

## CHAPTER 4

### Constitutional Provisions For Socio-economic Change: Fundamental Rights and Directive Principles of State Policy

#### 4.1 Why Fundamental Rights?

A Chapter on Fundamental Rights or a Bill of Rights as it is called is the political technique of placing certain basic civilisational values as limitations on the majoritarian impulse in a democracy. Democracy has wider moral implications than mere majoritarianism. A mere majoritarian democracy is likely, sooner or later, to degenerate into elective despotism. Pluralism is the soul of democracy. Without respect for pluralism, there will be no true democracy or a conflict-free society. The entrenched and justiciable Fundamental Rights are the expedient adopted by self-governing peoples to recognize certain basic human-rights as inalienable and place them beyond the reach of an amoral majority. Human Rights are not rewards of development; rather they are critical to achieving it. Values of life, liberty and dignity are not subject to political vicissitudes. They depend on the outcome of no elections. They are sacrosanct in themselves and are inalienable. They are put above the reach of the ordinary laws. In regard to the choice of the values, which need such consecration, there are certain basic contemplations as to what a Bill of Rights may legitimately hope to contain. The first, it is a code of relatively specific requirements and prohibitions. The second, it is a mean of correcting structural deficiencies in representative government. The third, it is a Charter on fundamental human rights. A Bill of Rights is a 'formal commitment to the protection of those Human Rights which are considered, at that moment in history, to be of particular importance'. In principle, they are binding upon the State; their violations attract specific sanctions and remedies. Part III of the Indian Constitution enshrines these great rights. Part IV contains directives which enable the realization and effectuation of the aspiration of Part III and give full meaning to them. Part IV is theoretically non-justiciable. But it permeates the whole ethos of Part III.

4.1.2 Sir B.N. Rao, Constitutional Adviser speaking of the scheme of Parts III and IV of the Constitution said:

“... There are certain rights which require positive action by the State and which can be guaranteed only so far as such action is practicable, while others merely require that the State shall abstain from prejudicial action ..... It is obvious that rights of the first type are not normally either capable of, or suitable for, enforcement by legal action, while those of the second type may be so enforced”.

4.1.3 This debate, in some form or the other, permeates the discourse on the general issues commonly raised on civil and political rights on the one hand and economic, social and cultural rights on the other in the international Human Rights regime. Some, like Michael Zander, argue that economic, social and cultural rights do not admit of consensus on their selection as they, in their adjudication, raise issues of allocation of society's resources over which courts have no sway. This debate loses its edge once it is realized that when what is contemplated is a

minimum standard of basic core of rights, such as 'access to life-sustaining water, adequate housing to enable life to go on, primary education, essential medical services and food sufficient to make the right to life meaningful are hardly so exotic or grandiose or too idealistic as to make such minimum guarantee unrealistic'.

4.1.4 But the all important question is how the spirit of Constitution is nurtured by men. 'I often wonder' said Learned Hand "if we do not rest our hopes too much upon Constitutions, upon laws and upon courts. Believe me, there are false hopes. Liberty lies in the hearts of men; when it dies there, no court can do much to help it"

## **4.2 Constitutional Mechanism For Realization Of**

### **Socio-Economic Goals**

Indian Constitutional scheme 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 judicial process of "constitutionising" 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 sources of law for a welfare state. Indeed, the Constitution of the Republic of South Africa, 1996 contains certain specific mandates. Section 39 of that Constitution provides as under:-

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#### **"39. Interpretation of Bill of Rights**

- (1) When interpreting the Bill of Rights, a court, tribunal or forum –
  - (a) must promote the values that underlie an open and democratic society based on human dignity, equality and freedom;
  - (b) must consider international law; and
  - (c) may consider foreign law.
- (2) When interpreting any legislation, and when developing the common law or customary law, every court, tribunal or forum must promote the spirit, purport and objects of the Bill of Rights.
- (3) The Bill of Rights does not deny the existence of any other rights or freedoms that are recognized or conferred by common law, customary law or legislation, to the extent that they are consistent with the Bill."

4.2.2 Article 38 of the Indian Constitution enjoins upon the State to strive to promote the welfare of the people by securing a social order in which justice, social, economic and political shall inform all the institutions of national life and to minimize inequalities in income, status, facilities and opportunities not only amongst individuals but amongst groups of people. Article 39 directs the State *inter-alia* to secure to the citizens the right to adequate means of livelihood; that the ownership and control of material resources of the community are so distributed as best to subserve the common good; that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment; that the children are given the opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment. Article 39A provides that the State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. Article 41 contemplates effective provision for securing the right to work; Article 42 for securing just and humane conditions of work and for maternity relief. Article 45 enjoins upon the State to endeavour to provide within a period of 10 years, for free and compulsory education for all children until they complete the age of 14 years. Article 46 provides for the promotion, with special care of, the educational and economic interests of the weaker sections of the people and in particular of the Scheduled Castes and the Scheduled Tribes. It also enjoins protection to them from social injustice and from all forms of exploitation. Article 47 calls for raising of the level of nutrition and standards of living of the people and to improve public health. These directives are fundamental in the governance of the country.

4.2.3 The Constitution of India, therefore, rests firmly on the principles of liberty, equality, fraternity and justice. It reflects an uncompromising respect for human dignity, an unquestioning commitment to equality and non-discrimination, and an over-riding concern for the poorest and the weakest in society. The Constitution makes it mandatory to protect and promote freedoms, and to assure every citizen a decent standard of living.

### **Constitutional Mechanism For Realization Of**

#### **Socio-Economic Goals**

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- ❑ ***The basic constitutional scheme for realization of socio-economic goal is laid in Parts III and IV of the Constitution.***
- ❑ ***Entrenched and Justiciable Fundamental Rights enshrined in Part III provide Constitutional guarantee of these basic human rights as being inalienable and not subject to political vicissitudes.***
- ❑ ***Directives for realization and effectuation of the ideology of Part III are contained in Part IV - The Directives though non-justiciable theoretically permeate the whole ethos of Part III.***
- ❑ ***Synthesis and integration of Fundamental rights with Directive Principles in the judicial process of constitutionalising social and economic rights has been crucial in giving impetus to the pace of realization of the Directive Principles not only as a means to effectuate Fundamental Rights but also as a source of law for a Welfare State.***

4.2.4 After fifty years a grateful nation pays its homage to the founding fathers. Of the American Constitution, it was said in a noble tribute, "that the stream of time, which has washed away and dissolved the fabric of many other constitutions, has left almost untouched its time and strength". This is indeed true of the Indian Constitution as well.

4.2.5 Indian Constitution indeed makes a strong commitment to promoting the well being of citizens. But how it has actually been worked and how the great phrases of the Constitution are translated into action and how its pledge to the poor and the deprived redeemed is an altogether different story. How different indeed is the situation in India today than what Nehru described at the dawn of the Independence is the subject matter of the succeeding chapters.

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