UNIT 9 – UPSC - Preamble

During the national struggle our leaders indicated that in the constitutional set up in free India people would be granted certain rights. In fact, in the various schemes relating to future constitutional set up, there were references of particular rights that the people of India should be granted. The Commonwealth of India Bill (1925), the Nehru Committee Report (1928), the memorandum of the National Trade Union Federation submitted to the Joint Committee on Indian Constitutional Reforms (1932- 33), the Memorandum submitted by M. Venkatarangaiah to the Sapru Committee and the Sapru Committee Proposals provided for various Fundamental Rights that the people of free India should get. The Constitution which lays down the basic structure of a nation's polity is built on the foundations of certain fundamental values. The vision of our founding fathers and the aims and objectives which they wanted to achieve through the Constitution are contained in the Preamble, the Fundamental Rights and the Directive Principles.

Preamble

The framers of the Constitution sought to unite the vast country with its great diversity of languages and creeds within a common bond of constitutional justice based on the great ideals of liberty, equality, fraternity and justice. Framers showed an uncompromising respect for human dignity, an unquestioning commitment to equality and non-discrimination, and an abiding concern for the poor and the weak The Preamble through its noble words promised Justice, social, economic and political; Liberty of thought, expression, belief, freedom of faith and worship; Equality of status and of opportunity and to promote Fraternity, assuring the dignity of the individual and the unity and integrity of the Nation. Speaking of the imperatives of social democracy,

Dr. Ambedkar said:

"it was, indeed, a way of life, which recognizes liberty, equality and fraternity as the principles of life and which cannot be divorced from each other: Liberty cannot be divorced from equality; equality cannot be divorced from liberty. Nor can liberty and equality be divorced from fraternity. Without equality, liberty would produce the supremacy of the few over the many. Equality without liberty would kill individual initiative. Without fraternity, liberty and equality could not become a natural course of things."

The Socio-economic Agenda

The scheme of the Constitution for the realisation of the socio-economic agenda comprises of both the justiciable Fundamental Rights as well as the non-justiciable Directive Principles. The judicial contribution to the synthesis and the integration of the Fundamental Rights and the Directive Principles in the process of "constitutionalising" social and economic rights has been crucial to the realisation of the Directive Principles not only as a means to effectuate Fundamental Rights but also as a source of laws for a welfare state.

FUNDAMENTAL RIGHTS

Constitutional guarantees for the human rights of our people were one of the persistent demands of our leaders throughout the freedom struggle. By the year 1949, when the Constituent Assembly had completed the drafting of the Fundamental Rights Chapter, it had before it the 'Universal Declaration of Human Rights, 1948.

The International Covenant on Civil and Political Rights,1966 (ICCPR) broadly referred to the inherent right to life and liberty and the right against arbitrary deprivation of those rights and its various aspects (Articles 6 to 14); privacy, family, etc. (Article 17); freedom of conscience and religion (Article 18); freedom of expression and information (Article 19); Right of peaceful assembly (Article 21); freedom of association (Article 22); rights of minorities (Article 27); etc. The International Covenant on Economic, Social and Cultural Rights, 1966 (ICESCR) broadly referred to the "right to work" and its various aspects (Articles 6 and 7); right to form trade unions for promotion of economic or social interests and the right to strike (Article 8); right to social security and social insurance (Article 9); family, marriage, children and mothers' rights (Article 10); adequate standard of living, right to food, clothing and housing, freedom from hunger (Article 11); physical and mental health (Article 12); education (Article 13); compulsory primary education (Article 14) and culture (Article 15).

The treaty obligations under the covenant enjoined the State Parties to ensure these rights without discrimination and "to take steps" to promote them "to the maximum of its available resources", with a view to achieving "progressively" the full realisation of these rights. The Directive Principles of State Policy in Part IV of the Constitution are indeed the precursor to economic, social and cultural rights specified in the ICESCR.

SUPREME COURT IN 1973 IN KESAVANANDA BHARATI VS. STATE OF KERALA

As to what are these basic features, the debate still continues. The Supreme Court has also held that the scope of certain fundamental rights could be adjudged by reading into them or reading

them not only in the light of the Directive Principles of State Policy but also international covenants or conventions which were in harmony with the Fundamental Rights.

The Fundamental Rights — embodied in Part III of the constitution — guarantee civil liberties such that all Indians can lead their lives in peace as citizens of India. The six fundamental rights are right to equality, right to freedom, right against exploitation, right to freedom of religion, cultural and educational rights and right to constitutional remedies. These include individual rights common to most liberal democracies, incorporated in the fundamental law of the land and are enforceable in a court of law. Violations of these rights result in punishments as prescribed in the Indian Penal Code, subject to discretion of the judiciary. These rights are neither absolute nor immune from constitutional amendments. They have been aimed at overturning the inequalities of pre-independence social practices. Specifically, they resulted in abolishment of untouchability and prohibit discrimination on the grounds of religion, race, caste, sex, or place of birth. They forbid human trafficking and unfree labour. They protect cultural and educational rights of ethnic and religious minorities by allowing them to preserve their languages and administer their own educational institutions.

All people, irrespective of race, religion, caste or sex, have the right to approach the High Courts or the Supreme Court for the enforcement of their fundamental rights. It is not necessary that the aggrieved party has to be the one to do so. In public interest, anyone can initiate litigation in the court on their behalf. This is known as "Public interest litigation". High Court and Supreme Court judges can also act on their own on the basis of media reports. Fundamental Rights primarily protect individuals from any arbitrary State actions, but some rights are enforceable against private individuals too. For instance, the constitution abolishes untouchability and prohibits begar. These provisions act as a check both on State action and actions of private individuals. Fundamental Rights are not absolute and are subject to reasonable restrictions as necessary for the protection of national interest.

In the Kesavananda Bharati vs. state of Kerala case, the Supreme Court ruled that all provisions of the constitution, including Fundamental Rights can be amended. However, the Parliament cannot alter the basic structure of the constitution like secularism, democracy, federalism, separation of powers. Often called the "Basic structure doctrine", this decision is widely regarded as an important part of Indian history.

In the 1978 Maneka Gandhi v. Union of India case, the Supreme Court extended the doctrine's importance as superior to any parliamentary legislation. According to the verdict, no act of parliament can be considered a law if it violated the basic structure of the constitution. This landmark guarantee of Fundamental Rights was regarded as a unique example of judicial independence in preserving the sanctity of Fundamental Rights. The Fundamental Rights can only be altered by a constitutional amendment, hence their inclusion is a check not only on the executive branch, but also on the Parliament and state legislatures. The imposition of a state of emergency may lead to a temporary suspension of the rights conferred by Article 19 (including freedoms of speech, assembly and movement, etc.) to preserve national security and public order. The President can, by order, suspend the right to constitutional remedies as well.

DIRECTIVE PRINCIPLES OF STATE POLICY IN INDIA

An important feature of the constitution is the Directive Principles of State Policy. Although the Directive Principles are asserted to be "fundamental in the governance of the country," they are not legally enforceable. Instead, they are guidelines for creating a social order characterized by social, economic, and political justice, liberty, equality, and fraternity as enunciated in the constitution's preamble.

The Forty-second Amendment, which came into force in January 1977, attempted to raise the status of the Directive Principles by stating that no law implementing any of the Directive Principles could be declared unconstitutional on the grounds that it violated any of the Fundamental Rights. The amendment simultaneously stated that laws prohibiting "antinational activities" or the formation of "antinational associations" could not be invalidated because they infringed on any of the Fundamental Rights. It added a new section to the constitution on "Fundamental Duties" that enjoined citizens "to promote harmony and the spirit of common brotherhood among all the people of India, transcending religious, linguistic and regional or sectional diversities." However, the amendment reflected a new emphasis in governing circles on order and discipline to counteract what some leaders had come to perceive as the excessively freewheeling style of Indian democracy. After the March 1977 general election ended the control of the Congress (Congress (R) from 1969) over the executive and legislature for the first time since independence in 1947, the new Janata-dominated Parliament passed the Forty-third Amendment (1977) and Forty-fourth Amendment (1978). These amendments revoked the Forty-second Amendment's provision that Directive Principles take precedence over Fundamental Rights and also curbed Parliament's power to legislate against "antinational activities."

The Directive Principles of State DPSP are Policy (contained in part IV, articles 36 to 50,) of the Indian Constitution. Many of the provisions correspond to the provisions of the ICESCR. For instance, article 43 provides that the state shall endeavor to secure, by suitable legislation or economic organization or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities, and in particular the state shall endeavor to promote cottage industries on an individual or cooperative basis in rural areas. This corresponds more or less to articles 11 and 15 of the ICESCR. However, some of the ICESCR rights, for instance, the right to health (art. 12), have been interpreted by the Indian Supreme Court to form part of the right to life under article 21 of the Constitution, thus making it directly enforceable and justiciable. As a party to the ICESCR, the Indian legislature has enacted laws giving effect to some of its treaty obligations and these laws are in turn enforceable in and by the courts.

Article 37 of the Constitution declares that the DPSP "shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the state to apply these principles in making laws." It is not a mere coincidence that the apparent distinction that is drawn by scholars between the ICCPR rights and ESC rights holds good for the distinction that is drawn in the Indian context between fundamental

rights and DPSP. Thus the bar to justiciability of the DPSP is spelled out in some sense in the Constitution itself.

It was said by several members in the Constituent Assembly that the directive principles are superfluous or mere guidelines or pious principles or instructions. They have no binding force on the State. In his speech Dr. Ambedkar answered.

" The directive principles are like instruments of instructions which were issued to the Governor in General and Governors of colonies and to those of India by the British Government under the 1935 Act under the Draft Constitution. It is proposed to issue such instructions to the president and governors. The text of these instruments of the instructions shall be found in scheduled IV to the Constitution of India. What are called directive principles is that they are instructions to the Legislature and the Executive. Such a thing is, to my mind, to be welcomed. Wherever there is grant or power in general terms for peace, order and good government that it is necessary that it should be accompanied by the instructions regulating its exercise." It was never intended by Dr. Ambedkar that the Directive Principles had no legal force but had moral effect while educating members of the Government and the legislature, nor can it be said that the answer referred to necessarily implied with the Directive Principles had no legal force.

THE FOLLOWING OBSERVATIONS OF PROF. FOOD BHAT :

Firstly, some of the directive principles of State policy, which are related to distributive justice, moulded the property relations by influencing the interrelationship doctrine, both directly and indirectly.

Secondly, the interrelationship doctrine is very much influenced by Article 39A of the Constitution which provides for equal justice and free legal aid in the justice delivery system.

Thirdly, the directive principles of State shall strive to secure its citizens right to an adequate means of livelihood and make the effective provision for securing right to work.

Fourthly, the directive principle that ';tender age of children are not abused';, and that ';children are given opportunities and facilities to develop in a healthy manner and in a conditions of freedom and dignity that childhood and youth are protected against exploitation against moral and material abandonment'; [Article 39(f) have provided the spirit of law to the Apex Court.

Fifthly, the directive principle of ';Equal pay for equal work'; and ';participation of workers in management'; were received through right to equality under Article 14 in Part III, in various cases, such as Randhir Singh (AIR 1982 SC 469)and National Textile Workers Union case (AIR 1983 SC 75).

Sixthly, the directive principles relating to uniform civil code has the potentiality of using the interrelationship doctrine for its implementation.

Seventhly, the promotion of educational and economic interest of Scheduled Caste and Scheduled Tribe and other weaker section of the society, contemplated under Article 46 provides a guidance for affirmative actions under Article 15(4) and 16(4) and a pointer for resolving tension between

formal and substantive equality by laying emphasis on infusing of strength and ability to compete, through eduction and training to weaker sectors (M.R. Balaji vs. State of Mysore – AIR 1963 SC 649).

Finally, the directive principle that the State shall endeavour to foster respect for international law and treaty obligations has a great potentiality of absorbing the international principles relating to guarantee as under of human rights, and thus influence the interrelationship doctrine.

The convictions are reflected:

(i) The impact of directive principles upon the interrelationship doctrine or vice-versa is not only theoretical but also practical and rewarding. Interrelationship doctrine has given impetus to, and got animated by the process of reading the directive principles into Part III of the Constitution.

(ii) It is true to say that the interrelationship doctrine has its roots in the very text of the constitution. This can be seen when the objects set in the Preamble, followed by Juxtaposing of right to equality with classification, the flexibility imbibed in fundamental rights, the spirit of law (operation of whole Part-III of the Constitution visa-vis the impugned law) rejection of compartmentalised treatment of fundamental rights and finally, the distinction between citizens and non-citizens with regard to availability of fundamental rights and the possibility of invoking a fundamental right to avail a suspended fundamental right during emergency are taken into account with a conscious approach of unity in diversity.

Former Chief Justice of India Shri M.N. Venkatachelaiah, said that professor Bhat examines the relationship of fundamental rights inter se and the jurisprudential and constitutional foundations of that interrelationship. The interrelationship is also a necessary implication of constitutionalism and Rule of Law. It was viewed that professor Bhat, in his elegant analysis, indicates the ';parallel streams'; and 'cross-currents' of fundamental rights and how these rights inform and enrich each other. This discourse has its familiar ring in the International Human Rights Regime, and the principles of their universality, indivibility and interdependence Fundamental Rights and DPSP.

When the tussle for primacy between fundamental rights and DPSP came up before the Supreme Court in the case of **State of Madras v. Champakam Dorairajan (1951) SCR**525 first, the court said, "The directive principles have to conform to and run subsidiary to the chapter on fundamental rights." Later, in the Fundamental Rights Case (referred to above), the majority opinions reflected the view that what is fundamental in the governance of the country cannot be less significant than what is significant in the life of the individual. Another judge constituting the majority in that case said: "In building up a just social order it is sometimes imperative that the fundamental rights should be subordinated to directive principles." This view, that the fundamental rights and DPSP are complementary, "neither part being superior to the other," has held the field since **(V.R.Krishna Iyer,J. in State of Kerala v. N. M.. Thomas (1976) 2 SCC 310 at para. 134, p. 367)**.

The DPSP have, through important constitutional amendments, become the benchmark to insulate legislation enacted to achieve social objectives, as enumerated in some of the DPSP, from attacks of invalidation by courts. This way, legislation for achieving agrarian reforms, and specifically for achieving the objectives of articles 39(b) and (c) of the Constitution, has been immunized from challenge as to its violation of the right to equality (art. 14) and freedoms of speech, expression, etc. (art. 19). However, even here the court has retained its power of judicial

review to examine if, in fact, the legislation is intended to achieve the objective of articles 39(b) and (c), and where the legislation is an amendment to the Constitution, whether it violates the basic structure of the constitution. Likewise, courts have used DPSP to uphold the constitutional validity of statutes that apparently impose restrictions on the fundamental rights under article 19 (freedoms of speech, expression, association, residence, travel and to carry on a business, trade or profession), as long as they are stated to achieve the objective of the DPSP.

The DPSP are seen as aids to interpret the Constitution, and more specifically to provide the basis, scope and extent of the content of a fundamental right.

To quote again from the Fundamental Rights case:

Fundamental rights have themselves no fixed content; most of them are empty vessels into which each generation must pour its content in the light of its experience. Restrictions, abridgement, curtailment and even abrogation of these rights in circumstances not visualised by the constitution makers might become necessary; their claim to supremacy or priority is liable to be overborne at particular stages in the history ofthe nation by the moral claims embodied in Part IV **(Chandra Bhavan v. State of Mysore (1970) 2 SCR, note 1, SCC para. 1714, p. 881)**.

The Maneka Gandhi Case and Thereafter Simultaneously, the judiciary took upon itself the task of infusing into the constitutional provisions the spirit of social justice. This it did in a series of cases of which **Maneka Gandhi v. Union of India (1978) 1 SCC 248** was a landmark. The case involved the refusal by the government to grant a passport to the petitioner, which thus restrained her liberty to travel. In answering the question whether this denial could be sustained without a predecisional hearing, the court proceeded to explain the scope and content of the right to life and liberty. In a departure from the earlier view, **A.K.Gopalan v. State of Madras 1950 SCR 88** the court asserted the doctrine of substantive due process as integral to the chapter on fundamental rights and emanating from a collective understanding of the scheme underlying articles 14 (the right to equality), 19 (the freedoms) and 21 (the right to life). The power the court has to strike down legislation was thus broadened to include critical examination of the substantive due process element in statutes. Once the court took a broader view of the scope and content of the fundamental right to life and liberty, there was no looking back. Article 21 was interpreted to include a bundle of other incidental and integral rights, many of them in the nature of ESC rights. In **Francis Coralie v. union territory of India(AIR 1978 SC 597)** the court declared:

"The right to life includes the right to live with human dignity and all that goes with it, namely, the bare necessaries of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and comingling with fellow human beings. The magnitude and components of this right would depend upon the extent of economic development of the country, but it must, in any view of the matter, include the bare necessities of life and also the right to carry on such functions and activities as constitute the bare minimum expression of the human self."

The combined effect of the expanded interpretation of the right to life and the use of PIL as a tool led the court into areas where there was a crying need for social justice. These were areas where there was a direct interaction between law and poverty, as in the case of bonded labor and child labor, and crime and poverty, as in the case of under trials in jails. In reading several of these concomitant rights of dignity, living conditions, health into the ambit of the right to life, the court

overcame the difficulty of justiciability of these as economic and social rights, which were hitherto, in their manifestation as DPSP, considered nonenforceable. A brief look at how some of these ESC rights were dealt with by the court in four specific contexts will help understand the development of the law in this area.

RIGHT TO WORK

Article 41of the Constitution provides that "the State shall within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want."(article 6 of the ICESCR) Article 38 states that the state shall strive to promote the welfare of the people and article 43 states it shall endeavor to secure a living wage and a decent standard of life to all workers. One of the contexts in which the problem of enforceability of such a right was posed before the Supreme Court was of large-scale abolition of posts of village officers in the State of Tamil Nadu in India. In negating the contention that such an abolition of posts would fall foul of the DPSP, the court said:

It is no doubt true that **Article 38 and Article 43** of the Constitution insist that the State should endeavour to find sufficient work for the people so that they may put their capacity to work into economic use and earn a fairly good living. But these articles do not mean that everybody should be provided with a job in the civil service of the State and if a person is provided with one he should not be asked to leave it even for a just cause. If it were not so, there would be justification for a small percentage of the population being in Government service and in receipt of regular income and a large majority of them remaining outside with no guaranteed means of living. It would certainly be an ideal state of affairs if work could be found for all the able-bodied men and women and everybody is guaranteed the right to participate in the production of national wealth and to enjoy the fruits thereof. But we are today far away from that goal.

The question whether a person who ceases to be a government servant according to law should be rehabilitated by being given an alternative employment is, as the law stands today, a matter of policy on which the court has no voice.**(K.Rajendran v. State of Tamil Nadu (1982) 2 SCC 273, para. 34, p. 294.)**. But the court has since then felt freer to interfere even in areas which would have been considered to be in the domain of the policy of the executive. Where the issue was of regularizing the services of a large number of casual (nonpermanent) workers in the posts and telegraphs department of the government, the court has not hesitated to invoke the DPSP to direct such regularization. The explanation was:

Even though the above directive principle may not be enforceable as such by virtue of Article 37 of the Constitution of India, it may be relied upon by the petitioners to show that in the instant case they have been subjected to hostile discrimination. It is urged that the State cannot deny at least the minimum pay in the pay scales of regularly employed workmen even though the Government may not be compelled to extend all the benefits enjoyed by regularly recruited employees. We are of the view that such denial amounts to exploitation of labour. The Government cannot take advantage of its dominant position, and compel any worker to work even as a casual labourer on starvation wages. It may be that the casual labourer has agreed to work on such low wages. That he has done because he has no other choice. It is poverty that has driven him to that

state. The Government should be a model employer. We are of the view that on the facts and in the circumstances of this case the classification of employees into regularly recruited employees and casual employees for the purpose of paying less than the minimum pay payable to employees in the corresponding regular cadres particularly in the lowest rungs of the department where the pay scales are the lowest is not tenable . . . It is true that all these rights cannot be extended simultaneously. But they do indicate the socialist goal. The degree of achievement in this direction depends upon the economic resources, willingness of the people to produce and more than all the existence of industrial peace throughout the country. Of those rights the question of security of work is of utmost importance.

In **Bandhua Mukti Morcha v. Union of India, (1984) 3 SCC 161** a PIL by an NGO highlighted the deplorable condition of bonded laborers in a quarry in Haryana, not very far from the Supreme Court. A host of protective and welfare-oriented labor legislation, including the Bonded Labour (Abolition) Act and the Minimum Wages Act, were being observed in the breach. In giving extensive directions to the state government to enable it to discharge its constitutional obligation towards the bonded laborers, the court said: The right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and particularly clauses (e) and (f) of Article 39 and Article 41 and 42 and at the least, therefore, it must include protection of the health and strength of workers, men and women, and of the tender age of children against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief. These are the minimum requirements which must exist in order to enable a person to live with human dignity and no State has the right to take any action which will deprive a person of the enjoyment of these basic essentials. Since the Directive Principles of State Policy contained in clauses (e) and (f) of Article 39, Articles 41 and 42 are not enforceable in a court of law, it may not be possible to compel the State through the judicial process to make provision by statutory enactment or executive fiat for ensuring these basic essentials which go to make up a life of human dignity, but where legislation is already enacted by the State providing these basic requirements to the workmen and thus investing their right to live with basic human dignity, with concrete reality and content, the State can certainly be obligated to ensure observance of such legislation, for inaction on the part of the State in securing implementation of such legislation would amount to denial of the right to live with human dignity enshrined in Article 21, more so in the context of Article 256 which provides that the executive power of every State shall be so exercised as to ensure compliance with the laws made by Parliament and any existing laws which apply in that State.

Thus the court converted what seemed a non-justiciable issue into a justiciable one by invoking the wide sweep of the enforceable article 21. More recently, the court performed a similar exercise when, in the context of articles 21 and 42, it evolved legally binding guidelines to deal with the problems of sexual harassment of women at the work place**(Vishaka v. State of Rajasthan (1997) 6 SCC 241.)**. The right of workmen to be heard at the stage of winding up of a company was a contentious issue. In a bench of five judges that heard the case the judges that constituted the majority that upheld the right were three. The justification for the right was traced to the newly inserted article 43-A, which asked the state to take suitable steps to secure participation of workers in management. The court observed: It is therefore idle to contend 32 years after coming into force of the Constitution and particularly after the introduction of article 43-A in the Constitution that the workers should have no voice in the determination of the question whether the enterprises should continue to run or be shut down under an order of the court.

It would indeed be strange that the workers who have contributed to the building of the enterprise as a centre of economic power should have no right to be heard when it is sought to demolish that

centre of economic power **National Textile Workers Union v. P. R. Ramakrishnan (1983) 1 SCC 249**

RIGHT TO SHELTER

Unlike certain other ESC rights, the right to shelter, which forms part of the right to an adequate standard of living under **article 11** of the **ICESCR**, finds no corresponding expression in the DPSP. This right has been seen as forming part of article 21 itself. The court has gone as far as to say, "The right to life . . . would take within its sweep the right to food . . . and a reasonable accommodation to live in." However, given that these observations were not made in a petition by a homeless person seeking shelter, it is doubtful that this declaration would be in the nature of a positive right that could be said to be enforceable. On the other hand, in certain other contexts with regard to housing for the poor, the court has actually refused to recognize any such absolute right.

In **Olga Tellis v. Bombay Municipal Corporation (1985) 3 SCC 545** the court held that the right to life included the right to livelihood. The petitioners contended that since they would be deprived of their livelihood if they were evicted from their slum and pavement dwellings, their eviction would be tantamount to deprivation of their life and hence be unconstitutional. The court, however, was not prepared to go that far. It denied that contention, saying: No one has the right to make use of a public property for a private purpose without requisite authorisation and, therefore, it is erroneous to contend that pavement dwellers have the right to encroach upon pavements by constructing dwellings thereon . . . If a person puts up a dwelling on the pavement, whatever may be the economic compulsions behind such an act, his use of the pavement would become unauthorised.

Later benches of the Supreme Court have followed the Olga Tellis dictum with approval.**In Municipal Corporation of Delhi v. Gurnam Kaur, (1989) 1 SCC 101**. the court held that the Municipal Corporation of Delhi had no legal obligation to provide pavement squatters alternative shops for rehabilitation as the squatters had no legal enforceable right. **In Sodan Singh case (1989) 4 SCC 155** a constitution bench of the Supreme Court reiterated that the question whether there can at all be a fundamental right of a citizen to occupy a particular place on the pavement where he can squat and engage in trade must be answered in the negative. These cases fail to account for socioeconomic compulsions that give rise to pavement dwelling and restrict their examination of the problem from a purely statutory point of view rather than the human rights perspective.

Fortunately, a different note has been struck in a recent decision of the court. In **Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan, (1997) 11 SCC 123**in the context of eviction of encroachers in a busy locality of Ahmadabad city, the court said:

Due to want of facilities and opportunities, the right to residence and settlement is an illusion to the rural and urban poor. Articles 38, 39 and 46 mandate the State, as its economic policy, to provide socio-economic justice to minimise inequalities in income and in opportunities and status. It positively charges the State to distribute its largesse to the weaker sections of the society envisaged in Article 46 to make socio-economic justice a reality, meaningful and fruitful so as to make life worth living with dignity of person and equality of status and to constantly improve excellence. Though no person has a right to encroach and erect structures or otherwise on footpaths, pavements or public streets or any other place reserved or earmarked for a public

purpose, the State has the constitutional duty to provide adequate facilities and opportunities by distributing its wealth and resources for settlement of life and erection of shelter over their heads to make the right to life meaningful.

RIGHT TO HEALTH

The right to health has been perhaps the least difficult area for the court in terms of justiciability, but not in terms of enforceability. Article 47 of DPSP provides for the duty of the state to improve public health. However, the court has always recognized the right to health as being an integral part of the right to life **Francis Coralie Mullin, note 3 above; Parmanand Katara v. Union of India (1989) 4 SCC 286** . The principle got tested in the case of an agricultural laborer whose condition, after a fall from a running train, worsened considerably when as many as seven government hospitals in Calcutta refused to admit him as they did not have beds vacant. The Supreme Court did not stop at declaring the right to health to be a fundamental right and at enforcing that right of the laborer by asking the Government of West Bengal to pay him compensation for the loss suffered. It directed the government to formulate a blue print for primary health care with particular reference to treatment of patients during an emergency **(Paschim Banga Khet Majoor Samity v. State of West Bengal (1996) 4 SCC 37)** . **State of Punjab v. Ram Lubhaya Bagga (1998) 4 SCC 117, para. 29, p.130**. A note of caution was struck when government employees protested against the reduction of their entitlements to medical care.

The court said:

No State or country can have unlimited resources to spend on any of its projects. That is why it only approves its projects to the extent it is feasible. The same holds good for providing medical facilities to its citizens including its employees. Provision on facilities cannot be unlimited. It has to be to the extent finances permit. If no scale or rate is fixed then in case private clinics or hospitals increase their rate to exorbitant scales, the State would be bound to reimburse the same. The principle of fixation of rate and scale under the new policy is justified and cannot be held to be violative of article 21 or article 47 of the Constitution.

RIGHT TO EDUCATION

Article 45 of the DPSP, which corresponds to article 13(1) of the ICESCR, states, "The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years." Thus, while the right of a child not to be employed in hazardous industries was, by virtue of article 24, recognized to be a fundamental right, the child's right to education was put into the DPSP in part IV and deferred for a period of ten years.

The question whether the right to education was a fundamental right and enforceable as such was answered by the Supreme Court in the affirmative in **Mohini Jain v. State of Karnataka (1992) 3 SCC 666**.. The correctness of this decision was examined by a larger bench of five judges in **Unnikrishnan J.P. v. State of Andhra Pradesh (1993) 1 SCC 645**.The occasion was the challenge, by private medical and engineering colleges, to state legislation regulating the charging of "capitation" fees from students seeking admission. The college management was seeking enforcement of their right to business. The court expressly denied this claim and proceeded to

examine the nature of the right to education. The court refused to accept the nonenforceablity of the DPSP. It asked:

It is noteworthy that among the several articles in Part IV, only Article 45 speaks of a time-limit; no other article does. Has it no significance? Is it a mere pious wish, even after 44 years of the Constitution? Can the State flout the said direction even after 44 years on the ground that the article merely calls upon it to endeavour to provide the same and on the further ground that the said article is not enforceable by virtue of the declaration in Article 37. Does not the passage of 44 years—more than four times the period stipulated in Article 45—convert the obligation created by the article into an enforceable right? In this context, we feel constrained to say that allocation of available funds to different sectors of education in India discloses an inversion of priorities indicated by the Constitution. The Constitution contemplated a crash programme being undertaken by the State to achieve the goal set out in Article 45. It is relevant to notice that Article 45 does not speak of the "limits of its economic capacity and development" as does Article 41, which inter alia speaks of right to education. What has actually happened is more money is spent and more attention is directed to higher education than to—and at the cost of—primary education. (By primary education, we mean the education which a normal child receives by the time he completes 14 years of age.) Neglected more so are the rural sectors, and the weaker sections of the society referred to in Article 46. We clarify, we are not seeking to lay down the priorities for the Government—we are only emphasising the constitutional policy as disclosed by Articles 45, 46 and 41. Surely the wisdom of these constitutional provisions is beyond question.

The court then proceeded to examine how this right would be enforceable and to what extent. It clarified the issue thus: The right to education further means that a citizen has a right to call upon the State to provide educational facilities to him within the limits of its economic capacity and development. By saying so, we are not transferring Article 41 from Part IV to Part III—we are merely relying upon Article 41 to illustrate the content of the right to education flowing from Article 21. We cannot believe that any State would say that it need not provide education to its people even within the limits of its economic capacity and development. It goes without saying that the limits of economic capacity are, ordinarily speaking, matters within the subjective satisfaction of the State. More caution followed. The court's apprehension clearly was that recognition of such a right might open the flood gates for other claims. It clarified:

We must hasten to add that just because we have relied upon some of the directive principles to locate the parameters of the right to education implicit in Article 21, it does not follow automatically that each and every obligation referred to in Part IV gets automatically included within the purview of Article 21. We have held the right to education to be implicit in the right to life because of its inherent fundamental importance. As a matter of fact, we have referred to Articles 41, 45 and 46 merely to determine the parameters of the said right.

In fact, the court had broken new ground in the matter of justiciability and enforceability of the DPSP. The decision in Unnikrishnan case has been applied by the court in formulating broad parameters for compliance by the government in the matter of eradication of child labor. This it did in a PIL where it said:

Now, strictly speaking a strong case exists to invoke the aid of Article 41 of the Constitution regarding the right to work and to give meaning to what has been provided in Article 47 relating to raising of standard of living of the population, and Articles 39 (e) and (f) as to non-abuse of

tender age of children and giving opportunities and facilities to them to develop in a healthy manner, for asking the State to see that an adult member of the family, whose child is in employment in a factory or a mine or in other hazardous work, gets a job anywhere, in lieu of the child. This would also see the fulfillment of the wish contained in Article 41 after about half a century of its being in the paramount parchment, like primary education desired by Article 45, having been given the status of fundamental right by the decision in Unnikrishnan. We are, however, not asking the State at this stage to ensure alternative employment in every case covered by Article 24, as Article 41 speaks about right to work "within the limits of the economic capacity and development of the State". The very large number of child labour in the aforesaid occupations would require giving of job to a very large number of adults, if we were to ask the appropriate Government to assure alternative employment in every case, which would strain the resources of the State, in case it would not have been able to secure job for an adult in a private sector establishment or, for that matter, in a public sector organisation. We are not issuing any direction to do so presently. Instead, we leave the matter to be sorted out by the appropriate Government. In those cases where it would not be possible to provide job as above mentioned, the appropriate Government would, as its contribution/grant, deposit in the aforesaid Fund a sum of Rs.5000/- for each child employed in a factory or mine or in any other hazardous employment. **M.C.Mehta v. State of Tamil Nadu (1996) 6 SCC 772, para. 31**

The court, while recognizing the importance of declaring the child's negative right against exploitation and positive right to education, chose a pragmatic approach when it came to enforceability. Earlier the court would have shrugged off the whole issue as not being within its domain. That has now changed as is clear from the recent trend of cases.

It is here the Supreme Court read into our Constitution several provisions of International Covenants. The Judges also considered DPSP and how the same could be read together with the Fundamental Rights. As stated in the case of **Unnikrishnan v/s. State of AP [(1993)1 SCC 645, para 165]** "In order to treat a right as fundamental right, it is not necessary that it should be expressly stated as one in Part III of the Constitution. The provisions of Part III and Part IV are supplementary and complementary to each other." That is why very often the court reads the two together. There is no conflict between the two. It is wrong to assume that fulfillment of obligations relating to social and economic human rights would impair fundamental rights. That is why we incorporated Article 31-C (25th Amendment Act 1971) which says, "Notwithstanding anything contained in Article 13, no law giving effect to the policy of the State towards securing all or any of the principles laid down in Part IV shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by Article 14 or Article 19....." As Glanville Austin says: "The core of the commitment to the social revolution lies in Part III and IV in the Fundamental Rights and in the Directive Principles of State Policy. These are the conscience of the Constitution." This is what Bhagwati J. said in **Minerva Mills case (AIR 1980 SC 1789 at 1846)**: "The core of the commitment of the social revolution lies... in the Fundamental Rights and directive principles of state policy."

The Directive Principles also urge the nation to develop a uniform civil code and offer free legal aid to all citizens. They urge measures to maintain the separation of the judiciary from the executive and direct the government to organize village panchayats to function as units of self-government. This latter objective was advanced by the Seventy-third Amendment and the Seventy-fourth

Amendment in December 1992. The Directive Principles also order that India should endeavor to protect and improve the environment and protect monuments and places of historical interest.

The Forty-second Amendment, which came into force in January 1977, attempted to raise the status of the Directive Principles by stating that no law implementing any of the Directive Principles could be declared unconstitutional on the grounds that it violated any of the Fundamental Rights. The amendment simultaneously stated that laws prohibiting "antinational activities" or the formation of "antinational associations" could not be invalidated because they infringed on any of the Fundamental Rights. It added a new section to the constitution on "Fundamental Duties" that enjoined citizens "to promote harmony and the spirit of common brotherhood among all the people of India, transcending religious, linguistic and regional or sectional diversities." However, the amendment reflected a new emphasis in governing circles on order and discipline to counteract what some leaders had come to perceive as the excessively freewheeling style of Indian democracy. After the March 1977 general election ended the control of the Congress (Congress (R) from 1969) over the executive and legislature for the first time since independence in 1947, the new Janata-dominated Parliament passed the Forty-third Amendment (1977) and Forty-fourth Amendment (1978). These amendments revoked the Forty-second Amendment's provision that Directive Principles take precedence over Fundamental Rights and also curbed Parliament's power to legislate against "antinational activities"

FUNDAMENTAL DUTIES

Fundamental Duties of citizens serve a useful purpose. In particular, no democratic polity can ever succeed where the citizens are not willing to be active participants in the process of governance by assuming responsibilities and discharging citizenship duties and coming forward to give their best to the country. Some of the fundamental duties enshrined in article 51A have been incorporated in separate laws.

For instance, the first duty includes respect for the National Flag and the National Anthem. Disrespect is punishable by law. To value and preserve the rich heritage of the mosaic that is India should help to weld our people into one nation but much more than article 51A will be needed to treat all human beings equally, to respect each religion and to confine it to the private sphere and not make it a bone of contention between different communities of this land. In sum, the Commission believes that article 51A has travelled a great distance since it was introduced in the Forty-second Amendment and further consideration should be given to ways and means to popularise the knowledge and content of the Fundamental Duties and effectuate them.

The most important task before us is to reconcile the claims of the individual citizen and those of the civic society. To achieve this, it is important to orient the individual citizen to be conscious of his social and citizenship responsibilities and so shape the society that we all become solicitous and considerate of the inalienable rights of our fellow citizens. Therefore, awareness of our citizenship duties is as important as awareness of our rights. Every right implies a corresponding duty but every duty does not imply a corresponding right. Man does not live for himself alone. He lives for the good of others as well as of himself.

It is this knowledge of what is right and wrong that makes a man responsible to himself and to the society and this knowledge is inculcated by imbibing and clearly understanding one's citizenship duties. The fundamental duties are the foundations of human dignity and national

character. If every citizen performs his duties irrespective of considerations of caste, creed, colour and language, most of the malaise of the present day polity could be contained, if not eradicated, and the society as a whole uplifted. Rich or poor, in power or out of power, obedience to citizenship duty, at all costs and risks, is the essence of civilized life.

Spirit of Harmony and Dignity of Women Some further thought needs to be given to clauses **(e) and (f) of article 51A. Article 51A(e)** desires the promotion of harmony and the spirit of common brotherhood among all the people of India transcending religious, linguistic and regional or sectional diversities and renunciation of practices derogatory to the dignity of women. It is couched in broad terms but it should be clear that attacks on minority communities or minority opinions are frowned upon. Respect for both are essential and the wording lends support to a broad humanism to cover such differences as may exist or better still, co-exist.

Two thoughts can be distilled. The first is that the objective will not be reached unless there is a determined effort to restrict religious practices to the home on the justified premise that one's religion is a personal matter and is not conducive to mass assertiveness. The other is the status of women.

Lip service is being paid to the doctrine of gender equality. The fact remains that generally women are still regarded as inferior both home and workplace although the Commission has noticed an improvement, however dissatisfied it may be with the degree of the at improvement. It is necessary to separate religious precepts from civil law. Civil law as the name implies is a matter for society not for religious leaders and it would seem to us to be axiomatic that in matters of civil rights, laws of property and inheritance and marriage and divorce, although practices may differ, legal rights that accrue must be the same. For example, a marriage may be solemnised according to religious or social custom but the rights of a woman in the case of divorce must be the same no matter what her religion is.

Clause (e) of article 51A also seems to cover the need to regard all human beings equally. In this connection, it is necessary to consider the question of the upliftment of the Scheduled Castes and other disadvantaged sections of our society. The scourge must be eradicated. The Constitution gave us ten years to do the job; the provision has been extended to fifty years and we are in our sixth ten-year period but we are no nearer the goal. The discrimination is two-fold. It is economic-condemning whole sections of our society numbering millions to menial jobs as part of the evil of treating them as sub-human. We have provided for reservation of jobs to these people, we have even given them separate constituencies to represent them. It has created a vested interest in backwardness. The other adverse result is that it has had no effect on their status in society, which continues to be determined by birth and not human worth and human personality. It is this social stigma which still plagues our people and the struggle to restore to them basic human dignity has made no significant progress. While the Commission appreciates the context in which affirmative action became necessary, it feels that reservation of jobs and seats in the legislatures will not help this aspect of the matter.

It is quite clear to the Commission that the disease of considering human beings as high or low based on the accident of birth is a disease rooted in the mind and it is in the mind that the defences of a society based on human dignity and equality must be constructed. Logically this leads directly to the conclusion that the key lies in education. The time to begin training our young people to respect the National flag and sing the National anthem, to respect women, to hold all religions

equal and deserving of as much respect as one's own, to accept that all human beings are born equal and are entitled to equal treatment are among principles best taught by examples when the child is too young to understand but not too young to obey. The focus must, therefore, shift to education which has suffered from serious neglect. Schools restrict admissions on unacceptable criteria, teachers themselves are untrained and often politicised, as is the curriculum. Despite these hardships, many of our young people have done well.

COMPOSITE CULTURE

Clause (f) of article 51A requires us to value and preserve the rich heritage of our composite culture. It follows that we may not break each other's places of worship, set fire to religious texts, or beat up one another's priests or obstruct those who exercise their Fundamental Right under article 25 to profess, practice and propagate religion. Composite culture means culture drawn from many strands. Here again education in its broadest and best sense can provide the corrective to the aberrations that have occurred.

Education is not confined only to the time spent in schools and colleges. Education begins at birth in the subconscious and continues till death. Anyone who says that he has nothing more to learn is already brain-dead.

It follows that the influences that play on a child at home are of great importance. Parents should understand that education begins at home, the examples they set, the environment of enlightenment and tolerance that is necessary to produce good citizens cannot be sub-contracted to formal schooling important though this is. Schemes should, therefore, be framed that include parents in social activities that have as their objective the country's age-old traditions, its welcome to the persecuted of every faith, its virtues of tolerance of and respect for all religions and a certain pride in belonging to this land and in being considered as Indian. The highest office in our democracy is the office of citizen; this is not only a platitude, it must translate into reality.

The distinction is not illusory. This country has given far too much indulgence to an attitude of mind that acts on the question - what is there in it for me? Education and the process of inculcating unselfishness and a sense of obligation to one's fellowmen should inspire the question – where does my duty lie? The transformation has the potential to make our nation strong, invincible and able to command the respect of the world.

i. The Commission recommends that the first and foremost step required by the Union and State Governments is to sensitise the people and to create a general awareness of the provisions of fundamental duties amongst the citizens on the lines recommended by the Justice Verma Committee

   on the subject. Consideration should be given to the ways and means by which Fundamental Duties could be popularized and made effective;

ii. right to freedom of religion and other freedoms must be jealously guarded and rights of minorities and fellow citizens respected;

iii. reform of the whole process of education is an immediate but immense need, as is the need to free it from governmental or political control; it is only through education that will power to adhere to our Fundamental Duties as citizens can be inculcated; and

iv. duty to vote at elections, actively participate in the democratic process of governance and to pay taxes should be included in article 51A. The Commission fully endorses the other recommendations of the Justice Verma Committee on operationalisation of Fundamental Duties of Citizens and strongly suggests their early implementation.

The Commission also recommends that the following should be incorporated as fundamental duties in article 51A of the Constitution -

.To fosters a spirit of family values and responsible parenthood in the matter of education, physical and moral well-being of children.

. Duty of industrial organizations to provide education to children of their employees.