


Subject: LAW

Production of Courseware

 - Content for Post Graduate Courses



Paper : ADVANCED CONSTITUTIONAL LAW

Module : RELATIONSHIP BETWEEN FUNDAMENTAL RIGHTS AND DIRECTIVE PRINCIPLES



Component - I - Personal Details

Role	Name	Affiliation
Principal Investigator	Prof(Dr) Ranbir Singh	Vice Chancellor National Law University Delhi
Principal Co-investigator	Prof(Dr) G S Bajpai	Registrar National Law University Delhi
Paper Coordinator	Dr. Anupama Goel	Associate Professor



		National Law University Delhi
Content Writer/Author	Harman Shergill	Assistant Professor University Institute of Legal Studies, Panjab University, Chandigarh.
Content Reviewer	Prof.(Mrs.) Nishtha Jaswal	Professor of Law and Former Chairperson, Department of Laws, Panjab University, Chandigarh.

Component - I (B) Description of Module

	Description of Module
Subject Name	Law
Paper Name	Advanced Constitutional Law
Module Name/Title	Relationship between Fundamental Rights and Directive Principles
Pre-requisites	Understanding of the concept of Directive Principles of State Policy as enshrined in the Constitution of India.
Objectives	To provide an understanding of the relationship between Directive Principles and Fundamental Rights.
Keywords	Directive Principles of State Policy, Fundamental Rights



Module : 7- Relationship between Fundamental Rights and Directive Principles

Structure:

- 1. Introduction**
- 2. Learning Outcomes**
- 3. Concept of 'Directive Principles Of State Policy'**
- 4. Need For Directives**
- 5. Directive Principles of State Policy**
- 6. Justiciability of the Directives**
- 7. Relationship between Directive Principles and Fundamental Rights**
- 8. Article 31-C and Directive Principles**
- 9. Conclusion**



1. Introduction:

The Constitution of India aims to establish not only a political democracy but also seeks to provide socio-economic justice to the people in order to establish a welfare state. For this reason, the Constitution lays down certain principles and guidelines known as 'Directive Principles of State Policy' in Part IV. This Chapter introduces the learner to the Directive Principles contained in Articles 36 to 51 of the Constitution of India. These principles are meant for the State to follow in matters of administration and in making of laws. Hence, it is the duty of every responsible government to translate these principles into action to promote socio-economic justice among citizens.

2. Learning Outcomes:

After going through this Chapter, you will be able to:

- Elaborate meaning and the concept of Directive Principles of State Policy



- Describe the significance of the Directive Principles of State Policy and the object behind their incorporation in the Constitution of India.
- Understand the various Directives as provided in Part IV of the Constitution of India.
- Explain the relationship between Directive Principles and Fundamental Rights.

3. Concept of 'Directive Principles Of State Policy':

Part IV (Arts. 36 to 51) of the Constitution of India contain the Directive Principles of State Policy. The Directive Principles of State Policy contained in Part IV of the Constitution set out the aims and objectives to be taken up by the State in the governance of the country. The idea to have such principles in the Constitution has been borrowed from the Irish Constitution.¹ The Directive Principles are the ideals which the Government must keep in mind while it formulates policy or pass any law. They lay down certain social, economic and political principles, suitable to peculiar conditions prevailing in India.² They embody the aims and objectives of a welfare State.

4. Need For Directives:

The main objective behind enactment of the Directive Principles appears to have been to set standards of achievements before the Legislature and the Executive, the local and other authorities, by which their success or failure can be judged.

There was a time, known as the laissez faire era, when the state was mainly concerned with the maintenance of law and order and defence of the country against external aggression. Such a restrictive concept of the state no longer remains valid. Today, we are living in an era of 'welfare state' which seeks to promote the prosperity and well – being of the people. The makers of the Constitution had realized that in a poor country like India, political democracy would be useless without economic democracy. Accordingly, they incorporated a few provisions in the Constitution with view to achieve amelioration of the socio-economic condition of the masses.³ Therefore, the Directive Principles of State Policy strengthen and promote this concept by seeking to lay down some socio-economic goals which the various governments in India, both at the Centre and in the States, have to strive to achieve.

In a number of pronouncements, the Supreme Court has time and again insisted that these Directive Principles seek to introduce the concept of a welfare state in the country. Thus, we find the Supreme Court observing in *Paschim Banda*:⁴

¹ M.P.Jain, *Indian Constitutional Law* (5th Edition, Wadhwa and Company Nagpur 2007) 1363.

² *Ibid.*

³ Jain (n 1).

⁴ *Paschim Banga Khet Mazdoor Samiti vs. State of West Bengal*, AIR 1996 SC 2426.



“The Constitution envisages the establishment of a welfare state at the federal level as well as the State level. In a welfare state, the primary duty of the Government is to secure the welfare of the people.”

5. Directive Principles of State Policy



The Directives may be divided into the following broad categories:

5.1 – Social and Economic Charter

a. Social order based on justice: Article 38

Art. 38 needs to be read along with Art. 14.⁵ This directive reaffirms what has been declared in the Preamble to the Constitution,⁶ viz., the function of the Republic is to secure, *inter alia*, social, economic and political justice.⁷ To secure justice to the people under the law, courts with broad powers have been established in the country.⁸ The Supreme Court has observed that if a law is made to further socio-economic justice, it is *prima facie* reasonable and in public interest. In other words, if it is in negation, it is unconstitutional.⁹

Art. 38 is supplemented by Art. 39 which lays stress upon certain aspects of economic justice.

b. Principles of policy to be followed by the State for securing economic justice: Article 39

The Supreme Court has taken recourse to *Art. 39 (a)* to interpret Art. 21 to include therein the “right to livelihood”. The Supreme Court has observed in *Olga Tellis v. Bombay Municipal Corporation*:¹⁰

“If there is an obligation upon the State to secure to the citizens an adequate means of livelihood and the right to work, it would be sheer pedantry to exclude the right to livelihood from the content of the right to life.”

In a major pronouncement in *Madhu Kishwar v. State of Bihar*,¹¹ with a view to protect the economic interests of tribal women depending on agriculture for their livelihood, the Supreme

⁵ Jain (n 1) 1373.

⁶ *Ibid.*

⁷ *Air India Statutory Corporation vs. United Labour Union*, AIR 1997 SC 669.

⁸ Jain (n 5).

⁹ *Kasturi Lal vs. State of J&K*, AIR 1980 SC 1992.

¹⁰ AIR 1986 SC 180.

¹¹ AIR 1996 SC 1870.



Court has ruled that on the death of the last male holder in an agricultural tribal family, the dependent family female members have the constitutional remedy of continuing to hold the land so long as they remain dependent on it to earn their livelihood. Otherwise, the females will be rendered destitute.

Arts. 39 (b) and (c) relate to significant constitutional provisions as they affect the entire economic system in India. Directive Principles contained in Arts. 39 (b) and 39 (c) have assumed great importance and have figured in number of judicial pronouncements after the enactment of Art. 31C.¹² Arts. 39 (b) and 39 (c) relate to distribution of ownership and control of material resource of the community. An Act falling under Clauses (b) and (c) of Art. 39, must have operation in the economic system and concentration of wealth. Taking over of management by the government of a sick textile mills has been characterised as being in furtherance of Arts. 39(b) and (c).¹³

In *State of Tamil Nadu vs. L. Abu Kavur Bai*,¹⁴ upholding the nationalization of stage carriages, the Supreme Court has given an expansive interpretation to the word ‘distribution’ in *Art.39(b)*:

“.....the word ‘distribution does not merely mean that property of one should be taken over and distributed to others like land reforms where the lands from big landlords are taken away and given to landless labourers.....that is only one of the modes of distribution but not the only mode....”

Art.39(c) contemplates measures for preventing concentration of wealth and means of production in a few private hands.

Parliament has enacted the Equal Remuneration Act, 1976, to implement *Art. 39 (d)*. The Act provides for payment of equal remuneration to men and women workers for the same work, or work of a similar nature and for the prevention of discrimination on grounds of sex.¹⁵

Reading *Arts. 39(e)* and *(f)* together, it is obvious that one of the objective is that the State should, in particular, direct its policy towards securing that childhood and youth are protected against exploitation and against moral and material abandonment.¹⁶ These constitutional provisions indicate that the constitution-makers were very anxious to protect and safeguard the interests and welfare of the children.¹⁷

5.2- Social Security Charter

¹² Jain (n 1) 1375.

¹³ *N.T. Corporation Ltd. vs. Sitaram Mills*, AIR 1986 SC 1234.

¹⁴ AIR 1984 SC 326.

¹⁵ Jain (n 1) 1378.

¹⁶ *Ibid.* p.1379.

¹⁷ *Ibid.*



a. Equal justice and free legal aid to economically backward classes: Article 39A

The above Directive has been added by the Constitution (42nd Amendment) Act, 1976, in order to ensure equal justice which has been promised to all the citizens by the Preamble and to further the guarantee of equality before law (Art.14) which has no meaning to a poor man as long as he is unable to pay for his legal adviser.

b. Right to work, education and public assistance in certain cases: Article 41

By reason of this Directive, the State would be justified in exempting claimants to compensation in cases of road accidents from payment of court-fees or to extend the pauper provisions of the CPC to indigent claimants.¹⁸

c. Just and humane conditions of work: Article 42

In *Bandhua Mukti Morcha v. Union of India*,¹⁹ the Supreme Court read Art. 21 and 23 with such Directive Principles as Arts. 39 (e) and (f) and Arts. 41 and 42 to secure the release of bonded labour and free them from exploitation. The Court has observed in this connection:²⁰

“This right to with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and particularly Articles 41 and 42”

It is not only the question of release of bonded labour but also of their proper rehabilitation after release. The Supreme Court has insisted upon effective rehabilitation of the freed bonded labour families.

d. Living wage for workers: Article 43

This Article makes it a ‘reasonable restriction’ upon the freedom of business under Art.19(1)(g) to provide that an employer must pay a minimum bonus to his workmen even in a year in which loss has been sustained.²¹

¹⁸ *State of Haryana vs. Darshana*, AIR 1979 SC 855.

¹⁹ AIR 1984 SC 469.

²⁰ *Ibid.* p. 811.

²¹ *Jalan Trading vs. Aney*, AIR 1979 SCC 233.



e. Participation of workers in the management of industries: Article 43A

In a capitalist economy, the ownership as well as the management of any industry or enterprise belongs to a particular individual who provides the capital; the workers are hired and only get wages from the capitalist to who earns all the profit and bears all the loss. Under a socialist economy, there is no place for a capitalist, because all means of production together with their management would belong to the State.²² But, socialism does not believe in any violent transition from capitalism to collectivism, but believes in a phased transition.²³ Article 43A is the first active step towards socialism in India, after having inserted the word socialist in the Preamble by the 42nd Amendment Act, 1976.²⁴ The scheme of Art.43A is that though the ownership might belong either to a private individual or to the State, the workers engaged in a particular industry or enterprise, shall, by legislation, be given a share in the management thereof.²⁵

f. Provision for early childhood care and education to children below the age of six years: Article 45

The Directive does not empower the State to override the fundamental right of minority communities to establish educational institutions of their own choice under Art.30(1). It is possible for the State to discharge its obligation under the present Article through Government owned and aided schools.²⁶

g. Promotion of educational and economic interest of weaker sections: Article 46

The provision in Art.15(4) is to be read along with this Directive.²⁷ Art.15(4) uses the expression 'backward class' while the present Article uses the expression 'weaker sections', but in the context of the words, 'educational and economic interests' and the words 'in particular of the Scheduled Castes and the Scheduled Tribes', it would be legitimate to infer that the expression 'weaker sections' refers to sections of people who, though they do not belong to the Scheduled Castes or Tribes, suffer from backwardness similar to that of the Scheduled Castes and Tribes, owing to educational and economic reasons.²⁸ "Weaker section" is a wider expression and includes "backward classes".

h. Duty to raise the standard of living and improvement of health: Article 47

²² *Ibid.*

²³ Durga Das Basu, *Constitutional Law of India* (8th Edition, Lexis Nexis Butterworths Wadhwa 2008) 221.

²⁴ *Ibid.*

²⁵ *Ibid.*

²⁶ *Reference on the Kerala Education Bill, 1957*, AIR 1958 SC 956.

²⁷ *State of Kerala vs. Thomas*, AIR 1976 SC 490.

²⁸ Cf. *Balaji vs. State of Mysore*, AIR 1963 SC 649 at 658.



It has been held by a Full Bench of the Madras High Court²⁹ these words contemplate the use of liquor or alcohol for the making or manufacture of medicinal preparations and does not contemplate the free use of intoxicating drinks as medicine.

Art.47 casts a duty on the State to reduce liquor consumption.³⁰

5.3 - Community Welfare Charter

a. Uniform Civil Code: Article 44

The objective of this Article is to effect national integration by bringing all communities on the common platform on matters which are at present governed by diverse personal laws, e.g., marriage, divorce, maintenance.³¹ It is based on the concept that there is no necessary connection between religion and personal law in a civilized society.³² The Supreme Court has repeatedly regretted that Art.44 has so long as remained a dead letter and recommended early legislation to implement it.³³ A common civil code will help the cause of national integration by removing the contradictions based on ideologies.³⁴

b. Organisation of Village Panchayats: Article 40

Article 40 requires the State to take steps to organize village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government.

c. Organisation of agriculture and animal husbandry: Article 48

Art. 48 has accorded recognition in somewhat 'guarded and hesitant form' to the Hindu sentiment regarding cows.³⁵ Under Art. 48, a total ban on cow – slaughter is possible and this position has been accepted by the Supreme Court in *Quareshi*³⁶. While the test of usefulness has to be applied in extending protection to other animals, it is not to be applied in extending

²⁹ *Satish vs. State*, AIR 1979 Mad. 246(FB).

³⁰ *State of Maharashtra vs. Nagpur Distilleries*, AIR 2006 SC 1987.

³¹ *Ibid.* p. 222.

³² *Sarla Mudgal vs. Union of India*, (1995) 3 SCC 635.

³³ *Jorden vs. Chopra*, AIR 1985 SC 935.

³⁴ *John Vallamattom vs. Union of India*, AIR 2003 SC 2902.

³⁵ *Gajendragadkar, Secularism and the Constitution of India* (University of Bombay, Bombay 1971) 129.

³⁶ *Quareshi vs. State of Bihar*, AIR 1958 SC 731.



protection to other animals, it is not to be applied to cows. This is criticised by many as anti – secular and uneconomic.³⁷

d. Protection and improvement of forests and wildlife: Article 48A

The Supreme Court has clarified that whenever a problem of ecology is brought before the Court, it is bound to keep in mind Arts. 48–A and 51 A (g) and cannot leave the matter entirely to the government. “The least that the Court may do is to examine whether appropriate considerations are borne in mind and irrelevance excluded. In appropriate cases, the Court may go further.”³⁸

In *M.C.Mehta vs. Union of India*³⁹ the Court has observed: “Articles 39(e), 47 and 48A by themselves and collectively cast a duty on the state to secure the health of the people, improve public health and protect and improve the environment”. Notwithstanding adequate laws being in place, the Administration did not show much concern about environmental pollution. Accordingly, the Supreme Court has had to take an active interest in the area.⁴⁰

Two principles, viz. “Precautionary Principle” and the “Polluter Pays Principle” have been developed by the Supreme Court. In *M.C. Mehta v. Union of India*,⁴¹ the Supreme Court has issued several direction in order to protect Taj Mahal from deterioration on account of environmental pollution.

e. Protection of monuments and places and objects of national importance: Article 49

Art. 49 directs the state to protect every monument or place or object of artistic or historic interest, declared by or under law made by Parliament to be of national importance, from spoliation, disfigurement, destruction, removal, disposal or export, as the case may be. Parliament can make such a law under entry 67, List I.

f. Separation of Judiciary from Executive: Article 50

Art. 50 is based on the bedrock of the principle of independence of the judiciary.⁴² It requires the state to take steps to separate the judiciary from the public services of the state. This means that there shall be a separate judicial service free of executive control.⁴³

7. Promotion of International peace and security: Article 51

Sikri, C.J., has observed in *Kesavananda*⁴⁴ as regards Art. 51 as follows:

³⁷ Gajendragadkar (n 35); Smith, *India as a Secular State* (Princeton University Press 1963) 488.

³⁸ *Shri Sachidanand Pandey vs. State of West Bengal*, AIR 1987 SC 1109.

³⁹ JT 2002(3) SC 527.

⁴⁰ Jain (n 1) 1392.

⁴¹ *Mehta* (n 39).

⁴² *Baldev Raj vs. Punjab and Haryana High Court*, AIR 1976 SC 2490 at 2493.

⁴³ Jain (n 1) 1393.

⁴⁴ *Kesavananda Bharti vs. State of Kerala*, AIR 1973 SC 1461.



“It seems to be that, in view of Article 51 of the Constitution, this Court must interpret language of the Constitution, if not intractable, which is after all a municipal law, in the light of the United Nations Charter and the solemn declaration subscribed to by India.”

6. Justiciability of the Directives:

The Directive Principles of State Policy have specifically been made non-enforceable by any court of law by virtue of Article 37.

Article 37: The provisions contained in this Part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.

It follows from Article 37 that Directive Principles impose no legal obligation on Parliament or the State Legislatures to make laws complying with Directive Principles, and confer no rights on any person which he can enforce in any Court.⁴⁵

The reason behind the legal non-enforceability and non-justifiability of these principles is that they impose positive obligations on the state. While taking positive action, government functions under several restraints, the most crucial of these being that of financial resources. Nevertheless, the Constitution declares that the Directive Principles, though not enforceable by any court, are ‘fundamental’ in the governance of the country, and the ‘state’ has been placed under an obligation to apply them in making laws. The State is, thus, required to make laws and use its administrative machinery for the achievement of these Directive Principles.

The Supreme Court in *Lily Thomas vs. Union of India*,⁴⁶ has observed:

“This Court has no power to give directions for the enforcement of the Directive Principles of the State Policy..... This Court has time and again reiterated the position that Directives..... are not enforceable in courts as they do not create any justifiable rights in favour of any person”.

But, the Courts are, nevertheless, bound “to evolve, affirm and adopt principles of interpretation which will further and not hinder the goals set out in the Directive Principles of State Policy.”⁴⁷

7. Relationship between Directive Principles and Fundamental Rights:

The Directive Principles differ from Fundamental Rights which enjoin the state to refrain from taking prejudicial action against an individual and, thus, impose a negative duty on the state. Fundamental Rights seek to introduce an egalitarian society and to ensure liberty for all. The

⁴⁵ H.M.Seervai, *Constitutional Law of India*(4th Edition, Universal Law Publishing Co. 2004) 1923.

⁴⁶ AIR 2000 SC 1650.

⁴⁷ *Ibid.*



Directive Principles seek to achieve a welfare state. The two together constitute the conscience of the Constitution. Infact, the Preamble, the Fundamental Rights and the Directive Principles can be characterized as the trinity of the Constitution.⁴⁸

The Directives differ from Fundamental Rights contained in Part III of the Constitution in the following respects:

- (i) The Directives are not enforceable in the courts and as such, do not create any justiciable rights in favour of individuals.
- (ii) The Directives require to be implemented by legislation, and so long as there is no law carrying out the policy laid down in a Directive neither the State nor the individual can violate any existing law or legal right under colour of following a Directive.⁴⁹
- (iii) The Directives, *per se*, do not confer upon or take away⁵⁰ any legislative power from the appropriate legislature. Legislative competence must be sought from the Legislative Lists contained in the 7th Schedule of the Constitution.
- (iv) The Courts cannot declare any law as void on the ground that it contravenes any of the Directive Principles.⁵¹
- (v) The Courts are not competent to compel the government to carry out any Directive, e.g., to provide for free compulsory education within the time limited by Art.45,⁵² or to provide adequate means, of livelihood to every citizen,⁵³ or to make any law to give effect to the Directive Principles.⁵⁴

The Supreme Court in *State of Madras v. Champakam Dorairajan*⁵⁵, declared invalid a government order in conflict with Art. 29(2), a Fundamental Right, although the government did argue that it was made in pursuance of Art 46, a Directive Principle. The Court ruled that while the Fundamental Rights were enforceable, the Directive Principles were not, and so the laws made to implement Directive Principles could not take away Fundamental Rights. The Directive Principles should conform, and run as subsidiary, to the Fundamental Rights. The Fundamental Rights would be reduced to ‘a mere rope of sand’ if they were to be overridden by the Directive Principles.

In course of time, a perceptible change came over the judicial attitude on this question. The Supreme Court’s view as regards the interplay of Directive Principles and Fundamental Rights underwent a change. The Supreme Court started conferring a good deal of importance to the Directive Principles from a legal point of view and started arguing for harmonizing the two – the Fundamental Rights and Directive Principles.⁵⁶

⁴⁸ Jain (n 1) 1366.

⁴⁹ *Mangru vs. Commissioner of Budge Budge*, (1951) 87 CLJ 369.

⁵⁰ *Deep Chand vs. State of U.P.*, AIR 1959 SC 648 at 664.

⁵¹ *Ibid.*

⁵² *Keshavananda* (n 44).

⁵³ *Ibid.*

⁵⁴ *Markandeya vs. State of A.P.*, (1989) 3 SCC 191.

⁵⁵ AIR 1951 SC 226.

⁵⁶ Jain (n 1) 1366.



Further, the courts adopted the view that in determining the scope and ambit of Fundamental Rights, the Directive Principles should not be completely ignored and that the courts should adopt the principle of harmonious construction and attempt to give effect to both as far as possible.

Without, therefore, making the Directive Principles justiciable as such, the courts began to implement the values underlying these principles to the extent possible. The Supreme Court began to assert that there is “no conflict on the whole” between the Fundamental Rights and the Directive Principles. “They are complementary and supplementary to each other.”⁵⁷

Since then, the judicial attitude has become more positive and affirmative towards Directive Principles, and both Fundamental Rights and Directive Principles have come to be regarded as co-equal.⁵⁸ There is in effect a judicial tendency to interpret Fundamental Rights in the light of, and so as to promote, the values underlying Directive Principles.⁵⁹

This aspect of the Directive Principles was stressed upon by the Supreme Court in *Golak Nath*⁶⁰. The Supreme Court there emphasized that the Fundamental Right and Directive Principles formed an ‘integrated scheme’ which was elastic enough to respond to the changing needs of the society.

In *Kesavananda Bharati v. State of Kerala*⁶¹, Hegde and Mukherjea, JJ., observed:

“The Fundamental Right and Directive Principles constitute the “conscience of the Constitution.....” There is no antithesis between the Fundamental Right and Directive Principles and one supplements the other”.

Shelat and Grover, JJ....observed in their judgment:

“Both Parts III (Fundamental Right) and IV (Directive Principles) have to be balanced and harmonized.....then alone the dignity of the individual can be achieved.....they were meant to supplement each other.”

The Supreme Court in *State of Kerala v. N.M. Thomas*⁶², observed that the Directive Principles and Fundamental Right should be construed in harmony with each other and every attempt should be made by the Court to resolve any apparent inconsistency between them.

In *Pathumma v. State of Kerala*⁶³, the Supreme Court has emphasized that the purpose of the Directive Principles is to fix certain socio-economic goals for immediate attainment by bringing about a non-violent social revolution. The aim is to bring about synthesis between Fundamental Right and Directive Principles.

⁵⁷ *Chandra Bhawan Boarding and Lodging, Bangalore vs. State of Mysore*, AIR 1970 SC 2042 at 2050.

⁵⁸ Jain (n 1) 1369.

⁵⁹ *Ibid.*

⁶⁰ *Golak Nath vs. State of Punjab*, AIR 1967 SC 1643.

⁶¹ AIR 1973 SC 1461 at 1641.

⁶² AIR 1976 SC 490.

⁶³ AIR 1978 SC 771.



The Supreme Court has observed in *Olga Tellis*⁶⁴, that since the Directive Principles are fundamental in the governance of the country they must, therefore, be regarded as equally fundamental to the understanding and interpretation of the meaning and content of Fundamental Right.

Chandrachud, C.J., in *Minerva Mills*⁶⁵, observed that the Fundamental Right “are not an end in themselves but are the means to an end.” The end is specified in the Directive Principles. It was further observed in the same case that the Fundamental Right and the Directive Principles together “constitute the core of commitment to social revolution and they, together, are the conscience of the Constitution.” The Indian Constitution is founded on the bedrock of “the balance” between the two. It was further observed that to give absolute primacy to one over the other is to disturb the harmony of the Constitution. This harmony and balance between Fundamental Rights and Directive Principles is an essential feature of the basic structure of the Constitution.

The theme that “Fundamental Right” are but a means to achieve the goal indicated in the Directive Principles” and that “Fundamental Right must be construed in the light of the Directive Principles” has been advocated by the Supreme Court time and again.⁶⁶ The biggest beneficiary of this approach has been Art. 21. By reading Art. 21 with the Directive Principles, the Supreme Court has derived therefrom a bundle of rights.

To conclude, a survey of the case law shows that the courts have used Directive Principles not so much to restrict Fundamental Rights as to expand their scope and content.

8. Article 31-C and Directive Principles:

Art. 31-C was added by the Constitution (25th Amendment) Act, 1971. The amendment has considerably enhanced the importance of the directive principles. The object of the amendment as stated in the objects clause of the Bill was that this was enacted to get over the difficulties placed in the way of giving effect to the directive principles of State policy. The first part of Article 31-C provides that no law which is intended to give effect to the Directive Principles contained in Art. 39 (b) and (c) shall be deemed to be void on the ground that it is inconsistent with or takes away or abridges any of the rights conferred by Article 14, or 19. The second part of Art. 31-C provided that “no law containing a declaration that it is for giving effect to such policy can be called in question on the ground that it does not in fact give effect to such policy”. The validity of first part of Article 31-C was upheld in the *Fundamental Rights* case,⁶⁷ but the second part of this Article, which barred the judicial scrutiny of such laws, was struck down as unconstitutional.

⁶⁴ *Olga Tellis vs. Bombay Municipal Corporation*, AIR 1986 SC 194.

⁶⁵ *Minerva Mills vs. Union of India*, AIR 1980 SC 1789.

⁶⁶ See, for example, Jeevan Reddy, J., in *Unnikrishnan vs. State of Andhra Pradesh*, AIR 1993 SC 2178 at 2230.

⁶⁷ *Kesavananda* (n 44).



Article 31-C was again amended by the Constitution (42nd Amendment) Act, 1976. This Amendment further widened the scope of Art. 31-C so as to cover all Directive Principles. For the purpose, the amendment substituted the words, “all or any of the principles laid down in Part IV” for the words “the principles specified in clause (b) or (c) of Article 39” in Article 31-C of the Constitution.

Thus, whereas the 25th Amendment gave primacy to Directive Principles contained in Art. 39(b) and (c) over the Fundamental Rights in Arts. 14, 19 or 31, the 42nd Amendment gave precedence to all the Directive Principles over the Fundamental Rights guaranteed in Articles 14, 19 or 31 of the Constitution.

In *Minerva Mills vs. Union of India*,⁶⁸ the Supreme Court by 4 to 1 majority struck down Art. 31-C as amended by the 42nd Amendment as unconstitutional on the ground that it destroys the “basic features” of the Constitution. The Court held that Art. 31-C was beyond the amending power of the Parliament and was void since it destroyed the basic feature of the Constitution by a total exclusion of challenge to any law on the ground that it was inconsistent with or took away or abridged any of the rights conferred by Art. 14 or 19 of the Constitution. The majority observed that “the Constitution is founded on the bed rock of the balance between Part III and Part IV. To give absolute primacy to one over the other is to disturb the harmony of the Constitution which is the essential feature of the basic structure. The goals set out in Part IV have to be achieved without the abrogation of the means provided for by Part III. To destroy the guarantees given by Part III in order to achieve the goals of Part IV is plainly to subvert the Constitution.” The Court held that the unamended Art. 31-C is valid as it does not destroy any of the basic features of the constitution. The unamended Art 31-C gives protection to defined and limited categories of laws, i.e. specified in Arts. 39(b) and (c). They are vital for the welfare of the people and do not violate Arts. 14 and 19. In fact, far from destroying the basic structure, such laws, if passed bona fide, for giving effect to the directives in Arts. 39(b) and (c) will fortify that structure.

But in *Sanjeev Coke Mfg. Co.v. Bharat Coking Coal Ltd.*,⁶⁹ the Supreme Court expressed doubt on the validity of its decision in *Minerva Mills* case. A five – Judge Bench held that the question regarding the validity of Section 4 of the 42nd Amendment was not directly at issue in *Minerva Mills* case and therefore, determination of that question was uncalled for and since the validity of Art 31-C, as originally introduced in the Constitution, had been upheld in *Kesavananda Bharati’s* case, it should lead to the conclusion that Art. 31-C as amended by the 42nd Amendment is also valid.

The confusion created by the above judgment has been removed by the decision of the Supreme Court in *State of Tamil Nadu. vs. L. Abu Kavur Bai*,⁷⁰ A five – Judge Bench of the Court has held that although the Directive Principles are not enforceable, yet the Court should make a real

⁶⁸ AIR 1980 SC 1789.

⁶⁹ AIR 1983 SC 239.

⁷⁰ AIR 1984 SC 626.



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. The reason why the founding fathers of our Constitution did not advisedly make these principles enforceable was, the Court said, perhaps due to the vital consideration of giving the Government sufficient latitude to implement these principles from time to time according to capacity, situations and circumstances that may arise.

Instead of becoming a stumbling block, the judiciary has now taken itself the responsibility of implementing the Directive Principles. In a number of decisions the Supreme Court has given many Directive Principles of State Policy, the status of Fundamental Rights. In *Unnikrishnan v. State of A.P.*,⁷¹ the Directive Principle contained in Art. 45 has been raised to the status of a Fundamental Right. It has been held that children from the age of 6 to 14 years have Fundamental Right to free and compulsory education. Similarly, 'equal pay for equal work' has been held to be a Fundamental Right in *Randhir Singh vs. Union of India*,⁷² and therefore, enforceable by the Court. In *H.M Hoskot vs. State of Maharashtra*,⁷³ it has been held that "legal aid" and "speed trial" are fundamental rights under Art. 21 available to all prisoners and can be enforced.

9. Conclusion:

In relation to Directive Principles, Dr. Wheare has doubted 'whether there is gain, on balance, from introducing these paragraphs of generalities into a Constitution'.⁷⁴ Yet, as we have seen the Directive Principles have been a guide for the Union Parliament and the State Legislatures; they have been cited by the Courts to support decisions; governmental bodies have been guided by their provisions.⁷⁵ The Government of India Fiscal Commission 1949, for example, recognized that its recommendations should be guided by the Principles.⁷⁶ 'It is obvious', the report said, 'that a policy for the economic development of India should confirm to the "objectives" laid down in the.....Directive Principles of State Policy'.⁷⁷

While fundamental rights have served in protecting the rights and liberties of the people of the nation, directive principles contain certain fundamental guidelines which it shall be the duty of the State to follow both in the matter of administration as well as in the making of laws.

⁷¹ (1993) 1 SCC 645.

⁷² AIR 1982 SC 879.

⁷³ AIR 1978 SC 1548.

⁷⁴ K.C.Wheare, *Modern Constitutions* (Reprinting, Oxford University Press, London 1958) 69.

⁷⁵ Granville Austin, *The Indian Constitution: Cornerstone of a Nation* (8th Impression, Oxford University Press 2004) 114.

⁷⁶ *Ibid.*

⁷⁷ Report of the Fiscal Commission (Delhi 1950) 9.



ePathshala
पाठशाला
A Gateway to All Post Graduate Courses