
THE RELATIONSHIP BETWEEN FUNDAMENTAL RIGHTS AND THE DIRECTIVE PRINCIPLES OF STATE POLICY: JUDICIAL APPROACH

PROF (Dr.) UTTAM KUMAR SAMANTA

Ph.D., LL.B, LL.M, MSW

[Advocate, Supreme Court of India]

Principal Gangadharpur Sikshan Mandir

(College Of Teacher Education)

1.1 Introduction

The constitution of India is considered as the longest written constitution of any sovereign nation in the world. At its birth, it had 395 articles in 22 parts and 8 Schedules and it currently has a Preamble, 25 Parts with 12 schedules, 5 appendices, 101 amendment and 448 articles. January 26 is celebrated as the Republic Day every year. The importance of the Constitution was given effect after 67 years and later on, it was amended more than 100 times.

1.2 Objectives of the Research

1. To have the understanding of the relationship between fundamental rights and the directive principles of state policy.
2. To know how harmoniously both fundamental rights and the directive principles of state policy co exists.
3. To know whether any conflict is there between fundamental rights and the directive principles of state policy
4. To know which right is superior over other.
5. To analyze the work various Supreme Court Judgment in respect of fundamental rights and the directive principles of state policy.
6. To find out various major Conflict area between fundamental rights and the directive principles of state policy and their harmonious relation.

1.3 Scope and Limitations of the Research

The present article deals with the study of relationship between fundamental rights and directive principles of state policies through judicial pronouncements.

1.4 Significance and Utility of the Research

The current research tries to better understand relationship existing between fundamental rights and the directive principles of state policy.

1.5 Methodology of the Research

The current research involves the following categories of research:

- Doctrinal methodology
- Analytical methodology
- Descriptive methodology
- Historical methodology
- Case-analysis methodology

1.6 Formulation Hypothesis

1. There exist a harmonious relation between fundamental rights and the directive principles of state policy.
2. The hon'ble supreme court has time to time delivered judgments defining the nature of relationship between fundamental rights and the directive principles of state policy.

1.7 Research questions

1. What are fundamental rights?
2. What are directive principles of state policy
3. What relation exists between fundamental rights and the directive principles of state policy?

4. Which are superior fundamental rights or the directive principles of state policy?
5. What is the nature of relationship between fundamental rights and the directive principles of state policy?

1.8 Sources of data:

The researcher has studied from primary sources such as statutes, case laws, reports and secondary sources including text books, research articles from various law journals and web resources.

What are Fundamental Rights and DPSP?

Fundamental rights and DPSP as cherished in the Constitution of India together comprises the human rights of an individual. The Constitution expresses fundamental rights as an idea which appeared in India in 1928 itself. The Motilal Committee Report of 1928 clearly shows inalienable rights derived from the Bill of Rights enshrined in the American Constitution to be given to the individual. These rights were preserved in Part III of the Indian Constitution of India.

Fundamental rights are also known as inherent rights because they are inherent to every person by birth. These are the rights which provide an individual with some basic rights for the purpose of survival. No discrimination is made on the basis of religion, caste, race etc. and if any person feels so that his fundamental rights are being infringed then he can surely approach to court for the violation of his rights.

There are six fundamental right mentioned under the Constitution of India

1. Right to equality
2. Right to freedom
3. Right to freedom of religion
4. Right against exploitation
5. Cultural and educational rights
6. Rights to constitutional remedies

1. Right to Equality

Freedom Law is supreme in nature and everyone is equal before the law and equal treatment should be given to everyone. No discrimination should be done on the basis of race, caste, creed or gender. An equal amount of opportunity should be given to every individual in the field of employment, abolition of untouchability and titles.

2. Right to Freedom

Every individual has the right to freedom to form an association, peacefully assemble, to travel or move freely reside and settle at any location and to go or opt for any profession throughout the territory of India. Right to education, life, liberty and dignity also fall under this right, protection in respect of arrest and detention and conviction of an offence.

3. Right against Exploitation

Prohibition of Child labour and Human trafficking and forced labour is a result of this right.

4. Right to Freedom of religion

This right provides us with the freedom to follow any religion without any question mark and freedom to attend any religious ceremony at a religious institution or education centre and pay tax for the promotion of religion. Nobody can force any individual who is not interested in paying any kind of tax for religious purposes.

5. Cultural and educational Right

It provides protection to different languages and varieties of culture present in India. It also protects the rights and culture of minorities. Establishing educational institutions and primary education to every child below the age of 14 years comes under this head.

6. Rights to seek Constitutional remedies

An individual has the right to move in any court of law if they feel fundamental rights are being violated. Our constitution consists of 5 writs. Here writs mean the “Order of court”. If only fundamental rights are violated then the individual can directly approach to Supreme Court of India. The writs are explained below:

1. Habeas corpus
2. Mandamus
3. Prohibition
4. Certiorari
5. Quo warrantor

1. Habeas Corpus

It simply means to 'Produce the body'. This writ is issued to produce a person who has been detained and to present him before the court to release if such detention is illegal.

2. Mandamus

This means 'We Command'. It is an order given by the Superior Court to the Inferior Court to perform a public duty.

3. Prohibition

It is basically known as Stay order which prohibits from doing certain actions by the authority where it has no jurisdiction to deal with the case.

4. Certiorari

This means 'to be Certified'. This order can be issued by the Supreme Court for quashing the order which is already passed by any inferior court, tribunal or authority.

5. Quo – warranto

It signifies by what authority? It is a writ issued to restrain a person from holding a public office to which he is not entitled.

THE DIRECTIVE PRINCIPLES OF STATE POLICY

The concept of DPSP emerged from Article 45 of the Irish Constitution. DPSP imposes a duty upon the state not only to protect and acknowledge the Fundamental right of the individual but also to achieve Social-economic goals. DPSP was summarizing in Part IV of the Indian Constitution of India.

Certain guidelines are present for the state authority to work upon them for the protection of society. It mostly focuses on welfare and improvement of society altogether. As fundamental rights are enforceable in a court of law, DPSP cannot be enforced for making any rules, policy or guidelines.

The Directives are often classified into three broad categories:

1. **Socialistic Principles** – For e.g. Article 38, to promote the welfare of the people by securing a social order permeated by justice – social, economic and political and thereby to minimize any types of inequalities be it income, status and opportunities.
2. **Gandhian Principles** – These principles characterize the programme for reconstruction as enunciated by the father of the Nation – Mahatma Gandhi during the national movement and struggle. For e.g. – Article 40 to organize village panchayats and endow them with necessary powers and authority to enable them function as units of self – government.
3. **Liberal–Intellectual Principles**– These DPSPs entail in themselves some characteristics of the ideology of liberalism. For e.g. – Article 50 which further imposes an obligation upon the state to separate judiciary from the executive in the public services of the State.

Some of the examples of DPSP are:

1. Right to education
2. Maternity benefit
3. Uniform Civil code
4. Providing proper nutrition food
5. Providing adequate means of livelihood

However, it is already a controversial topic in the Constitution about the relationship of Fundamental rights and DPSP, as there would be conflict in the interest of individual at a micro level and benefit of the community at a macro level.

The central part of this controversy is the question person should have primacy in the case of conflict between Chapter III and IV of the Constitution of India.

RELATIONSHIP BETWEEN FUNDAMENTAL RIGHTS AND D.P.S.P.:

Constitution of India is a Ground norm all the law which are made must conform to the constitution of India.

The difference between DPSP and FR are: DPSP

Fundamental Rights

Limited scope.

Scope of DPSP is limitless.

Protect the rights of the individual and work at a micro level.

Protect the rights of a citizen and work at a macro level.

If anybody feels that his rights are being violated can approach the court of law. DPSP are not enforceable by law.

For better understanding about the conflict between DPSP and Fundamental Rights lets study some of the important case laws and then we can decide what happens when a conflict arises between both of them.

The first case we are going to study is about **Golak Nath vs the State of Punjab**, A.I.R. 1976 SCR (2) 762. Firstly, we will see what the Supreme Court has said and then we will discuss what the parliamentary action was taken. In this case, S.C. said Fundamental rights cannot be diluted, abridged, diminished, finish or taken away and then in response to it by bringing Amendment Act of the Constitution and inserted Article 31 (C) in part III now what does Article 31 (C) say:

By making a law under Article 39 (B) which talk about material resources of community and Article 39 (C) discuss the operation for an economic system. They say that if any law is framed with effect to DPSP and if it violates Article 14, 19 and 21 then the law should not declare constitution as void merely on this ground.

In **Champak Dorairajan vs. the State of Madras**, the Supreme Court held that DPSP cannot override the provisions of Part III of the Constitution of India i.e. the Fundamental Rights.

Now DPSP has to run subsidiary to the Fundamental rights and have to confirm them and this was very important judgement the parliament responded by amending various fundamental rights which were coming in conflict with DPSP.

RELATIONSHIP BETWEEN FUNDAMENTAL RIGHTS AND DIRECTIVE PRINCIPLES OF STATE POLICY

The Relationship between Part III and Part IV is the one that is not a novice one and was discussed by the Constitutional Advisor Sir B.N. Rau who advocated the idea that the right of an individual on the basis of their nature can be divided into:

1. Justiciable Rights

2. Non-justiciable Rights

The list of Justiciable Rights was engulfed in Part–III while the non-justiciable one became the member of Part–IV of the Constitution. At times and again these Directive Principles are used by the Judiciary to determine the constitutional validity of any legislation when they are found to be in conflict with the Fundamental Rights or Part–III of the Constitution.

The first case we are going to discuss in this light is of *Sajjan Singh V. State of Rajasthan* of 1964 where the Obiter Dicta laid down by Justice Madhukar becomes apposite, even the fundamental rights enshrined in Part III were taken as unalterable, the much-needed dynamism may be according to him achieved by a proper interpretation of the Fundamental Rights in light of the Directive Principles. Further, he observed that the Part IV is fundamental in the governance of the country and the provision relating to Part III must be interpreted harmoniously with these principles”. As discussed above in the case of *Champakam Dorairajan (Supra)* it was held by the Supreme Court that the Fundamental Rights would be reduced to a “Mere rope of sand” if they were to be override or superseded by the Directive Principles of State Policy.

Also, as we discussed earlier in this article while deliberating on the case of *I.C. Golaknath (Supra)*, Hon’ble Justice Subba Rao of the Apex Court accentuated that the Fundamental

Rights and the Directive Principles of State Policy together form an integrated scheme which is elastic enough to respond to the changing needs of the society. On a similar note in **Bijoya Cotton Mills V. State of West Bengal**, the Supreme Court has two folded view regarding the same:

In a case of conflict between the rights of an Individual and a law that particularly aims at the implementation of socio-economic policies in furtherance of the Directive Principles, the weight would be accorded to the latter.

Every Act or Legislation enacted in fulfillment of the Directive Principles should be construed as the one professing in the public interest or as a reasonable restriction to Part III of the Constitution.

Doctrine of Harmonious Construction and relevant case laws

The doctrine of Harmonious construction as a new technique of interpretation was inducted and innovated by the Supreme Court in the case of *Quareshi Mohd. v. State of Bihar* where the court stated that the Constitution has to be construed harmoniously, the Directive Principles must be implemented in such a way that it does not take away or encroach upon the fundamental rights of citizens. The courts should adopt the principles of harmonious construction and attempt to give effect to both Part III and Part IV of the Constitution.

In *Re: Kerala Education Bill* case of 1958, Chief Justice S.R. Das held while affirming the primacy of fundamental rights over the directive principles “nevertheless, in determining the scope and ambit of Fundamental Rights relied upon by or on behalf of any person or body, the court may not entirely ignore the DPSPs laid down in Part IV of the Constitution but should adopt the principle of harmonious construction and should attempt to give to both as far as possible”.

The Supreme Court then began to proclaim that there exists no conflict between the Fundamental Rights and Directive Principles both stand supplementary and complementary

to each other. The above stand was taken by the Apex Court in the case of Chandra Bhavan Boarding & Lodging V. State of Mysore. Since then, the Supreme Court of India in the plethora of cases started to reiterate the point that the judicial attitude towards both DPSPs and Fundamental Rights is co-equal.

In 1973, in the landmark case of Kesavananda Bharti V. State of Kerela – Justice K.S. Hedge duly observed that the Fundamental Rights and Directive Principles constitute the “Conscience of the Constitution.” While Justice Shelat and Grover observed that both these Parts (III and IV) have to be balanced and harmonized.

At various instances and in catena of cases the courts have utilized the above-mentioned Doctrine of Harmonious Constructions while pronouncing judgments relating to Part III and Part IV of the Constitution. On a similar note, the Hon’ble Supreme Court in the case of State of Kerala V. N.M. Thomas held that both the Directive Principles and the Fundamental Rights should be construed in harmony with each other and every effort should be made by respective courts to resolve any apparent inconsistency that exists between them.

Justice Chandrachud in the landmark case of Minerva Mills V. Union of India observed “Fundamental Rights are not an end in themselves but are means to an end”, the aforesaid end is specified in the directive principles. In the (Paras 56 and 57) of the same judgment, it was also duly held that “harmony and balance between the fundamental rights and directive principles is an essential feature of the basic structure of the Constitution”.

From the above one can pellucid infer that the Fundamental Rights enshrined in Part III can be considered to be the means to achieve several goals that are thereby enshrined in Part IV and even at various instances the Fundamental Rights is interpreted in light of non-justiciable Directive Principles of State Policy.

The same becomes pertinent when we look in the case of Bandhu Mukti Morcha case where the bench headed by Justice P.N. Bhagwati in page 163 of the same Judgment has expressly mentioned: “The Right to live human dignity, free from exploitation enshrined under Article 21 derives its life and breath from the Directive Principles of State Policy and particularly

clauses (e) and (f) of Article 39 and Article 41 and 42”.

The inextricable and entangles relation between the Part III (Fundamental Rights) and Part IV (Directive Principles of State Policy) that was even recognized by the Legislature in the 86th Constitutional Amendment Act of 2002, where Right to Education earlier and originally the element of Part IV of the Constitution was raised to the Fundamental Right enshrined under Article 21A of Part III of the Constitution.

“These Directive Principles of State Policy are fundamental in the governance of the country they must be therefore regarded as equally fundamental to understanding and interpretation of the meaning and content of fundamental rights” – The aforesaid view was taken by the Supreme Court in the case of *Olga Tellis*.

Recently, in the case of *Charu Khurana V. Union of India* of 2015, the Supreme Court of India again highlighted the importance of their existence (Part III and Part IV) by observing that “Fundamental Rights and the Directive Principles are the two wheels of the chariot establishing the egalitarian social order.

In *Minerva Mills Case*, the Court held that the law under Article 31 (C) would be protected only if it is made to implement the directive in Article 39 (b) and (c) and not in any other DPSP. Earlier protection was given to all the DPSP but after this case, it becomes restrictions and was declared that if protection is given to all DPSP it will be declared as void and unconstitutional in nature.

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Conclusion

In an overview, it becomes apparent or ostensible to note that the view of the judiciary regarding the relationship between the Fundamental Rights and the Directive Principles of State Policy is the one that is subjected and have undergone gradual transformations from the case of 1951 of Srimathi Champakam Dorairajan where the Supreme Court accorded supremacy to the Fundamental Rights over the Directive Principles to making the harmony and balance between the two (Part III and Part IV) an essential feature of the basic structure of the Constitution.

Today, we can manifestly observe that Part III at times have to necessarily be interpreted in the light of the Directive Principles and the co-dependence and liaison between the two are increasing day by day.

Conclusively, it can be clearly inferred from the judgments as mentioned above that the approach of our judicial system towards the Fundamental Rights and Directive Principles have been an integrative one and time and again, the judiciary in its judgment has employed the principle of Harmonious Construction.

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