CHAPTER - IV

CONSTITUTIONAL IMPACT ON THE GROWTH OF LABOUR JURISPRUDENCE
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4.1. Introduction

The case for a fair deal to labour is emphasized in the Directive Principles of State Policy of the Constitution. The source and strength of industrial branch of Third World Jurisprudence is social justice proclaimed in the Preamble to the Constitution. Myriad devices, half-hidden in fold after fold of legal form depending on the degree of concealment needed, the type of industry, the local conditions and the like, may be resorted to when labour legislation casts welfare obligations on the real employer, based on Articles 38, 39, 42, 43 and 43-A of the Constitution.¹

The Constitution came into force on 26th January 1950. It is one of the greatest social documents of mankind written by democracy for its people. Of Special interest to the working classes are the Fundamental Rights² and the Directive Principles of State Policy³ enshrined in the Indian Constitution. The Fundamental Rights cover, inter alia, equality before the law⁴, prohibition of discrimination because of religion, race,

¹. Hussainbhai v/s. The Alath Factory Tezhilali Union and Others, AIR 1978 SC 1410 at para 05.
². Part III of the Indian Constitution.
³. Part IV of the Indian Constitution.
⁴. Article 14 of the Indian Constitution.
caste, sex or place of birth, equality of opportunity in matters of public employment, the abolition of untouchability, protection of certain rights regarding freedom of speech, association, etc. and prohibition of employment of children in factories. The Constitution retains the earlier division of powers between the Center, now termed the Union and the Provinces now called States.

The Parliament has the exclusive right to legislate; these are enumerated in the Union List, and include regulation of labour and safety in mines and oil-fields; industrial disputes concerning union employees; and inter-State migration. The State legislatures have the exclusive right to enact legislation on the subjects in the State List. With regard to third group of subjects, namely those specified in the Concurrent List, both Parliament and the State legislature have the right to make laws. But when the provisions of the Act passed by the Union with those of an Act passed by a State, the former prevails over the latter. Among the subjects in the concurrent List are;

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5. Article 15 of the Indian Constitution.
9. Article 19(1)(g) of the Indian Constitution.
10. Article 24 of the Indian Constitution.
1. Trade unions, industrial and labour disputes;
2. Welfare of labour, including conditions of work, provident fund, employer's liability, workmen's compensation, invalidity and old-age pensions and maternity benefits;
3. Social security and social insurance, employment and unemployment;
4. Vocational and technical training of labour;
5. Economic and social planning; and
6. Factories. ¹¹

The framers of the Constitution realized the progressive trends of social philosophy and inter alia, provided them in the directive principles of State Policy, which serves as a blue-print of Indian Pattern of Social Justice. The Constitution (42nd Amendment) Act, 1976 has further strengthened and amplified this part.

4.2. Impact of Directive Principles of State Policy on Labour Matters:

The relevant Articles dealing with Directive Principles of the State Policy are: Article 38 of the Constitution observes, that "The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.

¹¹. Ibid. at. 33-34.
Article 39 of the Constitution says that “The State shall, in particular, direct its policy towards securing:

a. That the citizens, men and women equally, have the right to an adequate means of livelihood;
b. That the ownership and control of the material resources of the community are so distributed as best to subserve the common good;
c. That the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;
d. That there is equal pay for equal work for both men and women;
e. That the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;

According Article 41 of the Constitution "That State shall, within the limits of its economic capacity and development, make effective provisions for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want."
Article 42 says that, the State shall make provision for securing just and humane conditions of work and for maternity relief. According to Article 43, the State shall endeavour to secure, by suitable legislation or economic organization or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the State shall endeavour to promote cottage industries on an individual or co-operative basis in rural areas.

According to Article 43-A, the State shall take steps, by suitable legislation or in any other way, to secure the participation of workers in the management of undertakings, establishments or other organizations engaged in any industry.  

The Preamble and Article 38 of the Constitution envision social justice as the arch to ensure life to be meaningful and liveable with human dignity.

4.3. The Constitutional Goals and the Judicial Interpretations:

Social justice, equality and dignity of person are cornerstones of social democracy. The concept of "social justice" which the Constitution

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of India engrafted consists of diverse principles essential for the orderly growth and development of personality of every citizen. "Social justice" is thus an integral part of justice in the generic sense. Justice is the genus, of which social justice is one of its species. Social justice is a dynamic device to mitigate the sufferings of the poor, weak, dalits, tribals and deprived sections of the society and to elevate them to the level of equality to live a life with dignity of person. Social justice is not a simple or single idea of a society but is an essential part of complex social change to relieve the poor etc. from handicaps, penury to ward off distress and to make their life liveable, for greater good of the society at large. In other words, the aim of social justice is to attain substantial degree of social, economic and political equality, which is the legitimate expectation and constitutional goal. Social security, just and humane conditions of work and leisure to workman are part of his meaningful right to life and to achieve self-expression of his personality and to enjoy the life with dignity. The State should provide facility and opportunities to enable them to reach at least minimum standard of health, economic security and civilized living while sharing according to their capacity, social and cultural heritage.¹⁴

The concept of social justice embeds equality to flavour and enliven the practical content of life. Social justice and equality are complementary to each other so that both should maintain their vitality. Rule of law,

¹⁴ Ibid. at 388.
therefore, is a potent instrument of social justice to bring about equality in results. ¹⁶

The Founding Fathers of the Constitution, cognizant of the reality of life wisely engrafted the Fundamental Rights and Directive Principles in Chapters III and IV for a democratic way of life to every one in Bharat Republic. The State under Article 38 is enjoined to strive to promote the welfare of the people by securing and protecting as effectively as it may, a social order in which justice, social, economic and political shall inform all the institutions of the national life and to minimize the inequalities in income and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations. Article 39(a) provides that the State shall direct its policies towards securing that the citizens, men and women equally, have the right to an adequate means of livelihood; clause (d) provides for equal pay for equal work for both men and women; clause (e) provides to secure the health and strength of workers. Article 41 provides that within the limits of its economic capacity and development, the State shall make effective provision to secure the right to work as fundamental with just and humane conditions of work by suitable legislation or economic organization or in any other way in which the worker shall be assured of living wages, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities to the workmen. The poor, the

¹⁵. Ibid, at 388.
workman and common man can secure and realize economic and social freedom only through the right to work and right to adequate means of livelihood, to just and humane conditions of work, to a living wage, a decent standard of life, education and leisure. To them, these are 'fundamental' facets of life. Article 43-A, brought by the 42nd Constitution (Amendment) Act, 1976 enjoins upon the State to secure by suitable legislation or in any other way, the participation of workers in the management of undertakings, establishments or other organizations engaged in any industry. Article 46 gives a positive mandate to promote economic and educational interests of the weaker sections of the people. Correspondingly, Article 51-A imposes fundamental duties on every citizen to develop scientific temper, humanism and to strive towards excellence in all spheres of individual and collective activity, so that the nation constantly rises to higher levels of endeavour and achievement. To make these rights meaningful to workmen and meaningful right to life a reality to workmen, shift of judicial orientation from private law principles to public law interpretation harmoniously fusing the interest of the individual entrepreneur and the paramount interest of the community is essential. Article 39-A furnishes beacon light that justice be done on the basis of equal opportunity and no one be denied justice by reason of economic or other disabilities. Courts are sentinel on the qui vive of the rights of the people, in particular the poor. The judicial function of a court, therefore, in interpreting the Constitution and the provisions of the Act, requires to build
up continuity of socio-economic empowerment to the poor to sustain equality of opportunity and status and the law should constantly meet the needs and aspiration of the society in establishing the egalitarian social order. Therefore, the concepts engrafted in the statute require interpretation from that perspective, without doing violence to the language. Such an interpretation would elongate the spirit and purpose of the Constitution and make the aforesaid rights to the workmen a reality lest establishment of an egalitarian social order would be frustrated and constitutional goal defeated.\textsuperscript{16}

It must be remembered that the Constitution adopted a mixed economy and control over the industry in its establishment, working and production of goods and services. After recent liberalized free economy private and multinational entrepreneurship has gained ascendancy and entrenched into wider commercial production and services, domestic consumption goods and large-scale industrial productions. Even some of the public corporations are thrown open to the private national and multinational investments. It is axiomatic, whether or not industry is controlled by Government or public corporations by statutory form or administrative clutch or private agents, juristic persons, corporation whole or corporation sole, their constitution, control and working would also be subject to the same constitutional obligations to provide facilities and opportunities enjoined in the Directive Principles, the Preamble and the

\textsuperscript{16} Ibid. at 401-402.
Fundamental Rights enshrined in the Constitution. The word "control", therefore, requires to be interpreted in the changing commercial scenario broadly in keeping with the aforesaid constitutional goals and perspectives.\(^\text{19}\)

The 42nd Constitution (Amendment) Act, 1976, brought explicitly in the Preamble socialist and secular concepts in sovereign democratic republic of Bharat with effect from 3-1-1977. The Preamble was held as part of the Constitution in *Kesavananda Bharati v. State of Kerala*.\(^\text{20}\) The provisions of the Constitution including Fundamental Rights are alterable but the result thereof should be consistent with the basic foundation and the basic structure of the Constitution. Republican and democratic form of Government, secular character of the Constitution, separation of powers, dignity and freedom to the individual are basic features and foundations easily discernible, not only from the Preamble but the whole scheme of the Constitution. In *S.K. Bommai v. Union of India*\(^\text{21}\) it was held that the Preamble of the Constitution is the basic feature. Either prior to 42nd Constitution (Amendment) Act, or thereafter, though the word "socialist" was not expressly brought out separately in the main parts of the Constitution, i.e., in the Chapters on Fundamental Rights or the Directive Principles, its seedbeds are right to participation in public offices, right to seek consideration for appointment to an office or post; right to life and

\[^{19}\text{Ibid. at 408-409.}\]
\[^{20}\text{(1973) 4 SCC 225; 1973 Supp SCR 1.}\]
\[^{21}\text{(1994) 3 SCC 01.}\]
right to equality which would amplify the roots of socialism in democratic
form of Government; right to equality of status and of opportunity, right to
equal access to public places and right to prohibition of discrimination read
with right to freedoms, protective discrimination, abolition of untouchability,
its practice in any form a constitutional offence, as guaranteed in Parts III
and IV, i.e., Fundamental Rights and Directive Principles which to every
citizen are Fundamental Rights.

In Minerva Mills Ltd., v. Union of India\textsuperscript{22}, the Constitution Bench
had held that the Fundamental Rights and the Directive Principles are two
wheels of the chariot in establishing the egalitarian social order. Right to
life enshrined in Article 21 means something more than survival of animal
existence. It would include the right to live with human dignity [vide Francis
Coralie Mullin v. Administrator, Union Territory of Delhi\textsuperscript{23} (AIR para 3);
Olga Tellis v. Bombay Municipal Corp.\textsuperscript{24} and Delhi Transport
Corporation. v. D.T.C. Mazdoor Congress\textsuperscript{25} (AIR paras 223, 234 and
259).] Right to sustenance allowance during suspension was held in State
of Maharashtra v. Chandrabhan Tale\textsuperscript{26} (AIR para 20) to be a part of right
to life. Right to means of livelihood and the right to dignity, right to health,
right to potable water, right to pollution-free environment and right to
education have been held to be a part of right to life. Social justice has

\textsuperscript{22}. (1980) 3 SCC 625; AIR 1980 SC 1789.
\textsuperscript{24}. (1985) 3 SCC 545; AIR 1986 SC 180.
\textsuperscript{25}. 1991 Supp (1) SCC 600.
\textsuperscript{26}. (1983) 3 SCC 387; AIR 1983 SC 803.
been held to be fundamental right in *Consumer Education and Research Center v. Union of India*\(^{27}\) (Scale at p. 375).

The Directive Principles in our Constitution are forerunners of the UNO Convention on Right to Development as inalienable human right and every person and all people are entitled to participate in, contribute to and enjoy economic, social, cultural and political development in which all human rights, fundamental freedoms would be fully realized. It is the responsibility of the State as well as the individuals, singly and collectively, for the development taking into account the need for fuller responsibility for the human rights, fundamental freedoms as well as the duties to the community, which alone can ensure free and complete fulfillment of the human being. They promote and protect an appropriate social and economic order in democracy for development. The State should provide facilities and opportunities to ensure development and to eliminate all obstacles to development by appropriate economic and social reforms so as to eradicate all social injustice. These principles are embedded, as stated earlier, as integral part of our Constitution in the Directive Principles. Therefore, the Directive Principles now stand elevated to inalienable fundamental human rights. Even they are justiciable by themselves. Social and economic democracy is the foundation for stable political democracy. To make them a way of life in the Indian polity, law as a social engineer, has to create just social order, remove the inequalities

in social and economic life and socio-economic disabilities due to which people are languishing; and to require positive opportunities and facilities as individuals and groups of persons for development of human personality in our civilized democratic set-up so that every individual would strive constantly to rise to higher levels.\textsuperscript{28}

\textit{Dr Ambedkar}, in his closing speech in the Constituent Assembly on 25-11-1949, had lucidly elucidated the meaning of social and political democracy. He stated that it means a way of life, which recognizes liberty, equality and fraternity as the principles of life. They are not to be treated as separate items in a trinity. They form an integral union. One cannot divorce one from the other; otherwise it would defeat the very purpose of democracy. Without equality, liberty would produce supremacy of the few over the many; equality without liberty would kill the initiative to improve the individual’s excellence, political equality without socio-economic equality would run the risk of democratic institutions suffering a setback. Therefore, for establishment of a just social order in which social and economic democracy would be a way of life inequalities in income should be removed and every endeavour be made to eliminate inequalities in status through the rule of law.\textsuperscript{29}

\textsuperscript{28} Supra Note 15. at 416.
\textsuperscript{29} Ibid. at 416.
The word "socialism" was brought into the Preamble and its sweep elaborately was considered by this Court in several judgments. It was held that the meaning of the word "socialism" in the Preamble of the Constitution was expressly brought in the Constitution to establish an egalitarian social order through the rule of law as its basic structure. In Minerva Mills Ltd. case 30, the Constitution Bench had considered the meaning of the word "socialism" to crystallise a socialistic State securing to its people socio-economic justice by interplay of the Fundamental Rights and the Directive Principles. In D.S. Nakara v. Union of India 31 another Constitution Bench had held that the democratic socialism achieves socio-economic revolution to end poverty, ignorance, disease and inequality of opportunity. The basic framework of socialism was held to provide a decent standard of life to the working people and especially to provide security from the cradle to the grave. The less equipped person shall be assured a decent minimum standard of life to prevent exploitation in any form, equitable distribution of national cake and to push the disadvantaged to the upper ladder of life. It was further held that the Preamble directs the centers of power, the Legislative, Executive and Judiciary, to strive to shift up from a wholly feudal exploited slave society to a vibrant, throbbing socialist welfare society which is a long march; but during the journey to the fulfillment of goal, every State action, whenever

30. Supra Note. 22.
taken, must be directed and must be so interpreted as to take the society towards that goal.

Dr V.K.R.V. Rao,32 one of the eminent economists of India, in his *Indian Socialism — Retrospect and Prospect* has stated that equitable distribution of the income and maximization of the production is the object of socialism under the Constitution to solve the problems of unemployment, low income and mass poverty and to bring about a significant improvement in the national standard of living. He also stated that to bring about socialism, deliberate and purposive action on the part of the State, in regard to production as well as distribution and the necessary savings, investment, use of human skills and use of science and technology should be brought about. Changes in property relations, taxation, public expenditure, education and the social services are necessary to make a socialist State under the Constitution, a reality. It must also bring about, apart from distribution of income, full employment as also increase in the production. In *State of Karnataka v. Ranganatha Reddy*33 a Bench of nine Judges of this Court, considering the nationalization of the contract carriages, had held that the aim of socialism is the distribution of the material resources of the community in such a way as to subserve the commonhood. The principle embodied in Article 39(b) of the Constitution is one of the essential directives to bring about

32. Supra Note. 15. at 417.
33. (1977) 4 SCC 471.
the distribution of the material resources. It would give full play to the distributive justice. It fulfils the basic purpose of restructuring the economic order. Article 39(b), therefore, has a social mission. It embraces the entire material resources of the community. Its task is to distribute such resources. Its goal is to undertake distribution as best to subserve the common good. In *Sanjeev Coke Manufacturing Co. v. Bharat Coking Coal Ltd.*, another34 - Constitution Bench interpreted the word "socialism" and Article 39(b) of the Constitution and had held that the broad egalitarian principle of economic justice was implicit in every Directive Principle. The law was designed to promote broader egalitarian social goals to do economic justice for all. The object of nationalization of mining was to distribute nation's resources. In *State of T.N. v. L Abu Kavur Bai*,35 the same interpretation was given by another Constitution Bench upholding nationalization of State Carriages and Contract Carriages (Acquisition) Act. Therefore, all State actions should be such to make socio-economic democracy with liberty, equality and fraternity, a reality to all the people through democratic socialism under the rule of law.

In *Consumer Education & Research Center v. Union of India*,36 a Bench of three Judges had to consider whether right to health of workers in the Asbestos industries is a fundamental right and whether the management was bound to provide the same? In that context, considering

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34. (1983) 1 SCC 147.
36. Supra Note. 27.
right to life under Article 21, its meaning, scope and content, this Court had held that the jurisprudence of personhood or philosophy of the right to life envisaged under Article 21 enlarges its sweep to encompass human personality in its full blossom with invigorated health which is a wealth to the workman to earn his livelihood, to sustain the dignity of person and to live a life with dignity and equality. The expression "life" assured in Article 21, does not connote mere animal existence or continued drudgery through life. It has a much wider meaning, which includes right to livelihood, better standard of living, hygienic conditions in the workplace and leisure.

Right to health and medical care to protect health and vigour, while in service or after retirement, was held a fundamental right of a worker under Article 21, read with Articles 39(c), 41, 43, 48-A and all related constitutional provisions and fundamental human rights to make life of the workman meaningful and purposeful with dignity of person. The right to health of a worker is an integral facet of meaningful right to life, to have not only a meaningful existence but also robust health and vigour without which the worker would lead a life of misery. Lack of health denudes him of his livelihood. Compelling economic necessity to work in an industry exposed to health hazards due to indigence for breadwinning for himself
and his dependants, should not be at the cost of the health and vigour of the workman.37

The Preamble and Article 38 of the Constitution envision social justice as the arch to ensure life to be meaningful and liveable with human dignity. Jurisprudence is the eye of law giving an insight into the environment of which it is the expression. It relates the law to the spirit of the time and makes it richer. Law is the ultimate aim of every civilized society, as a key system in a given era, to meet the needs and demands of its time. Justice, according to law, comprehends social urge and commitment. The Constitution commands justice, liberty, equality and fraternalty as supreme values to usher in the egalitarian social, economic and political democracy. Social justice, equality and dignity of person are cornerstones of social democracy. The concept of "social justice" which the Constitution of India engrafted, consists of diverse principles essential for the orderly growth and development of personality of every citizen. "Social justice" is thus an integral part of justice in the generic sense. Justice is the genus, of which social justice is one of its species. Social justice is a dynamic device to mitigate the sufferings of the poor, weak, dalits, tribals and deprived sections of the society and to elevate them to the level of equality to live a life with dignity of person. Social justice is not a simple or single idea of a society but is an essential part of complex social change to relieve the poor etc. from handicaps, penury to ward off

37. Supra Note. 15. at 418.
distress and to make their life liveable, for greater good of the society at large. In other words, the aim of social justice is to attain substantial degree of social, economic and political equality, which is the legitimate expectation and constitutional goal. Social security, just and humane conditions of work and leisure to workman are part of his meaningful right to life and to achieve self-expression of his personality and to enjoy the life with dignity. The State should provide facility and opportunities to enable them to reach at least minimum standard of health, economic security and civilized living while sharing according to their capacity, social and cultural heritage.\footnote{38. Supra Note. 15. at 419.}

In a developing society like ours, steeped with unbridgeable and ever-widening gaps of inequality in status and of opportunity, law is a catalyst, rubicon to the poor etc., to reach the ladder of social justice. What is due cannot be ascertained by an absolute standard, which keeps changing, depending upon the time, place and circumstance. The constitutional concern of social justice as an elastic continuous process is to accord justice to all sections of the society by providing facilities and opportunities to remove handicaps and disabilities with which the poor, the workmen etc. are languishing and to secure dignity of their person. The Constitution, therefore, mandates the State to accord justice to all members of the society in all facets of human activity. The concept of social justice embeds equality favour and enliven the practical content of
life. Social justice and equality are complementary to each other so that both should maintain their vitality. Rule of law, therefore, is a potent instrument of social justice to bring about equality in results. It was accordingly held that right to social justice and right to health are Fundamental Rights. The management was directed to provide health insurance during service and at least 15 years after retirement and periodical tests for protecting the health of the workmen.39

In LIC of India v. Consumer Education & Research Centre,40 considering the Life Insurance Corporation's right to fix the rates of premium, this Court had held that the authorities or private persons or industry are bound by the directives contained in Pan IV and the Fundamental Rights in Part III and the Preamble of the Constitution. The right to carry on trade is subject to the directives contained in the Constitution, the Universal Declaration of Human Rights, European; Convention of Social, Economic and Cultural Rights and the Convention on Right to Development for Socio-Economic Justice. Social security is a facet of socio-economic justice to the people and a means to livelihood. In Murlidhar Dayandeo Kesekar v. Vishwanath Pandu Barde,41 the question arose whether the alienation of the lands assigned to Scheduled Tribes was valid in law. In that context considering the Preamble, the Directive Principles and the Fundamental Rights including the right to life, this Court

39. Ibid, at 419.
41. 1995 Supp (2) SCC 549.
had held that economic empowerment and social justice are Fundamental Rights to the tribes. The basic aim of the welfare State is the attainment of substantial degree of social, economic and political equalities and to achieve self-expression in his work as a citizen, leisure and social justice. The distinguishing characteristic of the welfare State is the assumption by the community acting through the State and as its responsibilities to provide the means, whereby all its members can reach minimum standard of economic security, civilized living, capacity to secure social status and culture to keep good health. The welfare State, therefore, should take positive measures to assist the community at large to act in collective responsibility towards its members and should take positive measure to assist them to achieve the above. It was, therefore, held thus: (SCC pp. 556-57, paras 12 and 14).

"Article 21 of the Constitution assures right to life. To make right to life meaningful and effective, this Court put up expansive interpretation and brought within its ambit right to education, health, speedy trial, equal wages for equal work as fundamental rights. Articles 14, 15 and 16 prohibit discrimination and accord equality. The Preamble to the Constitution as a socialist republic visualizes to remove economic inequalities and to provide facilities and opportunities for decent standard of living and to protect the economic interest of the weaker segments of the society, in particular, Scheduled Castes i.e. Dalits and the Scheduled
Tribes i.e. Tribes and to protect them from 'all forms of exploitations'. Many a day have come and gone after 26-1-1950 but no leaf is turned in the lives of the poor and the gap between the rich and the poor is gradually widening on the brink of being unbridgeable.

Providing adequate means of livelihood for all the citizens and distribution of the material resources of the community for common welfare, enable the poor, the Dalits and Tribes, to fulfill the basic needs to bring about a fundamental change in the structure of the Indian society which was divided by erecting impregnable walls of separation between the people on grounds of caste, sub-caste, creed, religion, race, language and sex. Equality of opportunity and status thereby would become the bedrocks for social integration. Economic empowerment thereby is the foundation to make equality of status, dignity of person and equal opportunity a truism. The core of the commitment of the Constitution to the social revolution through rule of law lies in effectuation of the fundamental rights and directive principles as supplementary and complementary to each other. The Preamble, fundamental rights and directive principles the trinity are the conscience of the Constitution. Political democracy has to be stable. Socio-economic democracy must take strong roots and should become a way of life. The State, therefore, is enjoined to provide adequate means of livelihood to the poor, weaker
sections of the society, the dalits and, tribes and to distribute material resources of the community to them for common welfare etc".

In *R. Chandevarappa v. State of Kamataka*, the Supreme Court was to consider whether the alienation of Government lands allotted to the Scheduled Castes was in violation of the constitutional objectives under Articles 39(6) and 46. It was held that economic empowerment to the Dalits, Tribes and the poor as a part of distributive justice is a Fundamental Right; assignment of the land to them under Article 39(6) was to provide socio-economic justice to the Scheduled Castes. The alienation of the land, therefore, was held to be in violation of the constitutional objectives. It was held thus citing from *Murlidhar Dayandeo Kesekar case* (SCC p. 313, para 8)

"In fact, the cumulative effect of social and economic legislation is to specify the basic structure. Moreover, the social system shapes the wants and aspirations that its citizens come to have. It determines in part the sort of persons they want to be as well as the sort of persons they are. Thus an economic system is not only an institutional device for satisfying existing wants and needs but a way of creating and fashioning wants in the future. The economic empowerment, therefore, to the poor, dalits and tribes as an integral Constitutional scheme of socio-economic democracy

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43. Supra Note 41.
is a way of life of political democracy. Economic empowerment is, therefore, a basic human right and a fundamental right as part of right to live, equality and of status and dignity to the poor, weaker sections, dalits and tribes".

It was further held that providing adequate means of livelihood for all the citizens and the distribution of the material resources of the community for common welfare enable the poor, the dalits and the tribes, to fulfill the basic needs to bring about the fundamental change in the structure of the Indian society. Equality of opportunity and status would thereby become the bedrocks for social integration. Economic empowerment is, therefore, a basic human right and Fundamental Right as a part of right to life to make political democracy stable. Socio-economic democracy must take strong roots and become a way of life. The State, therefore, is enjoined to provide adequate means of livelihood to the poor, weaker sections of the society, the dalits and the tribes and distribute material resources of the community to them for common welfare. Justice is an attribute of human conduct and rule of law is an indispensable foundation to establish socio-economic justice. The doctrine of political economy must include interpretation for the public good, which is based on justice that would guide the people when questions of economic and social policy are under consideration. In Peerless General
Finance and Investment Co. Ltd. v. Reserve Bank of India\textsuperscript{44} (SCC at p. 389 para 55), the Supreme Court had held that stability of the political democracy hinges upon socio-economic democracy. Right to development is one of the important facets of basic human rights. Right to self-interest is inherent in right to life. Mahatma Gandhi, the Father of the Nation said that "every human being has a right to live and, therefore, to find the wherewithal to feed himself and where necessary to clothe and house himself". In O.K. Yadav v. J.M.A. Industries Ltd.,\textsuperscript{45} the question was whether the workman for absence in service for 7 days could be removed without an enquiry. In that context a Bench of three Judges had held thus: (SCC p. 269, para 12)

"Article 21 clubs life with liberty, dignity of person with means of livelihood without which the glorious contents of dignity of person would be reduced to animal existence. When it is interpreted that the colour and content of procedure established by law must be in conformity with the minimum fairness and processual justice, it would relieve legislative callousness despising opportunity of being heard and fair opportunities of defence. Article 14 has a pervasive processual potency and versatile quality, equalitarian in its soul and allergic to discriminatory dictates. Equality is the antithesis of arbitrariness."

\textsuperscript{44} (1992) 2 SCC 343.

\textsuperscript{45} (1993) 3 SCC 259; 1993 SCC (L&S) 723.
In Dalmia Cement (Bharat) Ltd. v. Union of India, a Bench of three Judges of the apex Court was to consider the constitutionality of Jute Packing Material Act, 1987. The law was made to protect the agriculturists cultivating jute and jute products. In that context it was held thus: (SCC pp. 115-121, paras 11-22).

"The agriculturists have fundamental rights to social justice and economic empowerment. The Preamble of the Constitution is the epitome of the basic structure built in the Constitution guaranteeing justice — social, economic and political — equality of status and of opportunity with dignity of person and fraternity. To establish an egalitarian social order, the trinity, the Preamble, the Fundamental Rights in Part III and Directive Principles of State Policy (for short 'Directives') in Chapter IV of the Constitution delineated the socio-economic justice. The word 'justice' envisioned in the Preamble is used in a broad spectrum to harmonise individual right with the general welfare of the society. The Constitution is the supreme law. The purpose of law is realization of justice whose content and scope vary depending upon the prevailing social environment. Every social and economic change causes change in the law. In a democracy governed by rule of law, it is not possible to change the legal basis of socio-economic life of the community without bringing about any corresponding change in the law. In interpretation of the Constitution and the law, endeavour needs to be made to harmonise the individual interest

with the paramount interest of the community keeping pace with the realities of ever-changing social and economic life of the community envisaged in the Constitution. Justice in the Preamble implies equality consistent with the competing demands between distributive justice with those of cumulative justice. Justice aims to promote the general well-being of the community as well as individual's excellence. The principal end of society is to protect the enjoyment of the rights of the individuals subject to social order, well-being and morality. Establishment of priorities of liberties is a political judgment.

Social justice is the comprehensive form to remove social imbalances by law harmonizing the rival claims or the interests of different groups and/or sections in the social structure or individuals by means of which alone it would be possible to build up a welfare State. The ideal of economic justice is to make equality of status meaningful and life worth living at its best removing inequality of opportunity and of status social, economic and political.47

Justice, according to law, comprehends social urge and commitment. Justice, liberty, equality and fraternity are supreme constitutional values to establish the egalitarian social, economic and political democracy. Social justice, equality and dignity of person are cornerstones of social democracy. Social justice consists of diverse

47. Supra Note. 15. at. 423.
principles essential for the orderly growth and development of personality of every citizen. Justice is the generic term and social justice is its facet, dynamic device to mitigate the sufferings of the disadvantaged and to eliminate handicaps so as to elevate them to the level of equality to live life with dignity of person. Social justice is not a simple or single idea of a society but is an essential part of complex social change to relieve the poor etc. from handicaps, penury, to ward them off from distress and to make their lives liveable for greater good of the society at large. Social justice, therefore, gives substantial degree of social, economic and political equality, which is the constitutional right of every citizen. In paragraph 19, it was further elaborated that social justice is one of the disciplines of justice, which relates to the society. What is due cannot be ascertained by an absolute standard which keeps changing depending upon the time, place and circumstances. The constitutional concern of social justice, as an elastic continuous process, is to transform and accord justice to all sections of the society by providing facilities and opportunities to remove handicaps and disabilities with which the poor etc. are languishing. It aims to secure dignity of their person. It is the duty of the State to accord justice to all members of the society in all facets of human activity. The concept of social justice embeds equality to flavour and enlivens the practical content of life. Social justice and equality are complementary to each other so that both should maintain their vitality.
Rule of law, therefore, is a potent instrument of social justice to bring about equality in result.48

Social and economic justice in the context of our Indian Constitution must, therefore, be understood in a comprehensive sense to remove every inequality and to provide equal opportunity to all citizens in social as well as economic activities and in every part of life. Economic justice means the abolition of those economic conditions, which ultimately result in the inequality of economic values between men. It means to establish a democratic way of life built upon socio-economic structure of the society to make the rule of law dynamic.49

The Fundamental Rights and the Directives are, therefore, harmoniously interpreted to make the law a social engineer to provide flesh and blood to the dry bones of law. The Directives would serve the Court as a beacon light to interpretation. Fundamental Rights are rightful means to the end, viz., social and economic justice provided in the Directives and the Preamble. The Fundamental Rights and the Directives establish the trinity of equality, liberty and fraternity in an egalitarian social order and prevent exploitation.50

48. Supra Note. 15. at 423-424.
49. Ibid, at 424.
50. Ibid. at. 424.
Social justice, therefore, forms the basis of progressive stability in the society and human progress. Economic justice means abolishing such economic conditions which remove the inequality of economic value between man and man, concentration of wealth and means of production in the hands of a few and are detrimental to the vast. Law, therefore, must seek to serve as a flexible instrument of socio-economic adjustment or bring about peaceful socio-economic revolution under rule of law. The Constitution, the fundamental supreme lex distributes the sovereign power between the Executive, the Legislature and the Judiciary. ... “The Court, therefore, must strive to give harmonious interpretation to propel forward march and progress towards establishing an egalitarian social order.”

In *Delhi Transport Case*, the Supreme Court had held that right to life to a workman would include right to continue in permanent employment, which is not a bounty of the employer, nor can its survival be at the volition and mercy of the employer. Income is the foundation to enjoy many Fundamental Rights and when work is the source of income, the right to work would become as such a fundamental right. Fundamental Rights can ill afford to be consigned to the limbo of undefined premises and uncertain application. In *Bandhua Mukti Morcha v. Union of India* the Supreme Court had held that the right to life with human dignity enshrined in Article 21 derives its life breath from the

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51. Ibid, at 425.
52. Supra Note. 25.
Directive Principles of State Policy and that opportunities and facilities should be provided to the people. In *Olga Tellis case*\(^{54}\) this Court had held that the right to livelihood is an important facet of the right to life. Deprivation of the means of livelihood would denude life itself. In *C.E.S.C. Ltd. v. Subhash Chandra Base*\(^{55}\) it was held that the right to social and economic justice is a fundamental right. Right to health of a worker is a fundamental right. The right to live with human dignity at least with minimum sustenance and shelter and all those rights and aspects of life which would go to make a man's life complete and worth living, would form part of the right to life. Enjoyment of life and its attainment social, cultural and intellectual without which life cannot be meaningful, would embrace the protection and preservation of life guaranteed by Article 21. In *UC case*\(^{56}\) a Bench of two Judges had held that right to economic equality is a fundamental right. In *Dalmia Cement (Bharat) Ltd, case*\(^{57}\), right to economic justice was held to be a fundamental right. Right to shelter was held to be a fundamental right in *Olga Tellis case*\(^{58}\); *P.G. Gupta v. State of Gujarat*\(^{59}\); *Shantistar Builders v. Narayan Khimalal Totame*\(^{60}\); *Chameli Singh v. State of U.P.*\(^{61}\) etc.,
It would, thus, be seen that all essential facilities and opportunities to the poor people are fundamental means to development, to live with minimum comforts, food, shelter, clothing and health. Due to economic constraints, though right to work was not declared as a fundamental right, right to work of workman, lower class, middle class and poor people is a means to development and source to earn livelihood. Though, right to employment cannot, as a right, be claimed but after the appointment to a post or an office, be it under the State, its agency, instrumentality, juristic person or private entrepreneur, it is required to be dealt with as per public element and to act in public interest assuring equality, which is a genus of Article 14 and all other concomitant rights emanating there from are species to make their right to life and dignity of person real and meaningful. The democracy offers to everyone as a doer, an exerter and developer and enjoyer of his human capacities, rather than merely as a consumer of utilities, as stated by Justice K.K. Mathew,62 “These exercises of human capacity require access to the material resources and also continuous and sufficient intake of material means to maintain human energy. Lack of access to the material resources is an impediment to the development of human personality”. This impediment, as a lack of access to means of labour, if we take labour in its broadest sense of human resource, requires removal only under the rule of law. To the workmen, right to employment is the property, source of livelihood and dignity of

person and a means to enjoy life, health and leisure. Equality, as a principle of justice, governs the distribution of material resources including right to employment. Private property ownership has always required special justifications and qualifications to reconcile the institution with the public interest. It requires to thrive and at the same time, be responsive to social weal and welfare. *St. Thomas Acquinas,*\(^6^3\) has stated that the private rights and public needs are to be balanced to meet the public interest.

"The common possession of things is to be attributed to natural law, not in the sense that natural law decrees that all things are to be held in common and that there is to be no private possession, but in the sense that there is no distinction of property on the grounds of natural law, but only by human agreement, and this pertains to positive law, as we have already shown. Thus, private property is not opposed to natural law, but is an addition to it, devised by human reason. If, however, there is such urgent and evident necessity that there is clearly an immediate need of necessary sustenance, if, for example, a person is in immediate danger of physical privation, and there is no other way of satisfying his need, then he may take what is necessary from another person's goods, either openly or by stealth. Nor is this strictly speaking fraud or robbery."

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\(^6^3\) St. Thomas Acquinas,*" Selected Political Writings"* (1948 Edn,) at p. 169,
Property is a social institution based upon an economic need in a society organized through division of labour, as propounded by Dean Roscoe Pound, and M.R. Cohen had stated that "the principle of freedom of personality certainly cannot justify a legal order wherein a few can, by virtue of their legal monopoly over necessities, compel others to work under degrading and brutalizing condition". If there is no property or if one does not derive fruits and means of one's labour, no one would have any incentive to labour in the broader sense. Social progress receives setback without equality of status, fraternity would not be maximized. Edward Kent, in his Property, Power and Authority, Prof. Herald Laski in his Congress Socialist dated 11-4-1936, had stated that "those who know the normal life of the poor will realize enough that without economic security, liberty is not worth living". Brooklyn Law Review p. 541 at p. 547 has stated that: "In modern translation, public officers and others who promulgate policies designed to increase unemployment or to deny or diminish benefits to the poor are accountable for the consequences to free human personality." It would, thus, be clear that in a socialist democracy governed by the rule of law, private property, right of the citizen for development and his right to employment and his entitlement for employment to the labour, would all harmoniously be blended to serve larger social interest and public purpose.

64. Dean Roscoe Pound, "An Introduction to Philosophy of Law", (1954 Edn.) p. 125, at p. 129.
66. Supra Note. 15. at 427.
Mahatma Gandhi, the Father of the Nation, has said thus:

"To a people famishing and idle, the only acceptable form in which God can dare appear is work and promise of food as wages. God created man to work for his food, and said that those who ate without work were thieves. Eighty per cent of India are compulsory thieves half the year. Is it any wonder if India has become one vast prison?"

Again, he stressed:

No one has ever suggested that grinding pauperism can lead to anything else than moral degradation. Every human being has a right to live and, therefore, to find the wherewithal to feed himself and, where necessary, to clothe and house himself.... In a well-ordered society the securing of one's livelihood should be, and is found to be the easiest thing in the world. Indeed, the test of orderliness in a country is not the number of millionaires it owns, but the absence of starvation among its masses.

*Justice K.K. Mathew*, has, therefore, stated that the single most important problem in constitutional law for years to come in this country will be how to implement the Directive Principles and at the same time give full play to the Fundamental Rights. It is only by implementing the

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67. Mahatma Gandhi, "Socialism of My Concept".

Directive Principles that distributive justice will be achieved in the society.

Justice, as Aristotle said, "is the bond of men in society" and "States without justice" are, as ST. Augustine said, "robber-bands".

In Kesavananda Bharati Case, Jaganmohan Reddy, J. had held that:

"What is implicit in the Constitution is that there is a duty on the Courts to interpret the Constitution and the laws to further the Directive Principles which under Article 37, at fundamental in the governance of the country".

The country witnessed the enactment of social welfare, social security and employment regulation laws during the post-constitutional era are in tune with the basic philosophy of Constitutional values as enshrined in the Preamble as well as in the Directive Principles of State Policy.

Against this background the perusal of labour judgments pronounced by the Supreme Court in the context is material for further elaborate discussion to draw certain important conclusions. The constitutional force pertaining to the law laid down by the Supreme Court has spelt out in Article 141 of the Constitution is the next issue that assume vital importance in the context.

69. Supra Note. 20. at 640 para 116.