

AN EVALUATION OF RELATIONSHIP BETWEEN FUNDAMENTALS RIGHTS & DIRECTIVE PRINCIPLES UNDER CONSTITUTION

A review of the present study makes it explicit clear that the concept of social justice which is enshrined in the preamble of our Constitution contains the aspiration of the people of India. This preamble message of justice has been translated in various provisions of Part III & IV of the constitution. Both of them have a common grounding. In fact both these sets of rights owe their origin to the freedom struggle waged by the Indians against the British Regime to protect Indian culture, Philosophy and system. The main object of the British rule in India was the overall exploitation of the country and its people. It caused disintegration of all kinds of Indian system, society and economy. This state of affairs led to the thinking in the minds of the Indians that socio-economic conditions of the people can not be improved unless there is change in Government and its Administrative set up. It led the public to realize that the solution lies in Political freedom and Indianization of National set up. To fulfill the pledges and commitments, hopes and aspirations of pre-independence era, the constitution made clear provisions for fundamental rights and directive principles of a state policy. Having been impressed with the fundamental character of directive principles Dr. B.N. Rao, the constitution Advisor for saw the danger of a conflict between the Directive Principles and fundamental rights. He therefore suggested that a provision should be incorporated in the constitution to make it clear that no Law by State in discharge of its obligation contained in directives shall be deemed to be invalid merely because it contravenes the provisions of fundamental rights. But the founding fathers did not accept this proposal because they thought that on a fair reading of the entire constitution it was amply clear that there exists no conflict between them. They were further said to be complementary and supplementary to each other. Regarding the nature and significance of these principles, both the views one, leveling them as pious wishes and the other, considering them as most important, prevailed in the Assembly, Framing constitution. Directive principles were not made enforceable in the Court of Law. But in the Court of people while the fundamental rights made enforceable in Court of Law.

Now after a period of about 40 years of constitutional experience we may ask the question how far the fundamental rights and directive principles have succeeded in playing its role forward the achievement of the constitutional objective of searching social justice to the masses and what steps have been taken by the Executive, Legislature and Judiciary in respect of their fulfillment.

Various constitutional amendments (1, 4, 17, 25, 34, 39, 40, 42, 44 etc.) passed by the Parliament in India for giving effect to the Directive principles have made it clear that the State always regarded Directive principles as Fundamental in the governance of the Country. Other Legislative and Executive measures taken in the past 40 years clearly indicated that the State providing social justice to the people. An appraisal of various measures taken in the field of Education health, living standard, employment, agriculture, Trade and business, Science and Technology, public services and other social services pursued in the past years shows that a good amount of progress has been made in improving the conditions of the starving millions. This shows that the directive principles have played a very significant role in implementation of social justice to the ordinary and less privileged class of our society. It goes without saying that a great deal has been done towards ameliorating the condition of the peasantry, the labour, the exploited and the under privileged by introducing agrarian reforms by various relief acts by undertaking several important prospects and by initiating several social welfare schemes. Likewise fundamental rights have also played vital role in the preservation, substantial equities, various freedoms, liberty and other civil and political rights. Unfortunately several factors caused confrontation between fundamental rights and directive principles. Marriage between two could not last long. The fear or danger of B.N. Rau, The constitutional Advisor gradually became apprehensive and it was felt that there exist conflict between two. Hence it may be recalled that soon after the coming into force of the constitution, the judiciary entered into a false dilemma of conflict of States relationship between Fundamental Rights directive principles.

Under our constitution the Judiciary has great role to play in interpreting the social and other progressive Legislations passed by the State to implement the policies in the directive principles. The questions is : Has the judiciary succeeded in discharging the constitutional obligation or has it created any obstacle in the implementation social and progressive legislation enacted on state in furtherance of directive principles. No clear cut answer can be given because apex court the land in the case of Champa Karane Dorairajan propounded the theory of subordination of directive Principles to Fundamental rights. However, a new light was given to the hopes and aspirations of the people by the Judiciary in Kerala education Bill & M.H. – Quareshi cases by the doctrine of harmonious construction. But the true and full hopes could not crystallize into reality because of the various pronouncements of the court in property and other matters (Chiranjee Lal's Kameshwar Singh's, Subodh Gopal's, Vara velu, metal Corporation's, Santi Lal Mangal Das's cases & Golak Nath's cases). IN order to render these decisions ineffective, Parliament enacted a number of amendment to the constitution to carry forward the object of social justice of constitution.

Similarly the supreme court in early days conceded constituent power to Parliament in Sankar Prasad and Sajjan Singh cases. But later in Golak Nath case the Court held that Parliament had no power to amend the fundamental rights. In Bank nationalization and privy purse cases Court took the narrow and strict view and attached to much sanctity to fundamental rights. A new era of amendment was opened by the parliament to nullify the effect of these decisions. Constituent power was restored to the Parliament and article 31C was added to give primacy to the directives contained in Article 39(b) & (c) over Article 14, 19 and 31. Here at this time supreme court responded well to the clarion call of the time by overruling Golak Nath in Kesava Nath Bharti. The court observed that Parliament can change and part of constitution except basic features of the constitution. The court also kept the power of examining the relation and true nexus between the enactment (Law) and the principles to be implemented. This generated hope and fear both in the mind of people. But in the following year the Supreme Court showed little bit more concern towards directive principles. While recognising the importance, it observed in Mumbai Kamgar Sabha's case that where two judicial choices are available (AIR 1976 S.C. 1455) the construction in conformity to the social Philosophy of part IV has preference. The similar were the views in the case of State of Kerala V/s N.M. Thomas (AIR 1970 SC 490).

Encouraged by these Judicial pronouncements and realizing the need of the time Parliament passed constitutional (No. 42) Amendment Act 1976 and again amended Article 31C so as to give effect to all or any of the Directive Principles laid down in Part IV. It established the supremacy of directive Principle over Fundamental rights, The opinion of Dr. B.N. Rao, Constitutional Advisor was adopted and accepted after 34 years, It shifted the power from Raj to Republic. Further Parliament by enacting the 44th. Constitutional amendment Act 1978 repealed the right to property as a fundamental right and declared it simply to be a simple constitutional right under Article 300 A.

But the hopes generated by the Court Parliament were belied by the decision Minerva mill case in which Article 31C was assailed and Judicial trend set up in Mumbai Kamgar Sabha was changed. But a ray of hopes emerged out of the dissenting opinion of Justice. P.N. Bhagwati who upheld the amended Article 31C and said that the amendment in Article 31C far from damaging the basic feature of the constitution re-enforces and strengthens it by giving fundamental importance to the right of the Members of the community as against the rights of a few individuals. The dissenting opinion of Justice P.N. Bhagwati prevailed in 1983. In the case of Sanjeeva Coke mfg. Co. Vs Bharat cooking Coal Ltd. the majority view of Minerva mills case was severely criticised but not overlooked. The opinion of Justice Roa's case also did not make any thing clear but indirectly favoured the Directive principle.

The repeal of property right from the list of Fundamental rights has made this right to property more fundamental more vital and more powerful than it was even before just dull to certain Technical lapse in the Legislative drafting. Now the entire condition is hotch potch. Nothing is clear. It is interesting to point out here that barring from Status controversy between fundamental rights and directive principles where the Legislature and Judiciary entered into a boxing ring, the court has shown its judicial wisdom by upholding certain Legislation on the ground that directive principles are reasonable restrictions on Fundamental Rights and the law giving effect to them are in public interest. The concept of reasonable restrictions runs like a golden thread through entire Fabric of the constitution. We hope that the courts shall do needful and continue to do needful also in future. The clouds of uncertainty shall be made clear and pulled into water and fresh breath shall be given to the ideas of the constitution for harmonious human notes. But how it all shall be carried into practical form at the Platform of the Indian Society, has to be seen with caution.

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