CHAPTER 9
CHAPTER - I

The Preamble

In this Chapter an attempt has been made to discuss the importance of the Preamble of the Constitution in interpreting the various provisions of the Constitution in relation to workers. Various terms used in the Preamble are also discussed. The concepts of socio-economic justice, equality of opportunity, Directive Principles of State Policy, Fundamental Rights and Fundamental Duties in the light of the Preamble are also highlighted.

A: The terms used:

The preamble to our Constitution declares: "We The People of India, having solemnly resolved to constitute India into a Sovereign Socialist Secular Democratic Republic and to secure to all its citizens: Justice, Social, economic and political; Liberty of thought, expression, belief, faith and worship; Equality of status and of opportunity; and to promote among them all Fraternity assuring the dignity of the individual and the unity and integrity of the Nation; In Our Constituent Assembly this twenty-sixth day of November, 1949, do Hereby Adopt, Enact And Give To Ourselves This Constitution".

The Preamble to our Constitution serves two purposes:

(a) It indicates the source from which the constitution derives its authority,
(b) It also states the objects which the constitution seeks to establish and promote.

(1)'We The People Of India': The word "We the people of India" echo the opening words in the Preamble to the constitutions of the United States and
of Eire\(^1\) and emphasise the ultimate sovereignty of the people and that the constitution itself is founded on the authority of the people. In Scott Vs. Stanford\(^2\), it was held that the constitution itself is founded on the authority of the people who hold the power and conduct the government through their representatives.

Our constitution has been made by men who can not be said to be fully representative of the nation and it has not been ratified by the direct vote of the people. Our constitution, like that of the United States professes that it is founded on the consent and acquiescence of the people. It is not imposed by any external authority as was the Government of India Act, 1935. In Union of India Vs Madan Gopal\(^3\), the Supreme Court has, from this aspect of the Preamble, drawn the power of the legislatures set up by the constitution to enact laws with retrospective operation beyond the commencement of the constitution itself and observed:

"Our constitution, as appears from the Preamble, derives its authority from the people of India, and learned counsel conceded that it was open to the people to confer on the legislatures, established by the constitution, which they framed through their representatives, power to make laws having operation in relation to periods prior to the commencement of the constitution"\(^4\).

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1. Eire: Ireland is called Eire (Pronounced AIRuh) in Gaelic, the ancient language of Ireland. Gaelic and English are the country's two official languages. Ireland also has long been known by the poetic name Erin- Erin go bragh is well known phrase of Gaelic that means- Ireland forever. (The World Book Encyclopedia, Vol. 10, World Book Inc. London, at 416.)
4. Id at 555.
It is by authority derived from the people that the constitution blotted out in one magnificent sweep all vestiges of arbitrary and despotic power in the territories of India', and conferred upon the subjects of the autocratic Princes (of Indian States) the fullfledged Citizenship of India. The word 'people' indicates that the constitution is not created by the States or by the people of the several States, but by the people of India in their aggregate capacity. Hence, it would not be open to any State or group of States either to put an end to our constitution or to secede from Union created by it.

(2) 'Sovereignty' :- Sovereign or Supreme Power is that which is absolute and uncontrolled within its own sphere.

According to Davies and Holdcroft, Austin's sovereignty can be put into four propositions, as follows:

(a) A superior expresses a desire that an inferior does an act or forebears from doing that act.

(b) Superior is capable of inflicting an evil, if the inferior does not obey the orders of the superior.

(c) The inferior is a member of a society, the majority of which is in the habit of obeying the orders of the superior.

(d) The superior is not in the habit of obeying orders of any determinate human superior.

Austin’s Sovereignty has got three characteristics:

(a) Sovereignty is illimitable
(b) Sovereignty is indivisible
(c) Sovereignty is continuous

Sovereignty is a concept and full sovereignty is the ultimate standard desired to be achieved by a country, people or State. Therefore it should always be kept in mind that though expressed in absolute terms, it is not always absolute in real terms.

Sovereignty may be divided into two parts (a) External Sovereignty or Sovereignty in international law (b) Internal Sovereignty.

(a) External Sovereignty:- External Sovereignty means the independence of a State of the will of other States. According to Schwarzenberger\(^7\) Sovereign in its relation between States signifies independence, Independence in regard to a portion of the globe is the right to exercise therein, to the exclusion of any other State, the function of a State.

Now by the passing of the Indian Independence Act, 1947, India ceased to be a ' Dependency of the British Empire'. Whatever, subjection or limitation was still implied has been abjured by India declaring herself a Republic in the Constitution. So, India is now as sovereign as the United States of America.

Here it will be better to discuss the position of India as member of Commonwealth of Nations. At the Prime Ministers' Conference at London on April 27, 1949, India has made a declaration to the effect that notwithstanding her becoming 'a sovereign, independent Republic'; he will continue.-

\(^7\) Schwarzenberger, International Law, 1945, Vol. 1, at 44.
"her full membership of the Commonwealth of Nations and her acceptance of the king as the symbol of the free association of the independent nations and as such the Head of the Commonwealth".

But it is to be noted that this declaration is extra legal and there is no mention of it in the constitution of India. It is a voluntary declaration and indicates a free association and no obligation. It accepts the King of England only as a symbolic head of the Commonwealth and there is no question of allegiance of the citizens of India to the King of England. As a member of the Commonwealth, India has a right to be represented in Commonwealth Conferences, decisions at Commonwealth Conferences will not be binding on her and no treaty with a foreign power or declaration of war by any member of the Commonwealth will be binding on her, without her express consent. Hence, this voluntary association of India with the Commonwealth does not affect her sovereignty to any extent and it would be open to India to cut off that association as easily as it was declared.

(b) Internal Sovereignty:- Internal Sovereignty refers to the relation between the State and the individuals within its territory. It means "the power to compel obedience and to punish for disobedience", or, the power to determine what rule shall have the force of law and to enforce them.

If we collect the judicial opinions of the Courts from the United States about the nature of Sovereignty we will find that the Sovereignty is divided between the Union and the States, each being Sovereign as regards the subjects committed to it by the Constitution. Sometimes the two Sovereignties

8. India has preferred to remain a member of the Commonwealth even after declaring herself a Republic.
may operate within the same territory. Thus, the same act may constitute an
offence against a federal law and another offence against a State law and each
government may punish for the respective offences separately, in the exercise
of their separate Sovereignty.

In Ableman vs Booth, the court observes:

"The powers of the general government and the State, although
both exist and are exercised within the same territorial limits, are
yet separate and distinct sovereignties, acting separately and
independently of each other, within their respective spheres. And
the sphere of action appropriated to the United States is a far
beyond the reach of the judicial process issued by a State Judge or
a State Court, as if the line of division was traced by landmarks and
monuments visible to the eye."

The theory of divided sovereignty has also been expressed in several
cases in Australia.

Though there is a division of powers between the Union and the States
in the Indian Constitution, there is a lesser scope for the divided sovereignty.
This division of power is honoured in the normal days but in the national
interest and in emergencies the Union is empowered to override the division.
Of course, in normal days and so long as the Union does not exercise any of
these overriding powers, the Union and the States are autonomous within
their respective spheres as outlined by the division of powers effected by the
constitution, but the sovereignty of the State becomes illusory when its
constitutional government is suspended and its functions assumed by the

10. Id at 516.
Commonwealth, (1904) 1 C.L.R. 208.
Union (under Articles 356\textsuperscript{12} and 365\textsuperscript{13}). But the sovereignty cannot be resided in the Union Parliament alone, because whether in the normal or in emergencies, the powers of the Union are limited by the constitution and its acts which transgress the constitution would be unconstitutional and invalid. Another example of such limitation is the power of amendment. Though the power of amendment is vested in the Union Parliament under Art. 368 (1), ratification by the State legislature is required for following changes in --

(a) Articles 54, 55, 73, 162 or 241;

(b) Chapters IV of Part V, Chapter V of Part VI or Chapter I of Part XI;

(c) any of the lists in the Seventh Schedule;

(d) the representation of States in Parliament and

(e) the provisions of Article 368

(3) Socialist Secular-. These words were added by the Constitution (Forty-second Amendment) Act, 1976.

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\textsuperscript{12} Articles 356: (1) "If the President, on receipt of a report from the Governor of a State or otherwise, is satisfied that a situation has arisen in which the Government of the State can not be carried on in accordance with the provisions of this Constitution, the President may by Proclamation--

(a) assume to himself all or any of the functions of the Government of the State and all or any of the powers vested in or exercisable by the Governor or any body or authority in the State other than the Legislature of the State;

\textsuperscript{13} Article 365: Where any State has failed to comply with, or to give effect to, any directions given in the exercise of the executive power of the Union under any of the provisions of this Constitution, it shall be lawful for the President to hold that a situation has arisen in which the Government of the State can not be carried on in accordance with the provisions of this Constitution.
The concept of socialist was already implicit in the constitution. The amendment merely spells out clearly this concept in the Preamble. The word 'Socialism' is used in democratic as well as socialistic constitution. It has no definite meaning. The degree of State control will determine whether it is a democratic State or socialist State. India has however, chosen its own brand e.g. mixed economy.

The term secularism simply means a State which has no religion of its own as recognised religion of State. State treats all religions equally in all aspect. In a secular State the State regulates the relation between man and man. It is not concerned with the relation of man with God.

This change in the Preamble is criticised by H.M. Seervai in the following words:-

"Whether the Preamble at all needed amendment is a question of policy. However, it may be observed that the word 'Socialist' would require to be defined. It is a word of many meanings, and its appropriation by the Soviet Union would seem to suggest that a socialist form of government can be a dictatorship, which is foreign to our constitution. In fact, an amendment to the Preamble moved by Maulana Hasrat Mohani which spoke if 'we the people of India having solemnly resolved to constitute India into a Union of Indian Socialistic Republic to be called U.I.S.R. on the lines of the U.S.S.R.,' was rejected as inconsistent with our constitution. Secondly, the word 'Secular' is not precise and would itself require to be defined. 'Secular' may be opposed to 'religious' in the sense that a secular State can be an anti-religious State. In this sense, the constitution of India is not secular, because the right to the freedom of religion is a guaranteed Fundamental Right. The word 'secular' may mean that as far as the
State is concerned, it does not support any religion out of public funds, nor does it penalise the profession and practice of any religion or the right to manage religious institutions as provided in Articles 25 and 26. The secular nature of our constitution has to be gathered from these and other Articles of our Constitution, like the Articles relating to a common citizenship (Part-II) and Articles 15, 16 and 29(2). Good drafting would require that ambiguous words should not be put into a Preamble without a reason and as far as one can see, there is no reason for putting in the word 'Socialist' and the word 'Secular', for the content of those concepts themselves would have to be found in the enacting parts of the constitution, and by themselves the two words have certain associations which are inconsistent with the enacting provisions of our Constitution—"14.

(4) **Democratic**:- 'Democracy' is one of the most comprehensive terms used in Political Science. It may mean a political, social as well as economic condition. In Indian constitution, the term 'democratic' indicates that the Constitution has established a form of Government which gets its authority from the will of the people. The rulers are elected by the people and are responsible to them.

(5) **Republic**:- In Political science, the word 'Republic' is used in the various senses. But in Indian Constitution the term 'Republic signifies that there shall be an elected head of the State who will be the Chief executive head. The President of India, unlike the British King, is not a hereditary monarch but an elected person chosen for a limited period. It is an essential ingredient of a Republic.

(6) **Social, economic and political justice**:- The social and economic justice

is discussed in the Part 'B' of this chapter. In our Constitution, the political justice means the absence of any arbitrary distinction between man and man in the political sphere. The political justice is secured under Indian Constitution by adopting universal adult suffrage and the abolition of communal reservation, and by throwing open employment under the State to all citizens without distinction of race, caste, sex, decent, place of birth or religion.

(7) Liberty: - Liberties are, however, defined by the chapter on Fundamental Rights, but in case of doubt, it may be useful to refer to the ideal of liberty embodied in the Preamble. Our constitution respects the liberty of thought, belief, faith, and expression to be essential to the development of the individual and the nation.

(8) Equality of opportunity: - It is discussed in the part 'C' of this chapter.

(9) Fraternity: - Fraternity as an object is not reflected in any Article of the Constitution- no constitution and no law can produce brotherly feeling or concord. But democracy would indeed be hollow if it fails to generate a spirit of brotherhood among all sections of the people. Fraternity is essential for country like India where many races, religions, languages and cultures are existed. Article 1 of the Universal Declaration of Human Rights (1948) adopted by the United Nations, says:

"All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood."

It is this spirit of brotherhood that the Preamble of our Constitution refers to.

B: Importance of Preamble: - There is a great importance of the Preamble
of the constitution in interpreting the various provisions of the constitution in relation to labour. The Preamble of the Indian constitution is the pole star of our basic national objectives and goals which include among other things the dignity of individual, freedom of association and movement, the freedom of speech and expression and control of exploitation of workers within the parameters of law. There is Fundamental Right to form an association, to organise for formulating, maintaining and enforcing the rights of citizens. Their right to organise for collective bargaining for realizing the trade union objectives is not denied.

It is interesting to note that there is a remarkable similarity between the Preamble of the Indian Constitution and the Declaration concerning the aims and purposes of the ILO adopted at the Twenty Sixth Session of the International Labour Conference at Philadelphia, popularly known as the Philadelphia Charter of 1944. For instance, the expression, 'Labour' is not a Commodity of the ILO Constitution can be equated to 'dignity of individual' in the Indian constitution; "freedom of expression and association 'of the ILO with 'Liberty of thought, expressions" etc. Further the right of all human beings irrespective of race, creed and sex to pursue their material well-being of the ILO with 'equality of status and opportunity' and 'liberty of 'belief, faith', of the Indian Constitution and so on. The similarity becomes even more striking when the Indian constitution lays down in greater details what it calls the Fundamental Rights and Directive Principles of state policy"15. Preamble to the constitution commits India to the ideal of political democracy, coupled with social and economic democracy within the frame work of the rule of law. The expressions, 'Justice', 'Liberty', 'equality' and 'fraternity' may not be susceptible to exact definition, yet they are not mere platitude. They are given

content by the enacting provisions of the constitution particularly by Part III, the Fundamental Rights and Part IV, the Directive Principles of State policy.

Social justice is indispensable for the economic development of the country. So when we are going to interpret any provision of the constitution, the Preamble will give its colour to the provision because the proper function of a Preamble is to explain certain facts which are necessary to be explained before the enactments contained in the Act can be understood. In short, it contains a recital of the facts or state of the land for which it is proposed to legislate by the statute; the object and policy of legislation and the evils or inconveniences it seeks to remedy.

The Preamble is a legitimate aid in the construction of the provisions of the constitution specially when these provisions are related to the workers. For the purposes of interpretation, the Preamble of the constitution stands in the same position as the Preamble of an Act.

In Berubari Union case\(^\text{16}\) the Supreme Court observed that the declaration made by the people of India in exercise of their sovereign will in the Preamble to the constitution is 'a key to open the mind of the makers' which may show the general purposes for which they made the several provisions in the constitution; but the Preamble is neither a part of the Constitution nor is it the source of any substantive power of the Government. Such powers embrace only those powers which are either expressly granted by the Constitution or which may be implied from those granted. What is true about the powers is equally true about the prohibitions and limitations. Besides, it is not easy to accept the assumption that the first part of the Preamble postulates a very serious limitation on one of the very important

\(^{16}\) In re. Berubari Union (1960) S.C.R. 250
attributes of sovereignty itself. It is universally recognised that one of the attributes of sovereignty is the power to cede parts of national territory if necessary. At the highest it may perhaps be arguable that if the terms used in any of the Articles in the constitution are ambiguous or are capable of two meanings, in interpreting them some assistance may be sought in the objectives enshrined in the Preamble. Therefore, it is not right in contending that the Preamble imports any limitation on the exercise of what is generally regarded as necessary and essential attribute of sovereignty.

Kesvananda Bharti's case\(^\text{17}\) throws the light on the importance of the Preamble and the interpretation of provisions of the constitution. In this case the petition was heard by a Bench consisting of all the thirteen judges of the Supreme Court and it was held that basic structure of the constitution could not be amended. The Supreme Court did not define what is 'basic structure' but pointed out that rule of law, judicial review and separation of powers, Fundamental rights, except right to property are included in the basic structure. In this regard the opinions of Hon'ble Judges (Sikri, C.J., Shelat, Hegde and Mukherjee J.J.) given in the above case are as follows:

1. While interpreting the constitution one must not construe it as an ordinary statute. The constitution apart from setting up a machinery for government, has a noble and grand vision in the Preamble.

2. So far as the Preamble is concerned though in an ordinary statute we do not attach any importance to the Preamble, all importance has to be attached to the Preamble in a constitutional statute. The holding in In re Berubari Union\(^\text{18}\) followed by

\(^{17}\) Kesvananda Bharti Vs. State of Kerala, (1973) 4 S.C.C. 225.
\(^{18}\) In re Berubari Union (1960) S.C.R. 250.
Wanchoo and Buchawat, J.J. in Golak Nath's\textsuperscript{19} case that Preamble is not part of the constitution is not correct. It was expressly voted to be part of the constitution.

(3) The Constitution is an organic document which must grow and it must take place of the vast socio economic problems, particularly, of improving the lot of the common man consistent with his dignity and the unity of the nation.

(4) The Preamble embodies the fundamentals underlyings the structure of the constitution. It was adopted by the Constituent Assembly after the entire constitution has been adopted. It hardly makes any substantial difference whether the Preamble is the part of the constitution or not. The true function of the Preamble is to expound the nature and extent and not substantially to create them.

(5) A constitution is not to be construed in any narrow and pedantic sense. A broad and liberal spirit should inspire those whose duty is to interpret it.

(6) The true function of the Preamble is to express the nature and extent and application of the powers actually conferred by the constitution and not substantially to create them. If any provision of the constitution had to be interpreted and if the expressions used therein are ambiguous, the Preamble would certainly furnish valuable guidance in the matter.

(7) Our constitution is not a mere political document. It is essentially a social document. It is based on a social philosophy and

every social philosophy like every religion has two main features, namely, basic and circumstantial. The former remains constant but the latter is subject to change. The core of a religion always remains constant but the practices associated with it may change. Likewise, a constitution like ours contains features which are so essential that they cannot be changed or destroyed.

(8) From the Preamble it is quite clear that the two primary objectives before the Constituent Assembly were - (a) to constitute India into a Sovereign Democratic Republic and (b) to secure to its citizens the rights mentioned therein. It was a plan to build a welfare State and an egalitarian society. The statement in the Preamble that the people of this country conferred on themselves is not open to challenge before this court. Its factual correctness cannot be gone into by this court which again is a creature of the constitution. The facts set out in the Preamble have to be accepted by this court as correct.

In Atam Prakash's Case, the Court observed:

"Whether it is the constitution that is expounded or the Constitutional validity of a statute that is considered, a cardinal rule is to look to the Preamble to the constitution as the guiding light and to the Directive Principles of State Policies as the Book of Interpretation. The Preamble embodies and expresses the hopes and aspirations of the people. The Directive Principles set out proximate goals. When we go about the task of examining statutes against the constitution, it is through these glasses that we must look, 'distant vision' or 'near vision'. The constitution being sui generis, where constitutional issues are under consideration, narrow interpretative rules which may have relevance when legislative enactments are interpreted may be misplaced."

Originally, the Preamble to the constitution proclaimed the resolution of the people of India to constitute India into a 'Sovereign Democratic Republic' and set forth 'Justice, liberty, Equality and Fraternity', the very rights mentioned in the French Declarations of the Rights of Man as our hopes and aspirations. That was in 1950 when we had just emerged from the colonial feudal rule. Time passed. The people's hopes and aspirations grew. In 1977 the 42nd amendment proclaimed India as a socialist Republic. The word 'Socialist' was introduced into the Preamble to the constitution. The implication of the introduction of the word 'socialist', which has now become the centre of the hopes and aspirations of the people - a beacon to guide and inspire all that is enshrined in the Articles of the constitution, is clearly to set up a 'vibrant throbbing socialist welfare society' in the place of a Feudal exploited society'. Whatever Article of the constitution it is that we seek to interpret, whatever, statute it is whose constitutional validity is sought to be questioned, we must strive to give such an interpretation as will promote the march and progress towards a Socialistic Democratic State.

The mode of realisation of this ideal, namely, the establishment of an egalitarian society, permeated by social, economic and political justice, is carried out in detail by the various provisions of the Constitution.

But the Preamble is not the source either of any power or of any limitation. It can not thus be argued that the power to cede any part of the territory, which belongs to every State as an attribute of sovereignty, does not exist under the Indian Constitution because the Preamble says that 'the people of India' have solemnly resolved to constitute India a sovereign democratic republic. Nor is any appeal to the Preamble permissible to override the express provisions of the Constitution.

21. Id at 860.
On the other hand, in Constituting the Fundamental Rights enumerated in Part III of the Constitution, the high purpose and spirit of the Preamble, namely, that it assured to the citizen the dignity of the individual and other cherished human values as a means to the full evaluation and expression of his personality, should be born in mind. The emphasis of our Constitution, as expressed in the Preamble, is to establish a 'welfare State'.

C: Socio Economic Justice:— Social Scientists and political thinkers trace the origin of the idea of Social justice in the stoic conception of Natural equality and the Christian conception of common brotherhood of all sons of God. Carl J. Friedrich relates the idea of social justice with certain ancient and medieval doctrines. Thus he observed:

"The idea of social justice has its roots in the old and new testament. In ancient Israel there was a provision for a kind of redistribution of wealth. Every so often all debts were abolished..."

The early liberal thinkers, particularly the exponents of laissez-faire, individualism such as Adam Smith (1723-1790), David Recordo (1777-1823) and Thomas Robert Mathews (1766-1834) treated labour merely as a commodity subject to frequent fluctuations of values according to the market forces of demand and supply like other commodities in the market. In fact by the eighteenth century the stage was set for the victory of the capitalist class in Europe. The working class had not yet emerged as a force strong enough to make its voice felt. They continued to be exploited by the dominant

capitalist class which projected freedom of contract as the essence of social justice because such freedom tilted the balance in favour of this class.

In ancient India the policies for the State were laid down by Dharamshastra. The State used to undertake many functions which socialists, ancient and modern, are advocating, yet these went hand to hand with the enlargement of right and freedom. There is the illusion that the correct economic thought is only of recent growth and exclusively European origin. But the concept of a declaration of policy in regard to social and economic obligations of the State can not be said to be foreign to the genus of India Kautilya ordained in his Arthasastra that "the king shall provide the orphan, the dying, the infirm, the afflicted and the helpless with maintenance, he shall also provide subsistence to helpless expectant mothers and also the children they give birth to".

"Dharama is the supreme law of Laws, King of the Kings. It is Raja Dharama in which all living creatures take refuge", Yudhistra observed. "Raja Dharama or the principles of the State can also, in a way, include Western concept of Natural law". Till the British Rule, the society was feudal in nature and there was politico-economic administration of feudal land lords who were known as Zamindars. The socially and economically backward class of the society was in their bondage and dependent as such on their whims and fancies. The Indian society was mainly agricultural society. On the one hand there were limited handicrafts and other small trades to meet out the day to day needs of the working people. There were very few cases of employment because the craftsmen, artisans and traders carried out the work either

29. B.N. Rao, in his address to the Indian Council of World Affairs, 10th August 1949.
31. Ibid.
themselves or with the help of their family members. It was only in case of land lords and Jagirdars that agricultural labour were engaged. They were either permanently under the socio-economic bondage of the land lords or they worked on the agricultural holdings owned by them. There was direct nexus of contract between the employer land lords, Jagirdars and the workers. These agricultural workers could not think of their rights, their unity, or organization to raise voice against the feudals. Land lords were so much powerful and strong that they could make vanish the total family or even race of a worker who dared to raise voice against them. On the other hand Indian agricultural society was dominated by the hierarchical caste system, extreme poverty and ignorance coupled with social customs. This complex structure of our society led to the widening of gap between the haves and have-nots. Thus, the poor and deprived were constrained by multiple social compulsions to take loans, advances in cash or kind from the dominant section of our society and consequently mortgaged their labour. This system mostly prevalent among agricultural sector, has now spread over to other areas like stone quarries, brick kilns, construction sites, forestry, carpet weaving, fishing, bidi making and the like. In this way, the age old in human system of labour has taken new dimensions in the present socio economic structure of our society.

The concept of Social Justice discussed above, may be found in any religion whether it is Islam, Hinduism or Christianity. Here our purpose is to define the concept of social and economic justice in the light of laws made by men for men. The Supreme law made by man is the constitution. So before discussing the concept of social and economic justice in light of the Preamble and other provisions of the Indian constitution mainly Fundamental Rights and Directive Principles, it would be better to discuss the idea of social justice in historical perspective.
A reference to history may sometimes be permissible in interpreting the terms of the constitution. A Constitution is the heir of the past as well as the testator of the future.

Inspired by the Declaration of Independence of America in 1776 and the Declaration of the Rights of man and of the citizen adopted in 1789 by the French Assembly, the emancipation of social and economic politics became a regular feature in the constitution framed in the post war period.

Dr. Shanful Hasan has rightly formulated that:

"The demand for right in India traces back to the 19th century and the patriotic flame resulted in the formation of the Indian National Congress in 1885. The Constitution of India Bill was introduced in 1895. A series of congress resolutions reiterated that demand between 1885 and 1919. The emergence of Mahatma Gandhi on the political scene gave to the freedom a new dimension. It ceased to be merely anti-British, it became a movement for the acquisition of rights of liberty for the Indian community: Mrs. Besant's Commonwealth of India Bill, 1925 and Madras Congress Resolution of 1928 provided continuity for that movement."

All Parties Conference of 1928 recommended for incorporating a chapter on Fundamental Rights and also social and economic rights. The Congress Resolution 1929 also emphasised the same theme of the socio-economic reconstruction when it declared:

"The great poverty and misery of the Indian people are due, not only to foreign exploitation in India but also to the economic structure of

society, which the alien rulers support so that their exploitation may continue. In order to remove this poverty and misery and to ameliorate the condition of the Indian masses, it is essential to make revolutionary changes in the present economic and social structure of society and to remove the gross inequalities"33.

The socio-economic rights embodied in the Directive Principles are as much a part of human rights as the Fundamental Rights"34.

The Congress held its 45th session at Karachi in March 1931 which adopted the Resolution on Fundamental Rights and Economic and Social Change, which was both a declaration of rights and a humanitarian socialist manifesto.

The Karachi resolution stated that in order to end the exploitation of the masses, political freedom must include the real economic freedom of the starving millions. The state was to safeguard the interest of industrial workers, ensuring that suitable legislation should secure them a living wage, healthy conditions, limited hours of labour, and protection from the economic consequences of old age, sickness, and unemployment. Women and children were also to be protected in various ways and accorded special benefits. The State was to own or control key industries and services: mineral resources, railways, waterways, shipping and other means of public transport. Another item called for the reform of the system of land tenure, revenue, and rent35.

The next major document on the rights of the pre-Assembly era was the Sapru Report, published at the end of 1945. The report suggested constitutional scheme for India, and although the portions of the report dealing with

33. Ibid. at 23.
34. Ibid.
Fundamental Rights contained overtones of the social revolution it addressed itself mainly to the problem of placating minority fears, which were again overshadowing the political scene. With independence likely in the not too distant future, the minorities had to face the responsibility of living together and of creating a State. The Sapru Committee in its final report recommended for the declaration of Fundamental Rights and made a distinction between justiciable and non-justiciable rights.

The social and economic objective was embodied in the Objective Resolution adopted by the Constituent Assembly on the 22nd January, 1947 which framed the constitution.

(a) Socio-Economic Justice and the Indian Constitution: The Constitution of India has promised to all citizens social and economic justice, equality of status and of opportunity, liberty of thought, expression, and to promote among them all fraternity which ensures the dignity of the individual and the unity of the nation. The promise which is given by the constitution makers to all citizens of this country furnishes a key to the basic concept underlying the material provisions of the constitution. The dignity of the individual and the importance of his freedoms are recognised as essential parts of the democratic way of life which the constitution proclaimed. But the founding fathers of the constitution were also fully aware of about the problem posed by the ideal of the welfare state, and so the constitution has guaranteed to its citizens social and economic justice.

At the time of introducing the Bill to amend the constitution in the Lok Sabha on May 16, 1951, Pandit Jawahar Lal Nehru said:

"The Directive Principle of State Policy represent a dynamic move
towards a certain objective. The Fundamental Right represent something static; their object is to preserve certain rights which already exist. Both again are rights. But sometime it might so happen that the dynamic movement and the static do not quite fit into each other.

A dynamic movement towards a certain objective necessarily means certain changes; that is the essence of movement. Now, it may be that, in the process of dynamic movement, certain existing relationships are altered, varied or affected. In fact, it is meant to affect those settled relationship and yet if you come back to the Fundamental Rights they are meant to preserve, though not always indirectly, certain settled relationships. There is a certain conflict between the two approaches but I am sure it is not inherent one. However there is some difficulty and, naturally, when the Courts of the land have to consider these matters, they have to lay stress more on the Fundamental Rights than on Directive Principles of the State Policy. The result is that the whole purpose behind the constitution, which was meant to be a dynamic constitution, leading to a certain goal step by step, is some what hampered and hindered by the static element being emphasized a little more than the dynamic element ... in the process of protecting of individual liberty, if you also protect individual or group inequality, then you came into conflict with that Directive Principles. If, therefore, an appeal to individual liberty and freedom is construed to as an appeal for the continuation of the existing inequalities, then you come up against difficulties. You become static and unprogressive and cannot change; you can not realize the ideal of an egalitarian society which I hope, most of us want."

37.Supra note 32 at 44.
The Fundamental Rights are enforceable by the judiciary while the Directive Principles, though Fundamental in the governance of the Country, are not enforceable under Article 37. Article 37 says: "The provisions contained in this part (Part IV-Directive Principles of State Policy) 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 of law." But this does not mean any conflict between the two. Both constitute essential features of the constitution and thus are binding on all organs of the State. It is the responsibility and duty of the High Courts, Supreme Court and the lawyers to give reality to both these parts of the constitution while they are interpreting these parts of the constitution because the constitution is not only a legal but also a social and political document.

The constitution of India has attempted to harmonize the apparently conflicting claims of socio-economic justice and individual liberty and Fundamental Rights of the citizens of this Country. They are, the right

(a) to freedom of speech and expression;

(b) to assembly peaceably and without arms;

(c) to form associations and unions;

(d) to move freely throughout the territory of India;

(e) to reside and settle in any part of the territory of India

(f) ...

38 Sub-clause (f) omitted by the Constitution (Forty Fourth) Amendment) Act, 1978, by S.2. w.e.f. 20.6.1979.
(g) to practice any profession, or to carry on any occupation, trade or business.

Article 19 makes it perfectly clear that these rights are not absolute and can not be treated as ends in themselves. They are co related to certain inevitable obligations imposed on all the citizens of India by reason of fact that Indian democracy has dedicated itself to the ideal of achieving socio-economic justice. This is the fact that while guaranteeing the citizens their respective Fundamental Rights prescribed by Article 19 (1), sub-clauses (a) to (g), the Constitution of India, has made it perfectly clear that these Fundamental Rights can be reasonably restricted, provided the restriction satisfy the test prescribed by sub-articles (2) to (6) to Article 19 respectively. It is thus clear that the scheme of Article 19 considered as a whole furnishes a very satisfactory and rational basis for adjusting the claims of individual rights of the freedom and the claims of Public good.

Article 15 is specific application of the right to equality which is generally stated in Article 14. Art.14 is available to the all persons, while Art 15 is available to citizens only. Clause 1 of Article 15 prohibits the State to discriminate against citizen on the ground only of religion, sex, caste, place of birth or any of them.

Clause 2 of Article 15 declares that no citizen shall, on the grounds only of religion, race, caste, sex, place of birth or any of them, be subjected to any disability, liability, restriction or condition with regard to (a) access to shops, public restaurants, hotels and place of public entertainment, or (b) the use of wells, tanks, bathing ghats, roads and place of public resort, maintained wholly or partly out of State funds or dedicated to the use of the general public. This clause, on the other hand, is levelled not only against the State but also against private individuals, who, may be in control of the public places
mentioned in that clause, clause (3) embodies an exception to clause (1) and provides that notwithstanding clause (1), it would be permissible for the State to make "Special provision for women and children." This exception is not confined to beneficial provisions only and any special provision that the State considers necessary in the interest of women, whatever its nature may be, would be valid under this clause. There are various legislations which are made specially for women and children. For example provisions for the benefit of women in labour welfare legislations such as Factories Act, 1948; Employees State Insurance Act, 1948; Indian Majority Act, 1875; Guardian and Wards Act, 1890; Child Marriage Restraint Act, 1929; Children (Pledging of Labour) Act, 1933; Employment of Children Act, 1938; Reformatory Schools Act, 1897; Apprentice Act, 1961; Maternity Benefit Act, 1961; Medical Termination of Pregnancy Act, 1971 and special treatment of women and children, in the matter of granting bail under Cr. P.C.

The object of clause (4) added in 1951, is to bring Article 15 and 29 in line with 16(4) and 340, and to make it constitutional for the State to reserve seats for backward classes of citizens, Scheduled Caste and Scheduled Tribes in the Public educational institutions, as well as to make other special provisions as may be necessary for their advancement.

Article 16 is an instance of the application of the general rule of equality before law laid down in Article 14 and the prohibition of discrimination guaranteed by Article 15(1) with special reference to the opportunity for the employment or appointment to any Office under the State.

Articles 23 and 24 provide for Fundamental Rights against exploitation. Article 23 prohibits-(a) traffic in human beings, (b) begar; and (c) other similar forms of forced labour. Article 24, in particular, prohibits an employer from employing a child below the age of 14 years in any factory or mine or any other
hazardous employment.

Part IV of the Constitution contains Directive Principles of State Policy. These Principles specify the goals and values to be secured. Some of these principles specify the goals and values to be secured by legislation for workmen. They are:

(i) an adequate means of livelihoods (ii) prevention of concentration of wealth and means of production; (iii) equal pay for equal work (iv) protection and preservation of the workers' health (v) the right to work, the right to education, and the right to public assistance in cases of undeserved want; (vi) just and human conditions of work, and maternity relief; (vii) a living wage and a decent standard of life.

These principles are no doubt unjusticiable and can not be judicially enforced, but having regard to the place of pride accorded to them, it is obvious that the constitution makers expect the governments of different States as well as the Central Government to bear these Directive Principles in the mind and mould the policies from time to time so as to give effect to them. That is the importance of these directives.

(b) Directive Principles and Fundamental Rights: The Supreme Court in Champakam case held that the Fundamental Rights being sacrosant, the Directive Principles of State Policy can not over-ride them but must run as subsidiary to them. The opinion of the Court in this case is the result of the narrow legalism and the legal technicalities. In fact the Supreme Court did not pay attention towards the socio-economic aspect of these principles in the life of the Country. This judgement of the Court about the position of the Directive Principles of the State Policy has in fact created controversy between

the two and has led to a series of constitutional amendments.

The Supreme Court in Mohd. Hanif Qureshi\textsuperscript{40} and Kerala Education Bill cases\textsuperscript{41}, conceding importance and significance of the Directive Principles while reiterating its view given in Champakam case, had modified its earlier stand tilting towards the Directive Principles.

In dealing with the Directive Principles vis-a-vis the Fundamental Rights, the Court's attitude has been purely legal and constitutional though the Supreme Court did not accept the Directive Principles as superior to the Fundamental Rights on account of Article 37 which expressly lays down their character, yet had always been in favour of their implementation. It exhorted the government to discharge its legal and constitutional obligations imposed on it by Part IV of the constitution without touching the Fundamental Rights—Even before the Kesavananda Bharti's case\textsuperscript{42} a considerable change started in the Court's attitude in dealing with these principles of State Policy. The Court has certainly made a shift by making liberal interpretation so that the Principles of State Policy specified in Part IV of the constitution could be realised\textsuperscript{43}.

In Marwa Manghani's case\textsuperscript{44} the Punjab High Court observed:

"These principles though not enforceable by Courts of law are nevertheless a part of the Constitution which is one organic whole and are thus supreme. The Courts while construing a statute, should thus consistently, with its express language, interpret it so that it

\textsuperscript{40} Mohd Hanif Qureshi Vs State of Bihar, A I R 1958 S C 731
\textsuperscript{41} In re-Kerala Education bill, A I R 1958 S C 1956
\textsuperscript{42} Kesavananda Bharti Vs State of Kerala, A I R 1973 S C 1461
\textsuperscript{43} Dr Shareful Hasan, "Supreme Court Fundamental Rights and Directive Principles", 56 , (Deep and Deep Publication Rajouri Garden, New Delhi, 1981)
\textsuperscript{44} Marwa Manghani Vs Sanghram Sampat, A I R 1960 Punjab 35
implements the Directive Principles instead of reducing them to the level of mere theoretical ideals or illusions"45.

The constitutional importance of the Fundamental Rights and Directive Principles was discussed elaborately by the 13 Judges of the Supreme Court in Kesavananda Bharti's Case46. To understand the importance and the nature of the Fundamental rights and Directive Principles, it will be better to point out the opinions of these Judges:—

Sikri, C.J. observed:

"It is impossible to quote the Directive Principles with Fundamental rights though it can not be denied that they are very important. But to say that the Directive Principles give a directive to take away Fundamental Rights in order to achieve what is directed by the Directive Principles seems to be a contradiction in terms"47.

Shaletand Grover J.J. said:

"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 Part-III and IV were enacted"48.

Hegde and Mukher jee J.J. observed:

"Part IV of the constitution is designed to bring about the social and

45. Id at 40.
47. Id. at 1510.
48. Id. at 1582.
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 sustenance provided for in the constitution, the hopes held out to the Nation and the very ideals on which our constitution is built. Without faithfully implementing the Directive Principles, it is not possible to achieve the welfare State contemplated by the constitution. A society like ours steeped in poverty and ignorance can not realise the benefit of human rights without satisfying the minimum economic needs of every citizen of this country\textsuperscript{49}.

A.N. Ray J. said:-

"Social Justice will determine the nature of the individual rights and also the restriction on such rights. Social justice will require modification or restriction 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\textsuperscript{50}.

In this regard Jaganmohan Reddy J. said:

"There can be no doubt that the object of the Fundamental Rights is to ensure the ideal of Political Democracy and prevent authoritarian rule, while the object of the Directive Principles of State Policy is to establish a welfare state where there is economic and social freedom\textsuperscript{49, 50}.

\textsuperscript{49} Id. at 1641.
\textsuperscript{50} Id. at 1715
without which Political democracy has no meaning. What is implicit in the constitution is that this is a duty of the courts to interpret the constitution and the laws to further the Directive Principles which under Article 37, are fundamental in the governance of the Country"\textsuperscript{51}.

K.K.Mathew J. said :

"As the preamble indicates, it was to secure the basic human rights like liberty and equality that the people gave unto themselves the constitution and these basic rights are an essential feature of the constitution, the constitution was also enacted by the people to secure justice, Political Social and economic. Therefore the moral rights in Part IV of the constitution are equally an essential feature of it, the only difference being that 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. The Fundamental Rights themselves have no fixed content, most of them are mere empty vessels into which each generation must pour its contents in the light of its experience. Whether at a particular moment in the history of the Nation, a particular Fundamental Right should have priority over the moral claim embodied in Part IV or must yield to them is a matter which must be left to be decided by the generation in the light of its experience and its values."\textsuperscript{52}

\textsuperscript{51} Id. at 1755.  
\textsuperscript{52} Id. at 1952-53.
M.H. Beg J. told that it would be more correct to describe the Directive Principles as laying down the path which was to be pursued by our Parliament and State legislatures in moving towards the objectives contained in the Preamble. Indeed from the point of view of the Preamble, both the Fundamental Rights and Directive Principles are means of attaining the objectives which were meant to be served both by the Fundamental Rights and Directive Principles.

Chandrachud J. observed:

"Our decision of this vexed question must depend upon the postulate of our Constitution which aims at bringing about synthesis between Fundamental Rights and Directive Principles of State Policy, by giving to the former a place of pride and to the latter a place of permanence. Together, not individually, they form the core of the constitution. Together, not individually, they constitute its true conscience."

After pointing out the views of the judges in Kesavananda Bharti's case we find that the Fundamental Rights and Directive Principles are meant to supplement one another. It can well be said that Directive Principles prescribe goal to be attained and the Fundamental Rights lay down the means by which that goal is to be achieved.

In N.M. Thomas's case Fazal Ali J pithily and pointedly observed:

"It is clear that the Directive Principles form the fundamental features and the social conscience of the constitution and the constitution

53. Id. at 1970
54. Id. at 2021
enjoins upon the State to implement these Directive Principles. The directives provide the policy, the guide lines and the end of socio-economic freedoms and Articles 14 and 16 are the means to implement the policy to achieve the ends sought to be promoted by the Directive Principles so far as the Courts are concerned where there is no apparent inconsistency between the Directive Principles contained in Part IV and the Fundamental Rights mentioned in Part III, which in fact, supplement each other there is no difficulty in putting a harmonious construction which advances the object of the Constitution.\(^56\)

These judicial pronouncements mentioned above testify the great concern shown by the judges of the Supreme Court not merely for the fundamental Rights as such but also for the Directive Principles. Judges are the part of the society and they can easily feel the needs of the society at a given time. They realise that the social and economic justice is the need of the time. Realizing this they have attached the greatest possible importance to the Principles set forth in the Preamble to the Constitution. Due to the social and economic backwardness of our people, the Supreme Court has rightly shown special zeal, enthusiasm and alertness in emphasising the need of social and economic justice and defending the rights of the people in this regard.

Before any discussion of the legislative and judicial efforts in this direction it will be beneficial to understand the nature of Directive Principles as provided in the Constitutional scheme. There are two types of objectives of Directive Principles of State Policy:

1. Objectives to be allowed for bringing about a welfare State e.g. social order based on justice, principles of Policy to be followed by

\(^{56}\) Id at 548.
the State for securing economic justice, participation of workers in management of industries, just and human conditions of work, living wage for workers, free and compulsory education for children, duty to raise the standard of living and improvement of health, promotion of education and economic interest of weaker sections, equal justice and free legal aid to economically backward classes.

(2) Others are of a different nature e.g. separation of judiciary from executive, promotion of International Peace and Security, protection of monuments and places and objects of national importance, uniform civil code.

A misplaced emphasis of justiciability was given in regard to the nature of Directive Principles of State Policy. The very nature of the Directive Principles is such that they cannot form part of a justiciable Code. They are in fact incapable of being enforced by Courts.

In the begining, the Supreme Court attitude was that matters of Directive Principles are the concern of the Government and not that of courts. Thus we find a hands off attitude of the courts in this era e.g. State of Madras Vs. Champakam Dorairajan. In this case it was held that in case of any conflict between Fundamental Rights and Directive Principles, the Fundamental Rights would prevail. But after one year when the court dealt with Zamindari Abolition cases its attitude was considerably modified. In State of Bihar Vs. Kameshwar Singh the court relied on Article 39 in deciding that a certain Zamindari Abolition Acts had been passed for public purpose within the

meaning of Article 31. Similarly in Inre Kerala Education Bill the Supreme Court observed that though the Directive Principles cannot override the Fundamental Rights, nevertheless in determining the scope and ambit of Fundamental Rights the court may not entirely ignore the Directive Principles. It should adopt the principles of harmonious construction and should attempt to give effect to both as much as possible. Later in Mohd. Hanif Qureshi Vs. State of Bihar a State law which prohibits slaughter of cows and calves and other cattle capable of work has been upheld by the court because it was meant to give effect to Article 48 of the constitution.

In Kesavananda Bharti's case the court observed:

"Our founding fathers were satisfied that there is 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 prescribes the means through which the goal is to be reached."

In Unikrishnan Vs. State of A.P., the Supreme Court has reiterated the same principle that the Fundamental Rights and Directive Principles are supplementary and complementary to each other and the provision in Part III should be interpreted having regard to the Preamble and Directive Principles of State Policy.

59 AIR 1957 SC 957
60 AIR 1958 SC 731
61 Supra note 46 at 1641
62 (1993) I SCC 625
Thus it is clear from the above pronouncements that in the earlier
decisions the court paid less regard to the Directive Principles on the ground
that they are not justiciable like the Fundamental Rights, but in its later
decisions the courts has taken the view, that there is no conflict between the
Directive Principles and Fundamental Rights and they supplement each other
in aiming at the same goal bringing about a social revolution and the
establishment of welfare State which is envisaged in the Preamble.

Recently in Air India Statutory Corporation, case 63 the Supreme Court
has held that the Directive Principles now stand elevated in inelienable
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 social engineer, is to create
just social order, remove the inequalities in social economic life and socio­
economic disabilities with which people are languishing; and to require
positive opportunities and facilities as individuals and groups of persons for
development of human personality in our civilised democratic set up so that
every individual would strive constantly to rise to higher levels. Therefore, for
establishment of 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.

The Supreme Court64 thus abandoned its earlier attitude reluctantly
and progressively towards a more active role of the courts in this area, also
because of largely the failure of the Government in bringing about the desired
changes as expressed in Fundamental Rights and Directive Principles.

63. Air India Statutory Corporation Vs. United Labour Union, A.I.R. 1997 S.C. 645 at
647.
64. Supra Note 57.
The result of the controversy of Fundamental Rights and Directive Principles and the attitude of the Supreme Court was the declaration of certain Fundamental Duties in Part IV-A of the Constitution. This new part consists only one Article i.e. Article 51-A. The framers of the constitution declared the Fundamental Rights of the citizens and other persons, and also setforth certain directives and duties of the State. Directive Principles of State Policy with a view to strengthen the institutions of national life, and with the object of ushering in a new social order, based on socio-economic and political justice, equality and liberty. They did not, however, declare any Fundamental Duties of the individual citizens. But proponents of 42nd Amendment, 1976 thought it fit to remove this lacuna. They seem to have thought that non declaration of the citizens duties was a missing part of the social contract to which the citizens should be deemed to have submitted by the general will under the frame-work as established under the Constitution. They also seem to have thought that the declaration of Fundamental Rights would in accordance with sovereign will of the people, and would be required to ensure social solidarity and allegiance to the Republic, the community and the new established social order. They thought that the Fundamental Duties flow from the Fundamental rights and the idea that it was the citizens' duties on which the Fundamental Freedoms were based; and the Fundamental duties would Constitute the corner stone of the arch of the established socio-political order. They said that the citizens should accept certain responsibilities towards the State and the constitutional Government of the country, and practices and processes of constitutional institutions and the national State.

In our country there is a balanced constitutional scheme of rights and

duties of the citizens and the government. These rights and duties are contained in Parts III, IV and IV-A of the constitution.

(c) **Fundamental Duties:** Article 51-A of Part IV-A of the constitution declared 10 fundamental duties (the ten commandments of the constitution) as follows:

Firstly, the citizens should abide by and respect the basic ideals of the constitution. They should have respect for established democratic institutions. They should, further, respect the national flag, and national anthem;

Secondly, they ought to cherish and follow the noble ideals which inspired the people in their national struggle for freedom and independence;

Thirdly, they must be obliged to uphold and protect sovereignty, integrity and independence of the country;

Fourthly, they should by obliged to defend the country by rendering national service whenever called upon to do so. They ought not to be conscientious objectors.

Fifthly, the citizens should be obliged to promote harmony among all sections of the people, and to respect the dignity of women. They should promote the spirit of common brotherhood, transcending barriers of caste, creed, religion or language.

Sixthly, they should preserve the values of the inherited common composite culture of India.

Seventhly, they ought to protect and improve the natural environments, and ought to have compassion for living creatures.
Eighthly, they should encourage and develop scientific temper, a spirit of humanism, and the habit of enquiry and reform;

Ninthly, they should safeguard public property and to promote non-violence.

Tenthly, they should strive for excellence in all spheres of activity—individual as also collective, and ought to endeavour to rise to higher levels of thought, action and achievement.

These traditional duties have given constitutional sanction. If one take care to see, he will discover in the constitution not only his rights but also his duties. A look at the constitution will also answer the complaint of some persons that constitution has conferred rights on the individual but has not set out the duties of the individuals towards society.

Judicial activism or judicial attitude reminded the legislature of their duty and we find that a number of attempts have been made by the legislature to implement them. For example the Government has fixed minimum wages for the workers, modernised our labour laws and improved the labour conditions. For the Promotion of cottage industries the Government has established several Boards, viz. All India Khadi and village Industries Board, Small Scale Industries Boards, Silk Board, All India Handicraft Board, All India Handloom Board etc. A large number of laws have made to implement the directives contained in Article 40. The objectives laid down in Article 40 have now been fulfilled by enacting the constitution 73rd and 74th Amendment Acts, 1992 known as the Panchayati and Nagarpalika Constitution Amendment Act, 1992. These Amendments provide constitutional sanction to democracy at the grass root level.

66. Ibid PP. 518, 519.
The constitution was amended by the 25th Amendment Act, 1971, so as to enable the Government to implement more speedy socio-economic reforms. This Amendment added a new Article e.g. Article 31-C to Article 31 of the constitution. The new Article provides that no law which is intended to give effect to principles contained in Article 39 (b) and (c) 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 or 19 of the Constitution. The validity of the above amendment has been upheld by the Supreme Court in Fundamental Right Case.

Further more some other laws for the betterment of the workers have been passed by the legislature i.e. Equal Remuneration Act, 1976; Beedi and Cigar Workers (conditions of Employment) Act, 1966; Child Labour (Prohibition and Regulation) Act, 1986; Dangerous Machines (Regulation) Act, 1983; Inter-State Migrant Workmen (Regulation of Employment And Conditions of Service) Act, 1979, Maternity Benefit Act, 1961; Motors Transport Workers Act, 1961; Payment of Bonus Act, 1965; Sales Promotion Employees (Conditions of Service) Act, 1976 and Cine Workers and Cinema Theatre Workers (Regulation of Employment) Act, 1981 and the like.

Though much has been achieved still much more is to be achieved. The standard of living of the workers is yet to be raised. The economic position of our country is now very sound in comparison to the time when the constitution was framed. This is the most appropriate time to implement Directive Principles to raise the living standard of workers. It can be safely concluded that the efforts of Union Government and of the States are really very encouraging and substantial in the implementation of these objectives.

The recent statistic shows that while the poverty line some decades back was 27% it has increased and now 39.3% people are living below poverty line. It definitely shows that there is some grave error in the country. It further shows that the attempts by legislature and the judiciary have not been very effective in the long run. Therefore it is suggested that the policy of economic upliftment must undergo both legislative and administrative changes. Obviously the judiciary is not designed to play an effective role in this field in the absence of cooperation of the two other institutions. Judicial attempts have been like brilliant sparks in the dark of economic distress and failed to provide a reasonably lighted atmosphere.

(D) Equality of opportunity :- Our Constitution craves for an egalitarian society, a society in which every body would prosper whatever may be his or her caste, creed, race, religion or region. Right to equality is guaranteed under Articles 14 to 18 of our constitution.

Article 14 provides: "The State shall not deny to any person equality before law or the equal protection of the laws within the territory of India". Article 15 prohibits discrimination on grounds of religion, race, caste, sex or place of birth. It consists of clauses(1) to (4), clause (4) having been added by the Constitution (First Amendment) Act, 1951. Clause (1) prohibits discrimination against any citizen on grounds only of religion, race, caste, sex,


69. The immediate object of this amendment was to override the decision in State of Madras Vs. Champakan (1951). S.C.R. 525 to the effect that Article 29(2) was not controlled by Art. 46 and that the Constitution did not intend to protect the interest of the backward classes in the matter of admission to educational institutions. But though the amendment would validate reservation for the Backward Classes and Scheduled Castes and Tribes, it would not support the distribution of seats according to communities so as to discriminate between classes who are not backward interse.
place of birth or any of them Clause (2) saves every citizen from being subjected to any disability, liability, restriction or condition with regard to matters covered by sub clause (a) and (b) on any of the grounds enumerated in clause (1). Clause (3) provides an exception to clause (1) and it enables the State to make any special provision for women and children. Similarly, clause (4) provides for an exception and enables the State to make any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Caste and the Scheduled Tribes. Thus, it has been seen that, while providing for equality to all citizens, the constitution makers took the precaution of enabling the State to take suitable action, either legislative or executive, to help women and children and members of the communities mentioned in clause (4).

On similar lines, Article 16 provides for equality of opportunity in matters of public employment. By clause (1) it is provided that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any Office under the State; and clause (2) prohibits discrimination against any citizen on grounds only of religion, race, caste, sex, decent, place of birth, residence or any of them in respect of any employment or Office under the State. Clauses (3), (4) and (5) provide for exception to the principles enunciated by clauses (1) and (2). Clause (3) enables Parliament to make any law prescribing in regard to a class or classes of employment or appointment to an Office under the government or any local or other authority within, a state or Union territory, and requirement as to residence within the State or Union territory prior to such employment or appointment. It will be noticed that this clause confers power on Parliament to make a law by which special provision may be made for employment or appointment to the Offices mentioned in the clause in favour of persons
satisfying the specified test of residence with the State or Union territory. Clause (4) enables the State to make any provision for the reservation of appointment or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the service under the State. Clause (5) excepts from the operation of clauses (1) and (2) of Article 16 any law which provides that the incumbent of an Office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular Denomination. Thus, Article 16, with the exceptions guarantees equality of opportunity to all the citizens in matters of public employment.70

Article 17 abolishes untouchability. The complete abolition of untouchability was one of the visions of Mahatma Gandhi in his Ramrajya'. This Article adopts the Gandhian ideal without any qualifications.

Article 18 deals with the abolition of titles and consists of four clauses. Here our purpose is to define the equality of opportunity so Articles 17 and 18 are not discussed in detail.

Articles 14, 15 and 16 form part of a string of constitutionally guaranteed rights. These rights supplement each other. Article 16 which ensures to all citizens equality of opportunity in matters relating to employment is an incident of guarantee of equality contained in Article 14. Article 16 (1) gives effect to Article 14. Both Articles 14 and 16 (1) permit reasonable classification having a nexus to the objects to be achieved. Under Article 16 there can be a reasonable classification of the employees in matters relating to employment or appointment.

In State of Kerala Vs N.M. Thomas\textsuperscript{71} where it was brought to the notice of the government that large number of government servants belonging to Scheduled Castes and Scheduled Tribes were unable to get their promotion because of want of test qualification. In order to give relief to the Scheduled Castes and Scheduled Tribes the government incorporated Rule 13 AA which enabled the government to grant exemption to members of Scheduled Castes and Scheduled Tribes for a specified period. On 13 January, 1972 exemption from passing the test was granted to members of Scheduled Castes and Scheduled Tribes for two years. On 11 January, 1974 order was made under Rule 13 AA giving members of Scheduled Castes and Scheduled Tribes exemption from passing the tests for the period of two tests to be conducted after the order dated 11 January, 1974\textsuperscript{72}. The contentions\textsuperscript{73} on behalf of respondent were:

(1) Article 16 is a specific application of Article 14 in matters relating to employment or appointment to any service in the state. Clauses (1) and (2) of Art. 16 give effect to equality before law guaranteed by Article 14 and to prohibition against discrimination guaranteed by Article 15 (1). In other words, Article 16 (1) is absolute in terms guaranteeing equality of opportunity to every individual citizen seeking employment or appointment. Emphasis is placed on similar opportunity and equal treatment for seeking employment or appointment.

(2) Matters relating to employment in Article 16(1) include all matters in relation to employment both prior and subsequent to the employment and form part of the terms and conditions of service. Equal opportunity

\textsuperscript{72} Id. at 496.
\textsuperscript{73} Id. at 495-496.
is to be given for appointment, promotion, termination of employment and payment of pension and gratuity.

(3) The abridgement of equality guaranteed by Article 16(1) is only to the extent curtailed by Article 16(4). Apart from Art. 16(4), the right guaranteed under Article 16(1) can not be curtailed. Art. 16(4) is, in substance, an exception to rights guaranteed by Art. 16(1) and (2).

(4) Article 16(4) does not cover the entire field occupied by Article 16(1) and (2). Some of the matters relating to employment in respect of which equality of opportunity has been guaranteed by Article 16(1) and (2) do not fall within the mischief of non obstante clause in Article 16(4). To illustrate, clauses (1) and (2) of Art. 16 do not prohibit the prescription of reasonable rules for selection to any employment or appointment in office. Any provision as to the qualification for employment or appointment in office reasonably fixed and applicable to all citizens would be consistent with the doctrine of equality of opportunity in Article 16(1). Reasonable qualification of employment for the purpose of efficiency of service is justified.

(5) Rule 13 AA is violative of Article 16(1) and (2). The impeached Exhibits fall within the same mischief. There is no scope for dealing with Scheduled Caste and Scheduled Tribes different from other backward classes. Exemption from qualification necessary for promotion is efficiency of administration and violates not only Article 335 of the Constitution but also Article 16(1).

In reply to these contentions it was held by the Supreme Court that under Article 16 there can be reasonable classification of the employees in matters relating to employment or appointment. Article 16(1) does not
prohibit the prescription of reasonable rules for selection to any employment or appointment to any office. In regard to employment, like other terms and conditions associated with and incidental to it, the promotion to a selection post is also included in the matters relating to employment and even in regard to such promotion to a selection post all that Article 16(1) guarantees equality of opportunity to all citizens. Article 16(1) and (2) give effect to equality before law guaranteed by Article 14 and the prohibition of discrimination guaranteed by Art. 15(1). Promotion to selection post is covered by Article 16(1) and (2). The power to make reservation which is conferred on the State under Article 16(4) can be exercised by the State in a proper case not only by providing for reservation of appointments but also by providing for reservation of selection post. In providing for reservation of appointments or posts under Article 16(4) the State has to take into consideration the claims of the backward classes consistently with the maintenance of the efficiency of the administration. Article 16(4) clarifies and explains that classification on the basis of backwardness does not fall within Article 16(2) and is legitimate for the purpose of Article 16(1) If preference shall be given to particular under-represented community other than a backward class or under-represented State in an All India Services such a rule will contravene Article 16(2). A similar rule giving preference to under represented backward community is valid and will not contravene Articles 14, 16(1) and (2). The classification of employees belonging to Scheduled Castes and Scheduled Tribes for allowing them an extended period of two years for passing the special tests for promotion is a just and reasonable classification having rational nexus to the object of providing equal opportunity for all citizens in matters relating to employment or appointment to public office. Article 335 of the constitution states that the claims of members of the Scheduled Castes and Scheduled Tribes shall be taken into consideration in the making of appointment to the
services and posts in connection with affairs of the state consistent with the maintenance of efficiency of administration. Rule 13 AA and Orders dated 13.1.1972 and 11.1.1974 are related to this Constitutional mandate- Rule 13 AA and the orders are meant to implement not only the direction under Article 335 but also the Directive Principle under Article 46. Rule 13 AA does not impair the test of efficiency in administration in as much as members of Scheduled Castes and Scheduled Tribes who are promoted have to acquire the qualification of passing the test. The only relaxation which is done in their case is that they are granted two years more time than others to acquire the qualification. From the point of view of time a differential treatment is given to members of Scheduled Castes and Tribes for the purpose of giving them equality consistent with the efficiency. Rule 13 AA and the two orders are therefore valid.

In deciding the scope and ambit of the right to equality of opportunity it is necessary to bear in the mind that in construing the relevant Article i.e. Article 16 a technical or pedantic approach must be avoided. When we are doing the interpretation of the material words of such Article we must seek the intention of the makers of the Constitution. If the words used in the Article are wide in their import they must be liberally construed in all their amplitude. Thus construed it would be clear that matters relating to employment can not be confined only to initial matters prior to the act of employment. The narrow construction would confine the application of Article 16(1) to the initial employment and nothing else; but that clearly is only one of the matters. The other matters relating to employment would inevitably be the provision as to the salary and periodical increments therein, terms as to leave, to gratuity, to pension and to age of superannuation. These are all matters relating to employment and they are, and must be deemed to be included in the expression
matters relating to employment' in Article 16(1). The equality of opportunity guaranteed by Art. 16(1) need not be an absolute equality as such. Article 16 (1) and (2) does not prohibit the prescription of reasonable rules for selection to any employment or appointment to any Office. If the narrow construction is accepted, it would make the Fundamental Right guaranteed by Article 16 (1) illusory. In that case it will be open to the governments to comply strictly the provisions of Article 16 (1) in the matter of initial employment and then to defeat its very aim and object by introducing discriminatory provisions in respect of employees soon after their employment. Now a question arises here. Would it, for instance, be open to the State to prescribe different scales of salary for the same or similar posts, different terms of leave or superannuation of the same or similar posts? On the narrow construction of Article 16 (1), even if such a discriminatory course is adopted by the State in respect of its employees that would not be violative of the equality of opportunity guaranteed by Article 16 (1). Such result could not obviously have been intended by the constitution. In this connection it may be relevant to remember that Article 16 (1) and (2) really give effect to the equality before law guaranteed by Article 14 and to the prohibition of discrimination guaranteed by Art 15 (1). These provisions form part of the same constitutional code of guarantees and supplement each other. If that be so, there would be no difficulty in holding that the matters in relating to employment must include all matters in relation to employment both prior, and subsequent, to the employment which are incidental to the employment and form part of the terms and conditions of such employment.

The right guaranteed by Article 16 (1) includes the right to make an application for any post under the government and a right to be considered on merits for the post for which an application has been made. Article 16 does not mean that governments are not, like other employers, entitled to pick and choose from amongst a number of candidates offering themselves for employment under the government. It is also open to the appointing authority to lay down such pre-requisite conditions of service as would be conducive to proper discipline amongst government servants.

But if the State lays down the conditions or qualifications for appointment to a post or to employment under the State, in general, such conditions must be applicable to all the citizens. These conditions or requisites must have a reasonable relation to the suitability for the post or of employment in public service in general. If there will be no relevant connection between the test prescribed and the interests of the public, such condition will be violative of Article 16.

A person who complains of violation of Art. 16 (1) must show that he satisfies all such tests or conditions validly prescribed by the authority, and was yet denied equal opportunity. He cannot rely on erroneous orders of the authority, even though repeated, in other cases.

Right guaranteed under Article 16 (1) also includes the promotion and termination of service. If equality of opportunity for promotion is denied to the government servant holding different post in the same grade, it will be infringement of Art. 16 (1). The Article is thus violated if an employee, belonging to the same class as those promoted, has not been considered at all.

76. Ibid.
It does not prohibit the creation of different grades in the government service. It is competent for the State to classify the employees for purposes of promotion. In such cases, the Court can interfere only if the difference between the two groups of recruits are not sufficient to give any preference to one against the other, or, in other words, there is no reasonable nexus between such differences and the nature of the Office or Offices to which recruitment is being made. Nor does the Article prevent the government from laying down conditions of efficiency or other qualifications, for securing the best service, for being eligible for promotion, including general academic qualifications even where the post is to technical.

The rule that employment under the State is held at pleasure does not militate against the application of Art. 16 (1) to the matter of termination of such employment where there has been an arbitrary discriminations in terminating the services of a particular employee, say, on the ground that he has a particular colour or height, or that he belongs to another State or on the ground that he should make room for political sufferers- which are wholly irrelevant to the requirements of the service.

The retrenchment of the employee on the ground that he has been detained under the law of preventive detention or is engaged in subversive activities can not be said arbitrary or discriminatory unless it is shown that those retained are similarly situated. There is nothing in the Article 16 to prohibit the classification of government servants into temporary and permanent servants and to provide for a different mode of termination of service, e.g., by service of notice.

A vexed question may sometimes arise whether the provisions of Article 16(4) are permissive as to leave the State free to make or not to make provision for reservation thereunder or they are mandatory so that the State would be bound to take action under that article. In the former case nobody can seek any remedy if the State does not make any reservation in public services, but in the latter case any member of a backward class of citizens, who may be affected by inaction on the part of the State may approach the court for appropriate remedy against the state. Clause (4) of Article 16 gives a power to the State to make provision for reservation of appointments or posts in favour of backward classes of citizens but no corresponding rights is conferred on the backward class of citizens. If the intention of the constitution makers had been to make the provisions of clause (4) of Article 16 binding on the State, the language of the clause would have been different. The provision of reservation in favour of a backward class can be made only if, in the opinion of the State, that class is not adequately represented in the services under the State. If the intention had been to confer a right on the backward classes of citizens and to impose a corresponding duty on the state, the question of adequacy of representation in public services could not have been left to the opinion or subjective satisfaction of the State, but would have been made to be decided objectively on the basis of certain specified data of facts and figures. Above all the State has also to take the question of efficiency into consideration while making provision for reservation of appointments or posts in favour of backward classes of citizens because Article 335 makes it abundantly clear that the paramount consideration in public services is that of efficiency and even the claims of the Scheduled Caste and the Scheduled Tribes for such services are subject to the maintenance of efficiency in the administration.
In Som Raj V State of Haryana, the Supreme Court held that normally the order of appointment would be in order of merit of candidates from the select list\(^1\).

In Indra Sawhney's Case\(^2\) the Supreme Court has given final judgement on reservation. In this reservation case, it has been held that reservation can not exceed 50%. Reservation in favour of backward classes on basis of caste criterion is valid. Reservation in cases of promotion posts is not permissible. Advanced sections in backward classes must not be given the benefit of reservation.

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\(^1\) (1990) 2 S.C.C. 653.