DIRECTIVE PRINCIPLES OF STATE POLICY: THEIR RELEVANCE IN CONTEMPORARY CONSTITUTIONAL JURISPRUDENCE

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Introduction

The Constitutional law is one of the most important and fast-growing branches of law in the country and it is that branch of law which considers the various aspects which are very near to the problems faced by the citizens of the country. And therefore, I thought that I will share some of my views with you on the subject of the significance of the 'Directive Principles of State Policy' in the Constitution of India. For that, we will have to go little into history so as to find out what was the pre-constitution history, what were the challenges before the Constitution makers, the various amendments to the Constitution and the development of the law by the Apex Court. I have restricted myself to the judgments of the Apex Court; otherwise the speech would have been too lengthy. As it is, it is going to be somewhat lengthy and may be; I will have to test your patience. But there is no other alternative.

Directive Principles of State Policy: Instrument for Social Change

Friends, as all of us know that our country is a country with various diversities. We have various religions, Hinduism, Islam, Christianity, Buddhism, Jainism etc. and our society was classified into various castes. We had a society which was having a caste system wherein some castes were at high level and some at low level. The country is having various languages; the country is having various geographical differences. On one hand, we have Himalayas and on the other hand we have various stretches of States which are adjoining sea.

[1]Judge, Supreme Court of India. This is a text of a lecture delivered at Supreme Court Bar Association, Delhi on October 21, 2019.)

On a social plane, we had also a system, which discriminated amongst men and women. As all of us know that Mahatma Jyotiba Fule and Savitribai Fule had to fight to give just due to woman in the society. Dr. B.R. Ambedkar had said, that women in the country were considered lower, even than the *Shudras* and they were at the bottom most pedestals. We had economic inequalities. The vast stretches of land vested with the *Zamindars* and crores of people were living below poverty line, even finding difficult to earn wages for their livelihood. Before the Constitution was enacted, the country witnessed a long battle for getting freedom. Then, along with battle for getting freedom, there was also a battle for getting their dues by the persons who were downtrodden. Therefore, we also witnessed along with freedom battle, the fight for social and economic equality. All these factors have weighed while making the Constitution between 1947 to 1950 and giving its final shape, what we find on November 26, 1950.

The Constituent Assembly also consisted of people belonging to different ideologies. There were communists who wanted the Russia and China model to be followed in India. There were socialists, there were capitalists who wanted the Constitution of the country to be on a capitalist model, there were fundamentalists, there were also seculars and there were representatives of *Zamindars*, there were representatives of the Princely States. Therefore, it was a Herculean task for the framers of the Constitution to frame a Constitution, which was acceptable to one and all. It took almost three years to frame the Constitution and if we go through the debates of the constituent Assembly, we will know as to what deep thoughts, what sincerity was with the Constitution makers, for drafting a Constitution which was fit for a country, which was full of diversities, which was full of differences. And therefore, the purpose and the aim of the Constitution, we find in the Preamble to the Constitution of India itself which reads as "*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; and FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation."[1]

As we know that with one vote, one value, one person the country could achieve or at least it attempted to achieve the political democracy. But insofar as the economic and social democracy is concerned, the words of warning were given by Dr. B.R. Ambedkar while speaking in the Constituent Assembly on November 25, 1949, on a day prior to the adoption of the Constitution. The entire speech of Dr. B.R. Ambedkar itself makes an impressive reading, but here I will quote only one paragraph from the said speech and I quote "*The third thing we must do is not to be content with mere political democracy. We must make our political democracy a social democracy as well. Political democracy cannot last unless there lies at the base of its social democracy. What does social democracy mean? It means a way of life which recognizes liberty, equality and fraternity as the principles of life. These principles of liberty, equality and fraternity are not to be treated as separate items but a trinity. They form a union of trinity in the sense that to divorce one from the other is to defeat the very purpose of democracy. Liberty cannot be divorced from equality; equality cannot be divorced from liberty. Nor can liberty and equality be divorced from fraternity. Without equality, liberty would produce the supremacy of the few over the many. Equality without liberty would kill individual initiative. Without fraternity, liberty and equality could not become a natural course of things. It would require a constable to enforce them. We must begin by acknowledging the fact that there is complete absence of two things in Indian Society. One of these is equality. On the social plane, we have in India a society based on the principle of graded inequality which means elevation for some and degradation for others. On the*

[1] Preamble to the Constitution of India.

economic plane, we have a society in which there are some who have immense wealth as against many who live in abject poverty. On the 26th of January 1950, we are going to enter into a life of contradictions. In politics we will have equality and in social and economic life we will have inequality. In politics we will be recognizing the principle of one man one vote and one vote one value. In our social and economic life, we shall, by reason of our social and economic structure, continue to deny the principle of one man one value. How long shall we continue to live this life of contradictions? How long shall we continue to deny equality in our social and economic life? If we continue to deny it for long, we will do so only by putting our political democracy in peril. We must remove this contradiction at the earliest possible moment or else those who suffer from inequality will blow up the structure of political democracy which this Assembly has to laboriously build up".[2]

And, therefore, in order to achieve social and economic equality or justice, the Constituent Assembly found it necessary to incorporate Part-IV in the Constitution which deals with Directive Principles of State Policy. As all of us know various rights which can be said to be basic rights or human rights or primordial rights, considered necessary for development of human personality were brought in Part-III, i.e., Fundamental Rights. Therefore, I will not go into details. But Constitution makers found that the Fundamental Rights were not sufficient enough to bring in social and economic democracy in this country and, therefore, the directive principles were brought in Part-IV. As all of us know the fundamental rights are justiciable. For infringement of Fundamental Rights, anybody can knock the doors of the Court, even directly Supreme Court under Article 32. However, the Directive Principles of State Policy are not justiciable in court of law, though the Constitution makers by Article 37 have made them fundamental in governance of the country and duty is

[2] Dr. B.R. Ambedkar, Constitutional Assembly Debates.

cast upon the legislature as well as the executive to give effect to the Directive Principles, while making the laws and while discharging its executive function.

Article 38 provides that State shall strive to promote welfare of the citizens by securing and protecting as effectively as it may, a social order in which justice, economic, social and political, shall inform all the institutions of the national life. Then Clause (2) thereof, requires striving to minimize the inequalities in income, status, facilities and opportunities. There was a long debate on the inclusion of word 'Strive'. Dr. B.R. Ambedkar, said that the word 'Strive' will always remind the law makers and the Executive of the Directive Principles in making the laws and implementing them.

Article 39 requires the State to direct its policy towards providing right of livelihood to men and women, that the ownership and control of the material resources of the community to be so distributed, as best to sub-serve the common good; that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment. Then equal pay for equal work for both men and women. It also requires ensuring that the health and strength of workers, men, women and children is not abused. It also provides that the children are given opportunities to develop in healthy manner and in condition of freedom and dignity and that they are not exploited.

Then Article 41 provides for right to work, education and public assistance in cases of unemployment, old age, sickness and disablement etc.; Article 43 provides for living wages; Article 45 provides for early childhood care and education to children; Article 46 provides for promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections and abolition of all forms of exploitation; and Article 48 then provides for protection of environment and safeguarding of forest and wildlife.

We know that though the Constitution came into effect on 26th January, 1950 it was adopted on 26th November, 1949. Between 1947 and 1950, various laws were enacted with an objective of achieving social and economic justice. Most of these laws provided for abolition of *Zamindari* system.

Article 31 as it stood originally which was subsequently deleted in the year 1978, provided, that no person shall be deprived of his property without mandate of law. Clause (2) of Article 31 also provided that no law providing for compulsory acquisition shall be valid unless it provides for compensation. It also provided for the manner in which the compensation would be paid and the principles on which the compensation will be determined. The views of Pandit Jawaharlal Nehru on Clause (2) of Article 31, which originally was Article 24 in the draft Constitution, would be material to note here and I quote that "*Much thought has been given to it and there has been much debate as to where the judiciary comes in. Eminent lawyers have told us that on a proper construction of this clause, normally speaking, the judiciary should not and does not come in. Parliament fixes either the compensation itself or the principles governing that compensation and they should not be challenged except for one reason, where it is thought that there has been a gross abuse of the law, where in fact there has been a fraud on the Constitution. Naturally the judiciary comes in to scene if there has been a fraud on the Constitution or not. But normally speaking one presumes that any Parliament representing the entire community of the nation will certainly not commit a fraud on its own Constitution and will be very much concerned with doing justice to the individual as well as the community"*.[3]

I further quote from the same speech delivered on 10th September, 1949 that "*It has been not today's policy, but the old policy of the National Congress laid down years ago that*

[3] Pandit Jawaharlal Nehru, Constitutional Assembly Debates.

the Zamindari institution in India, that is the big estate system must be abolished. So far as we are concerned, we, who are connected with the Congress, shall give effect to that pledge naturally completely, one hundred per cent and no legal subtlety and no change is going to come in our way. That is quite clear. We will honour our pledges. Within limits no judge and no Supreme Court can make itself a third chamber. No Supreme Court and no judiciary can stand in Judgment over the sovereign will of Parliament representing the will of the entire community. If we go wrong here and there it can point it out, but in the ultimate analysis, where the future of the community is concerned, no judiciary can come in the way. And if it comes in the way, Ultimately the whole Constitution is a creature of Parliament. But we must respect the judiciary, the Supreme Court and the other High Courts in the land. As wise people, their duty it is to see that in a moment of passion, in a moment of excitement, even the representatives of the people do not go wrong; as they might. In the detached chamber of the courts, they should see to it that nothing is done that may be against the Constitution, that may be against the good of the country, that may be against the community in the larger sense of the term".[4]

Initial Judicial Approach on Directive Principles of State Policy

We find that immediately after the Constitution was enacted, a conflict between the Fundamental Rights and the Directive Principles arose. In the case of *Romesh Thapar v. State of Madras*[5] wherein the Supreme Court found that the guarantee under Article 19(1)(a) of Freedom of speech and Expression was so vast that it protected everything except what pertains to the security of the country and even if a person incites others to commit murder or

[4] Pandit Jawaharlal Nehru, Constitutional Assembly Debates.

[5] 1950 SCR 594 : AIR 1950 SC 124 : .

wage a war against the foreign nationals, the same was not saved by the exception and in *A.K. Gopalan v. State of Madras*[6] where an issue regarding preventive detention arose.

Then in the third case of *State of Madras v. Champakaran Dorairajan* [7] the Constitution Bench of Seven Judges took a view that the Fundamental Rights under Articles 14 and 15 read with Article 29(2) did not permit the reservation to be made in favour of Scheduled Castes, Scheduled Tribes and Other Backward Classes. In that Case, the State of Madras had issued Government Order providing reservations for Scheduled Castes, Scheduled Tribes and Other Backward Classes. The same was set aside by the Madras High Court. A challenge came before the Apex Court and the Constitution Bench of Seven Judges upheld the view of the Madras High Court holding that the chapter of fundamental rights is sacrosanct. I quote Justice Das who was speaking on behalf of the Constitution Bench that "*The chapter of Fundamental Rights is sacrosanct and not liable to be abridged by any Legislative or Executive Act or order, except to the extent provided in the appropriate article in Part-III. The directive principles of State policy have to conform to and run as subsidiary to the Chapter of Fundamental Rights"*.[8]

Then as all of us know that various enactments providing for abolition of *Zamindari* were challenged before the Patna High Court as well as Allahabad and Nagpur High Courts. Patna High Court held the enactment to be unconstitutional, whereas Allahabad and Nagpur High Courts upheld the Zamindari Abolition Laws.

Amendments to the Constitution from 1951 to 1972

[6] 1950 SCR 88 : AIR 1950 SC 27.

[7] 1951 SCR 525 : AIR 1951 SC 226.

[8] 1951 SCR 525, 531.

This led to the first amendment to the Constitution in the year 1951. The statement of objects and reasons of the Constitution (First Amendment) Act was signed by none other than Pandit Jawaharlal Nehru. The perusal of the statement of objects would reveal that, it was found that the citizen's right to freedom of speech and expression guaranteed by Article 19(1)(a) was held by some Courts to be so comprehensive as not to render a person culpable even if he advocates murder and other crimes of violence. As such it was found necessary to amend Article 19 so as to save the laws which impose reasonable restrictions on the exercise of the right conferred by sub-clause (a) of Clause (1) in the interests of the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of Court, defamation or incitement to an offence from the rigour of the said sub-clause.

It would further reveal , that in spite of the provisions of Clause (2) of Article 31, the validity of various enactments enacted to bring agrarian reform measures passed by the State Legislatures in the preceding last three years, had formed the subject matter of dilatory litigation, as a result of which the implementation of those important measures, affecting large numbers of people, had been held up. As such it was found necessary to make certain amendments in Article 19 to insert provisions fully securing the constitutional validity of Zamindari abolition laws in general and certain specified State Acts in particular.

To overcome the judgment of the Apex Court in the case of *Champakaran's*[9] case and in order to take further the mandate of Article 46, Clause (4) in Article 15 came to be inserted, which provided that nothing in the said Article or in clause (2) of Article 29 shall prevent the State from making any special provisions for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

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[9] *State of Madras v. Champakaran Dorairajan* 1951 SCR 525 : AIR 1951 SC 226.

As already discussed, the *Zamindari* abolition laws were held to be unconstitutional by the Patna High Court whereas, the Nagpur and Allahabad High Courts had upheld the validity of the said enactments. To overcome these difficulties, by the first amendment, Article 31-A was brought in the Constitution, wherein it was provided that the acts for acquisition of estates etc. were not to be declared void on the ground that they are inconsistent with or take away the Fundamental Rights. Then Article 31-B was brought in the Constitution, which provided for validation of certain Acts and regulations and it also provided that the Act's specified in IXth Schedule were not to be declared void on the aforesaid ground, notwithstanding any judgment and decree or order which continues to be in force.

The Parliament brought these amendments, so as to take forward the mandate of social and economic justice and by this amendment 13 Acts, for the first time were brought in IXth Schedule. This amendment to the Constitution came to be challenged, on the ground that it was violative of Article 13(2) of the Constitution. Article 13(2) provides that, no law shall be valid if it infringes the Fundamental Rights of the citizens. This amendment to the Constitution came for consideration before the Constitution Bench in *Shankari Prasad Singh Deo v. Union of India.*[10] However, the Constitution Bench consisting of Five Hon'ble Judges unanimously held that the provisions of Article 13(2) did not affect the power of the Parliament to amend the Constitution and the Parliament was empowered to amend the Constitution even if the amendment takes away the fundamental rights of the citizen.

In the meantime, there were three cases in the year 1954 before the Hon'ble Apex Court. First being *State of West Bengal v. Subodh Gopal Bose*[11] wherein validity of the Bengal Land Revenue Sales Act was challenged, on the ground that the principles which provided for

[10] AIR 1951 SC 458 : 1952 SCR 89.

[11] AIR 1954 SC 92 : 1954 SCR 587.

determining compensation, resulted in determining compensation which was very meagre and not reasonable and, therefore, violative of fundamental right to property.

In the case of *Dwarkadas Shrinivas of Bombay v. Sholapur Spinning and Weaving Co. Ltd.*[12] initially the Ordinance and subsequently the Enactment, which took over the property of the Solapur Spinning and Weaving Company Limited, was challenged on the ground of meagre compensation.

In the third case of *State of West Bengal v. Bela Banerjee*[13] the provisions of West Bengal Land Development and Planning Act 1948 which provided for taking away of land of the citizens by paying compensation determined on the principle, which provided for meagre amount, came to be challenged again on the ground that it was violative of fundamental right to property.

The three Constitution Benches, took a view that the principle on which the compensation was to be determined, provided a very meagre compensation and, therefore, led to deprivation of property without reasonable compensation and as such it violated the provisions of Article 31.This again led to 4th amendment to the Constitution in the year 1955, vide which Clause (2) of Article 31 was amended which provided that no such law shall be called in question in any Court on the ground that the compensation provided by that law is inadequate. Clause (2-a) was added to Article 31, which provided that wherein any law which provided for temporary transfer of a property in the state government without transferring the ownership or right to possession, then it shall not be deemed to be compulsory acquisition.

Article 31-A was again amended and Clause (1) was substituted, which provided that various laws which provide for acquisition of any estate, taking over management of property

[12] AIR 1954 SC 119 : 1954 SCR 674.

[13] AIR 1954 SC 170 : 1954 SCR 558.

etc. were not to be deemed to be void on the ground that they are inconsistent with or takes away or abridges any of the rights guaranteed by Articles 14, 19 and 21 of the Constitution. Various State Legislatures in the meantime enacted various laws for carrying out agrarian reforms. By Constitution (Seventeenth Amendment) Act in the year 1964 again Article 31-A came to be amended so as to expand the meaning given to the term 'Estate' and it included along with other things in its ambit, Jagirs, Muafi, Jungam Rights, Ryotwari etc. vide the said amendment again, 44 Acts were added in the IXth Schedule.

This came to be challenged in the case of *Sajjan Singh v. State of Rajasthan*[14] before the Constitution Bench of Five Hon'ble Judges. The majority upheld the amendment to the Constitution. Justice P.B. Gajendragadkar speaking for the majority observed that "*It is legitimate to assume that the Constitution- makers know that Parliament should be competent to make amendments in these rights so as to meet the challenge of the problems which may arise in the course of socio-economic progress and development of the country. That is why we think that even on principle, it would not be reasonable to proceed on the basis that the fundamental rights enshrined in Part-III were intended to be finally and immutably settled and determined once & for all and were beyond the reach of any future amendment*".[15]

The seeds of dissent could be found in the two judgments delivered separately of the minority view. In his judgment Justice M. Hidayatullah states and I quote that "*I would require stronger reasons than those given in Shankari Prasad's*[16] *case to make me accept the view that Fundamental Rights were not really fundamental but were intended to be within the*

[14] AIR 1965 SC 845 : (1965) 1 SCR 933.

[15] (1965) 1 SCR 933, 954.

[16] *Shankari Prasad Singh Deo v. Union of India* AIR 1951 SC 458 : 1952 SCR 89.

powers of amendment in common with the other parts of the Constitution and without the concurrence of the States".[17]

Justice J.R. Mudholkar again in the minority view states and I quote "*Can it not be said that these are indication of the intention of the Constituent Assembly to give a permanency to the basic features of the Constitution? It is also a matter for consideration whether making a change in a basic feature of the Constitution can be regarded merely as an amendment or would it be, in effect, rewriting a part of the Constitution; and if the latter, would it be within the purview of Art. 368?*"[18]

Therefore, we find that the concept of basic feature of the Constitution for the first time, is found in the minority judgment of J.R. Mudholkar J., which has been expanded by Justice H.R. Khanna in the case of *Keshavanand Bharti*[19] to which I will come little later. In the meantime, by the Constitution Amendment Act, two Acts, i.e., Mysore and Punjab Land Reforms Act were included in the IXth Schedule. The validity of these enactments came to be challenged in the case of *I.C. Golaknath v. State of Punjab*[20] to which we popularly refer as case of Golaknath. The Constitution Bench consisted of Eleven Judges, by a majority of 6 to 5, the Constitutional Amendment was held to be invalid.

Chief Justice K. Subba Rao, Justice J.C. Shah, Justice S.M. Sikri, Justice J.M. Shelat, Justice Vaidyalingam and Justice M. Hidayatullah held that if the amendment to the Constitution takes away, abridges any of the rights conferred by Part-III of the Constitution, such an amendment will have to be held to be invalid. However, invoking the doctrine of prospective overruling they held that, the decision will have prospective operation and

[17] (1965) 1 SCR 933, 961.

[18] (1965) 1 SCR 933, 966.

[19] *Kesavananda Bharati v. State of Kerala* (1973) 4 SCC 225: AIR 1973 SC 1461.

[20] 1967 (2) SCR 762 : AIR 1967 SC 1643.

whatever laws were enacted prior to that would be saved .It was declared that from the date of the judgment, Parliament will have no power to amend any of provision of Part-III of the Constitution so as to take away or abridge any of the fundamental rights. They held that amendment to the Constitution is also a law and therefore, covered under Clause (2) of Article 13 of the Constitution of India.

It would be relevant to refer to some of the views in the case of *Golaknath's*[21] case and I refer to the majority view of Chief Justice K. Subba Rao and I quote "*The importance attached to the fundamental freedoms is so transcendental that a bill enacted by a unanimous vote of all the members of both the Houses is ineffective to derogate from its guaranteed exercise. It is not what the Parliament regards at a given moment as conducive to the public benefit but what Part-III declare protected, which determines the ambit of the freedom. The incapacity of the Parliament therefore in exercise of its amending power to modify, restrict, or impair fundamental freedoms in Part-III arises from the scheme of the Constitution and the nature of the freedoms".*[22]

Justice M. Hidayatullah again, in a majority view holds that and I quote "*It cannot be conceived that in following the Directive Principles the Fundamental Rights, say for example, the equality clause, can be ignored. If it is attempted, then the action is capable of being struck down. In the same way, if an amendment of the Constitution is law for the reason explained by me, such an amendment is also open to challenge under Article 32, if it offends against the Fundamental Rights by abridging or taking them away. Of course, it is always*

[21] *I.C. Golaknath v. State of Punjab*1967 (2) SCR 762 : AIR 1967 SC 1643.

[22] 1967 (2) SCR 762, 792.

open to better Fundamental Rights. A law or amendment of the Constitution would offend the Fundamental Rights only when it attempts to abridge or take them away".[23]

I will also refer to the minority view of Justice K.N. Wanchoo speaking for himself and for Justice V. Bhargava and Justice G.K. Mitter and I quote "*But there can in our opinion be no doubt that when Article 13(2) prohibits the State from making any law which takes away or abridges rights conferred by Part-III, it is only referring to ordinary legislative power conferred on Parliament and legislatures of States and cannot have any reference to the constituent power for amendment of the Constitution contained in Article 368".*[24]

Justice R.S. Bachhawat again in minority states that "*It is argued that the preamble secures the liberties grouped together in Part-III and as the preamble cannot be amended, Part-III is not amendable. The argument overlooks that the preamble is mirrored in the entire Constitution. If the rest of the Constitution is amendable, Part-III cannot stand on a higher footing. The objective of the preamble is secured not only by Part-III but also by Part-IV and Article 368.The dynamic character of Part-IV may require a drastic amendment of Part-III by recourse to Article 368.Moreover, the preamble cannot control the unambiguous language of the Article of the Constitution".*[25]

Justice V. Ramaswami states that "*It was argued that the freedoms of democratic life are secured by the chapter on fundamental rights and dignity of the individual cannot be preserved if any of the fundamental rights is altered or diminished. It is not possible to accept this argument as correct. The concepts of liberty and equality are changing and dynamic and hence the notion of permanency or immutability cannot be attached to any of the fundamental*

[23] 1967 (2) SCR 762, 868.

[24] 1967 (2) SCR 762, 840.

[25] 1967 (2) SCR 762, 913.

rights. The Directive Principles of Part-IV are as fundamental as the constitutional rights embodied in Part-III and Article 37 imposes a constitutional duty upon the States to apply these principles in making laws".[26]

Immediately after *Golaknath's*[27] case, there were again two Constitution Bench cases; one was the case of *Rustom Cavasjee Cooper v. Union of India*[28] which is popularly known as *Bank Nationalisation's* case. The shares of the shareholders were acquired by paying meagre compensation. For that, initially an Ordinance came to be issued in 1969, which was translated into the Act XXII of 1969. It was again challenged on the ground that the compensation provided, was totally inadequate and, therefore, violated the Fundamental Rights and as such the law was unconstitutional in view of Clause (2) of Article 13.

In the same year there was also a case of *H.H. Maharajadhiraja Madhav Rao Jivaji Rao Scindia v. Union of India*[29] wherein the order passed by the President, withdrawing the privy purse rights and privileges etc. of the erstwhile princely states was challenged. Both these petitions were allowed by the Supreme Court, holding that the Fundamental Rights of the citizens were infringed and as such those laws did not stand the test of Article 13(2) and were liable to be set aside.

To overcome these three decisions, we witness various amendments to the Constitution. The 24th amendment, which amended Article 13 by inserting Clause (4) provided that *"Nothing in this Article shall apply to any amendment of this Constitution made under Article 368"*. Then Article 368 was also amended so as to overcome the difficulty of

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[26] 1967 (2) SCR 762, 934.

[27] *I.C. Golaknath v. State of Punjab* 1967 (2) SCR 762 : AIR 1967 SC 1643.

[28] 1970(1) SCC 248 : AIR 1970 SC 564 : (1970) 3 SCR 530.

[29] (1971) 1 SCC 85 : AIR 1971 SC 530 : (1971) 3 SCR 9.

Article 13(2) and it provided that nothing in Article 13 would affect power of the Parliament to amend the Constitution.

By 25th Amendment Act, Article 31C came to be inserted in the Constitution after Article 31B. It is the most important Article, for giving effect to the mandate of the directive principles. It provided that notwithstanding anything contained in Article 13, no law giving effect to the policy of the State towards securing the principles specified in Clause (b) or Clause (c) of Article 39 shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by Article 14, Article 19 or Article 31. It also provided that no law containing a declaration that it is for giving effect to such policy shall be called in question in any court on the ground that it does not give effect to such policy.

By the said amendment, Clause (2) of Article 31 came to be substituted. It provided that no property shall be compulsorily acquired or requisitioned save for a public purpose and save by authority of a law which provides for acquisition or requisitioning of the property, for an amount which may be fixed by such law or which may be determined in accordance with such principles and in such manner as may be specified in such law. It further provided, that no such law shall be called in question in any court on the ground that the amount so fixed or determined is not adequate or that the whole or any part of such amount is to be given otherwise than in cash. Clause (2B) came to be inserted after Clause (2A) in Article 31 which provided that nothing in sub-clause (f) of clause (1) of Article 19 shall affect any such law as is referred to in Clause (2).

Then on December 28, 1971 by 26th Amendment, Article 363-A came to be inserted which provided cessation of recognition granted to Rulers of Indian States and abolition of privy purses etc. By the 29th Amendment, which came into effect on June 9, 1972, two more

enactments enacted by Kerala Legislature which provided for amendment to Kerala Land Reforms Act, came to be inserted in IXth Schedule.

These amendments led to the celebrated case of *Kesavananda Bharati v. State of Kerala*.[30] There were bunch of petitions, since *Kesavananda Bharati's* case, i.e. , His Holiness Shri Shri Kesavananda Bharati's case was at Serial No.1, the case came to be named as Kesavananda Bharati. He was one of the Religious Priest in the State of Kerala. The said case had attracted the attention of the entire country and the name of Kesavananda Bharati became known throughout the country as it used to regularly appear in the newspaper and radio. He used to wonder as to why his name is regularly appearing in the Radio and Newspaper and he was also wondering whether he would be required to pay the fees and as to whether he would be in a position to pay the fees of the lawyer.

Again, in the case of *Kesavananda Bharati's*[31,] by a thin majority of 7 to 6, the amendments to Article 13 and Article 368 were upheld. Insofar as Article 31-C is concerned, the first part, which provided that no law shall be held to be void on the ground that it is violative of fundamental rights, if it is enacted for furtherance of Directive Principle of State Policy was held to be valid. However, the second part was held to be unconstitutional on the ground that it takes away the powers of the judicial review.

The most interesting aspect of this case is that the Bench is virtually divided into equal strength of 6 to 6.The Six Judges, i.e., Their Lordships Chief Justice S.M. Sikri, Justice J.M. Shelat, Justice N.S. Hegde, Justice A.N. Grover, Justice P. Jagamohan Reddy, and Justice A.K. Mukherjea hold, that there were implied and inherent limitations on the power of the

[30] (1973) 4 SCC 225: AIR 1973 SC 1461.

[31] *Kesavananda Bharati v. State of Kerala* (1973) 4 SCC 225: AIR 1973 SC 1461.

Parliament to amend the Constitution and it had no right to abridge, abrogate or take away the fundamental rights.

Whereas, the Six Judges, Their Lordships, Justice A.N. Ray, Justice D.G. Palekar, Justice K.K. Mathew, Justice M.H. Beg, Justice S.N. Dwivedi, and Justice Y.V. Chandrachud hold, that there was no limitation on amending power of the Constitution and the amendment can abridge, abrogate or take away the fundamental rights.

However, it is the view of Justice H.R. Khanna, which was a singular view, is now the view of the majority. Justice Khanna took a view that the argument that there were inherent or implied limitations on the amending power of the Constitution is not a correct view. He held that the power was plenary in nature; however, the word 'amendment' postulated that it was necessary to retain the basic structure or frame of the Constitution. He held that the power to amend the Constitution is not restricted by Clause (2) of Article 13 of the Constitution. He held, that there are no restrictions to amend the Articles relating to Fundamental Rights. He further held, that right to property does not form a part of the basic structure of the Constitution. It is the view of Justice Khanna which was partly supported by 6 on one side and 6 on the other side, the ratio in the case of *Kesavananda Bharati*.[32]

There is a book written by Former Advocate General of Maharashtra Shri Andhyarujina as to what happened in the making of *Kesavananda Bharati's*[33]case which makes an interesting reading. There are some things said in that book which due to the office I hold cannot be shared here publicly. But the record shows that, when what is said to be the ratio of *Kesavananda Bharati's*[34] case was placed for signature in the open Court, before 13 Hon'ble

[32] *Kesavananda Bharati v. State of Kerala* (1973) 4 SCC 225: AIR 1973 SC 1461.

[33] *Id.* (1973) 4 SCC 225: AIR 1973 SC 1461.

[34] *Id.* (1973) 4 SCC 225: AIR 1973 SC 1461.

Judges, only nine Hon'ble Judges signed it and four Hon'ble Judges did not sign. But subsequently the said ratio is what is followed by everyone to be ratio of *Kesavananda Bharati's*[35] case, which still holds the field. The conclusion as signed by the 9 Hon'ble Judges and which is now considered to be a ratio of the *Kesavananda Bharati's*[36] case is that -

(i) *Golaknath's*[37] case is overruled;

(ii) 24th Amendment is valid;

(iii) Section 2(a) and 2(b) of the 25th amendment is valid; and

(iv) First part of Section 3 of 25th Amendment is valid whereas Second part is invalid.

Emergence of Importance of the Directive Principles of State Policy

Though *Kesavananda Bharati's*[38] case was popularly known for laying down the 'Basic Structure' Doctrine, this landmark judgment has played a vital role in recognising the importance of directive principles of state policy. The earlier conflict between the fundamental rights and the directive principles and the concept of the supremacy of the fundamental rights *qua* the directive principles of state policy has been watered down to a great extent in the judgments of almost all the judges, though their views were conflicting, insofar as the amending power of the Constitution was concerned.

The said judgment recognised that both the fundamental rights and directive principles of state policy are equally important and that there is no conflict amongst them. It recognises that they are supplementary to each other and they together are the conscience of the

[35] *Id*. (1973) 4 SCC 225: AIR 1973 SC 1461.

[36] *Id.* (1973) 4 SCC 225: AIR 1973 SC 1461.

[37] *I.C. Golaknath v. State of Punjab* 1967 (2) SCR 762 : AIR 1967 SC 1643.

[38] *Kesavananda Bharati v. State of Kerala* (1973) 4 SCC 225: AIR 1973 SC 1461.

Constitution. It will be appropriate to refer to some of the observations made by Their Lordships of the Apex Court.

J.M. Shelat and A.N. Grover, JJ. Observed that "*Parts-III and IV which embody the Fundamental Rights and Directive Principles of State Policy have been described as the conscience of the Constitution. The Directive Principles of State Policy set forth the humanitarian socialist precepts that were the aims of the Indian social revolution. The Fundamental Rights and the Directive Principles were designed by the members of the Assembly to be the chief instruments in bringing about the great reforms of the social revolution. They have helped to bring the Indian society closer to the Constitution's goal of social, economic and political justice for all*".[39]

S.N. Hegde and A.K. Mukherjee, JJ., observed that "*The Directive Principles embodied in Part-IV of the Constitution or at any rate most of them are as important as the rights of individuals. The fundamental Rights and the Directive Principles constitute the 'conscience' of our Constitution. The purpose of the Fundamental Rights is to create an egalitarian society, to free all citizens from coercion or restriction by society and to make liberty available for all. The purpose of the Directive Principles is to fix certain social and economic goals for immediate attainment by bringing about a non-violent social revolution*".[40]

A.N. Ray, J., observed that "*The Directive Principles are also fundamental. They can be effective if they are to prevail over Fundamental Rights of a few in order to sub-serve the common good and not to allow economic system to result to the common detriment. Parts-III*

[39] *Kesavananda Bharati v. State of Kerala* (1973) 4 SCC 225: AIR 1973 SC 1461.

[40] *Ibid*.

and IV of the Constitution touch each other and modify. They are not parallel to each other".[41]

P. Jaganmohan Reddy, J., observed 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, are fundamental in the governance of the country*".[42]

H.R. Khanna, J., *observed that "The Directive Principles embody a commitment which was imposed by the Constitution-makers on the State to bring about economic and social regeneration of the teeming millions who are steeped in poverty, ignorance and social backwardness. They incorporate a pledge to the coming generations of what the State would strive to usher in". "There should be no reluctance to abridge or regulate the fundamental right to property if it was felt necessary to do so for changing the economic structure and attain the objectives contained in the Directive Principles*".[43]

K.K. Mathew, J., observed that "*Therefore, the moral rights embodied 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*".[44]

Y.V. Chandrachud, J., observed that "*Our decision of this vexed question must depend upon the postulate of our Constitution which aims at bringing about a synthesis between 'Fundamental Rights' and the 'Directive Principles of State Policy', by giving to the former a*

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[41] *Kesavananda Bharati v. State of Kerala* (1973) 4 SCC 225: AIR 1973 SC 1461.

[42] *Ibid.*

[43] *Kesavananda Bharati v. State of Kerala* (1973) 4 SCC 225, p. 534.

[44] *Ibid.*

pride of place 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".[45]

As discussed hereinabove in view of Article 31-C of the Constitution, certain laws which were enacted for taking further the mandate of directive principles as enshrined in the Articles 39(b) and (c) were protected even if they violated the fundamental rights. By the Constitution (Fourty Second) Amendment Act, 1976, Article 31-C was further amended to expand the scope which was earlier restricted only to Article 39(b) and (c), to include the entire directive principles. Similarly, an amendment was also sought to be made to Article 368 by insertion of Clause (4) which took away the power of judicial review. Clause (5) was also inserted to the said Article which provided that there shall be no limitation to the power of the Parliament to amend the Constitution.

The said amendment came for consideration before the court in the case of *Minerva Mills Ltd. v. Union of India*[46] wherein, the said amendment was held to be invalid by a majority of 4: 1. However, while doing so, the said judgment also emphasised the importance of directive principles of state policy.

It will be relevant to refer to the observations made by Y.V. Chandrachud, J. speaking for majority that "*Parts-III and IV are like two wheels of a chariot, one no less important than the other. You snap one and the other will lose its efficacy. They are like a twin formula for achieving the social revolution, which is the ideal which the visionary founders of the Constitution set before themselves. In other words, the Indian Constitution is founded on the bedrock of the balance between Parts-III and IV. To give absolute primacy to one over the other is to disturb the harmony of the Constitution. This harmony and balance between*

[45] *Id.*

[46] (1980) 3 SCC 625

fundamental rights and directive principles is an essential feature of the basic structure of the Constitution".[47]

It will also be relevant to refer to the observations made by Justice P.N. Bhagwati, who partly disagreed and held that though the amendment to Article 368 taking away the power of judicial review was invalid, the amendment to Article 31C expanding the scope was valid. I quote Justice P.N. Bhagwati "*The Directive principles of State Policy, therefore, impose an obligation on the State to take positive action for creating socio-economic conditions in which there will be an egalitarian social order with social and economic justice to all, so that individual liberty will become a cherished value and the dignity of the individual a living reality, not only for a few privileged persons but for the entire people of the country. It will thus be seen, that the Directive Principles enjoy a very high place in the constitutional scheme and it is only in the framework of the socio-economic structure envisaged in the Directive Principles that the Fundamental Rights are intended to operate, for it is only then they can become meaningful and significant for the millions of our poor and deprived people who do not have even the bare necessities of life and who are living below the poverty level"*.[48]

The importance given to the directive principles by the Higher Judiciary of the Country could also be seen in the case of *Waman Rao v. Union of India*[49] wherein the validity of Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1975 was challenged. Rejecting the challenge, Hon'ble Y.V. Chandrachud, C.J. states that "*In fact far from damaging the basic structure of the Constitution, laws passed truly and bona fide for giving effect to directive principles contained in clauses (b) and (c) of Article 39 will fortify that structure. We do hope*

[47] *Minerva Mills Ltd. v. Union of India* (1980) 3 SCC 625

[48] *Ibid*.

[49] (1981) 2 SCC 362 : AIR 1981 SC 271 : (1981) 2 SCR 1.

that the Parliament will utilise to the maximum its potential to pass laws, genuinely and truly related to the principles contained in Clauses (b) and (c) of Article 39".[50]

Interesting Twist

Thereafter in the case of *Sajeev Coke Manufacturing Co. v. M/s. Bharat Cooking Coal Ltd.,*[51] a challenge was raised that since the acquisition of only certain coke oven plants was made, it was violative of Article 14 of the Constitution. However, the Constitution Bench holding that since the Cooking Coal Mines (Nationalisation) Act, 1972 had a protection of Article 31C, the challenge on the ground of violation of the fundamental rights was not tenable. Justice Chinnappa Reddy widening the scope of the term 'material resources of the community' observed that "*We hold that the expression 'material resources of the community' is not confined to natural resources; it is not confined to resources owned by the public; it means and includes all resources, natural and man-made, public and private-owned*".[52]

However, the said judgment would also be known for an interesting twist. As discussed hereinabove, in the case of *Minerva Mills Ltd.*[53], the amendment to Article 31-C by the Constitution Amendment Act, 1976 was held to be invalid. Disagreeing with the said judgment, the Constitution Bench observed thus, "*In the second place, the question of the constitutional validity of Article 31C appears to us to be concluded by the decision of the Court in Kesavananda Bharati's*[54] *case"*. "No one suggests that the nature of the directive principles enunciated in the other Articles of Part-IV of the Constitution is so drastic or

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[50] *Waman Rao v. Union of India* (1981) 2 SCC 362 : AIR 1981 SC 271 : (1981) 2 SCR 1, para 54.

[51] (1983) 1 SCC 147 : AIR 1983 SC 239 : (1983) 1 SCR 1000.

[52] *Sajeev Coke Manufacturing Co. v. M/s. Bharat Cooking Coal Ltd.* (1983) 1 SCC 147 : AIR 1983 SC 239 : (1983) 1 SCR 1000, para 19.

[53] *Minerva Mills Ltd. v. Union of India* AIR 1980 SC 1789 : (1980) 2 SCC 591.

[54] *Kesavananda Bharati v. State of Kerala* (1973) 4 SCC 225: AIR 1973 SC 1461,para 12.

different from the directive principles in Clauses (b) and (c) of Article 39, that the extension of constitutional immunity to laws made to further those principles would offend the basic structure of the Constitution. In fact, no such argument appears to have been advanced in the *Minerva Mills's*[55] case and we find no discussion and no reference whatsoever, separately to any of the distinct principles enunciated in the individual Articles of Part-IV of the Constitution decision in *Minerva Mills's*[56] case. The argument advanced and the conclusion arrived at both appear to be general, applicable to every clause of Article 39, and every Article of Part-IV of the Constitution, no less to Clauses (b) and (c) than to the other Clauses. We wish to say no more about the *Minerva Mills's*[57] case as we are told that there is pending a petition to review the judgment".

It could thus, be seen that we have two judgments, of Two Constitution Benches consisting of Five Hon'ble Judges. In the case of *Minerva Mills Ltd*.[58] the Constitution Bench held that the amendment to Article 31C which expands the scope of Article 31C is unconstitutional. However, within 2-3 years the other judgment again by the Constitution Bench of the Five Hon'ble Judges holds that the extension of constitutional immunity to laws made in furtherance of all the directive principles would not offend the basic structure of the Constitution.

Wide Interpretation of Article 31-C by the Supreme Court

I will now consider some judgments which have taken further the journey of socio-economic justice, by giving wide interpretation to Article 31C. In the case of *State of*

[55] *Ibid*.

[56] *Id*.

[57] *Id*. para 13.

[58] *Id*.

Karnataka v. Ranganath Reddy[59] the Karnataka Contract Carriages Act, which provided for nationalisation of the transport service came to be challenged. It was before the Constitution Bench of the Hon'ble Seven Judges. It was again challenged on the ground that the compensation was inadequate and that in view of the Nine Judges judgment in the case of *Bank Nationalization's* case, the Act was not valid. Justice V.R. Krishna Iyer J. negating the argument states that "*The social philosophy of the Constitution shapes creative judicial vision and orientation. Our nation has, as its dynamic doctrine, economic democracy sans which political democracy is chimerical. We say so because our Constitution, in Parts-III and IV and else-where, ensouls such a value system and the debate in this case puts precisely this soul in peril". "Our thesis is that the dialectics of social justice should not be missed if the synthesis of Part-III and Part-IV is to influence State action and court pronouncements. Constitutional problems cannot be studied in a socio- economic vacuum, since socio-cultural changes are the source of the new values and sloughing off old legal thought is part of the process of the new equity-loaded legality. A judge is a social scientist in his role as constitutional invigilator and fails functionally if he forgets this dimension in his complex duties".*[60]

Then again in the case of *Bhim Singhji v. Union of India*[61] the validity of the Urban Land Ceiling Act, which provided for compulsory acquisition of the land beyond a particular ceiling limit, came up for consideration before the Constitution Bench of five judges wherein, the majority of 3 to 2 upheld the enactment. Again V.R. Krishna Ayer, J. speaking for the majority states that "*It needs no argument to conclude that the objective of the legislation as set out in the long title and in the statutory scheme is implementation of Part-IV of the*

[59] AIR 1978 SC 215 : (1977) 4 SCC 471 : (1978) 1 SCR 641.

[60] *State of Karnataka v. Ranganath Reddy* AIR 1978 SC 215, 233- paras 44 & 45.

[61] AIR 1981 SC 234.

Constitution. The Directive principles of State policy being paramount in character and fundamental in the country's governance, distributive justice envisaged in Article 39 (b) and (c) has key role in the developmental process of the socialist Republic that India has adopted". However, they put a note of caution by observing that *"Only such of the laws which sub-serve the purpose under Article 39(b) and (c) shall be upheld and the lands so acquired should be utilised for the purpose as enshrined in Article 39 (b) and (c)*".[62]

Again, before the Constitution Bench, in the case of *State of Tamil Nadu v. Abu Kavur Bai*[63], the nationalisation of transportation in the State of Karnataka was challenged on the ground that the compensation so provided was inadequate and there was no distribution of resources as provided under Article 39 (b) and (c). Justice S.M. Fazal Ali, speaking for the Bench states that "*Article 31-C gives a complete protective umbrella to any law passed with the object of achieving the aims and goals of Article 39(b) and (c) so as to make it immune from challenge on the ground that the said law violates Articles 14, 19 or 31.The only condition for application of Article 31-C is that there should be a direct and reasonable nexus between the law and the provisions of Article 39(b) and (c), and the reasonableness would be regarding the nexus rather than the law. Although the directive principles are not enforceable yet the court should make a real attempt at harmonising and reconciling the directive principles and the fundamental rights and any collision between the two should be avoided as far as possible"*.[64]

Insofar as term distribution is concerned, the Hon'ble Supreme Court gave a wider meaning. It says that distribution cannot be given a narrower meaning of collecting from someone and distributing to others. The Court held that insofar as private transporters are

[62] *Bhim Singhji v. Union of India* AIR 1981 SC 234.

[63] (1984) 1 SCC 515.

[64] *State of Tamil Nadu v. Abu Kavur Bai (*1984) 1 SCC 515.

concerned, their main aim would be to earn profit and, therefore, they would only provide transport services on the profit earning routes. However, on nationalisation the vehicles will go to the remote villages even if the State does not earn any profit there from. It therefore, held that providing facilities to the citizens residing in the remotest part of the country, would also amount to distribution within the meaning of Article 31 (b) and (c).

Then in the case of *State of Maharashtra v. Basantibai Mohanlal Khetan*[65] the provision of Maharashtra Housing and Area Development Act, 1976 which provided for compulsory acquisition of the land at a meagre compensation and thereafter using that land for construction of the houses for houseless persons came to be challenged. An important factor is that, in that enactment, there was no declaration that the law is protected under Article 31-C. Inspite of that, the Supreme Court rejected the challenge. It will be appropriate to refer to the words of My Lord Justice E.S. Venkataramiah and I quote "*The question whether an Act is intended to secure the objects contained in Article 39(b) or not, does not depend upon the declaration by the legislature but depends on its contents. We have already dealt with the objects of the Act with which we are concerned in this case. It, inter alia, makes provision for acquisition of private lands for providing sites for building houses or housing accommodation to the community. The title to the lands of the private holders which are acquired first vests in the State Government. Later on, the land is developed and then distributed amongst the people as house sites. It also provides for reserving land for providing public amenities without which people cannot live there. Community centres, shopping complexes, parks, roads, drains, playgrounds, are all necessary for civic life and these amenities are enjoyed by all. That is also a kind of distribution"*.[66]

[65] (1986) 2 SCC 516 : AIR 1986 SC 1466 : (1986) 1 SCR 707.

[66] *State of Maharashtra v. Basantibai Mohanlal Khetan* AIR 1986 SC 1466, para 13.

It can thus, be seen that inspite of there being no declaration that the law was protected under Article 31C, the Supreme Court itself examined, as to whether the enactment was taking further the mandate of Article 39 (b) and (c) and upholds it on the ground that it is protected under Article 31C.

Then in the case of *Maharashtra State Electricity Board v. Thana Electric Supply Company*[67] the case pertained to nationalization of the electricity wherein, the compensation provided was only on the depreciated value of the property and not on the basis of market value. Again in this case also there was no declaration that the Act was protected under Article 31C.Justice E.S. Venkatachaliah speaking on behalf of the Constitution Bench holds that "*At the outset the misconception that an express legislative declaration in the legislation is condition precedent to the attraction of Article 31-C would, perhaps, requires to be removed. The High Court, we say so with respect, was under a clear misconception on the point that an express incantation was necessary in the law itself. The nexus between the law and the objects of Article 39(b) could be shown independently of any such declaration by the legislature". "We accordingly hold that the provisions of Amending Act of 1976 have a direct and substantial relationship with the objects of Article 39(b) and, therefore, are entitled to the protection of Article 39-C. If the impugned law has such protection, as we indeed hold that it has, all challenges to it on the ground of violation of Articles 14, 19 and 31 must necessarily fail".*[68]

Similarly, in the case of *Tinsukhia Electric Supply Co. Ltd. v. State of Assam*[69] the challenge was to the acquisition of land on the ground that the compensation provided on the book value, is totally illusory in nature. Again Justice E.S. Venkatachaliah states that "*On an*

[67] (1989) 3 SCC 616 : AIR 1990 SC 153 : (1989) 2 SCR 518.

[68] *Maharashtra State Electricity Boardv. Thana Electric Supply Company* AIR 1990 SC 153, para 48.

[69] AIR 1990 SC 123 : (1989) 3 SCC 709 : (1989) 2 SCR 544.

examination of the scheme of the impugned law the conclusion becomes inescapable that the legislative measure is one of nationalisation of the undertakings and the law is eligible for and entitled to the protection of Article 31C".[70]

Further the Constitution Bench of Nine Hon'ble Judges had an occasion to consider the aspect regarding meagre compensation, in the case of *I.R. Coelho v. State of Tamil Nadu*[71] Hon'ble Chief Justice Y.K. Sabharwal, speaking for the Bench of Nine Hon'ble Judges observed that "*The object of the fundamental rights is to foster the social revolution by creating a society egalitarian to the extent that all citizens are to be equally free from coercion or restriction by the State. By enacting fundamental rights and directive principles which are negative and positive obligations of the States, the Constituent Assembly made it the responsibility of the Government to adopt a middle path between individual liberty and public good. Fundamental rights and directive principles have to be balanced. That balance can be tilted in favour of the public good. The balance, however, cannot be overturned by completely overriding individual liberty. This balance is an essential feature of the Constitution".*[72]

And, therefore, the Constitution Bench held that each law which is included in the IXth Schedule, will have to be examined on the touchstone of this principle and it will also have to be examined, as to whether such a law affects the basic structure of the Constitution and if the basic structure is not affected and though fundamental rights are abridged, taken away or adversely affected, it will not be a ground for declaring such a law to be invalid.

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[70] *Tinsukhia Electric Supply Co. Ltd. v. State of Assam* AIR 1990 SC 123, para 28.

[71] (2007) 2 SCC 1 : AIR 2007 SC 861.

[72] *I.R. Coelho v. State of Tamil Nadu* AIR 2007 SC 861,para 101.

In the case of *K.T. Plantation Pvt. Ltd. v. State of Karnataka*[73] the Constitution Bench presided over by Hon'ble Chief Justice S.H. Kapadia again considered the issue regarding meagre compensation and held that "*Requirement of public purpose, for deprivation of a person of his property under Article 300-A, is a pre-condition, but no compensation or nil compensation or its illusiveness has to be justified by the State on judicially justiciable standards. Measures designed to achieve greater social justice, may call for lesser compensation and such a limitation by itself will not make legislation invalid or unconstitutional or confiscatory. In other words, the right to claim compensation or the obligation to pay, though not expressly included in Article 300-A, it can be inferred in Article 300-A and it is for the State to justify its stand on justifiable grounds which may depend upon the legislative policy, object and purpose of the statute and host of other factors".*[74]

Observing this, the Bench held that the acquisition of the land was for the purpose of the Directive Principles of State Policy under Article 39 (b) and (c) and as such protected under Article 31.

Labour Welfare and Protection Enactments

I will now come to another aspect. Prior to *Kesavananda Bharti's*[75] case, the trend was of predominance of fundamental rights and directive principles of state policy being subordinate to the fundamental rights. However, even prior to *Kesavananda Bharti's*[76] case, the Apex Court not only with regard to Article 39(b) and (c), but with regard to other directive principles had upheld various laws, which were in furtherance of social and economic justice. And this is particularly in cases of labour laws, labour welfare legislations.

[73] AIR 2011 SC 3430 : (2011) 9 SCC 1.

[74] *K.T. Plantation Pvt. Ltd. v. State of Karnataka* AIR 2011 SC 3430, para 121.

[75] *Kesavananda Bharati v. State of Kerala* (1973) 4 SCC 225: AIR 1973 SC 1461.

[76] *Kesavananda Bharati v. State of Kerala* (1973) 4 SCC 225: AIR 1973 SC 1461.

In the case of *Bijay Cotton Mills Ltd. v. State of Ajmer*[77] as early as in 1955, the provisions of the Minimum Wages Act, 1948 came to be challenged on the ground that they infringed the fundamental rights of employer guaranteed under Article 19(1)(g). The argument advanced was that, if a labour is willing to work with an employer for 10 rupees, why should an employer be compelled to pay 20 rupees to the labourer. Rejecting this argument, the Constitution Bench presided over by Justice A.K. Mukherjee observed that "*It can scarcely be disputed that securing of living wages to labourers which ensure not only bare physical subsistence but, also the maintenance of health and decency, is conducive to the general interest of the public. This is one of the Directive Principles of State Policy embodied in Article 43 of our Constitution. If the labourers are to be secured the enjoyment of minimum wages and they are to be protected against exploitation by their employers, it is absolutely necessary that restraints should be imposed upon their freedom of contract and such restrictions cannot in any sense be said to be unreasonable. On the other hand, the employers cannot be heard to complain they are compelled to pay minimum wages to their labourers even though the labourers, on account of their poverty and helplessness, are willing to work on lesser wages"*.[78]

In the case of *Standard Vacuum Refining Co. of India v. Workmen*[79] the question of minimum wages again came for consideration. Again, relying on the provisions of Article 43 the Bench speaking through Justice P.B. Gajendragadkar in the Supreme Court observed that "*It is because of this socio-economic aspect of the wage structure that industrial adjudication postulates that no employer can engage industrial labour unless he pays him what may be regarded as the minimum basic wage. If he cannot pay such a wage, he has no right to engage*

[77] AIR 1955 SC 33 : (1955) 1 SCR 752.

[78] *Bijay Cotton Mills Ltd. v. State of Ajmer* AIR 1955 SC 33, para 4.

[79] AIR 1961 SC 895 : (1961) 3 SCR 536.

labour, and no justification for carrying on his industry. It is the duty of the society and the welfare State to assure to every workman engaged in industrial operations the payment of what in the context of the times appears to be the basic minimum wage. This position is now universally recognised".[80] And after observing this, the Supreme Court itself held that, while determining minimum wages, the following factors will have to be taken into consideration and they are;

(1) 3 units for one cover, then food required on the basis of net intake of calories as recommended by Mr. Aykrod,

(2) Clothing requirement of 10 yards P.H., i.e., 72 yards for family,

(3) rent commensurate to minimum area provided under Government Industrial Housing Scheme, fuel, lighting and

(4) other miscellaneous items should constitute 20% of the total minimum wages.

This has been further expanded in the case of *Workmen v. Reptakos Brett. Co. Ltd.*[81] the Supreme Court held that "*Keeping in view the socio-economic aspect the following norms should also be added to the Minimum Wages, i.e., the Children's education, medical requirement, recreation, provision for old age, marriage etc. and this should constitute 25% of minimum wages".*[82]

Then in the case of *Chandra Bhawan Boarding and Lodging, Bangalore v. State of Mysore*[83] the power which is given to the state government under Section 5 of the Minimum Wages Act 1948 to determine minimum wages came to be challenged on the ground that the

[80] *Standard Vacuum Refining Co. of India v. Workmen* AIR 1961 SC 895, para 10

[81] (1992) 1 SCC 290 : AIR 1992 SC 504.

[82] *Workmen v. Reptakos Brett. Co. Ltd.* AIR 1992 SC 504.

[83] AIR 1970 SC 2042 : (1970) 2 SCR 600 : (1969) 3 SCC 84.

powers were arbitrary and therefore violative of Article 14 of the Constitution. The Constitution Bench presided by Justice S.N. Hegde stated and I quote "*Freedom of trade does not mean freedom to exploit. The provisions of the Constitution are not erected as the barriers to progress. They provide a plan for orderly progress towards the social order contemplated by the preamble to the Constitution. They do not permit any kind of slavery, socio-economic or political. It is a fallacy to think that under our Constitution there are only rights and no duties. While rights conferred under Part-III are fundamental, the directives given under Part-IV are fundamental in the governance of the country. We see no conflict on the whole between the provisions contained in Part-III and Part-IV. They are complementary and supplementary to each other. The provisions of Part-IV enable the legislatures and the Government to impose various duties on the citizens. The provisions therein are deliberately made elastic because the duties to be imposed on the citizens depend on the extent to which the directive principles are implemented. The mandate of the Constitution is to build a welfare society in which justice social, economic and political shall inform all institutions of our national life. The hopes and aspirations aroused by the Constitution will be belied if the minimum needs of the lowest of our citizens are not met".*[84]

Again in the case of *People's Union for Democratic Rights v. Union of India*[85] the Supreme Court had an occasion to consider the aspect where payment was made below minimum wages and Justice P.N. Bhagwati speaking for the Bench states that "*There is no reason why the word 'forced' should be read in a narrow and restricted manner so as to be confined only to physical or legal 'force'. The word 'force' must therefore be construed to include not only physical or legal force but also force arising from the compulsion of economic circumstances which leaves no choice of alternatives to a person in want and*

[84] *Chandra Bhawan Boarding and Lodging, Bangalore v. State of Mysore* AIR 1970 SC 2042, para 13.

[85] AIR 1982 SC 1473 : (1982) 3 SCC 235 : (1983) 1 SCR 456.

compels him to provide labour or service even though the remuneration received for it is less than the minimum wage".[86]

In the case of *State of Tamil Nadu v. K. Sabanayagam*[87] the Apex Court held that Payment of Bonus Act 1965 is a piece of welfare legislation enacted for the benefit of large category of workmen, seeking a living wage to make their lives more meaningful and for gratifying the benevolent object of Article 21of the Constitution.

Judgments to further Mandate of Article 46

Another aspect that needs to be looked into is taking further the mandate of Article 46, which provides for special provision for weaker sections of the society, i.e., the Scheduled Caste, Scheduled Tribe and the Other Backward Classes. As I have already discussed hereinabove that in the case of *Champakaran* [88] the reservations were held to be invalid, and taking mandate from Article 46 by Constitution (First Amendment) Act, 1951, Clause (4) was added to Article 15 which enabled the state to make special provision for the advancement of socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

The reservations for the Scheduled Caste, Scheduled Tribe and the Other Backward Classes are provided on the ground that for no fault of theirs, insofar as Scheduled Castes are concerned on socio-cultural aspects and insofar as Scheduled Tribes are concerned, on the basis of geographical reasons, they were deprived from being in the mainstream of the society

[86] *People's Union for Democratic Rights v. Union of India* AIR 1982 SC 1473.

[87] AIR 1998 SC 344 : (1998) 1 SCC 318.

[88] *State of Madras v. Champakaran Dorairajan*1951 SCR 525 : AIR 1951 SC 226.

and in order to bring them in the mainstream, some preferential special treatment was necessary.

First of such judgments was delivered by Justice K. Hegde in the case of *D.G Vishwanath v. Government of Mysore*[89] and I quote Justice K. Hegde "*It is dangerous to be blind to the appalling conditions of many sections of people. It was said on behalf of the State and it was not denied by any one that unaided many sections of the people who constitute the majority in this State cannot compete with the advanced sections of the people, who today have the monopoly of education, and consequently have predominant representation in the Government service as well as in other important walks of life. It is cynical to suggest that the interest of the Nation is best served if the Barber's son continues to be a barber and a shepherd's son continues to be a shepherd. The limitations of the doctrine of laisse faire is now well known. We have pledged ourselves to establish a welfare State. Social justice is an important ingredient of that concept. That goal cannot be reached if we over emphasis the 'merit theory'".*[90]

In the case of *M.R. Balaji v. State of Mysore*[91] Justice P.B. Gajendragadkar observed that "*It is obvious that unless the educational and economic interests of the weaker sections of the people are promoted quickly and liberally the ideal of establishing social economic equality will not be attained. The interests of the weaker section of the society which are a first charge on the States and the Centre have to be adjusted with the interests of the community as a whole".*[92]

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[89] AIR 1964 Mys 132.

[90] *Vishwanath v. Government of Mysore* AIR 1964 Mys 132, para 9.

[91] AIR 1963 SC 649.

[92] *M.R. Balaji v. State of Mysore* AIR 1963 SC 649.

As all of us know that the earlier view was that Clause (4) of Article 16 was considered to be an exception or proviso to the main principle contained in Clause (1) of Article 16 and, as we know a proviso has a limited operation and, therefore, the earlier view was that Article (4) had a limited operation.

However, seeds of new trend were sown in the case of *T. Devadasan v. Union of India*[93] itself wherein Justice K. Subba Rao in his minority judgment holds that *"It is not an exception but a preserved power untrammelled by other provisions of that Article"*.[94] But the turning point was in the case of *State of Kerala v. N.M. Thomas*.[95] It was again before a Constitution Bench of Hon'ble Seven Judges, wherein various circulars issued by the Railway Authorities for providing reservation and special treatment to the Scheduled Caste, Scheduled Tribes were under challenge.

Chief Justice Mr. A.N. Ray, speaking for the Bench observed that "*Preferential treatment for members of backward classes with due regard to administrative efficiency alone can mean equality of opportunity for all citizens. Equality under Article 16 could not have a different content from equality under Article 14. Equality of opportunity for unequals can only mean aggravation of inequality. Equality of opportunity admits discrimination with reason and prohibits discrimination without reason"*.[96]

Justice K.K. Mathew states that "*The principles of proportional equality is attained only when equals are treated equally and unequals unequally. If equality of opportunity guaranteed under Article 16(1) is to mean effective material equality, then Article 16(4) is not*

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[93] AIR 1964 SC 179 : 1964 SCR (4) 680.

[94] *T. Deodasan v. Union of India* AIR 1964 SC 179.

[95] AIR 1976 SC 490 : (1976) 2 SCC 310 : (1976) 1 SCR 906.

[96] *State of Kerala v. N.M. Thomas* AIR 1976 SC 490.

an exception to Article 16(1). It is only an emphatic way of putting the extent to which equality of opportunity would be carried".[97]

Justice V.R. Krishna Iyer states that "*The core conclusion I seek to emphasize is that every step needed to achieve in action actual, equal partnership for the harijans alone amounts to social justice- not enshrinement of great rights in Part-III and good goals in Part-IV. Otherwise, the solemn undertakings in Articles 14 to 16 read with Articles46 and 335 may be reduced to a 'teasing illusion of promise of unreality'".*[98]

Again in the case of *Akhil Bharatiya Soshit Karamchari Sangh (Railway) v. Union of India*[99] in the year 1981, the special provisions which were made for the Scheduled Castes and Scheduled Tribes came to be challenged and Justice V.R. Krishna Ayer, in his inimitable style observed that "*It is constant guideline which we must vigilantly remember, as we have stated earlier, that our Constitution is a dynamic document with destination social revolution. It is not anaemic nor neutral but vigorously purposeful and value-laden as the very descriptive adjectives of our Republic proclaim. Where ancient social injustice freezes the 'genial current of the soul' for whole human segments our Constitution is not non-aligned. Activist equalisation, as a realistic strategy of producing human equality, is not legal anathema for Articles 14 and 16. To hold otherwise is constitutional obscurantism and legal literalism, allergic to sociologically intelligent interpretation".*[100]

Then comes the celebrated case of the Constitution Bench consisting of nine Hon'ble Judges, i.e., case of *Indra Swaheny's* [101] case (popularly known as *Mandal Commission* case)

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[97] *State of Kerala v. N.M. Thomas* AIR 1976 SC 490.

[98] *Ibid*.

[99] AIR 1981 SC 298 : (1981) 1 SCC 246 : (1981) 2 SCR 185.

[100] *Akhil Bharatiya Soshit Karamchari Sangh (Railway) v. Union of India* AIR 1981 SC 298, para 20.

[101] *Indra Swaheny v. Union of India*AIR 1993 SC 477.

wherein the Constitution Bench upheld the view in *N.M. Thomas* case. It was also held, that for reservation, it is not necessary that legislation has to be enacted and even by an Executive instruction and Office Memorandum, the reservation could be provided. It held that Clause (4) Article 16 was not an exception to Clause (1) but an instance of classification implicit in it and even otherwise permissible under Clause (1) of the Article 16. It was further held, that it was only emphatic way of stating a principle implicit in Article 16 (1), and therefore, it can be seen that by applying principle of compensatory discrimination or protective discrimination or doctrine of proportionality in the various judgments, the Apex Court had upheld the reservation in favour of Scheduled Caste, Scheduled Tribes and Other Backward Classes.

Taking Journey Forward

Taking further the mandate of giving effect to the directives as enshrined in Part-IV of the Constitution, various enactments providing for social and economic justice by distributing the resources, have been enacted by the Parliament so also State Legislatures and as I have already referred, the Apex Court has played a very pragmatic role in upholding all these enactments.

In the case of *Ku. Sonia Bhatia v. State of UP*[102] where Uttar Pradesh Imposition of Ceilings on Lands Holding Act 1960 came to be challenged though it was a very hard case, yet the gift deed which was executed in favour of the petitioner by her grandfather could not be saved. Justice S.M. Fazal Ali speaking for the Bench observed that "*This is undoubtedly a serious hardship but it cannot be helped. We must remember that the Act is a valuable piece of social legislation with the avowed object of ensuring equitable distribution of the land by taking away land from large tenure-holders and distributing the same among landless tenants or using the same for public utility schemes which is in the larger interest of the community at*

[102] AIR 1981 SC 1274.

large. The Act seems to implement one of the most important constitutional directives contained in Part-IV of the Constitution of India. If in this process a few individuals suffer severe hardship that cannot be helped, for individual interests must yield to the larger interests of the community or the country as indeed every noble cause claims its martyr".[103]

Then in 1984, two enactments, one from Maharashtra, which provided for restoration of land to the Scheduled Tribes and one from Karnataka, which provided for prohibition of transfer and restoration of the land to the Scheduled Castes and Scheduled Tribes came under challenge. The same was considered in *Lingappa Pochanna Appelwar v. State of Maharashtra*[104] wherein Justice A.P. Sen, who was from our town, speaking for the Bench observed that "*Under the scheme of the Constitution, the Scheduled Tribes as a class require special protection against exploitation. The very existence of Scheduled Tribes as a distinctive class and the preservation of their culture and way of life based as it is upon agriculture which is inextricably linked with ownership of land, requires preventing an invasion upon their lands. The impugned Act and similar measures undertaken by different States placing restrictions on transfer of lands by members of the Scheduled Castes and Tribes are aimed at the State Policy enshrined in Article 46 of the Constitution which enjoins that "the State shall promote with special care the educational and economic interests of the weaker sections of the people and in particular of the Scheduled Castes and Tribes and shall protect them from social injustice and all forms of exploitation". One has only to look at the artlessness, the total lack of guile, the ignorance and the innocence, the helplessness, the economic and the educational backwardness of the tribal pitted against the artful, usurious, greedy land grabber and exploiter invading the tribal area from outside to realise the urgency of the need for special protection for the tribals if they are to survive and to enjoy the benefits of*

[103] *Ku. Sonia Bhatia v. State of UP* AIR 1981 SC 1274, para 29.

[104] (1985) 1 SCC 479 : AIR 1985 SC 389 : (1985) 2 SCR 224.

belonging to the 'Sovereign, Socialist, Secular, Democratic Republic' which was vowed to secure to its citizens 'justice, social, economic and political' 'assuring the dignity of the individual'. The great importance which the Founding Fathers of the Constitution attached to the protection, advancement and prevention of exploitation of tribal people may be gathered from the several provisions of the Constitution".[105]

In the case of *Mahinder Kumar Gupta v. Union of India*[106] the policy framed by the Government of India for providing dealership of the Government controlled oil companies fell for consideration. In the said policy, the Family unit was defined. The said definition was challenged on the ground that it was arbitrary. Upholding the policy, Justice V. Ramaswami for the Bench stated that and I quote, "*The Preamble to the Constitution envisages the securing of economic and social justice to all its citizens; accorded equality of status and of opportunity assuring the dignity of the individual. Article 39(b) postulates that the ownership and control of the material resources of the community are to be so distributed so as to best subserve the common good. Clause (c) prevents concentration of wealth and means of production to the common detriment. Since the grant of dealership or distributorship of the petroleum products belongs to the Government largesse, the Government in its policy of granting the largesse, have prescribed the eligibility criteria. Therefore, the guidelines are based on public policy to give effect to the constitutional creed of Part-IV of the Indian Constitution".*[107]

In the case of *Dalmia Cement (Bharat) Ltd. & Anr. v. Union of India & Ors.*[108] the State of West Bengal had enacted an enactment wherein; it was made compulsory that only

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[105] *Lingappa Pochanna Appelwar v. State of Maharashtra* AIR 1985 SC 389, para 14.

[106] (1995) 1 SCC 85.

[107] *Mahinder Kumar Gupta & Ors. v. Union of India* (1995) 1 SCC 85, para 5.

[108] (1996) 10 SCC 104.

Jute bags shall be used by the manufacturers in the state for the packaging purpose. The argument advanced was that the Jute bags were much more costly than the other bags which were available in the market and the restriction, which was put on the manufacturers, was unreasonable and arbitrary. However, the Apex Court held that the Act was enacted to provide social and economic justice to 2.5 lakh agriculturists/Jute growers in the State of West Bengal and as such it was protected. Justice V. Ramaswami speaking for the Bench observed that "*Social justice, therefore, forms the basis of progressive stability in the society and human progress. Economic justice means abolishing such economic conditions which cause 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 to 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 three instrumentalities, within their play endeavour to elongate the constitutional basic structure built in the Preamble. Fundamental Rights and Directives, namely, establishment of an egalitarian social order in which every citizen receives equality of opportunity and of status, social and economic justice. The Courts, therefore, must strive to give harmonious interpretation to propel forward march and progress towards establishing an egalitarian social order".*[109]

We will, therefore, find that various enactments which have been enacted by the Parliament and various State Legislatures for achieving the goal of socio-economic justice have been upheld by the Highest Court of the country to further the mandate of socio-economic justice as enshrined in Directive Principles of State Policy.

[109] *Dalmia Cement (Bharat) Ltd. v. Union of India* (1996) 10 SCC 104, para 22.

Expanded Scope and Meaning of Article 21

We will further find that taking the mandate of the Directive Principles of State Policy, Article 21 has been given the widest possible meaning by the Apex Court. Nobody would doubt that there is no other Article in the Constitution which has received such a widest interpretation. In the case of *Bandhua Mukti Morcha v. Union of India & Ors.*[110] the plight of the bonded labourers in the State of Haryana, who migrated from various States, came up for consideration before their Lordships of the Supreme Court. Justice P.N. Bhagwati, speaking for the Bench observed that "*The State is under a constitutional obligation to see that there is no violation of the fundamental right of any person, particularly when he belongs to the weaker sections of the community and is unable to wage a legal battle against a strong and powerful opponent who is exploiting him. The Central Government is, therefore, bound to ensure observance of various social welfare and labour laws enacted by Parliament for the purpose of securing to the workmen a life of basic human dignity in compliance with the Directive Principles of State Policy. The State of Haryana must therefore ensure that the mine-lessees or contractors, to whom it is giving its mines for stone quarrying operations, observe various social welfare and labour laws enacted for the benefit of the workmen. This is a constitutional obligation which can be enforced against the Central Government and the State of Haryana by a writ petition under Article 32 of the Constitution".*[111]

In the case of *Maneka Gandhi v. Union of India*[112] the Apex Court again expanded the scope of Article 21.It was held that right to life includes all those aspects of life, which go to make a man's life, meaningful and worth living. In the case of *Olga Tellies v. Bombay*

[110] AIR 1984 SC 802 : (1984) 3 SCC 161 : (1984) 2 SCR 67.

[111] *Bandhua Mukti Morchav.Union of India* AIR 1984 SC 802, para 10.

[112] AIR 1978 SC 597 : (1978) 1 SCC 248 : (1978) 2 SCR 621.

Municipal Corporation[113] it is held that Right under Article 21 includes right to live with human dignity. Further in the case of *Sheela Barse v. State of Maharashtra*[114] various directions were issued on the basis of Directive Principles of State Policy and Article 21 so as to make the life of women in custody liveable.

In various cases of *M.C. Mehta v. Union of India*[115] the Highest Court of the Country holds that right to good health, right to live in a pollution free environment to be a fundamental right under Article 21. We find that on account of various directions issued by the Apex Court various polluting buses from Delhi were made to leave the territorial area of Delhi, various polluting industries were removed from the territory of Delhi.

In the case of *Ratlam Municipal Council v. Vardhichand*[116] the Supreme Court came down heavily on the practice which was still adopted by the Municipal Council, where human beings were carrying excreta of another human being. In the case of *Paschim Bengal Khet Mazdoor Samity v. State of WB*[117] and *Parmanand Katra v. Union of India*[118] the Supreme Court, taking recourse to the provisions of Article 47 held that right to have a medical aid to a citizen is a fundamental right, and issued various directions in that regard. Right to food has also been considered by the Supreme Court to be one of the fundamental rights.

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[113] AIR 1986 SC 180 : (1985) 3 SCC 545.

[114] AIR 1983 SC 378 : (1983) 2 SCC 96 : (1983) 2 SCR 337.

[115] AIR 1989 SC 2039.

[116] AIR 1980 SC 1622.

[117] 1996 (4) SCC 37 : AIR 1996 SC 2426.

[118] (1989) 4 SCC 286 : AIR 1989 SC 2039 : (1989) 3 SCR 997.

Then even prior to Article 21-A being brought in the Constitution, in the case of *Mohini Jain v. State of Karnataka*,[119] the Apex Court, on the basis of Article 45 held that free and compulsory education for children up to the age of 14 is a fundamental right.

Conclusion

Therefore, we find that in the journey of last 67 years, the Parliament as well as the Highest Court of the Country had been progressing forward. In the case of *Kesavananda Bharati's*[120] Justice K.K. Mathew holds that the Courts are also State within the meaning of Article 12 of the Constitution, and I quote him "*I can see no incongruity in holding, when Article 37 says in its latter part 'it shall be the duty of the State to apply these principles in making laws' that judicial process is 'State action' and that the judiciary is bound to apply the Directive Principles in making its judgment"*.[121]

Justice M.H. Beg in the same Judgment also holds that "*Primarily the mandate was addressed to the Parliament and the State Legislatures, but, insofar as Courts of Justice can indulge in some judicial law making, within the interstices of the Constitution or any Statute before them for construction, the Courts too are bound by this mandate"*.[122]

P. Jaganmohan Reddy, J., in the case of *Kesavananda Bharati's* observed 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 are fundamental in the*

[119] (1992) 3 SCC 666 : AIR 1992 SC 1858 : (1992) 3 SCR 658.

[120] *Kesavananda Bharati v. State of Kerala* (1973) 4 SCC 225: AIR 1973 SC 1461.

[121] *Ibid*, para 1704.

[122] AIR 1973 SC 1461, 1802.

governance of the country".[123] V. R. Krishna Iyer J., in the case of *State of Karnataka & Anr. vs. Ranganatha Reddy & Anr*[124] also observed that "*it is the duty of the Judges to take forward the mandate of the Directive Principles and the Fundamental Rights*".[125] In retrospect if we consider the expectation of the Constitution makers as could be reflected in the speech of Pandit Jawaharlal Nehru in the Constituent Assembly on September 10, 1949 that the judiciary would not come in the way of aspiration of the country in achieving social and economic justice, has been proved to be a reality. Wherever the enactments were made by the Parliament or the State Legislature for acquisition of lands or compulsory acquisition of the property in furtherance of the mandate of directive principles and though the compensation provided for the same was either nominal or negligible, the highest court of the country has upheld such enactments.

Pandit Jawaharlal Nehru had stated that we will welcome the Supreme Court and the High Court to interfere only when a fraud is sought to be played on the Constitution. If we consider the journey of the Superior Courts of the Country post *Kesavananda Bharati's*[126] case, it could clearly be seen that aspirations of the Constitution makers have been given effect to by the Indian Judiciary. The expectation as was reflected in the speech of Pandit Jawaharlal Nehru quoted hereinabove that the Supreme Court and the High Court would not normally interfere in giving effect to the socio-economic development of the country, has largely been found to be followed. As could be seen that post *Kesavananda Bharati's*[127] case various laws which were enacted, taking an umbrella of Article 31C have been interfered with

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[123] *Ibid.*

[124] AIR 1978 SC 215

[125] *Id.*

[126] *Id.*

[127] AIR 1973 SC 1461.

very rarely. Not only that but the Hon'ble Supreme Court itself had expanded the scope of Article 39(b) and (c) and had also protected the laws, even when there was no declaration that the laws were having a protection of Article 31C, by itself reading the provisions in the enactments and tracing the said provisions to Clauses (b) and (c) of Article 39.

When Directive Principles of State Policy were sought to be incorporated in the Constitution, a criticism was made by some of the members against Dr. B.R. Ambedkar that these Directive Principles were nothing else but a post-dated cheque on a bankrupt bank. It was said that this is nothing else but the election manifesto. Dr. B.R. Ambedkar, always considered the Constitution to be a weapon for achieving bloodless, social and economic revolution. Answering the criticism, he said that, *"I am willing to accept the criticism that it is a post-dated cheque but I am not willing to accept the criticism that it is on a bankrupt bank".* He said, *"I am sure that one day the Bank of my country would be so able that this post-dated cheque would be encashed".* He further said that, *"Though these principles are not justiciable in Court but at the end of each term, those persons seeking votes will have to answer as to how they have followed the mandate of Directive Principles of State Policy or not"*.[128]

The period of 67 years for a democracy, cannot be said to be too long a period. The United States took decades and centuries for recognizing the human rights. We find that in the last 67 years millions of landless labourers have been distributed the lands seized under the ceiling enactments. Millions of tenants of the landlords have now become owners of the lands. Various labour laws for the protection and welfare of the labour have been enacted and upheld.

Though initially only 13 enactments were included in the IXth Schedule, today there are 284 enactments which find place in the IXth Schedule. A person belonging to Schedule

[128] AIR 1973 SC 1461.

Caste has occupied the highest office of the country as he has been the President of India. A person belonging to Schedule Caste has occupied the office of Chief Justice of India. A person belonging to Scheduled Caste has occupied the office of the Speaker of the Lok Sabha.

A woman could become President of India, a Prime Minister of India and now a Speaker of the Lok Sabha. Recently the present Prime Minster while speaking at Surat said that it is only because of the Constitution of India that a person, who was selling tea at railway station, could become Prime Minster of the country. Therefore, if we look at the journey of the Indian Parliament and the Indian Judiciary for the last 67 years, it could be seen that the journey is towards living up to the aspirations of the Constitution makers, be it Pandit Jawaharlal Nehru or Dr. B.R. Ambedkar that the Constitution should be used as a weapon for achieving social and economic justice.

No doubt that a lot needs to be done and, therefore, as a citizen, as a lawyer or Judge, we have a duty to follow the mandate of the Constitution. We must pledge that we will strive to take this journey of social and economic justice forward.

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