

II. Enforcibility Value of these Constitutional Norms

A. Original form at the Commencement Stage.

2.10. At the commencement stage of the Constitution of India the enforceability potential of the norms contained in the Part IV, embodying the Directive Principles of State Policy, was described in Article 37, which itself was a part of the Directive Principles of State Policy and which ran as follows :-

"37. Application of the principles contained in this Part. - The provisions contained in this Part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws."

2.11. As the text of Article 37 indicates the "Directive Principles of State Policy" did not as such, confer any rights on any person and did not impose any enforceable obligation upon the "State" (as understood in terms of Article 12). All the same, these Directive Principles were certainly incorporated in the Basic Statute "to set standards of achievements before the legislature, the executive and the local and other authorities by which their success or failure could be judged."

2.12. This situation has been summed up usually by differentiating the position of the Fundamental Rights and the Directive Principles, from their enforceability

point of view, by suggesting that the former are justiciable whereas the latter are non-justiciable.

2.13. However, Granville Austin's analysis depicts the true position when he observes, "Parts III and IV are like two wheels of a chariot, one no less important than the other. You snap one and the other will lose its efficacy. They are like a twin formula for achieving the social revolution, which is the ideal which the visionary founders of the Constitution set before themselves."⁷

2.14. In this regard it has further been observed by the Supreme Court that :

"The edifice of our Constitution is built upon the concepts crystallised in the Preamble. We resolved to constitute ourselves into a Socialist State which carried with it the obligation to secure to our people justice - social economic and political. We, therefore, put Part IV in our Constitution containing directive principles of state policy which specify the socialistic goal to be achieved. We promised to our people a democratic polity which carries with it the obligation of securing to the people liberty of thought, expression, belief, faith and worship; equality of status and of opportunity and the assurance

7. Cited in *Minerva Mills Ltd. and Others v. The Union of India and others*, AIR 1980 SC p.1306.

that the dignity of the individual will at all costs be preserved. We, therefore, put Part III in our Constitution conferring these rights on the people. Those rights are not an end in themselves but are the means to an end. The end is specified in Part IV." ⁸

2.15. This analysis shows that the role of the Fundamental Rights and the Directive Principles in our Constitution is supplementary as well as complimentary but, in no way antagonistic, to each other.

B. The Turning Point

2.20. In spite of the provisions of Article 37 which rendered the Directive Principles of State Policy unenforceable, the Constitution 25th (Amendment) Act, 1971 which came into force with effect from 24.4.1972, inserted, through its section 3 a new Article in the Constitution, namely, Article 31C, which stated:

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

Notwithstanding anything contained in Article 13, no law giving effect to the policy of the State towards securing the principles specified in clause (b) or

3. Ibid, pp.1806, 1807.

clause (c) of Article 39, shall be deemed to be void on the ground that it is inconsistent with, or take away or abridges any of the rights conferred by Article 14, Article 19 or Article 31, and no law containing a declaration that it is for giving effect to such policy shall be called in question in any court on the ground that it does not give effect to such policy.

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

2.21. This amendment serves as a watershed in the history of the Directive Principle Principles in the Indian polity. Its purpose and effect was twofold. Firstly, it made the legislative measures, enacted to give effect to the policy of the state towards securing the principles specified in cl. (b) and cl. (c) of Article 39, thereby making such provisions sheltered by Article 39 (b) and (c), enforceable and secondly, it extended the scope of restrictions imposed upon Articles 14 and 19 in a way that henceforth, in addition to the provisions, already existing, which could be invoked to defend measures which otherwise abridged Articles 14 and 19, now even the measures enacted to give effect to the policy and principles contained in

Article 39 (b) and (c) could not be challenged if they violated or abridged the provisions of Articles 14, 19 and 31. Thus, through the said amendment a provision got inserted in the Constitution, in the form of an additional Fundamental Right (under Article 31C), which raised the Directive Principles under Article 39 (b) and (c) above the Fundamental Rights enshrined in Articles 14, 19 and 31.

2.22. The validity of this amendment was upheld by the Supreme Court in *Keshvananda Bharti v. State of Kerala*⁹ subject to one exception, namely, that the clause in Article 31C, running as: "and no law containing a declaration that it is for giving effect to such policy shall be called in question in any court on the ground that it does not give effect to such policy," was held to be void as it was declared to be beyond the constituent powers of the Parliament.

C. Consolidation

2.30. Through section 4 of the Constitution 42nd (Amendment) Act, 1976 which came into effect on January 3, 1977, the words "all or any of the principles laid down in Part IV" were substituted for the words "the principles specified in cl. (b) and cl. (c) of Article 39", contained in Article 31C inserted by the Constitution 25th (Amendment) Act, 1971.

9. AIR 1973 SC 1461.

2.31. Through this measure the status granted to Article 39 (b) and (c) by the Constitution 25th (Amendment) Act, 1971, was extended to the entire body of Directive Principles of State Policy as contained in Part IV of the Constitution.

2.32. However, it was felt that although the insertion of Article 31C in the Constitution, through the Constitution 25th (Amendment) Act, 1971 was to enable the State to bring forth some socio-economic measures for well-being of the underprivileged and as such creating a balance between the Fundamental Rights and the Directive Principles, the result brought about by section 4 of the Constitution 42nd (Amendment) Act, 1976 was fundamentally and basically different. Through the Constitution 44th (Amendment) Act, 1978, which came into force w.e.f. 20.6.1979, the words "Articles 14, 19 and 31", were replaced by the words "Articles 14 and 19". The amendment inserted through the 42nd Amendment, basically exalted and consolidated the Directive Principles in their entirety but in that process it indirectly sowed the seeds for letting loose a phenomenon for denigrating the Fundamental Rights and, as such, eventually for destroying the basic structure of the Constitution.

D. The Reversal and Restoration

2.40. In *Minerva Mills Ltd. and others v. The Union of India and Others*, the amendments introduced in Article 31, inter alia, in the form of amendment of Article 31C by section 4 of the Constitution 42nd (Amendment) Act,

1976 was challenged on the ground that section 4 was beyond the constituent powers of the Parliament under Article 368.

2.41. The majority in that case held "that section 4 of the Constitution 42nd (Amendment) Act, 1976, which amended Article 31C is beyond the amending power and is void since it damages the basic or essential features of the Constitution and destroys its basic structure by a total exclusion of challenge to any law on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by Article 14 or Article 19 of the Constitution, if the law is for giving effect to the policy of the state towards securing all or any of the principles laid down in part IV of the Constitution."¹⁰

2.42. The constitutional validity of the amended Article 31C as shaped through section 4 of the 42nd Constitution (Amendment) Act, 1976, had to be tested and determined in the light of the findings of the Supreme Court in *Keshvananda Bharati v. State of Kerala*, in which case the Supreme Court had upheld the constitutional validity of the unamended Article 31C, as it existed by virtue of the 25th Constitution (Amendment) Act, 1971. Thus, in the opinion of the Supreme Court the question for consideration was whether section 4 of the 42nd Amendment has brought about a result which is basically and fundamentally different from the one arising under the unamended Article."¹¹

10. (1980) 2 SCC 591; (1981) 1 SCR 206.

11. See *Minerva Mills Ltd. and others v. The Union of India and others*, AIR 1980 SC (vol.2) 1789 at p.1800.

2.43. While examining the issue in depth the Supreme Court observed:

"The significance of the perception that Part III and Part IV together constitute the core of commitment to social revolution and they, together, are the conscience of the Constitution is to be traced to a deep understanding of the scheme of the Indian Constitution the Indian Constitution is founded on the bedrock of the balance between Part III and Part IV. To give absolute primacy to one over the other is to disturb the harmony of the Constitution. The harmony and balance between fundamental rights and directive principles is an essential feature of the basic structure of the Constitution." ¹²

2.44. The Supreme Court further observed that:

"The goals set out in part IV have, therefore, to be achieved without the abrogation of the means provided for by Part III. It is in this sense that Parts III and IV together constitute the core of our Constitution and combine to form its conscience. Anything that destroys the

12. Ibid, p.1806.

balance between the two parts will ipso facto destroy an essential element of the basic structure of our Constitution".¹³

2.45. In justification of its verdict to invalidate section 4 of the 42nd Constitution (Amendment) Act, 1976, which amended Article 31C of the Constitution so as to make the laws enacted for giving effect to the policy of all or any of the Directive Principles of State Policy enshrined in Part IV unchallengeable before any court, the Supreme Court held:

"Three Articles of our Constitution and only three, stand between the heaven of freedom into which Tagore wanted his country to awake and the abyss of unrestrained power. They are Article 14, 19 and 21. Article 31C has moved two sides of that golden triangle which affords to the people of this country an assurance that the promise held forth by the Preamble will be performed by ushering an egalitarian era through the discipline of fundamental rights, that is, without emasculat-ion of the rights to liberty and equality which alone can help preserve the dignity of the individual."

13. Ibid. p.1807.

"These then are our reasons for
the order which we passed on May 9, 1930.."14

2.46. The verdict of the Supreme Court in the Minerva Mills Case, thus, reversed the process of establishing the supremacy of all or any of the directive principles over fundamental rights enshrined in Articles 14 and 19. The reference to Article 31 was deleted by the 44th Amendment as a consequence of the abolition of the right to property as a fundamental right.

2.47. As a result of the findings of the Supreme Court in the case under reference Article 31C was restored to its position and form in which it existed before the 42nd Constitution (Amendment) Act, 1976, namely, that only the laws enacted to give effect to the policy of Article 39 (b) and (c) remained unchallengeable before any court, even if they were not consistent with, or abrogated, Articles 14 and 19 of the Constitution.

III. Some Relevant and Significant Provisions of Certain International Charters and Conventions and Resolution of International Organisations.

A. The Charter of Human Rights :

3.10. The following provisions of the Universal Declaration of Human Rights of 10th December, 1948, also known as the Charter of Human Rights, are pertinent to our present discussion:-

14. Ibid., p.1811. The order referred to was the one which struck down section 4 of the 42nd Constitution (Amendment) Act, 1976 as ultra vira of the amending powers of the Parliament.