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'NEGATIVE' AND 'POSITIVE' OBLIGATIONS OF THE STATE – THE JOURNEY THUS FAR

J. Ravindran*

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Abstract

The goals of justice, liberty, equality and fraternity which we have resolved to secure to our citizens, as enshrined in the Preamble to the Constitution of India, find its concrete and most prominent expressions in both Parts III and IV that deal with the Fundamental Rights and Directive Principles of State Policy respectively. While the former is 'fundamental' to our living, the latter is a 'directive' to the State, which incidentally for the purpose of both Parts III and IV have the same meaning, to ensure that policies of the State are so directed as to make the rights and freedoms guaranteed enjoyed to the optimum. Initial attempts by both the State and Union Governments to take recourse to the directives to abridge the rights did not succeed as the Supreme Court, in the initial years, appeared to zealously guard the fundamental rights which were to a large extent largely if not wholly absent in the colonial period. After two decades of working of our Constitution, as a result of Indo-Russian Accord of 1971 and to further our goal of socialism seen in the aftermath of American support to Pakistan, Article 31-C was inserted subsequently to save laws giving effect to certain directive principles from being challenged on the touchstone of Articles 14, 19 and 31. Challenge to unconstitutionality of Article 31-C partly fell in that that the Court, in exercise of its power of judicial review, shall continue to have the last word as to the validity of the law. Later, Parliament amended Article 31-C with the result that no law giving effect to any of the principles could be tested with reference to Articles 14, 19, 31. However, this action of the Parliament to give preference

* Associate Professor and Associate Dean, Vivekananda School of Law and Legal Studies, Vivekananda Institute of Professional Studies-TC, New Delhi.

to the directives over certain fundamental rights failed to appeal to the Supreme Court. The implication, therefore, is that Article 31-C as originally upheld holds the field. This research paper attempts to give a brief account of the development of law in the last seven decades on the inter-relationship between fundamental rights and directive principles of state policy.

***Key Words**: Part III and Part IV, Inter-relationship, pre-1971 position, Kesavananda, post Kesavananda, I R Coelho*

I. Introduction

The Constitution of Ireland which was adopted on 1st July 1937, now in place, repealing the Constitution then in force and the Constitution of the Irish Free State (Ireland) Act, 1922, runs into 50 Articles. Chapter III thereof contains the list of 'Fundamental Rights' from Articles 40 to 44. Article 45 figuring in Chapter IV lists the 'Directive Principles of Social Policy' that are intended for the general guidance of Parliament whose application in the making of laws shall be the care of Parliament exclusively and shall not be cognizable by any court under any of the provisions of the Constitution.[1] Less than a decade later, in 1945, such a distinction was also noticed by Sir Hersh Lauterpacht, formerly a Judge of the International Court of Justice at the Hague, Netherlands in his 'International Bill of Rights'.

Back home, at the All-Parties Conference in 1944, a Conciliation Committee under the Chairmanship of Shri Tej Bahadur Sapru came to be formed with the approval of Mahatma Gandhi with the object of understanding the view point of political parties by contacting leaders of all parties with a view to recommend a solution to India's political problems. The members of the Committee though apolitical were eminent men in Indian public life but not belonging to any of the organized political parties.[2] The subject of fundamental rights figured prominently in the deliberations of the Sapru Committee which was of the opinion that however inconsistent with British law it might be, in the 'peculiar circumstances of India' fundamental rights were necessary not only as 'assurances and guarantees to the minorities but also for prescribing a standard of conduct for the legislatures, governments and the courts'. The Committee felt that it was for the constitution-making body to settle first the list of fundamental rights and then to undertake their division into justiciable and

1 M V Pylee, Constitution of the World, Vol. 2, 4th Edition, Universal, New Delhi, 2012.

2 B Shiva Rao, Ed., The Framing of India's Constitution a Study, Select Documents Vol. V, 320, New Delhi, 1968.

non-justiciable rights and provide suitable machinery for their enforcement.[3]

The need for a written guarantee of fundamental rights in the Constitution of India was recognized by the Cabinet Mission in 1946 which while envisaging a Constituent Assembly for framing the Constitution of India, recommended the setting up of an advisory committee for reporting *inter alia* on fundamental rights. In the Objectives Resolution which stood against his name, Pandit Jawahar Lal Nehru moved *inter alia* in the Constituent Assembly on the 13th December, 1946, that the Assembly solemnly pledge itself to draw up for India's future governance a Constitution wherein 'shall be guaranteed and secured to all the people of India justice, social, economic and political, equality of status, of opportunity and before the law: freedom of thought, expression, belief, faith, worship, vocation, association and action, subject to law and public morality' and wherein 'adequate safeguards would be provided for minorities, backward and tribal areas, and depressed and other backward classes'.[4]

On the 22nd January, 1947, the said Resolution as moved by Pandit Nehru was adopted with members standing in their respective places.[5] On 24th January, 1947, Pandit Govind Ballabh Pant moved the resolution standing against his name for the constitution of an Advisory Committee for reporting on minorities, fundamental rights and on the tribal and excluded areas which was adopted, as amended.[6] The Advisory Committee in turn constituted on 27th February, 1947, five sub-committees one of which was to deal with fundamental rights. The Sub-Committee on Fundamental Rights at its first meeting on the same day had before it the proposals drafted earlier by the Constitutional Adviser, Sir Benegal Narsing Rau, to divide fundamental rights into two classes, justiciable and non-justiciable. Although the initial reaction of several members of the sub-committee appeared to be averse to Rau's proposal, eventually the sub-committee accepted the scheme of classifying the fundamental rights into justiciable and non-justiciable rights to be embodied in the Constitution.[7]

Pursuant to the resolution adopted by the Constituent Assembly on the 29th August, 1947, a Committee to scrutinize the draft of the text of the Constitution of India prepared by the Constitutional Adviser giving effect to the decisions already taken in the Assembly and including all matters which were ancillary thereto or which had to be provided in

3 *Ibid.*

4 Constituent Assembly Debates, Vol. I, 59.

5 *Id.*, Vol. II at 324.

6 *Id.* at 328-49.

7 Supra, note 2.

such a Constitution, and to submit to the Assembly for consideration the text of the draft Constitution as revised by the Committee, was appointed.[8] In his covering letter dated 21st February, 1948 to the Hon'ble President of the Constituent Assembly submitting the said Draft as settled by the Committee, its Chairman pointed out, with regard to fundamental rights, that the Committee had attempted to make those rights and the limitations to which they must necessarily be subject as definite as possible, since the courts might have to pronounce upon them. After the Draft Constitution remained in public domain for eight months, Dr. B. R. Ambedkar, in his capacity as the Chairman of the Drafting Committee, introduced the Draft Constitution as settled by the Drafting Committee in the Constituent Assembly on the 4th November, 1948 and moved that it be taken into consideration.[9] As he submitted, *"These Directive Principles have also come up for criticism. It is said that they are only pious declarations. They have no binding force. This criticism is of course superfluous. The Constitution itself says so in so many words. If 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 in law."*[10]

Dr. Ambedkar further submitted that the Directive Principles were like the Instruments of Accession 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 Government of India Act, 1935 and that the only difference between them was that they were instructions to the Legislature and the Executive. Justifying the inclusion of such instructions in the Constitution, he argued that who should be in power was left to be determined by the people, as it must be, if the system was to satisfy the test of democracy but whoever captures power would not be free do what he liked with it and that in the exercise of such power, he would have to respect those instruments of instructions which were called Directive Principles and that he would not afford to ignore them and though, he might not have to answer for their breach in a Court of Law, he would certainly have to answer for them before the electorate at the time of elections.

In the Draft Constitution as introduced in the Constituent Assembly, these directives were contained in Articles 30 to 40. After deliberations, these very articles were numbered from Article 38 to Article 51. The directive relating to organization of village panchayats[11] was not a part of the Draft Constitution. By virtue of the Constitution (Forty-second) Amendment

8 Constituent Assembly Debates, Vol. V, 293-310.

9 *Id.,* Vol. VII at 31.

10 *Id*. at 41.

11 The Constitution of India, Article 40.

Act, 1976, the directives relating to equal justice and free legal aid,[12] participation of workers in management of industries[13] and protection and improvement of environment and safeguarding of forest and wild life[14] were inserted. The existing directive to the State to secure a social order for the promotion of welfare of the people was renumbered[15] and a new directive[16] was inserted by the Constitution (Forty-fourth) Amendment Act, 1978. The Constitution (Eighty-sixth) Amendment Act, 2002 has omitted the directive relating to provision for free and compulsory education for children and in its place made provision for early childhood care and education to children below the children the age of six years.[17]

II. Inter-Relationship Between Parts III & IV of The Constitution of India

The inter- relationship between Fundamental Rights and Directive Principles and the manner in which it has been interpreted by the Supreme Court could be understood by making a reference to the position as it existed before the year 1971 followed by the Constitution (Twenty-fifth) Amendment Act, 1971 which was questioned in *Kesavananda Bharathi*.[18] A reference to their relationship finds mention in each of the nine judgements delivered by the Judges who constituted the Special Bench. Subsequently, the Constitution (Forty-second) Amendment Act, 1976 which sought to exclude any challenge to the implementation of any of the directives on the touchstone of fundamental right to equality and right to freedom came to be questioned successfully in *Minerva Mills*.[19] Thereafter, the Supreme Court had an occasion to survey the entire gamut of leading cases that has a bearing on the relationship between Fundamental Rights and Directive Principles in *Mirzapur Moti Kureshi Kassab Jamat* [20] culminating in the principle laid down in *I R Coelho*.[21]

1. Pre-1971 Position

Government Order providing for reservation in favour of various communities for admission to medical/engineering seats in Madras was struck down by the high court for violating

12 *Id.*, Article 39A.
13 *Id.*, Article 43A.
14 *Id.*, Article 48A.
15 INDIA CONST. art. 38 renumbered as cl.(1).
16 INDIA CONST, art 38(2).
17 *Id.*, Article 45.
18 Kesavananda Bharati v. State of Kerala and Anr, AIR 1973 SC 1461.
19 Minerva Mills Ltd. v. Union of India, AIR 1980 SC 1789.
20 State of Gujarat v. Mirzapur Moti Kureshi Kassab, AIR 2006 SC 212.
21 I R Coelho v. State of Tamil Nadu (2007) 2 SCC 1.

Article 29(2).[22] In appeal, in *State of Madras v. Champakam Dorairajan*,[23] it was contended by the State that having regard to the directive which commanded the State to promote the educational interests of the weaker sections of the people, it was entitled to maintain the Communal Government Order fixing proportionate seats for different communities and if because of the said Order, the respondents were unable to get admission into the educational institutions, there was no infringement of their Fundamental Rights. It was further contended that the said directive over rid the rights of a citizen not to be denied admission into educational institution which was either maintained by the state or in receipt of aid from the State. Rejecting the contentions so advanced, S. R. Das, J (as he then was) who wrote for a seven Judge Bench, observed that *"the directive principles which were made expressly made unenforceable by a Court, could not override the provisions found in Part III which, notwithstanding other provisions, were expressly made enforceable by appropriate writs, orders or directions"*. Holding that the chapter of Fundamental Rights was sacrosanct and not liable to be abridged by any legislative or executive act or order, except to the extent provided in the appropriate article in Part III, it was further observed that *"the directives had to conform to and run as subsidiary to the chapter on fundamental rights"*. However, it was also observed that *"so long as there was no infringement of any fundamental right, to the extent conferred by the provisions in Part III, there could be no objection to the state acting in accordance with the directives 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."* [24] As a sequel, the Constitution (First Amendment) Act, 1951, inserted Article 15(4) to enable the state to make any special provision for advancement of certain communities.

The constitutional validity of legislative enactments banning the slaughter of certain animals passed by the States of Bihar, Uttar Pradesh and Madhya Pradesh were called in question in *Mohd Hanif Quareshi v. State of Bihar*. [25] The petitions were allowed partly as few of the provisions in each of the acts passed by the respective States were held to fall foul of the fundamental right to trade. Interestingly, the *amicus curiae* raised a preliminary objection to the effect that the impugned acts were made by the States in discharge of the obligations laid on them by the directive on organization of animal husbandry and that the impugned laws having thus been made in discharge of that fundamental obligation imposed on the

22 INDIA CONST. article 29(2) prohibits discrimination on certain grounds for admission to state maintained/ aided educational institutions.

23 State of Madras v. Champakam Dorairajan, AIR 1951 SC 226.

24 *Id.* at 228.

25 Mohd Hanif Quareshi v. State of Bihar, AIR 1958 SC 731.

State, the fundamental rights conferred on the citizens and others by Chapter III of the Constitution must be regarded as subordinate to those laws and that the directive principles were equally, if not more, fundamental and must prevail. Unmoved, Chief Justice S. R. Das heading the five Judge Bench ruled that the directive principles could not override the categorical restriction imposed on the legislative power of the State by Article 13(2). [26] Following *Champakam*,[27] it was observed that a harmonious interpretation had to be placed upon the Constitution and so interpreted it meant that the State should certainly implement the directive principles but it must do so in such a way that its laws do not take away or abridge the fundamental rights, for otherwise the protecting provisions of Chapter III will be 'a mere rope of sand.' [28]

A reference was made by the President of India under Article 143(1) [29] of the Constitution of India, on certain questions of law of considerable importance that had arisen out of certain provisions of the Kerala Education Bill, 1957 *In re Kerala Education Bill, 1957.* [30] After examining particularly certain directives relating to principles of policy to be followed by the State, right to work, to education and to public assistance in certain cases, provision for free and compulsory education for children and promotion of educational and economic interests of SCs, STs and other weaker sections, again S. R. Das, C J speaking for the majority of six Judges observed that although the legislation in question might have been undertaken by the State of Kerala in discharge of the obligation imposed on it by the directives enshrined in Part IV, it must, nevertheless, subserve and not override the fundamental rights conferred by the provisions of articles contained in Part III. It was also observed that *"in determining the scope and ambit of the fundamental rights relied on by or on behalf of any person or body, the court may not entirely ignore these directive principles of state policy but should adopt the principle of harmonious construction and should attempt to give effect to both as much as possible."* [31]

Authoring the leading opinion of the Constitution Bench in *Deep Chand v. State of U. P.*, [32] where the validity of the scheme of nationalization of State Transport Service formulated by the State Government was unsuccessfully challenged, K. Subba Rao, J (as he then

26 INDIA CONST. article 13(2) dealing with post Constitution law restrains the state from making any law restricting the fundamental rights.

27 *Supra*, note 23.

28 *Supra,* note 25 at 739.

29 INDIA CONST. article 143 deals with the advisory jurisdiction of the Supreme Court.

30 AIR 1958 SC 956.

31 *Id.* at 966.

32 Deep Chand v. State of U.P., AIR 1959 SC 648.

was) refused to accept any relevancy in the reference to the directive principles pointing out that the legislative power of a State is only guided by the directive principles of state policy and the directions, even if disobeyed by the State, cannot affect the legislative power of the State, as they are only directory in scope and operation.[33] In *I. C. Golak Nath v. State of Punjab*,[34] while adjudicating upon the validity of the Constitution (Seventeenth) Amendment, Act, 1964, K. Subba Rao, C J who led the majority opinion concluded that fundamental rights are given a transcendental position under our Constitution though Parts III and IV constituted an integrated scheme forming a self-contained code and that all the directive principles of state policy could reasonably be enforced without taking away or abridging the fundamental rights as the scheme itself was elastic. [35]

The validity of notification issued by the Government of Mysore fixing the minimum wages of different classes of employees in residential hotels and eating houses in the State of Mysore, under the provisions of the Minimum Wages Act, 1948, was unsuccessfully called in question in *Chandra Bhavan Boarding & Lodging, Bangalore v. State of Mysore*. [36] Dealing with the contention that the provisions of the Act were unconstitutional as they conferred arbitrary power without guidance to the Central and State Governments concerned to fix minimum rates of wages and thus interfered with the freedom of trade guaranteed under Article 19(1)(g) [37] of our Constitution, K.S. Hegde, J who wrote for the Constitution Bench observed that the freedom of trade did not mean freedom to exploit and that the provisions of the Constitution were not erected as the barriers to progress but they provided a plan for orderly progress towards the social order contemplated by the preamble to the Constitution. On the aspect of fundamental rights and directive principles, it was observed that *"it was a fallacy to think that under our Constitution, there were only rights and no duties and there was no conflict on the whole between the provisions contained in Part III and Part IV which were complementary and supplementary to each other."* With respect to Part IV it was observed that *"the provisions thereof enabled the legislatures and the Government to impose various duties on the citizens and the same were deliberately made elastic because the duties to be imposed on the citizens depended on the extent to which the directive principles were implemented. The mandate of the Constitution was to build a welfare society in which justice social, economic and political shall inform all institutions*

33 *Id.* at 664.

34 I. C. Golak Nath v. State of Punjab, AIR 1967 SC 1643.

35 *Id.* at 1656.

36 Chandra Bhavan Boarding & Lodging, Bangalore v. State of Mysore AIR 1970 SC 2042.

37 INDIA CONST. art 19(1)(g) grants to citizens freedom to practice any profession, or to carry on any occupation, trade or business.

of our national life and that the hopes and aspirations aroused by the Constitution will be belied if the minimum needs of the lowest of our citizens were not met." [38]

2. The Constitution (Twenty-Fifth Amendment) Act, 1971 & Kesavananda

Parliament sought to immunize, by insertion of Article 31C vide the Constitution (Twenty-fifth) Amendment Act, 1971, laws giving effect to certain directive principles from being challenged on the ground that it was inconsistent with certain fundamental rights, The Act also was a subject matter of challenge in *Kesavananda Bharathi*.[39] Though only that part of the Article 31C which gave a legislative finality to the law was held to be invalid, the inter-relationship between Fundamental Rights and Directive Principles were extensively considered in all the nine judgements pronounced by the court. As the opinion of Judges who composed the majority with regard to the question on hand has largely influenced successive benches which had to grapple with the question of whether or not to accord primacy to Fundamental Rights as enshrined in Part III of the Constitution, it may be worth to list them out in the words of Judges who adorned the Bench.

Observed J. M. Shelat & A. N. Grover, JJ thus, *"While most cherished freedoms and rights have been guaranteed, the government has been laid under a solemn duty to give effect to the Directive Principles. Both Parts III and IV which embody them have to be balanced and harmonised – then alone the dignity of the individual can be achieved. It was to give effect to the main objectives in the Preamble that Parts III and IV were enacted.* [40]*...Our Constitution makers did not contemplate any disharmony between the fundamental rights and the directive principles. They were meant to supplement one another. It can well be said that the directive principles prescribed the goal to be attained and the fundamental rights laid down the means by which that goal was to be achieved."* [41] For K. S. Hegde & A. K. Mukherjea, JJ, *"Our founding fathers were satisfied that there is no antithesis between the fundamental rights and directive principles. One supplements the other. The directives lay down the end to be achieved and Part III prescribes the means through which the goal is to be reached. Our Constitution does not subscribe to the theory that end justifies the means adopted."* [42] A. N. Ray, J (as he then was) wrote thus, *"The core of the commitment to the social revolution lies in Parts III and IV of the Constitution. They are described to be the 'conscience of the Constitution'. The object of Part III was to 'liberate*

38 *Supra*, note 36 at 2050.
39 *Supra,* note 18.
40 Supra, note 18 at 1582.
41 *Id.* at 1607.
42 *Id.* at 1641.

the power of man equally for distribution to the common good'. The State would have to bear the responsibility for the welfare of citizens. The Directive Principles are declaration of economic independence so that our countrymen would have economic as well as political control of the country...But the Directive Principles are also fundamental. They can be effective if they are to prevail over fundamental rights of a few in order to subserve the common good and not to allow economic system to result to the common detriment. It is the duty of the State to promote common good [43]*... Parts III and IV of the Constitution touch each other and modify. They are not parallel to each other. Different legislation will bring in different social principles. These will not be permissible without social content operating in a flexible manner."* [44] Observed P. Jaganmohan Reddy, J recording thus, *"There can be no doubt that the object of the Fundamental Rights is to ensure the ideal of political democracy and prevent authoritarian rule, while the object of the Directive Principles of State Policy is to establish a welfare State where there is economic and social freedom without which political democracy has no meaning. What is implicit in the Constitution is that there is a duty on the Courts to interpret the Constitution and the laws to further the Directive Principles which under Article 37 are fundamental in the governance of the country."* [45] Noted D. G. Palekar, J, *"The Preamble read as a whole, therefore, does not contain the implication that in any genuine implementation of the Directive Principles, a fundamental right will not suffer any diminution."* [46] In the words of K. K. Mathew, J, *"I can see no incongruity in holding, when Article 37 says in its latter part 'it shall be the duty of the State to apply these principles in making laws', that judicial process is 'state action' and that the judiciary is bound to apply the Directive Principles in making its judgement."* [47] M. H. Beg, J (as he then was) recorded, *"Perhaps, the best way of describing the relationship between the fundamental rights of individual citizens, which imposed corresponding obligations upon the State and the Directive Principles, would be to look upon the Directive Principles as laying down the path of the country's progress towards the allied objectives and aims stated in the Preamble, with fundamental rights as the limits of that path."* [48] Y. V. Chandrachud, J (as he then was) had this to say, *"Our decision on this vexed question must depend upon the postulate of our Constitution which aims at bringing about a synthesis between 'Fundamental Rights' and the 'Directive Principles of State Policy', by giving to the former a pride of place and to the latter a*

43 *Id.* at 1707.
44 *Id.* at 1714.
45 *Id.* at 1755.
46 *Id.* at 1815.
47 *Id.* at 1950.
48 *Id.* at 1970.

place of permanence. Together, not individually, they form the core of the Constitution. Together, not individually, they constitute its true conscience." [49]

Striking a different path, S. M. Sikri, C J who headed the largest ever bench to have assembled in the Summit Court till date, ruled that the question was not whether directive principles were important but whether they override the fundamental rights. In other words, could Parliament abrogate the fundamental rights in order to give effect to some of the directive principles.[50] In his view, *"It was impossible to equate the directive principles with fundamental rights though it cannot be denied that they are very important. But to say that the directive principles give a directive to take away fundamental rights in order to achieve what is directed by the directive principles seems to me a contradiction in terms."* [51] Incidentally, H. R. Khanna, J whose opinion was titled towards those on the bench who sought to put a check on Parliament's power to amend the Constitution, does not appear to have considered the inter-relationship between parts III and IV so also S. N. Dwivedi, J who dissented with the majority view, as is discernible in their respective judgements.

3. Post - Kesavananda

The question which arose for determination before a seven Judge Bench in *State of Kerala v. N M Thomas*, [52] was whether the State Government could grant exemption for specified period to employees belonging only to the scheduled castes or scheduled tribes from passing departmental test for the purpose of promotion under clause (1)[53]of Article 16 of the Constitution, by way of certificate[54] upon the High Court of Kerala having answered the question in the negative. Among those who allowed the appeals, by majority, Syed Murtaza Fazal Ali, J who concurred separately took the view that that a clear mandate to achieve equality and social justice is contained in the directive principles and they constitute the stairs to climb the high edifice of a socialistic state and that the means by which it could be achieved is by fundamental rights. He reiterated that both should be construed

49 *Id.* at 2021.

50 *Id.* at 1508.

51 *Id.* at 1510.

52 State of Kerala v. N M Thomas, AIR 1976 SC 490.

53 INDIA CONST. art.16 cl. 2 It states that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

54 INDIA CONST. article 133(1), as it then stood, stated that an appeal shall lie to the Supreme Court from any judgement, decree or final order in a civil proceeding of a High Court in the territory of India if the High Court certifies (a) that the case involves a substantial question of law of general importance; and (b) that in the opinion of the High Court the said question needs to be decided by the Supreme Court. After the passage of the Constitution (Forty-fourth) Amendment Act, 1978, certificate of the type contemplated by Article 134A is a *sine qua non* for invoking the appellate jurisdiction of the Hon'ble Supreme Court.

in harmony with each other and every attempt should be made by the court to resolve any apparent inconsistency.[55] As he summarized, *"it is clear that the directive principles form the fundamental feature and the social conscience of the Constitution and the Constitution enjoins upon the State to implement these directive principles. The directives thus provide the policy, the guidelines and the end of socio-economic freedom and Articles 14 and 16 are the means to implement the policy to achieve the ends sought to be promoted by the directive principles. So far as the Courts are concerned where there is no apparent inconsistency between the directive principles contained in Part IV and the fundamental rights mentioned in Part III, which in fact supplement each other, there is no difficulty in putting a harmonious construction which advances the object of the Constitution. Once this basic fact is kept in mind, the interpretation of Articles 14 and 16 and their scope and ambit become as clear as day"*.[56]

3. Directive Principles and Reasonableness of Restrictions

The vires of Maharashtra Debt Relief Act, 1976 was unsuccessfully challenged in *Fatehchand Himmatlal v. State of Maharashtra*.[57] Rejecting the contention as to money-lending being a trade, V. R. Krishna Iyer, J, for a Bench of five Judges took the view that every systematic, profit-oriented activity, however sinister, suppressive or socially diabolic, cannot ipso facto, exalt itself into a trade. As he observed, *"Incorporation of the Directive Principles of State Policy casting the high duty upon the State to strive to promote the welfare of the people by securing and protecting as effectively as it might a social order in which justice – social, economic and political – shall inform all the institutions of the national life, is not idle print but command to action"*. Therefore, economic activities shaped as trade or business or commerce could be so de-recognized in the face of state action defending the weaker sections from social injustice and all forms of exploitation and raising the standard of living of the people. [58]

In *Pathumma v. State of Kerala*,[59] similar challenge was unsuccessfully mounted on the Kerala Agriculturists' Debt Relief Act, 1970, and during the course of the arguments, appellants did not press the ground relating to legislative competence of the Act in question considering the fact that in *Fatehchand Himmatlal,*[60] similar or rather harsher provisions in

55 *Supra,* note 52 at 546.

56 *Id.* at 548.

57 Fatehchand Himmatlal v. State of Maharashtra, AIR 1977 SC 1825.

58 *Id.* at 1833.

59 Pathumma v. State of Kerala AIR 1978 SC 771.

60 *Supra,* note 57.

the Maharashtra Debt Relief Act, 1976, already stood upheld by the court. Dealing with the first plank of argument advanced on behalf of the appellants that the said Kerala Act was violative of Article 19(1)(f)[61] of the Constitution in as much as it took away the right to hold property, for the appellants having acquired valid title to the property after having purchased it at the auction sale in execution of decree against the debtors and after the sale the properties vested in the appellants, Syed Murtaza Fazal Ali, J who authored the leading opinion on behalf of four Judges observed that one of the tests laid down is that, in judging reasonableness of the restrictions imposed by clause (5) of Article 19, the court has to bear in mind the directive principles of state policy. In his view, the object of the impugned Act fulfilled the directive laid down in Articles 38[62] and 39(b)[63] of the Constitution and there was no conflict between the said directive principles and the restrictions placed by the Act.[64]

4. The Constitution (Forty-Second Amendment) Act, 1976, Minerva Mills And Thereafter

During the regime of emergency, Parliament sought to extend the umbrella of immunizing laws giving effect to all the directive principles from being questioned on the ground that it was inconsistent with certain fundamental rights by amending Article 31C vide the Constitution (Forty-Second) Amendment Act, 1976. The relevant section 4 of the Act came to be questioned in *Minerva Mills*.[65] Excepting P N Bhagwati, J (as he then was) who otherwise concurred with the majority in striking down section 55 of the Act, which sought to travel beyond the limitations imposed on the scope of amending power of the Parliament when tested on the anvil of *Kesavananda*,[66] Y. V. Chandrachud, C J authoring for the majority held that section 4 was beyond the amending power of Parliament and was void since it damaged the basic or essential features of the Constitution and destroyed its basic structure by a total exclusion of challenge to any law on the ground that it was inconsistent with, or took away or abridged any of the rights conferred by Article 14 or Article 19 of the Constitution, if the law was for giving effect to the policy of the State towards securing

61 INDIA CONST. art.19 cl. 1(f), All citizens had the fundamental right to acquire, hold and dispose of property and this now stands omitted by the Constitution (Forty-fourth) Amendment Act, 1978.

62 INDIA CONST. article 38 obligates the State to secure a social order for the promotion for the welfare of the people.

63 INDIA CONST. art, 39 cl.(b) This sub-article advises the State to secure that the operation of the economic system does not result in common detriment.

64 *Supra,* note 58 at 777.

65 *Supra,* note 19.

66 *Supra*, note 18.

all or any of the principles laid down in Part IV of the Constitution.[67]

The main controversy in these petitions centered round the question whether the Directive Principles of State Policy contained in Part IV could have primacy over the Fundamental Rights conferred by Part III, as the Constitutional Amendment in question by its section 4 subordinated the Fundamental Rights conferred by Articles 14 and 19 to the Directive Principles.[68] Since *Kesavananda* [69] had prescribed the limits up to which the Parliament could act while amending the Constitution, the question was, whether in view of its majority decision was it permissible to the Parliament to so amend the Constitution so as to give a position of precedence to Directive Principles over Fundamental Rights. The answer to this question necessarily depended upon whether Articles 14 and 19, challenge to which was sought to be now given up to laws passed in order to effectuate the policy of the State towards securing all or any of the principles of directive policy, were essential features of the basic structure of the Constitution. It was only if the rights conferred by these two Articles were not a part of the basic structure of the Constitution that they could be allowed to be abrogated by a constitutional amendment. If they were a part of the basic structure, they could not be obliterated out of existence in relation to a category of laws described in Article 31C or, for the matter of fact, in relation to laws of any description, whatsoever, passed in order to achieve any object or policy whatsoever.[70]

According to the court, the history of India's struggle for independence and the debates of the Constituent Assembly showed how deeply we value their personal liberties and how those liberties were regarded as an indispensable and integral part of our Constitution.[71] Also, fundamental rights which occupied a unique place in the lives of civilized societies and had been variously described in their judgements as `transcendental', `inalienable' and `primordial'[72] were not an end in themselves but means to the end specified in Part IV. As the Chief Justice observed *"the Indian Constitution is founded on the bedrock of the balance between Parts III and IV. To give absolute primacy to one over other is to disturb the harmony of the Constitution. This harmony and balance between fundamental rights and directive principles is an essential feature of the basic structure of the Constitution"*.[73] Accordingly, it was held that the goals set out in Part IV had to be achieved without the

67 *Supra,* note 19 at 1795.
68 *Id.* at 1803.
69 *Supra,* note 18.
70 *Supra*, note 68.
71 *Supra*, note 19 at 1805.
72 *Id.* at 1806.
73 *Ibid.*

abrogation of the means provided for by Part III and it was in this sense that Parts III and IV together constituted the core of our Constitution and combined to form its conscience. [74]

The High Court of Madras had stayed the operation of the Tamil Nadu Stage Carriages and Contract Carriages (Acquisition) Ordinance, later replaced by the Act of 1973 that purported to nationalise transport. Appeals by the State in *State of Tamil Nadu v. L Abu Kavur Bai* [75] succeeded. Recourse to nationalization of the entire transport service as also a part of the entire assets of the units thereof was decided as a matter of policy and could not be enquired by the courts unless the policy was so absurd as to violate the provisions of the Constitution. Further, in view of Article 31C which gave protective umbrella against Article 31(2) also, the court could not strike down the Act merely because the compensation for taking over the transport services or its units was not provided for, the reason being that Article 31C was not merely a pragmatic approach to socialism but imbibed a theoretical aspect by which all means of production, key industries, mines, minerals, public supplies, utilities and services might be taken gradually under public ownership, management and control.[76] Speaking for the Constitution Bench, Syed Murtaza Fazal Ali, J observed that *"in recent decisions on the subject the view that has crystallised was that the courts should attempt to give a harmonious interpretation to the directive principles contained in Part IV of the Constitution even though not enforceable. Attempt should, therefore, be made to reconcile the two important provisions rather than to arrive at conclusions which bring into collision these two provisions – one contained in Part III and the other in Part IV. We must appreciate that the reason why the founding fathers of our Constitution did not advisedly make these principles enforceable was perhaps due to the vital consideration of giving the Government sufficient latitude to implement these principles from time to time according to capacity, situations and circumstances that may arise...there appears to be complete unanimity of judicial opinion of the various decisions of this court on the point that although the Directive Principles were not enforceable yet the court should make a real attempt at harmonising and reconciling the Directive Principles and the Fundamental Rights and any collision between the two should be avoided as far as possible."* [77]

Challenge to constitutional validity of the Kerala Industrial Establishments (National and Festival Holidays) (Amendment) Act, 1990 by virtue of which the Parent Act of 1958 was altered inasmuch as the national holidays were increased from 3 to 4 (with the addition of

74 *Supra,* note 18 at 1807.

75 State of Tamil Nadu v. L Abu Kavur Bai, AIR 1984 SC 326.

76 *Id.* at 334.

77 *Id.* at 331.

2nd October as Mahatma Gandhi's Birthday) and festival holidays were increased from 4 to 9, failed before a Single Judge and in appeal to a Division Bench of High Court of Kerala and finally before Supreme Court in *M R F Ltd. v. Inspector, Kerala Government*. [78] As S. Saghir Ahmed, J heading the Bench observed *"the Directive Principles of State Policy were not enforceable but were nevertheless fundamental in the governance of the country and had to be applied by the State in making the laws. They were essential articles of faith of the country and as such the Legislature, the Executive and the Judiciary had to follow them unless there was likely to be an infringement of any express provisions of the Constitution. They had to be regarded as the 'Wisdom' of the Nation manifested in the 'paramount law' of the country."* [79] According to the court, the idea behind Article 43[80] of the Constitution of India was that the workers would not be compelled to work on all days and that while other employees might enjoy national and festival holidays, the workers in an industry or an agricultural farm must work throughout and should not avail any of the holidays was not the philosophy of Article 43 and that as human beings, they were entitled to period of rest which would enable them to full enjoyment of their leisure and participate in social and cultural activities. Further, having regard to the factors enumerated in the counter affidavit as also to the Directive Principle of State Policy contained in Article 43, the court opined that the Act by which the national and festival holidays had been increased was fully constitutional and did not, in any way, infringe the right of the appellants to carry on their trade or business under Article 19(1)(g) and that the compulsory closure of the industrial concern on national and festival holidays could not be treated as unreasonable as the same was protected by clause (6) of Article 19 and therefore, could not be treated to be violative of the Fundamental Right under Article 19(1)(g). It was further observed that the Act was a social legislation to give effect to the Directive Principle of State Policy contained in Article 43 of the Constitution.[81]

The constitutional validity of sections 175(1)(q) & 177(1) of the Haryana Panchayati Raj Act, 1994 which disqualified a person having more than two living children from holding the post of Sarpanch or Panch of a Gram Panchayat or a member of a Panchayat Samiti or Zila Parishad was challenged by Writ Petitioners and appellants who had been

78 M R F Ltd. v. Inspector, Kerala Government AIR 1999 SC 188.

79 *Id.* at 192.

80 INDIA CONST. art 43, It states that the State shall endeavour 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 endeavour to promote cottage industries on an individual or co-operative basis in rural areas.

81 *Supra,* note 78 at 193.

disqualified or proceeded against for disqualification either from contesting the elections for, or from continuing in, the office of Panchas/Sarpanchas in *Javed v. St of Haryana*. [82] At the bar it was agreed that the grounds of challenge could be categorized into five; the first three submissions were based on Article 14[83]; the fourth on Article 21[84] and the fifth one on Article 25.[85] Though the challenge to the constitutional validity of the said sections failed on all the counts with the court holding that both the provisions were intra vires the Constitutions, the Special Leave Petitions [86] were dismissed with certain directions. Heading a Full Bench, R. C. Lahoti, J (as he then was) ruled that *"fundamental rights were not to be read in isolation and that they had to be read along with the Chapter on Directive Principles of State Policy and the Fundamental Duties enshrined in Article 51A."* [87] Inserted by the Constitution (Forty-second) Amendment Act, 1976, it figures in Part IVA of the Constitution of India. According to the court, none of the lofty ideals contained in Articles 38, 46 and 47 could be achieved without controlling the population inasmuch as our materialistic resources were limited and the claimants were many.

5. Principles Laid Down in Mirzapur Moti Kureshi Jamat and I R Coelho

As a new directive relating to safeguarding the wild life of the country was introduced only by the Constitution (Forty-fourth) Amendment, 1978, a duty was imposed on the citizens to protect and improve the natural environment and wild life and to have compassion for living creatures and that certain prior decisions by Constitution Bench of five Judges needed reconsideration as a consequence thereof, it was but natural for the constitution of 7 Judges Bench to adjudicate State's challenge to the decision of the High Court of Gujarat which had ruled that section 2 of the Bombay Animal Preservation (Gujarat Amendment) Act, 1994 which introduced certain amendments in Section 5 of the Bombay Animal Preservation Act, 1954 (as applicable to the State of Gujarat) as ultra vires the Constitution in *State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat*,[88] The effect of the amendment was total prohibition against slaughter of progeny of cow. Chief Justice R. C. Lahoti led the majority opinion on behalf of Six Judges in allowing the appeal and holding that the impugned provisions were intra vires the Constitution testing it also on the touchstone of Articles

82 Javed v. St of Haryana AIR 2003 SC 3057.

83 INDIA CONST. article 14 mandates equality before law.

84 INDIA CONST. article 21 affords protection for life and personal liberty.

85 INDIA CONST. article 25 guarantees freedom of conscience and free profession, practice and propagation of religion.

86 INDIA CONST. article 136(1) makes provision for special leave to appeal to Supreme Court.

87 *Supra,* note 82 at 3069.

88 *Supra,* note 20.

48A[89] and 51A(g)[90] of the Constitution. In dissent was A K Mathur, J who agreed with the order under appeal finding no justification for reversing the view taken by the earlier Constitution Bench judgements.

On the aspect of fundamental rights and directive principles, relying on *Kesavananda,* [91] it was noted that the interest of a citizen or section of a community, howsoever important, was secondary to the interest of the country or community as a whole. It was observed that *"for judging the reasonability of restrictions imposed on Fundamental Rights the relevant considerations were not only those as stated in Article 19 itself or in Part III of the Constitution; the Directive Principles stated in Part IV were also relevant. Changing factual conditions and State policy, including the one reflected in the impugned enactment, have to be considered and given weightage to by the courts while deciding the constitutional validity of legislative enactments. A restriction placed on any Fundamental Rights aimed at securing Directive Principles will be held as reasonable and hence intra vires subject to two limitations: first, that it does not run-in clear conflict with the fundamental right, and secondly, that it has been enacted within the legislative competence of the enacting legislature under Part XI Chapter I of the Constitution."* [92] It was also ruled that the several clauses of Article 37 themselves needed to be harmoniously construed and the end part of the said Article was not a pariah but a constitutional mandate. It was observed that the effect of judgements delivered thus far was that *"while interpreting the interplay of rights and restrictions, Part III (Fundamental Rights) and Part IV (Directive Principles) have to be read together. The restrictions which can be placed on the rights listed in Article 19(1) are not subject only to Articles 19(2) to 19(6); the provisions contained in the chapter on Directive Principles can also be pressed into service and relied on for the purpose of adjudging the reasonability of restrictions placed on the Fundamental Rights."* [93]

Testing the impugned legislation on the anvil of relevant directives and fundamental duty and according due weightage to them and overruling earlier decisions which went to the contrary, it was observed that *"faced with the question of testing the constitutional validity of any statutory provision or an executive act, or for testing the reasonableness of any restriction cast by law on the exercise of any fundamental right by way of regulation, control or prohibition, the Directive Principles of State Policy and Fundamental Duties as*

89 *Supra*, note 13.

90 INDIA CONST. article 51A(g) casts a duty on every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures.

91 *Supra*, note 18.

92 *Supra*, note 20 at 226.

93 *Id.* at 228.

enshrined in Article 51A of the Constitution play a significant role." [94]

The enunciation of the "doctrine of basic features" and identification of new and more of fundamental features in decisions rendered thereafter did not, however, prevent the legislature from making certain laws and save it from challenge. The fundamental question, therefore, in *I. R. Coelho v. State of Tamil Nadu*,[95] was whether on and after 24th April 1973 when the basic structure doctrine was propounded in *Kesavananda* [96] was it permissible for Parliament under Article 31B [97] to immunize legislations from fundamental rights by inserting them into the Ninth Schedule and, if so, what was its effect on the power of judicial review of the Court. For Y. K. Sabharwal, C J who headed the Nine Judge Bench, fundamental rights were those rights of citizens or those negative obligations of the State which did not permit encroachment on individual liberties, the object of fundamental rights being to foster the social revolution by creating a society egalitarian to the extent that all citizens were to be equally free from coercion or restriction by the State. It was further observed that *"by enacting fundamental rights and directive principles which were negative and positive obligations of the States, the Constituent Assembly made it the responsibility of the Government to adopt a middle path between individual liberty and public good. Fundamental Rights and directive principles have to be balanced. That balance can be tilted in favor of the public good. The balance, however, cannot be overturned by completed overriding individual liberty. This balance is an essential feature of the Constitution."* [98] Resultantly, it was held that since the basic structure of the Constitution included some of the fundamental rights, any law granted by the Ninth Schedule deserved to be tested against these principles and if the law infringed the essence of any of the fundamental rights or any other aspect of the basic structure then it would be struck down.[99]

III. Conclusion

From 'directive principles could not override the provisions found in Part III' and that 'the directives had to conform to and run as subsidiary to fundamental rights' in *Champakam Dorairajan,*[100] that 'the directive principles could not override the categorical restriction

94 *Id.* at 230.

95 I. R. Coelho v. State of Tamil Nadu, (2007) 2 SCC 1.

96 *Supra*, note 18.

97 INDIA CONST. article 31B provides for validation of certain Acts and Regulations specified in the Ninth Schedule.

98 *Supra*, note 95 at 98.

99 *Supra*, note 95 at 111.

100 *Supra,* note 23.

imposed on the legislative power of the state by Article 13(2)' and 'on a harmonious interpretation of the reading of the Constitution, the state could certainly implement the directives without taking away or abridging the fundamental rights' in *Mohd Hanif Quareshi,*[101] and that 'the directives must subserve and not override the fundamental rights' and 'the court may not entirely ignore the directive principles but should adopt the principle of harmonious construction and should attempt to give effect to both as much as possible' in *In re Kerala Education Bill,*[102] the Supreme Court speaking through Chief Justice S. R. Das, coincidentally in all these judgements appeared to give a place of primacy to the fundamental rights indicating clearly that the laws made to implement directives could be validly made if and only if they did not run into clear irreconcilable conflict with fundamental rights. Even in *Deep Chand,* [103] K. Subba Rao, J (as he then was) felt that the directive principles of state policy are only directory and that their disobedience by the State did not affect its legislative power, as such.

It was in *Golak Nath*,[104] that the majority speaking through Chief Justice K. Subba Rao felt that both Parts III & IV constituted an integrated scheme forming a self-contained code and that all the directives could be enforced without taking away or abridging the fundamental rights. In *Chandra Bhavan Boarding & Lodging, Bangalore*,[105] the Constitution Bench speaking through K. S. Hegde, J went to hold further that there was no conflict between the provisions of both Parts III and IV which were complementary and supplementary to each other. All these interpretations placed by the Hon'ble Supreme Court, it is respectfully submitted, were de hors any specific constitutional sanction to implementation of any of the directive in the face of any fundamental right.

Subsequently, the enactment of Constitution (Twenty-fifth) Amendment, Act, 1971 sought to thwart a challenge to implementation of the directives contained in clause (b) & (c) of Article 39 on the touchstone of Articles 14, 19 and 31 in spite of the mandate of Article 13. The majority in *Kesavananda,*[106] held this part of section 3 of the Act to be valid on the basis of their interpretation as to the relationship between Parts III & IV of the Constitution of India and their premise was followed in *L. Abu Kavur Bai*.[107] Though *Pathumma* [108] dealt

101 *Supra,* note 25.
102 *Supra,* note 30.
103 *Supra,* note 32.
104 *Supra,* note 34.
105 *Supra,* note 36.
106 *Supra,* note 18.
107 *Supra,* note 75.
108 *Supra,* note 59.

with the question of fundamental right to property, it spelt out several guidelines which would indicate as to in what particular circumstances restriction on the freedom could be regarded as reasonable, and in particular, in judging the reasonableness of the restriction the Court had to bear in mind the Directive Principles of State Policy.[109] Thereafter, the Constitution (Forty-second) Amendment Act, 1976 which subordinated the fundamental rights as enshrined in Articles 14 and 19 to all the directive principles by way of amending Article 31C was successfully challenged in *Minerva Mills* [110] resulting in restoration of status quo ante with regard to the immunity given to implementation of the specific directive principles from being attacked on the ground that, inspite of what was contained in Article 13,[111] it was inconsistent with or took away or abridged certain fundamental rights.

With greatest respect to the Judges who were in the majority in *Minerva Mills*, [112] on the question of the validity of Article 31C, as amended, *Pathumma* [113] appears to have escaped their kind attention though P. N. Bhagwati, J (as he then was), in minority on this question alone, had relied on *Pathumma* [114] too to hold that the amended Article 31C, as interpreted by him, could not be in the circumstances be regarded as violative of the basic structure of the Constitution.[115] The evolution of law with respect to inter-relationship between Part III & IV has been elaborately explained in *Mirzapur Moti Kureshi Kassab Jamat* [116] with *I R Coelho* [117] outlining the limits of the exercise of power by the Parliament with regard to fundamental rights and directive principles of state policy.

Opinion has been expressed by certain commentators that it needs clarification as to whether Article 31C as it stood post *Kesavananda*[118] prior to its amendment in *Minerva Mills* [119] must survive the latter decision. Such a question, though in a different context arose before the Constitution Bench in *Supreme Court Advocates-on-Record Association v. Union of India* [120] which dealt with the constitutional validity of the Constitution (Ninety-

109 *Supra,* note 64.
110 *Supra,* note 19.
111 INDIA CONST. article 13 states that laws inconsistent with or in derogation of fundamental rights are void.
112 *Supra,* note 19.
113 *Supra,* note 59.
114 *Ibid.*
115 *Supra,* note 19 at 1857.
116 *Supra,* note 20.
117 *Supra,* note 21.
118 *Supra,* note 18.
119 *Supra,* note 19.
120 Supreme Court Advocates-On-Record Association v. Union of India (2016) 5 SCC 1.

ninth) Amendment Act, 2014 and National Judicial Appointments Commission Act, 2014. While upholding the challenge by the petitioners, all the four Judges who composed the majority, in their concurring judgements, recorded their findings which were identical *qua* the question posed as regards Article 31C. J. S. Khehar, J (as he then was) made a reference to English Common Law wherein a repealing enactment is repealed by another law, the repeal of the second enactment would revive the former *ab initio*. According to him, there would be a constitutional breakdown if the contention that the striking down of the impugned constitutional amendment would not result in the revival of the provisions which had been amended by Parliament is accepted.[121] Madan B. Lokur, J felt that the result of accepting the contention of the respondents would be calamitous as, as he demonstrated, the President shall have absolute power to appoint a Judge of the Supreme Court and High Court without consulting the Chief Justice of India. He, accordingly, held that the constitutional provisions amended by the 99th Constitution Amendment Act spring back to life on the declaration that the 99th Constitution Amendment Act was unconstitutional.[122] The arguments advanced on this score did not appeal to common sense so felt Kurian Joseph, J and in his brief order observed that once the process of substitution and insertion by way of constitutional amendment is itself to be bad and impermissible, the pre-amended provisions automatically resurface and revive which alone could be the reasonably inferential conclusion. He observed that though the legal parlance and common parlance may be different but that cannot be any legal sense of an issue which does not appeal to common sense.[123] Adarsh K. Goel, J did not find any logic for the stand taken by the respondents and held that in exercise of power of judicial review, a provision can be declared void in which case the legal position as it stands without such void provision can be held to prevail.[124] It is, therefore, no more res integra that Article 31C as it stood pre *Minerva Mills* [125] holds the field.

To sum up, any and every law which seeks to implement the directive principles of state policy as contained in Part IV save clause (b) or clause (c) of Article 39 is open to attack on the ground that it is inconsistent with or takes away or abridges any of the rights conferred by Article 14 or Article 19. However, on the strength of *Pathumma* [126] challenge to Article 19 is likely to fail. Likewise, challenge to Article 14, to pass muster, must satisfy the

121 *Id.* at 469.
122 *Id.* at 680.
123 *Id.* at 689.
124 *Id.* at 740.
125 *Supra,* note 19.
126 *Supra,* note 59.

twin test of reasonable classification and intelligible differentia as pointed out by S. R. Das, J (as he then was) in *State of West Bengal v. Anwar Ali Sarkar* [127] a test which has withstood the test of time or the test of absence of arbitrariness first propounded by P. N. Bhagwati, J (as he then was) in *E P Royappa v. State of Tamil Nadu* [128] or absence of manifest arbitrariness identified in *Shayara Bano v. Union of India*.[129] The authority for the proposition that if a challenge is made to a law implementing a directive principle, it is obligatory for the constitutional courts to look at fundamental duties as enshrined in Part IVA and testing it on its anvil is to be found in *Mirzapur Moti Kureshi Kassab Jamat*. [130] A law made to implement any of the directive principles for public good could be upheld but never at the cost of his individual liberty is an assurance which *I R Coelho* [131] gives to every individual on the principle that the balance between Parts III & IV is an essential feature of the Constitution of India.

127 State of West Bengal v. Anwar Ali Sarkar AIR 1952 SC 75

128 E P Royappa v. State of Tamil Nadu AIR 1974 SC 555.

129 Shayara Bano v. Union of India 2017(9) SCALE 178.

130 *Supra,* note 20.

131 *Supra,* note 21.