CONSTITUTIONAL AMENDMENTS AND DIRECTIVE PRINCIPLES

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D E C L A R A T I O N

CERTIFIED that the material presented in this dissertation has not been submitted for any other diploma or degree of this or any other University.

Supervisor

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Preface

The present trends in the Constitutional History of India are making the study of the Indian Constitution very interesting and important. Many new problems have been posed for fresh considerations. But it has been found that, but for Dr. K.C. Markandan's valuable work, not much work has been done on the study of the Directive Principles of State Policy which have been declared by the Constitution as "fundamental in the governance of the country".

Fresh issues were posed by the decisions in the Golak Nath and the Bank Nationalization Case regarding the nature of and the real purpose behind the Directive Principles. Apart from this a notion is gaining momentum in the country that the Constitution is being reduced to a mockery by too frequent amendments. But, what is the reality behind these constitutional amendments?

These are the critical constitutional issues of the Indian Constitution which are the aim of this study. Within the limited volume of this dissertation, I am sure, justice has been done to the study of these vital issues.

In the end, I express my sincere thanks and deep gratitude to Prof. Rasheeduddin Khan and S. Kaviraj who

inspired and guided me at all junctures during the course of this study.

I am also grateful to Prof. Randhir Singh, Dr. R.N. Mathur and Prof. M.P. Jain for their valuable opinions and guidance.

I also express my sincere thanks to Sh. L.N. Misra who finally typed this dissertation.

With the guidance of particularly, Prof. Rasheeduddin Khan, I have tried to do justice to this study, however, the lapses, whatsoever, are my own.

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C O N T E N T S

CHAPTER I

CHAPTER I

INTRODUCTION

Probably no other part of the Indian Constitution has been so much controversial, in its nature and contents, as Part IV. In regard to Part IV, containing the 'Directive Principles of State Policy', it is the interpretation of Article 13 and Article 37 which have given rise to much of the controversy. The Indian Constitution contains two sets of rights in parts III and IV. While part III of the Indian Constitution contains the guaranteed rights of the Indian citizens which are negative and static in character in the sense that the state shall refrain from touching them, part IV contains certain 'positive obligations of the state'[1] incorporated in the Indian Constitution for the general guidance of the appropriate legislatures and governments in India (hereafter referred to collectively as 'the state').[2] No doubt, 'the leaders of the Independence Movement had drawn no distinction between the positive and negative obligations of the state[3], but when the Indian Constitution was framed the constituent Assembly recognised them as distinct provisions. In fact, it was B.N. Rau, the Constitutional Advisor to the Constituent Assembly of India, who was of the opinion that a distinction should be made between the

the two sets of rights. His suggestion was mainly based on the scheme of the Irish Constitution, which deals first with "fundamental rights", strictly so called, and then with "directive principles of social policy", the latter being expressly excluded from the purview of the courts.[4]

Apart from Sir B.N. Rau, notes on Fundamental Rights were also submitted by Prof. K.T. Shah, Shri K.M. Munshi and Dr. Ambedkar. The note submitted by Prof. K.T. Shah contained a list of 'economic and social rights' and was quite elaborate in its scheme. Certainly, the socialist-minded members of the Constituent Assembly were very keen on getting incorporated these 'Directive Principles of State Policy' in the Indian Constitution, yet their idea was first injected in the Constituent Assembly by Sir B.N. Rau. However, their inclusion was even recommended by the Advisory Committee on Fundamental Rights. The Committee recommended:

> "We have come to the conclusion that in addition to these fundamental rights, the Constitution should include certain directives of State Policy which though not cognisable in any court of law, should be regarded as fundamental in the governance of the country." [5]

This, however, should not lead us to a view that there was complete consensus on the inclusion of these directives. According to K.M. Munshi:

> "There was considerable discussion as to whether the directive principles should be set forth in the Constitution. Alladi Krishnaswami opposed it; so did I. Any Directive Principle prescribed at that stage, we thought, could not meet the needs of changing situations and Parliament should be left to decide its own policy, subject to Fundamental Rights."[6]

Apart from some Indian leaders, the inclusion of these directives has even been criticized by some eminent foreign scholars like Ivor Jennings and K.C. Wheare. According to Ivor Jennings, the ghosts of Sidney and Beatrice Webb stalk through the pages of the entire text and that the inclusion of Part IV in the Constitution envisages "Fabian Socialism without the word 'socialism' for only the nationalisation of the means of production, distribution, and exchange is missing."[7] K.C. Wheare, in his analysis of the Indian Constitution, observed:

> "Difficult to justify to the practical-minded British observer, perhaps, is the large section embodying the 'Directive Principles of State Policy'. As these principles cannot be enforced in any court, they amount to a little more than a manifesto of aims and aspirations."[8]

Inspite of such a criticism, it will not be wise to dismiss these Directive Principles as being useless. They have their utility is an established fact to-day.

Though B.N. Rau's suggestion of incorporating both, the justiciable and non-justiciable, rights was finally accepted by the Constituent Assembly of India, yet the difficulty about making a distinction between them was expressed. Pointing to this difficulty Mr. Somnath Lahiri Said:

> "It is rather difficult to make a fine distinction between what are justiciable rights and what are not. For instance, when we make a provision that people should have the right to work, that is, unemployment should not be allowed to exist in our country, it would be a social right. If you make it an inalienable provision of our fundamental rights, naturally it would have to be justiciable. Similarly, take the question of nationalisation of land. If we want to say that land belongs to the people and to nobody else, that would be a social and fundamental right no doubt. But nevertheless, it will also be a justiciable right, if that is to be given effect to. Therefore, it is rather arbitrary to make a fine distinction between what are justiciable rights and what are social and economic rights."[9]

Thus we find, while some question the very inclusion of these 'directive principles', there are yet others who have expressed controversial views about their nature. This emphasizes the need for a careful reconsideration of the very idea and the purposes that led our Constituent Assembly to incorporate these 'directives' in the Indian Constitution.

Again conflicting views have been expressed about the relationship between the 'Fundamental Rights' and the 'Directive Principles of State Policy'. There are many like V.G. Ramachandran, M.C. Setalvad, and Mr. Justice K.S. Hegde who consider that there is no conflict between the two sets of provisions. Mr. Justice K.S. Hegde while delivering the — 'B.N. Rau Memorial Lectures', in Delhi, said:

"To my mind the Fundamental Rights and the Directive Principles are complementary and they supplement each other."[10]

Even according to Mr. K. Subba Rao (former Chief Justice of India), the conflict between the Fundamental Rights and the Directive Principles of State Policy is more apparent than real because'the Indian Constitution has avoided this conflict and rigid positions and provided pragmatism as the road to the new social order'.[11]

As against this view about the relationship between the Fundamental Rights and the Directive Principles of State Policy, there is an opposite view according to which there exists a conflict between them. Such a view has been expressed by D.D. Basu, in his famous 'Commentaries on the Constitution of India'. According to Basu, 'the question of priority in case of conflict between the two classes of provisions may easily arise'[12] and that 'the Directives cannot override the

Fundamental Rights'. D.D. Basu however, accepts that, in case of such a conflict, 'the principle of harmonious construction' should be evolved. M.C. Setalvad also recommended such a principle.

Such conflicts have come before the Supreme Court of India in many cases. In this connection the Golak Nath case and the famous Bank Nationalisation case are of immense importance. In the Golak Nath case it was contended that Article 13 makes the 'Fundamental Rights' immutable and that the 'State' cannot take away these rights even by an amendment of the Constitution. In the famous 'Bank Nationalisation' case also the Supreme Court set aside the principle of 'public purpose' and interpretted 'compensation' to mean 'a just equivalent', inspite of the Fourth Ammendment Act of 1955 which amended the Articles 31 and 31A only to avoid the dispute over the validity of the 'compensation' and 'the principles governing compensation'.

This shows that the conflict between the Fundamental Rights and the Directive Principles of State Policy has come to the surface in many cases and that in cases of such conflicts the Judiciary has considered the first as 'fundamental'. This problem again is of vital importance as has been admitted even by the present ruling party (Congress) through point 14 and 15 of its 'Election Manifesto' of 1971. In these points the present ruling party admits that effective implementation of the Directive Principles of State Policy has become impossible as a result of certain recent judicial pronouncements (referred

above) and that constitutional remedies and amendments are necessary to overcome the impediments in the path of social justice.[13] It is therefore important that the extent and the nature of this conflict should be examined carefully. A cafeful comparison between the constitutional positions and nature of the two sets of provisions in Part III and Part IV is necessary inspite of much work that has been done earlier on this subject.

Associated with the Directive Principles of State Policy, is the problem of Constitutional Amendments. It is difficult for a newly liberated and developing country, particularly traditional, like India, where the Constitution has envisaged the establishment of a 'socialistic pattern of society', where the aspirations of the people are well high and where the economy is comparatively more backward, to avoid Constitutional Amendments. In India, particularly, the problem of Constitutional Amendments becomes more important because the Indian Constitution has been so far amended no less than 29 times for various reasons.

While delivering 'Lajpat Rai Memorial Lectures' K.Subba Rao, former Chief Justice of India, observed about the Constitutional Amendments made in the Indian Constitution:

> ".....the constitutional design has been disturbed by inconsistent and incongruous additions. A brilliant architectural piece was destroyed of its purity of design by the mundane additions of the lay occupant."[14]

'Why so frequent Constitutional Amendments have been made in the Indian Constitution' is an important question. Is it to be answered in the light of the requirements of a changing society or in the light of the constitutional impediments or contradictions or in the light of giving practical shape to the Directive Principles which have not been made enforceable by the court of laws? This is another big question which has to be considered and answered.

These are some critical problems of the Indian Constitution which are even now wrapped in controversies. The purpose of this dissertation is to consider, investigate and answer these controversial issues regarding the 'Directive Principles of State Policy' and the 'Constitutional Ammendments'. These are vital provisions which are connected with the process and the substance of socio-economic changes in India, the changes which the'Directive Principles of State Policy' envisage and the changes which, wherever they have been found necessary, have been furthered by the Constitutional Amendments.

NOTES

1. Granville Austin : "The Indian Constitution Cornerstone of a Nation", Clarendon Press, Oxford, 1966, p.52.

2. B.N. Rau : "India's Constitution in the Making", Allied Publishers, p.276.

3. G. Austin : "The Indian Constitution Cornerstone of a Nation", Calarendon Press, Oxford, 1966, p. 52.

4. B.N. Rau : "India's Constitution in the Making" , Allied Publishers, p. 275.

5. (Para 2), Report of the Advisory Committee on Fundamental Rights.

6. K.M. Munshi: "Indian Constitutional Documents, Vol.I, Pilgrimage to Freedom (1902-1950)", Bhartiya Vidya Bhawan, Bombay, p.296.

7. Ivor Jennings: "Some Characteristics of the Indian Constitution", p. 13.

8. Article of K.C. Wheare: "India's New Constitution Analysed", Published in Allahabad Law Journal 21.(1950)

9. Constituent Assembly Debates, Vol.III, No.2, April 29, 1947.

10. Mr. Justice K.S. Hegde: "The Directive Principles of State Policy in the Constitution of India" (The Second B.N. Rau Memorial Lecture), Pub. The Institute of Constitutional And Parliamentary Studies, New Delhi, 1972, p.47.

11. K.Subba Rao: "Conflicts in Indian Polity" (Lajpat Rai Memorial Lectures): Pub. S.Chand & Co. (Pvt.)Ltd., New Delhi, 1970, p.29.

12. D.D. Basu:"Commentary on the Constitution of India", IV Edition, Jan. 1962, S.C. Sarkar & Sons (Pvt.) Ltd., Calcutta-12, p.306.

13. Election Manifesto, issued by the 'Indian National Congress' for 1971 Elections, pp..5&6, Points 14 & 15.

14. K.Subba Rao : 'Conflicts in Indian Polity' (Lajpat Rai Memorial Lectures), S.Chand & Co.(Pvt.) Ltd., New Delhi, 1970, p.29.

CHAPTER II

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Adoption of the Fundamental Rights and the Directive Principles of State Policy.

The Preamble to the Constitution of India claims to constitute India into a 'Sovereign Democratic Republic' and "the success or failure of a democracy depends largely on the extent to which civil liberties are enjoyed by the citizens in general".[1] Thus, inclusion of a Bill of rights was a certainty in India. Even the Karachi session of the Congress as far back as 1930 strongly favoured the inclusion of the fundamental rights in the Indian Constitution. Apart from this, the Cabinet Mission Plan of 1946 had favoured incorporation of the fundamental rights of citizens, though it laid more emphasis on the minority rights. As a matter of fact, "the Fundamental Rights and Directive Principles had their roots deep in the struggle for independence. And they were included in the Constitution in the hope and expectation that one day the tree of true liberty would bloom in India."[2] Attempts were made even prior to independence to persuade the British government to guaranttee some fundamental rights to the Indians mainly with a view to safeguard the interests of the minority communities in India. But it was not possible then, as K.C. Markandan observes:

> "Being a subject country under Britain which itself did not have either a written Constitution or a Declaration of Fundamental Rights, India till she attained independence and framed her own Constitution did not have a Bill of Rights for her people."[3]

Therefore, when we gained the right to frame our own Constitution, the Constituent Assembly with a overwhelming majority favoured the inclusion of Fundamental Rights in the Constitution.

History of Fundamental Rights is the history of man's development as a member of a civilized community. Human history is full of conflicts between the absolutism of state authority and consistent demand by man for more and mor individual liberties. Certain individual rights have been considered very essential for man's personal development at all times and by all social scientists. Since the eighteenth century a tendency is found almost in all the leading world constitutions to provide for a Bill of Rights. The greatest and oldest of such documents, the Magna Carta (1215) of Britain bears a testimony to this, whereby a vast area of liberties were granted to his subjects through a contract by King John. This was followed by the Continental Congress in Philadelphia, when it adopted the great 'Declaration of Independence' on July 4, 1776. The following extract from 'the Declaration of Independence', primarily the work of Thomas Jefferson, boldly claims a number of human rights which are

considered natural and fundamental for all human beings:

> "When in the course of human events it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation."
>
> "We hold these truths to be self-evidant, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness."[4]

While our constitution was in the process of being framed, even the General Assembly of the U.N.O. adopted 'the Universal Declaration of Human Rights' on December 10, 1948. The impact of all these world-wide Constitutional developments was quite immense on the founding fathers of our Constitution. According to Shri K.M. Munshi:

> "Most members of the Constituent Assembly, other than those owing allegiance to the Muslim League, were from the beginning of the view that a modern democratic constitution, such as the one we were framing, should contain guarantees securing fundamental freedoms to the citizens."[5]

To complete the task of incorporating the fundamental rights of the people in the Indian Constitution, a sub-Committee on Fundamental Rights of the Advisory Committee of the Constituent Assembly was appointed. This Sub-Committee consisted of the following members:

Kriplani, Alladi Krishnaswamy Aiyar, Maulana Azad, Sardar Harnam Singh, Ambedkar, K.T. Shah, Rajkumari Amrit Kaur, M.R. Masani and K.M. Munshi. To this list Mrs. Hansa Mehta, K.M. Panikkar and Jairamdas Daulatram were also later nominated.

Even prior to the meeting of this Sub-Committee, B.N. Rau, the Constitutional Advisor to the Constituent Assembly, had submitted a note on the Fundamental Rights prepared after a comparative survey of the Bill of Rights in other Constitutions. Similar noted on the Fundamental Rights were also submitted by B.R. Ambedkar, Prof. K.T. Shah and K.M. Munshi. Such notes also followed from Sardar Harnam Singh and Sir Alladi Krishnaswamy Ayyar. Out of all these notes the most important ones were those submitted by Prof. K.T. Shah, K.M. Munshi, B.R. Ambedkar and B.N. Rau. The draft accompanying note of K.M. Munshi contained fourteen articles including economic, political and social rights. Dr. B.R. Ambedkar's memorendum was spread over two sections containing various fundamental rights which he considered inalienable. Criticizing Prof. K.T. Shah's note, in his book 'Pilgrimage to Freedom', writes K.M. Munshi:

> "Of us all, K.T. Shah, the born leftist intellectual, was the most bellicose. On 23rd December 1946, he submitted to the President a note, almost a treatise, on Fundamental Rights; it was of such a drastic character that, if it was accepted, no effective government would be possible in this country."[6]

But a study of the note submitted by Prof. K.T. Shah reveals that by and large it was an elaborate and balanced Bill of Rights containing three categories of Fundamental Rights: i) Civil Rights, ii) Political Rights and iii) Economic and Social Rights. In fact it was a Bill of Rights which placed many of the so called 'Directive Principles of State Policy', on an equal footing along with the fundamental rights. Had this scheme been accepted, there would have been no controversy now over the comparative importance of the fundamental rights and the directive principles. Prof. K.T. Shah thus emphasized the importance of the 'Economic and Social Rights':

> "The most important group, however, of these rights is the third category of Economic and Social Rights. Based on the primary Right to life, in the wider sense now a days given to it, these rights are indispensable, if the two preceding group of Rights are not to be meaningless. The Right to free Election, without a full belling would be a mockery."
>
> "Being so all-important, these Rights of individual must be treated as in some way the responsibilities of the entire civilized society, even though, immediately, they may be the obligation of each given state."[7]

But those who were to man the government on the basis of the framed constitution knew that the scarce resources of the country would make it an headache for them if they accepted and adopted such a draft.

Last of the drafts on Fundamental Rights was submitted by Sir B.N. Rau 'who never departed from his balanced way of looking at things and always spoke with judicial detachment'.[8] As a matter of fact, it was Sir B.N. Rau who took the lead in recommending two sets of rights; justiciable and unjusticiable. For the purpose of framing the Fundamental Rights, he recommended:

".....it is useful to recognise a distinction between two broad classes of rights; there are certain rights which require positive action by the state and which can be guaranteed only so far as such action is practicable, while others merely require that the state shall abstain from prejudicial action."[9]

Thus the idea of incorporating two sets of rights was injected in the Constituent Assembly. Tracing the growth of these fundamental rights in Indian constitutional system, Granville Austin observes:

"Although the Fundamental Rights and Directive Princi-ples appear in the Constitution as distinct entities, it was the Assembly that separated them; the leaders of the Independence Movement had drawn no distinction between the positive and negative obligations of the state. Both types of rights had developed as a common demand....."[10]

This is further proved by the fact that neither the Karachi Resolution nor the 'Objectives Resolution', moved by Pt. Nehru in the Constituent Assembly on 15th December, 1946, made any mention about two distinct categories of fundamental

rights. On the other hand it is significant to note that both these resolutions made a strong mention about general r rights. Nevertheless, Sir B.N. Rau, influenced by the scheme of rights in the Irish Constitution, recommended that two separate categories of rights should be incorporated in the Indian Constitution. In his recommendation on the subject, he also cited a similar distinction recognized in Dr. Lauterpacht's 'International Bill of Rights of Man' (1945). Sir B.N. Rau Thus recommended:

> "We may usefully follow this plan and separate the two classes of rights: Part A (now IV) may deal with Fundamental Principles of State Policy and Part B (now III) with Fundamental Rights strictly so called.[11]

According to K.M. Munshi:

> "There was considerable discussion as to whether the directive principles should be set forth in the Constitution. Alladi Krishnaswamy opposed it; so did I (K.M. Munshi)."[12]

At this stage it is significant to note that this Sub-Committee on Fundamental Rights was by and large a Committee composed of most conservative and individualist elements with one sole exception of Prof. K.T. Shah as an extreme socialist.

A careful study of the Constituent Assembly Debates can reveal this fact that it was Prof. K.T. Shah, with some support from H.V. Kamath, Nazirudddin Ahmed and Prof. Shibban Lal Saxena, who fought a historical battle in the

Constituent Assembly for making these Directive Principles more important and effective. Nevertheless, most of his most valuable suggestions and recommendations were set aside. If these Directive Principles were made 'fundamental in the governance of the country', it was only done under the influence of the moderates like Pt. Jawahar Lal Nehru and Dr. B.R. Ambedkar.

Finally, the Constituent Assembly decided to incorporate these principles of state policy in the Indian Constitution. One most fundamental reason for incorporating them was the initial commitment of the Congress Party to socialism. This initial commitment of the Congress Party to socialism is proved by the adoption of the Karachi Resolution and also by the adoption of the 'Objectives Resolution'moved in the Constituent Assembly by Pt. Nehru on 15th December, 1946. According to Granville Austin:

> "The Assembly's belief in parliamentary government was also strengthened in large measure by the intellectual or emotional commitment of many members to socialism."[13]

Norman D.Palmer also agrees with this view but he has raised serious doubts about the nature of this socialism of the Indian leaders. He, thus, writes:

> "... Most of the prominent leaders of Indian political life have been and are professed socialists, although it is often difficult to determine exactly what socialism means to them."[14]

It will not be strange to say that one cannot find so many varieties of socialism in any other country of the world as one can find in India. Joad's statement that socialism is just like a cap and so has a very flexible shape, is very much proved in India because, in India, the meaning of socialism changes from leader to leader and region to region and to add from party to party. The existence of many political parties with some form of socialist ideologies bears a testimony to this fact.

The Constituent Assembly also felt inspired by the United Nations' resolution on the Universal Declaration of Human Rights. It was during the year 1947 when the Indian Constituent Assembly was very seriously working to frame the Indian Constitution when the Commission on Human Rights was appointed by the United Nations Organisation, with Mrs. Eleanor D. Roosevelt as the Chairman. Again it was during the last months of 1948, the time when the Directive Principles were also being discussed, when the U.N.O. finally adopted the Universal Declaration of Human Rights.

Apart from this, there is no doubt that the Constituent Assembly was working under the Gandhian impact. Though Mahatama Gandhi, after independence, was no longer the same driving force for the Congress, yet it will be difficult to disagree with the fact that there was a considerable Gandhian impact under which the Constituent Assembly functioned.

One clear proof of this fact is the opening remarks of respect to the father of the Nation by Pt. Nehru while moving the Objectives Resolution and also the incorporation of the provisions on the Village Panchayats, Community Development and small-scale industries in Chapter IV of the Indian Constitution.

At the same time, the Constituent Assembly was also aware of the rise of the welfare states. According to Norman D. Palmer the Indian Constituent Assembly agreed to seven basic decisions regarding the nature of the new state, and out of these seven one was that India should be a welfare state.[15] In the words of Norman D. Palmer:

> "...The basic aims of a welfare state were clearly foreshadowed in the preamble to the Constitution, and in virtually all of Part IV of the Constitution, containing the Directive Principles of State Policy."[16]

Even Umakant Tiwari holds identical views on this point:

> "The Advisory Committee, in formulating these directives of the State Policy, was not writing on a clean slate. With the rise of the ideal of a welfare state, it had become a widespread practice to provide in the Constitution for social and economic policy. In the post-war period, several constitutions stated such directives to be followed by a state. Naturally its impact was also felt in India."[17]

Most of such impact on the founding fathers of our constitution came from the Irish Constitution. Sir B.N. Rau, while recommending the inclusion of the Fundamental Rights and the Directive Prinkiples of State Policy was much influenced by the American and the Irish Constitutions respectively. He wanted the Indian Constituent Assembly to incorporate the Directive Principles in the Indian Constitution on the pattern of the Irish Constitution and the Fundamental Rights on the pattern of the American Constitution. Thus the Indian Constituent Assembly looked for guidence, mainly, from the Directive Principles of Social Policy as included in the Irish Constitution while incorporating the Directive Principles of State Policy in the Indian Constitution. As a matter of fact most of the directives in the Indian Constitution have been taken from the Irish Constitution.

Thus under many influences the Drafting Committee of the Indian Constitution included the Directivo Principles of State Policy, spread from article 28 to 40, in the original Draft of the Constitution which came up for discussion in the Contituent Assembly on 19th November and finally adopted on 25th November, 1948. In the adopted constitution these Directive Principles are included in Part IV (separate Part) spread from article 36 to 51.

Though a detailed discussion of the various provisions will not suit the size of this work yet it is important, at this stage, to throw some light on them. For a proper understanding of the various provisions contained in Part IV we can divide them into five heads. Firstly, there are those provisions which define the nature of these Directive Principles. These provisions are formed by Article 36 and 37. While Article 36 subscribes to the definition of state, Article 37 defines the nature of these Directive Principles. What Article 37 explains can be summed up as follows:

i) that Part IV contains certain principles for the guidence of the state;
ii) that these principles shall not be enforceable by any court;
iii) that, nevertheless, these principles are fundamental in the governance of the country;
iv) and that it shall be the duty of the state to apply these principles in making laws.

Thus, we can say that a study of Article 37 is of great importance to really understand the nature of the Directive Principles and to really appreciate their purpose.

Secondly, there are those provisions which have been incorporated for the guidance of the socio-economic policy of the state. Those comprise of Articles 38,39,44,47 and 48. Article 38 directs the state to promote the welfare of the people and secure social, economic and political justice to

all citizens while Article 39 directs the state to preserve the economic, social and physical interests of the worker-citizens and to follow an economic policy to stop the concentration of wealth and the means of production. Article 44 directs the state to give the citizens, a uniform civil code. Article 47 directs the state to pursue the policy of prohibition and to raise the level of nutrition and the standard of living of all people. Article 48 directs the state to organise agriculture and animal husbandry on modern and scientific lines and protect the milch cattle against slaughter.

Thirdly, there are those provisions which are in the nature of certain socio-economic rights, unjusticiable in character. Article 41 speaks of the right to work, to education and to public assistance while Article 42 speaks of the right to just and human conditions of work. Article 43 provides that the workers should be entitled to a living wage and that the state should promote cottage industries. Article 45 provides for free and compulsory education for children and Article 46 provides for the promotion of educational and economic interests of the worker sections of the society. Though these socio-economic rights are not justiciable yet they are of vital importance.

Fourthly, there are provisions for the guidence of the administrative policy of the State. These comprise of Articles 40, 49 and 50. Article 40 directs the state to organise village panchayats as the units of self-government. This Article clearly reflects the Gandhian impact on the Constitution makers. Article 49 expects the state to protect monuments, places and objects of national importance. Apart from these Article 50 directs the state to separate judiciary from executive, a provision which is quite fundamental to the cause of democracy in a country.

Finally, there is Article 51 which directs the State to promote international peace and security and follow the international policy of peaceful co-existence.

Let us now proceed to study the nature of the Directive Principles and compare their constitutional Position with that of the Fundamental Rights.

NOTES

1. M.V. Pylee : "Constitutional Government In India", Asia Publishing House, 1965,p.187 (Ch.XIII).

2. Granville Austin : "The Indian Constitution, Cornerstone of a Nation", Clarendon Press Oxford, 1966, p 30 (Ch.III).

3. K.C. Markandan: "Directive Principles in the Indian Constitution", Allied Publishers Private Limited, 1966, p.28 (Ch.II).

4. Opening sentences from "the Declaration of Independence", Quoted from the Constitution of the United States of America, p. 1, U.S.I.S. Publication.

5. K.M. Munshi : "Pilgrimage to Freedom" Vol. I, Bhartiya Vidya Bhavan, p. 293, Part XIII, (Ch. I.)

6. op. cit., p.295, Part XIII, (Ch.I).

7. Quoted from the note of Prof. K.T. Shah on "Fundamental Rights".

8. K.M. Munshi : "Pilgrimage to Freedom", Bhartiya Vidya Bhavan, 1967, p. 295, Part XIII, (Ch.I).

9. B.N. Rau : "India's Constitution in the Making", Allied Publishers, p. 258.

10. Granville Austin: "The Indian Constitution, Cornerstone of Nation", Clarendon Press, Oxford, 1966, p.52.

11. B.N. Rau : "India's Constitution in the Making", Allied Publishers, pp. 275-76.

12. K.M. Munshi: "Pilgrimage to Freedom Vol. I", Bhartiya Vidya Bhavan, 1957, p. 296.

13. Granville Austin : "The Indian Constitution, Cornerstone of a Nation", Clarendon Press, Oxford, 1966, p. 41 Ch. II.

14. Norman D. Palmer: "The Indian Political System", George Allen & Unwin Ltd., London, 1961, p. 104.

15. Norman D. Palmer: "The Indian Political System", George Allen & Unwin Ltd., London, 1961, p.93.

16. op.cit., p. 104.

17. Umakant Tiwari: "The Making of the Indian Constitution", Central Book Depot, Allahabad, 1967, p. 153, Ch. 6.

CHAPTER III

C H A P T E R III

Nature of the Directive Principles and Comparison of their Constitutional Position with that of the Fundamental Rights.

There is a deep controversy which persists even today on the nature of the Directive Principles of State Policy and their constitutional position in comparision to the Fundamental Rights. There is a great need to carefully reconsider some questions on the Directive Principles as quite contradictory views are available on them. The two such important questions which will be investigated in this Chapter are; i) Are the Directive Principles and the Fundamental Rights similar provisions or they are different from each other? And, ii) Which of them enjoys a better Constitutional position in India?

So far as the first question is concerned, there are two prominent sets of views. There is one which considers the Directive Principles and the Fundamental Rights to be similar in character. They are similar because they both are rights. While Part III, with the title 'Fundamental Rights', contains some Natural Human Rights, Part IV also contains rights which are socio-economic in nature. One is not less important than the other. While one is necessary to protect individual liberties against encroachment by the

state, the other is necessary to urge the state to further the socio-economic interests of all in the society. Many members in the Constituent Assembly considered both the categories as rights as they were considered in the stream of the national movement. Even the sub-Committee on Fundamental Rights with Sardar Patel as its Chairman had recommended their inclusion as rights, ofcourse injusticiable, with the title 'Fundamental Principles of State Policy'. Some members who supported their inclusion, like Kazi Syed Karimuddin, H.V. Kamath and others, in the words of K.C. Markandan, were of the opinion:

> "If this Chapter was to be incorporated in the Constitution, they (supporters) preferred the substitution of the word 'Fundamental' as suggested by Sardar Vallabhbhai Patel in the Advisory Committee's Report on Fundamental Rights, for there was no difference between the rights contained in the chapter on the Directives and/the previous one on Fundamental Rights except for the fact that the former was justiciable and the latter justiciable."[1]

As a matter of fact Prof. K.T. Shah, one of the Chief advocates of socio-economic rights considered the Directives as socio-economic rights of equal importance like other rights and in his submitted Draft on Fundamental Rights had included them with other Fundamental Rights. Prof. K.T. Shah did so because he considered:

> "..... true individual freedom cannot exist without economic security and independence. Necessitous men are not free men."[2]

Even Granville Austin considers both the Parts III & IV, not only similar in nature but also having identical objectives. According to Him :

"The Indian Constitution is first and foremost a social document. The majority of its provisions are either directly aimed at furthering the goals of the social revolution or attempt to foster this revolution by establishing the conditions necessary for its achievement. Yet despite the permeation of the entire constitution by the aim of national renascence, the core of the commitment to the social revolution lies in Parts III and IV, in the Fundamental Rights and in the Directive Principles of State Policy. These are the conscience of the Constitution."[3]

Blackshield also does not consider these two as distinct from each other. According to him:

"Above all, the distinction between Part III and Part IV is not that Part III, being justiciable, is the responsibility of the courts (and not of the Parliament), whefeas Part IV, not being justiciable, is the responsibility of the Parliament (and not of the courts). All the moral rights reflected in Part III and part IV are the responsibility of the organs of government."[4]

V.G. Ramachandran also considers the two Parts not only similar but also complimentary to each other. According to him :

"Fundamental Rights outlined in Part III of the Constitution and Directive Principles of State Policy in this Part IV are complementary to one another and are the basic foundations on which the structure of our Constitution is built, giving it all the scope to herald, promote and foster a truly socialist society and Welfare State."[5]

Identical views were expressed by Mr. Justice K.S. Hegde, while delivering 'The Second B.N. Rau Memorial Lecture':

"To my mind the Fundamental Rights and the Directive Principles are complementary and they supplement each other ...."[6]

Even Pt. Nehru while introducing the Constitution First Amendment in 1951 told Lok Sabha that the Fundamental Rights and the Directive Principles were both, rights.[7]

Thus we see that the first view possesses considerable strength. The 'Fundamental Rights' and 'Directive Principles' appear quite similar in character as rights with only one difference, that is, while the first require the State to abstain from doing certain things, the second require a positive action on the part of the State which can be guaranteed only so far as such action is practicable.

The second view is that these two are different provisions, while one contains individual's rights the other contains state's duties. According to this view, strictly speaking, the Directive Principles cannot be regarded as rights because they have not been made justiciable. But

before we consider this view it is necessary to consider some important views expressed in the Constituent Assembly.

It is important to recall here that the Sub-Committee on Fundamental Rights was already having on its table the recommendation of Sir B.N. Rau who was of the opinion that following the Irish precedent our Constitution should also have two sets of human rights; justiciable and unjusticiable. Speaking on the Supplementary Report of the Sub-Committee on Directives, Sardar Patel said in the Constituent Assembly:

> "There are two parts of the report: one contained Fundamental Rights which were justiciable and the other part of the report referred to Fundamental Rights which were not justiciable but were directives more or less which would be useful for the governance of the country."[8]

It is again worth-while to note that the Directive Principles were originally designated as Fundamental Rights. It was later that the two were differentiated and drafted as Fundamental Rights and Fundamental Principles of State Policy, as recommended by the Sub-Committee on Fundamental Rights. In the final draft, however, these principles of social policy were named as 'Directive Principles' instead of 'Fundamental Principles', the original designation. In the beginning the very move to include the Directive Principles was opposed by some members like K.M. Munshi and Alladi Krishnaswamy. Later, however, it was resolved that they should

be incorporated along with the Fundamental Rights.

When the Draft dealing with the Directive Principles of State Policy came up for discussion before the Constituent Assembly, diverse views were expressed by many members, over their inclusion in the Constitution. But it is important to note here that their inclusion was opposed on different grounds and because of different objections. These were members like T.T. Krishnamachari who opposed the incorporation of the Directive Principles outright. While commenting on Dr. Ambedkar's Amendment, Sh. T.T. Krishnamachari said in the Constituent Assembly:

> "Probably, he (Dr. B.R. Ambedkar) felt that in view of the fact that quite a number of new items have crept into this Part which might be called a veritable dust-bin of sentiment, he might also find a place in it for this particular amendment of his, I see no objection actually to this or any other amendment coming in because this dust-bin seems to be sufficiently resilient as to permit any individual of this House to ride his Hobby-horse into it."[9]

There were other members also who did not attach much importance to them because of two reasons: firstly, they had been designated as 'Directive Principles' as against 'Fundamental Principles' as originally suggested by the Advisory Committee on Fundamental Rights, and secondly, they had not been made justiciable. It is for these reasons that

Kazi Syed Karimuddin considered their inclusion 'meaningless' if they were not binding on the state. Speaking earlier on 5th November, on the Directive Principles, he said:

"What is stated in Part IV is vague. What we want today is not mere talk of economic or philosophical ideals. We want an economic pattern of the country in which the lot of the poor masses can be improved. In this Constitution which is framed, there is neither a promise nor a declaration for the nationalization of the industries. There is no promise for the abolition of Zamindari. It is nothing but a draft. It is nothing but avoiding the whole issue in a Constitution of a Free India. Not to have a definite economic pattern in the Constitution of Free India is a great tragedy."[11]

Kazi Syed Karimuddin was thus against laying down such generalisations as have been laid down in the chapter containing Directive Principles. Even Naziruddin Ahmad, a representative from West Bengal, was against incorporating 'pious principles which do not have the backing of the law.' It is therefore that he said:

".....I submit that if you introduce pious principles without making them justiciable, it will be something like resolutions made on New Year's day which are broken at the end of January."[12]

For the same reasons even Prof. K.T. Shah criticized these Directives for their vagueness. Prof. K.T. Shah remarked:

> "If I may say so without any offence, it is a kind of provision which encourages the court and also the executive not to worry about whatever is said in the Constitution, but to act only at their own convenience and on their practicability, and go on with it. It looks to me like a cheque on a bank payable when able viz, only if the resources of the bank permit."[13]

It was for the same reasons, again, that Dr. P.S. Deshmukh criticized their incorporation in the Constitution and said in the constituent Assembly:

> "The Honourable Dr. Ambedkar was at pains to justify the inclusion of the Directive Principles of administration in the body of the Constitution. He was constrained to admit that if he had the choice he would have relegated them to the schedule in the Constitution. That I think is very clear and explicit admission on his part. Really speaking there is no place for them in the Constitution. It is a sort of an election manifesto....."[14]

In the light of these objections, in order to make these Directive Principles more important and realistic, two very important Amendments were moved in the Constituent Assembly; one by Shri H.V. Kamath, supported by Kazi Syed Karimuddin, Naziruddin Ahmad and Prof. K.T. Shah, and the other by Prof. K.T. Shah, supported by the above members and

Dr. P.S. Deshmukh. Shri H.V. Kamath, through his Amendment No. 838, wanted:

> "That in the heading under Part IV for the word 'Directive' the 'Fundamental' be substituted."

H.V. Kamath gave two reasons for moving his amendment and getting the Directives designated as 'Fundamental' Principles. Speaking for these reasons he said:

> ".....Firstly, we have been told that Part III & IV of the Draft Constitution embody certain rights, Part III being justiciable rights and Part IV being unjusticiable rights. But both are looked upon or regarded as rights which are fundamental."[15]

And secondly,

> ".....on page 48 of this booklet which contains the reports of the Committee of which the Honourable Sardar Patel was the Chairman, they have given the title to these very rights which are now embodied in Part IV - "Fundamental Principles of Governance." I should like to know from Dr. Ambedkar and the gentlemen of the Drafting Committee why they have made a departure from the title given by Sardar Patel to these rights."[16]

M.A. Ayyangar (Madras) considered this Amendment as 'misconceived' And, Dr. B.R. Ambedkar, replying to this Amendment, considered the Draft as alright for two reasons. First, because the word 'Fundamental' finds a place in Art. 37 of the present Constitution and secondly, because the word

'Directive' is necessary as these are certain directions to the future legislature and the future executive to show in which manner they are to exercise the legislative and executive power which they will have. On this reply, the Amendment moved by H.V. Kamath was withdrawn by himself by leave of the Assembly.

Prof. K.T. Shah, through his Amendment No. 847 wanted:

> "That for article 29 (now 37), the following be substituted:
>
> 29. The Provisions in this Part shall be treated as the obligation of the state towards the citizens, shall be enforceable in such manner and by such authority as may be deemed appropriate in or under the respective law relating to each such obligation. It shall be the duty of the state to apply these principles in making the necessary and appropriate laws."[17]

Prof. Shibban Lal Saxena also supported this Amendment and through his Amendment No. 861 wanted the addition of following Clause with article 29:

> "After a period of 10 years, these Directive Principles of State Policy will become the Fundamental Rights of the people and shall be enforceable by any court."

Speaking in support of his Amendment, Prof. K.T. Shah pointed out:

> ".....Sir, In the absence of any such mandatory direction to those who may have the governance of the country hereafter, it is quite possible that all

> these things for which we have been hoping, and striving all these years may never come to pass, at any rate within our lifetime. This is an attitude which no lover of the poeple would care to justify, would dare to justify."[18]

Even Pandit H.N. Kunzru criticized these Directive Principles for their inability to be judicially enforced. He thus spoke in the Constituent Assembly:

> "Frankly, I attach no value to any of the principles included in the Chapter on Directive Principles, particularly as there is at the commencement of that Chapter an article saying that nothing in that Chapter can be judicially enforced."[19]

But inspite of all efforts, the motion on the Amendment of Prof. K.T. Shah was negatived by the Constituent Assembly.

Now let us consider the other side of the picture. On this side, inspite of all this criticism, there were many important personalities who spoke very high of these Directive Principles. Particularly, Pandit Thakur Das Bhargava (Punjab) and Biswanath Das considered them as an effective and important provision. Highlighting the importance of these principles, Pandit Thakur Das Bhargava said:

> ".....I, therefore, think that this chapter is not merely a chapter of pious wishes, but a chapter containing great principles. This is a very important chapter which lays down the principles which will govern the policy of the State and which, therefore, will ensure to the people of the country the realization of the great ideals laid down in the Preamble."[20]

Not only this, he also justified the way the Directives were worded. Krishnamurthy Rao (Mysore) regarded them as containing the germs of a socialist government.

Justifying the language of the Directive Principles, Dr. B.R. Ambedkar said:

> ".....While we have established political democracy, it is also the desire that we should lay down as our ideal economic democracy ..... Now, having regard to the fact that there are various ways by which economic democracy may be brought about, we have deliberately introduced in the language that we have used, in the directive principles, something, which is not fixed or rigid. We have left enough room for people of different ways of thinking, with regard to the reaching of the ideal of economic democracy, to strive in their own way, to persuade the electorate that it is the best way of reaching economic democracy, the fullest opportunity to acting the way in which they want to act ..... Sir, that is the reason why the language of the articles in Part IV is left in the manner in which this Drafting Committee thought it best to leave it. It is no use giving a fixed, rigid form to something which is not rigid, which is fundamentally changing and must, having regard to the circumstances and the times, keep on changing....."[21]

Again, Dr. B.R. Ambedkar and Sir A. Krishnaswami Ayyar also replied the criticism why these Directive Principles were not made justiciable and enforceable provisions. While speeking on this issue Sir A. Krishnaswamy Ayyar Said:

> "The Constitution, while it does not commit the country to any particular form of economic structure or social adjustment, gives ample scope for future legislatures and the future Parliament to evolve any economic order and to undertake any legislation they choose in public interests. In this connection, the various Articles which are directive principles of social policy are not without significance and importance..... It is idle to suggest that any responsible Government or any legislature elected on the basis of universal sufferage can or will ignore these principles'."[22]

Identical views were expressed by Dr. B.R. Ambedkar, the chief architect of the Constitution, on this issue. He observed:

> "It is said that they are only pious declarations. They have no binding force. This criticism is ofcourse superfluous. The Constitution itself says so in so many words. It is said that the Directive Principles have no legal force behind them, I am prepared to admit it. But I am not prepared to admit that they have no sort of binding force at all. Nor I am prepared to concede that they are useless because they have no binding force in law..... The inclusion of such instructions in a Constitution such as is proposed in the Draft becomes justifiable for another reason. The Draft Constitution as framed only provides a machinery for the government of the country. It is not a contrivance to instal any particular party in power as has been done in some countries. Who should be in power is left to be determined by the people, as it must be, if the system is to satisfy the tests of

> democracy. But whoever captures power will not be free to do what he likes with it. In the exercise of it he will have to respect these instruments of instructions which are called Directive Principles'. He cannot ignore them. He may not have to answer for their breach in a court of law. But he will certainly have to answer for them before the electorate at election times'. What great value these directive principles possess will be realised better when the forces of right contrive to capture power."[23]

In the light of these views, expressed by leading personalities in the Constituent Assembly, let us examine the real nature of these Directive Principles and compare their constitutional position with that of the Fundamental Rights'. The first view that they are rights does not appear true although the provisions from Article 41 to 46 are more in the nature of rights'. They are not rights which can be claimed by an individual in any court of law'. There is no constitutional guarantee behind these so called rights. Although, at best, they may be called rights 'which the individual enjoys in his collective capacity by virtue of being a member of the welfare state.'[24] But even if we regard them rights in this sense, they do not really make rights because they are completely at the mercy and pleasure of the state'.

Another view that these Directive Principles contain the philosophy of the Constitution also does not explain their real nature. Such a view does not even make the inclusion of these principles in the Indian Constitution

worthwile because so far as the philosophy of the Constitution is concerned, it is clearly contained in the Preamble[25] to the Constitution. Nevertheless, this view was also taken by some members of the Constituent Assembly, like Srimati Renuka Ray, Dr. Keskar Satish Chandra and Mohan Lal Gautam. Their amendments[26] prove the fact that they considered these Directive Principles as provisions containing the philosophy of the Constitution. They wanted, through their amendments, that this part (now IV) of the Constitution should be incorporated immediately after the Preamble. As a matter of fact, such a view does not make these Directive Principles more important because much of the philosophy which they seek to incorporate is already incorporated in the Preamble to the Constitution and rather with quite a broader meaning.

Another view, that these Directive Principles of State Policy are the duties of the State, has a considerable strength but they are not duties in the legal sense, duties, for the non-performance of which the State shall be answereble in the courts of law, but in the moral and constitutional sense.[27] They are not duties of a similar nature as the one that the United States government has regarding the guarantee of a Republican form of government to every State.[28]

That the Directive Principles are directives or instructions to the governments of the day, is probably the most appropriate view on their nature. This view is even proved by the statement of Dr. B.R. Ambedkar, the chief architect of the Constitution, made in the constituent Assembly. Speaking on the nature of the Directive Principles of State Policy, Dr. B.R. Ambedkar said:

> "The Directive Principles are like the Instruments of Instructions which were issued to the Governor-General and to the Governors of the Colonies and to those of India by the British Government under the 1935 Act. Under the Draft Constitution it is proposed to issue such Instruments of Instructions which will be found in Schedule IV of the Constitution. What are called Directive Principles is merely another name for Instruments of Instructions. The only difference is that they are instructions to the Legislature and the Executive. Such a thing is, to my mind, to be welcomed. Wherever there is a grant of power in general terms for peace, order and good government, it is necessary that it should be accompanied by Instructions regulating its exercise."[29]

Dr. K. C. Markandan also supports such a view. His observations on the nature of these Directive Principles conclude:

"(i) That the Directives are like the Instruments of Instructions to the Legislatures and the Executive and as such could be justified for inclusion in the Constitution on two grounds, namely, (a) wherever there was a grant of power

and general terms for peace, order and good government, it was necessary that it should be accompanied by instructions regulating its exercise and (b) since the Draft Constitution as framed only provided a machinery for the government of the country and not a contrivance to instal any particular party in power it was necessary to see that whosoever captured power would not be free to do what he liked with it but followed certain instructions."[30]

Even an examination of Article 37 proves that the Directive Principles are just like some directions for the governments of the day. Article 37 reads:

> "Application of the principles contained in this Part - 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."

This provision shows that Part IV contains some directions to be followed while making laws by the future governments. These principles are again of the nature of duties but they are certainly not made obligatory on the part of the State. Certainly, in good faith, it has been expected of the political party, whichsoever captures power, to apply these principles while making laws. Nevertheless, it is important to observe that

> a political party in power can ignore these directive principles and there is no provision anywhere making it obligatory on the party to see that these directive principles are followed.

Again, the view that these Directive Principles do not commit the country or any political party to any particular form of economic structure is not wholly true because these principles are not of very general nature. As a matter of fact, some of these principles are quite specific like those contained in Article 38 and 39. Therefore it has to be agreed that any political party capturing political power, irrespective of its programme and economic ideology, is committed, if not legally at least morally and constitutionally, to the social and economic structure outlined in Part IV of the Constitution. But legally Part IV has not been made obligatory on the political party capturing power. It is this drawback which reduces much of the importance of the Part IV inspite of its containing some most useful provisions.

This study of the nature of the Directive Principles shows that they are not rights and being in the nature of some directives for the future governments are different from the Fundamental Rights. Such a view can be further examined when we compare the constitutional positions. But before this is done, it is important to say something on the nature of

the Fundamental Rights. On the importance of incorporating the Fundamental Rights in the Indian Constitution, M.C. Setalvad observes:

> "With our long history of foreign rule with its oppression, disabilities and discrimination we had come to regard a Bill of Rights as an essential part of a Constitution."[31]

So far as these rights are concerned, 'the real problem that confronted the framers was how to limit their selection to certain categories only'[32]. According to Ivor Jennings:

> "The Indian reaction(in enacting the Bill of Rights) like the American reaction, is in a large measure a product of the British rule."[33]

In regard to the Fundamental Rights, the framers of the Indian Constitution took guidance from the scheme of rights contained in the American and the Irish Constitutions. While the individual rights, strictly so called, had to be included, a section of the Constituent Assembly was also in the favour of incorporating certain social and economic rights in the chapter of Fundamental Rights. Ultimately it was decided to follow the American pattern and the socio-economic rights were not included in the chapter of Fundamental Rights. Thus, unlike the Irish and Weimar Constitutions, the (Indian) declaration (of Fundamental Rights) does not lay down any

economic, cultural or social rights.[34] Dr. Hari Chand correctly observes:

> "The chapter on Fundamental Rights represents maily an ideology of individualism propounded by Bentham and preached by J.S. Mill and a host of other philosophers."[35]

On this issue, M.V. Pylee observes:

> ".....This was because the State in India was not yet in a position to guarantee the right to employment or education. It was a matter of physical impossibility, not the lack of will. Hence, they divided these rights into two categories, justiciable and non-justiciable."[36]

But this reason is quite sound but a study of the Constituent Assembly Debates shows and it was also a matter of policy that the socio-economic rights were not included in the chapter of Fundamental Rights. According to Sir B.N. Rau, as already considered, the reason for not incorporating the socio-economic rights in the chapter of Fundamental Rights was that such rights were not normally suitable for enforcement by legal action. A few socio-economic rights do find a place in the chapter of Directive Principles, but as considered above they cannot be considered as rights in the real sense. No individual or social group can claim them in a court of law.

Thus the first difference between the Directive Principles and the Fundamental Rights is that while the former are in the nature of instruments of instructions to the Governments of the day, to do certain things and to achieve certain ends by their actions, the latter constitute limitations upon the State action.[37] It is in this light that one can glorify the Directive Principles to the position of positive rights like Dr. K.C. Markandan or one can speak of them as dynamic provisions as against the provisions contained in Part III which are considered static by Pandit Nehru, V.G. Ramachandran and others. Pt. Nehru, while moving the Constitution First Amendment Bill on 16th May, 1951, said in the Lok Sabha:

> "The Constitution lays down certain Directive Principles of State Policy and after long discussion we agreed to them and they point out the way we have got to travel. The Constitution also lays down certain Fundamental Rights. Both are important. The Directive Principles of State Policy represent a dynamic move towards a certain objective. The Fundamental Rights represent something static, to preserve certain rights which exist. Both again are right."[38]

Though the Directive Principles are of dynamic nature nevertheless they are purely 'Directive Principles', laying down certain guide-lines for the future governments in India,

as such they are not rights, fundamental in nature.

Dr. D.K. Sen rightly observes:

> ".....It is, therefore, clear that the socio-economic rights recognized by the Indian Constitution are not rights in the strict sense of the word, since they are not legally enforceable."[39]

This is another difference between the Fundamental Rights and the Directive Principles. While Article 32[40] clearly makes the Fundamental Rights enforceable by the courts, there is no such provision making the Directive Principles enforceable by the courts. They simply require to be implemented by the legislative action of the governments of the day, as and when and if a political party controlling the Government is pleased or compelled by the popular forces. And as long as there is no law implementing a Directive Principle, an existing law cannot be violated by the State or an individual. Even the Courts cannot compel the Government to implement the Directive Principles. The only sanction behind the directives is the public opinion.

Apart from this, there is yet another most important difference between the Constitutional positions of the Directive Principles and that of the Fundamental Rights. While Article 13 (2)[41] stands as an important constitutional protection to the provisions contained under the Chapter of

Fundamental Rights, there is no such constitutional protection provided to the provisions contained under the Chapter of Directive Principles of State Policy. The Courts have no power to declare any law as void on the ground that it contravenes any of the Directive Principles. Of course, the Courts can take their cognizance in the matters of interpretations.

These are the most important constitutional differences between the Directive Principles and the Fundamental Rights as contained in the Indian Constitution. And it is because of these constitutional differences that the Fundamental Rights enjoy a superior constitutional status than the Directive Principles. On the basis of the Constitutional scheme, it becomes difficult to agree with such views as expressed by Dr. K.C. Markandan:

> "Truly speaking, the Directive Principles are more fundamental than fundamental rights from the point of view of the constitution since the ideals enshrined in it, 'justice, social, economic and political,' are loftier in conception, and seek to secure to the individual tangible benefits of great significance than fundamental rights."[42]

Bus such a view is not correct from the point of view of the Constitutional position of the Directive Principles. Such a view is correct from the socio-economic point of view

as Prof. K.T. Shah and Shri P.S. Deshmukh viewed them when they suggested to make them obligatory on the State. Their fear was substantial like that of Shri Hussain Imam who observed:

"A political party in power can ignore these directive principles and there is no provision anywhere making it obligatory on the party to see that these directive principles are followed."[43]

Dr. P.S. Deshmukh's evaluation of these Directive Principles has considerable weight. Dr. Deshmukh observed:

"At least since the year 1942 the character of the country has changed .....That being so, it is our duty to look to the promises that we had held out, and in considering the Report we should have kept out that ideal in view and not tried merely to make half-hearted recommendations so as to be able to say to the Socialists that we are also socialists of a sort and to try to say to the Communists that we also respect the same of their theories..... Now what is the sanctity to these recommendations? They are supposed to be directives. Instead of having all these several items, let the framers of the Constitution give us a definite programme that they are determined to give effect to. The whole of India is thirsting for it. Instead of all that we are merely going to hold out some distant and indistinct hope without providing in our Constitution any effective means as to when and how they are going to be realised."[44]

Thus the Constitutional reality about the nature and the position of the Directive Principles prior to the 25th Constitutional Amendment was that they had been merely given the status of 'directives', their implementation, even today, is a moral duty, depending upon the political party coming into power, and that their Constitutional position was inferior to that of the Fundamental Rights. They were, from the social and economic point of view, of great significance, is a doubtless position. And that the change in times and in the role of the state in the socio-economic field makes them even more important than the Fundamental Rights, again, is quite the realistic approach. But, speaking from the point of view of the Indian Constitution, the Directive Principles of State Policy had not been given such a respectable position. That they should be given such a respectable position in the Indian Constitution has been a need of the time. This has certainly been proved by the Constitution Twenty Fifth Amendment which the present Congress Party has made to the Indian Constitution. This Amendment now places the Directive Principles on a better footing than the Fundamental Rights. We shall consider this revolutionary Amendment in a separate chapter.

NOTES

1. K.C. Markandan: "Directive Principles in the Indian Constitution.", Allied Publishers Pvt. Ltd., p. 128.

2. K.T. Shah: "Prasad Papers File 4-C/47", quoted by Granville Austin, op.cit., p. 60.

3. Granville Austin:"Indian Constitution, Cornerstone of a Nation", Clarendon Press, Oxford, 1966, p.50.

4. A.R. Blackshield: "Fundamental Rights, 10, J.I.L.I. (1968) p. 44", quoted by Dr. Hari Chand, op.cit. p.137.

5. V.G. Ramachandran: "Fundamental Rights and Constitutional Remedies", vol. II, Eastern Book Company, 1970 edn., p. 917.

6. Mr. Justice K.S. Hegde: "The Directive Principles of State Policy in the Constitution of India", I.C.P.S. Publication, 1972, p. 47.

7. Lok Sabha Debates, Part II, May 16, 1951, Col. 8820.

8. C.A.D., Vol. V, No. II, dated 30th August 1947.

9. C.A.D., Vol. VII, No. 12, dated 24th Nov., 1948.

10. C.A.D., Vol. VII, No. 9, dated 19th Nov., 1948.

11. C.A.D., Vol. VII, No. 2, 5th Nov., 1948.

12. C.A.D., Vol. VII, No. 9, 19th Nov., 1948.

13. C.A.D., Vol. VII, No. 9, 19th Nov., 1948.

14. C.A.D., Vol. VII, No. 2, 5th Nov., 1948.

15 & 16. C.A.D., Vol. VII, No. 9, 19th Nov. 1948.

17. Amendment No. 847, moved by Prof. K.T. Shah to the Draft Constitution, on 19th Nov. 1948, C.A.D., Vol. VII, No. 9.

18. C.A.D., Vol. VII, No. 9, 19th Nov. 1948.

19. C.A.D., Vol. VII, No. 13, 25th Nov. 1948.

20. C.A.D., Vol. VII, No. 9, 19th Nov. 1948.

21. C.A.D., Vol. VII, No. 9, 19th Nov. 1948.

22. C.A.D., Vol. VII, No. 4, 8th Nov. 1948.

23. C.A.D., Vol. VII, No. 1, 4th Nov. 1948.

24. K.C. Markandan: "Directive Principles in the Indian Constitution", Allied Publishers Pvt. Ltd., Ch. IV, p. 145, Edn. 1966.

25. Preamble: WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN DEMOCRATIC REPUBLIC and to secure to all its citizens:

JUSTICE, social, economic and political;
LIBERTY, of thought, expression, belief, faith and worship;
EQUALITY of status and of opportunity;
and to promote among them all
FRATERNITY assuring the dignity of the individual and the unity of the Nation;
IN OUR CONSTITUENT ASSEMBLY THIS TWENTY-SIXTH day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.

26. Amendment No. 828 moved jointly by Mrs. Renuka Ray, Dr. Keskar, Satish Chandra and Mohan Lal Gautam:

"That Part IV be deleated and the Directive Principles of State Policy be incorporated immediately after the Preamble."

Amendment No. 829 (Mrs. Renuka Ray):

"That the words 'Directive Principles of State Policy' enumerated in in Part IV be incorporated immediately after the Preamble subject to the amendment that in Article 36 the following be added at the end:

"Every State Government shall allocate not less than 25 percent of its total revenue for the purpose of education."

27. K.C. Markandan: "Directive Principles in the Indian Constitution", Allied Publishers Pvt. Ltd., Ch. IV, p. 145, Edn. 1966.

28. American Constitution: Article 4, Section 4.

29. C.A.D., Vol. VIII, No. 1, dated 4th November, 1948.

30. K.C. Markandan: "Directive Principles in the Indian Constitution", Allied Publishers Pvt. Ltd., Ch. IV, p. 142.

31. M.C. Setalvad: "The Indian Constitution, 1950-1965", University of Bombay, 1967, Ch. I, p. 27.

32. M.V. Pylee: "Constitutional Govt. in India", Asia Publishing House, Edn. 1965, p. 196.

33. Ivor Jennings: "Some characteristics of the Indian constitution", 1953, p. 34.

34. Sirdar D.K. Sen: "A Comparative study of the Indian Constitution", Vol. II, Orient Longmans, New Delhi, 1966, p. 152.

35. Dr. Hari Chand: "The Amending Process in the Indian Constitution", Metropolitan Book Co. (Pvt.)Ltd., Edn. 1972, p. 133.

36. M.V. Pylee:"Constitutional Government in India", Asia Publishing House, edn. 1965, p. 196.

37. D.D. Basu: "Introduction to the Constitution of India", S.C. Sarkar & Sons (Pvt.) Ltd., Fourth Edition, 1966, p. 112.

38. Pt. Nehru's speech while moving the Constitution First Amendment Bill: Lok Sabha Debates, Part II, May 16, 1951, Col. 8820.

39. D.K. Sen : "A Comparative Study of the Indian Constitution" Vol. II, Orient Longmans New Delhi, 1966, p. 172.

40. "Art. 32. (1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.

(2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo waranto and certiorari, whichever may be appropriate for the enforcement of any of the rights conferred by this Part." (III).

41. "Art. 13. (2) The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this Clause shall, to the extent of the contravention, be void."

42. K.C. Markandan: "Directive Principles in the Indian Constitution", Allied Publishers Pvt. Ltd., Edn. 1966, p. 148.

43. C.A.D.: Vol. VII, No. 9, dated 19th November, 1948.

44. C.A.D. : Vol. V, No. 11, dated 30th August, 1947.

CHAPTER IV

C H A P T E R IV

Relationship between the Directive Principles and Fundamental Rights and Attitude of the Judiciary towards the Former.

The aim of this Chapter is to study the relationship between the Directive Principles and the Fundamental Rights and the attitude of Judiciary towards the Directive Principles. So far as the relationship between the Directive Principles and the Fundamental Rights is concerned, diverse views are available. As a matter of fact, even today, a big controversy persists on the relationship. There are those, like Pandit Nehru, V.G. Ramachandran, Justice K.S. Hegde, M.V. Pylee, and others who believe that they are complimentary to each other. And hence, as M.V. Pylee observes:

> "Indeed, there can be no real conflict between the two. They are intimately related to and inseparably bound up with each other."[1]

Even K. Subba Rao, former Chief Justice of India, while delivering the Lajpat Rai Memorial Lectures at Bombay, held:

> "The conflict between citizens rights and the State's power to implement the said principles is reconciled by putting limitations both on the right and on the power. The said fundamental right is not absolute but is subject to the law of reasonable restrictions in the interest of the general public. The State's power is also subject to the condition that the law made by it so far as it infringes the fundamental rights should stand the double test of reasonableness and public interest."[2]

Inspite of this scheme, the fact is that the two chapters have not proved complimentary to each other. In the words of M.C. Setalvad:

> "Sometimes the Court has been placed in the position of having to decide between giving effect to the fundamental rights and directive principles."[3]

Even D.D. Basu, an eminent jurist and an authority on the Indian Constitution, observes:

> "It may be observed that the declarations made in Part IV of the Constitution under the head 'Directive Principles of State Policy' are in many cases of a wider import than the declarations made in part III as 'Fundamental Rights'. Hence, the question of priority may easily arise."[4]

It is very important to note here that the cause of most of the conflicts that arose in the past was more extra-constitutional than Constitutional. The reality of the problem, viewed strictly from the constitutional angle, is that there is no real conflict between the two provisions. While the Directive Principles set certain moral obligations for the state to achieve certain goals, the Fundamental Rights do not stand as an absolute hinderance. Even if a Fundamental Right comes in the way of State's obligation, the State has the constitutional right to impose reasonable restrictions on it. Thus, reasonable restrictions can safely resolve the situations of conflict.

Inspite of this fact many conflicts have come to the surface for various reasons. One of the most important reasons is that they differ in their nature, what the Directive Principles demand from the State, the Fundamental Rights disallow the State. While Art. 37 directs the State to consider the Directive Principles as 'Fundamental in the Governance of the country' and hence apply them in making laws, Art. 13 (2) cautions the State not to make any law so as to infringe the Fundamental Rights.

Another most fundamental reason for the conflict between the Directive Principles and the Fundamental Rights

is the clash in their purposes. While the Directive Principles, in the Marxian Sense, aim at changing the property relations, the Fundamental Rights aim at safeguarding the individualistic rights, the capitalistic system, and hence maintenance of the status-quo. Dhirendranath Sen is very critical of the scheme of Part III and IV in the Indian Constitution and considers:

> ".....it is wrong to think that our Constitution gives priority to the general interest of the community over the interest of the individual. Had it done so, it would not have protected private ownership of the instruments and means of production in the manner it has done."[5]

True, the interest of the individual has been well-protected in Chapter III of the Constitution, nevertheless, the directives have been incorporated in Chapter IV (Art. 38 & 39)[6] for the State to direct its policy towards changing the property-relations. It is here, that the Fundamental Rights and the Directive Principles come in conflict with each other. Possibility of such a conflict was even realised by Sir B.N. Rau, the Constitutional Advisor to the Constituent Assembly, and for the purpose of avoiding such a conflict he even suggested an amendment which was rejected as being too late by the Drafting Committee.

Even Pt. Nehru realised the possibility of a conflict between the two sets of provisions. While speaking on the Constitution First Amendment Bill, he said:

> "The dynamic movement towards a certain objective necessarily means certain changes taking place: that is the essence of movement. Now it may be that in the process of dynamic movement certain existing relationships are altered, varied or affected. In fact, they are meant to affect those settled relationships and yet if you come back to the Fundamental Rights they are meant to preserve, not indirectly, certain settled relationships. There is a certain conflict in the two approaches, not inherently, because that was not meant, I am quite sure. But there is that slight difficulty and naturally when the courts of the land have to consider these matters they have to lay stress more on the Fundamental Rights than on the Directive Principles."[7]

Dr. K.C. Markandan has also accepted the fact that a conflicting situation can arise. He observes:

> "A situation may arise when the State in due discharge of its duty, under the directive principles, may make a law prejucicial to fundamental rights, or, an aggrieved individual in support of his rights cites the Directive Principles. In either case there is room for a conflict between the provisions of the Constitution relating to Fundamental Rights and the

> Directive Principles of State Policy, or, in other words, between the executive and the legislature on the one hand and the judiciary on the other."[8]

Apart from the reasons mentioned above a conflict might be created even by the method which the state selects for implementing the Directive Principles. For instance, there are various ways open to the state for implementing the Directive Principles contained in Article 38 and 39. One of the ways is to restrict the private sector and extend the public sector in order to socialize the economy. Another method in pursuance of the above method is that the government can resort to progressive taxation in order to shatter concentration of wealth and hence reduce the disparities in incomes. Yet another course open to the government is that already existing private business can be nationalized and run by the government for common social interests. Not only this but the government can also impose ceilings on wealth and acquire the surplus for public purpose. The government can do both these things by paying due compensation to the parties. So far as these methods of implementing the Directive Principles are concerned, there is no reason why a conflict between the Fundamental Rights and the Directive Principles may arise. But, of course, a conflict may arise when the government may resort to certain other

methods for implementing the Directive Principles. One such method can be that the government may have to acquire surplus property or nationalise private business without paying compensation at the market-rate. And, the reality of the problem is that payment of compensation at the market-rate is not possible for the government with so meagre economic resources of the country. Pandit Jawaharlal Nehru emphatically made it clear while intervening in the debate on Constitution Fourth Amendment Bill. Pt. Nehru said:

> "If we are aiming, as I hope we are aiming, and we repeatedly say we are aiming at changes in the social structure, there inevitably we cannot think in terms of giving what is called full compensation. Why? Well, firstly because you cannot do it, secondly, because it would be improper to do it, unjust to do it, and it should not be done even if you can do it for the simple reason that in all these social matters, laws, etc., they are aiming to bring about a certain structure of society different from what it is at present."

It is in such cases of implementing the Directive Principles that a conflict may arise between the Fundamental Rights and the Directive Principles. In cases of such conflicts, unless such implementation is followed by an amendment to the relevant provision of the constitution, the Fundamental Rights will prevail. It is for removing this drawback that Constitution Twenty Fifth Amendment has been made.

Though implementation of the Directive Principles was not made oblegatory on the State, yet, they were not included in the Constitution simply to remain as dead provisions but a moral duty was imposed on the future governments to make them effective in the governance of the country. A conflict, therefore, may never arise between the Directive Principles and the Fundamental Rights if they are left untouched by the government. But, a conflict can very much arise if the government works for the fulfillment of its duty of giving effect to the Directive Principles. Such a conflict may arise for various Constitutional reasons. Firstly, a governmental measure implementing a Directive Principle by imposing reasonable restriction on the Fundamental Rights may be considered conflicting and hence declared void on the basis of the restriction being unreasonable. Secondly, a measure can be declared void even on the plea of its infringement or setting aside a Fundamental Right altogether. Thus, a situation can easily arise when two provisions come into clash with each other and one has to be given priority over the other. Which of the two should be given priority in such a case? This question has been touched in the previous chapter also. Let us examine the attitude of Judiciary towards this problem, here.

The Judiciary has faced this problem in about fifty cases so far. First of such cases - State of Madras vs. Champakam Dorairajan, came before the Supreme Court in 1951 The petitioner in this case challenged the validity of the Madras Government Communal Order reserving seats in the Medical College admissions for the backward Hindus and Harijans. This scheme of reservations was based on religion. The petitioner contended that the Madras Government Communal Order was discriminatory and that it violated her Fundamental Rights under Article 15(1), which prohibits discrimination on grounds only of religion, race, caste, sex and place of birth, and also the one under Article 29(2) which protects the citizens from denial of admission into an educational institution, maintained by the State or receiving aid from the State funds, on the grounds only of race, religion, caste and language. The State of Madras contended that its Order was justified in pursuance of Article 46 which directs the State to promote the educational and economic interests of the weaker sections of the people. Full Bench of the Madras High Court, comprising of Rajamannar C.J., Viswanatha Sastri J. and Somasundaram J., heard this case. In the majority judgement, the Madras High Court held:

> "Granting that one of the objectives of the Constitution is to provide for the uplift of the backward and weaker sections of the people which inter alia is embodied in Article 46, can we hold that the State is at liberty to do anything to achieve that object? The obvious answer is 'yes', so long as no provision of the Constitution is contravened and no Fundamental Right declared by the Constitution is infringed or impaired."[10]

It is important to take note of the dissenting observations of Somasundaram J., here. Somasundram J. observed:

> "Article 46 of the Constitution is a very relevant and important Article to be considered in this connection. This is placed in the Chapter relating to Directive Principles of State Policy. Article 37 states that though the provisions in that Part are not enforceable in court, nevertheless the principles therein are foundamental in the governance of the country — I emphasise the word 'fundamental' in the Article ..... It is, therefore, the duty of the State to respect and give effect to the principles in Article 46."[11]

These observations of the learned Judge show that the Judiciary must realize its duty of co-operating with the Legislature and the Executive in their efforts of giving effect to the Directive Principles.

When this case came before the Supreme Court, it also upheld the validity of the decision given by the Madras High Court with a bolder judgement. Delievering the Judgement, Justice S.R. Dgs observed:

> "The Directive Principles of State Policy which by Article 37 are expressly made unenforceably by a Court cannot over-ride the provisions found in Part III which notwithstanding other provisions, are expressly made enforceable by appropriate writs, orders or directions under Article 32. 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 articles in Part III. The Directive Principles of State Policy have to confirm to and run as subsidiary to the Chapter on Fundamental Rights. In our opinion that is the correct way in which the provisions found in Part III and IV have to be understood. However, so long as there is no infringement of any Fundamental Rights, to the extent conferred by the provisions in Part III there can be no objection to the State acting in accordance with the Directive Principles set out in Part IV, but subject again to the Legislative and Executive powers and limitations conferred on the State under different provisions of the Constitution."[12]

Following are the most important implications of this judgement:

i) that the Chapter of Fundamental Rights is sacrosanct and cannot be abridged by any Legislative or Executive act;

ii) that the Directive Principles can be given effect by the Legislature and Executive by imposing reasonable restrictions only as provided in the appropriate articles in Part III;

iii) that Directive Principles have to conform to and run as subsidiary to the Chapter on Fundamental Rights; and

iv) that the Legislative and Executive action giving effect to the Directive Principles is also subject to the limitations conferred on them under different provisions of the Constitution.

It is, again, very important to note that the decision given in this case was dangerous, fearful and showed as distrust of the State, particularly the Legislature. It was dangerous in the sense that it declared the Fundamental Rights as sacrosanct and paved the way for the Supreme Court to declare in the famous Golak Nath Case that the Fundamental Rights could not be abridged even by a Constitutional Amendment. This created one of the biggest Constitutional deadlocks, the country has ever seen in its Constitutional History. As we know, it was later resolved by the Constitution Twenty Fourth Amendment Act, 1971. We shall discuss the implications of the Golak Nath Case in a

different Chapter. The judgement in this case was, again, based on the 'doctrine of fear'. The fear, which resulted in the distrust of the Legislature, was that the Legislature in order to give effect to the Directive Principles might make serious encroachments on the Fundamental Rights and therefore the Court resorted to the precaution of declaring to the Legislature and Executive that their actions could not abridge the Fundamental Rights and that they could give effect to the Directive Principles only by imposing reasonable restrictions on the Fundamental Rights.

Again, the judgement delivered in this Case reflects the attitude of non-cooperation of the Judiciary towards the Legislature and the Executive and the fact, that the difficulty posed by its judgement was only removed by a Constitutional Amendment made in Article 15 of the Constitution, proves that the Court makes it necessary to achieve socio-economic changes, for the betterment of the weaker sections of the society, through Constitutional Amendments. There is no doubt that the Courts cannot enforce the Directive Principles in the absence of any law made for giving effect to them, nevertheless, it is equally a duty of the Courts that, when such a law has been passed imposing reasonable restrictions on the Fundamental Rights, they should appreciate the social purpose behind it.

Of course, in the cases of serious infringements of the Fundamental Rights, the Courts may not give preference to the Directive Principles. In order to show as to what can constitute a serious infringment of the Fundamental Rights, let us take the case of an institution, maintained by the State. If the State passes a law that it will admit students only belonging a particular community or section of the society, it can be complained that this law infringes the Fundamental Rights guaranteed under Article 15(1) and 29(2) and shows discrimination. But, if only a few seats are reserved for the students from weaker sections of the society, if cannot be complained that the law is discriminatory because this law has imposed only a reasonable restriction on the Fundamantal Rights, in pursuance of the Directive Principle urging the State tc take steps for the upliftment of the weaker sections of the society. Such a law cannot be said to have taken away the Fundamental Right completely. The Fundamental Right to get admission still exists, but, a restriction has been imposed on it that leaving only a few seats for the students from poor families other students have to compete for the remaining seats in order to get admission. Firstly, such arrangement should not be considered as an infringment by the citizens. Secondly, even if such a case comes before the Courts, they should uphold the reasonableness of such a restriction

because they too are a part of the State which owes a Constitutional duty to give effect to the Directive Principles. Such a view was expressed in Om Prakash Vs. State of Punjab.[13] Delievering the judgement, Kapur J. Observed:

> "The argument raised by counsel was that according to Article 37 the provisions of Part IV cannot be enforced by any Court. That is correct, but it definitely says that the principles laid down in this Part are nevertheless fundamental in the governance of the country....If it is incumbent on the State to promote the educational and economic interest of Scheduled Castes then it appears to me that it can well do that by reserving certain seats in educational institutions for these castes."[14]

Apart from this, it was only in a few other cases like the Kerala Education Bill,[15] that the Judiciary showed some respect to the Directive Principles of State Policy. In this case also, like M.H. Quareshi Vs. State of Bihar,[16] though the Fundamental Rights were considered constitutionally superior to the Directive Principles, yet, the principle of harmonious interpretation was suggested. In this case, the Supreme Court held:

> "The Directive Principles have to conform to and run as subsidiary to the Chapter on Fundamental Rights. Nevertheless in determining the scope and ambit of Fundamental Rights relied on by or on behalf of any person or body, the Court may not

> entirely ignore those Directive Principles of State Policy laid down in Part IV of the Constitution but should adopt the principle of harmonious construction and should attempt to give effect to both as much as possible."[17]

Even the above judgement of the Supreme Court cannot inspire us to conclude that attitude of the Judiciary has been co-operative towards the implementation the Directive Principles. No doubt the Directive Principles are not enforceable and that Article 13 and 32 impose a duty on the Judiciary to protect the Fundamental Rights, nevertheless, Article 37 makes these Directive Principles fundamental in the governance of the country and imposes a constitutional duty on the State, including the Judiciary, to apply them while making laws. While delievering the Second B.N. Rau Memorial Lecture, Justice K.S. Hegde rightly observed:

> "While Article 37 makes those Directives unenforceable by courts, the principles therein laid down are made fundamental in the governance of the country and a duty is imposed on the State to apply these principles in making laws. But a mandate of the Constitution, though not enforceable by courts, is none the less binding on all the organs of the State."[18]

That in cases of unreasonable conflicts, the Fundamental Rights should be considered superior is an accepted

fact. Apart from D.D. Basu and M.C. Setalvad, even H.M. Seervai and M.P. Jain support such a view.

In his book, Indian Constitutional Law, Prof. M.P. Jain observes:

> "In case of a conflict between a Fundamental Right and a Directive Principle, it is the former, and not the latter, which prevails.....The main reason for this approach is that the Fundamental Rights have been expressly made enforceable whereas the Directive Principles are expressly made unenforceable. The Fundamental Rights would be reduced to 'a mere rope of sand' if they were to be overridden by the Directive Principles."[19]

Though similar views have been expressed by Shri H.M. Seervai, yet he has laid stress upon harmonising the relationship between the Fundamental Rights and the Directive Principles. Like D.D. Basu, Shri Seervai holds:

> ".....though an attempt must be made to harmonise the two, in cases of irreconcilable conflict, fundamental rights must prevail over directive principles."[20]

Inspite of the fact that even those, who consider the Fundamental Rights superior, have laid stress upon harmonising the relationship between the two, it is unfortunate to see that the Judiciary, in place of appreciating the real purpose behind the Directive Principles and co-operating

with their implementation, has even tried to make their implementation difficult only out of its fear that their implementation may not result in the abrogation of Fundamental Rights. It is only out of this fear that the Supreme Court, in the famous Golak Nath Case,[21] observed:

> "If it is the duty of Parliament to enforce the directive principles, it is equally its duty to enforce them without infringing the fundamental rights. The Constitution-makers thought that it could be done and we also think that the directive principles can be reasonably enforced within the self-regulatory machinery provided by part III."[22]

It was also declared by the majority judgement that from the date of this judgement, the Parliament will not have the power to amend any provisions in Part III of the Constitution so as to take away or abridge any Fundamental Right. According to Subba Rao C.J., who delivered the majority judgement, the reasons for this were that the people in India, while giving themselves the Constitution, reserved Fundamental Rights to themselves as Article 13 was also incorporated to protect them from infringement by post-constitutional laws, including the Constitutional Amendments.

This was the decision which made the implementation of the Directive Principles highly difficult and cumbersome if not impossible. Prior to this Case, the inconsistent attitude of the Judiciary shows that in some Cases, certainly, the Judiciary came quite near to appreciating the real purpose behind the Directive Principles. For instance, a careful study of the judgement given in State of Bihar Vs. Kameshwar Singh[23] will reveal a change in the attitude of the Judiciary towards the Directive Principles. The attitude taken by the Judiciary in this Case reveals;

i) that the Directive Principles are not merely the policy of any particular Party but they are the Principles directing the policy of the State towards the cause of a welfare state;

ii) that whenever any Act giving effect to a Directive Principle comes in clash with the Fundamental Rights, the Directive Principles should not be given a light treatment; and

iii) that wherever a 'public purpose' is involved, Part IV should be given greater weight.

But the decision in this and a few other Cases cannot lead us to conclude that the attitude of Judiciary has been favourable to the Directive Principles. The reality is that the Judiciary, under some plea or the other, has always regarded the Fundamental Rights as sacrosanct, inviolable and unamendable provisions of the Constitution. As shown

earlier, by the judgement in the Golak Nath Case, the Judiciary has created further road blocks in the way of implementation of the Directive Principles. Inspite of the Constitution Fourth Amendment Act of 1955, which was passed only to liberalise the compensation issue, it is very sad to note, that the Supreme Court not only revived the compensation issue but also failed to appreciate the 'public purpose' in its judgements in the famous Bank Nationalization Case[24] and the Privy Purses Case.[25] In the Bank Nationalization Case, the Supreme Court interpretted 'compensation' as 'full indemnification' and 'just equivalent'. The Supreme Court did not appreciate that there was a great 'public purpose' behind both these acts of the government. The banks were nationalized with a 'public purpose' of utilising the savings in the country for the upliftment of the poor sections of the society and for other vital common economic interests of the whole society and the Privy Purses were abolished in order to achieve a social order based on justice and equality.

What is more shocking to note here is that while this work is reaching its completion, the Supreme Court has struck down the 'Newsprint Control Order'.[26] In striking down the 10 page ceiling, the Court has held:

> "In our judgement, the policy of the Government to limit all papers at 10 page is arbitrary. It tends to treat unequals as equals and discriminates against those who by virtue of their efficiency, standard and service and because of their all-India stature, acquired a higher page level in 1957."[27]

Mr. Justice Ray considered that newsprint restrictions cut at the very root of the guaranteed freedom. However, Mr. Justice K.K. Mathew, in his dissenting judgement held:

"It has been said that justice is the effort of man to mitigate the inequality of men. The whole drive of the directive principles of the Constitution is toward this goal and it is in consonance with the new concept of equality. The only norm which the Constitution furnishes for distribution of the material resources of the community is the elastic norm of the common good (see article 39 B). I do not think I can say that the principle adopted for the distribution of newsprint is not for the common good."[28]

Thus, our study shows that the attitude of Judiciary has not been sufficiently co-operative towards the implementation of the Directive Principles of State Policy. It has rather been hostile. One most important reason for this hostile attitude has been its constant fear and distrust against the Legislative encroachment upon the Fundamental Rights behind the purpose of giving effect to the

Directive Principles. But out of this fear, instead of doing any good to the Fundamental Rights, it has rather done harm to them. With the Constitution Twenty Fourth Amendment Act, 1971 and Constitution Twenty Fifth Amendment Act, 1971 having come into force, the Indian Parliament has settled the controversy in favour of the Directive Principles, making them really fundamental in the governance of the country. Now, no law 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, when it is accompanied with a declaration that it is for giving effect to the provisions of article 39. Again, such a declaration shall not be called in question in any court on the ground that it does not give effect to such policy.

NOTES

1. M.V. Pylee: "Constitutional Government in India", Asia Publishing House, 1965, p. 339.

2. K.Subba Rao : "Lajpat Rai Memorial Lectures", "Conflicts in Indian Polity", S.Chand & Co.(Pvt.)Ltd., New Delhi, 1970, p. 28.

3. M.C. Setalvad: "The Indian Constitution 1950-1965", University of Bombay, 1967, Ch. I, p. 32.

4. D.D. Basu: "Introduction to the Constitution of India", S.C.Sarkar & Sons (Pvt.) Ltd., 1966, p. 112.

5. Dhirendranath Sen: "From Raj to Swaraj", Vidyodaya Library, Calcutta, 1954, p. 80.

6. State to secure a social order for the promotion of welfare of the people. The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life. Art. 39. Certain Principles of Policy to be followed by the State. The State shall, in particular, direct its policy towards securing- a) that the citizens, men and women equally, have the right to an adequate means of livelihood; b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good; c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment; d) that there is equal pay for equal work for both men and women; e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength; f) that childhood and youth are protected against exploitation and against moral and material abandonment.

7. Lok Sabha Debates, Part II, 16th May, 1951, Cols. 8822-8823.

8. K.C. Markandan: "Directive Principles in the Indian Constitution", Allied Publishers, Pvt. Ltd., 1966, p. 238.

9. A.I.R. 1951: Madras 120.

10. Ibid.

11. Ibid.

12. A.I.R. 1951: SC 226.

13. A.I.R. 1951: Punjab 93.

14. Ibid.

15. A.I.R. 1958: SC 956.

16. A.I.R. 1958: SC 731.

17. A.I.R. 1958: SC 956.

18. Mr. Justice K.S. Hegde: "The Directive Principles of State Policy In the Constitution of India", I.C.P.S., National Publishing House, Delhi-6: 1972: p. 49.

19. M.P. Jain: "Indian Constitutional Law", N.M. Tripathi, Bombay, IInd Edn., 1970, P. 670.

20. H.M. Seervai: "Constitutional Law of India", Vol. II, N.M. Tripathi, Bombay, 1968, p.759.

21. 1967, 2 S.C.R. 762.

22. Ibid.

23. A.I.R. 1952: SC 252.

24. "Rustom Cavasjee Copper V. Union of India", AIR 1970: SC 564.

25. A.I.R. 1970, SC 530.

26. Report of the 'Newsprint Control Case', 'The Hindustan Times', daily, dated 31st October, 1972: pp. 1&4.

27. Ibid.

28. Ibid.

CHAPTER V

C H A P T E R V.

The Realities of Implementation:

No doubt, the framers of the Indian Constitution could not accommodate the wishes of Prof. K.T. Shah of making the Directive Principles obligatory on the State, nevertheless, it has to be agreed that they really considered these provisions of great Constitutional importance. It was for this reason that Article 37 was adopted to make the provisions 'fundamental in the governance of the country' and to impose a Constitutional duty on the State to apply these provisions while making laws. Though the word 'obligatory' has not been used in Part IV, nevertheless it was expected that Political Parties coming to power shall not be able to pay only lip-service to the Directive Principles. Speaking on the obligatory nature of the Directive Principles, Dr. B.R. Ambedkar observed:

> "The Directive Principles are nothing but obligations imposed by the Constitution upon the various governments in this country that they shall do certain things, although it says that if they fail to do them, no one will have the right to call for specific performance. But the fact that they are obligations of the Government, I think, stands unimpeached."[1]

This positive assertion of the fundamental nature of the Directive Principles has been emphasized even by K.P. Setti, in his book.[2] This shows that the State applies them in its policies and plans, is a Constitutional obligation imposed on the State. Let us examine the realities of the implementation of the Directive Principles. According to Mr. Justice K.S. Hegde, following should be the test of our judgement:

> "Our success and failure have to be judged ont only from what we have achieved but also from what we have failed to do. Of what avail will our legislative and executive measures be if they are not vigorously implemented?"[3]

If, after a period of about twenty two years of working of the present Constitution, we ask: 'has the intention of bringing a great social revolution through the directive principles succeeded?', briefly, the answer is yes.[4]

though there have been many flaws with our planning and implementation, yet the achievements, whatsoever, show that it is not wise to say that there has been no progress at all. Mr. Justice K.S. Hegde rightly warns that only 'a cynic would say that our plans and policies have only made the rich richer and the poor poorer'.[5]

That the Government has been serious about the implementation of the Directive Principles is well proved by the fact that Zamindari system in the country was abolished right after the inception of the Constitution and when it became necessary, Constitution First Amendment Act was passed in 1951. The country was certainly lucky for the leadership, for the first seventeen years, remained in the hands of the great champion of socialism and democracy, Pt. Jawaharlal Nehru. With his planned approach to economic development of India, he set the country on the path of democratic socialism. He was a socialist, non-violent, human and liberal in outlook. He had considered socialistic pattern of society as an ideal for India. In his Presidential address at the Lahore Session of the Indian National Congress, in December, 1929, Pt. Nehru said:

> "I must frankly confess that I am a socialist and a republican and not a believer in kings and princes or the order which produces the modern kings of industry who have greater power over the lives and fortunes of men than even kings of old, and whose methods are predatory as those of the old feudal aristocracy. I recognise, however, that it may not be possible for a body constituted as is this National Congress, and in the present circumstances of the country, to adopt a full socialistic programme. But we must realize that the philosophy

> of socialism has gradually penetrated the entire structure of society the world over and almost the only points in dispute are the pace and methods of advance to its full realization. India will have to go that way too if she seeks to end her poverty and inequality, though she may evolve her own methods and adopt the ideal to the genius of the race."

True, during his leadership, he always laid emphasis on efficiency and maximization of production; along with it of course went his stress on distributive justice and equality of opportunity.[6]

The country has launched four Five Year Plans, already, in order to give a meaningful effect to the objectives stated in the Chapter of Directive Principles. This was emphatically made clear in the First Five Year Plan itself, when it was stated:

> "The Directive Principles of State Policy enunciated in Articles 36 to 51 of the Constitution make it clear that for the attainment of these ends, ownershi p and control of the material resources of the country should be so distributed as best to subserve the common good, and that the operation of the economic system should not result in the concentration of wealth and economic power in the hands of a few. It is in this larger perspective that the task of planning has to be envisaged."[7]

This clearly indicates that planning in India was not merely considered as a method of economic development but with the purpose of implementing the Directive Principles. And certainly, one cannot overlook the achievements. Some noteworthy changes have taken place in the socio-economic structure of our once feudalistic, traditional, superstitious, passive, dependent and illiterate population. The attitude of the awakened masses of India shows that they have well accepted the socialistic way of life which the Constitution envisages to contruct. The 'socialist pattern of society' was defined by Pandit Nehru as 'a society in which there is social cohesion without classes, equality of opportunity and the possibility for every-one to have a good life'. The Second Five Year Plan, further threw light on it, in the following words:

> "The accent of the socialist pattern is on the attainment of positive goals; the raising of living standards; the enlargement of opportunities for all, the promotion of enterprise among the disadvantaged classes and the creation of a sense of partnership among all sections of the Community."[8]

By now many things have been done in the direction of achieving the goals set by the Constitution. The country has made an encouraging progress in the fields of agriculture and industry. For the betterment of the working population new 'social security measures' have been taken, minimum wages[9]

have been fixed and conditions of work have been modernised and improved. By opening new Universities and educational institutions, better facilities of education have been provided to the children and youth of the country. After abolishing the Zamindari system, various land-reform measures have been and are being taken to provide land to the landless villagers. Many hospitals and dispensaries have been opened in order to provide minimum medical aid to the entire population. This is not to suggest that our planning and implementation has been without any flaws and that the country has achieved a progress of far-reaching satisfaction. While new plan projects have been taken up for the development, the population has also been rising on a fast rate. This rise in population has undermined much of the progress in different fields.

The State has moved into a significant economic area. Bhakra-Nangal, Damodar Valley and Hirakund multi-purpose river projects, Bhilai, Rourkhela and Durgapur steel projects, Vizag ship-building centre and many other concerns like Fertilizers Corporation, Hindustan Machine Tools, Chittaranjan Locomotives, Hindustan Aircraft, etc., are owned by the State and managed to serve the socio-economic interests of the country.

For rural development, Block Development Offices have been set up as a part of the scheme to extend the community development projects. With the establishment of the Khadi and Village Industries Commission and also the Boaśd to assist it, considerable attention is being paid to the development of village industries.

Returning to the Five Year Plans, have to admit that achievements of the Plans have not been very satisfactory. This is evident even from the mid-term appraisal of the Fourth Five Year Plan. The appraisal shows:

> "The Fourth Plan envisages an increase in national income at an average annual compound rate of growth of 5.6%. The actual rate of growth has been 5.3% in 1969-70 and 4.8% in 1970-71. In 1971-72, on account of a sharp decline in the rate of growth of industrial production during the first half of the year, the rate of growth of national income may not reach the figure recorded for 1970-71. The deceleration in the rate of growth of national income is a matter of serious concern. Only agricultural production, in terms of value added, has been growing at an average rate of 5.2%, slightly higher than the one envisaged for the Plan."[10]

Table I

Selected Physical Targets and Achievements

Mid-Term Appraisal of the Fourth Five Year Plan.

	Unit	1973-74 Target	1969-70 Actual	1970-71 Ac./Likely actual	1971-72 Target/ Anti. Ach.	1973-74 Likely achievement
Food grains	million tonnes	129.00	99.50	107.82	112.00	122.00-125.00
Irrigation Maj. & Med.	million hec.	44.00	36.29	37.43	38.75	22.50(maj.) Med. N.A.
Steel	million tonnes	18.90	11.23	10.57	12.35 (anti.)	14.45
Cloth	million metres	4250.00	3600.00	3760.00	3810.00 (anti.)	3900.00
Education						
i) Classes I-XI	Million	22.53	3.46	4.29	4.30	4.50 (20.90 Cumu.)
ii) University Education	"	1.08	0.17	0.22	0.17	0.22 (0.92 Cumu.)
Hospital-beds	'000 no.	281.60	262.40	266.00	270.00	N. A.

Source: The Fourth Plan, Mid-Term Appraisal (A Summery): Issued on behalf of Planning Commission, Government of India: Feb., 1972: pp. 3-8, Annexure 1.1.

Table I (p.86), containing mid-term appraisal of the selected physical targets and achievements, shows that, but for agriculture, over-all progress is well below the set targets.

Let us evaluate the implementation of different Directive Principles included in Part IV of the Constitution.

Village Panchayats:

Article 40, in Part IV, directs the State to organize the Village Panchayats and give them effective powers as units of self-government. For this purpose, the Government of India appointed a Committee headed by Shri Balwant Rai Mehta to make recommendations on Democratic Decentralization. The recommendations of this Committee were endorsed by the National Development Council in 1958. For the establishment of Panchayats at the State-level, the Centre set-forth certain principles. Afterwards, many States followed one after the other to introduce the Panchayati system. The first State to take steps in this direction, however, was Rajasthan.[11] In 1965, in 21 States of India, 212,424 Panchayats were working, covering 551, 595 villages and 3496.9 lakhs of people.[12]

By 1966, the States of Andhra Pradesh, Assam, Bihar, Gujrat, Jammu & Kashmir, Kerala, Madhya Pradesh, Tamil Nadu, Maharashtra, Mysore, Orissa, Punjab, Haryana, Rajasthan, Uttar Pradesh, West Bengal, A.& N. Islands, Delhi, Himachal Pradesh, Manipur, Tripura and Goa, Daman, & Diu, had passed legislations for the implementation of the Pahchayati Raj system in India. Some case studies, by the Government, show that the Panchayats have made notable progress since their formation. The villages have been provided with panchayat-ghar, village tank, pucca drains, soak pits, drinking water wells and a t some villages initiative has been taken in the direction of making kutcha roads also.[13] This study shows that the achievements of the Village Panchayats are quite encouraging. Inspite of this fact, we have to admit that the room for improvement is still large. Widespread illiteracy stands as a big hazard in the way of effective popular control of the panchayats. Again, because of religion and caste considerations, panchayats are controlled, even today, by the privilleged rural classes only. As the Fifth Five Year Plan lays stress on education, it is expected that a desired change will follow to improve the working of Village Panchayats.

Primary Education:

The Constitution (Article 45) expected the State to provide at least compulsory primary education to all within a period of 10 years i.e., upto 1960. A time-limit has been set by the Constitution only with regard to the achievement of this goal. The Constitution visualizes compulsory primary education for the children between the age group of 6 to 14 years. But inspite of all the efforts put in by the Central Government and the State Governments, the records show, that even after a period of about twenty two years, we are well behind the set goal. This should not lead us to the conclusion that it is because of the lack of initiative or resources only, on the part of the state, that the goal has not been achieved. As a matter of fact the problem is also related with the traditional attitude of the citizens. In this regard, bringing the girls to the schools has been a serious difficulty. Anothe serious difficulty has been that owing to economic difficulties, the parents feel compelled many times to take their children away from the schools so that they could add something to the meagre income of the family. A careful study of the Table II (p.90) will show that the State, with whatever resources at its command, has been devoting its serious attention for the achievement of this goal.

Table II

Plan Outlay and Expenditure under Elementary Education

(Rs.Lakhs)

	Fourth Plan Outlay	1969-70		1970-71		1971-72	1969-72	(8) as % of (2)
		out lay	Act. expen.	Out lay	Anti. expen.	Out-lay	expen. (4+6+7)	
	2	3	4	5	6	7	8	9
Total	23454.16	1675.28	1535.17	2690.59	2527.14	4401.16	8483.47	36

Source: The Fourth Plan Mid-Term Appraisal, Vol. II: Government of India, Planning Commission, December, 1971: p. 206, Annexure V.

In the finalised Fifth Plan Approach Draft also, education is to be given high priority along with the distributive aspects. According to the Planning Minister, whole structure of education might undergo a change in the fifth Plan to conform to the quantum and pattern of employment opportunities for the educated youth.[14] A vast net of primary schools is expected to be spread through the length and breadth of the country to achieve the goal of providing compulsory primary education.

Prohibition:

Four States, namely, Andhra, Bombay, Madras and Saurashtra introduced prohibition immediately after independence, in pursuance of Article 47 which directs the State to endeavour to bring about prohibition of intoxicating drugs which are injurious to health. In 1954, the Planning Commission appointed a Prohibition Enquiry Committee with Sriman Narayan as its Chairman. On its recommendations, prohibition was regarded as an integral part of the Second Five Year Plan. A number of States have also set up Prohibition Enquiry Committees and considerable measures are worked out. Inspite of this, the results are very poor. Lack of education amongst the citizens is also responsible for much of failure. The country still needs a well integrated plan to implement this directive which is an important part of the Gandhian philosophy.

Uniform Civil Code:

K.M. Panikkar observes:

> ".....the Indian Parliament has been active in the matter of social legislation, whether it be called by the Hindu Code or by another name."[15]

True, inspite of many socio-religious difficulties, the State passed many Acts, namely, The Hindu Marriage Act, the Hindu Succession Act, the Hindu Minority and Guardianship Act, the Hindu Succession Act by 1956, in pursuance of Article 44 of the Directive Principles.

Scientific Organization of Agriculture and Animal Husbandry:

Though agriculture in India has not become sufficiently modernized, yet many scientifice and modern techniques of agriculture have been made available to the farmers. Tube-wells, fertilizers, crop-insecticides, tractors and other appliances are being provided in more and more numbers. Aid is also sought from Russia and other countries for this purpose. With the result, the achievements in the mid-term appraisal of the Fourth Plan show:

> "The Plan had set a target of five million tonnes of foodgrains buffer stock. On account of the increase in the output of cereals, particularly wheat, it has been possible to build, by the end of September 1971, a buffer stock of 4.9 million tonnes comprising

> 0.6 million tonnes of rice, 4 million tonnes of wheat and 0.3 million tonnes of coarse grains."[16]

This shows that inspite of the natural calamities like draught, etc., the country has made considerable progress in the field of agriculture. The State has also devoted its attention towards organization of animal husbandry and providing protection to the milch cattle. Between 1969 and 1970, the country has been an increase of 65.8% in the population of breedable cows and buffaloes.[17]

Land Reforms:

In the direction of modernizing agriculture and pro-viding land to the tiller, many land reform measures have been taken in various States. There is much transformation in the Indian villages now, which were once plagued by predominance of semi-feudal landownership, landless and land-poor peasants, semi-feudal exploitation and impoverishment, commercialization of agriculture and development of capitalism in the countryside, according to Grigory Kotovsky.[18]

A review by the Land Reforms Implementation Committee Shows:

> "Fifteen years ago when the First Plan was being formulated, intermediary tennures like Zamindars, Jagirs and inams covered more than 40% of the area. There were large disparities in the ownership of

> land held under ryotwari tenure which covered the other 60% area; and a substantial protion of the land was cultivated through tenants-at-will and share-croppers who paid about one-half the produce as rent. Most holdings were small and fragmented. Besides, there was a large population of landless agricultural labourers. In these conditions, the principal measures recommended for securing the objectives of the land policy were the abolition of intermediary tenures, reform of the tenancy system, including fixation of fair rent at one-fifth or one-fourth of the gross produce, security of tenure for the tenant, bringing tenants into direct ownership with the State and vesting them with ownership of land. A ceiling on land holdings was also recommended so that some surplus land may be made available for redistribution to the landless agricultural workers. Another important part of the programme was consolidation of agricultural holdings and increase in the size of the operational unit to an economic scale through co-operative methods."[19]

Though, it cannot be claimed that land-reform measures have been satisfactorily implemented in all States, yet it has to be admitted that considerable steps have been taken in this direction by many State Governments.

Employment and Social Security Schemes:

Achievements in pursuance of Article 41 of the Directive Principles are quite dismal. During 1970-71, increase in the working age population has been double the

increase in the employment opportunities. There is a serious unemployment among the technically qualified personnel and educated youth. Considering the seriousness of the problem, a beginning has been made in 1971-72 by providing Rs. 25 crores for creating employment for the educated, including engineers and technicians. Several programmes formulated by Central Ministries for this amount have been sanctioned. They are expected to continue in the remaining two years and would create employment for teachers, agricultural graduates, engineers and technicians in addition to providing assistance for self-employment opportunities.[20] A war on poverty and unemployment has been declared as the main objective of the Fifth Plan also.

According to Prof. Nurul Hasan, a sound foundation has been laid in India during the period 1952-1957 for an effective social security system. According to him:

"This period (1952-57) may be rightly called the dawn of the era of social security. The period may be distinguished from the rest of social security history in many ways. In the first instance, social insurance principles were accepted as the main basis of social security legislation in India. Secondly, an integrated approach to the problem of health insurance was made for the first time comprising sickness, maternity, employment injuries and

allied contingencies. Thirdly, social assistance measures were also introduced for the first time in many States. Fourthly, compulsory provident fund schemes were introduced in factory industries. Fifthly, attempts began to be made to work out a comprehensive scheme of social security. Sixthly, protection was sought to be provided against certain types of unemployment of industrial workers. Lastly, measures of work relief were undertaken on a large scale for fighting the prevailing unemployment."[21]

Thus, inspite of failure in certain aspects, the steps taken certainly deserve appreciation.

Separation of the Judiciary from the Executive:

By statutory enactments complete separation of the Judiciary from the Executive has been achieved in many States, in accordance with the directive contained in Article 50. This provision is the core of a democratic system. But many States are yet to separate the Judiciary from the Executive. Delhi, Punjab and Haryana have also taken steps in this direction, recently. Such separation has already been affected in Andhra Pradesh, Gujrat, Kerala, Tamil Nadu, Mysore, Maharashtra and West Bengal.

Promotion of International Peace:

In the international field, India has always been taking guidance from Article 51 of the Directive Principles. As such India believes in peaceful co-existence of all nations. The Taskent Declaration and the famous Simla Agreement of 1972 bear a testimony to this fact.

Conclusion:

While the fact, that there has been no lack of will on the part of the Legislature and the Executive in the direction of implementing the Directive Principles, well established itself, it is not easy to ignore the other side of the picture. In the first place, it has to be admitted that there has not been an effective implementation of the Five Year Plans. It is owing to this that most of the targets were never achieved. In other words we can say that the progress has been slow in comparision to the expectations. In the second place, it is important to notice that our Plans have lacked distributive justice. It is because of this fact that inspite of the progress there has been no significant reduction in disparities of income and wealth. This is the fact that has been admitted even by the present leadership. The Resolution on Economic Policy, of the Congress Party admits:

> "It cannot be denied, however, that despite visible changes in the pre-independence structure of the Indian economy, certain sections of the community have amassed enormous wealth, but taken as a whole tens of millions still live in conditions of poverty. These glaring inequalities are reflected in flamboyant display of material possessions, and even more in the exercise of economic power to the detriment of social progress."[22]

Need to reduce these disparities, was even emphasized in the Third Five Year Plan. It was stated in the Plan:

> "In the implementation of plans and policies there is need for greater emphasis on the special objectives of planned development, in particular on bringing about reduction in disparities in income and wealth...."[23]

It is for these reasons that the Fifth Plan lays emphasis on distributive justice and for that, it has been admitted by the Hon'ble Planning Minister, 'we, have, therefore, to improve implementation'[24] in order to end poverty, unemployment, illiteracy and inequalities.

An over all evaluation of the implementation schemes shows that the Legislature and the Executive have been taking all possible steps, within the scarce economic resources of the country, to implement the Directive Principles of State Policy.

NOTE

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3. Mr. Justice K.S. Hegde: "The Directive Principles of State Policy in the Constitution of India", I.C.P.S., National, Delhi; 1972, p. 56.

4. Granville Austin: "The Indian Constitution, Cornerstone of a Nation", Clarendon Press, Oxford, 1966, p.

5. op. cit. p. 59.

6. V.K.R.V. Rao: "The Nehru Legacy", Popular Prakashan Bombay: 1971, p. 86.

7. The First Five Year Plan: Planning Commission, p. 8.

8. The Second Five Year Plan: Planning Commission, p.24.

9. Minimum wage Act, 1948.

10. The Fourth Plan, Mid-Term Appraisal: A Summary: Planning Commission, p. 1.

11. Rajasthan Panchayati Samitis And Zila Parishads Act, 1959.

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CHAPTER VI

CHAPTER VI

The Imperative of Constitutional Amendments

It has been often complained, by individuals and parties, that the Indian Constitution has been made a mockery by making frequent amendments to it. It is in this light that Mr. Subba Rao, former Chief Justice of India, has remarked:

> "A brilliant architectural piece was destroyed of its purity of design by the mundane additions of the lay occupant."[1]

But is it to suggest that the Constitution of a country is a mere show-piece which should simply be seen and not touched at all? Is such a criticism fair and should we admit that Constitution Amendments have been made without any purpose? Our answer to such questions can never be 'yes' because there is no logic in saying that an individual or party will like to disturb an arrangement even if it is working well and satisfying the needs for which it exists. The Indian Constitution has been amended a number of times but this cannot lead us to a conclusion that the Constitution has been considered a play-thing by the Party which the people have so-far entrusted with the task of working it. Right from the first amendment the Constitution has been amended only when

the socio-economic necessities have presented compelling situations to do so'. A careful study of the Constitutional Amendments will show that the Constitution has been amended only in accordance with the obligations cast by the Constitution on those who have to work with it and achieve the goals set therein. Has it been quite imperative to amend the Constitution so many times? Before answering this question let us examine the truth behind the sacred character of a Constitution'. We can pose the question like this: 'Is a Constitution such a sacred document that it cannot be changed or altered at all?'. Here it is important to consider as to what a Constitution is'. On the definition of Constitution, J.W. Garner observes:

> "Like other terms in political science, it (constitution) has been expressly defined by different writers according to the varying conceptions which they hold as to what a constitution should be'."[2]

Thus we find various definitions of a constitution. For instance Gilchrist, thus defines a constitution:

> "The constitution of a State is that body of rules or laws, written or unwritten, which determine the organisation of government, the distribution of powers to the various organs of government and the general principles on which these powers are to be exercised."[3]

This definition includes both the written and unwritten constitutions. The definition given by Appadorai says:

> "A constitution, by contrast, is one in which the fundamental principles concerning the organization of a government, the powers of its various agencies and the rights of the subjects, are written down in one document (or a few documents as in the French Constitution of 1875)." [4]

Whatever definition we give or accept, the most important principle related to all constitutions is that they cannot say the last word about the march of mankind. However fundamental it might be, no constitution can possess the seal of finality because it can never be an end in itself. A constitution is made by a people, it grows with them to satisfy their needs and requirements or it is smashed if it fails to do so. R.N. Gilchrist is quite correct when he says:

> "No constitution-making authority can foresee all the political or social circumstances that may arise in the future. Hence a provision has to be made for alteration or amendment of the constitution." [5]

No institution, no force on earth, can stop the march of mankind. It moves, changes its circumstances and, therefore,

also the institutions which it builds according to the requirements of time. It is in this light that J.W. Garner observes:

> "It is an old saying, attributed both to Sir James McIntosh and Sir Henry Maine, that constitutions grow, instead of being made. Whatever may be the amount of truth contained in the saying, it is undeniably true that no existing constitution has reached its final form and become, as it were, a dead or fixed thing incapable of further development."[6]

Therefore a constitution must grow and cater to the needs of its people, if it is to exist. Burke's philosophy, that constitution is a sacred document immune from amendments, is quite outdated. This is shown even by the observations of J.W. Garner:

> "But with the passing of time the view of Jefferson has come more and more to be the political philosophy of the masses of the American people and indeed of the democratic peoples of the world generally. Constitutions, he said, should not be looked upon with 'sanctimonious reverence like the ark of the covenant, too sacred to be touched'. The frequency with which old constitutions are revised or replaced by new ones is evidence enough that the philosophy of Jefferson rather than that of Burke has triumphed."[7]

This is sufficient to show that the constitutions must grow. A constitution is framed by the people and should continue to satisfy their urges. The people who make it, certainly have the power to change it, modify it or if the need be completely replace it by a new document. The Indian Constitution permits changes and amendments in it is proved by the inclusion of Article 368. This was made quite clear by Pandit Nehru, when he said in the Constituent Assembly:

> "While we want this Constitution to be as solid and permanent as we can make it, there is no permanence in constitutions. There should be a certain flexibility. If you make anything rigid and permanent, you stop the nation's growth of living, vital, organic people... In any event, we could not make this Constitution so rigid that it cannot be adapted to changing conditions. When the world is in turmoil and we are passing through a very swift period of transition, what we may do today may not be wholly applicable tomorrow."[8]

It is for this reason that Article 368 was included to enable the Parliament to make further amendments, whenever necessary. An amendment literally means - "removal of faults or errors, reformation, the alteration of a Bill before Parliament, a proposed alteration which if adopted may even defeat the measure", as defined by Shorter Oxford English Dictionary. Chambers' Twentieth Century

Dictionary defines an amendment as - "Correction, improvement, an alteration proposed on a bill under consideration, a counter proposal put before a meeting, a counter-motion". According to Dr. Hari Chand:

> "In Article 368, the expression "amendment" has been used in a very wide sense... It appears that since the Founding Fathers knew well the meaning of "amendment" as used in regard to a constitution, they considered it unnecessary and superfluous to insert the words 'addition, variation or repeal' in Article 368."[9]

Thus "amendment" in Article 368 of the Indian Constitution has been used in a wider sense and as such it is wider than and includes change. There were various methods of amendment open to the Indian Constituent Assembly. The two most important features of a federal constitution are that it is written as well as rigid. But the framers of the Indian Constitution wanted to seek a balance in rigidity and flexibility. Four important methods have been suggested by R.N. Gilchrist to amend rigid constitutions.[10] These are:

i) by the ordinary Legislature, but with a specified majority;

ii) by a special body like 'convention' in U.S.A.;

iii) with the approval of the local bodies and institutions; or

iv) by popular referendum.

The scheme as provided for in Article 368 of the Constitution is a unique contribution of the founding fathers. It is neither too rigid nor too flexible. Pandit Nehru also favoured a less rigid method of amendment. Shri K.M. Munshi, in his draft Article on amendment had suggested a flexible method while, Prof. K.T. Shah suggested a more rigid method of amendment. Certainly, we needed a less rigid constitution for various reasons. Firstly, we were experimenting with a constitutional government for the first time, with the people having diverse socio-religious and linguistic problems. Secondly, the Indian States were undergoing a rapid change. Thirdly, the Constituent Assembly was lacking a real representative character as it was not elected on the basis of adult franchise. Pointing out the details of the provision for amendment, Dr. B.R. Ambedkar said:

> "...we propose to divide the various articles of the Constitution into three categories. In one category we have placed certain articles which would be open to amendment by Parliament by simple majority. The second set of articles require a two-thirds majority of Parliament. The third category requires a two-third majority of Parliament plus ratification by the States. The States are given an important voice in the amendment of these matters. These are fundamental matters where States have important powers under the

Constitution and any unilateral amendment by Parliament may vitally affect the fundamental basis of the system built up by the Constitution."[11]

Thus Article 368 of the Indian Constitution provides:

"Procedure for amendment of the Constitution - Article 368. An amendment of this Constitution may be initiated only by the introduction of a Bill for the purpose in either House of Parliament, and when the Bill is passed in each House by a majority of total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting, it shall be presented to the President for his assent and upon such assent being given to the Bill, the Constitution shall stand amended in accordance with the terms of the Bill:

Provided that if such amendment seeks to make any change in --

(a) article 54, article 55, article 73, article 162 or a rticle 241, or

(b) Chapter IV of Part V, Chapter V of Part VI or Chapter I of Part IX, or

(c) any of the Lists in the Seventh Schedule, or

(d) the representation of States in Parliament, or

(e) the provisions of this article,

the amendment shall also require to be ratified by the Legislatures of not less than one-half of the States by resolutions to that effect passed by those Legislatures before the Bill making provision for such amendment is presented to the President for assent."

A careful scrutiny of this Article shows that the power and process of amendment, as provided in the Indian Constitution has following characteristics:

i) that the power to amend the Constitution lies in Article 368 itself;

ii) that Article 368 also vests constituent power in the Union Parliament;

iii) that the State Legislatures do not have the power to initiate a Constitutional Amendment;

iv) that the process is neither too flexible to help easy amendments nor too rigid to make them very difficult;

v) that the same procedure as provided for ordinary Bills have been provided for amendments subject to the provisions of Article 368;

vi) that previous sanction of the President is not required for the introduction of an Amendment Bill;

vii) that the condition of ratification by the state Legislatures is more liberal and attached only with the provisions concerning the federal structure;

viii) that no provision of the Indian Constitution is immune from Constitutional Amendment, not even Article 368 itself ; and

ix) that even part III of the Constitution, containing Fundamental Rights, inspite of the provisions of Art. 13 (2), has not been provided with any special immunity from Constitutional Amendments but for the requirements of the prescribed majority.

Now it is easy for us to answer the questions already posed. The answers provided by Article 368 are very clear. This article does not make the Indian Constitution a such sacred document which cannot be changed at all rather it provided for a process which is well suited to the necessary changes which time may call for. Thus, inspite of the Indian Constitution being a fundamental law of the land it does not carry the seal of finality. As asmatter of fact, experiences in Constitutional History show that no 'Manu' could or has ever been allowed to write a final provision, not even a word, in a Constitution. With the considerations of a fast-changing future in India, the framers of the Indian Constitution too thought it wise that Constitution

should not be made very rigid. And, they did the best thing to frame Article 368.

A line of thinking seems to have developed in certain minds in India that Part III of the Constitution, containing the Fundamental Rights is immune from amendments. This trend started developing from the decision given in the State of Madras Vs. Champakam Dorairajan in 1951. In the decision given in this case, the Supreme Court observed, on the nature of the Fundamental Rights:

> "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 articles in Part III."[12]

This trend reached its peak in the decision given in the famous Golak Nath case. Subba Rao, C.J., in the majority judgement held:

> "The power of Parliament to amend the Constitution is derived from Article 245, 246 and 248 of the Constitution and not from Article 368 thereof which only deals with procedure and the amendment is merely a legislative process."[13]

In this case, it was further held:

> " An amendment is law within the meaning of Article 13 of the Constitution, and therefore, if it takes away or abridges the rights conferred by Part III thereof, it is void."[14]

We have already seen that the rights guaranteed in Part III are not absolute and that Article 13 (2) gives them protection against ordinary laws only as the provision says:

> "The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void."

Again, it has been provided in the Constitution that reasonable restrictions can be imposed on the Fundamental Rights and this shows that the right of regulating the exercise of these rights has been given to the State. But the decision given in the Golak Nath case declared that 'law' in Article 13 (2) also covers an amendment of the Constitution. Thus the issues which were once settled in the Shankari Parsad and Sajjan Singh cases were again revived. Let us consider certain vital implications of this case here. Following were the most important implications of the decision given in this case:

1) that Fundamental Rights are sacrosanct and that the Parliament did not have the right to curtail them;

ii) that 'law' in Article 13 (2) also included an amendment of the Constitution; and

iii) that Art. 368 simply prescribed the procedure to amendment and the power to amend the Constitution comes from Articles 245 and 248 read with item 97 of list first.

One can well imagine, what a serious constitutional deadlock was created by the decision given in this case.

Apart from this case, our experience shows that particular difficulties came before the government from Supreme Court's interpretation of 'compensation' in Article 31. To overcome the difficulties caused by the Zamindari Abolition measures, the Parliament passed the Constitution First Amendment Act, in 1951 and to remove subsequent difficulties caused by the 'compensation' issue, the Parliament passed the Constitution Fourth Amendment Act in 1955. Apart from this, Article 31 was further amended by the Constitution Seventeenth Amendment Act in 1964. But inspite of all these amendments, legal difficulties came up before the government owing to the 'compensation' issue in the famous Bank Nationalization Case. In this case, 'compensation' was defined as 'full indemnification' for the acquired property.[15]

It was in order to remove these difficulties, which came in the way of discharging the Constitutional duties, that resort was sought to 24th and 25th Constitution Amendment Acts in 1971.

Not only this, but 26th Constitution Amendment Act was also passed in order to overcome the constitutional difficulties caused by the decision given in the Privy Purses Case.[16]

Thus we find that Constitutional Amendments have been resorted to with specific purposes in the interest of bringing about socio-economic changes and for removing the constitutional impediments in their way, inherent or caused by the decisions given by the Supreme Court, in various cases.

NOTES

1. K.Subba Rao: "Conflicts in Indian Polity", S.Chand & Co. Pvt. Ltd., New Delhi: 1970, p. 29.

2. J.W. Garner: "Political Science and Government", The World Press Pvt. Ltd., Calcutta, Ist Edn., 1951, p. 456.

3. R.N. Gilchrist : "Principles of Political Science", Orient Longmans, 1964, p. 226.

4. A.Appadorai : " The Substance of Politics", Oxford University Press, 1961, p. 456.

5. op. cit., p. 235.

6. op. cit., p. 486.

7. op. cit., p. 493.

8. C.A.D., Vol VII, pp. 322-23.

9. Dr. Hari Chand: "The Amending Process in the Indian Constitution", Metropolitan Book Co. (Pvt.) Ltd., Delhi-6, 1972, p. 18.

10. op. cit., p. 235-236.

11. C.A.D., Vol. IX, p. 1569.

12. A I R 1951: SC 226.

13. A I R 1967: SC 1643.

14. Ibid.

15. A I R 1970: SC 564.

16. A I R 1970: SC 530.

CHAPTER VII

C H A P T E R VII

The Constitution 24th And 25th Amendments; The Landmarks in the Constitutional History of India.

In the earlier chapters we have seen that in the process of implementation of the Directive Principles of State Policy certain conflicts have openly come to the surface and that in cases of such conflicts, the Judiciary has failed to appreciate the real purpose behind the provisions contained in Part IV of the Constitution. Owing to this over-leagalistic attitude of the Judiciary towards the Directive Principles, many Constitutional Amendments have become quite imperative. The purpose of this chapter is to study two such conflicts in which the Judicial decisions created a stir in constitutional as well as political circles. One of such cases was the famous Golak Nath Case and the other was the equally famous Bank Nationalization Case. Out of these two, particularly the Golak Nath Case is of far-reaching Constitutional importance. For the champions of individual rights, the decision given in this case was a historic one as the Supreme Court declared that from the

date of the decision in that case, the Parliament would have no power to take away or abridge any of the Fundamental Rights contained in Part III of the Constitution.

The Constitutional Amendments, resorted to by the Parliament in order to dissolve the constitutional deadlocks created by the Judicial pronouncements in these cases, can certainly be regarded as landmarks in the Constitutional History of India[1]. Let us first study the implications of the Golak Nath Case and the Constitution Twenty Fourth Amendment Act[2], 1971[3].

We are aware that Article 37 of the Directive Principles casts a constitutional duty on the State to apply the provisions contained in Part IV in making laws[4]. The State governments, in pursuance of Article 39, passed the Zamindari Abolition Acts as early as 1951[5]. But as some of such Acts were struck down by Courts, the Parliament passed the Constitution First Amendment Act of 1951 to make the Zamindari Abolition laws retrospectively unchallengeable in the courts[6]. For this purpose it also inserted Articles 31-A and 31-B and also a schedule in the Constitution[7]. To make the special provisions, made for the advancement of the weaker sections of the people and the scheduled castes and the scheduled tribes, immune from challenge in the courts on the ground of being discriminatory[8], it also amended Article 15.

Not only this but the First Amendment Act also amended clauses 2 and 6 of Article 19 in the interest of imposing reasonable restrictions on the right of freedom of speech and expression and the right to carry on any trade, business, industry or service. This amendment was passed by the Provisional Parliament under Article 368 of the Constitution. This Constitution First Amendment Act of 1951 was challenged in Shankari Prasad Singh Vs. Union of India, on the ground that when the definition of 'State' in Article 12 included 'Parliament', the definition of 'law' in Article 13 must include even a constitutional amendment and as such must be subject to Article 13 (2). As the intention of the framers of the Constitution was to make the Fundamental Rights immune from not only ordinary laws but also from constitutional amendments, the Constitution First Amendment Act was unconstitutional on the ground that it infringed Fundamental Rights. But the Supreme rejected the doctrine of the immutability of Fundamental Rights and declared that the Parliament had the power to amend even Part III of the Constitution. Speaking for the Court, Patanjali Sastri, J., held:

> "Although 'law' must ordinarily include constitutional law, there is a clear demarcation between the ordinary law, which is made in exercise of legislative power,

and constitutional law, which is made in exercise of constituent power."[2]

He further said:

"No doubt, our constitution-makers, following the American model, have incorporated certain fundamental rights in Part III and made them immune from interference by laws made by the State. We find it, however, difficult, in the absence of a clear indication to the contrary, to suppose that they also intended to make those rights immune from Constitutional Amendments."[3]

In Sajjan Singh Vs. State of Rajasthan, again the validity of the Constitution Seventeenth Amendment Act, was challenged on the same ground as in the Shankari Prasad's [4] case. Gajendragadkar, C.J., in the majority judgement, held in this case:

"In our opinion, the expression 'amendment of the Constitution' plainly and unambiguously means amendment of all the provisions of the Constitution."[5]

The Supreme Court rejected the doctrine of the immutability of the Fundamental Rights on the ground that had it been the intention of the constitution-makers to save fundamental rights even from constitutional amendments, they would have taken the precaution of making a clear

provision to that regard. However, in the same case, Hidayatullah, J., speaking for himself, observed:

> "But I make it clear that I must not be understood to have subscribed to the view that the word 'law' in article 13 (2) does not control constitutional amendments. I reserve my opinion on that case for I apprehend that it depends on how wide is the word 'law' in that article ... I would require stronger reasons than those given in Shankari Prasad's case to make me accept the view that fundamental rights were not really fundamental but were intended to be within the powers of amendment in common with other parts of the constitution ... The constitution gives so many assurances in part III that it would be difficult to think that they were the playthings of a special majority."[6]

The Supreme Court decisions in these two cases had well settled the controversy that an amendment of the constitution was not a law within Article 13 (2) and that the fundamental rights were not immune from amendments.

But in Golak Nath Vs. The State of Punjab, 1967, again, the validity of the Constitution First Amendment Act, 1951 and the Constitution Fourth Amendment Act, 1955 was challenged on the ground that they were violative of the Fundamental Rights guaranteed under Article 14, Article 19

and Article 31 of the Constitution. Following were the important contentions of the petitioners:

1. The constitution is a fundamental and indestructible document, at least in its fundamentals.

2. The Fundamental Rights which form the basic structure of the constitution could not be destroyed, at least in their essence.

3. Article 368 only enables a modification of the provisions of the constitution and not their destruction.

4. The framers of the constitution had intended to make the fundamental rights immune from even constitutional amendments.

5. The provision for reasonable restrictions makes Part III elastic enough to suit the changing conditions.

6. Article 368 was only procedural and the power to amend the constitution lies outside it.

7. Definition of 'law' within Article 13(2) includes even an amendment of the constitution.

Though this does not form the exhaustive list of the contentions raised in this case yet, they broadly give us the line of argument. The historic judgement in this case was delievered by a slender majority of one Judge, six to five ruling. Exercising the power of Judicial Review, the

Supreme Court reversed the earlier judgements given in the Shankari Prasad and Sajjan Singh cases. The Supreme Court declared that from the date of its decision in that case, Parliament will not have the power to amend any of the provisions of Part III of the constitution so as to take away or abridge the fundamental rights enshrined therein. The Court also developed the doctrine of 'prospective over-ruling' to save the various Acts passed by various States and also the First, fourth and Seventeenth Amendments to the constitution.

In its majority judgement, the Supreme Court held:

> "The power of Parliament to amend the Constitution is derived from Article 245, 246 and 248 of the Constitution and not from Article 368 thereof which only deals with procedure and the amendment is merely a legislative process."[8]

The Court further held:

> "Amendment is law within the meaning of Article 13 of the Constitution and therefore, if it takes away or abridges the rights conferred by Part III thereof, it is void."[9]

The majority, in this case, further held that if Parliament wants to amend the fundamental rights so as to take away or abridge them, it can do so only by calling a Constituent Assembly for making the new Constitution or radically changing it.

However, it is interesting to note that the minority judgement (on behalf of five Judges) in this case, delivered by Wanchoo, J., held that Article 368 was not subject to Article 13(2) of the Constitution and that the power to amend the Constitution was a constituent power and was not, therefore, law within the meaning of word 'law' used in Article 13(2) of the Constitution. The minority judgement also considered that Article 368 was not simply procedural but also - contained the power of amendment.

As we have seen, the Constitution First, Fourth and Seventeenth Amendment Acts were adopted by the Indian Parliament only with a view to avoid clashes with the Fundamental Rights in the matters of socio-economic legislation. But with the decision in the Golak Nath Case, the Supreme Court created a constitutional deadlock by taking away from the Parliament the power of amending the Fundamental Rights, which, as the experience shows, were the most serious impediments in the way of the implementation of the Directive Principles. On the issue of implementation of the Directive Principles, the Supreme Court in Golak Nath case observed:

> "If it is the duty of Parliament to enforce the directive principles, it is equally its duty to enforce them without infringing the fundamental rights. The Constitution-makers thought that it could be done and we also think that the Directive Principles can be reasonably enforced within the self regulatory machinery provided by part III.

> Indeed both Parts III and IV of the Constitution, dealing with fundamental rights and directive principles respectively, form an integrated scheme and are elastic enough to respond to the changing needs of the society. The verdict of Parliament on the scope of law of social control of fundamental rights is not final but justiciable."[10]

But even the recent decision in the 'News-print Control' Case shows that the Supreme Court has failed to appreciate even reasonable restrictions on fundamental rights, applied in the interest of socio-economic legislation. Thus in order to end the constitutional deadlock, created by the judicial pronouncement in the Golak Nath Case, the government brought before the Parliament the Constitution Twenty Fourth Amendment Bill in 1971, with the purpose of restoring to it the power of amending any part of the Constitution, including the Fundamental Rights. Prior to the introduction of this Bill, three other proposals were made by late Shri Nath Pai, Shri Yashpal Singh and Shri K.R. Ganesh. Shri Nath Pai's Bill, inspite of the official support, failed to get the required majority. The Constitution Twenty Fourth Amendment Act of 1971 has now restored to the Parliament the right to amend any part of the Constitution, including the Fundamental Rights. It has also amended Article 368 to make it clear that it provides also the power to amend the Constitution. And above all, this Act has amended Article 13 also to make it inapplicable to any amendment of the Constitution under Article368.

S.P. Aiyar and S.V. Raju, in the introduction to their book "Fundamental Rights and The Citizen", observed

> "What is sought by the Constitution (Twenty-fourth Amendment) Bill, on the other hand is to give Parliament a blanket power to use Article 368 to amend any part of the Constitution, including the fundamental rights of the citizens."[11]

But does it not lead one to argue that, in fact, it is the power of judicial review which seems to have given the Indian Supreme Court the blanket power to strike down any socio-economic legislation under some plea or the other of the infringement of Fundamental Rights. The past experience has proved this fact. And to add to it, while this work is reaching its last pages, the Supreme Court is hearing the petition of Shri Kesavananda Bharati challenging the right of the Union Parliament to amend the Fundamental Rights. While arguing for this case, Mr. N.A. Palkhivala submitted to the Supreme Court:

> "If you come to the conclusion that 24th amendment empowers Parliament to abrogate, or to destroy or impair the frame-work behind the written word, then to use the language of an American writer, it is a silent revolution engulfing this country without the people knowing it. This means an attempt has been made to alter the will of the people without their even knowing it."[12]

Though the Supreme Court is yet to give its verdict in this Case yet such a line of argument, as taken by Shri N.A. Palkhivala, does not appear sound because the Constitution Twenty-fourth Amendment is not a silent revolution but a popular revolution for which the people gave mandate to the ruling Congress Party.

The second case with far-reaching constitutional importance has been the Bank Nationalization Case, as popularly known. In this case, inspite of the Constitution First, Fourth and Seventeenth Amendment Acts, made with the specific purpose of liberalizing the 'compensation' issue, the Supreme Court decided that 'Compensation' meant 'full indemnification' or 'just equivalent' at the market-value. The Constitution First Amendment, made for the purpose of saving the various Acts passed by State Governments from the purview of the courts and amending Article 31 to add Article 31-A and 31-B, failed to achieve the desired results. Inspite of this Amendment, the Supreme Court held, in Mrs. Bella Banerjee Vs. State of West Bengal:

> "While it is true that the legislature is given the discretionary power of laying down the principles which should govern the determination of the amount to be given to the owner for the property appropriated, such principles must ensure that what is determined as payable must be compensation, that is, a just equivalent of what the owner has been deprived of."[13]

To avoid such judicial difficulties, the Constitution Fourth and the Constitution Seventeenth Amendments were passed to place the compensation issue outside the purview of the courts and to enlarge the meaning of 'estate' in Article 31, respectively. Thus, Article 31 or the right to property had already been amended three times prior to the Bank Nationalization Case, in order to further socio-economic changes in the direction of implementing Article 39 of the Directive Principles. But even these earlier three amendments failed to serve the purpose of social legislation because inspite of them the Supreme Court invalidated the Bank Nationalization Ordinance, issued on 19th July, 1969, nationalizing 14 major banks of the country. Prior to this case, the Supreme Court had decided, in Shantilal Mangaldas And Others Vs. State of Gujrat,[14] that neither the principles prescribing for compensation, nor the amount fixed as compensation can be questioned by the courts on the ground of the inadequacy of the compensation fixed or arrived at by the working of the principles. But in the Bank Nationalization case this decision was reversed and decided that compensation fixed for acquiring a property was justiciable. One very sad feature of the judgement was that the Supreme Court relied on the dictionary meaning of the term 'compensation' interpretting it to mean anything as equivalent, to make amends for the loss of damage. Thus, the Supreme Court invalidated the Bank

Nationalization Ordinance on the grounds of "hostile discrimination and inadequate compensation".[15]

The Supreme Court once again revived the settled issue of 'compensation' and failed to appreciate the socio-economic purposes behind the Executive measure in the direction of making the resources equally available to all. There has been much high-talking about the right to property in this country but what is sacred about it, nobody has shown. After all, where does the property come from? Is it not a recognised fact that all property is amassed as a result of the exploitation of the natural and social resources? Should then the society pay a 'Just equivalent' compensation for a thing which actually belongs to it and to no individual or a party beyond the limits of use. It is in this light that Prime Minister Mrs. Indra Gandhi told the House of People:

> "There is the talk of compensation. Even today we have heard some of it while my colleague was speaking. I heard often Mr. Piloo Modi say something about 'Chori'. He knows that this is a subject about which I feel very strongly and I would like to put it to the House, as I have put it on previous occassions. We have talked of compensation, but compensation for what? Compensation for land, compensation for a place or for a big house? I would like to ask Hon. Members, what about compensation for injustice? What about compensation for forced labour, for the

landless people, for land unfairly grabbed? What happens when a mill is closed , its machinery run down, its reserves eaten away, even provident funds diverted to private purposes; a small man's business is closed and its partners driven to the streets, and other such iniquities of the capitalist system?"[16]

Therefore, to smash the controversy over the compensation issue and enable the government to follow more and new socio-economic measures, the Constitution Twenty-fifth Amendment Act was passed by the parliament in 1971. Stressing the necessity and urgency of the Amendment, the Hon'ble Law Minister, Shri H.R. Gokhale, said in Lok Sabha:

> "After the Fourth Amendment there have been many judicial somersaults on its interpretation. The continued use of the word 'compensation' led to the interpretation that the money equivalent of the property acquired must be given for any property taken by the State for a public purpose. The provisions of the Fourth Amendment were thus rendered negatory."[17]

As a matter of fact it was also emphasized by Pandit Jawaharlal Nehru that neither the economic resources of the country permit to give the just-equivalent of the acquired property, nor it should be the principle. The Twenty-fifth Amendment was crowned by the Law Minister as "a landmark

in the Constitutional History of India". And true it is, for various reasons. Firstly, this Amendment smashes the compensation controversy completely by substituting the clause 'for an amount' in place of 'compensation'. This 'amount' shall be fixed by the Parliament by law while acquiring property for a 'public purpose'. Secondly, this amendment, for the first time, legally places the Directive Principles on a better footing than the Fundamental Rights. To put a check on the Judiciary and to protect it from itself, Article 31-C has been added to the right to property.

The newly added Article reads:

> "31C. 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 a rticle 14, article 19 or article 31; and 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..."

This shows that the Directive Principles which are 'fundamental in the governance of the country' have been supplied with the power that their implementation can override even the Fundamental Rights.

Thus, both the Twenty-fourth and the Twenty-fifth Amendments can really be regarded as landmarks in the Constitutional History of India because firstly, these amendments endow the Parliament with the power of 'supremacy' because they provide fredom to various legislative measures, from the courts, which seek to give effect to the Directive Principles. Secondly, these amendments have a real socio-economic purpose behind them and thus give priority to the social interests over the individual interests. Thirdly, the Directive Princiiles, often considered 'meaningless' provisions, have been given not only a legal status but have also been placed at a superior constitutional plane by these two amendments. Forthly, these amendments have removed the road-blocks from the way of socio-economic changes. And lastly, these amendments have ended one of the biggest constitutional deadlocks in the constitutional history of India, giving Parliament the necessary ritht to amend any part of the Constitution and to acquire property for socio-economic purposes and the interests of the whole community to reduce the grave disparities in wealth.

NOTES

1. AIR 1951: SC 458.
2. Ibid.
3. Ibid.
4. AIR 1965:SC 845.
5. Ibid.
6. Ibid.
7. AIR 1967: SC 1643.
8. Ibid.
9. Ibid.
10. Ibid.
11. S.P Aiyar And S. V. Raju: "Fundamental Rights And The Citizen", Academic Books Limited, 1972, Introduction, p. 8.
12. Report of the hearing of Shri Kesavananda Bharati's petition: "The Hindustan Times", daily, dated 2nd November, 1972, p. 4.
13. AIR 1954: SC 170.
14. AIR 1969: SC 624.
15. AIR 1970: SC 564.
16. Speech of Mrs. Indira Gandhi, given in the Lok Sabha on 4th August, 1971 and published in "Fundamental Rights And the Citizen", Aiyar And Raju: Academic Books Ltd., 1972, p. 99.
17. Lok Sabha Debates, Part II, dated 30th Nov., 1971, p. 7243.

CHAPTER VIII

CHAPTER VIII

Conclusions

It is clear from our study that although the Constitutional scheme of Part III and Part IV does not envisage any direct conflict between the two sets of Provisions, yet they differ from each other in their nature and purpose. It becomes clear from a careful study of the Fundamental Rights that they contain the traditional individual rights of man and seek to maintain a status-quo in the property-relations. But the Directive Principles, on the other hand, contain certain directions, which have also been made constitutional duties, to the State to direct its policy in such a way so as to achieve a change in the property-relations, through a peaceful, pursuasive, and gradual process. Inspite of the fact that they have not been given such a position in the Constitution, the Directive Principles, Article 41 to 46, contain certain socio-economic rights of citizens as the equal beneficiaries of society.

It becomes further clear, from this study, that because of their different nature and purposes, conflicts are quite possible between the provisions of Part III and

Part IV, in the process of implementation of the Directive Principles. Such conflicts have been admitted even by great Constitutional experts like D.D. Basu[1], H.M. Seervai[2], and also Prof. M.P. Jain[3]. Till this day, the most important cause of such conflicts has been the provisions of Article 13, Article 32 and Article 37. Clause (2) of Article 13 is to provide protection to the Fundamental Rights against arbitrary laws of the State and Article 32 expressly guarantees the enforcement of the Fundamental Rights by the Courts. Article 37, in PartIV, has been often resorted to by the Courts in India to take a purely legalistic view[4] of the Directive Principles. At the very outset, Article 37 says that the provisions contained in Part IV of the Constitution shall not be enforceable by any Court. This Article has been often relied upon by the Courts to give an inferior treatment to the Directive Principles of State Policy. Nevertheless, it is important to note that the same Article makes it emphatically clear that the provisions contained in Part IV of the Constitution shall be considered' fundamental in the governance of the State' and along with it a constitutional duty has been imposed on the State to 'apply these principles in making laws.'

But, as it is clear, from this study, baring a few cases in which the Judiciary really came near to appreciating the real purpose and importance of the Directive Principles, the Indian Judiciary seems to be functioning in isolation from other wings of the 'State' that is why many of the too much wanted Legislative and Executive acts have been declared void by it. The Judiciary has failed to comply with the spirit of the Constitution. It will not be too much to even say that it has failed to obey the directions of the Constitution. Article 37 has made it quite clear that the Directive Principles are 'fundamental in the governance of the country' and that it is the duty imposed by the Constitution on the State that it has to 'apply these principles in making laws'. The Judiciary itself is a part of the 'State' and as an organ of the Government it has equally to share the euty enjoined upon the State by the Constitution. The decision of the American Supreme Court in Dodge Vs. Woolsey, 1855, clearly shows:

> "The Departments of the government are Legislative, Executive and Judicial. They are co-ordinate in degree to the extent of the powers delegated to each of them. Each, in the exercise of its powers, is independent of the other, but all, rightfully done by either, is binding upon the others."[5]

But the Judiciary in India, sharing equal duties of applying the Directive Principles in making laws through interpretations of the Constitution, has failed to do so. It has rather, in the process of interpreting the laws, done considerable harm to both the Directive Principles as well as the Fundamental Rights. Though we have to agree that in the absence of a clear mandate from the Constitution to enforce the Directive Principles the Judiciary could not enforce them yet, it has been seen that the Judiciary failed to co-operate with other organs of the government in the direction of helping social legislation for the purpose of implementing the Directive Principles of State Policy.

As we have already considered, the Constitutional Advisor to the Constituent Addembly, Sir B.N. Rau, considering that a conflict might come up between Part III and Part IV of the Constitution, had suggested an amendment that in such cases the fundamental rights should be modified to enable the enforcement of the Directive Principles. But, as we know, that amendment was rejected by the Constituent Assembly as being too late. Explaining the stand of the Constituent Assembly in this regard, Dr. K.C. Markandan observes:

> "It was thought that the Judiciary would give due recognition to Part IV. But the Judiciary interpreted the integrated scheme and the elasticity thereof

> in the opposite way, namely that fundamental rights Part would not constitute an impediment in the governance of the State but that if it did the latter itself should be modified to permit enforcement within the ambit of Fundamental Rights'."[6]

That the Judiciary has given an interpretation against what was expected of it by the framers of the Constitution becomes clear from the observations of Hidayatullah, J. in Golak Nath Case. He observed:

> "The Directive Principles lay down the routes of State action but such action must avoid the restrictions stated in the Fundamental Rights."

Not only this but one more interesting point to observe, in the attitude of the Judiciary towards the Directive Principles, is that personal bias and theories of the Judges have been more allowed to influence their interpretation of the Constitution. This becomes evident from the following observations of Hidayatullah, J., in the Golak Nath Case:

> "While the world is anxious to secure fundamental rights internationally it is a little surprising that some intellectuals in our country think of the Directive Principles in our constitution as if they were superior to Fundamental Rights. To them an amendment of the Fundamental Rights is permissible

> if it can be said to be within a scheme of a supposed socio-economic reform, however, much the danger to liberty, dignity and freedom of the individual under all conditions."

The learned Judge allowed his personal love for individual rights to influence his interpretation of the Constitutional provisions. While so much stressing the importance of the fundamental rights, the learned Judge has set aside the value and importance of socio-economic rights which incidentally have received a place of pride in certain Constitutions like the Irish and the Russian. He has not cared to see carefully the changes going around. He has failed to see that even in a country like America, where fundamental rights have been given an important place in the constitution, socio-economic legislation has received all support and encouragement from the Judiciary and that the Government there has given so much importance to its socio-economic obligations that about 20% of the National Income is spent on the socio-economic over-heads, although it has a capitalistic system.

As our study shows, it is difficult to agree with the views of Mr. Justice K.S. Hegde[7] and V.G. Ramachandran[8] that the Fundamental Rights and Directive Principles of State Policy have no conflicts and are complimentary to each other. The history of implementation of the Directive Principles shows

that the two provisions have come into clash with eachother so many times. And it is important to note that it is mainly the provisions of Fundamental Rights which have often become hinderances in the way of the implementation of the Directive Principles'. Even the recent judicial pronouncement in the 'Newsprint Control' Order, shows that it is mainly the provisions of Fundamental Rights which have been pronounced as conflicting with the constitutional duty of the State'.

It is all the more important to note here, that the Judiciary in India seems to have developed a notion that if the Directive Principles are implemented and it upholds the validity of such legislation, then, there is a danger that the Fundamental Rights will be shunted into the background. It is under this 'doctrine of fear' that the Judiciary has been functioning. We have seen the height of this fear in the famous Golak Nath Case in which the Supreme Court, with a motive to give complete protection to the Fundamental Rights, held that Parliament had no power to amend them. Many eminent scholars and jurists have weighed the merits of the Golak Nath Case decision and most of them have considered the decision as unwise and an outcome of the Judicial-fear'.

Nevertheless, it is not to suggest that the Directive Principles have remained only 'pious hopes' in the Constitution'. The Executive and the Legislature have taken

many concrete steps in order to implement the Directive Principles. Pandit Nehru, India's first Prime Minister, was very eager to usher in the country a socialistic system and in this direction his government adopted planned development for the country through Five Year Plans. Even the present leadership of the country is following planned development with more socio-economic programmes for the uplift of the weaker and the backward sections of the society. Mrs. Indira Gandhi also clearly declared this before the Parliament:

> "The measures which we have taken and are taking are milestones in the progress of our democracy and are intimately related to the well-being and progress of millions of our people. They have come to be regarded by the people as marking a new stage in their struggle to build an egalitarian, more humane, more just society. As their elected representatives, it is our duty to reflect their urges."[9]

But this is not to stress that the progress achieved in the direction of implementing the Directive Principles of State Policy has been quite satisfactory. As a matter of fact, what has not been done is so much that it overshadows the achievements of the country. The fast rise in population, hovering unemployment, lack of medical facilities, illiteracy, etc., are even today the greatest problems before the leadership of the country. This requires still bolder

measures and greater state-role. As the Fifth Five Year Plan draft shows, steps are being taken in this direction and also in the direction of improving the implementation of the plans in order to achieve the targets and also to guarantee that the fruit of progress reach those who have been lagging behind in the economic march of the country.

The last part of our study makes it clear that the Constitutional Amendments have become more necessary and important to overcome the legal impediments in the way of the implementation of the Directive Principles. In this connection, it is important to take note of the observations of the American Supreme Court, in West Coast Hotel Co. Vs. Parrish, 1936. The Supreme Court observed:

> "If the Constitution, intelligently and reasonably contrued in the light of these principles, stands in the way of desirable legislation, the blame must rest upon that instrument, and not upon the court for enforcing it according to its terms. The remedy in that situation - and the only remedy - is to amend the Constitution."[10]

Therefore, Constitution Amendments have been very necessary in order to overcome the constitutional impediments. There is no wight in the complaints that Parliament has made mockery of the Constitution by frequent amendments to it. Usually five complaints are lodged against frequent amendments:[11]

i) that public is never consulted in the matters of amendments;

ii) that amendments have been mainly resorted to legalise the programme of the Congress Party;

iii) that Supreme Court verdict has often been overthrown by amendments;

iv) that Party-ship is served on amendments and hence individual of the members is curtailed; and

v) that too frequent amendments are made.

But much of such criticism is unwarranted and wrong. This is proved by the last general elections that mandate has been sought from the people on specific matters involving constitutional amendments. And again to say that constitutional amendments are resorted simply to legalise the programme of the Congress Party, is to undermine the real importance of the Constitutional Amendments. Apart from this our experience shows that most of the constitutional amendments have been necessitated by certain judicial pronouncements, particularly the recent ones, the 24th, 25th and 26th Amendments. As a matter of fact, such constitutional amendments have become necessary even in some other countries. On this issue Pritchett observes:

> "The conservatism of the Supreme Court (America), symbolized by its invalidation of the income tax in 1895, made constitutional amendment seem a necessary step toward achieveing liberal legislative goals."[12]

Constitutional Amendments have to be accepted in theory even if we consider a Constitution as Fundamental law of the land. In the words of Dr. K.C. Markandan:

> "...it is beyond doubt that constitutions are meant to be enduring and it is to ensure that the tendency is to get the constitutional document in the written form. But that does not mean that the constitution is something which once written cannot be altered for generations to come under any circumstances whatsoever. A Constitution is a means to an end which is the good Government of a country and the adjustment of the varying and often conflicting rights and duties of its inhabitants. Consiquently to treat an existing Constitution as an end in itself is to confuse means with ends and to forget the very purpose for which the Constitution was called into being."[13]

Our study shows that Constitutional amendments have not become a fashion for the Legislature in India. But, as the experience shows, constitutional amendments sometime have become necessary because of certain judicial pronouncements. The fact that certain constitutional amendments have been made in fulfilment of certain socio-economic goals is even mentioned by the ruling Congress Party in its election manifesto. The manifesto reads:

> "The nation's progress cannot be halted. The spirit of democracy demands that the Constitution should enable the fulfilment of the needs and urges of the people. Our Constitution has earlier been amended in the interest of economic development. It will be endeavour to seek such further constitutional remedies and amendments as are necessary to overcome the impediments in the path of social justice."[14]

The correctness of the conclusion, that Constitutional Amendments have been necessary to get past the impediments in the way of implementing the Directive Principles, is even strengthened by the following observations of Dr. K.C. Markandan:

> "The survey of Constitutional Amendments and amending process in India indicate that by and large the constitutional amendments adopted till date were not only necessary but had effected an improvement in the constitutional framework and that the procedure provided for the amendment of the constitution had worked satisfactorily."[15]

And true, the Constitution Twenty-fourth and Twenty-fifth Amendment Acts of 1971 from the landmarks in the Constitutional History of India, towards this goal enshrined in Part IV of the Constitution containing Directive Principles of State Policy.

NOTES

1. Op. cit., p. 112.
2. Op. cit., p. 759.
3. op.cit., p. 670
4. op. cit., p. 251
5. Rottschaefer: "Cases And Materials on Constitutional Law", St. Paul, Minn, West Publishing Co., 1948, p. 5.
6. Dr. K.C. Markandan: "The Amending Process And Constitutional Amendments In the Indian Constitution", Sterling Publishers (P)Ltd., New Delhi-16, 1972, p. 265
7. op. cit., p. 47.
8. op. cit., p. 917.
9. Speech of Mrs. Indira Gandhi in Lok Sabha, on 4th Aug., 1971: Published in "Fundamental Rights And The Citizen", edited by Sh. S.P. Aiyar and S.V. Raju, Academic Books Limited, 1972: p. 101.
10. op. cit., p. 19.
11. K.V. Rao: "Parliamentary Democracy in India", The World Press Pvt. Ltd., Calcutta, 1965, p. 442.
12. Pritchett: "The American Constitution", McGran Hill Book Company, New York, IInd Edn., p. 41.
13. op. cit., p. 271.
14. Indian National Congress Election Manifesto, 1971: pp. 5 and 6.
15. op. cit., p. 334.

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APPENDIX A

Text of Constitution (Twenty-fourth Amendment) Bill, 1971

Introduced in The Lok Sabha on July 28, 1971

Be it enacted by Parliament in the Twenty-second Year of the Republic of India as follows:-

1. This Act may be called the Constitution (Twenty-fourth Amendment) Act, 1971. — Short title

2. In article 13 of the Constitution after clause (3), the following clause shall be inserted, namely:- — Amendment of article 13

"(4) Nothing in this article shall apply to any amendment of this Constitution made under article 368."

3. Article 368 of the Constitution shall be renumbered as clause (2) thereof, and (a) for the marginal heading to that article, the following marginal heading shall be substituted, namely:- — Amendment of article 368

"Power of Parliament to amend the Constitution and Procedure therefor.";

(b) before clause (2) as so re-numbered, the following clause shall be inserted, namely:-

"(1) Notwithstanding anything in this Constitution, Parliament may in exercise of its constituent power amend by way of addition, variation or repeal any provision of this Constitution in accordance with the procedure laid down in this article.";

(c) in clause (2) as so re-numbered, for the words "it shall be presented to the President for his assent and upon such assent being given to the Bill," the words "it shall be presented to the President who shall give his assent to the Bill and thereupon" shall be substituted:

(d) after clause (2) as so re-numbered, the following clause shall be inserted, namely:-

"(3) Nothing in Article 13 shall apply to any amendment made under this article."

Statement of Objects and Reasons

The Supreme Court in the well-known Golak Nath's Case (1967, 2 S.C.R. 762) reversed, by a narrow majority, its own earlier decisions upholding the power of Parliament to amend all parts of the Constitution including Part III relating to fundamental rights. The result of the judgement is that Parliament is considered to have no power to take away or curtail any of the fundamental rights guaranteed by Part III of the Constitution even if it becomes necessary to do so for giving effect to the Directive Principles of State Policy and for the attainment of the objectives set out in the

Preamble to the Constitution. It is, therefore, considered necessary to provide expressly that Parliament has power to amend any provision of the Constitution so as to include the provisions of Part III within the scope of the amending power.

2. The Bill seeks to amend article 368 suitably for the purpose and makes it clear that article 368 provides for amendment of the Constitution as well as procedure therefore. The Bill further provides that when a Constitution Amendment Bill passed by both Houses of Parliament is presented to the President for his assent, he should give his assent thereto. The Bill also seeks to amend article 13 of the Constitution to make it inapplicable to any amendment of the Constitution under article 368.

Text of Constitution (Twenty-fifth Amendment) Bill, 1971

Introduced in The Lok Sabha on July 28, 1971

Be it enacted by Parliament in the Twenty-second Year of the Republic of India as following:

1. This Act may be called the Constitution (Twenty-fifth Amendment) Act, 1971. Short title

2. In article 31 of the Constitution:- Amendment of article 21

(a) for clause (2), the following clause be substituted, namely:-

"(2) 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 given in such manner as may be specified in such law; and 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.";

(b) after clause (2A), the following clause shall be inserted, namely:-

"(2B) Nothing in sub-clause (f) of clause (1) of article 9 shall affect any such law as is referred to in clause (2)".

3. After Article 31B of the Constitution, the following article shall be inserted, namely:- Insertion of new article 31C

"31C. 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; and 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. Saving of laws giving effect to certain directive principles.

Provided that where such law is made by the Legislature of a State, the provisions of this article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent."