



Directive principles and fundamental rights: Intricacies and precedence

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Abstract

The difference between Directive Principles and Fundamental Rights is that the Fundamental Rights are enforceable by courts while the Directive Principle of Policy is not tenable. The provisions contained in this Part shall not be enforced by any court. Nevertheless, the elements in them are fundamental in the governance of the country and in making the law, implementation of these elements is the duty of the state. So to connect them together by doing something without doing any kind of amendment. After all the efforts to make everything look balanced if any interpretation is done then the court has to implement Fundamental rights over DPSP.

Keywords: DPSP, fundamental rights, directive principle

Introduction

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.

The question arose in the case of *State of Madras v. Champakay Dorairajan* that in case of conflict between the Directive Principles and Fundamental Rights, which should be given priority? Hon. Court decided that the Fundamental Rights policy would be governed by the Directive Elements because as per Art. 37 directive principles of state policy were declared by the courts to be non-changeable. They cannot be effective on the provisions mentioned in the part.

The Kerala Education Bill AIR 1953

In this suit, SC has said that although Directive Principles of State Policy are below precedence with Fundamental Rights, and propounded the Doctrine of Harmonious Construction. Now,

what is the Doctrine of Harmonious Construction? It says that you need to constitute the provision of the constitution in such a way that fundamental rights and DPSP go hand in hand so this was there to avoid the situation of conflict while enforcing DPSP and Fundamental rights. So you should construe each and every provision of the constitution is such a way so they work harmoniously.

Now as per this doctrine the court held that if no inherent power is present then no conflict will arise but if any conflict comes in force just because the court is trying to interpret a particular law so they should attempt to give effect to both as far as possible.

In *Kesavanda Bharati v State of Kerala* ^[18] where it was held that the directive principles were in harmony with the country's aims and objectives and the fundamental rights could be amended to meet the needs of the hour implying that Parts III and IV needed to be harmoniously construed. Although these judgments were more dynamic in comparison to the previous approach that the apex court had extended, it still did not satisfy the ideals of the legislature. It could easily be speculated that the 42nd Amendment in 1976 was to accord primacy to the Directive Principles over the Fundamental Rights. The purpose of the amendment was to make the Directive Principles comprehensive and accord them precedence over the fundamental rights "which have been allowed to be relied upon to frustrate socio-economic reforms for the implementing of Directive Principles" ^[19]. "Fundamental Rights and Directive Principles of State Policy forms the basis of our contracts where, fundamental rights, are to serve in building a socialist society and a society without oppression or shackles. They are explicitly aimed to free the citizens from every form of discrimination and ensure freedom for all.

The purpose of Directive Principles is to set to achieve social and economic objectives, ones those were earlier achieved by violent social revolution. Fundamental rights and DPSP are the direct complementary elements to each other.

Art. 34 (c) was amended by the 42nd Constitution Act and it extended its outreach which gives priority to the two directive policies over fundamental rights.

According to this amendment for implementing the elements of directive policy, the same cannot be challenged on the grounds that they are incompatible with fundamental rights or snatches/suppresses them.

It is therefore evident that the legislature believed that Fundamental Rights were to assist the Directive Principles and not vice-versa ^[16].

This subsequently led to a transformation in the interpretation of the relationship between Fundamental Rights and Directive Principles to be more inclusive and harmonious. In *Chandra Bhawan Boarding and Lodging*

Bangalore v State of Mysore^[17], The state argued that it was obligated to provide for minimum wages in accordance with the Directive Principles. However, the court held that the provisions of the Constitution were created to facilitate progress, as intended by the Preamble and it would be fallacious to assume that the Constitution provided only for rights and no duties.

Furthermore, it was stated that although Part III encompasses Fundamental Rights, Part IV was essential in the governance of the country and were therefore supplementary to each other.

This view was reaffirmed in *Minerva Mills Ltd. v Union of India*^[20], the court believed that the harmonious relation between Fundamental Rights and Directive Principles was a basic feature of the Constitution. It was stated that Part III and Part IV together comprised of the core of the constitution and any legislation or amendment that destroyed the balance between the two would be in contravention to the basic structure of the Constitution. Chandrachud CJ. reasserted that Parts III and IV are complementary to each other and together they constitute the human rights of an individual. Reading these provisions independently would be impossible, as that would render them incomplete and thereby inaccessible. However, this was not settled as law yet and there was another hiccup in the subsequent judgments.

In *State of Kerala vs. N.M.Thomas*, 1976, the Supreme Court said that Fundamental rights and DPSP should be built in such a way to be with each other and every effort should be taken by the court to resolve the dispute between them.

In *Olga Tellis vs. Bombay Municipal Corporation*, 1985, the Supreme Court has submitted that DPSP are fundamental in the governance of the country so equal importance should be given to meaning and concept of fundamental rights

In *Dalmia Cement vs. Union of India*, the Supreme Court said that Fundamental rights and DPSP are supplementary and complementary to each other and the preamble to the constitution which gives an introduction, fundamental rights, DPSP are conscience of the Constitution.

In *Ashok Kumar Thakur Vs. Union of India*, 2008, the Supreme Court said that no difference can be made between the 2 sets of rights. Fundamental rights deal with Civil and political rights whereas DPSP deals with social and economic rights. DPSP are not enforceable in a court of law doesn't mean it is subordinate.

So basically, in all these cases, what they are trying to explain is that Fundamental rights and DPSP go together. Neither of them is supreme to each other.

Government has done several acts for the implementation purpose like panchayat were established by 73rd amendment, Nagar Palika under Article 41, compulsory education to every child who is below the age of 14 years and it was made Fundamental rights, to protect monuments of national importance now this right was converted into a law that is Ancient and Historical Monuments and Archaeological sites and remains (Declaration of National Importance) Act, 1951.

Although it appears to be well established that there is a need for balance and unanimity in interpreting Fundamental Rights and Directive Principles, this debate is far from over. The courts off late have played a proactive role in facilitating socio-economic development at a macro level which requires compromise on a micro level. Therefore in

light of the benefit of the community at large, the Directive Principles may be used to determine the extent of public interest to limit the scope of Fundamental Rights^[24].

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