FUNDAMENTAL RIGHTS AND DIRECTIVE PRINCIPLES: AN ANALYTICAL APPROACH TOWARDS SOCIAL JUSTICE

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Abstract:

The relationship between the Fundamental Rights and Directive Principles is best illustrated in the Article 37. It provides that Directives are not enforceable in a court of law. But, they are fundamental in the governance of the country and it shall be the duty of the state to apply them in making laws. In view of such provision, there have arisen certain conflicts between the Directive Principles and Fundamental Rights. But, as of now Article 39(b) and 39(c) can take precedence over Fundamental Right enshrined under Article 14 and Article 19. During the initial period from 1950 to 1966 there was emphasis on sacrosanct character of Fundamental rights. The Supreme Court held the view that if two interpretations of a law are possible, the one avoiding conflict should be accepted. But in case of a single interpretation, leading to conflict fundamental right would prevail over directive principles. In this view, constitutionality of 1st Amendment Act was hailed as valid. In the historic Golam Math's case, 1967, the Supreme Court emphasized on unamendability of the fundamental rights which have been given a 'transcendental position.' The Government passed 24th and 25th Amendment Act 1971. The 24th Constitution Amendment Act made it clear that the Parliament has power to amend any provision of the Constitution, including the fundamental Rights.

Keywords: - *Harmonious Construction, Constitutional Amendments, Right to Freedom, Social Justice, Judicial Review, Fundamental Duties, Interpretative Approach, Social Philosophy, Supreme Court of India*

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INTRODUCTION

The Fundamental Rights and Directive Principles of State Policy are sections of the Constitution of India that prescribe the fundamental obligations of the State to its citizens and the rights of the citizens. These sections comprise a constitutional bill of rights for government policy-making and the behaviour and conduct of citizens. These sections are considered vital elements of the constitution, which was developed between 1947 and 1949 by the Constituent Assembly of India. The Fundamental Rights is defined as the basic human rights of all citizens. These rights, defined in Part III of the Constitution, apply irrespective of race, place of birth, religion, caste, creed or gender. They are enforceable by the courts, subject to specific restrictions. The Directive Principles of State Policy are guidelines for the framing of laws by the government. These provisions, set out in Part IV of the Constitution, are not enforceable by the courts, but the principles on which they are based are fundamental guidelines for governance that the State is expected to apply in framing and passing laws. The Fundamental Rights are not absolute and are subject to reasonable restrictions as necessary for the protection of public interest. In the **Kesavananda Bharati v. State of Kerala**^[1] case in 1973, the Supreme Court, overruling a previous decision of 1967, held that the Fundamental Rights could be amended, subject to judicial review in case such an amendment violated the basic structure of the Constitution. The Fundamental Rights can be enhanced, removed or otherwise altered through a constitutional amendment, passed by a two-thirds majority of each House of Parliament. The imposition of a state of emergency may lead to a temporary suspension any of the Fundamental Rights, excluding Articles 20 and 21, by order of the President. The Directive Principles of State Policy, embodied in Part IV of the Constitution, are directions given to the State to guide the establishment of an economic and social democracy, as proposed by the Preamble. They set forth the humanitarian and socialist instructions that were the aim of social revolution envisaged in India by the Constituent Assembly. The State is expected to keep these principles in mind while framing laws and policies, even though they are non-justiciable in nature. The Directive Principles may be classified under the following categories: ideals that the State ought to strive towards achieving; directions for the exercise of legislative and executive power; and rights of the citizens which the State must aim towards securing.

Fundamental Rights are superior to Directives :

Soon after the commencement of the Constitution the judiciary started laying down an undue emphasis on the unenforceability of Directive Principles without taking in consideration their Fundamentalness and the Constitutional duty imposed upon the state to implement them. It gave rise to a belief that the Directive Principles were merely pious aspirations of little legal force and had to conform to and run subsidiary to the chapters on Fundamental Rights. The first important case after the commencement of the Constitution of India on this issue was that of *State of Madras v. Champakam Dorairajan*[2]. In this case, Champakam Dorairajan, a Brahmin made an application to the High court at Madras under article 226 of the Constitution for protection of her Fundamental Rights under article 15(1) & 29(2). When she was denied a seat in medical college on the ground that 2 seats reserved for Brahmins were already filled by 2 meritorious Brahmin students, the seats were reserved on the basis of caste. She filed a petition for issue of writ of mandamus. The High court by its judgment allowed the application of Champakam. The State of Madras appealed to the Supreme Court. The learned Advocate General appearing for the State contended that the provisions of Article 29(2) have to be read along with other article in the Constitution. He argued that Article 46 charges the state to promote with special care the educational and economic interests of weaker sections of the people particularly of the scheduled caste and scheduled tribes, and to protect them from social injustice and all forms of exploitation. He said, although this article finds place in part IV of the Constitution and though the provisions contained in that part are unenforceable by the court, the principles laid down therein are however fundamental in the governance of the country. Article 37 makes its obligatory on the part of the state to apply those principles in making laws. So according to this argument in regard to article 46 state is entitled to maintain communal Government order fixing proportionate seats for different communities and if because of that order the petitioners are unable to get admissions into the educational institutions there is no infringement of their Fundamental Rights. The Supreme Court held that 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 Article provided in Part III. The Directive Principles of State Policy cannot override the provisions found in part III but have to conform to and run as subsidiary to the chapter of Fundamental Rights. The Fundamental Rights would be reduced to a mere rope of sand if they were to be overridden by the Directive Principles. Constitutional Bench of the Supreme Court solemnly declared the law as follows:

“The Directive Principles of the State policy, which by article 37, are expressly made unenforceable by a court, cannot override the provisions are expressly made enforceable by appropriate writs orders or directions under article 32. The chapter of Fundamental Right is sacrosanct and not liable to be abridged by any legislation or Executive act or order except to the extent provided in appropriate article in part III. The Directive Principles of State policies have to conform to and run subsidiary to the chapter of Fundamental Rights. In our opinion that is the correct way in which the provisions found in Part III and IV have to be understood. However so long as there is no infringement of any Fundamental Rights 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, but subject to the Legislative and Executive powers and limitations conferred on the state under different provisions of the Constitution.” Prof. P.K. Tripathi in his article on the Directive Principles of State Policy characterised the lawyers approach to the Directive Principles as parochial, injurious and unconstitutional. The approach dominated the judicial approach was the most damaging opinion expressed on the value and effectiveness of the Directive Principles. The proper approach according to him was to interpret the Fundamental Rights in the light of Directive Principles, to observe the limits set by the Directive Principles on the scope of Fundamental Rights and if at all

one of the two sets of principles is to conform to other, it is the fundamental rights that seek their synthesis in the Directive Principles of the state policy, not the other way round [3].

The Law declared by the Supreme Court in Champakam's case has caused irreparable damage to the country and the Constitution. It gave a set back to the implementation of Directive Principles. The judicial decisions made it clear that:

- 1) Directive Principles are non-justiciable and these cannot override Fundamental rights.
- 2) Directive Principles have to conform and run subsidiary to the Fundamental Rights.
- 3) Fundamental Rights envisaged in Part III of the Constitution is sacrosanct and cannot be abridged by the legislature or executive except to the extent provided in the appropriate articles in part III.
- 4) Any action of the state under Directive Principles is subject to the legislative and executive powers.

Thus, the court held that if there is any conflict between Fundamental Rights and directive Principles it is the Directive Principles which would be subordinate to the Fundamental Rights. The hang-over of this observation was that it stood in the way of many socio-economic reforms.

Harmonious Construction between F.Rs and DPSPs

The Directive Principles have been used to uphold the Constitutional validity of legislations in case of a conflict with the Fundamental Rights. Article 31C, added by the 25th Amendment in 1971, provided that any law made to give effect to the Directive Principles in Article 39(b)–(c) would not be invalid on the grounds that they derogated from the Fundamental Rights conferred by Articles 14, 19 and 31. The application of this article was sought to be extended to all the Directive Principles by the 42nd Amendment in 1976, but the Supreme Court struck down the extension as void on the ground that it violated the basic structure of the Constitution. The Fundamental Rights and Directive Principles have also been used together in forming the basis of legislation for social welfare. The Supreme Court, after the judgement in the Kesavananda Bharati case, has adopted the view of the Fundamental Rights and Directive Principles being complementary to each other, each supplementing the other's role in aiming at the same goal of establishing a welfare state by means of social revolution. Similarly, the Supreme Court has used the Fundamental Duties to uphold the Constitutional validity of statutes which seeks to promote the objects laid out in the Fundamental Duties. These Duties have also been held to be obligatory for all citizens, subject to the State enforcing the same by means of a valid law. The Supreme Court has also issued directions to the State in this regard, with a view towards making the provisions effective and enabling a citizens to properly perform their duties.

Directive Principles, Fundamental Rights and Social Justice

Fundamental Rts and DPSP both are meant for social welfare and progress of nation. In India ever since the beginning of society its affairs were regulated not by the laws of state but customary rules known as Dharma. Dharma means to hold together. By the process of time, life became more and more mechanical under the regulation of shastras. The Vedic Brahmanvidya with its highly pragmatic contents was attenuated into systems of philosophy mazed in logic and words without sap of life. Dharma became a chain of bondage. The Mughal and British period attempted to bring the Hindus and Muslims together evolve a common way of living. Further the integration of a greater part of India into a single unit subject to uniform system of administration and the consequent elimination of barriers opened out fresh vistas for reorientation of religion, art, literature and culture. This was the era of harmonization. Thus the background of Fundamental Rights under the Constitution is the promotion and protection of universal respect for all and fundamental freedom was really the main concern of Constituent assembly. In a democracy like India it is governed by rule of law and any change in it can be brought through the process of law. The social revolution can be brought through the democratic process only i.e. with the expansion of doctrine of laws stand as PIL by the Supreme Court of India and this development of PIL has been thrown open to those people who are using the judicial review process through PILs. The power of Judicial Review is vested in SC of India and vital to the maintenance of rule of law and this power has been held as basic feature of the Constitution. Social Justice lies in Directive Principles of State Policy. Many legislations also have been enacted in order to protect social justice. Under our Constitution the judiciary has a great role to play in interpreting the social and other progressive legislations passed by States. Harold J Laski observed that 'Rts are those conditions of social life without which no man can seek in general to be himself at his best'.

Right to Freedom and Directive Principles

The freedom of speech is not only guarantee to India within national limits. But in International field VDHR provide in its Art. 13, 'Everyone has a Right to freedom of opinion and expression'. It includes freedom to hold opinion without interference and to seek, receive and import information and ideas through any media. In **Maneka Gandhi v UOI**^[4] the important question decided was whether Rt. of free speech and expression has any geographical limitations. The question was given in affirmative i.e. without any limitation by the Supreme Court. Freedom of Movement has also been recognized. It provides that every citizen has Right to travel throughout India. Rt. to go abroad has been recognized by S.C in **Maneka Gandhi v UOI**^[5] under this clause.

Art 48 provides the protection of animal husbandry on modern and scientific basis and prohibition of cow slaughtering. In **Hanif Qureshi v State of Bihar**^[6] it was argued that Muslims have got right to slaughter animals including cows. But the court gave answer in the negative and held that no one has got the right in society to slaughter animals to carry business and trade. Art. 20 has been incorporated as the protection of criminal prosecution. It provides that no person shall be convicted of any offence except for the violation of law in force at the time of commission of crime. S. 300 Cr.P.C. is

ahead in this respect of Art. 20 (1) because S. 300 Cr. P.C. provides that a person convicted or acquitted cannot be tried for the same offence. The fundamental nature of guarantee against Double Jeopardy is enshrined in Art. 20 (2) of the Constitution which provides that no person shall be prosecuted for same offence more than once. This principle was accepted in **Preetam Singh v State of Punjab**, AIR 1956 SC 415. Art. 20 (3) provides that no person shall be compelled to be a witness against himself who is accused of an offence. In **Nandini Satpathi v State of Orissa**, 1978 SCC 424, it was held if any person is keeping silence then he cannot be forced to answer.

The important phrase of Life - Liberty and the procedure established by law under Art. 21 has been broadened by Supreme Court in **Kharag Singh v State of UP**^[7] the court approved the definition of life. The concept of life has been broadly explained by P.V Bhagwati that this Right include the Rt. to live with human dignity and all that goes along with it. Every act which offends against human dignity would constitute deprivation of this right to life. Rt. of Speedy Trial has also been included Art. 21 by **Hussainara Khatoon v. State of Bihar**^[8]. Art. 21 and 22 have a relationship with DPSP. Art. 21 & 22 are the species of genus, while Art. 38 provides welfare of the people by securing and protecting social order in which Justice, socio-economic and political shall flourish. There is no Art. In DP which comes in the way if the implementation of Arts. 21 and 22 but rather they are helpful. S.C. has interpreted Art. 21 and 22 in such a way that all the principles of human rights and social justice can be secured through these Articles. The purpose of Art. 44 (Uniform Civil Code) is made for the upliftment of social status of citizens on uniform basis. Uniformity is the first basis of liberty to all. Art. 45, 46 provide about the removal of illiteracy and upliftment of schedule caste and tribe and other economically weaker sections. Life and Liberty without equality of status and mass education to all is worthless. If illiterate is not fought or economically weak are not provided with help, how can they lead a reasonable and good life. The poor masses of the nation can fight for their own causes of life, liberty and property. Villagers can seek protection for their agricultural land, produce animal husbandry and wild life through Articles 47, 48, 48-A under wider connotation of terms life and liberty of Art. 21. Separation of Judiciary from Executive v/Art. 50 has been enforced throughout nation. Art. 23 and 24 are crystallized mirror of Indian society. Art. 23 has tried to remove traffic in human being and forced labour. It provides that traffic in human being and Beggar are prohibited. Art. 24 provides that no child below the age of 14 years shall be employed to any work in factories or mines. As a result many acts such as Indian Factories Act, 1948, Prevention of Traffic Act, 1982 and women and Girls Act, 1956 etc. These Articles can be collaborated with Art. 45 where it is provided that state shall Endeavour to provide free and compulsory education to all children upto the age of 14 years. Art. 25 provides that all the persons are equally entitled to the freedom of conscience and the Rt. freely to profess, propagate and practice religion. This Article is based upon the concept of religion. Sec. 125 Cr. P.C is a secular step and mark of Uniform Civil Code in India as it does not relate to any religion and provides equal protection to all religions. It provides that a helpless and destitute lady, parent and children who are unable to maintain themselves may get their right of maintenance enforced against defaulter irrespective of religion in the court S.C in **Mohd. Ahmed Khan v Shah Bano Begum And Ors**^[9] held that Sec 125 is an independent of religion of parties. It is applicable over all and hence Muslim ladies who are divorcees are also entitled to maintenance. It is clear that there is no confrontation between religious rights v/Art. 25, 26, 27, 28 with directive principles. Art. 44 & 48 of directive principles are ideal examples of Art. 25(2)(b). Art. 29 and 30 guarantee cultural and educational rights to minority communities. These are complementary to Art. 45. Art. 45 requires the State to provide free and compulsory education for all children. But there is nothing to prevent the state from discharging that obligation through govt. aided schools. It can be conclude that there is harmony between cultural and educational rights and DPSP as a whole.

Inter – Relationship between Fundamental Rights and Directive Principles

The question of relationship between the Directive Principles and the Fundamental Rights has caused some difficulty, and the judicial attitude has undergone transformation on this question over time. What if a law enacted to enforce a directive principle infringes a

Fundamental Right? On this question, the judicial view has veered round from irreconcilability to integration between the Fundamental Rights and Directive Principles. Initially, the courts adopted a strict and literal legal position in this respect. The Supreme Court adopting the literal interpretative approach to Article 37 ruled that a Directive Principle could not override a Fundamental Right, and, that in case of conflict between the two, the Fundamental Right would prevail over the Directive Principle. This point was settled by the Supreme Court in **State of Madras v. Champakam Dorairajan**, where a government order in conflict with Art. 29(2), a Fundamental Right was declared invalid, although the government did argue that it was made in pursuance of Art. 46, a Directive Principle. The Supreme Court came to adopt the view that although Directive Principles, as such, were legally non-enforceable, nevertheless, while interpreting a statute, the courts could look for light to the “lode star” of the Directive Principles. “Where two judicial choices are available, the construction in conformity with the social philosophy” of the Directive Principles has preference. The courts therefore could interpret a statute so as to implement Directive Principles instead of reducing them to mere theoretical ideas. This is on the assumption that the law makers are not completely unmindful or oblivious of the Directive Principles. Without, therefore, making the Directive Principles justiciable as such, the courts began to implement the values underlying these principles to the extent possible. The Supreme Court began to assert that there is “no conflict on the whole” between the Fundamental Rights and the Directive Principles. “They are complementary and supplementary to each other.” The Supreme Court said in **State of Kerala v. N.M. Thomas**^[10], that the Directive Principles and Fundamental Rights should be construed in harmony with each other and every attempt should be made by the Court to resolve any apparent inconsistency between them.

In **Pathumma v. State of Kerala**^[11], the Supreme Court has emphasized that the purpose of the Directive Principles is to fix certain socio-economic goals for immediate attainment by bringing about a non-violent social revolution. The Constitution aims at bringing about synthesis between Fundamental Rights and Directive Principles.

The biggest beneficiary of this approach has been Art. 21. By reading Art. 21 with the Directive Principles, the Supreme Court has derived therefrom a bundle of rights. To name a few of these:

- (i) The right to live with human dignity. The Supreme Court has stated in *Bandhua Mukti Morcha* ^[12] That right to live with human dignity enshrined in Art. 21 derives its life breath from the Directive Principles of State Policy.
- (ii) Right to life includes the right to enjoy pollution free water and air and environment^[13].
- (iii) Right to health and social justice has been held to be a Fundamental Right of the workers. It is the obligation of the employers to protect the health and vigour of his employee workers. The Court has derived this right by reading Art. 21 with Arts. 39(e), 41, 43 and 48A^[14].
- (iv) Right to Shelter^[15].
- (v) Right to education implicit in Art. 21 is to be applied out in the light of the Directive Principle contained in Art. 41 and 45^[16] (vi) Right to Privacy.

Accordingly, the Directive Principles are regarded as a dependable index of 'public purpose'. If a law is enacted to implement the socio-economic policy envisaged in the Directive Principles, then it must be regarded as one for public purpose. Thus, in **State of Bihar v. Kameshwar**^[17], the Supreme Court relied on Art. 39 to decide that the law to abolish zamindari has been enacted for a 'public purpose' within the meaning of Art. 31.

Conclusion

Since both the Fundamental Rights and the Directive Principles were of common origin, it is clear that they both had the same objectives, namely to ensure the goal of a welfare society envisaged by the Preamble. If the Fundamental rights seek to achieve the goal by guaranteeing certain minimal rights to the individual as against State action, the Directives enjoin the State to ensure the welfare of the people collectively. Whenever the State makes laws, they should be made consistently with these principles with a view to establishment of an egalitarian society. At the beginning, a strict literal interpretation was advocated and the Fundamental Rights were would prevail over the Directive Principles. Later in course of time, a perceptible, and a welcome change came over the judicial attitude, and the courts though subordinated the Directives to the Fundamental Rights, took the view that the mechanism of harmonious construction should be used to interpret the two Parts. The next stage came with the case of *Sajjan Singh, and Golak Nath*, where the judiciary began expanding the Directive Principles and interpreted the two Parts as being co-equal, and without any conflict. *Kesavananda Bharti*, was a turning point in the history of Directive Principles Jurisprudence, where for the first time the court held that the Directive principles should be given primacy over the Fundamental Rights. This was the third stage. However, in *Minerva Mills* the judiciary again went back to stating that there should be balance and harmony between Part III and Part IV, and that none should be given a primacy over the other. Since then this has been the view taken by the courts in the subsequent cases. The recent trend in this regard, is that though the Directive Principles are unenforceable, and a State cannot be compelled to undertake a legislation to implement a Directive, the Supreme Court has been issuing directions to the State to implement the Principles. Hence various aspects of Part IV are being enforced by the courts indirectly. Today thus, the Directive Principles no longer remain merely a moral obligation of the Government.

References

- [1]. *Kesavananda Bharati v. State of Kerala* (1973) 4 SCC 225
- [2]. AIR 1951 SC 226, 1951 SCR 525
- [3]. *Tripathi P.K; Directive Principles of State Policy* (1972) p.12
- [4]. AIR 1978 SC 597
- [5]. AIR 1977 SC 599
- [6]. AIR 1958 S.C 731
- [7]. AIR 1963 SC 1295
- [8]. *Hussainara Khatoon v. State of Bihar*, AIR 1979 S.C. 1360
- [9]. *Shah Bano's case* AIR 1985 SC 945
- [10]. AIR 1976 SC 490, 1976 SCR (1) 906
- [11]. AIR 1978 SC 771, 1978 SCR (2) 537
- [12]. *Bandhua Mukti Morcha v. Union of India*, AIR 1984 SC 802, 811-812 : (1984) 3 SCC 161
- [13]. *Subhash Kumar v. State of Bihar*, AIR 1991 SC 420 : (1991) 1 SCC 598
- [14]. *Consumer Education Research Centre v. Union of India*, AIR 1995 SC 922 : (1995) 3 SCC 42; *LIC v. CERC*, AIR 1995 SC 1811 : (1995) 5 SCC 482.
- [15]. *Chameli Singh v. State of Uttar Pradesh*, AIR 1996 SC 1051 : (1996) 2 SCC 549
- [16]. *Unnikrishnan v. A.P.*, AIR 1993 SC 2178 : (1993) 1 SCC 645 17. AIR 1965 SC 575