

CHAPTER XI

Directive Principles and Fundamental Rights – The Two Complementary Principles of Justice

11.1 Aims and Spirit of Directive Principles

Part IV of the Constitution of India deals with the Directive Principles of State Policy which have been enunciated in the Articles 36-51. This part is based on the principle of social justice to achieve which the State is seen striving mainly since the dominance of coalition politics in the Indian political system, in order to firmly establish egalitarianism in the society. The Directive Principles constitute a significant part of the Constitution. It is very significant because the existence of fundamental rights will become weak if the Directive Principles are deleted from the Constitution. They tell about the aims that the State should strive to achieve. They contain the aims and objectives of India as a welfare state. They are expressive of the philosophy of a modern democratic society. It is not at all an exaggeration to say that Indian democracy draws its sustenance from the Directive Principles. The study and analysis of the principles demonstrates that democracy will be reduced to a state of meaninglessness if the Directive Principles are always ignored and overlooked by the State.

Democracy is the ideal of India and it is the main spirit of the Constitution of India. If democracy is presumed to be a living entity, social justice is definitely its soul because democracy is meaningless and absurd without social justice which our state seeks to ensure to all its citizens. Directive Principles of State Policy have been consciously incorporated in the Constitution of India to translate democracy into a reality through justifying social justice as a basic right for all Indians. They have another very important significance in the polity of India that the Fundamental Rights enunciated in our Constitution have been guarded and reinforced by the Directive Principles.

Directive Principles are the explicit desires and aspirations of the Constitution makers to give India a perfect shape of a “social service state” because one of

the primary aims of such a state is to provide social protection and ensure social justice to people. Since the dawn of Independence of India in 1947 the Government has been giving top priority to the question of social justice, social security, social and economic equality as the basic aim and objective of the State. The principles of compensatory justice has been derived from the spirit of Directive Principles of State Policy in order to achieve social justice for the backward classes who have been deprived of the facilities and opportunities which are supposed to be enjoyed by those of the upper classes in our society. The importance of Directive Principles cannot be diluted from no standpoint. They are the epitome of all human philosophies—socialism, liberalism, humanism and what not. The Directive Principles of State Policy are a unique blend of socialistic, liberal, democratic and Gandhian principles.

Dr. Pylee is of the view that the Directive Principles of State Policy provide one of the novel and striking features of modern constitutional government. They are not the paraphrase of the Irish Principles of Directive Principles of Social Policy but the reflections of the democratic ideals and aspirations of the western educated intellectual movement of the nationalist struggle to develop and establish an egalitarian society in India. They contain the mission and vision of New India which should strive to secure equality and justice to all Indians who had been long denied of rights, freedom and democracy.

The Directive Principles are broad directives to the State in accordance with which the legislative and executive powers of the State are to be exercised . The Directives are articulated in the Constitution in order to evolve a society characterized by humanism , tolerance and unity. They are fundamental in the governance of the country . According to Dr. Pylee, they enshrine the fundamentals for the realization that the State of India represents . They epitomize the noble political philosophy to which the State is committed. The philosophy is social justice and social security. They show the path to the achievements of the noble ideals – justice social , economic equality and political equality as proclaimed in the Preamble to the Constitution.

Though the Directive Principles of State Policy are non-justiciable and are said to be subordinate to the Fundamental Rights in the Constitution of India, they are meant to strengthen the Fundamental Rights. Prof. T.K. Shah deprecates the Directive Principles as "pious wishes" or a mere window dress up for the social revolution of India, but we cannot agree to this view because the Directive Principles constitute a set of instructions upon the state to transform a laissez faire society into a welfare state, a socialistic pattern of society and eventually into a socialist state.

Before we go into the linkage between the Directive Principles and Fundamental Rights we may again refer to the book, **Justice Krishna Iyer on Fundamental Rights and Directive Principles** by Shailja Chander to show how Justice Iyer demonstrated and established the relationship between the two. Chander referred to the headline "Position up to 1973 when Justice Iyer was elevated to Supreme Court". Chander wrote soon after the commencement of the Constitution that an undue emphasis was laid on the unenforceability of Directive Principles without taking into consideration their fundamental feature and the constitutional duty imposed upon the state to implement them. It gave rise to the belief that Directive Principles were mere pious aspirations of little legal force and had to conform to and run subsidiary to Fundamental Rights.

Conflicts between Directive Principles and Fundamental Rights may arise owing to various reasons. Clause (2) of Article 13 stipulates:

"The state shall not make any law which takes away or abridges the rights conferred by this part and any law made in contravention of this clause, shall to the extent of contravention, be void".

B.N. Rau had suggested, the following amendment

(1) at the beginning of col 9(2), now article 13(2), insert the words "subject to the provision of Cl (10) (which emphasized the fundamental nature of Directive Principles.

The first important case after the commencement of the Constitution was **State of Madras vs. Champakam Dorairaj** of, a Brahmin, made an application to the High Court of Madras under Article 226 of the Constitution as she was denied a seat in the Medical College. This case is quite important as it set the tenor of Directive Principles i.e, the justiciability or non-justiciability aspects. Also the first Constitutional Amendment Act was largely influenced by the judgement of the case. Moreover the 25th Constitutional Amendment, a gap of some two decades since the Champakam Dorairaj case was also a sequel of it.

11.2 Directive Principles and Fundamental Rights Basically

Inalienable

The Directive Principles of State Policy may be looked upon as a sister part of the Fundamental Rights in the sense that they aim at making Fundamental Rights a reality extending democracy in the social and economic sphere. The Directives instruct the State to play a positive and active role in ensuring justice to people in all respects. The State transforms policies and formulates laws keeping in view the principles stated in the Directive Principles. In this respect, the State follows the spirit, philosophy and instruction of Directive Principles. The Directive Principles help the State to plan, formulate and introduce welfare programmes to establish social and economic democracy in India and to protect people's right, freedom and dignity against infringement. They constitute a comprehensive blue print of social goals – they are the positive blue print of social protection and justice.

Though Fundamental Rights and Directive Principles of State Policy combine to form the conscience of the Constitution, they are outwardly distinguished from each other. While Fundamental Rights contribute to limitations upon the State action, the Directive Principles are in the nature of instruments of instruction to the government to do certain things and to achieve certain ends to their actions. This means that Fundamental Rights constitute a set of negative injunctions to the government. The State is restrained from doing certain things. Directive Principles, the other hand, are set of positive directions upon the State to take initiative to transform India into a social and economic democracy.

11.3 Fundamental Rights Constitutionally Contrasted with Directive Principles

While Fundamental Rights are enforceable by the courts under Art. 32 (1) of the Constitution provides for the right to move the Supreme Court by appropriate proceedings of enforcement of the fundamental rights. The courts are bound to declare any law void if it is inconsistent with the Fundamental Rights; but the Directive Principles are not enforceable by the courts as stated in Article. 37 , and the Courts cannot declare as void any law which is otherwise valid, on the ground that it contravenes any of the 'Directives'. Hence, in the case of any conflict between Parts III and IV of the Constitution , there is no doubt that the former will prevail in the courts.

For the first time , there arose a conflict between Directive Principles and Fundamental Rights and the matter was brought before the Supreme Court in 1951 through a writ petition . The court admitted it and the case was known Champakam Dorairajan vs. State of Madras. The Supreme Court opined that "Directive Principles of State Policy have to conform to and run subsidiary to the chapter on Fundamental Rights" (but it is not all to quote the judgement of this landmark case. This case along with Indira Sawhney case , Bishakha vs State of Rajasthan case be put together to guess the domain of social justice in the crucible of Directive Principles). In 1951 , the status of Directive Principles were ignored. Thus the Directives were positive in nature while the Fundamental Rights are negative or prohibitive.

But the 25th Amendment of the Constitution introduced Article 31C to effectuate certain directive principles. Amending to this Article , "Notwithstanding anything contained in Article 13 , no law giving effect to policy of the state towards securing the principles specified in clause (b) or (c) of Article 39 , shall be deemed to be void on the ground that it is inconsistent with or takes away or abridges any of the rights conferred by Article 14, Article 19 or Article 31 provided that where such law is made by legislatures of a state the provisions of this Article shall not apply thereto unless such law having been reserved for the consideration of the President has received his assent'. The Supreme Court

opined that Directive Principles should be subsidiary to Fundamental Rights because in a state wedded to socialism, laws directed to give effect to land reform were found to conflict with Fundamental Rights.

The 25th Amendment Act provided that no law giving effect to such policy e.g., the policy of the State towards running the Principles specified in clause (b) or clause (c) of Article 39 shall be in question in any court on the ground that it does not give effect to such policy" (Constitutional law of India , 1980 Naba Bharat Publications , Calcutta). Even before Keshavananda Bharati case in which the said portion was struck down as unconstitutional the Supreme Court upheld the validity of many laws with reference to the Directives.

"But when legislation is passed to implement Directive Principles which are alleged to be in conflict with Fundamental Rights, the court attempts to validate the law by the application of the reasonableness of the public interest. The case namely State of Bombay vs. Balsara⁶¹ is an illustration in point . In Quarashi vs. State of Bihar it was alleged that the prohibition of cow slaughtering contained in Article 48 contravened inter alia provisions of Articles 25 and 26 of the Constitution of India . But in that case the Supreme Court decided in favour of the validity of the legislation . In the case of Jugalkishore vs. Labour Commissioner of Bihar shop and establishment Act, 1953 , was challenged on the ground that that it was in conflict with Article 19 (1) (g) of the Constitution . But the Supreme Court upheld the validity of the law in the light of the provisions of Articles 41, 43 and 46 which provide for reasonable restriction in general interest of the public (D.D. Basu's Constitutional law of India). In 1967 , the Supreme Court in Golaknath case held that it is the duty of Parliament to enforce the Directive Principles without diluting Fundamental Rights. As a result of invalidation of some progressive laws like Bank nationalization , Privy Purses Abolition , Parliament passed the 25th Constitution Amendment Act in 1971 which amended an Article 31(c) . An Act for the enforcement for Directive Principles shall not be invalid on the ground that it

⁶¹ Bombay Prohibition Act (XXV of 1949)—constitutional validity – applicability of act to foreign liquors – to medicinal and toilet preparations containing alcohol – validity of ss 2(24) (a) 12, 13, 23, 24 39, 40(1) (b) etc.

violates Fundamental Rights as stated in Articles 14, 19, and 31. The effective implementation of Directive Principles of State Policy is a key to achievement of social goals -- to ensure equality, to secure rights and to prohibit discrimination and deprivation.

11.4 Implementation of Directive Principles and Achievement of Social Goals

Though the government cannot be forced to implement Directive Principles, we cannot deny that the realization of the social goals relies on the effective implementation of the Directives. The effective implementation of Directive Principles of State policy is a key to the achievement of social goals – to ensure equality, to secure rights, to uphold human dignity and to prohibit discrimination and deprivation. India is committed to Socialism and Directive Principles constitute the basis of social welfare and social justice. Their systematic implementation is expected to give India a shape to a social welfare state. Keeping in mind the necessity of implementation of Directive Principles for securing justice to people, the state should not strictly adhere to the principle of inviolability of Fundamental Rights. It should attach top priority to the establishment of egalitarian society. In this respect, Parliament may compromise, to a certain extent on Fundamental Rights to enact certain Directive Principles and implement them in the greater interest of people and the nation.

“The 42nd Constitution Amendment offered another change by declaring that no law giving effect to any or all Directive Principles of State Policy shall be invalid on the ground that it violates Fundamental Rights...”. This amendment attempted to give primacy to the Directive Principles as against Fundamental rights, but the Supreme Court in *Minerva Mills* case (1980) has upheld the supremacy of Fundamental Rights over Directive Principles. In this respect the Chief Justice argued that “Our Constitution is built on a balance between parts III and IV and to give absolute primacy to the one over the other is to disturb the harmony between the two...”. This observation of the Supreme Court defends and validates the interrelationship between Fundamental Rights and

Directive Principles of State Policy which is of great necessity for India to uphold equality , democracy and justice.

Directive Principles constitute the goals and aspirations of the state of India to ensure full justice and security to people. They are immensely valuable addition to the constitution of India of India as its integral part. According to Shri Durga Das Basu, the inclusion of Directive Principles in the Constitution has been vindicated by national consensus and the working of the Constitution since 1950.

The Directive Principles lay emphasis on the goals of Indian policy to establish a welfare state , which has been declared by the framers of the Constitution in the Preamble.. They constantly remind the state of India of its positive duty to ensure social and economic justice to its citizens and to protect dignity of the Individuals . They are expressive of indispensability of a new social order based on social justice and social protection in order to constitutionally guarantee individual rights and freedom. They help us to rightly understand the meaning and significance of Fundamental Rights. Fundamental Rights guided by Directive principles of State policy , will definitely enable the State of India to establish a classless , casteless and exploitation and discrimination free society based on the principles of political liberty , economic equality and social justice and social protection . It cannot be gainsaid that Fundamental Rights cannot alone render justice to people nor are they be able to bring about social revolution in India in a constitutional manner . Social revolution in India depends mainly on state's sincerity to the implementation of Directive Principles. Implementation of Directives stands for the protection of people's rights and dignity , dispensation of justice, of economic equality, guarantee of social protection and realization of our national goals.

Directive principle of State Policy is not less important than fundamental rights as far as the Constitution framers cherished the desire and aspirations for a true democratic state based on socialistic ideas. Fundamental Rights guarantee the Indian Citizens Right to equality which contain equality before law , abolition of discrimination on grounds of class , creed, sex, and religion , equality in public employment , abolition of untouchability and abolition of titles. They guarantee

rights to freedom which include six freedom with certain restrictions upon them. They protect rights against exploitation which prohibit traffic in human beings and child labour. They grant to the people of India right to freedom of religion and give India a secular character. They protect cultural and education rights that include the right to protection of language, script and culture granted to the minority, who are able to give the right to establish, run and administer educational institutions of their own. They grant Indians right to constitutional remedies and this right provides for enforcement fundamental rights through the judicial process. Directive Principles are not in conflict with the fundamental rights rather they have strengthened fundamental rights and broadened the scope of fundamental rights also. It may be said that the Fundamental Rights and Directive Principles of State Policy are mutually controlled. They are directives upon the states to secure welfare of the people which is explicit in the fundamental rights. They constitute the voice of the people demanding India to become a state where justice, equality and freedom for all will prevail. This is the spirit and principle of the Fundamental Rights.

11.5 Legal Importance and Implication of Directive Principles

Though the courts do not enforce the Directives, they are not completely devoid of any legal importance. In a number of cases the Supreme Court has upheld the validity of many laws made on the principles of the Directives, though it is often found that such laws were violative of the Fundamental Rights; and so the legality of such legislation was challenged and the laws were interpreted as invasion of the Fundamental Rights. In *Keshavananda Bharati* case, the Supreme Court upheld the validity of the enactment so as to implement Directive Principles. The Court declared that Parliament can amend the Constitution to override or abrogate any Fundamental Right in order to enable the State to implement the Directives, so long as the "basic features" of the Constitution are not violated. The basic implication of the court's interpretation of the Constitution consists in its view that the State needs to be permitted to overlap any of the Fundamental Rights so that it may ensure the implementation of the Directive Principles. The Court is part of the State as defined in Article 36 r/w. Article 12 of the Constitution and implementation of the Directive Principles

to secure justice to all may be thought to be the court's indirect responsibility. The Court should interpret the Constitution with the aim to implement the Directives to harmonise the social objective underlying the Directives with the individual rights.

"After Keshavananda Bharati case , certain broad propositions are laid down by the Supreme Court and it was recognized that there is no disharmony between Directive Principles and the Fundamental Rights . Both are supplementary to each other in aiming at the same goal of bringing about social revolution and the establishment of welfare state.

It is a fact revealed from the Constitution that the Directive Principles cannot directly overstep the Fundamental Rights and so the courts cannot completely ignore the Directive Principles. The court should uphold as far as possible, legislation made by the State to ensure "distributive justice" and defend such laws as seek to check and remove inequalities, social injustices and exploitation and to defend government's attempt to achieve a fair division or distribution of wealth amongst members of the society. This attitude of the Court towards the State's initiative to implement Directive Principles through legislation is reflected in *Manchegowda vs State of Karnataka* , 1984 SC and *Lingappa Pochanna vs. State of Maharashtra* ,1985 SC⁶².

"In *Sameer vs. State* (1982 SC 66) the Supreme Court emphasized that it is the duty of the State under the Directive (Art. 41) not only to establish educational institution but also effectively secure right to education by admitting students to the seats available at such institution and State's action seem to conform to the standard of equality and rationality underlying Article 41"

"Similarly , the directives under art. 39(d) viz , equal pay for equal work for both men and women read together with equality clauses enshrined under Article 14 to 16 and was given effect to." "In *Randhir Singh vs. Union of India* (1982 , SC 879) the Supreme Court held that the principle of "equal pay for equal work" though not a fundamental right is certainly a constitutional goal, and therefore,

⁶² Showing the context in which Hyderabad tenancy and agricultural land act, 1950 appears

capable of enforcement⁶³ and also in *D S Nakara vs. Union of India* (1982, 1 SC, 305) the name was reaffirmed.

In recent cases , the Supreme Court has directed the government and administrative authorities to adopt positive measures to redress the grievances of the petitioners , that have been caused by the their failure to implement the Directives. The Courts have directed them to enforce the following directives:

- To ensure minimum wages for bonded and other workers or labourers who are being exploited;
- To form a joint committee of the central government and state governments to supervise , monitor and ensure that the poor and needy employees are not exploited by unscrupulous contractors infringing or violating Articles 38, 41, 42 43 of Directive Principles and other labour laws.
- To provide the benefit of Art. 39A to all undertrial prisoners.
- To lay down procedural safeguards in matters of adoption of Indian children by foreigners in accordance with Article 39 (f).

11.6 Value of Directive Principles in the Field of Social Justice

Directive principles of State policy are of immense value as far as social justice to the people of India are concerned . They are said to constitute the philosophy of the Constitution of India. Fundamental Rights are described by Pandit Jawaharlal Nehru as “the conscience of the Constitution”. They are regarded as great charter of the of the Indian people. They have considerably helped to consolidate democratic ideals which Directive Principles seek to realize or translate into realities. The Karachi Session of the Indian national Congress (1931) which adopted an impressive document entitled *Fundamental Rights and Duties* , also dealt with provisions on labour , taxation and expenditure and economic and social programmes. These provisions form the basis of Part IV of the

⁶³ 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. Art. 39(d) of the constitution proclaims , as directive principles .

Constitution of India which is known as Directive Principles of State Policy. The Parliament of India has already passed several Acts on the Directives to bring about equality and social justice.

11.7 Directive Principles and Fundamental Rights Related

As it has been discussed and elaborated in the preceding chapters, we can say that Fundamental Rights and Directive Principles are interrelated and complementary as far as the aims and spirit of the Constitution are concerned. Fundamental Rights guarantee rights to the people of India while Directive Principles seek to widen range and scope of the rights and to render economic, social and economic justice to them. What are required for Fundamental rights to guarantee to the people of India are stated or declared in Directive Principles of State Policy. Fundamental Rights in close associations with Directive Principles facilitate the process of government's effort to ensure equality to all, to secure social justice to all and to make India a truly welfare state.

Summary

The implementation of directive Principles of State Policy accords legal status to the Directives being enacted and implemented are directed towards social justice. They have greatly been successful in ensuring justice to the poor and weaker section of the Society and thus brought about great change in our social, economic and political life. The Directive Principles which have already been enacted and implemented are enforceable by and justiciable in the courts of law. The violation of such Directives by the State is an infringement of law. The spirit of the Fundamental Rights is almost identical with that of Directive Principles of State Policy. Both interpret each other. Both aim at guaranteeing people's rights, freedom and human dignity. Both contain the mission and vision of our pre independent national leaders to make India State of perfect democracy, where equality and freedom will govern our social and national life.