

ENSURING SOCIAL JUSTICE: THE WAY FORWARD

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ABSTRACT

Pt. Jawahar Lal Nehru had once said “First work of this assembly is to make India independent by a new constitution through which starving people will get complete meal and cloths, and each Indian will get best option that he can progress himself”. Therefore, the provisions of directive principles of state policy and fundamental rights were incorporated in the constitution. The fundamental rights stand for ensuring liberty to the individuals and are justiciable whereas the directive principles are the set of principles that are needed for the good governance of the country. The directive principles of state policy largely say about reducing the inequities (social, economic and cultural). However these guidelines cannot be enforced in the court of law.

India is a very poor country where a large mass of the population reside in slums and don't get even two square meals a day. What is the meaning of fundamental rights to those people who remain in starvation? Hobson had rightly said that “What god is freedom to a starving man”. Equality is the basis for liberty and if there is no equality then ensuring liberty to the citizens is a complete hoax. As directive principles are non-justiciable, the Supreme Court in the **Champakam Dorairajan case** had clearly declared directive principles are non-justiciable and cannot be enforced in the court of law. However the trends started to change in the mid 1970's with the growth of judicial activism. In cases like **Olga Tellis v. Bombay Municipal Corporation** the judges with the help of directive principles of state policy expanded the scope of fundamental rights. Although implementing Directive principles is the function of legislature and executive still then the judiciary has intervened time to time when the legislature was found wanting on its duties to make laws. For example when there were no sufficient laws on sexual harassment the Supreme Court intervened and provided for guidelines in the case of **Vishakha v State Of Rajasthan**. It also intervened when there were no proper guidelines for arrest the Supreme Court intervened with the case of **D.K. Basu v. State of West Bengal** and provided eleven guidelines for the procedure of arrest.

The scope of my paper will be restricted to explain the relationship of equality and liberty with reference to an in depth analysis of the cases of Supreme Court and the attempt by the judges of the Supreme Court to ensure social justice.

INTRODUCTION

The directive principles of the state policy are contained in Articles 36-51 of the constitution of India. The idea to have such principles in the constitution has been borrowed from the Irish constitution. They are a set of guidelines which are considered fundamental for the governance of the country. Originally, the directive principles were more akin to moral, rather than to legal, precepts as they did not have much value from a legal point of view. The main idea underlying this principle was that they would serve an educational purpose and may also acts as a restraint as the political party that comes into power. Therefore Article 37 says it clearly that directive principles cannot be enforced in the court of law but they serve as fundamental principles for governance to the ruling party. However the trend is changing and the directive principles are now getting enforced by the courts.

The difference between the Fundamental Rights and the Directive Principles of the State policy are that the fundamental rights are enforceable whereas the directive principles are not enforceable. In addition to it the fundamental rights are more of a political right whereas the directive principles are socio - economic rights. The fundamental rights are the tools which act as protectors of the citizens from the oppression of the ruling party. It acts as a check on the existing government. The directive principles on the other hand are the socio - economic rights that ought to be given to the citizens by necessary state action.

Traditional view on Directive Principles of the State Policy and Fundamental Rights

The Directive Principles of State Policy were supposed to act as the guidelines to the government while framing its laws and policies. In the constituent assembly debates eminent scholars like Professor K. T. Shah had argued that the directive principles were as important as the fundamental rights and should be made justiciable in the court of law. However, Dr B. R. Ambedkar said that the DPSP needed to be unenforceable keeping in the view the condition of the country. At that time India had still not recovered from the losses by partition and the 200 years of systematic colonial exploitation. To enforce the directive principles the country

needed a lot of resources and at that point of time almost half of the country's population lived in poverty.

Therefore the directive principles were made as non-justiciable and left to the option of the government in power to enforce those principles or not. The principle behind this was that the sanction behind the enforcement of directive principles would be the electorates and not the courts of law. The courts too were of the view that they would not enforce any directive principle as they did not create any fundamental right in favour of an individual. In the case of *Ranjan Diwedi v Union of India*¹ it was held by the Supreme Court that it would not issue the writ of mandamus for the enforcement of directive principles.

During the framing of the fundamental rights the memories of brutal suppression of the basic human rights of the individuals were alive in the minds of the framers. As early as the establishment of the Indian National Congress the implementation of fundamental rights was high on the agenda. The first formal demands for a bill of rights were incorporated in the Constitution of India Bill, 1886. This shows the mindset of the framers while drafting the fundamental rights.

The fundamental rights therefore in contrary to the directive principles were made enforceable and justiciable in nature. They create negative obligations on the state, i.e. the state is required to refrain from doing something, and it is easier to enforce through a court a negative, as compared to a positive, obligation. Accordingly Article 13 also declares that a law inconsistent with a fundamental right is void. But there has never been any provision in the constitution as regards the directive principles. Therefore a law inconsistent with a directive principle cannot be declared invalid.

Judicial Discretion and the “Democratic Objection”

The judiciary, led by the Supreme Court, it has come up with new policies sending a signal that the law needs to change according to the needs of the society. According to the horizontal power sharing in the constitution power is distributed amongst the three organs of the government (judiciary, legislature and the executive). Therefore the court has sought to replace the division of powers among three branches of government “with a 'Unitarian' claim of formal judicial supremacy”.

This supremacy emerged out of both substantive and procedural developments in the Indian Supreme Court's jurisprudence. The directive principles in Part IV of the Constitution were drafted as non-justiciable guidelines, but have become justiciable rights under the right to "live with dignity" in Article 21.²

The Right to Food litigation exemplifies this transformation and shows how the Supreme Court has become a major player in formulating national socioeconomic policy. As of 2005, the Court in that case had issued forty-four interim orders and appointed two Commissioners charged with "monitoring and reporting to this Court of the implementation by the respondents of the various welfare measures and schemes."³ This sort of judicial policymaking calls forth a serious democratic objection. The Court today constrains democratic decision making on a wide range- and potentially indefinite-set of policy issues, this sort of judicial policymaking calls forth a serious democratic objection. The Court today constrains democratic decision making on a wide range- and potentially indefinite-set of policy issues, leading many commentators to declare it the "most powerful court in the world."⁴

The court's role in Indian political life is difficult to compare with that of a Rawlsian liberal conception of democracy. The theory propounds the concept of a loose "horizontal" separation of powers. In the present context the Michelman's theory seems to be more apt. Michelman does not rely or even accept the very concept of the separation of powers trope, in which legislatures make policy choices without regard to law and courts appear later to review the legality of legislative action. In fact, he argues that the democratic objection, which grows out of this view, "trades on a particular, contestable and indeed poor, conception of democracy."⁵ Therefore the society need not accept this narrow conception of separation of powers or the very idea that the norms which are not enforceable in the court of law should not be a part of the constitutional law. In fact, Michelman puts forth a different conception-one in which constitutional law figures prominently in the "conduct of public affairs," constraining the acts of the executive and legislature.

This view relies on a framing of socioeconomic guarantees as directive principles guiding legislative action toward certain societal goals, and not as judicially enforceable rights. Even if courts are kept away from adjudicating socioeconomic rights, there is still value in placing these rights within a Constitution. The value lies in a subtle but important effect that constitutional status confers-it would create a "certain pressure on the frame of mind" of

citizens and their representatives to consider principles of socioeconomic justice in their deliberations and public policy decisions. These principles would not overly constrain democratic policymaking but give a "certain inflection to political public reason."

This is what the framers of the constitution had in my mind when they separated Fundamental Rights from the Directive Principles by making the former justiciable and the latter as non-justifiable.

Firstly as a result of this the court started the expansive interpretation of the fundamental rights. For example in **Maneka Gandhi v Union of India**⁶ the court had given an expansive interpretation of Article 21. In the case of **Mullin v. Adm'r, Union Territory of Delhi**⁷, the Supreme Court declared that Article 21 meant right to "live with dignity" which included "the bare necessities of life like nutrition, clothing and shelter" overhead. However the court placed no limits to the expansive interpretation of this fundamental right. The "Right to Food" litigation is emblematic of that growth-it began as a case about the supply and distribution of food to famine-affected populations, but now encompasses issues of homelessness, maternity, and child development. In another recent case, the Supreme Court declared that even the "right to sleep" falls within the ambit of Article 21. According to the Court, "sleep is essential . . . to maintain the delicate balance of health necessary for its very existence and survival." Cases like this suggest that the right to "live with dignity" has potentially infinite scope. It calls to mind W.E. Forbath's right to "social citizenship" that would provide assurances to all citizens that they can make a decent living through forms of social participation that provide the opportunity for self-improvement, material interdependence, and security for all.

A second way in which the Indian Supreme Court has increased its influence on socioeconomic policy is by liberalizing the procedures and relaxing the requirement of locus standi". It has informally created a new kind of jurisdiction named as "epistolary jurisdiction". This has made it easy for the common people to approach the court. It has largely come to the aid of the NGO's, where they can voice their grievances on behalf of the large segments of the population, and in process, obtain relief against the government.

For example in the case of **PUCL v. Union of India**¹⁰, PUCL filed a writ petition on the grounds of article 32 alleging right to food. It had filed a writ petition on behalf of thousands affected by the famine, even though the NGO was directly not affected. However the court accepted the petition although it did not fulfill the requirements of "locus standi" in strict

sense. Over time, the case expanded to include all Indian states as respondents, meaning that the Supreme Court's interim orders could potentially impact all Indian citizens.

Finally, a third and related means toward greater policymaking authority for the Indian Supreme Court is a series of procedural innovations; this includes the continuing mandamus and the appointment of special commissions that enable it to monitor compliance with its orders. The "Right to Food" litigation has continued for more than eleven years, with the Court having issued forty-four interim orders by 2005 and several more since then.¹¹ More strikingly, the Court instructed both central and state governments on how to allocate resources under various socioeconomic policy schemes and instituted timelines for their completion. The Court also appointed special commissioners to monitor and report whether government actors are complying with the Court's orders.

Together, these developments illustrate the judiciary's rise as a policymaking institution and call forth a serious democratic objection. The fact that socioeconomic rights are couched in very broad terms under Article 21 is problematic in the Indian context, but need not be per se. For instance, the Indian Supreme Court continued to locate a number of rights within the right to "live with dignity," but instead of formulating and enforcing its own policy prescriptions to remedy violations of those rights, it simply held government policies to a reasonableness standard. In this scenario, a "constitutionally declared right . . . of social citizenship would leave just about every major issue of public policy still to be decided."

Going forward, the Indian Supreme Court would lessen the democratic objection if it were to clearly prescribe limits on the "right to live with dignity" and set forth a standard of review for socioeconomic policy schemes. However, this seems unlikely in light of judicially-created procedural innovations at every stage of litigation that have allowed the Court to transform itself into a policymaking institution capable of affecting change on a large scale.

The Contractarian Objection to Constitutional Socioeconomic Rights in India

The contractarian objection focuses on the difficulty of measuring government compliance with socioeconomic rights. Social contractarians maintain that a citizen will only agree to abide by a constitution-which provides the government coercive power to compel her to act in prescribed ways and the ability to make policy choices with which she disagrees-if she sees other citizens and her government also complying with this constitution.¹³ This ability to

observe others abiding by the constitution is essential. It allows each citizen to confirm that the constitution's provisions, entailing commitments that make it universally acceptable, are in fact real.

The Indian Supreme Court has assumed an increasingly prominent role in the formulation and enforcement of socioeconomic policy through both substantive and procedural shifts in its jurisprudence. But has it set forth publicly acceptable reasons to justify its decisions to relax procedural requirements under Article 32 of the Constitution and to make socioeconomic rights justiciable under Article 21? This is the central question posed by the contractarian objection. It shifts our focus from the Court's role in India's constitutional framework to the legitimacy of its decision-making process.

The contractarian objection begins with the premise that a constitution's legitimacy requires, at a minimum, that rational citizens (acting reasonably) understand its terms and can agree to be governed by them.¹⁵ If citizens cannot understand the terms or are unable to determine if their government or fellow citizens are complying with constitutional principles, they will not regard the constitution as a legitimate source of political authority.¹⁶ To put this objection in the context of socioeconomic rights, recall that Rawls clearly differentiates between the first principle of justice that sets out a scheme of basic liberties that are “constitutionally essential,” and the second principle, which pertains to non-constitutionally essential questions of social and economic policy.¹⁷ A constitutional system can be legitimate if it complies with a range of basic liberties, but nonetheless unjust for failing to pursue socioeconomic justice.

While the second principle is not constitutionally essential, it nonetheless pertains to what Rawls calls “basic justice” and is therefore governed by the constraint of public reason.¹⁹ This requires citizens and their public institutions to present each other with publicly acceptable reasons for their political views, to be willing to listen to others, and to display “fair-mindedness in deciding when accommodations to their views should reasonably be made.” This requires citizens and their public institutions to present each other with publicly acceptable reasons for their political views, to be willing to listen to others, and to display “fair-mindedness in deciding when accommodations to their views should reasonably be made.” The constraint of public reason applies more stringently to the Supreme Court. In many democratic societies, including India's, the Supreme Court is the final arbiter of constitutional interpretation. Its justices must articulate the best interpretation of the Constitution through

reasoned opinions that are grounded in political values that reflect their best understanding of the public conception of justice. Unlike ordinary citizens or their elected representatives who deliberate on a range of policy issues, the justices are concerned with the higher (constitutional) law and matters of basic justice, and therefore must only use public reasons to explain their decisions. The need for the Court to explain its decisions through public reasons is heightened with regard to socioeconomic rights. These rights "lack the trait of transparency," as it is difficult to measure if they are being realized at any given moment. This lack of transparency accounts for one of the primary distinctions between the first and second principles. Rawls believes that in comparison to the second principle, it is far easier to tell whether . . . [Constitutional] essentials are realized." He states that the realization of the second principle is "always open to reasonable differences of opinion ...[it] depends on inference and judgment in assessing complex social and economic information." Thus, Rawls argues that the first principle should apply "at the stage of the constitutional convention," while issues of socioeconomic justice should be decided by elected representatives after the basic constitutional structure is in place. In essence, this is the structure adopted by the framers of the Indian Constitution. They set forth a scheme of basic liberties in Part III of the Constitution, followed by non-justiciable Directive Principles of State Policy in Part IV. The Indian Supreme Court altered this constitutional structure by interpreting Articles 21 and 32 to make socioeconomic rights justiciable and allow the Court to assume a central role in their enforcement.

As the "exemplar of public reason," the Supreme Court's decisions must reasonably comport with the text of the Constitution, constitutional precedents, and political understandings of the Constitution to articulate "a coherent constitutional view over the whole range of their decisions." If its decisions do not meet these criteria, citizens might lose confidence that public reason applies to decisions of socioeconomic justice and the "extant system of positive legal ordering is unjust." More broadly, if citizens cannot understand what constitutionally essential provisions require, they will doubt the legitimacy of the whole constitutional system.

With respect to Article 32, the Court's decisions appear to fit within the constraint of public reason. As a preliminary matter, the text of Article 32 sets forth a flexible standard rather than a fixed rule that allows the Court some interpretive discretion. It states that citizens may petition the Supreme Court via "appropriate proceedings" to obtain relief for violations of fundamental rights. As discussed in Part III, *supra*, the term "appropriate proceedings" originally limited

standing to petitioners directly affected by a challenged law. Yet, over time the Court loosened this requirement to accommodate petitions from any member of the public on behalf of disadvantaged individuals or groups. This interpretation is within the bounds of public reason because the phrase “appropriate proceedings” clearly sets forth a standard rather than a rule. All mainstream theories of constitutional interpretation, with the exception of what Jack Balkin calls “original expected application,” would accept that the phrase “appropriate proceedings” can (or even should) evolve over time. The Court is also quite clear in its reasoning on this question of interpretation. For instance, in **Bandhua Mukti Morcha**²⁰, Justice Bhagwati states,

“There is no limitation in regard to the kind of proceeding envisaged in clause (1) of Article 32 except that the proceeding must be “appropriate” and this requirement of appropriateness must be judged in the light of the purpose for which the proceeding is to be taken, namely, enforcement of a fundamental right.”

Justice Bhagwati also described the changing nature of litigation, where “Public Interest litigation is not in the nature of adversary litigation but it is a challenge and an opportunity to the government.” Here, Justice Bhagwati defends the Court's evolving interpretation of Article 32 on the grounds that “appropriate proceedings” should be interpreted according to the purpose of the litigation in question, and the purpose of public interest litigation, particularly in a country like India, is to allow ordinary citizens to approach the Court to hold the government accountable on matters of social justice.

While this justification does not lessen (and might even reinforce) the democratic objection, it overcomes the contractarian objection. The Court has interpreted Article 32 in a manner consistent with the text that recognizes the framers' broader goals of social revolution, as well as the real need for PIL in India. This fulfills the constraint of public reason: the Court's reasoning is transparent, clearly articulated, and is accessible to all Indian citizens in light of their own reasons.

The Court's reasoning with regard to Article 21 is more problematic. The Court has interpreted the right to life expansively to include a right to “live with dignity” which includes a range of socioeconomic rights. However, the structure of the Indian Constitution clearly demarcates fundamental rights in Part III and directive principles in Part IV. More importantly, Article 37 of the Constitution states that directive principles “shall not be enforceable by any court” even

though these principles are “fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.” Unlike Article 32, which uses a flexible standard, Article 37 sets forth a clear rule. The text of Article 37 is unambiguous and does not permit any deviation. Indeed, no major theory of constitutional interpretation would endorse a judicial interpretation of a bright-line rule that deviates from the plain meaning of the language of the text.

The Indian Supreme Court therefore has a heavy burden in justifying its deviation from the text of Article 37. In the seminal cases that transformed the meaning of Article 21 into a broader right to live with dignity, the Court's reasoning is inadequate-it either sidesteps or completely ignores the clear textual command of Article 37.

In the **Maneka Gandhi Case**, the Court first first set out a broader interpretation of Article 21, the Court included substantial dicta about the right to life without providing any justification for these pronouncements. It says, for instance, that fundamental rights in Part III of the Constitution “represent the basic values cherished by the people of this country since the Vedic times and they are calculated to protect the dignity of the individual and create conditions in which every human being can develop his personality to the fullest extent.”

It then builds on these broad assertions in *Francis Coralie*, proclaiming that the right to life “includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings.”

As with the excerpt from *Maneka Gandhi*, this definition of the right to life appears to be invented out of whole cloth, without reference to any precedent, constituent assembly debate, or other source of law. Moreover, both the *Maneka Gandhi* and the *Francis Coralie* decisions fail even to mention Article 37, much less explain how the Court got past the plain meaning of Article 37 when it reinterpreted Article 21 to make socioeconomic rights justiciable.

Justice Bhagwati provided some hints as to the Court's reasoning on this issue in the. First, he acknowledges that directive principles “are not enforceable in a court of law” and the Court therefore cannot compel the government to pass laws or executive orders to meet

socioeconomic goals. Still, he adds that if the state has already passed legislation impacting socioeconomic justice,

state actors “can certainly be obligated to ensure observance of such legislation for inaction on the part of the State in securing implementation of such legislation would amount to denial of the right to live with human dignity enshrined in Article 21.”

The distinction drawn here is illusory. Article 37 does not merely state that courts cannot compel the state to pass laws or orders; it flatly prohibits the enforcement of directive principles. Justice Bhagwati does not put forth evidence to support his view that Article 37 is not intended to apply to judicial review of existing laws. Further, even if the Court is permitted to review existing laws affecting socioeconomic policy, it has never clearly stated (in this case or otherwise) exactly to what standard the government is held. Additionally, as the "Right to Food" litigation demonstrates, the Court does not confine itself to a “reasonableness” or “minimum core” standard, but actually imposes its own policy prescriptions and timelines for completion on elected officials.

Justice Bhagwati's opinion in *Bandhua Mukti Morcha* also states that certain directive principles (Articles 39, 41, and 42) provide Article 21 with its "life breath." These articles direct the state to secure, inter alia, a fair economic system, adequate livelihood, education, public health access, and humane working conditions for all citizens. According to Justice Bhagwati, these principles constitute "the minimum requirements which must exist in order to enable a person to live with human dignity." The Court therefore implies a degree of interplay between Parts III and IV of the Constitution. It uses the directive principles to determine the scope and meaning of fundamental rights. Thus, Part IV of the Constitution is not justiciable on its own, but plays an important role in defining what the "right to life" encompasses.

Fundamental Rights and Directive Principles are Complementary

The next phase in the battle between fundamental rights and directive principles was characterized by efforts to interpret them in such a way that they are seen as complementary and supplementary to each other. The new approach was motivated by the criticism that previous decisions emphasized fundamental rights to such an extent that very little came from implementing the directive principles. Sharma observes that it is tragic to note that the judiciary, when it comes to social change, has “failed to appreciate the insights of the

Constitution and needs of society and has not shown evidence of foresight of the inevitable, futuristic projections".²¹ He argues as follows:

"Our judiciary has unwillingly allowed itself to be unduly obsessed by static jurisprudential concepts, procedural technicalities and rules of construction born and grown in foreign soil and appropriate to other developed societies."

One of the first cases in which the Supreme Court adopted a more conciliatory approach was that of **Sajjan Singh v. State of Rajasthan**.²³ In this case the court heard that if the chapter on fundamental rights were not amended, there was a great danger that the much needed socioeconomic reforms would not be able to take place. The court stressed the fact that the fundamental rights and directive principles formed the basis of the Constitution and that they should therefore be interpreted harmoniously.²⁴ Although the court maintained that the fundamental rights were not amendable, a new attitude was initiated, namely that these rights should be interpreted in the light of the ideals set by the directive principles.

An important case in the development of the relationship between fundamental rights and directive principles, was **Chandra Bhawan Boarding and Lodging Bangalore v The State of Mysore**.²⁵ In this case the petitioner challenged the provisions of the Minimum Wage Act, 1948 on the basis that it violated Art 14 of the Constitution. He alleged that the act conferred 'unguided and uncontrolled' discretion to the government to fix minimum wages, which interfered with the freedom of trade. The state replied that in terms of the directive principles it was its duty to provide a basis for minimum wages.

The court ruled that there was no conflict between the fundamental rights and directive principles and that they were 'complementary and supplementary'. Directive principles enable the state to place various duties on its citizens, and if such duties are not fulfilled the 'hopes and aspirations aroused by the Constitution will be belied if the minimum of the lowest of our citizens are not met'. The court concluded as follows:

'Freedom to trade does not mean freedom to exploit. The provisions of the Constitution are not erected as barriers to progress. They provide a plan for orderly progress towards the social order contemplated by the preamble to the Constitution . . . While rights conferred under Part 3 are fundamental, the directives given under Part 4 are fundamental in the governance of the country. We see no conflict on the whole between the provisions contained in Part 3 and Part 4. They are complementary and supplementary to each other.'

This equality of status of the chapters on fundamental principles and directive principles was formulated as follows in **Keshavananda Bharati v. State of Kerala**²⁶:

“Perhaps the best way of describing the relationship between the fundamental rights of individual citizens, which imposed corresponding obligations upon the State and the directive principles, would be to look upon the directive principles as laying down the path of the country's progress towards the allied objectives and aims stated in the Preamble, with fundamental rights as the limits to that path, which could be mended or amended by displacements, replacements or curtailments or enlargements of any part according to the needs of those who had to use the path.”

The second phase was thus characterized by the Supreme Court's view that instead of the fundamental rights and directive principles being contrary to each other they were complementary in nature. The reasoning in this phase was as follows:

- The duty of the court is to establish and maintain a balance between the interests of the individual and the obligation of the state to undertake socio-economic programmes for the benefit of all the people.
- Rather than asking which of the sets of principles carries more weight, the directive principles should be used as an instrument to interpret and better understand the scope of fundamental rights.
- The courts were inclined to be more pragmatic in comparison with the previous dogmatic stance, which left very little room for the state to fulfil its constitutional duties.

Directive Principles as the Spirit of the Constitution

The current phase of development in the relationship between fundamental rights and directive principles is characterized by the activist role that the courts are playing in effecting socio-economic change. This approach is based on primarily two arguments. The first is that it was the intention of the framers of the Constitution that the state should not only be aware of what was expected of it, but that it should have constitutional support for undertaking certain socio-economic projects. The second is that, due to the conservative approach of the courts through the years, the state has not succeeded in effectively fulfilling its obligations as formulated in the directive principles. The desperate conditions, in which millions of people still found

themselves, necessitated a joint approach by the legislature, the executive and the judiciary to address the intense socio-economic disparities.

The new philosophy was reflected in the watershed case in 1977 of **Maneka Gandhi v. Union of India**.²⁷ Since this case the courts have been taking an increasingly active position in addressing the plight of the underprivileged. The Supreme Court held that the preamble and the directive principles represented the contours and parameters of public interest and that state action could limit certain individual rights if this was in the public interest.

Fundamental to this new approach is the belief that the function of the courts is not only to interpret the law but 'to make it by imaginatively sharing the passion of the Constitution for social justice'. The active role of the courts since the Maneka Gandhi case has gained such momentum that 'by- an affirmative action the courts are trying to force the government to create favourable conditions for effective realisation of the new individual, collective, diffuse rights'.

The status of the directive principles was enhanced by Art 31c, which was included in the Twenty- Fifth Amendment in 1971. This amendment and the Forty-Second Amendment in 1976 gave primacy to the directive principles in certain circumstances over fundamental rights. The amendments were introduced by the Congress Government in the belief that it was the only way to give effect to the directive principles without their being restricted by fundamental rights. The early 1980s witnessed a resurgence of the debate on fundamental rights and directive principles with the case of **Minerva Mills Ltd v. Union of India**. The petitioners owned a textile company which had been nationalized under the Sick Textile Undertaking (Nationalization) Act, 1974. The petitioners questioned the constitutional validity of the act as well as the amendment to the Constitution. Section 55 of the amendment stated that no amendment to the Constitution could be called into question by any court and that there was no limitation on the power of parliament to amend the Constitution. The court held that the amendment was void due to the fact that parliament could not distort the Constitution out of recognition by amending it. The petitioners argued that fundamental rights could not be infringed and that the disputed Art 31c 'virtually abrogates and destroys fundamental rights in normal times'.

The court declared that parliament had not the power to 'destroy' the guarantees of the fundamental rights to achieve the goals set by the directive principles.²⁸ It concluded that:

“The goals set out in Part 4 (directive principles), have therefore, to be achieved without the abrogation of the means provided for by Part 3 (fundamental rights). It is in this sense that Parts 3 and 4 together constitute the core of our Constitution and combine to form its conscience. Anything that destroys the balance between the two parts will ipso facto destroy an essential element of the basic structure of our Constitution.”

The court concluded that parliament had acted outside its authority by giving precedence to the directive principles over the fundamental rights of Arts 14 and 19.

This decision was questioned and overruled by the Supreme Court in **Sanjiv Coke Mfg Co v M/s Bharat Coking Coal Ltd.**²⁹ The court suggested that the part of the Minerva case which dealt with Art 31c was an obiter dictum and therefore not binding. The court therefore ruled that the Coking Coal Mines (Nationalization) Act, 1972 was protected by Art 31c of the Constitution and had preference over the fundamental rights on the basis that it gave effect to Art 39(6)105 of the directive principles. The decision of the court in Sanjiv Coke supports the argument that “the fundamentalness of the directives is based on natural law and they are equally fundamental along with fundamental rights”.

The uncertainty of the two conflicting decisions by the Supreme Court was settled in **State of Tamil Nadu v. L. Abu Kavier Bai.**³⁰ In this case the court held that although the directive principles were not enforceable, it was the duty of the court to make a real attempt to harmonize them with the fundamental rights. The court referred to the decision of the Constituent Assembly to provide for two separate chapters:

“We must appreciate that the reason why the founding fathers of our Constitution did not advisedly make these principles enforceable was 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.”

CONCLUSION

Therefore, it can be concluded that liberty and equality are complementary to each other and are not contradictory. In our constitution basically the “fundamental rights” represent the characteristics of liberty and “directive principles” represent the characteristics of equality. Although the directive principles may be unenforceable in nature still then they are very important for the interpretation of fundamental rights. In the paper itself it has been seen that

in most of the cases that the fundamental rights are read with the directive principles of the state policy in order to understand the meaning of the fundamental rights.

The main reason for which the framers of the Constituent Assembly made the directive principles unenforceable was that the economy of the nation was at a very pitiable condition. However now with the rapid growth of the Indian economy it can be said that the government has enough resources to make the directive principles enforceable. Therefore the judiciary has stepped up to give preference to the directive principles over fundamental rights in order to ensure justice.