideration. In view of the importance of the question raised and in view of the fact that the question has been raised in many a petitions, it is expedient in the interest of the justice to settle the true position. Secondly, he pointed out that the Court was not dealing with an ordinary law which may or may not be passed so that it could be said that the court's jurisdiction was being invoked on the hypothetical consideration that the law might be passed in future which would injure the rights of the petitioners. The court was dealing with a constitutional amendment which had been brought into operation and which, of its own force, permitted the violation of certain freedoms through laws passed for certain purposes.

Seervai is also of the view that the preliminary objection was rightly overruled by Chandrachud, C.J. However, according to him, Chandrachud, C.J., proceeded on the wrong assumptions when he observed that "it is the settled practice of this Court not to decide academic questions." It is submitted that the preliminary objection was wrongly overruled and it deserved to be sustained. The question regarding the validity of amended article 31C did not arise on the writ petitions and the counter affidavits and it was wholly academic and superfluous to decide it.

Upholding the preliminary objection, Justice Bhagwati (as he then was) rightly observed:

Once Mr Palkhiwala conceded that he was not challenging the constitutionality of Article 31A, Article 31B and the unamended Article 31C and was prepared to accept them as constitutionally valid, it became wholly unnecessary to rely on

239. Ibid.
240. Ibid.
241. See Seervai, supra note 30 at 1633.
242. Ibid. According to Seervai, whenever any question of great public importance arises before the Court, then it is necessary and expedient to pronounce the judgement on the same. A Court administering justice ought not to allow a salutory self imposed general rule to produce so unjust result. Id. at 1634-35. See also Union of India v. Sankal Chand, A.I.R.1977 S.C.2328.
243. Supra note 224 at 1814.
the amended Article 31C in support of the validity of the Nationalisation Act, because Article 31B would, in any event, save it from invalidation on the ground of infraction of any of the Fundamental Rights.244

It is submitted that the entire argument of Mr. Palkhiwala raising the question of constitutionality of the amendment in article 31C was academic and the court could have very well declared to be drawn into it.245

Chief Justice Chandrachud, stated his views regarding the status relationship of fundamental rights and directive principles in the following words:

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

Fundamental rights occupy a unique place in the lives of civilized societies and have been variously described in our judgements as "transcendental", "inalienable" and "primodial". For us, ... they constitute the ark of the Constitution.246

Emphasising the cherished value of rights contained in articles 14 and 19 and the sweeping impact of article 31C on these individual freedoms, the learned Chief Justice observed:

Articles 14 and 19 do not confer any fanciful rights. They confer rights which are elementary for the proper and effective functioning of democracy... if articles 14 and 19 are put out of operation in regard to the bulk of laws which the legislature are empowered to pass, Article 32 will be drained of its life blood.247

It is submitted that from the above observations of Chief Justice, it is clear that he has elaborated only the importance of fundamental

244. Ibid.
245. Id. at 1815. Seervai has criticised the observations of Bhagwati, J., in upholding the preliminary objection. According to Seervai, the validity of articles 31A, 31B and unamended article 31C was to be decided in Waman Rao v. Union of India, A.I.R.1981 S.C.271. And there is no reason to suppose that the four majority Judges in Minerva did not understand correctly the preliminary objection. See Seervai, supra note 30 at 1630-31. It is submitted that the views of Seervai are wrong. Because the validity of amended article 31C depended upon the validity of articles 31A, 31B and unamended article 31C. Also there is no justification in saying that only majority could understand the preliminary objection and the minority judge could not understand it.
246. Supra note 224 at 1806.
247. Id. at 1808.
rights given in Part III but has totally ignored the importance of directive principles which are given in Part IV of the Constitution and which are "fundamental in the governance of the country". By describing the fundamental rights as "inalienable", "transcendental" and "primodial", he is trying to go back to the days of Champakam and Golak Nath. Mohammad Ghouse has rightly pointed out that "if the distinction between abrogation of the basic feature arising out of fundamental rights and amendment of fundamental right is obliterated, Golak Nath will stage a come-back draped in a basic feature. Such a development, it is needless to say, may endanger the theory of basic structure." It is further submitted that Chief Justice ignored the legislative and judicative development which took place from Champakam to Kesavananda Bharti. The Constitution(Twenty-fifth Amendment) Act, 1971 was passed in order to overrule the decision of the Supreme Court in Golak Nath and the amendment in regard to the substantive part of article 31C got the stamp of constitutionality in Kesavananda Bharti. And it was this very case in which the theory of the basic structure was evolved for the first time. No doubt, fundamental rights are very important for every individual but the directive principles are not of any less significance. In fact they are "fundamental in the governance of the country" and what is fundamental in the governance of the country cannot be brushed aside or ignored simply because of the reason that they are not enforceable in the Court of law.

The fact of non-justiciability does not, therefore, detract from the tremendous importance of the directive principles. The majority judgement gives the impression of virtual devaluation of directive principles and defundamentalisation of an unambiguous mandate. In fact, modern concept of socio-economic egalitarianism and freedom are better spelt out by the directive principles than formal fundamental rights. Conferring sancrosanct and inviolable character on these rights will lead to the affirmation of the

248. See Mohammad Ghouse, "Constitutional Law-I" in A.S.I.L., 156 at 220 (1980). In Minerva Mills, Chandrachud, C.J., tells us as to when an amendment of fundamental right abrogate a basic feature. He observed: "A total deprivation of fundamental rights, even in a limited area, can amount to abrogation of a fundamental right just as partial deprivation in every area can. . . . [T]he withdrawal of protection of Articles 14 and 19 from a large number of laws destroys the basic structure of the Constitution". Supra note 224 at 1807. Such a test, it is submitted, confirms the fear about the return of Golak Nath.

entrenched privileges of the privileged few, making the poor man still poorer. For a common man, as a matter of fact, the directive principles come first and fundamental rights later, because he must first have 'a minimum of material well-being' so as to be able to exercise these rights. In other words, the constitutional mandate in Part IV should not shine as rhetorical legalities drained of real life and effectiveness. Hence, the Constitution cannot be permitted to be used to sustain the status quo ante by judicial writs in the name of fundamental rights.

Dwelling upon the fundamental rights and directive principles jurisprudence, Bhagwati, J. (as he then was), observed:

The Fundamental Rights are no doubt important and valuable in a democracy, but there can be no real democracy without social and economic justice to the common man and create socio-economic conditions in which there can be social and economic justice to everyone, is the theme of the Directive Principles....The dynamic provisions of Directive Principles fertilise the static provisions of Fundamental Rights. 250

He further observed:

It will thus be seen that the Directive Principles enjoy a very high place in the constitutional scheme and it is only in the frame-work of the socio-economic structure envisaged in the 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 who do not have even the bare necessities of life and who are living below the poverty level. 251

It is submitted that Bhagwati, J., has rightly explained the status relationship of fundamental rights and directive principles. He further maintained that the two constitutional obligations, one in regard to the fundamental rights and other in regard to directive principles, are of equal strength and merit and there is no reason why in case of conflict, the former should be given precedence over the other. 252 According to Bhagwati, J. (as he then was), the effect of giving importance to the fundamental rights would amount to refusal to give effect to the words "fundamental in the governance of the country", and a constitutional command which has been declared by the Constitution as fundamental, would be rendered non-fundamental. 253

250. Supra note 224 at 1847.
251. Ibid. (Emphasis supplied)
252. Id. at 1851.
253. Ibid.
It may be pointed out here that even Chandrachud C.J., could not ignore the importance of the directive principles when he made the following observation:

The significance of the perception that Parts III and IV together constitute the core of commitment to social revolution and they, together, are the conscience of the Constitution is to be traced to a deep understanding of the Indian Constitution... (They) are like two wheels of a chariot, one no less important than the other. You snap one and the other will loose its efficacy. They are like a twin formula for achieving the social revolution...\(^\text{254}\)

He further observed:

\[\text{[T]he Indian Constitution is founded on the bedrock of the balance between Parts III and IV. To give absolute primacy to one over the other is to disturb the harmony of the Constitution. This harmony and balance between fundamental rights and directive principles is an essential feature of the basic structure of the Constitution.}\]\(^\text{255}\)

In Minerva Mills, the main thrust of the arguments of Mr. Palkhiwala was that by reason of amendment of article 31C, the harmony and balance between fundamental rights and directive principles is disturbed. Because fundamental rights which had, prior to the Amendment, supremacy over directive principles are now, as a result of the Amendment, made subservient to the directive principles.\(^\text{256}\)

Rejecting this contention of the learned counsel, Bhagwati, J.(as he then was) pointed out that prior to the amendment of article 31C fundamental rights never enjoyed a higher or superior position, in the constitutional scheme, than directive principles and there is accordingly no question at all of any subversion of the constitutional structure by the Amendment.\(^\text{257}\)

The Constitution makers never contemplated that a conflict would arise between the constitutional obligations in regard to fundamental rights and the constitutional mandate in regard to the directive principles. But if a conflict does arise between these two constitutional mandates of equal importance and of equal fundamental character, how is the conflict to be resolved? The Constitution did not provide any answer because such a problem

\(^{254}\) Id. at 1806.  
\(^{255}\) Ibid.  
\(^{256}\) Id. at 1800.  
\(^{257}\) Id. at 1851.
was never anticipated by the Constitution makers and this problem, therefore, had to be resolved by the Parliament and some modus operandi had to be evolved in order to eliminate the possibility of conflict, however, remote it might be. Quoting extensively, from the speech of Jawaharlal Nehru, delivered in the Lok Sabha at the time of discussion on the Constitution(First-Amendment) Bill, 1951, Bhagwati J.(as he then was) observed:

Parliament took a view that the constitutional obligation in regard to Directive Principles should have precedence over the constitutional obligation in regard to the Fundamental Rights in articles 14 and 19, because Fundamental Rights though precious and valuable for maintaining the democratic way of life, have absolutely no meaning for the poor, downtrodden and economically backward classes of people who unfortunately constitute the bulk of the people of India and the only way in which Fundamental Rights can be made meaningful to them is by implementing the Directive Principles, for, the Directive Principles are intended to bring about socio-economic revolution and to create a new socio-economic order wherein there will be social and economic justice for all and every one, not only a fortunate few but the teeming millions of India, would be able to participate in the fruits of freedom and development and exercise the Fundamental Rights.259

It is submitted that, Bhagwati, J., has rightly explained the true position of the directive principles vis-a-vis fundamental rights. Article 31C was amended by the Parliament with a view to provide that in case of conflict directive principles shall have precedence over fundamental rights in articles 14 and 19 and the latter shall yield place to the former. Parliament in making this amendment was moved by the noble philosophy eloquently expressed in highly inspiring and evocative words, full of passion and feelings by Chandrachud, J., (as he then was) in his judgement in Kesavananda Bharti.260 It is a matter of great concern that the learned Chief Justice favoured the directive principles in Kesavananda Bharti but not in Minerva Mills. In the latter case he switched over to the importance of fundamental rights. He, it is submitted, belied the hopes of millions of Indians who are still to come upto the level of privileged class. Like him all of us are concerned deeply for the steady erosion of the fundamental rights, but we are equally disturbed and worried for the non-implementation of the directive principles. However, the minority opinion of Bhagwati, J.(as he then was)

258. Ibid.
259. Id. at 1852(Emphasis supplied)
260. See supra note 200.
gives a ray of hope to the millions of destitutes for whom the directive principles come first.

From the observations of Chandrachud, C.J., and the arguments of learned counsel for petitioners, now the question that arises for consideration is whether there is any inviolable equation between fundamental rights and directive principles. And whether the amended article 31C alters or destroys the basic structure of the Constitution, either by destroying such equation or by excluding judicial review.

In Kesavananda Bharti, which expounded the basic structure theory, the Supreme Court upheld the constitutionality of the first part of unamended article 31C which gave supremacy to certain directives contained in article 39(b) and (c) over the fundamental rights secured by articles 14 and 19. Since the Kesavananda Bharti case disturbed the so called equation it must be presumed that the equation is either not at all inviolable or that any disturbance thereof does not per se destroy the basic structure of the Constitution. Being conscious of this fact, the Court seems to rest its verdict invalidating the amended article 31C on the ground that the Amendment which extended the protection to all the directive principles, brought about a result which is basically different from the one arising under the unamended article. It may be pointed out that the court found nothing intrinsically objectionable in disturbing the balance between the fundamental rights and directive principles in Kesavananda Bharti. It is really very difficult to find out how such a balance in Minerva Mills constitute the part of unalterable basic feature of the Constitution. While supporting this contention, Bhagwati, J.(as he then was), observed:

If the exclusion of the Fundamental Rights in Articles 14 and 19 could be legitimately made for giving effect to the Directive Principles set out in Clauses(b) and (c) of Article 39 without affecting the basic structure, I fail to see why these Fundamental Rights cannot be excluded for giving effect to the other Directive Principles.

261. Supra note 255.
262. See supra note 229.
263. The validity of the unamended article 31C has also been upheld by the Supreme Court in Waman Rao v. Union of India, A.I.R.1981 S.C.271.
264. Supra note 224 at 1854.
He further observed:

If the constitutional obligation in regard to the Directive Principles set out in clauses (b) and (c) of Article 39 could be given precedence over the constitutional obligations in regard to the Fundamental Rights in Articles 14 and 19, there is no reason in principles why such precedence cannot be given to the constitutional obligation in regard to the other Directive Principles which stand on the same footing.265

It is submitted that the observations of Bhagwati, J. (as he then was), are right and it would be incongruous to hold the amended article 31C invalid when the unamended article 31C has been held to be valid by the Supreme Court in Kesavananda Bharti and Waman Rao. Bhagwati, J., was right when he pointed out that there is no difference between clauses (b) and (c) of article 39 and other directive principles of Part IV. It is submitted that article 37 makes all the directives mentioned in Part IV of the Constitution as "fundamental in the governance of the country" and it further provides that "it shall be the duty of the state to apply these principles in making laws". Hence in the Constitution itself no difference has been mentioned between the various articles dealing with directive principles in Part IV.

The learned counsel for the petitioners, Mr. Palkhiwala also argued that the unamended article 31C was different from the amended article 31C as the former allowed the passing of laws with respect to certain categories of laws and now it gives a free licence to the legislature to pass any law and it will still be protected by amended article 31C even if it destroyed the fundamental rights in articles 14 and 19. It is submitted that the amended article 31C also does not protect the all kinds of laws. Only those laws which are passed to give effect "all or any of the directive principles", are protected by this amendment.

It is submitted that Chandrachud, C.J., was wrong when he pointed out that the clear intendment of amended article 31C was to shut out all judicial review in relation to whether there is an infringement of articles 14 and 19, which was again a basic feature of the Constitution.266 His view

265. Ibid. (Emphasis supplied) See also infra note 295.
266. Id. at 1808.
that the amended article 31C prevented the judicial scrutiny of the nexus between the law and the concerned directive, it is submitted, will compel us to re-read the verdict in *Kesavananda Bharti*. In that case the Court struck down that portion of the unamended article 31C which barred the judicial review by making conclusive the declaration of the state relating to giving effect to the specified directive principles. The constitutionality of the main portion of the unamended article 31C was upheld and the Court's verdict indicated that the same did not exclude judicial review. It is further submitted that the amendment to article 31C did not change or alter the position vis-a-vis judicial review. To quote Bhagwati, J., (as he then was):

[I]t was not every provision of the law which is entitled to claim protection...but only those provisions of the statute which are basically and essentially necessary for giving effect to the Directive Principles are protected under the amended Article 31C.267

Where, therefore, protection is claimed in respect of a statute under the amended Article 31C, the Court would have first to determine whether there is real and substantial connection between the law and the directive principle and the predominant object of the law is to give effect to such directive principle and if the answer to this question is in the affirmative, the court would then have to consider which are the provisions of the law basically and essentially necessary for giving effect to the directive principles and give protection of the amended article 31C only to those provisions.268 If the Court finds that a particular provision is subsidiary on incidental or not essentially and integrally connected with the directive principles, it would not enjoy the protection of the amended article 31C and would be liable to be struck down as invalid if it violates articles 14 or 19 of the Constitution.269

Therefore, the Parliament cannot be said to have exceeded its constituent powers if it seeks to amend the provisions of Part III to bring them in conformity with the declarations in the preamble and also with the precepts of the directive principles of state policy. Hence, the Parliament did not abridge the rights conferred by articles 14 and 19 by amending

267. Id. at 1855-56.
268. Id. at 1856.
269. Ibid. See also *In re Krishan Das Mondal*, A.I.R.1981 Cal.11 at 12.
article 31C, but effectuated a synthesis between the essential rights in Part III of the Constitution with the essential directives of Part IV of the Constitution. Professor Virendra Kumar has rightly pointed out that "on the doctrine of implied powers there is ample authority in the Constitution itself, namely, in the directive principles to permit the Parliament to make legislations, although it will not be specifically by the provisions contained in Part on Fundamental rights."270

Chandrachud, C.J., also supported the argument of Mr. Palkhiwala that fundamental rights are not an end in themselves but are the means to an end. The end is specified in Part IV. It was pointed out that "the goals set out in Part IV have, therefore, to be achieved without the abrogation of the means provided for by Part III."271

It is submitted that to hold that fundamental rights are the "means to an end" does not go with our constitutional scheme because the constitution itself specifies the ends in some of the provisions of Part III. For example, abolition of untouchability mentioned in article 17 is an end in itself. Similarly article 24 which deals with the prohibition of employment of children in factories, etc., who are below the age of fourteen years illustrates the same. The majority's refusal to readjust the so called 'means' with the so called 'ends' in Part IV of the Constitution seems to ignore the very basic philosophy underlying our Constitution. In fact, the apt formulation of 'means' and 'ends' was inaptly applied in the Minerva Mills.272

The majority decision has highlighted the fundamental rights to equality, freedom and liberty embodied in articles 14, 19 and 21 as the "golden triangle" and has enunciated that these articles stand between the "heaven of freedom into which Tagore wanted his country to awake and the abyss of the unrestrained power."273 However, Tagore's vision also envisaged a situation where the 'head is held high' and 'the mind is without fear' which is inconceivable in a system which acquiesces in the

271. Supra note 224 at 1807.
273. Supra note 224 at 1811.
degradation, mental fear and physical agony of poverty.\textsuperscript{274} In the words of Shariful Hasan, the amended article was an attempt to show legal and constitutional sympathy to the hopes and aspirations of the people of India mentioned in Part IV.\textsuperscript{275} The learned writer has rightly concluded:

\begin{quote}
Amended Article 31C is not a ship sailing in an uncharted sea. Not all conceivable legislations but only those which are made giving effect to 'all or any of the Directive Principles specified in Part IV', shall have the protection of Article 31C if they conflict with the Fundamental Rights guaranteed in Articles 14 and 19 of the Constitution.\textsuperscript{276}
\end{quote}

It is submitted that the principle of egalitarianism is an essential element of social and economic justice and, therefore, where a law is enacted for giving effect to a directive principle with a view to promote socio-economic justice, it would not run counter to the egalitarian principle and would not, therefore, be violative of the basic structure even if it infringes equality before the law in its narrow and formalistic sense.

The judgement of the Supreme Court in \textit{Minerva Mills} suffers from another predicament as well. For the consideration of the question of "momentous significance", there was no occasion for a judge of different persuasion of either persuading other brother judge, or being persuaded by them.\textsuperscript{277} Professor Virendra Kumar has rightly pointed out that this is not in consonance with the concept of judicial accountability of the Summit Judiciary for declaring "the Law" under article 141 of the Constitution.\textsuperscript{278}

Just as one single bad reason vitiate the whole executive order irrespective of the merit of other grounds, the non-inclusion of one single judge in the judicial conference should also nullify even the majority ratio, because it is just possible that the excluded one judge might have convinced his other brother judges holding opposite views of the merit of his own view point. It was quite possible that the minority judgement would have become

\textsuperscript{274} Shariful Hasan, supra note 249 at 89.
\textsuperscript{275} Ibid.
\textsuperscript{276} Ibid. See also Upendra Baxi, \textit{Courage Craft And Contention}, 97(1986)
\textsuperscript{277} Supra note 224 at 1815.
Thus, the majority opinion in Minerva Mills, appears to be unconvincing whereas the minority opinion appears to be more sound, consistent and coherent and suits the socio-economic spirit of our Constitution. The judiciary will be failing in discharging its constitutional obligation if it fails to attune itself to the spirit and soul of the Constitution. The soul and spirit of our Constitution is justice—economic and political to all citizens.

279. Id. at 119. It is a settled practice that in the Supreme Court, when a judge is asked to draft a judgement, the draft is circulated to his colleagues, for their approval. So even if no judicial conference is necessary for the preparation of the judgement, it is submitted, that the judgement should be prepared after the circulation of drafts prepared by the various judges who heard the case. Then the comments are made in the margin by judges to whom they are circulated, suggesting any alteration or addition in the judgement. However, this may become impracticable in two cases namely, if the personal relation between members of the Bench are strained. Secondly, there are cases where it would be impracticable to exchange draft judgements with any profit. For example, in Kesavananda Bharti, ten draft judgements covering about 916 pages were prepared. And profitable study by each judge of ten draft judgements would be a full time work for a period varying between six weeks to three months, which would be absurd. Again, the same applies to S.P.Gupta v. Union of India, (1982) 2 S.C.R.365. Where the seven judgements run into 957 pages of the Supreme Court Report. See Seervai, supra note 30 at 1676. See also P.B.Gajendragadkar, To the Best of My Memory, 135; Mohd. Yakub v. State of J&K, A.I.R.1968 S.C.765 at 771; State of Gujarat v. ShantiLal Mangaldas, A.I.R.1969 S.C.634 at 637 and article 145(5) which deals with the rules of the Court etc.

280. However, Seervai is of the view that majority judgement in Minerva Mills is clearly right and the dissenting judgement is clearly wrong. See supra note 30 at 1679. It is submitted that the conclusion of Seervai is different than our conclusion regarding the judgement of Minerva Mills because he did not consider the directive principles as law or part of the Supreme law and secondly, he is of the view that nothing would have happened if directive principles had been struck out from the Constitution. These views of Seervai have already been analysed and proved wrong in this Chapter under sub-head B(ii).

281. See Mool Chand Sharma, "Court as an Institution for the Delivery of Socio-Economic Justice in India", in Ram Avtar Sharma (Ed.), Justice And Social Order in India, 23 at 32(1984). The learned author has observed that in Minerva Mills case the majority has given a very comprehensive interpretation to the relationship between fundamental rights and directive principles instead of giving a progressive functional socio-economic interpretation. It is submitted that the observations of the learned author are right.
After Minerva Mills, no legislative attempt was made to change the status relationship of fundamental rights vis-a-vis directive principles. However, the judiciary has shown its concern towards directive principles which is evident from the following judgements of the Court.

In Bhim Singh v. Union of India, it was pointed out that Part IV of the Constitution dealing with directive principles which seeks to build a "Social Justice Society", is basic to our constitutional order. The directive principles being paramount in character and fundamental in the country's governance, have a key to play in the developmental process of the socialistic Republic that India has adopted. Explaining the basic structure of fundamental rights, Krishna Iyer, J., observed,

[What is a betrayal of basic structure is not a mere violation of Art.14 but a shocking, unconscionable or unscrupulous travesty of the quintessence of equal justice. If the legislation does go that far it shakes the democratic, foundation and must suffer the death penalty....To use the Constitution to defeat the Constitution cannot find favour with the judiciary. I have no doubt that the strategy of using the missile of 'equality' to preserve die-hard, dreadful societal inequality is a strategem which must be given short shrift by this Court.]

It is submitted that the above observations of Krishna Iyer, J., are in consonance with the minority opinion of Bhagwati, J., (as he then was) in Minerva Mills.

In Waman Rao v. Union of India, (as in Minerva), an order was passed on 9 May, 1980 and the reasons for the order were given later. In this

283. Id. at 242 (Per Krishna Iyer, J.) Quoting Lord Denning he said: "A Judge should not be a servant of the words used. He should not be a mere mechanic in the powerhouse of semantics." The courts can and must interpret words and read their meanings so that public good is promoted and power misuse is interdicted. Ibid.
284. Id. at 238.
285. Id. at 243.
order it was held:

(1) Article 31A as originally inserted by the Constitution (First Amendment) Act, 1951 and as further amended by the Constitution (Fourth Amendment) Act, 1955, did not destroy the basic structure of the Constitution and was constitutionally valid.

(2) Article 31B and the Acts and Regulations specified in the Ninth Schedule which had been held valid by the majority in Kesavananda Bharti, decided on 24 April, 1973, were held valid in respect of the Amendments made to the Schedule before 24 April 1973. The Amendments to the Constitution made on or after 24 April 1973 to the Ninth Schedule were open to challenge on the ground that they, or any one or more of them, were beyond the amending power of the Parliament since they damage the basic structure of the Constitution.

(3) The unamended article 31C was valid and it did not damage the basic structure of the Constitution.²⁸⁷ The validity of unamended article 31C was upheld by Chandrachud, C.J., on two grounds. First, that the matter was no longer res integra because the majority in Kesavananda Bharti had held that the unamended article 31C was valid except for the conclusive declaration clause, explaining the second ground Chandrachud, C.J., observed:

The unamended portion of Art. 31C is not like an uncharted sea. It gives protection to a defined and limited category of laws which are passed for giving effect to the policy of the State towards securing the principles specified in Cl.(b) or Clause(c) of Article 39. These...directive principles...are vital to the well-being of the country and the welfare of its people...It is impossible to conceive that any law passed for such a purpose can at all violate Art.14 or Art.19. ²⁸⁸

It is submitted that in the above observation, Chandrachud C.J., has admitted what Bhagwati J.(as he then was), said in Minerva Mills. As discussed earlier, in Part IV there is no distinction between the various directive principles.²⁸⁹ There is no directive principle in Part IV which is not for the wellbeing of the people. As pointed out by Bhagwati, J.,

²⁸⁷. Id. at 275.
²⁸⁸. Id. at 291-92(Emphasis supplied) See also Seervai, supra note 30 at 1666.
²⁸⁹. See supra note 265. See also infra note 300.
(as he then was), in Minerva Mills, that article 38 stresses the obligation of the State to establish a social order in which justice - social, economic and political - shall inform all the institutions of national life. Thus it talks of the duty of the State to promote the "well-being" of the people. The directive principles set out in the subsequent articles following upon article 38 merely particularise and set out facets and aspects of the ideal of social, economic and political justice articulated in article 38 of the Constitution. Therefore, it is submitted, that even the amended article 31C was constitutionally valid. Thus, from the reasoning which Chandrachud, C.J. gave in Waman Rao for upholding unamended article 31C, it is evident that he was wrong in holding amended article 31C as unconstitutional in Minerva Mills.

Professor S.P. Sathe has rightly observed that the Supreme Court no longer holds the view that the directive principles are less fundamental than fundamental rights. Much water has flown down the Yamuna since this view was noticed many years ago. There are passages in both Bhim Singh as well as Waman Rao which clearly show that the Court considered the directive principles of state policy as a part of the basic structure of the Constitution. A law seeking to implement a directive principle is now presumed to be constitutional.

Explaining the true position which directive principles occupy in the constitutional scheme, Chinnappa Reddy, J., in A.B.S.K. Sangh (Rly.) v. Union of India, observed:

[I]t becomes the duty of the Court to apply the Directive Principles in interpreting the Constitution and the Laws. The Directive Principle should serve the Courts as a code of interpretation. Fundamental Rights should thus be interpreted in the light of the Directive Principles and the later should, whenever and wherever possible, be read into the former.

290. Supra note 224 at 1857.
292. Ibid.
The echo of minority opinion of Bhagwati, J., (as he then was), in Minerva Mills was found in the case of Sanjeev Coke Mfg. Co. v. Bharat Coking Coal Ltd. This case was also decided by a Constitution Bench and the Supreme Court was asked to decide whether the Coking Coal Mines (Nationalisation) Act, 1972 was entitled to protection of article 31C.

Chinnappa Reddy, J., speaking for the Court observed:

We have some misgivings about the Minerva Mills decision despite its rare beauty and persuasive rhetoric.297

Supporting the minority opinion of Bhagwati J. (as he then was) in Minerva Mills, the learned judge pointed out that no question regarding the constitutional validity of section 4 of the Constitution (Forty-second) Amendment Act, 1976 appears to have arisen in that case. The validity of the provisions of the Sick Textile Undertakings (Nationalisation) Act, 1974 which was challenged in Minerva Mills, had been enacted prior to the coming into existence of the Forty-second Amendment. The Act had been protected under clauses (b) and (c) of article 39 by virtue of article 31C as it existed at that time and which had been upheld by the Supreme Court in Kesavananda Bharti. Thus, the majority in Minerva Mills had unnecessarily gone into an academic or hypothetical question of considering the validity of amended article 31C of the Constitution. 298

The judge, therefore, suggested, though he did not say so openly, that the decision in Minerva Mills on the validity of amended article 31C was an obiter dictum. 299 It was further observed that since unamended article 31C was upheld by the Supreme Court in Kesavananda Bharti, the amended article 31C must also be valid for the following reasons:

The dialectics, the logic and the rationale in upholding the validity of Article 31C when it confined its protection to laws enacted to further Article 39(b) or Article

297. Supra note 295 at 246.
298. Id. at 247.
299. In Basantibai v. State of Maharashtra, A.I.R. 1984 Bom. 366 it was argued that the Supreme Court decision in Minerva Mills was obiter and had been overruled in Sanjeev Coke. This contention was rejected by the Bombay High Court. It is submitted that in the Minerva Mills, both Reddy J. as well as Sen J., observed that in view of the fact that the matter was due to come for review before the Court, it was not necessary to deal with that question. Supra note 295 at 248 and 256-57.
39(c) should, uncompromisingly lead to the same resolute conclusion that Article 31C with its extended protection is also constitutionally valid. No one suggests that the nature of the Directive Principles enunciated in the other Articles of Part IV of the Constitution is so drastic or different from the Directive Principles in Cls. (b) and (c), of Article 39, that the extension of constitutional immunity to laws made to further those principles would offend the basic structure of the Constitution.300

The learned judge also pointed out that no argument showing how other directive principles were different from those embodied in clauses (b) and (c) of article 39 so as to justify disallowance of constitutional immunity in respect of them was advanced in Minerva Mills, and no decision had been given thereupon.301

Further, rejecting the argument of the petitioner in Sanjeev Coke, that a law in furtherance of article 39(b) and (c) must be non-discriminatory and in compliance with article 14, the learned judge observed that to make it a condition precedent is to make article 31C meaningless.302 If the law made to further the directive principle is necessarily non-discriminatory or is based on a reasonable classification, then such law does not need any protection such as afforded by article 31C. Such law would be valid on its own strength, with no aid from article 31C. Furthermore it appears to us that broad egalitarian principle of socio-economic justice for all was implicit in every directive principle and, therefore, a law designed to promote a directive principle, even if it came into conflict with the formalistic and doctrinaire view of equality before the law, would most certainly advance the broader egalitarian principle and the desirable constitutional goal of socio-economic justice for all.303

In view of the reasons stated above, the court upheld the validity of Coking Coal Mines (Nationalisation) Act, 1972 as this legislation was for giving effect to the policy of directive principles and, therefore, immune

300. Supra note 295 at 248(emphasis supplied).
301. Ibid.
302. Id. at 249.
303. Id. at 249-50. See also supra note 276. The learned judge in Sanjeev Coke pointed out that "where Article 31C comes in Article 14 goes out. There is no scope for bringing in Article 14 by a side wind as it were, that is, by equating the rule of equality before the law of Article 14 with the broad egalitarianism of Article 39(b) or by treating the principle of Article 14 as included in the principle of Article 39(b)... They are different concepts and in certain circumstances, may even run counter to each other." Id. at 250. See also supra note 279.
under article 31C, from the attack on the ground that it offends the fundamental right under article 14 of the Constitution.

It is submitted that the decision of the Supreme Court in *Sanjeev Coke* is right and has correctly explained the status relationship of fundamental rights, *vis-a-vis*, directive principles. Thus, the damage done to the recognition of the directive principles by the majority in *Minerva Mills*, has to certain extent been cured and the minority opinion of Bhagwati, J., (as he then was) in *Minerva Mills*, got the judicial stamp of approval in *Sanjeev Coke*.

In the decisions, subsequent to *Sanjeev Coke*, also the Supreme Court has recognised the importance and the role which directive principles play in the constitutional scheme. In *State of Tamil Nadu v. L. Abu Kavur Bai*, it was pointed out that on a careful consideration of the legal and historical aspects of directive principles and the fundamental rights, there appears to be complete unanimity of judicial opinion of the various decisions of the Supreme Court on the point that although directive principles are not enforceable yet the Court should make a real attempt at harmonising and reconciling the directive principles and the fundamental rights and any collusion between the two should be avoided as far as possible.

In *N.T.Cornp. Ltd. v. Sitaram Mills Ltd.*, it was held that in

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304. *Supra* note 295. at 253 and 256. See also B. Errabbi, "The Constitutional Scheme of Harmony Between Fundamental Rights and Directive Principles of State Policy in India: Judicial Perception", in Ram Avtar Sharma (Ed.), Justice And Social Order in India, 175 at 196 (1984). The learned author is of the view that the position of the law of the land on the issue of the constitutional validity of section 4 of the Constitution (Forty-second Amendment) Act, 1976 which amended Article 31C is not clear as there are two conflicting decisions of equal authority of the Supreme Court.

305. It is strange to note that an eminent jurist like Seervai, has criticised the judgement of *Sanjeev Coke*. According to him the judgement in *Sanjeev Coke* has a status inferior to that of *obiter dicta* and that possibility cannot overrule the majority decision in *Minerva*. See *supra* note 30 at 1680-81. It is submitted that the view of the learned author seems to be erroneous because of the reason that he did not consider the directive principles as part of the Supreme Court. As also for the reason that he supported majority in *Minerva Mills*, which in our submission, as discussed earlier in this Chapter, is clearly wrong.

306. *A.I.R.1984 S.C.326*. In this case *Tamil Nadu Stage Carriages and Contact Carriages (Acquisition) Act, 1973* was held constitutionally valid as it was passed to achieve the objectives of article 39(b) and (c) and hence protected by article 31C.


308. *A.I.R.1986 S.C.1234*. In this case the Textile Undertakings (Taking over of Management) Act, 1983 was upheld as it was in furtherance of directive (contd...)
interpreting such a piece of legislation which was clearly in furtherance of the directive principles of state policy, the court cannot adopt a doctrinaire or pedantic approach. It is well known rule of construction that in dealing with such a piece of legislation, the Court ought to adopt a construction which would subserve and carry out the purpose and object of the Act rather than defeat it.  

In Central Inland Water Transport Corpn.Ltd. v. Brojo Nath, the Supreme Court explained the difference in Part III and Part IV in the following words:

The difference between Part III and Part IV is that while Part III prohibits the State from doing certain things (namely, from infringing any of the Fundamental Rights), Part IV enjoins upon the State to do certain things. This duty, however, is not enforceable in law but nonetheless the Court cannot ignore what has been enjoined upon the State by Part IV, and though the Court may not be able actively to enforce the Directive Principles of State policy by compelling the State to apply them in the governance of the country or in the making of laws the Court can, if the State commits a breach of its duty by acting contrary to these Directive Principles, prevent it from doing so.  

It is submitted that the Court has rightly explained the position of the directive principles and the role which courts are required to play in their implementation. The judiciary is an arm of social revolution and hence it is duty bound to prevent the State from acting contrary to the directive principles which are aimed at furthering the goals of the social revolution by establishing conditions necessary for its achievement. It is high time for the judiciary to adopt an approach favouring socio-economic principles of state policy at this juncture when the nation is passing
through the transitional process of transformation from a *laissez faire*
state to a social welfare state.  

(D) Directive Principles and the Concept of 
Reasonableness and Public Interest: Judicial 
Perception

Despite the fact that about four decades of working of the Constitution were dominated by the status-controversy between fundamental rights and directive principles, the Courts, while determining the constitutionality of the laws in view of various fundamental rights, did not ignore the directive principles. In answering the question whether certain laws imposed reasonable restrictions on fundamental rights in the public interest and whether certain laws were enacted for public purpose, the Courts have considered the fundamental importance of directive principles in socio-economic upliftment of the country. Reasonableness is not a closed category whose parameters may be exhaustively enumerated. It has rather limitless potentialities to provide a particular policy orientation in the operationalization of the constitutional provisions regarding individual freedom. In this context, of particular, significance are the directive principles of state policy which, though non-justiciable, are fundamental in the governance of the country and which the State is under a constitutional obligation to apply in making laws. The Courts, in discharge of its constitutional duty, have developed a technique of construing directive principles as reasonable restrictions on fundamental rights in the public interest. The judiciary has thus shown its concern for the implementation of the directive principles.


315. Article 37.

In *State of Bihar v. Kameshwar Singh*, the main question to be decided by the Court was whether the abolition of landlordism was a public purpose so as to justify the deprivation of fundamental rights of the petitioner guaranteed under article 31. The court answered in the affirmative on the ground that the object of the impugned legislation was to promote the policy laid down in article 39 of the directive principles. The Court observed:

The state ownership or control over land is a necessary preliminary step towards the implementation of the directive principles of state policy and it cannot but be a public purpose.

It is submitted that the judgement of the Court was right because it recognised the concept of "public purpose" on the basis of which legislation would be made to stand or fall with reference to fundamental rights. In other words, the Supreme Court recognised that the concepts like "public purpose" or "reasonableness" mentioned in the fundamental rights could be justifiably given content with reference to the ideals of directive principles of state policy. In some of the later cases, the Supreme Court has shown to a greater degree its dependence upon the directive principles and has treated them as a reservoir of ideas and values on the basis of which they gave content to the constitutional concepts of "reasonableness", "public interest" and "public purpose".

In *F.N.Balsara v. State of Bombay*, the Supreme Court held that the Bombay Prohibition Act, 1949 which sought to implement the policy of prohibition as envisaged in article 47, was a valid piece of legislation and did not constitute an unreasonable restriction upon the fundamental rights guaranteed by article 19. The Court observed that in judging the reasonableness of restrictions imposed by the Act, one has to bear in mind the directive principles of state policy set forth in article 47 of the Constitution.

318. *Id. at 290. See also Kameshwar Singh v. State of Bihar, A.I.R.1951 Pat. 91.; Surya Pal Singh v. U.P. Government, A.I.R.1951 All.674; Maloji Rao v. State of Madhya Bharat, A.I.R.1953 M.B.97.* The expression "public purpose" has not been defined anywhere in the Constitution and the Courts have held that the expression should be construed according to the spirit of the time in which particular legislation is enacted. In *Mumbai Kamgar Sabha v. Abdul Bhai, A.I.R.1976 S.C.1455 at 1465*, the Supreme Court pointed out that "Statutory interpretation on the creative legal context, may look for light to the load star of Part IV."
Constitution

In Bijoy Cotton Mills v. State of Ajmer, the Supreme Court was required to consider the validity of the Minimum Wages Act, 1948. It was contended on behalf of the petitioner that the material provisions of the Act interfered with the freedom of trade or business guaranteed under article 19(1)(g) of the Constitution. Rejecting this contention, Mukherjee, J., speaking for the Court observed:

It can scarcely be disputed that securing a living wage to labourers which ensure not only bare physical sustenance but also the maintenance of health and decency, is conducive to the general interest of the public. This is one of the Directive Principles of State policy embodied in Article 43 of our Constitution.

It is submitted that the court rightly used the directive principles as a norm of reasonable restriction in the general interest of the public on the fundamental freedom under article 19(1)(g) of the Constitution.

In Hanif Quareshi v. State of Bihar, the question before the Supreme Court was regarding the validity of some State enactments banning the slaughter of certain animals including cows. These enactments were challenged on the ground that they violated the fundamental rights of the petitioner under article 19(1)(g) and 25(1). The Supreme Court held

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All these cases show that all steps taken by the Court to bring out prohibition are reasonable and in the public interest. For the detail of these cases see infra Chapter IX.


that so far as the intention of the Act was to prohibit the slaughter of milch cattle, including cows and calves, the restrictions were reasonable and in the public interest because the Act implemented the directive principle contained in article 48 of the Constitution. \[325\]

It is submitted that the Supreme Court was right in upholding the Act of the legislature to the extent it was passed in pursuance of the directive principles of state policy.

In Pathumma v. State of Kerala, \[326\] while determining the question of reasonableness of restriction the Supreme Court observed that in judging the reasonableness of the restriction imposed by clause(5) of article 19, the Court has to bear in mind the directive principles of state policy. \[327\] It further observed that a just balance has to be struck between the restriction imposed and the social control envisaged by clause (6) of article 19 of the Constitution. \[328\]

In Jalan Trading Co. v. D.M. Aney, \[329\] the Court observed:

> What is reasonable depends on a variety of circumstances, but what is important is that the Directive Principles of State policy in Part IV of the Constitution are fundamental to the governance of the country. Therefore, what is directed as State policy by the founding fathers of the Constitution cannot be regarded as unreasonable or contrary to public interest even in the context of Article 19...\[330\]

Thus, the concept of reasonableness and public interest is implicit in the directive principles of state policy. The concept of reasonableness, in fact, pervades the entire constitutional scheme like a golden thread and finds its positive manifestation and expression in the lofty, ideal of social and economic justice which inspires and animates the

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325. See also Buddhu v. Allahabad Municipality, A.I.R.1952 All 653; Dulla v. State of U.P., A.I.R.1958 All 198; A.H. Quareshi v. State of Bihar, A.I.R.1961 S.C.448, Usmanbhai Hasanbhai v. State, A.I.R.1981 Guj.40. In this case the Gujarat High Court observed that "by virtue of the provisions of Article 48 of the Constitution, any legislation prohibiting slaughter of cows and calves would be considered to be reasonable by Courts so far as challenge on the ground of Article 19(1)(g) is concerned." Id. at 47.
327. Id. at 776.
328. Id. at 778.
330. Id. at 234. See also U.P.S.C.Board v. Hari Shankar, A.I.R.1979 S.C. 65 where it was observed by the Supreme Court that the courts are bound to evolve, affirm and adopt principles of interpretation which will further and not hinder the goals set out in the directive principles of state policy. See also Gujarat Steel Tubes Ltd. v. Mazdoor Sabha, 2 S.C.C.593(1980).
The Directive principles concretise and give shape to the concept of reasonableness envisaged in Articles 14, 19 and 21 and other articles enumerating the fundamental rights. By defining the national aims, and the constitutional goals, they set forth the standards or norms of reasonableness which must guide and animate governmental action.332

Thus, if any action is taken by the government with a view to give effect to any one or more of the directive principles, then that would ordinarily be regarded as reasonable, while an action which is inconsistent with or runs counter to a directive principle would, prima facie, incur the reproach of being unreasonable.333 Explaining the concept of 'public interest', the Court further observed:

The concept of public interest must as far as possible receive orientation from the Directive Principles. What according to founding fathers constitute the plainest requirement of public interest is set out in the Directive Principles and they embody per excellence the constitutional concept of public interest.334

If, therefore, any action is taken by the government which is calculated to implement or give effect to the directive principles, it would ordinarily be informed with public interest.

In Minerva Mills v. Union of India,335 also, Bhagwati, J., (as he then was) observed:

It will, therefore, be seen that if a law is enacted for the purpose of giving effect to a Directive Principle and it imposes a restriction on a fundamental right, it would be difficult to condemn such a restriction as unreasonable or not in public interest. So also where a law is enacted for giving effect to a Directive Principle in furtherance of the constitutional goal of social and economic justice, it may conflict with a formalistic and doctrinaire view of equality before the law, but it would almost always conform to the principle of equality before the law in its total magnitude and dimension, because the equality clause in the Constitution

332. Id. at 2000(Emphasis supplied)
333. Ibid.
334. Ibid.(Emphasis supplied)
335. Supra note 224.
does not speak of mere formal equality before the law which embodies the concept of real and substantive equality which strikes at inequalities arising on account of vast social and economic differentials and is consequently an essential ingredient of social and economic justice.336

Thus, it is submitted, that the court has rightly pointed out that for judging the reasonableness of restrictions and whether they are in the public interest or not, one has to see for light in Part IV of the Constitution which contains socio-economic policies. From the above view it is also evident that the Constitution(Forty-second Amendment) Act, 1976 which amended article 31C was constitutionally valid and the majority opinion in Minerva Mills, which invalidated amended article 31C was clearly wrong because the Amendment was made in furtherance of the directive principles with a view to promote socio-economic justice and it would be difficult to say that such an amendment violated the principle of egalitarianism and is not in accordance with the principle of equality before the law as understood not in its strict and formalistic sense, but in its dynamic and activist magnitude.

Judicial concern to widen the concept of reasonableness and public interest is further shown in Laxmi Khandsari v. State of U.P., Fazal Ali, J., speaking for the Court observed:

It is abundantly clear that fundamental rights enshrined in Part III of the Constitution are neither absolute nor unlimited but are subject to reasonable restrictions which may be imposed by the State in public interest...It is difficult to lay down any hard or fast rule of universal application but this Court has consistently held that in imposing such restrictions the State must adopt an objective standard amounting to a social control by restricting the rights of the citizens where the necessities of the situation demand.338

The learned judge further observed:

It is manifest that in adopting the social control one of the primary considerations which should weigh with the Court is that(sic) the directive principles...be kept in mind in judging the question as to whether or not the restriction is reasonable. If the restriction imposed appears to be consistent with the directive principles of state policy, they would have to be upheld as the same would be in public interest and manifestly reasonable.339

336. Id. at 1850.
338. Id. at 880-81.
339. Id. at 881. (Emphasis supplied) See also Sonia Bhatia v. State of U.P.,...
It is submitted that from the perusal of the above observations of the Court it is amply clear that the directive principles of state policy in Part IV of the Constitution serve as a reference norm for imposing reasonable restrictions in public interest on fundamental rights of Part III of the Constitution. Professor Alexandrowicz has rightly pointed out that a "legislation implementing Part IV must be regarded as permitted restriction on Part III", of the Constitution. From the above mentioned judicial approach, it is also clear that the Courts are equally alive to the socio-economic needs of the common man who, in fact, is the focal point of our Constitution. The problem today is to see how far the courts shall enable the law perform its role in achieving socio-economic justice in India. In the recent pronouncements the Courts have definitely succeeded in displaying the judicial wisdom by declaring the constitutional obligations of Part IV as "reasonable restrictions" which could be imposed in the "public interest". Let us hope that the Courts, in future also, will continue to be guided by these principles while interpreting the law and the Constitution. To quote Gajendragadkar, "The ultimate solution to the problem can be no other than the establishment of democratic socialism in this country, and it is in the process of reaching the goal of socialism that the law has to play an important role."

(E) An Appraisal

The avowed aim of the preamble of the Constitution recited in sonorous words is to establish a social welfare state. This aim gets teeth and strength from Parts III and IV of the Constitution dealing with fundamental rights and directive principles respectively. But the fundamental rights will remain only as paper tigers for those who do not have the bare necessities of life like food, clothes and shelter.


Hence, the socio-economic rights in Part IV were incorporated in the Constitution and they were also made fundamental in the governance of the country. The sole aim of these directive principles is to provide socio-economic justice to all and create such conditions in which the enjoyment of fundamental rights can become a living reality for not only few but for all.

Regarding the nature of Parts III and IV, the framers of the Constitution made Part III as enforceable rights whereas the directive principles of Part IV were made non-enforceable rights. But in order to highlight the importance of directive principles they were "fundamental in the governance of the country" and it was further provided that "it shall be the duty of the State to apply these principles in making laws". Fundamental rights of Part III were made, enforceable so as to prevent the "State" from encroaching the individual liberties which were essential for the development with full human dignity. On the other hand, the directives of Part IV were made non-enforceable because the nation was at a nascent stage and it was not possible to fulfil all those obligations immediately. However, the "State" was required to achieve most of the directives in the shortest possible time and all the directives were to serve as "goals" for making laws.

The non-justiciable nature of the directive principles lead some people to think that they are having inferior status as compared to the fundamental rights. Seervai, a leading jurist of the country, went to the extent of saying that they are "not a part of the Supreme Law" and hence should be deleted from the Constitution. It is submitted, that, it seems, the views of Seervai are erroneous, because he has not viewed these principles in the historical context and the purpose for which they were enacted. What is fundamental in the governance of the country cannot be less important than what is fundamental to an individual. If any law is passed by the legislature which contravenes any of the directive principles, then that can be declared unconstitutional on the ground that it is repugnant to the Supreme law of the land. And if we apply "only" the "test of enforcement" as the test for determining the nature of the constitutional mandates, then we are left with too narrow a view of the constitutional law. In fact both Parts III and IV are fundamental and they fertilize each other.
From the commencement of the Constitution itself, both legislature and judiciary could not keep them out of the status controversy of fundamental rights and directive principles. In Champakam, the Supreme Court subordinated the directive principles to fundamental rights. To overcome its effects, the Parliament amended the Constitution. The approach of the Supreme Court in Champakam was purely technical. It gave a death blow to the most dynamic part of the Constitution. However, in M.H. Quareshi and Kerala Education Bill, it was admitted by the Supreme Court that the directive principles had been badly ignored and due importance should be given to them. The Supreme Court propounded the theory of harmonious construction of Parts III and IV. But again certain judicial pronouncements came in the property and other areas which came in the way of economic legislations and seriously affected the implementation of socio-economic policies of Part IV. In order to nullify these judicial pronouncements, the Parliament had to pass number of constitutional amendments. The validity of these amendments was upheld by the Supreme Court in Shankri Prasad and Sajjan Singh.

The Supreme Court in Golak Nath, which became a classic decision in the realm of property legislation, again made fundamental rights as "transcendental" and "sacrosanct" rights. The period immediately after Golak Nath, saw a highly legalistic and technical approach of the judiciary towards Part IV and the domination of individual rights.

Consequently, the Parliament enacted series of constitutional amendments and restored the Parliament its constituent power and established supremacy to the economic directives contained in article 39(b) and (c) by introducing a new article 31C into the Constitution. This was the first parliamentary direct attempt to give primacy to certain directive principles over certain fundamental rights. This was done with the objective of providing socio-economic justice to millions of Indians by implementing socio-economic policies. This change was again tested before the judiciary in Kesavananda Bharti. The Supreme Court upheld the amendment but regarding the nexus between the laws giving effect to directive principles and the directives, it was held that the Court would be competent to look into that question.

Thus, it was for the first time that the Supreme Court recognised the supremacy of the socio-economic directives over the fundamental rights.
The Court also pointed out that the Parliament while amending the Constitution, cannot violate the basic structure of the Constitution. Justice Mathew, rightly reminded the judiciary of its role in the implementation of directive principles by observing that judicial process is "state action" and the judiciary is duty bound to apply the directive principles in making laws. The directive principles got further recognition by the judiciary in Mumbai Kamgar Sabha.

Inspired by this judicial attitude, the Parliament enacted Forty-second Amendment and further amended article 31C thereby providing that if a law is passed to give effect to all or any of the directive principles, then that shall not be declared as unconstitutional that it violated fundamental rights given in articles 14, 19 and 31. This Amendment could have served as an eye opener to the judiciary for implementing socio-economic policies of Part IV. But the Supreme Court while hypothetically considering the validity of the amended article 31C, in Minerva Mills, declared that the amendment in article 31C made by the forty-second amendment is unconstitutional. The majority opinion pointed out that the balance between Part III and Part IV constitute the basic structure which cannot be destroyed, while the minority opinion rightly pointed out that if unamended article 31C did not disturb the balance, the amended article 31C can also not disturb the balance.

It is submitted that in Part IV all the directive principles are of equal importance and if two of the directives could be given supremacy over certain fundamental rights, why the remaining directives can't be given the same status. Thus, majority committed an error in restricting the scope of article 31C. However, the damage done by the majority in Minerva Mills was cured to some extent in Sanjeev Coke, where the Supreme Court pointed out that the amended article 31C was valid and the judgement in Minerva was only an obiter dicta. Fortunately, the decisions subsequent to Sanjeev Coke, recognised the importance of directive principles and finally in Central Inland Water Corp., the Supreme Court rightly pointed the role of the judiciary. It was held that the Court can, if the State commits a breach of its duty by acting contrary to these directives, prevent it from doing so. It is submitted that it was
with this intention that the judiciary was called the "arm of social revolution". If the judiciary follows this approach, then the socio-economic principles of Part IV can become a reality for millions of Indians. These principles will create such conditions where every individual will be able to cherish the fruits of fundamental rights. And there will be no conflict between fundamental rights and directive principles of state policy.

The judiciary, on the other hand, has also shown its wisdom in treating directive principles as reasonable restrictions on fundamental rights in the public interest. The judicial trend from Kameshwar Singh to Kasturi Lal and in subsequent cases makes it amply clear that if a law is made in furtherance of the directive principles, then that will be a reasonable law and in the public interest and hence valid.

It is submitted that if this approach is followed by the Courts, then the "so called" status conflict between fundamental rights and the directive principles will disappear and Parts III and IV will be translated into a "living law" and thereby fulfilling the preambular promise of assuring socio-economic justice to all. It is only then that the dream of the father of our Nation -"to wipe every tear from every eye" will become true.