

Directive Principles of State Policy and Social Justice

Dr. Mohan Singh Saggu

The Constitution of India, the supreme law of land envisages social and economic justice as its basic objective to ensure meaningful and dignified life for all citizens. Social justice, equality and dignity of person are cornerstones of social democracy. The concept 'Social Justice' which the Constitution of India adopted, consists of diverse principles essential for the orderly growth and development of the personality of every citizen. "Social justice" is thus an integral part of "justice" in generic sense.

Social justice is a dynamic device to mitigate the sufferings of the poor, weak, depressed classes, tribes and deprived sections of the society and to elevate them to the level of equality to live a life with dignity and honour. Social justice is not a simple or single idea of a society but is an essential part of complex social change to relieve the poor from handicaps, penury to ward off distress, and to make their life livable, for greater good of the society.

The Constitution, therefore, directs the State to accord justice to all the members of the society in all facets of human activity. The concept of social justice embeds equality, and enliven practical content of life. Social justice and equality are complementary to each other so that both should maintain their vitality. Rule of law, therefore, is a potent instrument of social justice to bring about equality in reality.

Directive Principles of State Policy constitute one of the basic and an significant part of the Constitution of India. At the time of the independence, the socio-economic condition of India was precarious. Common people and the labour were exploited in the hands of Zamindars and owners of the capital market. Most of the population was illiterate and poor, and the framers of the Constitution desired to uplift the downtrodden. They were aware of the fact that the resources available in the country were scarce and it would not be possible to include these principles in the chapter of fundamental rights. Therefore, they included these in the form of "Directive Principles of State Policy" which are not justifiable, but form a fundamental part in the governance of the country and it is the duty of the State to enforce such directives. These are the basic guidelines as mentioned in the Indian

Constitution to have a society characterized by social, economic and political justice accompanied by liberty, equality and fraternity.

These principles are specific policies, a set of instructions which are to be complied with by the State in distant future. These principles cannot be enforced in any court of law, nor are mandatory for the State to implement these. Unlike Fundamental Rights, Directive Principles are seen as a positive set of principles, as it permits the State to implement them at its convenience. But it has been pronounced in various decisions of the Supreme Court, though not enforceable, should not be ignored by the legislature.

Directive Principles of State Policy aims at establishment of a welfare state by securing social and economic justice. These principles have great moral and educational value also. These constitute the conscience of the Indian Constitution and the mirror of public opinion and these principles always reflect the will and the aspirations of the people. It is also a yardstick to measure the performance of the Government. These principles are fundamental in the governance of the country and the State should follow these principles for progress of the country.

The economic condition of India has changed over a period of time, and the resources and means which are now available with them are much greater than ever before. Considering these facts, it now becomes the duty of the state to implement these directives as and when it becomes necessary to implement them. Instead, there have been various provisions which were once part of these directive principles have been given effect in the form of some legislation, and some have been included in some other parts of the Indian Legal System. But, still there is a need to understand the basic difference between the provisions and its applicability which are present under the head of Fundamental Rights and Directive Principles of State Policy.

There are some basic differences which are to be kept in mind while dealing with Fundamental Rights and Directive Principles. But as the time has passed, the importance of directive principles has been increasing through various judicial verdicts. The Supreme

Court and High Courts have initiated to give primacy to the Directive Principles more than ever before.

The directive principles, though fundamental in the governance of the country, are not enforceable by any court in terms of the express provisions of Article 37 of the Constitution but it shall be the duty of the State to apply these principles in making law. Its social aspect can, however, be amended only by legislation to carry out the objectives of the directive principles of state policy.

Article 37: Application of the principles contained in this part.

In the case of *State of Madras v. Champakam Dorairajan*¹ the Court held that the Directive Principles of the State Policy cannot override the provisions found in Part III which, notwithstanding other provisions, are expressly made enforceable under Article 32. The chapter of 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 appropriate article in Part III. The Directive Principles of State Policy have to conform to and run as subsidiary to the Fundamental Rights. However, so long as there is no infringement of any Fundamental Right, to the extent conferred by the provisions in Part III, there can be no objection to the State acting in accordance with the directive principles set out in Part IV.

Again in *Kerela Education Bill, Re, 1957*² it was held that the Court should try to give as much effect to both as possible by adopting the principle of harmonious construction. There is no conflict between Part III and Part IV of the Constitution which are complementary and supplemental to each other. The hopes and aspirations aroused by the Constitution will be the minimum needs of the lowest of our citizens.³

In the past the Apex Court had decided many cases and as a result these case laws have provided directions and guidelines to the state for their implementation. These verdicts of the Court had reiterated at various occasions that State should not overlook the Directive Principles, and it should implement these principles as and when it become important to do so.

The importance of Directive Principles was enhanced by the 42nd amendment to the Indian Constitution which provided that Directive Principles cannot be declared unconstitutional only on the ground that they have violated any of the fundamental rights. The judiciary played an active role and curtailed the power of the legislature to amend the Indian Constitution to the extent that it should not amend the basic structure of the Indian Constitution.

Social order based on justice

Article 38(1) provides that the State shall strive to promote the welfare of the people by securing as effectively as it may, a social order in which justice—social, economic, political—shall inform all the institutions of national life.

This directive only reaffirms what has been said in the Preamble according to which the function of the Republic is to secure to all its citizens social, economic, and political justice.

The Apex Court in *Harjinder Singh Vs. Punjab State Warehousing Corporation* held that the High Courts are duty bound to keep in mind that the Industrial Disputes Act and other similar legislative instruments are social welfare legislations and the same are required to be interpreted keeping in view the goals set out in the Preamble of the Constitution and the provisions contained in Part IV thereof in general and Articles 38, 39(a) to (e), 43 and 43A in particular, which mandate that the State should secure a social order for the promotion of welfare of the people, ensure equality between men and women and equitable distribution of material resources of the community to sub-serve the common good and also ensure that the workers get their dues.

Article 38(2)

In order to implement economic justice and equality of opportunity, Section (2) in Article 38 was inserted by 44th Constitution Amendment Act, 1978. Its objective was to minimize the inequalities in income, and 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. This amendment has paved the way to usher in a socialist society, even without resorting to nationalization of the mean of production. A law which complies with Article 38 cannot conceivably abrogate the

fundamental freedoms except certain economic rights and that too, for the purpose to minimize inequalities.

Certain principles of socialistic policy to be followed by the State.

Article 39, contains the principles of what is known as the socialistic "welfare State". It attempts to promote social justice by means of nationalization and State action for a better distribution of material resources of the country among its citizens and to prevent the exploitation of the weak and the helpless.

Article 39 (a) provides that the citizens both men and women equally have the right to an adequate means of livelihood. It furnishes beacon light that justice be done on the basis of equal opportunity and no one be denied justice by reason of economic or other disabilities. The judicial function of a Court requires to build up continuity of socio-economic empowerment to the poor to sustain equality of opportunity and status and the law should constantly meet the needs and aspiration of the society in establishing the egalitarian of the society social order.

This article provides equal right for all citizens irrespective of sex, to adequate means of livelihood. In *Olga Tellis v. Bombay Municipal Corporation*,⁴ the Supreme Court held that the right to life includes right to livelihood because no person can live without the means of livelihood. If the right to livelihood is not treated as part of constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation. Such deprivation would not only denude the life of its effective content and meaningfulness but it would make life impossible to live.

Article 39 (b) provides that the ownership and control of the material resources of the community are so distributed as best to sub-serve the common good.

In *Sanjeev Coke Manufacturing Co. v. Bharat Cooking Coal Ltd.*⁵ the Court interpreted the word "*socialism*" and Article 39(b) of the Constitution and had held that the broad egalitarian principle of economic justice was implicit in every Directive Principle. The law was designed to promote broader egalitarian social goals to do economic justice for all. The object of nationalization of mining was to distribute resources of the nation.

The expression "*material resources of the community*" as used in Article 39(b) of the Constitution means all things which are capable of producing wealth for the community. The expression should not be interpreted in a narrow fashion and the words must be understood in the context of the constitutional goal of establishing a sovereign, socialist, secular' democratic republic. Resources of the community do not mean public resources only but include private resources as well. The distribution envisaged by Article 39 (b) necessarily takes within its stride the transformation of wealth from private-ownership into public-ownership and is not confined to that which is already public-owned.

In *State of Karnataka vs Shri Ranganatha Reddy*⁶ the Supreme Court, considering the nationalization of the contract carriages, had held that the aim of socialism is the distribution of the material resources of the community in such a way as to sub-serve the common good. The principle embodied in Article 39 (b) would give full play to the distributive justice. It fulfills the basic purpose of restructuring the economic order. Article 39 (b), therefore, has a social mission. Its goal is to undertake distribution as best to sub-serve the common good.

In *State of Tamil Nadu v. L. Abu Kavur Bai*⁷ the same interpretation was given by the Court upholding nationalization of State Carriages and Contract Carriages (Acquisition) Act. Therefore, all State actions should be such to make socio-economic democracy with liberty, equality and fraternity, a reality to all the people through democratic socialism under the rule of law.

Article 39 (c) provides that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment.

Article 39 (d) provides that there is equal pay for equal work for both men and women. The apex Court in *Randhir Singh vs Union of India*⁸ had held that the principles of equal pay for equal work for both men and women is not a fundamental right but it is fundamental goal and therefore capable of enforceable. The principle of equal pay for equal work is deducible from Articles 14, 16 and 39 (d) and any be properly applied to cases of unequal scales of pay based on no classification or irrational classification though, those drawing the different scales of pay do identical work under the same employer. It was held that the equal pay for equal work is certainly a constitutional goal and therefore capable of enforcement through constitutional remedies under Article 32 of the Constitution.

In the case of *Daily Rated Casual Labour vs Union of India*.⁹ it was held that the doctrine of equal pay for equal work is equally applicable to both men and women, even the daily wagers are also entitled to the same wages as other permanent employees in the department employed to do the identical work.

In *U.P. State Sugar Corporation Ltd. v. Sant Raj Singh* ¹⁰, the Court opined that possession of a higher qualification has all along been treated by this Court to be a valid basis for classification of two categories of employees.

Similarly in, *State of Haryana vs Rajpal Sharma*, the supreme court has held that the teachers employed under or in privately managed aided schools in the state of Haryana are entitled to the same salary and dearness allowances as is paid to teachers employed in the government schools. If the kind of work is not identical then it does not matter if men are paid more.

In *State of Haryana v. Charanjit Singh* ¹¹ the Supreme Court had held that the concept of 'equal pay for equal work' has undergone a sea of change in series of subsequent decisions. The Court after reviewing all the case laws on the subject observed as: "Undoubtedly, the doctrine of "equal pay for equal work" is not an abstract doctrine and is capable of being enforced in a court of law. But equal pay must be for equal work of equal value.

The Supreme Court in *Mackinnon Mackenzie & Co. Ltd. v. Audrey D'costa* ¹² decided that while performing same or similar nature of work lower remuneration to women workers discriminatory on ground of sex.

It is true that the principle of 'equal pay for equal work' is not expressly declared by the Indian Constitution to be a fundamental right but it certainly is a constitutional goal. Equal pay for equal work' is not a mere demagogic slogan. It is a constitutional goal capable of attainment through constitutional remedies by the enforcement of constitutional rights.¹³

In *State of Andhra Pradesh vs V.G.Sreenivasa Rao* it has been held that giving higher pay to a junior in the same cadre is not illegal and violative of Article 39 (d) if there is rational basis.

Article 39(d) of the Indian Constitution states that the state shall, in particular, direct its policy towards securing that there is equal pay for equal work for both men and women. This provision has been considered by Supreme Court from time to time, and finally it was decided that “Equal pay for equal work is not expressly declared by the Constitution as a Fundamental Right but in view of the Directive Principles of State Policy as contained in Art. 39(d) of the Constitution “equal pay for equal work” has assumed the status of Fundamental Right.

Article 39 (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.

Article 39 (f) provides 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.¹⁴

Equal justice and free legal aid.

Article 39A has often been relied in support of right to legal aid as well as legal aid programmes. In pursuance of this Article, the Parliament had enacted the Legal Service Authorities Act, 1987.

Article 39-A was inserted by the Constitution (42nd Amendment) Act, 1976. The objective behind this Article was to promote justice on a basis of equal opportunity and to provide free legal aid to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. The Codes of Civil Procedure and Criminal Procedure have already been amended to help the poor litigants and after the passing of the Constitution (42nd Amendment) Act, the States will take up specific legislation to provide legal aid to the poor as directed by the new Article 39A.

In *Sheela Barse v. State of Maharashtra*¹⁵ the Supreme Court has held that free legal assistance to a poor or indigent accused, arrested and put in jeopardy of his life or personal liberty, is a constitutional imperative mandated not only by Article 39 A but also by Articles 14 and 21 of the Constitution.

'Legal aid' and 'speedy trial' have now been held to be fundamental rights under Article 21 of the constitution available to all prisoners and enforceable by the courts. The state is under a duty to provide lawyer to a poor person and he must pay to the lawyer his fee as fixed by the court. *Hussainara Khatoon vs State of Bihar*¹⁶. Same opinion was given in the case of *A.M. Hoskot vs State of Maharashtra*¹⁷.

In *Air India Statutory Corporation vs United Labour Union*, it was held that the concept of social justice consists of diverse principles for orderly growth and development of personality of every citizen. The aim of social justice is to attain a substantial degree of social, economic, and political equality which is legitimate expectations and constitutional goal.

Laying stress on the importance of legal aid programmes the Supreme Court in *Center For Legal Research v. State of Kerala*¹⁸ held that there can be no doubt that if the legal aid programme is to succeed it must involve public participation. The legal aid programme which is meant to bring social justice to the people cannot remain confined to the traditional or litigation oriented program but it must take into account socio-economic conditions prevailing in the country and adopt a more dynamic approach.

Directives for right to work, to education and to public assistance in certain cases.

Article 41 directs that the State shall, within the limit of its economic capacity and development, make effective provisions for securing the right to work as fundamental with just and humane conditions of work by suitable legislation, to education and to public assistance in cases of unemployment, old age, sickness and disablement and in other cases of undeserved want. The worker shall be assured of living wages, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities to the workmen.

The Supreme Court in *Mohini Jain v. State of Karnataka*¹⁹ has held that Article 41 recognises an individual's right "to education" which is concomitant to the fundamental rights. Without making it a reality the fundamental rights shall remain beyond the reach of large majority which is illiterate. The State is under a constitutional mandate to establish educational institutions at all levels to enable the citizens to enjoy the said right. Charging

capitation fee in consideration of admission to educational institutions is a patent denial of a citizen's right to education under the Constitution. Right to Education was included in the list of Fundamental Rights in the year 2002 by 86th Amendment Act, and became functional in the year 2010.

. *Just and humane condition of work and maternity relief.*

Article 42 directs that the State shall make provisions for securing just and humane condition of work and for maternity relief.

In *Municipal Corporation of Delhi v. Female Workers (Muster Roll)* ²⁰, the Court while upholding the right of the female workers to get maternity leave relied upon the doctrine of social justice and stated that the provisions of the same must be read into the service contracts of Municipal Corporation.

Speaking for the benevolent legislation Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and its importance for promoting social justice the Supreme Court in *Regional P.F. Commissioner v. Hooghly Mills Co. Ltd.* ²¹ opined that it is no doubt true that the said Act effectuates the economic message of the Constitution as articulated in the Directive Principles of State Policy. Under the Directive Principles the State has the obligation for securing just and humane conditions of work which includes a living wage and decent standard of life. The interpretation of the said Act must not only be liberal but it must be informed by the values of Directive Principles.

. *Living wage for workers.*

Article 43 provides provision for living wages for workers; a wage which will enable him to provide his family with all the material things which are needed for their health and physical well being, enough to enable him to qualify to discharge his duties as a citizen. The concept of living wage includes in addition to the bare necessities of life, such as food, shelter, and clothing provision for education of children and insurance etc.

The concept of living wage has been discussed by the Supreme Court in *Standard Vacuum Refining Co. of India v. Workmen* ²². The Court has held that in construing wage structure the considerations of right and wrong, propriety and impropriety, fairness and

unfairness are also taken into account to some extent. The concept of a living wage is not a static concept; it is expanding and the number of its constituents and their respective contents are bound to expand and widen with the development and growth of national economy

The Constitution (42nd) Amendment Act, 1976 have introduced Article 43-A in the Constitution which provides for participation of workers in management of industries.

Article 43-A²³ The objective behind this Article was that in a capitalistic economy, the ownership, along with the management, of any industry or enterprise belongs to the person who provides the capital; the workers are hired and only get wages from the capitalist to whom goes the profit or the loss. Under a socialist economy, there is no place for a capitalist, because all means of production, together with their management, would belong to the State. But socialism does not believe in any violent transition from capitalism to collectivism, but believes in a phased transition.

In *National Textile Workers' Union v. P.R. Ramkrishnan* ²⁴ the Supreme Court has expressed that the Indian Constitution has shown profound concern for the workers and given them a pride of place in the new socio-economic order. The constitutional mandate under Article 43A is clear and undoubted that the management of the enterprise should not be left entirely in the hands of the suppliers of capital but the workers should also be entitled to participate in it. The owners of capital bear only limited financial risk and otherwise contribute nothing to production while labour contributes a major share of the product. While the former invest only a part of their moneys the latter invest their sweat and toil; in fact, their life itself. Thus, from being a factor of production the labour has become a partner in industry. It is a common venture in the pursuit of desired goal.²⁵

In *Krishan Singh v. Executive Engineer, Haryana State Agricultural Marketing Board, Rohtak* ²⁶, the Supreme Court reiterating to its earlier stand held that the Court is bound to keep in mind the Act and other similar legislative instruments, which are social welfare legislations, and they should be construed and interpreted keeping in view of the goals set out in Articles 38, 39 (a) to (e), 43 and 43A. The workers, therefore, have a special place in a socialistic pattern of society. They are no more vendors of toil they are not a

marketable commodity to be purchased by the owners of capital. They are producers of wealth as much as capital they supply labour without which capital would be impotent.

. Provisions for free and compulsory education for children.

Article 45 required that the State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years.

In *Unni Krishnan V/S State of Andhra Pradesh*,²⁷ the Supreme Court has held that the right to education up to the age of 14 years is the fundamental right within the meaning of Article 21 of the Constitution, but thereafter the obligation of the state to provide education flows directly from right to life.

Promotion of Educational and Economic Interest of Weaker Sections

Article 46 enjoins that the State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Schedule Castes and Schedule Tribes, and shall protect them from social injustice and all forms of exploitation.

Unless the educational and economic interests of the weaker sections of the people are promoted quickly and liberally, the ideal of establishing social and economic equality cannot be attained.

Reservation is one of the many tools that are used to preserve and promote the essence of equality, so that disadvantaged groups could be brought to the forefront of civil life. The continued division of the society on the basis of castes ultimately resulting in the existence of an economically depressed class based on caste structure and caste barrier. In order to establish a classless and casteless society, steps had to be taken to gradually eliminating the caste structure. Unfortunately, much could not be done in this direction rather the caste stratification has become more rigid to some extent, and where concessions and preferred treatment schemes are introduced for economically disadvantaged classes, the caste structure received a fresh lease of life. In fact there is a mad rush for being recognised as belonging to a caste which by its nomenclature would be included in the list of socially and educationally backward classes.²⁸

The Supreme Court in *State of Kerala v. N.M. Thomas*²⁹ expressed that the Preamble to the Constitution silhouettes a 'justice-oriented' community. To neglect this obligation is to play truant with Article 46. To give equality of opportunity for employment to the members of Scheduled Castes and Scheduled Tribes, it is necessary to take note of their social, educational and economic environment.

The members of the Scheduled Castes and the Tribes have been given a special status in the Constitution and they constitute a class by themselves. That being the position it follows that they do not fall within the purview of Article 16 (2) of the Constitution which prohibits discrimination between the members of the same caste.

. *Duty to raise standard of living and improvement of health.*

Article 47 imposes duty upon the state to raise the level of nutrition and the standard of living of its people and the improvement of public health. In particular the state should bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and drugs which are injurious to health.

In *State of Bombay v. FN. Balsara*³⁰ the Supreme Court examined the validity of the Bombay Prohibition Act, 1949. In that case, the Court held that in view of the provisions of Article 47 of the Constitution, the total prohibition on potable liquor would be reasonable.

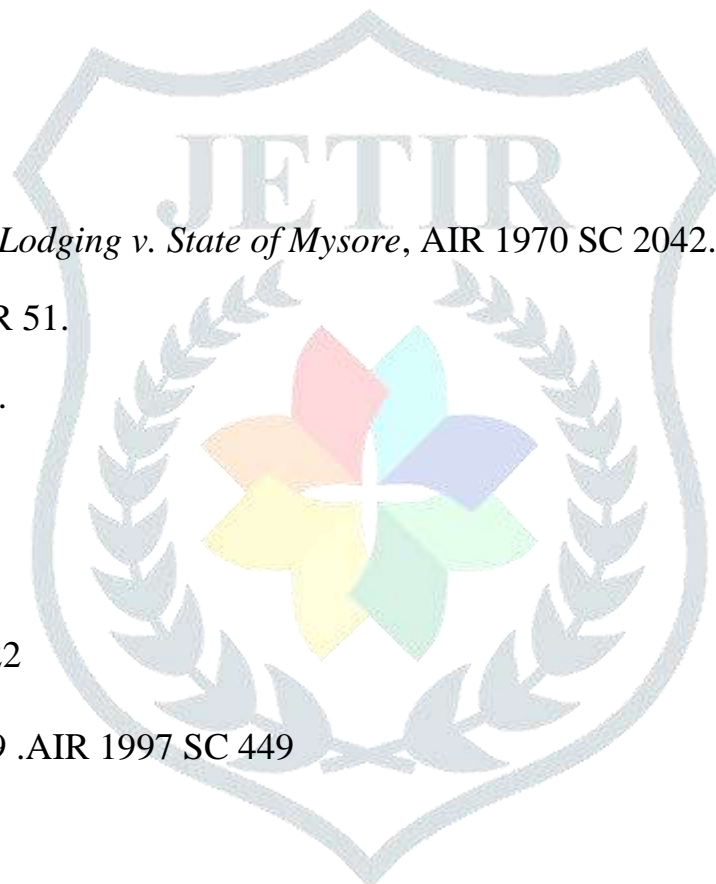
It is amply clear that the attitude of the judiciary towards the Directive Principles of State Policy had considerably changed. The Courts have been extremely cooperating in achieving the ideals such as the abolition of zamindari, enforcement of prohibition, ensured adequate wages, living wage and leisure to workmen as part of meaningful right to life, equal pay for equal work to both men and women, raising the standard of living, creating just and humane conditions of work, a favourable climate for the pursuit of happiness and for the development of human personality. The Courts took cognizance of the Directives and interpreted them on many occasions seeking to convey the true spirit of their conception as also their scope. They provide a framework for establishing welfare state and achieving economic and social democracy.

In totality the directive principles operate well in the planning process, but still have not been fully translated into action. It cannot be denied that various governments have put in some efforts in this direction.

In view of the above discussions and findings, it could be concluded that almost all the Directives have now become executable by the Courts except a few despite the express bar under Article 37. Let us hope for the implementation of the non - implemented directive principles also in the near future.

References

1. AIR 1951 SC 226.
2. AIR 1958 SC 956.
3. *C. B Boarding and Lodging v. State of Mysore*, AIR 1970 SC 2042.
4. 1985 suppl. (2) SCR 51.
5. (1983) 1 SCR 1000.
6. (1978) 1 SCR 641
7. (1984) 1 SCR 725.
8. AIR 1982 SC 879 22
9. (1988) 1 SCC 122 9 .AIR 1997 SC 449
- 10 (1989) 2 SCC 290
11. (2006) 9 SCC 82
12. (2006) 9 SCC 321.
13. (1987) 2 SCC 469.
14. *Randhir Singh v. Union Of India*, AIR 1982 SC 879.
15. Substituted by the Constitution (42nd Amendment) Act, 1976.
16. AIR 1983 SC 378.
17. AIR 1978 SC1548



18. AIR 1986 SC 1322.
19. (1992)3 SCC 666.
20. (2000) 3 S.C.C. 224.
21. (2012) 2 S.C.C. 489.
22. AIR 1961 SC 895.
23. Inserted by the Constitution (42nd Amendment) Act, 1976.
24. (1983) 1 SCC 228.
25. *Hindustan Tin Works Pvt. Ltd v. Employees Of Hindustan Tin Works*, AIR 1979 SC 75.
26. (2010) 3 SCC 637.
27. 1993 1 SCC 645
28. *Ashoka Kumar Thakur v. Union Of India*, (2008) 6 SCC 1
29. (1976) 2 SCC 310.
30. AIR 1951 SC 318.

