



# Research Inspiration

An International Multidisciplinary e-Journal  
(Peer - reviewed, Open Accessed & Indexed)

Web: [www.researchinspiration.com](http://www.researchinspiration.com); Email: [publish1257@gmail.com](mailto:publish1257@gmail.com)

ISSN: 2455-443X

Impact Factor:  
6.331 (SJIF)

Vol.5, Issue-II, March 2020

e-ISJN: A4372-3069

## THE JUDICIARY AS AN INSTRUMENT OF SOCIAL AND ECONOMIC JUSTICE

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### Abstract:

*One of the vital ways to keep human rights safe is by preserving the prevailing role of the judiciary. Standards development by the judiciary have a significant beneficial effect of making the lives of people better and the accomplishment of the government's goals easier. In addition, these standards may ensure a better understanding of the relationship between the people and their government. When the judiciary makes equitable decisions, those decisions set a valuable precedent for the future resolution of disputes between individuals or between the State and individuals. The judicial process emanating there from provides for the effective implementation of the law, the protection of the rights of individuals and groups, and sets a standard for the subsequent equitable enforcement of the law. Consequently social economic justice receives effective protection in the courts. The Constitution has made provisions for the establishment of the Supreme Court of India to head the judicial system. The Constitution entrusts the judiciary with the administration of justice, including adjudication of disputes and interpretation of laws between citizens and the state and between the Union and a State and State inter so. The judiciary is accountable to the nation and works under the Constitution. The goal of the socio-economic revolution assured by the directive principles of state policy, has to be shared, not shunned, by the judiciary. It must protect basic human rights and pave the way for socio-economic revolution by upholding legislative measures and executive projects designed to secure socio-economic justice to the weaker sections of the population. This constitutional goal of socio-economic justice can be achieved only if the courts adopt a pragmatic and sociological approach without making much a do about the rights in interpreting socio-economic legislations, which contemplate change in the social structure, effect a transition from seridom to freedom or attempt to remake material conditions of the society. Thus "Judges are independent and in the exercise of their judicial functions they are subject to no authorities other than that of the law".*

**Key Word-** The judiciary in relations to be directive principles of state policy, Laws to ensure economic and social justice, Judiciary and modern social welfare state, The judiciary has been responsible to the

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role played by directive principles in implementation of social-economic justice under the Indian Constitutions.

The Judiciary as an instrument of social and economic justice has been influenced by the directive principles ?<sup>1</sup> Has the judiciary stood in the way of implementation of various socio-economic legislations enacted by the State to effectuate the policies enshrined in the directive principles ?<sup>2</sup> Has it been able to resolve the so called controversy about the true position and role of the directive principles and fundamental rights which has arisen since the coming into force of the constitutional ?<sup>3</sup> And lastly, to what extent the judiciary has been responsive to the role played by the directive principles in implementation of socioeconomic justice under the Indian Constitution ? Before we answer these questions, it would be useful to make a few preliminary observations. First, in the constitutional set up the articles dealing with fundamental rights guaranteed in Part III show the balance which must be held between the interest of the individual and the community<sup>4</sup>, whereas the directive principles in Part IV indicate the way in which the state should frame its laws to ensure social and economic justice. Bothe Parts possess & stature of constitutional equality. The basic distinction between these two fundamental mandates of the Constitution is that the former are enforceable in the court of Law<sup>5</sup>, while the latter are not enforceable in the court of law. The fact that one is enforceable and the other not does not affect, adversely their importance. In fact, the directive are not excluded from the cognizance of the courts of law.<sup>6</sup> They are merely made non-enforceable by a court of law. The directives being the instructions of the ultimate sovereign, the people of India, the judiciary is obliged to make use of them in interpreting legislations. And secondly, since the coming into force of the Constitution there has been a controversy about the nature of these rights. Judicial corridors were mostly wishful in playing the directive principles to a position of inferiority. This might be because of lack proper appreciation by the judiciary of their true significance and place they occupy in the Constitution.

A review of the judicial decisions makes it ample clear that the judiciary has not been able to resolve the so called conflict between the fundamental rights and the directive principles of state policy. The whole problem appears to have been caused by the words “shall not be enforceable” used in Article-37. These words led the judiciary to believe that directive principles are of lesser significance than the fundamental rights. The warning given by Dr. B. R. Ambedkar for making these principles unenforceable through the judicial process does not appear to have been brought to the notice of the Court. He said, “If any Government ignores them, they will certainly have to answer for them before the electorates at the election time.”<sup>7</sup> Therefore, the proper forum for them is the State action and not the judicial process.<sup>8</sup> In fact the directive principles indicate the way in which State should frame its laws to ensure economic and social justice.

The theory of subordination of directive principles to fundamental rights was for the first time propounded in *Champakam Dorairaj* case. Its efficacy was somewhat whittled down in *M.H. Quareshi and re Kerals Education Bill* where the Supreme Court admitted that the directive principles were badly ignored in its earlier decisions and that it would attach due importance to them in future. Here the court introduced the doctrine of harmonious construction as a new technique of interpretation and observed that it should attempt to give effect to both fundamental rights and directive principles, which must be harmoniously interpreted. However, the Court failed to apply this doctrine in the right perspective when it observed that the State was free to implement the directive principles but it must do so in such a way that its laws do not take away or abridge the fundamental rights, for otherwise the protecting provisions of Chapter III will be “a mere rope of sand”. This opinion of the Court virtually reiterates the language used in *Champakam Dorairaj* case, that the directive principles cannot override the categorical restriction imposed by Article 13 (2) on the legislative power of the State. This meant that the directives have to remain subservient to fundamental rights. The situation was further complicated because of the distortions made by other judicial pronouncements concerning the property and other allied areas. Consequently, Parliament made a number of amendments in the Constitution so as to nullify the effect of such pronouncements and to enable the State to bring about socio-economic reforms.<sup>9</sup> The validity of these amendments was upheld by the Supreme Court in *Shankri Prasad and Sajjan Singh* case.

The Crises was, however, further aggravated by the subsequent decision of the Court in *Golak Nath and Bank Nationalization* case where it attached too much sanctity to fundamental rights. Thus the whole gamut of national policy of socialization to avoid the concentration of wealth to the common detriment was frustrated as a result of these judicial pronouncements. In other words, these decisions proved as great impediments in the socio-economic development of the country. Consequently, Parliament passed a series of amendments to restore its constituent power and to establish the supremacy of economic directives contained in Article 39 (b) and (c), over fundamental rights guaranteed by Articles 14, 19 and 31. This was in a way on ascertainment of the philosophy of “socialist pattern of society”<sup>10</sup> which was explicitly embodied in Part IV of the Constitution. Fortunately, these constitutional changes were endorsed by the Supreme Court in the case of *Kasavanada Bharti* with the rider that Parliament, while amending the Constitution could not alter its basic framework and that the Court would be competent to look into the nexus between the laws giving effect to directive principles and the directive themselves. Reminding the Judiciary of the role in the modern social welfare state, Mathew, J. Soundeds “Judicial process is State action” and the judiciary is bound to apply the Directive Principles in making its judgment.<sup>11</sup> These observations make it clear that the courts should not regard fundamental rights above social welfare as had been done by it in *Golak Nath* case.

At the same time the Supreme Court reversed, though not expressly, its observations in Champakam Dorairajan and observed in Mumbai Kamgar Sabha. “Where two judicial choices are available, the contraction in conformity with the social philosophy of Part IV has preference.”<sup>12</sup>

To fulfill the mandate of the Constitution as envisaged in its preamble and directive principles and to accord constitutional sanction to the latest judicial trend, the Parliament enacted the constitution (Forty-Second Amendment) Act, 1976 which widened the scope of Article 31C to cover all the directive principles. The Amendment which serves as an eye-opener to the judiciary, clarified that the social philosophy embodied in Part IV should be taken as a guide in the interpretation of the Constitution.<sup>13</sup> In the meantime the Constitution (Forty-fourth Amendment) Act, 1970, repealed the fundamental right of property and made the same a constitutional right only.

The applications of Article 31C to all the directives was, however, assailed in *Minerva Mills* case where the Supreme Court struck down the change of 1976 and restored Article 31C to its former position. Thus the ruling in *Minerva Mills* case has once again reversed the process of upholding the social Philosophy of Part IV over the individual’s rights contained in Part III.

According to the Majority Opinion of the Court the balance between fundamental rights and directive principles should not be disturbed and both should be treated at par. On the other hand, minority thought that the enjoyment of directive principles was a matter of paramount consideration for the nation and that the balance tilted in their favour should have been maintained.

It is submitted that the Supreme Court has committed an error in restricting the scope of Article 31C. The Court’s attitude in treating the amended Article 31C as damaging the basic feature of the Constitution is purely based on not physical reasoning of the eighteenth century natural law school. Indeed, it is a fallacy to treat fundamental rights in Part III of the Constitution as basic features. “The only basic feature” in the words of Krishna Iyer is”... the omnipresent poverty, the rising cost of living, and the fall in the cost of life. Iyer maintains that the “constitutionally guaranteed right have less value today than when the Constitution began, even as the Indian rupee today has less purchasing power than when India become free.”<sup>14</sup> These observations make it clear that these rights have to be reconciled with the directive principles to make them basic in any sense. In other words, the democratic socialism spelt out in the Preamble and the directive principles of our Constitution is meant to provide the context in which the fulfillment of the fundamental rights have to be achieved. The demanding tasks of the day are dynamic legislative streaming so as to transform our conditions of socio-economic jurisprudence under the Indian Constitution compels a reversal of the majority view refusing to give primacy to directive principles over fundamental rights even by an amendment of the Constitution. The directive principles which direct the State to promote the welfare of the people are no longer pious-wish back age but a programme of action.<sup>15</sup>

The courts are under a constitutional obligation to uphold every State measure that translates into living law the preamble framers` promise of social justice reiterated in Article 38 of the Constitution. Therefore, the judge must realize that they are not monks or scientists, but participants in the living stream of our national life. They must ensure that for a common man our State should mean a Welfare State and not a farewell state... farewell to the poor, their prosperity and liberty.

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