REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE/ORIGINAL JURISDICTION

CIVIL APPEAL NO.1012 OF 2002

PROPERTY OWNERS' ASSOCIATION & ORS. ...APPELLANT(S)

VERSUS

STATE OF MAHARASHTRA & ORS. ...RESPONDENT(S)

WITH

SLP(C) No.5777/1992, SLP(C) No.5204/1992, SLP(C) No.8797/1992, SLP(C) No.7950/1992, SLP(C) No.4367/1992, W.P.(C) No.934/1992, SLP(C) No.6191-6192/1992, SLP(C) No.6744/1993, SLP(C) No.2303/1995, SLP(C) No.13467/1995, W.P.(C) No.660/1998, W.P.(C) No.342/1999, W.P.(C) No.469/2000, W.P.(C) No.672/2000 and W.P.(C) No.66/2024

J U D G M E N T

SUDHANSHU DHULIA, J.

1. I have the advantage of going through the well-researched and erudite judgment of the learned Chief Justice D.Y. Chandrachud. During the hearing of the case itself, it was difficult to ignore the scope and ambit of the reference and that of Article 31-C in light of the amendments and judgements pronounced by

this Court, as they had a crucial bearing on the question on Article 39(b) i.e. whether privately owned resources would be a part of "material resources of the community". Logically, therefore, the arguments which were advanced at the bar, which were both long and scholarly, on both sides, were on these two crucial questions, and it is for this reason that the judgment of learned Chief Justice Chandrachud is in two parts. Part one i.e. Part (C) which is on Article 31-C and part two i.e. (D), which is on Article 39(b). I completely agree with part (C) of the judgment i.e. on Article 31-C.

2. In Part (C), the question which had come up for discussion was whether Article 31-C still protects Article 39(b) and (c) and if it does, then to what extent? The learned senior counsel Shri Zal Andhyarujina, learned counsel Shri Sameer Parekh, learned counsel Mr. H Devarajan for the appellants and learned senior counsel Ms. Uttara Babbar for one of the intervenors, argued at length and submitted that after the decision in ***Minerva Mills*** *v.* ***Union of India (1980) 3 SCC 625***, Article 31-C does not survive, and logically therefore the laws which are made in furtherance of the constitutional provisions contained in Article 39 (b) and (c) will not have the protection of Article 31-C. On the other hand, the learned Attorney General for the respondents i.e., Union of India

and Shri Rakesh Dwivedi, Sr. Advocate for the State of West Bengal would argue that even prior to ***Minerva Mills,*** the majority in the thirteen Judge Bench decision in ***Kesavananda Bharati*** *v.* ***State of Kerala, (1973) 4 SCC 225*** had upheld the validity of the unamended Article 31-C and to that extent Article 31-C still exists and gives protection to laws made in furtherance of policies in Article 39(b) and (c). We have also heard Shri Tushar Mehta, learned Solicitor General of India and Senior Advocate Shri Gopal Sankaranarayanan on behalf of the respondents.

As I have already expressed my complete agreement on the opinion given by the learned Chief Justice on this point, nothing further needs to be said. The unamended Article 31-C to the extent held valid in ***Kesavananda Bharati*** survives.

3. But I am afraid, I cannot accept the finding of the learned Chief Justice on the second part of his judgment i.e., on the meaning of the phrase "material resources of the community" given in Article 39 (b). My reasons for the disagreement are as follows:

The present appeals before us have travelled through three references, which have been discussed by the learned Chief Justice in detail, and finally the reference has been made by a

Bench of Seven Judges that the interpretation of Article 39 (b) requires a reconsideration. The reference is as follows:

> *"5. Having given due consideration, we are of the opinion that this interpretation of Article 39(b) requires to be reconsidered by a Bench of nine learned judges: we have some difficulty in sharing the broad view that material resources of the community under Article 39(b) covers what is privately owned.*
>
> *6. Given that there is some similarity in the issues here involved and in I.R. Coelho v. State of T.N. [(1999) 7 SCC 580. Ed.: The nine-judge bench decision therein is reported as I.R. Coelho v. State of T.N. , (2007) 2 SCC 1] which already stands referred to a larger Bench, preferably of nine learned Judges, we are of the view that these matters should be heard by a Bench of nine learned Judges immediately following the hearing in I.R. Coelho".*

The question as to whether privately owned resources are part of "material resources of the community" as used in Article 39(b), has been answered by the learned Chief Justice as "yes", "the phrase may include privately owned resources", but not in the expansive manner as held by the three learned judges in ***State of Karnataka*** *v.* ***Ranganatha Reddy (1977) 4 SCC 471*** and later in ***Sanjeev Coke Mfg. Co.*** *v.* ***Bharat Coking Coal Ltd. (1983) 1 SCC 147.*** The judgment further sets limits on what could be "material resources of the community".

I am unable to accept the above proposition as this view ultimately holds that not all privately owned resources are "material resources of the community". Not only this it further limits the hands of the legislature to a non-exhaustive list of factors to determine which resources can be considered as "material resources". In my opinion there is no need for this pre-emptive determination.

The definition of "material resources of the community" was purposely kept in generalized and broad-based terms, with which I intend to deal in some detail later in this judgment. I entirely endorse the view taken by the Three learned Judges in ***Ranganatha Reddy*** and by the Five learned Judges in ***Sanjeev Coke***, as to the scope and ambit of "material resources of the community". Privately owned resources are a part of the "material resources of the community".

4. The question which is there before us is not simply a legal or constitutional question. The question is as much rooted in our modern and contemporary history, as it is in law. Therefore, discussions on the historical background immediately preceding independence as well as on the debates in the Constituent Assembly are extremely important, in my consideration.

5. *"We may have democracy, or we may have wealth concentrated in the hands of a few, but we cannot have both."* This expression is attributed to Justice Louis D. Brandeis[1], an eminent Jurist and a former Judge of US Supreme Court. Without doubt, when Articles 38 and 39 of the Constitution of India were being incorporated in Part IV of our Constitution, a similar thought dominated the minds of the framers of our Constitution. It is for this reason that Granville Austin calls the Indian Constitution, *"first and foremost a social document".*[2] Our Constitution is not merely a roadmap for governance, it is also a vision for a just and equitable society. The members of our constituent assembly were freedom fighters, social reformers, scholars and lawyers. The struggle against colonial rule for them was not just to liberate India politically, but also to change it for the better, both socially and economically, as inequality reigned everywhere in our society; inequality of wealth, income and status. India's freedom struggle therefore was as much a struggle to overthrow the colonial yoke, as it was to remove inequality and poverty from a deeply caste ridden society. Nothing articulates this idea better than the

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[1] Louis Dembitz Brandeis was an associate Judge on the U.S. Supreme Court from 1916-1939. *See* MR. JUSTICE BRANDEIS, GREAT AMERICAN: PRESS OPINION & PUBLIC APPRAISAL (The Modern View Press, Saint Louis, 1941), pg.42.

[2] GRANVILLE AUSTIN, THE INDIAN CONSTITUTION: CORNERSTONE OF A NATION (Oxford University Press, New Delhi, Second Impression 2000), Pg. 50.

closing speech of Dr. B. R. Ambedkar in the Constituent Assembly on November 25, 1949. This is what he had said:

> *"……We must begin by acknowledging the fact that there is complete absence of two things in Indian Society. One of these is equality. On the social plane, we have in India a society based on the principle of graded inequality which means elevation for some and degradation for others. On the economic plane, we have a society in which there are some who have immense wealth as against many who live in abject poverty. On the 26th of January 1950, we are going to enter into a life of contradictions. In politics we will have equality and in social and economic life we will have inequality. In politics we will be recognizing the principle of one man one vote and one vote one value. In our social and economic life, we shall, by reason of our social and economic structure, continue to deny the principle of one man one value. How long shall we continue to live this life of contradictions? How long shall we continue to deny equality in our social and economic life? If we continue to deny it for long, we will do so only by putting our political democracy in peril. We must remove this contradiction at the earliest possible moment or else those who suffer from inequality will blow up the structure of political democracy which this Assembly has so laboriously built up."*[3]

6. The Constitution of India has deep roots in our freedom struggle and its Part III and Part IV are the embodiment of the hope that one day the tree of true liberty would bloom in India.[4]

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[3] CONSTITUENT ASSEMBLY DEBATES, VOL. XI, Pg.979.

[4] GRANVILLE AUSTIN, THE INDIAN CONSTITUTION: CORNERSTONE OF A NATION (Oxford University Press, New Delhi, Second Impression 2000), Pg. 50.

Our effort here should be to find the true meaning of the expression "material resources of the community", from its historical perspective as well, and not to limit this analysis to legalism alone, considering the nature of the case. Also we have to go beyond textual interpretation. Not because text is not important. It is important, but it is only the starting point, not the end point. The meaning of the text has to be located within the general context.[5]

This Bench has to answer whether private properties or privately owned resources are included in the phrase "material resources of the community", given in Article 39(b) of the Constitution of India. This question has engaged much attention of our Court already. Initially the question was referred to a Five Judge Constitution Bench which in turn referred it to a Seven Judge Bench and finally to the present Nine Judge Bench. The journey this reference has taken, has already been covered in detail by the Chief Justice in his judgment, and therefore one need not go into it again.

7. Interpretation of a Constitution is different from interpreting an ordinary statute. The obvious difference is in the importance of

[5] AHARON BARAK, THE JUDGE IN A DEMOCRACY (Princeton University Press, 2006), Pg. 308.

the Constitution, in the hierarchy of the laws of the land, where the Constitution occupies the highest place. Not only this, all laws must adhere to it, and all other laws directly or indirectly find their source or sustenance from the Constitution. The Constitution therefore sits at the top of the normative pyramid. In his seminal work 'Purposive Interpretation in Law', Aharon Barak explains the importance of a Constitution as follows:

> *"It shapes the character of society and its aspiration throughout history. It establishes a nation's basic political points of view. It lays the foundation for social values, setting goals, obligations and trends. It is designed to guide human behavior over an extended period of time, establishing the framework for enacting legislation and managing the national government. It reflects the events of the past, lays a politics, society, and law. The unique characteristics of a constitution warrant a special interpretive approach to its interpretation, because "it is a constitution we are expounding".*[6]

A Constitution is also designed by one generation with an eye towards many future generations to come, so that it is able to

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6 AHARON BARAK, PURPOSIVE INTERPRETATION IN LAW (Universal Law Publishing Co., 2007), Pg. 370.

withstand the vagaries of times. It is a law having special character.[7]

While interpreting the Canadian Charter of Rights and Freedoms, which is a part of the Canadian Constitution, Chief Justice Dickson of the Canadian Supreme Court wrote:

> *"The task of expounding a constitution is crucially different from that of construing a statute. A statute defines present rights and obligations. It is easily enacted and as easily repealed. A constitution, by contrast, is drafted with an eye to the future. Its function is to provide a continuing framework for the legitimate exercise of governmental power and, when joined by a Bill or a Charter of rights, for the unremitting protection of individual rights and liberties. Once enacted, its provisions cannot easily be repealed or amended. It must, therefore, be capable of growth and development over time to meet new social, political and historical realities often unimagined by its framers. The judiciary is the guardian of the Constitution and must, in interpreting its provisions, bear these considerations in mind."*[8]

In determining the meaning of a provision of a Constitution, we have to explore what was in the minds of the framers of the Constitution and what were the objective realities of the times when it was being written. In other words, there is both a

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[7] Aharon Barak, *Hermeneutics and Constitution Interpretation*, 14 CARDOZO L. REV. 767 (1992-93), Pg. 772.

[8] Hunter v. Southam Inc (1984) 2 S.C.R 145, Pg. 156. Also see, AHARON BARAK, PURPOSIVE INTERPRETATION IN LAW, Pgs. 370-371.

subjective interpretation and an objective interpretation. The subjective interpretation would be to find out what was in the minds of the framers of the Constitution while incorporating a particular provision. This method, though helpful in getting to the meaning, will alone not help us. The reason is again explained by A. Barak:

> *"The purpose of the constitutional text is to provide a solid foundation for national existence. It is to embody the basic aspirations of the people. It is to guide future generations by its basic choices. It is to control majorities and protect individual dignity and liberty. All these purposes cannot be fulfilled if the only guide to interpretation is the subjective purposes of the framers of the constitutional text. The constitution will not achieve its purposes if its vision is restricted to the horizons of its founding fathers. Even if we assume the broadest generalizations of subjective purpose, this may not suffice. It may not provide a solid foundation for modern national existence. It may be foreign to the basic aspirations of modern people. It may not be consistent with the dignity and liberty of the modern human being. A constitution must be wiser than its creators".*[9]

Subjective interpretation alone will not give us the full picture and we have to look at the objective purpose for bringing certain

[9] Aharon Barak, *Hermeneutics and Constitution Interpretation*, 14 CARDOZO L. REV. 767, (1992-93), Pg. 772.

provisions in the Constitution. Thus, in our interpretation of the Constitution both subjective and objective purpose is important.

> *"The objective purpose of a constitution is the interests, goals, values, aims, policies, and function that the constitutional text is designed to actualize in a democracy. A democratic legal system's values and principles shape the objective purpose of its constitution".*[10]

What was it that the Constitution sought to achieve. What are the foundations on which it stands. What is its purpose and what are its essential values. The debates of the Constituent Assembly will shed some light on why and for what purpose certain provisions were incorporated in our Constitution. But for this we have to first understand what kind of a society, socially and economically, were we to build and what kind of Constitution we thought would best build that society.

8. The earliest indication of what the Constitution of free India was going to be, can be seen in the Karachi Resolution of the Indian National Congress, adopted in the year 1931, which was read in detail before us by Sri Rakesh Dwivedi, Senior Advocate representing State of West Bengal. Many of the provisions which

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[10] AHARON BARAK, PURPOSIVE INTERPRETATION IN LAW (Universal Law Publishing Co., 2007), Pg. 377.

later came to be incorporated in Part III & IV of the Constitution can be traced to this Resolution. The Karachi Resolution can also be seen as a forerunner to Fundamental Rights and Directive Principles of State Policy which are the heart and soul of the Indian Constitution.[11]

The Karachi Resolution, *inter alia*, visualised the role of State in free India. The resolution, adopted by the All India Congress Committee, states that "*the State shall own or control key industries and services, mineral resources, railways, waterways, shipping and other means of transport*"[12]. The resolution speaks of democracy as another name for "socialism" and "socialist principles" of equality, distribution of wealth and grassroot participation of people.

9. The Constituent Assembly, which was formed in 1946, to frame a Constitution for free India consisted of members elected by the newly elected members of the Legislative Assemblies of Provinces (elected in January 1946), as well as nominated members who represented the princely States. What kind of

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[11] Granville Austin calls Fundamental Rights and Directive Principles of State Policy as "Conscience of the Constitution". *See* GRANVILLE AUSTIN, THE INDIAN CONSTITUTION: CORNERSTONE OF A NATION (Oxford University Press, New Delhi, Second Impression 2000), Pg. 50.

[12] A. M ZAIDI et al., THE ENCYCLOPAEDIA OF THE INDIAN NATIONAL CONGRESS (VOL.-10: 1930-1935): THE BATTLE FOR SWARAJ (S. Chand & Co. Ltd., 1980), Pg. 183.

Constitution was to be given to the nation was indicated by Jawahar Lal Nehru in the "Objective Resolution" which he placed before the Constituent Assembly on December 13, 1946. This is a watershed event in the making of the Indian Constitution[13], as it sets forth the task and the objects to be achieved by the Constituent Assembly. The task before the Constituent Assembly was "*to free India through a new Constitution, to feed the starving people and clothe the naked masses, and to give every Indian the fullest opportunity to develop himself according to capacity*."[14]

The Objective Resolution moved by Jawaharlal Nehru before the Constituent Assembly, which was adopted by the Assembly in December 1946 speaks of secularism and democratic principles of equality, liberty and fraternity to be a part of our Constitution. There was an earnest plea before the Assembly by Nehru to adopt socialist principles in order to uplift the economy and the condition of the vast majority of its people from poverty and illiteracy. The Objective Resolution was the harbinger of the constitutional values of distributive justice and social engineering in the Indian Constitution. Many of the provisions later became a part of the

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[13] RAKESH BATABYAL (ed.), THE PENGUIN BOOK OF MODERN INDIA SPEECHES (Penguin Books, 2007), Pg. 365.

[14] It was said by Jawahar Lal Nehru in Constituent Assembly of India on January 22,1947. *See* CONSTITUENT ASSEMBLY DEBATES, VOL. II, Pg. 316.

Directive Principles, particularly in Articles 38 and 39 of the Constitution of India. This is what was said by Nehru on Dec 13, 1946 while discussing the Objective Resolution:

> *"Well, I stand for Socialism and, I hope, India will stand for Socialism and that India will go towards the constitution of a Socialist State..... What form of socialism again is another matter for your consideration.... [We avoided an expression which could have given rise to controversy]. Therefore we have laid down, not theoretical words and formulae, but rather the content of the thing we desire."*[15]

Justice O. Chinnappa Reddy in his book *"The Court and the Constitution of India: Summits and Shallows"* explains that socialism is another name for humanism: -

> *".....After all, what is the essence of Socialism? Socialism is no more than humanism or at any rate the essential step towards humanism. The central problem of socialism (that is, humanism) is the problem of man, and its most essential aspect is that of creating conditions for man's happiness and full development."*[16]

Apart from the fact that "socialism" is now a part of our Preamble, many of the provisions in Part IV of the Constitution are rooted in socialist philosophy, such as Articles 38, 39, 39A, 41, 42,

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[15] CONSTITUENT ASSEMBLY DEBATES, VOL. I, Pg. 62.
[16] O. CHINNAPPA REDDY, THE COURT AND THE CONSTITUTION OF INDIA: SUMMITS AND SHALLOWS (Oxford University Press, 2008), Pg. 139.

43, 43A and 47. A word on socialism, which has a direct influence on Article 38 and Article 39 (b) and (c), would be in order. Socialism, thankfully, is not a rigid concept and over the years has been adopted and adjusted according to the needs of society. 'Socialism' in the context of the Indian Constitution is just another name for welfare economy. *"Indian socialism is about what the Constitution of India wants to have for the people of India, the establishment of a welfare state."*[17] What measures this welfare State has to adopt in a democracy is given in the Charter of Instructions contained in Part IV of the Constitution, that is Directive Principles of State Policy, which we will discuss shortly.

10. In the 1940s, when discussions were on as to what shape the free and independent nation would take, the nascent industrial class in India also understood well that the path independent India was to take will be influenced by socialist principles. The industrial class, though in many ways a beneficiary of the colonial rule, was essentially nationalist in character. It gave broad support to the national movement against imperialism and associated with the nationalist movement both as a segment of Indian society and as a separate and distinct political force; though it did not do so

[17] O. CHINNAPPA REDDY, THE COURT AND THE CONSTITUTION OF INDIA: SUMMITS AND SHALLOWS (Oxford University Press, 2008), Pg. 137.

through direct participation.[18] *"The Indian capitalist class had developed a long-term contradiction with imperialism while retaining a relationship of short-term dependence on and accommodation with it."*[19]

Our industrial community understood well, the role of the State in heavy industries and infrastructure, which was inevitable, even desirable, as till that time there was not enough capital in private hands, which could take large scale infrastructural projects, like dams, roads, railways and heavy industries. The industrial class recognised that it was the State alone which has to be the biggest investor and proponent of industrial revolution in India. For this reason in 1944-45, a group of industrialists in India took out a paper called *"A Plan Of Economic Development For India",* which is popularly known as the 'Bombay Plan'.[20] Some even refer to it as the Tata-Birla Plan.

The Bombay Plan was a visionary scheme drafted in the year 1944 by the then leaders of Indian industry and commerce. The plan recommended an economic policy for the National

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[18] BIPAN CHANDRA, NATIONALISM & COLONIALISM IN MODERN INDIA (Orient Longman, 1979), Pg. 158.
[19] BIPAN CHANDRA, NATIONALISM & COLONIALISM IN MODERN INDIA (Orient Longman, 1979), Pg. 145.
[20] SIR P.THAKURDAS, JRD TATA et al., A PLAN OF ECONOMIC DEVELOPMENT FOR INDIA (PART II) (1944). Also *see* SANJAY BARU (ed.), THE BOMBAY PLAN (Rupa Publications India Pvt Ltd., 2018), Pg. 292.

government, which would soon be taking power. The following were the prominent signatories to the plan:

> *1. JRD Tata, one of India's pioneer industrialists.*
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> *2. G. D. Birla, the leader of the Birla group of industries.*
>
> *3. Sir Ardeshir Dalal, an able administrator and technocrat.*
>
> *4. Lala Shriram, a prominent north Indian industrialist.*
>
> *5. Kasturbhai Lalbhai, a famous Indian Industrialist.*
>
> *6. D. Shroff, director of a number of prominent industries including a few of the Tata group.*
>
> *7. John Mathai, professor of economics at Madras University and a political personality.*
>
> *8. Purushottamdas Thakurdas, a Bombay based businessman and business leader.*

According to the Bombay Plan, per capita income in the country would double in 15 years from the implementation of the plan. It also laid down policies and methods for securing a better standard of living, improving medical and educational conditions. It also aimed at increasing agricultural production by 130% mainly through promotion of cooperative farming.

But it is the second part of the Bombay plan which is relevant here, where it recognised nationalisation of key industries and the dominant role of the State in the economic development of the

Country. It accepted as *fait accompli* the dominant role of socialism in the economic policies of the national government, but was nevertheless determined to retain and carve out a new space for private capital. It admitted that the existing system based on private enterprise and ownership has not provided the desired results, particularly in the distribution of national income and sought to overcome the weaknesses of private enterprises. This is what the Bombay plan says:

> *"...On the one hand, we recognize that the existing economic organization, based on private enterprise and ownership, has failed to bring about a satisfactory distribution of the national income. On the other hand, we feel that in spite of its admitted shortcomings, it possesses certain features which have stood the test of time and have enduring achievements to their credit. While it would be unwise to blind ourselves to the obvious weaknesses of the present system, we think it would be equally a mistake to uproot an organization which has worked with a fair measure of success in several directions."*[21]

According to Professor Aditya Mukherjee, through the Bombay Plan the industrial class in India sought a compromise in the inevitable socialist pattern of our national economy:

> *"The attempt was to incorporate 'whatever is sound and feasible in the socialist movement' and see 'how far socialist demands could be accommodated without capitalism surrendering any of its essential features'.*

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[21] SIR P. THAKURDAS, JRD TATA et al., *Introductory*, *in* A PLAN OF ECONOMIC DEVELOPMENT FOR INDIA (PART II) (1944). Also *see* SANJAY BARU (ed.), THE BOMBAY PLAN (Rupa Publications India Pvt Ltd., 2018), Pg. 292.

> *The eventual plan (Bombay Plan) was, therefore, to seriously take up the questions of equitable distribution, partial nationalization, etc., with this objective clearly in mind. 'A consistent ... programme of reforms' was the 'most effective remedy against violent social upheavals".* [22]

The purpose of discussing the Bombay Plan is to demonstrate that the 1940s and early 1950s were an era when socialist principles were acceptable to all classes, though with reservations. The young nation short of capital, took a conscious decision to imbibe these principles not only in its economy but also thought it prudent to include some of the provisions in Part IV of the Constitution; the Directive Principles of State Policies.

11. Coming now to the Directive Principles of State Polices. On November 4, 1948, while presenting the draft Constitution to the Constituent Assembly Dr. B. R. Ambedkar elaborated each provision of the Constitution, and laid particular stress on the Directive Principles of State Policies:

> *"The Directive Principles are like the Instruments of Instructions which were issued to the Governor-General and to the Governors of the colonies and to those of India by the British Government under the 1935 Act. Under the Draft Constitution it is*

[22] ADITYA MUKHERJEE, POLITICAL ECONOMY OF COLONIAL AND POST-COLONIAL INDIA (PRIMUS BOOKS, 2022), Pg.192.

proposed to issue such instruments to the President and to the Governors. The texts of these Instruments of Instructions will be found in Schedule IV of the Constitution. What are called Directive Principles is merely another name for Instruments of Instructions. The only difference is that they are instructions to the Legislature and the Executive. Such a thing is to my mind to be welcomed. Wherever there is a grant of power in general terms for peace, order and good government, it is necessary that is should be accompanied by instructions regulating its exercise.

The Inclusion of such instructions in a Constitution such as is proposed in the Draft becomes justifiable for another reason. The Draft Constitution as framed only provides a machinery for the government of the country. It is not a contrivance to install any particular party in power as has been done in some countries. Who be, if the system is to satisfy the tests of democracy. But whoever captures power will not be free to do what he likes with it. In the exercise of it, he will have to respect these Instruments of Instructions which are called Directive Principles. He cannot ignore them. He may not have to answer for their breach in a Court of Law. But he will certainly have to answer for them before the electorate at election time. What great value these Directive Principles possess will be realised better when the forces of right contrive to capture power."[23]

Directive Principles of State Policy incorporated in Part IV of the Constitution of India were therefore to be the "vehicles" for the change of a backward and semi feudal society, towards a journey for a modern and equitable society. Socialist principles were

[23] CONSTITUENT ASSEMBLY DEBATES, VOL. VII, Pg. 41.

thought to be necessary in making economic policies of the State if this change was to become a reality. For a fair distribution of wealth and resources, and for removal of inequality Articles 38 and 39 of the Constitution were incorporated, which largely contain the democratic and socialist principles of equality and fair distribution.

12. Initially when Fundamental Rights and Directive Principles of State Policy were debated and discussed in the Constituent Assembly, they were to be a part of the same group of rights. Together they were to be the conscience of the Constitution.[24] It was only later that a division was made between them on the basis of justiciable and non-justiciable rights; one being placed in Part III and the other in Part IV of the Constitution. Directive Principles, as we know, are not enforceable by any court, but as it has been stressed multiple times by this Court, these are nevertheless the principles which are fundamental for the governance of the country. This is what Article 37 of the Constitution mandates:

> *"**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*

[24] GRANVILLE AUSTIN, THE INDIAN CONSTITUTION: CORNERSTONE OF A NATION (Oxford University Press, New Delhi, Second Impression 2000), Pg. 50.

> *it shall be the duty of the State to apply these principles in making laws."*

The heart and soul of Part IV is Article 38 of the Constitution of India, which reads as under:

> *"**38. State to secure a social order for the promotion of welfare of the people. –** (1) The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.*
> *(2) The State shall, in particular, strive to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations."*

Article 39 of the Constitution of India, which is to be interpreted by us, has to be read in light of Articles 37 and 38. Article 39 reads as under:

> *"**39. Certain principles of policy to be followed by the State. –** The State shall, in particular, direct its policy towards securing—*
>
> *(a) that the citizens, men and women equally, have the right to an adequate means of livelihood;*
>
> *(b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;*
>
> *(c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;*

(d) that there is equal pay for equal work for both men and women;

(e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;

(f) that children are given 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."

Not just the above provisions, but several other provisions in the Directive Principles are based on socialist philosophy of a welfare State. These are:

Article 39A – Equal justice and free legal aid[25].

Article 41 – Right to work, to education and to public assistance in certain cases.

Article 42 – Provision for just and humane conditions of work and maternity relief.

Article 43 – Living wage, etc., for workers.

Article 43A - Participation of workers in management of industries[26].

Article 47 – Duty of the State to raise the level of nutrition and the standard of living and to improve public health.

[25] Inserted by s.8 of the Constitution (Forty-Second Amendment) Act, 1976.
[26] Inserted by s.9 of the Constitution (Forty-Second Amendment) Act, 1976.

Directive Principles are non-justiciable and therefore Courts cannot direct an authority to implement any of the Directive Principles contained in Part IV of the Constitution, unlike in Part III, the Fundamental Rights. But then should the Courts come in the way of the State which brings a law in furtherance of the Directive Principles? Is the State not following its charter of instructions which are "fundamental in the governance of the Country"? In my opinion, since the directive principles are fundamental in the governance of the Country, the Courts should best apply restraint, unless such implementation is destroying the core principles of the Constitution.

Directive Principles of State Policy lay down the goals which can only be achieved in a welfare economy. The philosophy behind Directive Principles is the welfare of the community, that is removal of poverty, inequality and ensuring fair distribution of wealth. These are some of its governing features. It has never been its aim to generate profit and wealth for individuals.

13. Introduction of Directive Principles in our Constitution was a unique and innovative attempt by the framers of the Constitution, as it had till then hardly any precedent in the written Constitutions of the world, except the Irish Constitution, from where these

principles have largely been borrowed. It was still an innovative step for it expands and elaborates Directive Principles, unlike as given in the Irish Constitution. While moving the Constitution (First Amendment) Bill, 1951 in Parliament, the Prime Minister said this:

> *"The Constitution lays down certain Directive Principles of State Policy and after long discussions we agreed to them and they point out the way we have got to travel. The Constitution also lays down certain Fundamental Rights. Both are important. The Directive Principles of State Policy represent a dynamic move towards a certain objective. The Fundamental Rights represent something static, to preserve certain rights which exist. Both again are right".*[27]

Again, while moving the Constitution (Fourth Amendment) Bill, 1954[28] the Prime Minister stressed on the importance of Directive Principles and held them to be more important than Fundamental Rights, it was said as under:

> *"I would like to draw the attention of the house to something that is not adequately stressed either in the Parliament or in the Country. We stress greatly and argue in Courts of Law about the Fundamental Rights. Rightly so, but there is such a thing also as the Directive Principles of Constitution… Those are, as the Constitution says, the fundamentals in the governance of the Country … if, … there is an inherent contradiction in the Constitution between*

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[27] *See* JUSTICE O. CHINNAPPA REDDY, THE COURT AND THE CONSTITUTION OF INDIA: SUMMITS AND SHALLOWS (Oxford University Press, 2008), Pgs. 74-75.

[28] This bill led to the Constitution (Fourth Amendment) Act, 1955.

> *the Fundamental Rights and the Directive Principles of State Policy,…. It is up to this Parliament to remove the contradiction and make the Fundamental Rights subserve the Directive Principles of the State Policy".*[29]

At the same time, another Member of Parliament M.S. Gurupadaswamy, while speaking on the Constitution (Fourth Amendment) Bill, 1954 underlined the importance of Directive Principles of State Policy and its purpose:

> *"I may point out that the rights that have been given in the chapter on Directive Principles are more fundamental than some of the so called Fundamental Rights. I feel that the principles enunciated in Part III and Part IV of the Constitution are inconsistent in a way… it is unfortunate that the Directive Principles are treated as less important than the so called Fundamental Rights. Some of the Directive Principles seem to be more fundamental than the Fundamental Rights. The Fundamental Rights chapter deals only with liberal rights of individuals and they seem to conform to the old school of thought which has outlived its utility, the school of utilitarians and the liberals. As against this the principles enunciated in Part IV approach a Socialist pattern. The sincerity or the goodness of this government will be judged by how far they go to implement these Directive Principles. It is very easy to stick to Fundamental Rights and appear progressive while doing nothing to reduce class difference. But real liberty will have no meaning unless there is economic equality".*[30]

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[29] *See* JUSTICE O. CHINNAPPA REDDY, THE COURT AND THE CONSTITUTION OF INDIA: SUMMITS AND SHALLOWS (Oxford University Press, 2008), Pgs. 74-75.

[30] *See* JUSTICE O. CHINNAPPA REDDY, THE COURT AND THE CONSTITUTION OF INDIA: SUMMITS AND SHALLOWS (Oxford University Press, 2008), Pgs. 74-75.

14. To reiterate, the purpose of the Directive Principles is the welfare of the people and of the community. Provisions in Part IV of the Constitution of India are directions to the State to bring such legislation which would make the 'Welfare State' a reality, as it will be the deeds of a 'Welfare State' which will truly make it a 'Welfare State'. Directive Principles have no meaning if they remain in the Constitution as a pious precept, as some members of the Constituent Assembly believed.[31] Directive Principles must be enforced through law. When and how it is done will depend on our Parliament and State legislatures as it is in their domain, but do they must, for these are *"fundamental for the governance of the Country"*. Directive Principles of State Policy are the guide maps which will take our State towards a 'Welfare State'. Justice O. Chinnappa Reddy in Chapter 9 of his book[32] writes:

> *"To any person interested in the building up of a welfare state, it is clear that the Directive Principles of State Policy are at least as fundamental as the Fundamental Rights and far more important from the point of view of the objectives to be attained as stated in the preamble which is the key to the Constitution. It is a mistake to suppose, with due respect to some eminent judges who so supposed,*

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[31] P.S. Deshmukh said "We do not want to depend on mere platitudes and pious wishes" (CONSTITUENT ASSEMBLY DEBATES, VOL. V, Pg.341). N. Ahmad referred to them as "pious expressions" (CONSTITUENT ASSEMBLY DEBATES, VOL. VII, Pg. 225). B. Das called them "pious hopes and wishes" (CONSTITUENT ASSEMBLY DEBATES, VOL. VII, Pg. 539). Kazi Syed Karimuddin also called them "pious wishes" (CONSTITUENT ASSEMBLY DEBATES, VOL. VII, Pg. 473).

[32] *See* JUSTICE O. CHINNAPPA REDDY, THE COURT AND THE CONSTITUTION OF INDIA: SUMMITS AND SHALLOWS (Oxford University Press, 2008), Pg. 76.

> *that the Fundamental Rights are more 'transcendental' or 'primordial' than the Directive Principles. The difference between the Fundamental Rights and the Directive Principles lies in this that the Fundamental Rights are aimed at assuring political freedom to citizens by protecting them against excessive state action while the Directive Principles are aimed at securing social and economic freedoms for citizens by state action. The one is concerned with the rights of citizens vis-à-vis the state while the other is concerned with the duties of the state vis-à-vis the body of citizens. In the words of Ambedkar, the Fundamental Rights make India a political democracy and the Directive Principles would make it a social and economic democracy."*

It is in the Directive Principles of State Policy that we find a vision of the social revolution that the framers had in mind for our Country. It aimed at making people of India free in a positive sense, "*free from the passivity engendered by centuries of coercion by society and by nature, free from the abject physical conditions that had prevented them from fulfilling their best selves".*[33]

15. In the beginning of our functioning as a new Republic, the non-enforceability of Directive Principles vis-à-vis the Fundamental Rights weighed with the Courts as well as some

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[33] GRANVILLE AUSTIN, THE INDIAN CONSTITUTION: CORNERSTONE OF A NATION (Oxford University Press, New Delhi, Second Impression 2000), Pg. 51.

prominent "Legal Scholars"[34], which resulted in the importance and significance of Directive Principles being undermined.

In ***State of Madras*** *v.* ***Champakam Dorairajan 1951 SCC OnLine SC 30***, this Court held as under:

> *".....The Directive Principles of State Policy which by Article 37 are expressly made enforceable by a court cannot override the provisions found in Part III which, notwithstanding other provisions are expressly made enforceable by appropriate writs, orders or directions under Article 32. The Chapter on Fundamental Rights is sacrosanct and not liable to be abridged by any legislative or executive act or order except to the extent provided in the particular Article in Part III. The Directive Principles of State Policy have to conform to and run subsidiary to the Chapter on Fundamental Rights. In our opinion that is the correct way in which the provisions found in Parts III and IV have to be understood...."*[35]

16. A subtle change is seen later in the interpretation of Directive Principles, where the Court could see that an attempt should be made to harmoniously construct Directive Principles with Fundamental Rights. In ***In Re: Kerala Education Bill, 1957, 1958 SCC OnLine SC 8***, this Court states as under:

> *"....The directive principles of State policy have to conform to and run as subsidiary to the Chapter on Fundamental Rights... nevertheless, in determining*

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[34] H.M. Seervai has been extremely critical of the role of directive principles, to the extent of considering it almost superfluous and unnecessary.
[35] 1951 SCC OnLine SC 30, para 15.

> *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 laid down in Part IV of the Constitution but should adopt the principle of harmonious construction and should attempt to give effect to both as much as possible."*[36]

In ***Mohd. Hanif Quareshi and others*** *v.* ***State of Bihar and others 1957 SCC OnLine 629,*** this Court again stresses on harmonious interpretation:

> *".....a harmonious interpretation has to be placed upon the Constitution and so interpreted it means 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."*[37]

17. The Constitution mandates that the Parliament and the legislative bodies of the States must apply Directive Principles in making their laws. They would be failing in their duty if they ignore this Constitutional mandate. It will be the same for the Courts if they fail to enforce Fundamental Rights which are enshrined in Part III of the Constitution. These are coordinate functions and must be performed in harmony[38]. The earlier position taken by this

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[36] 1958 SCC OnLine SC 8, para 8.
[37] 1957 SCC OnLine SC 629, para 12.
[38] P.K. TRIPATHY, SPOTLIGHTS ON CONSTITUTIONAL INTERPRETATION (N.M Tripathi Pvt. Ltd., 1972), Pg. 295.

Court in judgments cited above, in my opinion, did not reflect the correct position of the Constitution. An extremely eloquent expression underlining the significance of Directive Principles was given by Justice Y.V. Chandrachud in ***Kesavananda Bharati***:

> *".....As I look at the provisions of Parts III and IV, I feel no doubt that the basic object of conferring freedoms on individuals is the ultimate achievement of the ideal set out in Part IV. A circumspect use of the freedoms guaranteed by Part III is bound to subserve the common good but voluntary submission to restraints is a philosopher's dream. Therefore Article 37 enjoins the State to apply the Directive Principles in making laws. The freedoms of a few have then to be abridged in order to ensure the freedom of all. It is in this sense that Parts III and IV, as said by Granville Austin, together constitute the 'conscience of the Constitution'. The Nation stands today at the cross-roads of history and exchanging the time honoured place of the phrase, may I say that the Directive Principles of State Policy should not be permitted to become 'a mere rope of sand'. If the State fails to create conditions in which the fundamental freedoms could be enjoyed by all, the freedom of the few will be at the mercy of the many and then all freedoms will vanish. In order, therefore, to preserve their freedom, the privileged few must part with a portion of it."*[39]

Kesavananda Bharati, is a landmark decision which is notable for the strong but positive rupture it makes in our Constitutional journey and lays down a new path of Constitutional

[39] (1973) 4 SCC 225, para 2120.

understanding and interpretation with its "basic structure" doctrine. ***Kesavananda Bharati*** also firmly establishes the importance of directive principles in our Constitution and in interpretation of the legislative measures which have been brought about for the enforcement of Directive Principles.

Later, in ***Minerva Mills***, Justice Y.V. Chandrachud further reiterates this position:

> *"Part III and Part IV are like two wheels of a chariot, one no less important than the other. In other words, Indian Constitution is founded on the bedrock of the balance between Parts III and IV. This harmony and balance between Fundamental Rights and the Directive Principles is an essential feature of the Basic Structure of the Constitution."*[40]

In ***State of Kerala*** *v.* ***N.M. Thomas (1976) 2 SCC 310,*** Justice K. K. Mathew while concurring with the majority opinion blends equality in Article 14 and 16 with Part IV of the Constitution of India. What he says is extremely relevant:

> *"Today, the political theory which acknowledges the obligation of Government under Part IV of the Constitution to provide jobs, medical care, old age pension, etc., extends to human rights and imposes an affirmative obligation to promote equality and liberty. The force of the idea of a State with obligation to help the weaker sections of its members seems to have increasing influence in*

[40] (1980) 3 SCC 625, para 56.

> *constitutional law. The idea finds expression in a number of cases in America involving social discrimination and also in the decisions requiring the State to offset the effects of poverty by providing counsel, transcript of appeal, expert witnesses, etc. Today, the sense that Government has affirmative responsibility for elimination of inequalities, social, economic or otherwise, is one of the dominant forces in constitutional law. While special concessions for the underprivileged have been easily permitted, they have not traditionally been required. Decisions in the areas of criminal procedure, voting rights and education in America suggest that the traditional approach may not be completely adequate. In these areas, the inquiry whether equality has been achieved no longer ends with numerical equality; rather the equality clause has been held to require resort to a standard of proportional equality which requires the State, in framing legislation, to take into account the private inequalities of wealth, of education and other circumstances".*[41]

In ***State of Gujarat*** *v.* ***Mirzapur Moti Kureshi Kassab Jamat and others (2005) 8 SCC 534,*** this Court held that such restrictions which aim at fulfilling the Directive Principles are reasonable as long as they do not run in "clear conflict" with Fundamental Rights.

A scholarly study on the decisions of Supreme Court of India on social rights divides the period so far in three phases. The initial phase in the 1950s, 60s and even early 70s was a time when by

[41] (2005) 8 SCC 534, para 67.

and large this Court treated Directive Principles as subservient to Fundamental Rights. The second phase is when this Court spoke about harmony between the two sets of rights and then the third phase beginning in the 80s and 90s was when some of the rights which fall in Part IV were read as part of fundamental right to life with dignity.[42]

18. In his acknowledged scholarly work (the three volumes on Constitution of India), H.M. Seervai holds Directive Principles of State Policy of little significance. In the Fourth Edition of his Book "Constitutional Law of India" he has this to say about the Directive Principles:

> *"... To my knowledge, no one had been able to dispute the proposition that if directive principles had not been enacted, or are struck out, nothing would have happened, and, in my submission, it is incapable of being disputed. However, the answer to the second question, "What would have happened if fundamental rights had not been enacted or are struck out?" is that the result would have been a disaster and our country would have been in danger of being converted into a dictatorship and Police State".*[43]

The learned scholar expressed his scepticism on the importance of Directive Principles and held them to be superfluous and

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[42] SHYLASHRI SHANKAR, SCALING JUSTICE: THE SUPREME COURT, SOCIAL RIGHTS AND CIVIL LIBERTIES IN INDIA (Oxford University Press, 2009), Pg. 124.
[43] H.M. SEERVAI, CONSTITUTIONAL LAW OF INDIA (4th Ed., Vol. II, 1993), Pgs. 1923-1924.

unnecessary, and his reasons are at least partly based on the fact that a large number of democratic countries do not have Directive Principles and they are also not necessary for a welfare State[44]. However, as I write this opinion, about a dozen countries in the world have adopted Directive Principles, in one way or the other, in their Constitution, apart from Ireland and India.

Lael K. Weis in her article 'Constitutional Directive Principles'[45] cites examples of eleven Countries (mostly African Countries) who have borrowed the "Drafting Formula" from the Indian Constitution. In other words, some of the principles in the Directive Principles of State Policy of the Indian Constitution have been made a part of the Constitution of other countries. These are: *Constitution of Papua New Guinea, 1975; Constitution of United Republic of Tanzania, 1977; Constitution of Sri Lanka, 1978; Constitution of Zambia, 1991; Constitution of Ghana, 1992; Constitution of Uganda, 1995; Constitution of Gambia, 1996; Constitution of Eritrea, 1997; Constitution of Nigeria, 1999; Constitution of Swaziland, 2005 and Constitution of Nepal, 2015.*

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[44] H.M. SEERVAI, CONSTITUTIONAL LAW OF INDIA (4th Ed., Vol. II, 1993), Pg. 1932; "The framers of our Constitution borrowed the idea of enacting directive principles from the Irish Constitution. However, a large number of free democratic countries, federal and unitary, have no directive principles. And contemporary history shows that the enactment of directive principles is not necessary for introducing a welfare State."

[45] Lael K. Weis, *Constitutional Directive Principles*, 37 (4) OXFORD JOURNAL OF LEGAL STUDIES 916 (2017), Pg. 923.

In our Constitutional journey, without doubt, it is the provisions of Part III as well as that of Part IV, Fundamental Rights as well as Directive Principles, which have played the major role in influencing our society, politically, socially and economically. It is not without reason that Granville Austin calls Fundamental Rights and Directive Principles of State Policy, together, as the conscience of the Constitution.

19. Coming back to the direct question before this Court on "material resources of the community". A Three Judge Bench of the Supreme Court in ***Ranganatha Reddy*** and later a Five Judge Constitution Bench in ***Sanjeev Coke*** and then to some extent even a Nine Judge Constitution Bench in ***Mafatlal Industries*** *v.* ***Union of India (1997) 5 SCC 536*** had no difficulty in answering the question that "material resources of the community" includes privately owned resources. There is no judgment of this Court which has interpretated the phrase "material resources of the community", in any other manner, or has held that private property is not a part of material resources of the community. Only doubts have been raised, and it is on these 'doubts' that this Nine Judge Bench has finally been constituted to give its verdict.

There should be no confusion that the expression "material resources of the community" used in Article 39(b) includes privately owned resources. This has been the consistent view of this Court, as already referred above. It could not have been otherwise. To my mind a reference to material resources in Article 39 (b) without privately owned resources being a part of it, does not even make any sense. It is only when we include privately owned resources, as a part of the "material resources of the community" that the purpose of Articles 38 and 39 is fully realised. It is only then that the socialist and democratic principles incorporated in our Constitution get their true meaning. The aims and objects of our freedom fighters, their vision for a just and equitable society, the extensive debates in the Constituent Assembly, the provisions incorporated in Part IV, even other than Article 39 (b), all have to be taken into consideration and they leave us with no doubt that privately owned resources are a part of "material resources of the community", as given in Article 39(b).

Let us imagine the opposite. What if privately owned resources are not a part of "material resources of the community"? It would then mean that material resources will include only public resources. But public resources are in any case meant to serve

the public. It is only when "private ownership" and "private property" are included in "material resources" that the provision acquires a meaning. We also have to read clauses (b) and (c) of Article 39 together, and in light of Article 38 of the Constitution of India, in order to get a better perspective. Article 39(c) mandates that our economic system should not result in concentration of wealth and means of production (in a few hands). Material resources (both private and public) of the community must subserve the common good. The debates in the Constituent Assembly show that efforts made by some of the members to specify the scope of material resources were turned down for this reason.

There is another aspect to the matter. In case private property or privately owned resources are not considered as a part of "material resources of the community", and it would only include public resources and public property then the laws which are made for enforcement of these Directive Principles do not actually require the protection of Article 31-C. Protection of Article 31-C is only required when private property and privately owned resources are being acquired to subserve the common good and while doing so it is violating Article 14 and 19 of the Constitution

of India. When public resources are being utilised for common good, there is no violation of Article 14 and 19 of the Constitution of India and consequently there is no requirement of Article 31-C. As we have already referred in the preceding paragraphs, the unamended Article 31-C to the extent its validity has been upheld in ***Kesavananda Bharati*** still stands as a part of the Constitution and exists as a protective umbrella to the laws which are made in pursuance of Article 39 (b) and (c) of the Constitution of India.

The unamended Article 31-C to the extent held valid in ***Kesavananda Bharati*** is a part of the Constitution and protects the laws made in pursuance of Article 39 (b) and (c). This has also been discussed in detail in ***Minerva Mills, Waman Rao & Others*** *v.* ***Union of India (1981) 2 SCC 362*** and also in ***Sanjeev Coke.***

20. During the Constituent Assembly debates, an amendment was moved by one of the members, Mr. K. T. Shah, who proposed to elaborate as to what would be "material resources of the community". According to him, these would include all the natural resources, minerals, etc. This amendment was turned down by the Assembly. Dr. Ambedkar while denying this amendment also gave his reasons, which were that it is always better to keep some expressions in general terms since these are being incorporated in

a Constitution. In case one elaborates the phrase "material resources", the Constituent Assembly would be arresting and limiting its meaning. From this it can also be deducted that according to Dr. Ambedkar, a generalised term would include the entire resources of the community, including private property, and that also seemed to be the general consensus.

The precise reasons given by Dr. Ambedkar while disagreeing with the proposed amendment were as under:

> *"I think the language that has been used in the Draft is a much more extensive language which also includes the particular propositions which have been moved by Professor Shah, and I therefore do not see the necessity for substituting these limited particular clauses for the clauses which have been drafted in general language deliberately for a set purpose. I therefore oppose his second and third amendments".*[46]

What is important here is that, in turning down the proposed amendment of Shri Shah, the Constituent Assembly did not think it correct to limit "material resources" to specified resources alone and it was deliberately left as a broad-based term – "material resources of the community".

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[46] CONSTITUENT ASSEMBLY DEBATES, VOL. VII, Pgs. 518-19.

In doing so, Dr. B. R. Ambedkar showed great wisdom and acumen as the Chairman of the Drafting Committee of the Constitution. He understood well that the Constituent Assembly is not in the process of making an ordinary statute, it was the Constitution which was being made. A Constitution has to be drafted in a manner to withstand the test of several years and generations, and therefore, by necessity certain provisions and words have to be in general terms, which is referred to as 'Majestic Generalizations'.

21. A. Barak assigns three reasons as to why in a Constitution some expressions have to be broad based and in general terms; of which two are important. The first is because the constitutional text expresses a general agreement of the Constituent Assembly (as was the case in India). *"In order to reach agreement, nations generally must confine themselves to opaque and open-ended terms, reflecting their ability to reach consensus only at a high level of abstraction".*[47]

The second is that the constitutional text is designed to regulate human behaviour of future generations, therefore, by

[47] AHARON BARAK, PURPOSIVE INTERPRETATION IN LAW (Universal Law Publishing Co., 2007), Pg. 372.

necessity the language which has to be adopted should be flexible enough to include new viewpoints, positions and modes of behaviour which cannot be predicted at the time when the Constitution is being written. *"Otherwise, the constitutional text would be obsolete the day it is enacted. At the same time, a constitutional text must be definitive enough to bind the branches of government and prevent them from behaving in the future, in a way that is contrary to the viewpoints, positions, and social behavior that the text seeks to preserve. The language of a constitutional text must be both rigid and flexible. "Air valves" or open-ended terms that can be interpreted in a number of ways serve this purpose. Constitutions define human rights in open-textured terms, using "majestic generalities".*[48]

Dr. Ambedkar understood these concepts well and therefore as we have seen "material resources of the community" was not elaborated. In my opinion, the purpose was not to restrict the meaning of "material resources", by restricting the phrase only to a few given names (as Sri K.T. Shah had proposed) but to leave it to the legislature to include any material resource which would

[48] AHARON BARAK, PURPOSIVE INTERPRETATION IN LAW (Universal Law Publishing Co., 2007), Pgs. 372-373. *Also see* Fay v. New York 332 U.S. (1947) (Jackson, J.), Pg. 261, 282.

subserve common good. The choice of the words "material resources" and not "natural resources", is also significant.

22. Again, the words 'ownership' and 'control' have to be interpreted both conjunctively and disjunctively depending on the purpose and wisdom of the legislatures. At times, both ownership and control of material resources are required for public purpose while at some other instances it would not be necessary to acquire the ownership but only control of these resources. Shri Tushar Mehta, the learned Solicitor General of India, laid particular emphasis on this aspect. It will depend from fact to fact, situation to situation, and that should always be left to the wisdom of the legislative bodies, as the learned Attorney General Sri R. Venkataramani and Sri Gopal Sankarnarayanan, Senior Advocate (representing State of West Bengal) would also argue.

23. The first clear opinion by the Supreme Court on privately owned resources being a part of the "material resources of the community", though by a minority of three judges, is in ***Ranganatha Reddy.*** The State of Karnataka had challenged before this Court, the order of the Karnataka High Court, which had set aside a government scheme and also the provisions in the Karnataka Contract Carriages (Acquisition) Act, 1976 (hereinafter

referred to as "Karnataka Act") for acquisition of all private owned transport buses, which were to be plied by the state-owned corporation. The object and reasons of the Act showed that this was being done to implement Article 39 (b) and (c) of the Constitution. The High Court, however, held that there was no "public purpose" in the acquisition. This order of the High Court was set aside by the Seven Judge Bench, where all the Judges were unanimous in holding that the High Court was wrong in setting aside the scheme of the Government as it was indeed for a "public purpose". This was done by making a harmonious construction and reading down certain provisions of the Act. Three Judges (Justice V.R. Krishna Iyer, Justice P.N. Bhagwati and Justice Jaswant Singh) out of the seven, in their concurring but separate opinion went ahead to emphasise as to what the expression "material resources of the community" would mean in Article 39(b) of the Constitution of India. This opinion is significant for it is here that we get a clear and unequivocal description of what constitutes "material resources of the community". It is respectfully stated that this opinion holds the field even today and has been followed by the Five Judge Bench in ***Sanjeev Coke*** and later in many other cases.

24. Although Shri Tushar Mehta, the learned Solicitor General of India, argued at length to convince this Court that the observations in ***Mafatlal*** are not *obiter dicta* and it is a binding precedent for this Court, the argument is not entirely convincing. In ***Mafatlal***, the question before this Court primarily was of unjust enrichment. The observations of Justice Jeevan Reddy are only incidental and were not related to the core issue. I agree with the learned Chief Justice on this point and I adopt the detailed reasoning given by him in holding that the majority opinion in ***Mafatlal*** constitutes *obiter dicta* and is not binding on this Court.

25. Now coming back to ***Ranganatha Reddy***, the reason why a separate opinion was required, was explained by Justice V.R. Krishna Iyer and the other two Judges, as under:

> *"Because, to put it simplistically, a legislation for the nationalisation of contract carriages by the Karnataka State, where provision has been made for fair compensation under present circumstances, has still been struck down by the High Court on the surprising grounds of absence of public purpose, illusoriness of compensation State takeover being beyond the orbit of Article 39(b) and the like, and to express ourselves emphatically in reversal ... on the obvious, yet basic, issue we itemise below which is necessary to obviate constitutional derailment again. The public sector, in our constitutional system, is so strategic a tool in the national plan for transformation from stark poverty to social justice, transcending administrative and judicial allergies, that the questions raised and rulings thereon are of*

> *larger import for the country than one particular legislation and its vires and one particular Government and its policies. What are those disturbing interrogatories?"*[49]

The Three Judges have given a very wide meaning to the term material resources, stating:

> *"81……. material resources of the community in the context of re-ordering the national economy embraces all the national wealth, not merely natural resources, all the private and public sources of meeting material needs, not merely public possessions. Every thing of value or use in the material world is material resource and the individual being a member of the community his resources are part of those of the community. To exclude ownership of private resources from the coils of Article 39(b) is to cipherise its very purpose of redistribution the socialist way. A directive to the State with a deliberate design to dismantle feudal and capitalist citadels of property must be interpreted in that spirit and hostility to such a purpose alone can be hospitable to the meaning which excludes private means of production or goods produced from the instruments of production".*[50] *(Emphasis supplied)*

After ***Ranganatha Reddy,*** comes the unanimous decision of the Five Judge Bench of this Court in ***Sanjeev Coke*** where 'material resources' were held to be as follows:-

> *"And material resources of the community in the context of reordering the national economy embraces all the national wealth, not merely*

[49] (1977) 4 SCC 471, para 40.
[50] (1977) 4 SCC 471, para 81.

> *natural resources, all the private and public sources of meeting material needs, not merely public possessions. Every thing of value or use in the material world is material resource and the individual being a member of the community his resources are part of those of the community. To exclude ownership of private resources from the coils of Article 39(b) is to cipherise its very purpose of redistribution the socialist way."*

It then goes on to say this:

> *"We hold that the expression "material resources of the community" is not confined to natural resources; it is not confined to resources owned by the public; it means and includes all resources, natural and man-made, public and private-owned".*[51]

26. Since ***Sanjeev Coke*** there has been a long list of judgments of this Court where the findings of ***Ranganatha Reddy*** and ***Sanjeev Coke*** have been followed. Some of these are as follows: -

> *1. State of T.N. v. L. Abu Kavur Bai, (1984) 1 SCC 515*
> *Decision by: Y.V. Chandrachud, C.J. and S. Murtaza Fazal Ali, V.D. Tulzapurkar, O. Chinnappa Reddy and A. Varadarajan, JJ.*
>
> *2. Tinsukhia Electric Supply Co. Ltd. v. State of Assam, (1989) 3 SCC 709*
> *Decision by: R.S. Pathak, C.J. and Sabyasachi Mukharji, S. Natarajan, M.N. Venkatachaliah and S. Ranganathan, JJ.*

[51] (1983) 1 SCC 147, para 19.

3. Madhusudan Singh v. Union of India, (1984) 2 SCC 381
Decision by: S. Murtaza Fazal Ali and M.P. Thakkar, JJ.

4. State of Maharashtra v. Basantibai Mohanlal Khetan, (1986) 2 SCC 516
Decision by: E.S. Venkataramiah And M. P. Thakkar, JJ.

5. Assam Sillimanite Ltd. v. Union of India, 1992 Supp (1) SCC 692.
Decision by: Kuldip Singh and M. Fathima Beevi, JJ.

6. Jilubhai Nanbhai Khachar v. State of Gujarat, 1995 Supp (1) SCC 596
Decision by: K. Ramaswamy and N.G. Venkatachala, JJ.

In my opinion it would be unwise to upset the long-settled meaning given consistently by several Benches of this Court to the phrase "material resources of the community", used in Article 39(b) by the framers of the Constitution.

Did ***Sanjeev Coke*** fall in error in relying upon the observations of minority judges in ***Ranganatha Reddy,*** penned by Justice V.R. Krishna Iyer, as the opinion of the majority of Judges had expressly stated their inability to agree with such observations of the minority? Did ***Sanjeev Coke*** break judicial discipline by following the law laid down by minority, and not following the binding precedent of majority? And were the future

decisions of this Court wrong in following the decision in ***Sanjeev Coke*** too? The question here is essentially one of the binding nature of a precedent. Was that breached?

27. What is a binding precedent and more precisely what would be the value of a minority judgment. This aspect needs to be cleared.

In the common law system, which we follow in India, judicial precedents have to be followed. This we know as *stare decisis* or *'stare decisis et non quieta movere'* (stand by the decisions and not to unsettle what is settled). A co-ordinate bench must follow the law laid down by another co-ordinate bench. Now, the question is what is the law laid down on Article 31-C and Article 39 (b) by the majority of Four Judges in ***Ranganatha Reddy***. With respect, there is none. The only interpretation on the above provision is by the minority of Three Judges.

28. The background of ***Ranganatha Reddy*** case must be stated again in order to get a proper perspective. The State of Karnataka enacted a statute known as Karnataka Contract Carriages (Acquisition) Act, 1976, by which all the contract carriages which were in private hands in State of Karnataka, were acquired and thus became a part of the Karnataka State Road Transport

Corporation (hereinafter referred to as 'Corporation'). The object and reasons of the Act[52] clearly state that the primary reason for incorporating the Act is to implement the policy of the State mandated under Article 39 (b) and (c) of the Constitution of India. The scheme of the acquisition as well as the *vires* of the Karnataka Contract Carriages (Acquisition) Act, 1976, was challenged before the Karnataka High Court and these petitions were ultimately allowed and the Act was declared to be in violation of Articles 14 and 19 of the Constitution of India. It was held that the acquisition of private properties in the form of private transport was not in public interest, and it did not subserve common good. There again, the defence of the State and the corporation was that the Act was to implement a policy of the State in line with Article 39(b) & (c) of the Constitution.

The matter was taken in appeal before this Court and was ultimately referred to a Bench of Seven Judges. All Seven Judges allowed the appeal and upheld the constitutional validity of the

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[52] From the Statement of Objects and Reasons of Act 21 of 1976 — A large number of contract carriages were being operated in the State to the detriment of public interest and were functioning stealthily as stage carriages. This had to be prevented. Article 39(b) and (c) enjoins upon the State to see that the ownership and control of the material resources of the community are so distributed as best to subserve the common good and that the operation of the economic system does not result in the concentration of wealth to the common detriment.
In view of the aforesaid it was considered necessary to acquire the contract carriages run by private operators.

Karnataka Contract Carriages (Acquisition) Act, 1976, thereby setting aside the order of the High Court. All the same, the majority of the Judges i.e. Four out of the Seven Judges upheld the validity of the law by their reading through a harmonious construction of the Act, and did not go into the aspect of Article 39 (b) or (c), as well as Article 31-C of the Constitution of India. This was dealt only in the minority judgment of Justice Krishna Iyer (minority comprising Three Judges). At this juncture, we may also note that the very purpose of the Act, the Constitutional validity of which was challenged before the Supreme Court, was to implement the policy of the State as mandated under Article 39(b) & (c) of the Constitution of India. It was also the main argument on behalf of the State Government/the appellant to justify the acquisition under the Directive Principles of State Policies stated above. Nevertheless, it is true that the majority of Four Judges, although upheld the validity of the law and thereby had set aside the judgment of the Karnataka High Court, did so on the basis of harmonious reading of the law. This is what they said:

> *"37... Since we have upheld the constitutional validity of the Act on merits by repelling the attack on it by a reasonable and harmonious construction of the Act, we do not consider it necessary to express any opinion with reference to Article 31-C read with clauses (b) and (c) of Article 39 of the*

> *Constitution. Our learned Brother Krishna Iyer, J. has prepared a separate judgment specially dealing with this point. We must not be understood to agree with all that he has said in his judgment in this regard".*[53]

The minority Three Judges concurred with the view of the majority Four Judges, but gave a separate opinion along with reasons as to why a separate opinion is necessary, which has already been referred above. The minority of Three Judges upheld the validity of the Karnataka Act, primarily, on the touchstone of Articles 31-C and 39(b) & (c) of the Constitution of India. This is what was said:

> ***"****This takes us to the non-negotiable minimum of nexus between the purpose of the acquisition and Article 39(b). Article 39(c) was feebly mentioned but Article 39(b) was forcefully pressed by the appellant. Better read Article 39(b) before discussing its full import:*
> *"39. (b) Certain principles of policy to be followed by the State— The State shall, in particular, direct its policy towards securing that the ownership and control of the material resources of the community are so distributed as best to subserve the common good."*
>
> *The key word is "distribute" and the genius of the Article, if we may say so, cannot but be given full play as it fulfils the basic purpose of restructuring the economic order. Each word in the article has a strategic role and the whole article a social mission. It embraces the entire material resources of the community. Its task is to distribute such resources.*

[53] (1977) 4 SCC 471, para 37.

Its goal is so to undertake distribution as best to subserve the common good. It re-organizes by such distribution the ownership and control.

81. "Resources" is a sweeping expression and covers not only cash resources but even ability to borrow (credit resources). Its meaning given in Black's Legal Dictionary is: "Money or any property that can be converted into supplies; means of raising money or supplies; capabilities of raising wealth or to supply necessary wants; available means or capability of any kind."

And material resources of the community in the context of re-ordering the national economy embraces all the national wealth, not merely natural resources, all the private and public sources of meeting material needs, not merely public possessions. Every thing of value or use in the material world is material resource and the individual being a member of the community his resources are part of those of the community. To exclude ownership of private resources from the coils of Article 39(b) is to cipherise its very purpose of redistribution the socialist way. A directive to the State with a deliberate design to dismantle feudal and capitalist citadels of property must be interpreted in that spirit and hostility to such a purpose alone can be hospitable to the meaning which excludes private means of production or goods produced from the instruments of production".[54]

[54] (1977) 4 SCC 471, paras 80-81.

In other words, the minority judgment agreed with the majority in upholding the validity of the Karnataka Act, but went ahead justifying the acquisition under the Karnataka Act, as it was only following the mandate of the Constitution given in Article 39(b) and (c) of the Constitution of India which had its protection under Article 31-C of the Constitution of India. The minority judgment upheld the Karnataka law and the acquisition made therein, by justifying the law on the basis of Article 31-C and Article 39 (b) and (c) of the Constitution. The majority had reached a similar conclusion, but by another reasoning. They did not discuss Article 31-C or Article 39(b) and (c). Although, the legislation in question was passed by the State legislature, declaring in its objects and reasons that the Act was enacted with the purpose of achieving the aim of Article 39 (b) and (c) of the Constitution of India.

When the Karnataka Act was challenged in the High Court, the State defended the legislation relying upon Article 39 (b) and (c) in the light of Article 31-C of the Constitution. The Division Bench of the High Court rejected the arguments of the State as it saw no public purpose in the acquisition. Again, when the case came to this Court in Appeal, the entire argument of the appellant was built on Article 39(b) and (c) and the protection the law had

under Article 31-C. The minority of Three Judges thus were not answering a question which was never there, but to the contrary, they chose to answer the fundamental question which was before them.

29. My respectful submission here is that the judgment of Three Judges in ***Ranganatha Reddy*** does not fall under clause (5) of Article 145[55] as a dissenting judgment or opinion, though yes it is also true that what will be called as a judgment and opinion of the Court, will be what was given by the majority of four Judges since "no judgment and no such opinion shall be delivered by the Supreme Court save with the concurrence of a majority of the Judges present at the hearing of the case.." [Article 145(5)]

When later the opinion of the Three Judges is followed by the Five Judges in ***Sanjeev Coke*** it was done as the Five Judge Constitution Bench was persuaded by the logic and reasoning of the Three Judges. In doing this no judicial discipline was broken as the majority of Four Judges did not give a contrary opinion on

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[55] **Article 145: Rules of Court, etc.:**
(1) …
(2) …
(3) …
(4) …
(5) No judgment and no such opinion shall be delivered by the Supreme Court save with the concurrence of a majority of the Judges present at the hearing of the case, but nothing in this clause shall be deemed to prevent a Judge who does not concur from delivering a dissenting judgment or opinion.

the subjects. Admittedly, there was no judgment before ***Sanjeev Coke*** which had held a view contrary to what was held in ***Ranganatha Reddy.***

Coming back to ***Ranganatha Reddy*** while answering this question, the minority of Three Judges did not go against any of the observations or findings of the majority judges. All they did was give a clear opinion on a question of law, which they were called upon to do. That was the crucial question before the Supreme Court which the Three Judges had answered.

30. The question now is that when in ***Sanjeev Coke***, the Five Judge Constitution Bench unanimously followed the minority judgement in ***Ranganatha Reddy*** did it violate judicial discipline of not following the majority but the minority decision. In my opinion, it did not break any judicial discipline, since in ***Sanjeev Coke,*** the Five Judges did not go against the law laid down by the majority Judges in ***Ranganatha Reddy*** but only adopted the logic of the Three Judges on which the majority of Four Judges were silent.

31. It is first difficult for me to even come to the conclusion that the Four Judges in ***Ranganatha Reddy*** entirely disagreed with the minority opinion of Justice Krishna Iyer. It merely says *"we*

must not be understood to agree with all that he has said in his judgment in this regard." This is not exactly a disagreement. The majority of the Four Judges chose to remain silent on the subject. It cannot be said that the Four Judges, in any way, said anything contrary or in opposition to what was laid down by the Three Judges in ***Ranganatha Reddy,*** and therefore, no judicial discipline was broken by Justice O. Chinnappa Reddy when he authored the unanimous judgment in ***Sanjeev Coke*** by adopting the logic of the Three Judges in ***Ranganatha Reddy.***

Theoretically speaking there are no judgments of the Supreme Court which may throw any light on what would be the binding nature of a judgment of minority judges given on a subject, where the majority has remained silent.

The logic, however, is very clear, in cases where a Judge or Judges of the Supreme Court in minority have given a decision on a point on which the majority has remained silent, that it would be binding on the High Courts and all other Courts, and for this Court the least it will have is persuasive value. Reference can be made here to a decision of this Court in ***KT Moopli Nair*** *v.* ***State of Kerala 1960 SCC OnLine SC 7***. In the above judgment, the Supreme Court had held that a tax rate of 2 rupees per acre

irrespective of the nature of the land was violative of Article 14, as unequals cannot be treated as equals. The question which was before this Court was whether the impugned levy, although levied as a tax on land, was also applicable on forest land. In other words, it was argued that a similar tax on forest land was invalid. The majority of the Judges noticed this submission in ***Moopli Nair,*** but did not deal with it. This was only dealt with by Justice A.K. Sarkar in his dissenting judgment where it was held that the power to tax under Entry 49 List II, would include taxation of forest land as well. Consequently, when a similar matter came before Kerala High Court in ***V. Padmanabha Ravi Varma Raja*** *v.* ***Deputy Tahsildar 1962 SCC OnLine Ker 98***, it was held by the High Court that it was bound by the minority view of Justice Sarkar on the point and held that State legislature had the competence to levy tax on land on which a forest stood. Similarly, the Bombay High Court in ***Mahinder Bahawanji Thakur*** *v.* ***S.P. Pande 1963 SCC OnLine Bom 28*** had held that the minority decision will have a precedential value on a point when the law has not been discussed by the majority in their judgment. Allahabad High Court held a similar view in ***Sudha Tiwari*** *v.* ***Union of India*** **2011 SCC OnLine All 253**.

The logic therefore would be that the opinion of minority judges on a point where the majority is silent, can be followed by the High Courts but in the Supreme Court it will have only persuasive value.

The five learned judges in ***Sanjeev Coke*** relied upon the decision of the minority judges in ***Ranganath Reddy*** as they were persuaded by the logic and the interpretation given by Justice Krishna Iyer to the phrase *"material resources of the community"*.

32. There is another aspect to the question which is before us today, which is if we today hold that privately owned resources are not a part of "material resources of the community", we would not only be unsettling ***Ranganatha Reddy*** and ***Sanjeev Coke*** and all the subsequent decisions of this Court, which followed ***Sanjeev Coke***, but we would also be unsettling the whole body of laws including Constitution Bench decisions of this Court which have held even prior to ***Ranganath Reddy*** though indirectly that privately owned resources are part of "material resources of the community". There was a clear presumption in all these cases that privately owned resources are part of "material resources of the community".

What is the most important "material resource" of the community in India? Undoubtedly, it is land. At the time of our independence, inequality in land distribution was evident throughout the country. We had big landlords, on the one hand, and landless masses of poor peasantry on the other, who mostly worked as agricultural labourers on the large farm lands of these landlords. The abolition of zamindars, big landlords and middlemen was a pledge the leaders of the freedom movement had made to the people of this country. This was also now one of the "charters of instructions" for the Government as Dr. Ambedkar would put it under Articles 38 and 39 of the Constitution of India. On September 10, 1949, the then Prime Minister while speaking on Article 24[56] before the Constituent Assembly, emphasised the necessity of abolishing the zamindari system. He underlined that this was the pledge they had given to the nation, *"and no change is going to come in our way. That is quite clear. We will honour our pledges"*[57].

Since land was in the State List i.e., List II of the Seventh Schedule of the Constitution of India, such changes had to be brought in by the State Legislatures. Land reform legislations were

[56] That came to be enacted as Article 31 of the original Constitution.
[57] CONSTITUENT ASSEMBLY DEBATES, VOL. IX, Pg. 1195.

thus the first important legislations passed in different States, by and large on the same lines, taking care of the local provisions and local factors.

These land reform legislations had to first muster the scrutiny of the respective High Court, where these legislations were challenged by the landlords and zamindars. High Courts, though were not unanimous in their verdicts, for example Patna High Court struck down the Bihar Land Reforms Act, 1950, but the validity of a similar legislation in Madhya Pradesh was upheld. Similarly, the Constitutional validity of U.P. Zamindari Abolition Act, 1947 was upheld by the Allahabad High Court.

This was done by Allahabad High Court in ***Raja Suryapal Singh*** *v.* ***U.P of Govt.*****, 1951 SCC OnLine All 183.** One of the grounds on which the U.P. Zamindari Abolition Act was challenged was that the acquisition under it was not for 'public purpose' and it did not make provisions for adequate compensation, thus, violating Article 31(2) of the Constitution. The High Court went into the question of 'public purpose' as used in the Constitution, and while exploring the meaning of words 'public purpose', enquired as to whether there are any other provisions which can guide the Court to attribute a meaning to these words.

The decision of Allahabad High Court came in the very early days of the Constitution when the relationship between Directive Principles and Fundamental Rights was yet to be explored. It was a time when the First Constitutional Amendment had yet to be introduced. We would like to reproduce here some of the observations of Allahabad High Court:

> *"41. Now is there to be found in the Constitution of India anything to guid the Cts. as to the meaning to be attributed to the expression "public purpose" when used therein? We think there is. Chap. 4 contains what are described as directive principles of State policy, & although those principles are not enforceable by any Ct. Article 37 specifically lays down that they are nevertheless fundamental in the governance of the country & that "it shall be the duty of the State to apply these principles in making laws.*
>
> *42. If then we examine the directive principles we find that Article 39, cls. (b) & (c) provide:*
>
> *"(b) that the ownership & control of the material resources of the community are so distributed as best to sub-serve the common good;*
> *(c) that the operation of the economic system does not result in the concentration of wealth & means of production to the common detriment..*
> *……*
> *47. If, therefore, the acquisition of property sought to be affected (effected?) by the impugned Act is for the purpose of implementing one or more of the directive principles of State policy it will, in our judgment, be for a public purpose within the meaning of the Constitution, & it will be unnecessary for us to consider whether for other*

> *purposes it comes within the meaning which the law has given to that expression."*[58]

33. In order to safeguard land reform laws from the interference of the Courts, the Constitution (First Amendment) Act, 1951 was introduced. Though there were other reasons as well, they may not be relevant for our purposes.

The Statement of Objects and Reasons of the First Constitution (Amendment) Bill, 1951 states as follows: -

> *"The main object of the Bill are, accordingly to amend Article 19 for the purposes indicated above and to insert provisions fully securing the constitutional validity of zamidari abolition laws in general and certain specified State Acts in particular."*

At that time, the Constituent Assembly was working as the provisional Parliament because the First General Elections were yet to be conducted. The urgency of the provisional Parliament in bringing the First Constitutional Amendment was explained by the Prime Minister on May 16, 1951, who said that the delay was causing injustice to millions of Indians, and there was an urgent need to incorporate Article 31A and 31B and the Ninth Schedule to the Constitution. [59]

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[58] 1951 SCC OnLine All 183, paras 41, 42 and 47.

[59] PARLIAMENTARY DEBATES (PART II-PROCEEDINGS OTHER THAN QUESTIONS AND ANSWERS), Pg. 8830. Prime Minister Nehru explained the urgency as follows :-

Then explaining the predictable long delay the land reforms would take in Courts, against which nothing much could be done, he said as follows:

> *"It is not good for us to say we are helpless before fate and the situation which we are to face at present. Therefore we have to think in terms of these big changes land changes and the like and therefore we thought of amending article 31. Ultimately, we thought it best to propose additional articles 31A and 31B in addition to that there is a schedule attached of a number of Acts passed by the State Legislatures, some of which have been challenged or might be challenged and we thought it best to save them from long delays and these difficulties, so that this process of change which has been initiated by the States should go ahead. Many of us present here are lawyers and have had some training in law which is a good training and many of us respect lawyers. But nevertheless a lawyer represents precedent and tradition and not change, not dynamic process. Above all the lawyer represents litigation..."*[60]

In other words, the Parliament could not wait for decisions of Courts to settle the position in regard to land reforms, as it could take a long time and every day of delay in bringing land reforms would be an injustice to the people to whom they had

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"……the primary problem is the land problem today in Asia, as in India. And every day of delay adds to difficulties and dangers apart from being an injustice in itself."

[60] PARLIAMENTARY DEBATES (PART II- PROCEEDINGS OTHER THAN QUESTIONS AND ANSWERS), Pgs. 8831-8832.

promised these reforms long before Independence. The Parliament wanted to stabilize the situation as early as possible and did not want these land reforms to remain entangled in the legal battles, at least this is what was thought.

34. The First Amendment, *inter alia*, introduced Articles 31-A & 31-B and the Ninth Schedule to the Constitution with an aim to strengthen land reform laws with the innovative Ninth Schedule, providing safe harbour to such legislations.

The First Amendment was challenged before the Supreme Court in the famous ***Shankari Prasad Singh v. Union of India*, AIR 1951 SC 458** where it was upheld. The powers of the Parliament under Article 368 of the Constitution of India of amending the Constitution were held to be plenary which could also amend the Fundamental Rights in the Constitution.

Subsequently, decisions of High Courts on land legislations were challenged before this Court in ***State of Bihar*** *v.* ***Kameshwar Singh,* (1952) 1 SCC 528,** but now Article 31A, Article 31B and the Ninth Schedule were there in the Constitution after getting approval of this Court in ***Shankari Prasad***.

Justice S.R Das in ***Kameshwar Singh*** underlined the importance of Articles 38 and 39 in bringing social, economic and political justice. He stated as under:

> *"…Indeed, what sounded like idealistic slogans only in the recent past are now enshrined in the glorious Preamble to our Constitution proclaiming the solemn resolve of the people of this country to secure to all citizens justice, social, economic and political, and equality of status and of opportunity. What were regarded only yesterday, so to say, as fantastic formulae have now been accepted as directive principles of State policy prominently set out in Part IV of the Constitution. The ideal we have set before us in Article 38 is to evolve a State which must constantly strive to promote the welfare of the people by securing and making as effectively as it may be a social order in which social, economic and political justice shall inform all the institutions of the national life. Under Article 39 the State is enjoined to direct its policy towards securing, inter alia, that the ownership and control of the material resources of the community are so distributed as to subserve the common good and that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment… what, I ask, is the purpose of the State in adopting measures for the acquisition of the zamindaries and the interests of the intermediaries? Surely, it is to subserve the common good by bringing the land, which feeds and sustains the community and also produces wealth by its forest, mineral and other resources, under State ownership or control. This State ownership or control over land is a necessary preliminary step towards the implementation of the directive principles of State policy and it cannot but*

> *be a public purpose... Further, it must always be borne in mind that the object of the impugned Act is not to authorise the stray acquisition of a particular property for a limited and narrow public purpose but that its purpose is to bring the bulk of the land producing wealth under State ownership or control by the abolition of the system of land tenure which has been found to be archaic and non-conducive to the general interest of the community..."*[61]

There was now to be a ceiling on land and the surplus was to be distributed among the marginal and landless farmers, though further legislations would be required. It is true that in years to come, in reality, the rich and powerful landlords defeated much of the provisions of land reforms, yet the land reforms had its positive effects. Professor Aditya Mukherjee in his book "Political Economy of Colonial and Post-Colonial India" states as under:

> *"Also, though the opportunity to acquire large areas of surplus lands for redistribution was missed because of defective and delayed ceiling laws, in the long run the high population growth and the rapid subdivision of large holdings over several generations (in the absence of the practice of primogeniture for over the ceiling limits. In fact, the number of holding and the areas operated under the category of large holdings and the area operated under the category of large holdings, 25 acres or above (even 15 acres and above), kept falling in the decades since independence right upto the 1990s. Except in certain small pockets in the country, very large landholdings of the semi feudal type now became things of the past.*

[61] (1952) 1 SCC 528, para 142.

> *Inequality among landowners was no longer a key issue, as it was not very skewed any more. By one estimate, by 1976-7 nearly 97 per cent of the operated holdings were below 25 acres and 87 per cent of the holdings were below 10 acres."* [62]

The eminent scholar of Indian agriculture C.H. Hanumantha Rao who has also been quoted by Aditya Mukherjee has this to say about the land reforms: "*The law discouraged concentration of landownership beyond the ceiling level and thus prevented the possible dispossession of numerous small and marginal holders which would probably have occurred through a competitive process in the land market in the absence of a ceiling on landholdings".*[63]

What is more important is the fact that essentially land reform laws were upheld on these principles by the Supreme Court (See: ***Kameshwar Singh*** and ***Shankari Prasad***). In other words, taking away of material resources from private hands for public purposes was held to be constitutional by the Supreme Court. For our purposes, therefore, logically taking away of material resources from private hands for the good of the community was upheld even before ***Ranganath Reddy***. We see no reason as to why there can

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[62] ADITYA MUKHERJEE, POLITICAL ECONOMY OF COLONIAL AND POST-COLONIAL INDIA (PRIMUS BOOKS, 2022), Pg. 511.

[63] C.H Hanumantha Rao, *Rural Society and Agricultural Development in Course of Industrilisation: Case of India*, 26 ECONOMIC AND POLITICAL WEEKLY (1991), Pg. 691.

be any different view now simply because the material resources may not only be land but some other "material resources".

35. In 1964, the Government of India appointed a Commission under the Commission of Inquiry Act, 1952 to inquire into concentration of wealth. The terms of its reference were as follows:

> *"(a) to inquire into the extent and effect of concentration of economic power in private hands and the prevalence of monopolistic and restrictive practices in important sectors of economic activity other than agriculture with special reference to-*
>
> *(i) the factors responsible for such concentration and monopolistic and restrictive practices;*
> *(ii) their social and economic consequences, and the extent to which they might work to the common detriment; and*
>
> *(b) to suggest such legislative and other measures that might be considered necessary in the light of such enquiry, including, in particular, any new legislation to protect essential public interests and the procedure and agency for the enforcement of such legislation."*[64]

This Commission gave its report in 1965 called the 'Report of the Monopolies Inquiry Commission 1965', which was prepared after taking views from leading businessmen, State governments and various other stakeholders. Chapter II titled *'Causes of Concentration'* in the report, earmarked the following as the primary reasons for concentration of wealth in India:

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[64] *Introduction* to REPORT OF THE MONOPOLIES INQUIRY COMMISSION 1965.

(a) Easier Access to Credit: Big enterprises were able to obtain credit from banks on much easier terms than small businesses, which further helped in the growth of concentration, as they can offer much better security.

(b) Only the Indian industrialists had the skill and knowledge to successfully run an enterprise. They were able to raise sufficient capital, from the public through limited liability public companies, so as to afford licences and import raw materials and machinery required to proliferate the nascent economy of independent India.

(c) As a result of the policies to achieve self-reliance, most foreign enterprises were taken over by a few Indian industrialists as only they could afford such an acquisition.

(d) Formation of Industrial Conglomerates: During World War II, the colonial government granted subsidies to certain enterprises to expand their production capacity in order to support the war effort. This helped increase their profits and allowed them to acquire their competitors, leading to an elimination of competition and concentration of economic power in the hands of those few select business houses

The Report referred to the provisions in the Constitution to prove the point that the framers of our Constitution were aware of the tendency of the national economy, which favoured concentration of wealth in a few hands and this had to be remedied:

> *"It would be wrong to think that the dangers of excessive concentration were not recognised by the Indian statesmen. The makers of the Indian Constitution were well aware of this potential danger. It was to impress upon the future governments of the country the need of fighting this danger that the following principles were laid down in article 39(b) and (c) of the Constitution."*[65]

The point which is being made here is that private wealth was only concentrated in a few hands and there was a huge gap between the rich and the poor and the distribution of wealth was not taking place as it ought to have as there were provisions in the Constitution to bring suitable changes.

36. Measures the Government could take in reducing inequality and redistributing wealth could only be through its laws and the schemes under the law, but then these laws invariably faced challenges before the constitutional courts, which significantly delayed their implementation. One example is the laws for abolition of zamindari as discussed previously. Another important

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[65] REPORT OF THE MONOPOLIES INQUIRY COMMISSION 1965 (VOL-I), Pg. 6.

resource, which the State sought to take control of in pursuance of achieving the objectives of Article 39(b) & (c), was financial assistance, to the farmers in particular. It was not difficult for big enterprises to obtain credit. Also, the landowning farmers could mortgage their land to obtain credit but the landless farmers had no collateral to provide as security against credit before the private banks.

Agriculture was the main source of livelihood for a majority of Indians. All the same, farmers in our country were perpetually indebted to the money lenders and had hardly any other resource to look forward to. The State was required to support the farmers in adopting new techniques if the food-grains production was to increase. Farmers needed financial support in the form of credit which could not have been expected through private banks.

Also, the agrarian reforms in the initial years would have failed to achieve their purpose if farmers, who benefitted from those reforms, were not to be supported in agriculture production. No doubt that agrarian reforms hold great significance in India, but it would be wrong to say that the abolition of zamindaris would be enough for the tillers of the soil. Merely handing over the most precious 'material resource' (land) to the farmers was not

sufficient; something more was required to be done. Financial assistance through easy loans were to be made available to farmers, and they were also to be provided with genetic seeds (HYV[66] seeds), pesticides etc. This was all to be a part of the Green Revolution of the late 1960s. Institutional credit support to the farmers would become easier with the nationalisation of the banking system, besides its impacts on other parts of the economy.

37. To understand the Bank Nationalisation Case, we have to go back a few years prior to when these measures were taken by the State. In ***State of West Bengal*** *v.* ***Bela Banerjee*** **(1953) 2 SCC 648**, a Five-Judge bench of this Court was dealing with the provisions of West Bengal Land Development and Planning Act, 1948, under which the State could acquire land for public purposes including settling immigrants who had migrated to West Bengal from erstwhile East Pakistan (now Bangladesh). Proviso to Section 8(b) of this Act had fixed the market value as the maximum compensation as on 31.12.1946, for the lands acquired irrespective of the date of its actual acquisition. This Court held the proviso to be unconstitutional on the ground that it offended Article 31(2), which at the time, stood as follows:

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[66] High-Yielding Variety.

> *"(2) No property, movable or immovable, including any interest in, or in any company owning, any commercial or industrial undertaking, shall be taken in possession of or acquired for public purposes under any law authorizing the taking of such possession or such acquisition, unless the law provides for compensation for the property taken possession of or acquired and either fixes the amount of the compensation, or specifies the principles on which, and the manner in which, the compensation is to be determined and given."*

Justice Shastri, writing for the Constitution Bench, observed that the legislature has the discretion of laying down principles on which compensation has to be determined but *"such principles must ensure that what is determined as payable must be compensation, that is, a just equivalent of what the owner has been deprived of."*[67] Further, it was observed that principles to determine the compensation are justiciable and whether they took into consideration all factors which make up the true value of the property has to be examined.

Apart from this issue of *'just equivalent'* doctrine, the Government also realised that the detailed description of the property in the original Article 31(2) would pose a problem for laws

[67] (1953) 2 SCC 648, para 6.

not only essentially related to acquisition but also for the legislations which incidentally touched on property rights.

38. To overcome these difficulties, the Parliament introduced the Constitution (Fourth Amendment) Act 1955, which, *inter alia*, amended Article 31(2) and excluded 'regulatory laws' from the purview of 'acquisition'. For this, the elaborate description in the original Article 31(2) in the form of the words '*moveable or immoveable, including any interest in, or in any company owning any commercial or industrial undertaking'* was removed and the question of adequacy of compensation was made a non-justiciable issue. The amended Article 31(2) was as follows:

> *"(2) No property shall be compulsorily acquired or requisitioned save for a public purpose and save by authority of a law which provides for compensation for the property so acquired or requisitioned and either fixes the amount of the compensation, or specifies the principles on which, and the manner in which, the compensation is to be determined and given; and no such law shall be questioned in any court on the ground that the compensation provided by that law is not adequate."*

The Fourth Amendment, so far as it relates to Article 31 (2), was aimed at restricting judicial interference on the question of adequacy of compensation. On 11th April 1955, while discussing

the Bill (that led to the Constitutional (Fourth Amendment) Act, 1955), the then Prime Minister had said in Lok Sabha that:

> *"Remember this, that the sole major change is to make clear one thing which I submitted on the last occasion, was clear to us at the time this Constitution was framed. That is to say, according to the Constitution as put forward before the Constituent Assembly and as it emerged from the Constituent Assembly, the quantum of compensation or the principles governing compensation would be decided by the legislature. This was made perfectly clear. Now, it is obvious that those who framed the Constitution failed in giving expression to their wishes accurately and precisely and thereby the Supreme Court and some other Courts have interpreted it in a different way. The Supreme Court is the final authority for interpreting the Constitution. All I can say is that the Constitution was not worded as precisely as the framers of the Constitution intended. What the framers of the Constitution intended is there for anyone to see. All that has been done now is to make that wording more precise and more in accordance with what the framers of the Constitution at that time meant and openly said. That is the only thing."*[68]

In other words, the Government of the day was of the view that the framers of the Constitution never intended that compensation be 'just equivalent' to what owners are deprived of and in any case, compensation was to be the sole domain of the legislatures and Courts cannot go into that aspect. The decisions

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[68] LOK SABHA DEBATES (PART II- PROCEEDINGS OTHER THAN QUESTIONS AND ANSWERS), VOL-III, Pgs. 4833-4834.

of this Court, however, go against this view that Courts are altogether precluded from going into the question of adequacy of compensation.

39. A Five-Judge bench of this Court in ***Vajravelu*** *v.* ***Special Deputy Collector, 1964 SCC OnLine SC 22*** dealt with the scope of the Fourth Constitutional Amendment qua Article 31(2)[69]. In this case, this Court declared the Land Acquisition (Madras Amendment) Act, 1961 as unconstitutional on the grounds of violation of Article 14. Justice Subba Rao observed that though the law fixing the amount of compensation or laying down principles governing such fixation cannot be questioned on the grounds of adequacy, yet the legislature cannot play fraud on the Constitution by determining compensation on irrelevant principles or making the compensation illusory. This is what was said:

> *"To illustrate: a law is made to acquire a house; its value at the time of acquisition has to be fixed; there are many modes of valuation, namely, estimate by an engineer, value reflected by comparable sales, capitalisation of rent and similar others. The application of different principles may lead to different results. The adoption of one principle may give a higher value and the adoption of another principle may give a lesser value. But nonetheless they are principles on which and the manner in which compensation is determined. The court*

[69] *See State of Madras v. D. Namasivaya Mudaliar* 1964 SCC OnLine SC 169, *Union of India v. Metal Corporation of India* 1966 SCC OnLine SC 15. *But also see State of Gujarat v. Shri Shantilal Mangaldas & Ors.*, AIR 1969 SC 634.

> *cannot obviously say that the law should have adopted one principle and not the other, for it relates only to the question of adequacy. On the other hand, if a law lays down principles which are not relevant to the property acquired or to the value of the property at or about the time it is acquired, it may be said that they are not principles contemplated by Article 31(2) of the Constitution. If a law says that though a house is acquired, it shall be valued as a land or that though a house site is acquired, it shall be valued as an agricultural land or that though it is acquired in 1950 its value in 1930 should be given, or though 100 acres are acquired compensation shall be given only for 50 acres, the principles do not pertain to the domain of adequacy but are principles unconnected to the value of the property acquired. In such cases the validity of the principles can be scrutinized. The law may also prescribe a compensation which is illusory: it may provide for the acquisition of a property worth lakhs of rupees for a paltry sum of Rs 100. The question in that context does not relate to the adequacy of the compensation, for it no compensation at all. The illustrations given by us are not exhaustive. There may be many others falling on either side of the line. But this much is clear. If the compensation is illusory or if the principles prescribed are irrelevant to the value of the property at or about the time of its acquisition, it can be said that the legislature committed a fraud on power and, therefore, the law is bad. It is a use of the protection of Article 31 in a manner which the article hardly intended".*[70]

Thereafter, this Court summed up the position with the following words:

> *"Briefly stated the legal position is as follows: If the question pertains to the adequacy of compensation,*

[70] 1964 SCC OnLine SC 22, para 15.

> *it is not justiciable; if the compensation fixed or the principles evolved for fixing it disclose that the legislature made the law in fraud of powers in the sense we have explained, the question is within the jurisdiction of the court".*[71]

In short, the entire acquisition, nationalisation, distribution, etc., could never be properly implemented, or made effective for reasons of "inadequate compensation".

40. In July 1969, the President promulgated an ordinance nationalising 14 banks. We would also like to reproduce the extracts from the speech of the then Prime Minister who addressed the Nation from the All India Radio on the day when the initial ordinance to nationalise banks was promulgated. The Prime Minister explained the decision of nationalising banks as follows:

> *"...Ours is an ancient country but a young democracy, which has to remain ever vigilant to prevent the domination of the few over the social, economic or political systems... To the millions of small farmers, artisans and other self-employed persons, a bank can be a source of credit, which is the very basis for any effort to improve their meagre economic lot... What is sought to be achieved through the present decision to nationalise the major banks is to accelerate the achievement of our objectives. The purpose of expanding bank credit to priority areas which have hitherto been somewhat neglected- such as (1) the removal of control by a few, (2) provision of adequate credit for agriculture, small industry and exports, (3) the giving of a*

[71] 1964 SCC OnLine SC 22, para 16.

> *professional bent to bank management, (4) the encouragement of new classed of entrepreneurs, (5) the provision of adequate training as well as reasonable terms of service for bank staff- still remains and will call for continuous efforts over a long time. Nationalisation is necessary for the speedy achievement of these objectives".*[72]

This ordinance soon turned into an Act called the Banking Companies (Acquisition & Transfer of Undertakings) Act, 1969 (Act 22 of 1969), passed in August 1969. This first phase of Bank Nationalisation resulted in the famous ***RC Cooper v. Union of India (1970) 1 SCC 248*** where the majority of 10:1 struck down the Act on the grounds that "*Act violates the guarantee of compensation under Article 31(2)*". It was not the case that ***RC Cooper*** held that the State was incompetent to nationalise the banks but it held that the Act nationalising the Banks did not apply the right principles in determining the compensation. ***RC Cooper*** discussed ***Bela Banerjee*** and ***Vajravelu*** in the following words:

> *"89. This Court held in Bela Banerjee case that by the guarantee of the right to compensation for compulsory acquisition under Article 31(2), before it was amended by the Constitution (Fourth Amendment) Act, the owner was entitled to receive a "just equivalent" or "full indemnification". In P. Vajravel Mudaliar case this Court held that notwithstanding the amendment of Article 31(2) by*

[72] A. MOIN ZAIDI, THE GREAT UPHEAVAL 1969-1972 (Orientalia, 1972), Pgs. 103-105.

> *the Constitution (Fourth Amendment) Act, and even after the addition of the words "and no such law shall be called in question in any Court on the ground that the compensation provided by that law is not adequate", the expression "compensation" occurring in Article 31(2) after the Constitution (Fourth Amendment) Act continued to have the same meaning as it had in Section 299(2) of the Government of India Act, 1935, and Article 31(2) before it was amended viz "just equivalent" or "full indemnification".*
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> *90. There was apparently no dispute that Article 31(2) before and after it was amended guaranteed a right to compensation for compulsory acquisition of property and that by giving to the owner, for compulsory acquisition of his property, compensation which was illusory, or determined by the application of principles which were irrelevant, the constitutional guarantee of compensation was not complied with……"*[73]

41. The main reason for holding the Bank Nationalising Act as unconstitutional in ***RC Cooper*** was that the principles specified in Schedule II of the Act, for determining compensation, were not appropriate. Many important factors like the goodwill of the bank and the value of unexpired periods of long-term leases were not taken into consideration for the determination of compensation. Para 117 and para 121 of the majority judgement summed up the striking down of Bank Nationalising Act as follows:

> *"117. We are of the view that by the method adopted for valuation of the undertaking, important items of assets have been excluded, and principles*

[73] (1970) 1 SCC 248, paras 89 -90.

> *some of which are irrelevant and some not recognised are adopted. What is determined by the adoption of the method adopted in Schedule II does not award to the named banks compensation for loss of their undertaking. The ultimate result substantially impairs the guarantee of compensation, and on that account the Act is liable to be struck down.*
>
> *.....*
>
> *121. Section 4 of the Act is a kingpin in the mechanism of the Act. Sections 4, 5, and 6, read with Schedule II provide for the statutory transfer and vesting of the undertaking of the named banks in the corresponding new banks and prescribe the method of determination of compensation for expropriation of the undertaking. Those provisions are, in our judgment, void as they impair the fundamental guarantee under Article 31(2). Sections 4, 5, and 6 and Schedule II are not severable from the rest of the Act. The Act must, in its entirety, be declared void."*[74]

Within a week of the pronouncement of the judgment in ***RC Cooper***, the Government came up with another ordinance which turned into the Banking Companies Act, 1970 (Act 5 of 1970). This new Act was the modified form of the earlier Act and this new Act provided for a specific amount to each bank nationalised, in order to facilitate the bank nationalisation. In this way, the first phase of Bank Nationalisation took place in India.

[74] (1970) 1 SCC 248, paras 117 and 121.

42. Ultimately the Parliament brought the Constitution (Twenty Fifth Amendment) Act, 1971 into force which *inter alia* further diluted the right to property. This Constitutional Amendment was the direct result of ***RC Cooper***, as it was evident from the Statement of Objects and Reasons of the Constitution (Twenty-fifth Amendment) Bill, 1971 which reads as follows:

> *"STATEMENT OF OBJECTS AND REASONS*
>
> *Article 31 of the Constitution as it stands specifically provides that no law providing for the compulsory acquisition or requisitioning of property which either fixes the amount of compensation or specifies the principles on which and the manner in which the compensation is to be determined and given shall be called in question in any court on the ground that the compensation provided by that law is not adequate. In the Bank Nationalization case [1970, 3 S.C.R. 530), the Supreme Court has held that the Constitution guarantees right to compensation, that is, the equivalent in money of the property compulsorily acquired. Thus in effect the adequacy of compensation and the relevancy of the principles laid down by the Legislature for determining the amount of compensation have virtuality become justiciable inasmuch as the Court can go into the question whether the amount paid to the owner of the property is what may be regarded reasonably as compensation for loss of property. In the same case, the Court has also held that a law which seeks to acquire or requisition property for a public purpose should also satisfy the requirements of article 19 (1) (f).*
>
> *The Bill seeks to surmount the difficulties placed in the way of giving effect to the Directive Principles of State Policy by the aforesaid interpretation. The word "compensation" is sought to be omitted from*

> *article 31(2) and replaced by the word "amount". It is being clarified that the said amount may be given otherwise than in cash. It is also proposed to provide that article 19(1)(f) shall not apply to any law relating to the acquisition or requisitioning of property for a public purpose.*
>
> *3. The Bill further seeks to introduce a new article 31C which provides that if any law is passed to give effect to the Directive Principles contained in clauses (b) and (c) of article 39 and contains a declaration to that effect, such law shall not be deemed to be void on the ground that it takes away or abridges any of the rights contained in article 14, 19 or 31 and shall not be questioned on the ground that it does not give effect to those principles. For this provision to apply in the case of laws made by State Legislatures, it is necessary that the relevant Bill should be reserved for the consideration of the President and receive his assent.*
>
> *(emphasis supplied)*

Amongst others, this Amendment substituted the word 'compensation' with the word 'amount' in Article 31(2). It also introduced Article 31-C, making legislations passed under Article 39 (b) & (c) immune from challenges under Articles 14 & 19 of the Constitution. The laws which were made subsequently and their challenge before the Courts have to be seen in the light of the background stated above.

43. It is true that the state of our economy and society has undergone a change since the Constitution was framed in the late 40s and first interpreted in the early 50s. Even till the 70s and

early 80s, this Court had no difficulty in interpretating and giving a meaning to the words 'material resources of the community', by including privately owned resources as its part. Doubts have been raised by this Court now, which is only significant of the times we presently live in. When a wider interpretation was given to the words "material resources" in the 60s, 70s and early 80s, it was in an era where socialism was still a principle embedded in our constitutional ethos and definitely in our economy. The political philosophy of that day also recognised and accepted this principle. Times have changed since then, and so has the governing philosophy which is now of a liberal and market driven economy. All the same, as our short but significant constitutional journey demonstrates the crucial Constitutional Amendments and its consequence, the landmark decisions of the Supreme Court relate as much to personal liberty as to wealth and its redistribution, which again is a part of the "material resources of the community", covered under Articles 38 and 39 of the Constitution. These decisions directly or indirectly touch upon "material resources of the community". Will we be correct in saying today that, private resources are not a part of the "material resources of the community". Can this be said in the light of the present times since 'Constitution is a living document'!

44. The Constitution is indeed a living document. The words and meanings in the Constitution are not frozen in time, they change and evolve. The Constitution cannot be limited to the vision of its founding fathers.[75] To borrow a phrase from Anatole France if we do that then the dead would be the living and the living the dead.[76] *"The judge has an important role in the legislative project: The judge interprets statutes. Statutes cannot be applied unless they are interpreted. The judge may give a statute a new meaning, a dynamic meaning, that seeks to bridge the gap between law and life's changing reality without changing the statute itself. The statute remains as it was, but its meaning changes, because the court has given it a new meaning that suits new social needs. The court fulfils its role as the junior partner in the legislative project. It realizes the judicial role by bridging the gap between law and life."*[77]

However, the meaning can change to an extent and no further. It can expand to an extent and evolve to a limit. Words and expressions cannot have an entirely opposite meaning to what was initially prescribed to them. In ***Video Electronics Pvt. Ltd.***

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[75] Aharon Barak, *Hermeneutics and Constitution Interpretation*, 14 CARDOZO L. REV. 767 (1992-93), Pg. 772.
[76] ANATOLE FRANCE et. al., CRAINQUEBILLE (Dodd, Mead & Co., Inc., 1922), Pg. 171. "The precise reference is from the following sentence "That which is written by the dead will be erased by the living. Were it not so, the will of those who have passed away would impose itself upon those who yet survive; and the dead would be the living and the living the dead".
[77] AHARON BARAK, THE JUDGE IN A DEMOCRACY (Princeton University Press, 2006), Pgs. 4-5.

v. State of Punjab, **(1990) 3 SCC 87**, Justice Sabyasachi Mukharji had said:

> *"Constitution is a living organism and the latent meaning of the expressions used can be given effect to only if a particular situation arises. It is not that with changing times the meaning changes but changing times illustrate and illuminate the meaning of the expressions used. The connotation of the expressions used takes its shape and colour in evolving dynamic situations."*[78]

45. We have earlier referred to the existing philosophy of the day, the purpose of Directive Principles and the speech of Dr. Ambedkar on inequality in the country when the Constitution was being framed. Has our world changed? Has the inequality in the country decreased? There are no definite or easy answers to these questions.

Although in absolute terms poverty may have decreased[79], as some reports indicate. Possibly, the lowest strata of our society in economic terms may be better off than what it was say 50 years earlier. But this would not mean that the inequality in our society too has decreased, or the gap between the rich and the poor has

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[78] (1990) 3 SCC 87, para 36.

[79] NATIONAL MULTIDIMENSIONAL POVERTY INDEX: A PROGRESS REVIEW 2023, NITI AAYOG, GOVERNMENT OF INDIA.

narrowed down. There are conflicting reports on inequality and poverty.

All the same, UNDP[80] Human Development Report shows India to be lagging behind in human development.[81] The Human Development Index ranks India at the 134th position, out of 193 countries, which were examined.[82] The Global Hunger Index (GHI) Report, which is based on WHO[83] parameters, similarly ranks India at the 105th spot, out of 127 countries evaluated[84].

The least the above figures indicate is that there are still large grounds which remain to be covered. The economic conditions as they exist today require the efforts of the State with its welfare measures, *inter alia* under Article 39(b) & (c) of the Constitution, as interpreted in ***Ranganatha Reddy*** and ***Sanjeev Coke***.

46. Undoubtedly this Court has given an expansive meaning to the phrase "material resources of the community". We have seen the background and the historical necessity both for the

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[80] United Nations Development Programme.
[81] As per the UNDP Development Report, India's Gini coefficient is 0.444. The Gini coefficient measures the dispersion of income or distribution of wealth among the members of a population, where 1 represents perfect inequality while 0 represents perfect equality. *Available at* https://hdr.undp.org/data-center/human-development-index#/indicies/HDI.
[82] *Available at* https://hdr.undp.org/data-center/human-development-index#/indicies/HDI.
[83] World Health Organisation.
[84] Global Hunger Index 2024. *Available at* https://www.globalhungerindex.org/pdf/en/2024.pdf

incorporation of such provisions and its interpretation by this Court.

Ultimately, we the people of India have resolved "to secure to all its citizens"- justice, liberty, equality and fraternity. The Constitution of India secures these values for all its citizens and speaks in an expansive language, particularly for the provisions contained in Part III and Part IV. This is how the Constitution has been interpreted by this Court all along. It is due to the expansive meaning given by the Supreme Court to Articles 14 and 21 that we have today an entire body of case laws, which protects the life and liberty of its people.

47. Articles 14, 19 and 21 of the Constitution have been given an expansive meaning by this Court, which was never perceived by the framers of the Constitution. But this is precisely the task of the Constitutional Courts.

There is a long list of decisions where this Court has protected the fundamental rights by expanding the scope and ambit of Articles 14 and 21 of the Constitution. To mention some of these:

1. In ***Maneka Gandhi v. Union of India,*** **(1978) 1 SCC 248**, this Court expanded Article 21 many folds by establishing its co-relationship with Articles 14 and 19. It culminated in a position of law where a law depriving 'personal liberty' has to meet the

requirements of Article 19 and 'procedure' under Article 21 has to satisfy Article 14, meaning that such 'procedure' cannot be arbitrary but has to be 'just, fair and reasonable'. A law which was arbitrary was violative of Article 14 of the Constitution of India.

2. In ***MH Hosket v. State of Maharashtra,*** **(1978) 3 SCC 544** this Court relied on ***Maneka Gandhi*** to recognize the right of prisoners to free legal assistance including help in filing appeals.

3. In ***Hussainara Khatoon v. Home Secretary, State of Bihar (I)*** **(1980) 1 SCC 81**, it was held that the right to a speedy trial is a fundamental right under Article 21 and any law keeping undertrials behind bars for long cannot be regarded as 'reasonable, just or fair'.

4. In ***Sunil Batra v. Delhi Administration,*** **(1980) 3 SCC 488** this Court condemned the inhuman and degrading treatment of prisoners, particularly the use of solitary confinement and held that fundamental rights do not end at the prison gates. It was emphasised that prison authorities must respect the dignity and rights of inmates under Articles 14, 19, and 21 of the Constitution. Thus, 'human dignity', which is apparently not a fundamental right was read as a part of Article 21 of the Constitution of India.

5. In ***Bijoe Emmanuel v. State of Kerala*** **(1986) 3 SCC 615** this Court held that expelling students for not singing the National Anthem, for the reasons that it went against their religious beliefs as Jehovah's Witnesses, was a violation of their Right to Freedom of Religion under Article 25. Further, it was observed that Article 19 also stood violated as no law required individuals to sing the national anthem, provided that they do not disrespect it. Tolerance was read as a part of the fundamental secular culture of this country.

6. In ***Vishaka v. State of Rajasthan,*** **(1997) 6 SCC 241** this Court, drawing upon constitutional principles and international conventions, established guidelines to address sexual harassment at the workplace, citing the absence of specific legislation and to ensure the protection of women's rights to equality, life, and liberty under Articles 14, 15, and 21.

7. In ***K.S. Puttaswamy v. Union of India*** **(2017) 10 SCC 1** this Court affirmed right to privacy as a fundamental right under the Constitution, which was read as a right and a part of 'life and liberty' under Article 21. It was held that privacy encompasses autonomy, dignity, and the freedom to control their own personality.

8. In ***Navtej Singh Johar v. Union of India*** **(2018) 10 SCC 1** this Court invalidated Section 377 of the Indian Penal Code, 1860, on the grounds that it contravenes Articles 14 and 15 of the Constitution by discriminating based on gender identity. Additionally, it was found to infringe upon the right to life, dignity, and autonomy guaranteed under Article 21, as well as the right to freedom of expression under Article 19(1)(a), thereby impeding the ability of LGBT individuals to realise their identity fully.

The words in Articles 14 and 21 apparently do not give the meaning which has come to be given to these two Articles now, through a catena of decisions of this Court. They cover the whole range of Rights as this is how they have evolved and expanded by this Court and the High Courts. A Constitutional provision acquires its meaning only after it is interpreted by a Constitutional Court.

48. The provisions in Article 39(b) & (c) too have to be read in the light of Article 38 of the Constitution of India. Once we do that, we cannot but give an expansive meaning to the phrase "material resources of the community".

The meaning which must be given to "material resources of the community" is what has been given to it in ***Ranganatha Reddy*** by the Three Judges and what has been followed in the Constitution Bench decision in ***Sanjeev Coke***. To my mind, this has been the correct interpretation of the phrase "material resources of the community". To reiterate what was said by Justice Krishna Iyer in ***Ranganatha Reddy***:

> *"… material resources of the community in the context of re-ordering the national economy embraces all the national wealth, not merely natural resources, all the private and public sources of meeting material needs, not merely public possessions. Everything of value or use in the material world is material resource and the individual being a member of the community his resources are part of those of the community."*[85]

49. It is for the legislature to decide how the ownership and control of material resources is to be distributed in order to

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[85] (1977) 4 SCC 471, para 81.

subserve common good. Once the expansive meaning of "material resources of the community" is determined, there is no necessity of drawing further guidelines for the legislatures to determine as to what will constitute material resources. How to control and distribute a material resource is also the task of the Legislature, but while doing so what has to be seen is that the control and ownership of the material resource be so distributed that it subserves common good of the community. If it does not, then such a legislation can be struck down as the Judiciary is not deprived of its powers of judicial review. The legislation in question has to establish a nexus with the principles specified in Article 39(b) and (c) to be a valid legislation. This is the law in terms of ***Kesavananda Bharati*** and ***Minerva Mills***. To put it differently what and when do the "privately owned resources" come within the definition of "material resources" is not for this Court to declare. This is not required. The key factor is whether such resources would subserve common good. Clearly the acquisition, ownership or even control of every privately owned resource will not subserve common good. Yet at this stage we cannot come out with a catalogue of do's and don'ts. We must leave this exercise to the wisdom of the legislatures.

50. The incorporation of Article 38 as well as Article 39(b) and (c) in Part IV of our Constitution was based on the prevalent philosophy of the time and the path of development India chose to follow. The interpretation given to the above provisions by this Court, particularly in ***Ranganatha Reddy*** and ***Sanjeev Coke*** also has its contextual relevance. Perhaps in some ways situations have changed. What has not changed, however, is the inequality. There is today a political equality and there is also an equality in law, yet the social and economic inequalities continue as cautioned by Dr. Ambedkar in his speech in the constituent Assembly on November 25, 1949[86].

The inequality in income and wealth and the growing gap between the rich and the poor is still enormous. It will therefore not be prudent to abandon the principles on which Articles 38 and 39 are based and on which stands the Three Judge opinion in ***Ranganatha Reddy*** and the unanimous verdict in ***Sanjeev Coke.***

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[86] *"On the 26th of January 1950, we are going to enter into a life of contradictions. In politics we will have equality and in social and economic life we will have inequality. In politics we will be recognizing the principle of one man one vote and one vote one value. In our social and economic life, we shall, by reason of our social and economic structure, continue to deny the principle of one man one value. How long shall we continue to live this life of contradictions? How long shall we continue to deny equality in our social and economic life? If we continue to deny it for long, we will do so only by putting our political democracy in peril. We must remove this contradiction at the earliest possible moment or else those who suffer from inequality will blow up the structure of political democracy which this Assembly has so laboriously built up."*

[From*:* Rudrangshu Mukherjee (ed.), Great Speeches of Modern India, (Random House India, 2007), Page 218-219]

The broad and inclusive meaning given to the expression "material resources of the community" by Justice Krishna Iyer and Justice O. Chinnappa Reddy in ***Ranganatha Reddy*** and ***Sanjeev Coke*** respectively has stood us in good stead and has lost none of its relevance, or jurisprudential value, nor has it lost the audience which appreciates these values.

Before I conclude, I must also record here my strong disapproval on the remarks made on the Krishna Iyer Doctrine as it is called. This criticism is harsh, and could have been avoided.

The Krishna Iyer Doctrine, or for that matter the O. Chinnappa Reddy Doctrine, is familiar to all who have anything to do with law or life. It is based on strong humanist principles of fairness and equity. It is a doctrine which has illuminated our path in dark times. The long body of their judgment is not just a reflection of their perspicacious intellect but more importantly of their empathy for the people, as human being was at the centre of their judicial philosophy. In the words of Justice Krishna Iyer himself : "The Courts too have a constituency – the nation – and a

manifesto – the Constitution". ***(Bangalore Water Supply & Sewerage Board. vs A. Rajappa & Others)***[87]**.**

.....J.
[SUDHANSHU DHULIA]

New Delhi.
November 5, 2024.

[87] (1978) 2 SCC 213, Para 7, Page 229.