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Fundamental Rights vs Directive Principles of State Policy: An Inevitable Transigent Tussle

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The enduring debate between Fundamental Rights (FRs) and Directive Principles of State Policy (DPSPs) forms a core aspect of Indian constitutional interpretation. While FRs under Part III are justiciable and safeguard individual liberty, DPSPs under Part IV are non-justiciable but guide the State toward achieving a welfare and egalitarian order. Initially, courts prioritised Fundamental Rights as seen in Champakam Dorairajan, but later adopted a harmonious approach, recognising that FRs and DPSPs are complementary, not conflicting. Landmark judgments such as Keshavananda Bharati, Minerva Mills, and Olga Tellis established that Fundamental Rights are the means and DPSPs the ends of constitutional governance. Illustrations like the balance between Article 19(1)(g) and Article 47, and the debate between Article 25 and Article 44, show evolving judicial efforts to align individual freedom with social welfare. The paper concludes that though the tussle between FRs and DPSPs is inevitable, it is essential for sustaining the dynamic harmony and basic structure of the Indian Constitution.

Keywords: *fundamental rights, dpsp, constitution.*

INTRODUCTION

The discussion on the rights and duties under Indian jurisprudence starts with the Constitution.[1] Eventually, the Indian legal system has become perplexed at the end of the day. With each passing day, a host of legal cum constitutional disputes arose, which, if not addressed cautiously within time, could have seriously impacted the rudimentary character of the Constitution. This article proposes to address only one major Constitutional battle, namely the dispute regarding the supremacy between justiciable rights (fundamental rights) and non-justiciable rights (DPSP), and also analyses the role of constitutional courts in harmonising the rift between them.

The constitutional visionaries who experienced *the laissez-faire* era realised that in an impoverished country like India, the idea of political democracy could not be achieved without economic liberalisation, and so, they recognised those rights which could have a significant impact on the economic, social, and political status of a person and delineated the same into two different chapters under the constitution. One was kept under the banner of justiciable rights (Fundamental rights), which is treated as the fundamental attribute of the Constitution, and the same were enshrined under Part III of the Constitution. On the other hand, there is a non-justiciable right, which is contemplated as a moral or positive obligation imposed upon the state in order to achieve the preambular vision of becoming a welfare state. Both these Rights – fundamental rights and directive principles of state policy (hereinafter referred to as DPSP) are regarded as consequential and inseparable parts of the constitution. In the long, independent history of India, there were several instances when disharmony between the two was reported.

DPSP: AN AFFIRMATIVE OBLIGATION

Chiefly speaking, DPSPs are a set of directions given to the legislature or government with regard to modus operandi in connection with the exercise of power by them. These directions promote and strengthen the idea of the welfare state by directing the state to act positively under the manifested direction to achieve economic democracy, so that the scheme of the welfare state can be accomplished ultimately. According to the Apex Court welfare state

[1] S Muralidhar, 'India: The Expectations and Challenges of Judicial Enforcement of Social Rights' in Malcolm Langford (ed), *Social Rights Jurisprudence: Emerging Trends in International and Comparative Law* (Cambridge University Press 2009)

refers to the idea of the greatest good of the greatest number and the benefit of all, and the happiness of all.[2] The Apex Court has reiterated that these directive principles stimulate the idea of a welfare state in the country in the following words: "*The constitution envisages the establishment of a welfare state at the federal level as well as the state level. In a welfare state, the primary duty of the government is to secure the welfare of the people.*"[3]

Here, one would observe that the socio-economic goals upon which the idea of socialist democracy, or rather, in the larger ambit scheme of the welfare state, is premised, itself form the very part of DPSP. As the broad egalitarian principle is very implicit in the part and parcel of DPSP, and accordingly, law should be designed in such a manner that it promotes broader egalitarian goals to ensure economic justice for all, which in turn will help in achieving the objective of socialist, economic and political democracy in a true sense.[4] The preamble read with Articles 38, 42, 43, 46 and 48(A) of DPSP promotes the idea of social justice, which means to achieve a notable degree of social, economic and political equality.

Now, a legitimate question arises here that, being such an important factor in realising the constitutional goals, what could be the reason behind the non-enforceability of the DPSP? Before moving on to the reasons, let us discuss the mandate of Article 37[5]. The mandate of Article 37 is very explicit that the proviso enumerated in part IV of the Constitution shall not be enforceable by any court of law but it also states that these principles are indispensable in the very administration of the country and it shall be the obligation upon state to enumerate those propositions into law or shall consider the scope of those principles to its fullest during the enactment of any statute.

In our opinion, the prime rationale backing the non-enforceability or non-justiciability of these principles is the imposition of a positive obligation upon the state. It obligates the state to take some positive action in the interest or prosperity of the masses, and while doing so, the government functions or suffers through certain restraints, the most pivotal being the limited financial resources. The constitutional visionaries, looking at the implementational impracticability in a country like India, where it is not at all possible for the government to take affirmative action for such a large number of masses out of the limited financial

[2] *Lala Ram v Union of India* (2015) 5 SCC 813
[3] *Paschim Banga Khet Mazdoor Samiti & Ors v State of West Bengal & Anr* (1996) 4 SCC 37
[4] *Sanjeev Coke Manufacturing Co v Bharat Coal Ltd. & Anr* AIR 1983 SC 239
[5] Constitution of India 1950, art 37

resources, took a restrictive approach by keeping these principles toothless. However, merely because they are non-enforceable through courts does not mean that they are of subordinate importance. They are equally significant in the administration of the country, and the state has been put under a positive obligation to apply these principles in making laws, meaning here by that the state has to make laws and use all sorts of machinery in such a manner that these principles may be achieved. The courts went a step further and held that, as they do not have the power to give direction for the execution of these principles, it nevertheless bound to adapt and evolve those principles of interpretation which will further the objective set out in these propositions.[6] For example, the court observed in ***Meenakshi Mills***[7]: *"Ordinarily, any restrictions imposed which have the effect of promoting or effectuating a directive principle can be presumed to be a reasonable restriction in the public interest."*

FUNDAMENTAL RIGHTS: A RUDIMENTARY FEATURE OF THE CONSTITUTION

Fundamental rights are basic human rights guaranteed to the citizens, as well as in some cases to the non-citizens, which cannot be taken away either by the state or by any individual and cannot be waived off by the right-holders themselves. It would be rather a fallacy to say that the Constitution has provided fundamental rights to the people, as a matter of fact, they exist with the existence of humans irrespective of any law, and the Constitution only recognises and protects those rights from being violated. Fundamental Rights occupy a unique place at the heart of civilised societies and have been described as 'transcendental', 'inalienable' and 'primordial'.[8] These rights are treated as a basic part of the Constitution, and the same cannot be abridged by any statutory or constitutional amendments by virtue of Article 13[9]. Any law that takes away or transgresses these rights shall stand in contravention of the basic structure doctrine.[10]

The demonstration regarding the *grundnorm*, that human has certain indispensable, elementary, natural and inviolable rights, which must be preserved to promote an efficacious social and democratic life, can be traced back to the 17th century. The idea of providing concreteness to those inalienable human rights by making them enforceable through courts

[6] *Lily Thomas v Union of India* AIR 2000 SC 1650
[7] *Workmen, Meenakshi Mills Ltd. v Meenakshi Mills Ltd. & Anr* AIR 1994 SC 2696
[8] DD BASU, *SHORTER CONSTITUTION OF INDIA* (14th edn, Lexis Nexis 2009)
[9] Constitution of India 1950, art 13
[10] *State of West Bengal & Ors v Committee for Protection of Democratic Rights & Ors* (2010) 3 SCC 571

has been borrowed from the U.S. However, in modern days, as a matter of guarantee, certain Rights that need to be protected from the government's unnecessary interference are formally expressed and liberally interpreted as a fundamental part of the Constitution. In India, the practice was adopted in order to ensure a sense of guarantee or confidence in the minds of people (who belong to diverse religious, linguistic, or cultural groups) regarding the protection of certain basic civil rights and self-autonomy of minorities by safeguarding their religious and cultural rights. Simply, it preserves the sacredness of certain essential rights against unbridled political alteration.[11]

Being the guardian, protector, custodian, and interpreter of fundamental rights, the judiciary, especially the Apex Court, has progressively changed the landscape of these rights by showcasing a high class of judicial creativity. It evolved a proposition that with the change in political, social, and economic scenarios, new rights may also be given the due recognition of FR, and prior formal expression of the same is not a fixed or inconvertible rule. The cases of ***Maneka Gandhi***[12]***, Indra Sawhney***[13]***, Asiad cases***[14]***, and R.C. Cooper***[15] may be considered, as these are landmark judgements, where the dimension of FR has witnessed a remarkable shift. Justice Bhagwati has recapitulated the same view in ***Ajay Hasia***[16] in the following words: *"It must be remembered that the fundamental rights are constitutional guarantees given to the people of India and are not merely paper hopes or fleeting promises…. they should not be allowed to be emasculated in their application by a narrow and constricted judicial interpretation."*

Fundamental rights are considered as a means to achieve the goal indicated in DPSP, and these rights must be interpreted in the light of the latter. Nowadays, it is a judicial strategy that fundamental rights cannot be read in isolation and the same has to be read along with DPSP so that the depth /scope of the former may be enhanced and the people may enjoy more and more rights. Hence, it simply means that both FR and DPSP are two inseparable or inalienable wheels of a constitution and both have their own scope and limitations but due to the absence of manifest demarcation between them, the relationship among them has always been puzzled and judicial pronouncement played a very significant and guiding role

[11] *Siddharam Satlingappa Mhetre v State of Maharashtra* AIR 2011 SC 312
[12] *Maneka Gandhi v Union of India* AIR 1978 SC 597
[13] *Indira Sawhney v Union of India & Ors* AIR 1993 SC 477
[14] *PUDR v Union of India* AIR 1982 SC 1473
[15] *RC Cooper v Union of India* AIR 1970 SC 564
[16] *Ajay Hasia v Khalid Mujid Sehravardi & Ors* AIR 1981 SC 487

in explaining the interrelationship between the two, which has also witnessed dramatic shift in its course over a period of time.

EVOLUTION OF CONSTITUTIONAL JURISPRUDENCE REGARDS TO RELATION BETWEEN FR & DPSP

The deliberation upon the Uniform Civil Code throughout the nation has once again triggered the hibernated perpetual debate as to the interrelation between fundamental rights and DPSP, or which one is to be given priority in the case of a tussle between them. This is not the first time that such a constitutional dispute has arisen in the history of independent India. Before this, several occasions were reported when the rift between these two had widened, and in such circumstances, the judiciary acted as an able interpreter and mended their relations. However, the attitude of the judiciary has seen a drastic shift over the period of time.

On various occasions, the Court had adopted a strict interpretative approach and ruled that DPSP cannot override the fundamental rights and opined that DPSP is a subsidiary of the fundamental right. Further, the Court expressed the same opinion in the case of ***Champakam Doriarajan***[17], which is as follows: "*The DPSP, which by Article 37 is expressly made unenforceable by a Court, cannot override the provisions found in Part III …... The chapter on FR is sacrosanct and not liable to be abridged by any legislative or executive Act…. the DPSP have to conform and run as subsidiary to FR.*"

The Court substantially changed its course by adopting a liberal approach and opined that the disputing elements between the two must be harmonised as much as possible in a manner that the superiority of the fundamental right does not get disturbed. This is the very first time that the Indian Courts have noticed the significance of DPSP and marked appropriate legal weight to it. The Court went a step ahead and opined that when two judicial choices are available, the construction that stands in conformity with the social philosophy of DPSP shall be given preference.[18]

The views expressed by the Court at the initial stage have been deserted in its subsequent judgments, and it has recognised that both fundamental rights and DPSP are important and

[17] *State of Madras v Champakam Doriarajan* AIR 1951 SC 226
[18] *Mumbai Kamgar Sabha, Bombay v M/S Abdulbhai Faizullabhai & Ors*AIR 1976 SC 1455

hence one shall not be given priority over the other. Moreover, with the change in the political and socio-economic landscape of India, judicial pronouncements have also witnessed a significant change, for instance, in cases such as ***Olga Tellis***[19] and ***Minerva Mills***[20], where the Hon'ble Court has placed DPSP and fundamental rights on an equal constitutional scale, which shows that for an inclusive welfare state, one cannot be given a dominant status over the other.

The crux of the discussion is that there is no conflict on the whole between the two, and they act as complementary and supplementary to each other.[21] Finally, at present, the judiciary is of the view that neither of the two is superior or dominant over the other and believes that DPSP is the end (which is bedrock for the governance of the country), which could be only achieved by certain means enshrined under Part III of the Indian Constitution, i.e., Fundamental Rights. In the furtherance of this idea, the Apex Court opined that FR and DPSP form an integrated scheme which was elastic enough to respond to the changing needs of society.[22] It is worthy of note that this balanced approach got due recognition after the pronouncement of ***Keshavananda***[23], where the court opined that parts III and IV represent two different sets of rights, which need to be synchronised, then only the dignity of a person can be achieved. The shift marked in the Court's interpretative attitude has played a significant role in harmonising the two intransigent or irreconcilable aspects of the Indian Constitution, which more or less is highly crucial in determining the value and scope of DPSP in relation to the fundamental rights.

ART 19(1)(G) VS ART 47: A REMARKABLE HARMONISATION OF TWO INCONGRUOUS PARTS

The Indian Constitution has witnessed enduring tussles between its two incongruous parts, time and again. One such scrimmage between the two came to light when the State of Bihar, in exercise of the power conferred under Article 47[24]. The Constitution prohibited the sale, storage, and consumption of intoxicating drinks except for medicinal purposes within its territorial jurisdiction, citing public health as the reason for the same. The same was

[19] *Olga Tellis v Bombay Municipal Corporation & Ors* AIR 1986 SC 180
[20] *Minerva Mills & Ors v Union of India & Ors* AIR 1980 SC 1789
[21] *Chandra Bhavan Boarding and Lodging, Bangalore v The State of Mysore and Anr* AIR 1970 SC 2042
[22] *IC Golaknath & Ors v State of Punjab & Anr* AIR 1967 SC 1643
[23] *Kesavananda Bharati Sripadagalvaru & Ors v State of Kerala & Anr* AIR 1973 SC 1461
[24] Constitution of India 1950, art 47

challenged as a violation of one of the fundamental rights, i.e., Art 19(1)(g)[25]. Here, the Court adopted a progressive approach and opined that no fundamental right is absolute in nature and the implementation of the same is subject to certain limitations mentioned under Article. 19(2), reasonableness is one such exception, and also the mandate of Article 47 is to prevent all those intoxicating elements which affect public life at large. Hence, harmonised the two elements of reasonableness and pronounced that the implementation of Article 47 is not violative of Article 19(1)(g) on the grounds of public health. Further Hon'ble Apex Court reiterated the same view in the case of ***Nashirwar***[26] and ***Har Shankar***[27].

The harmonisation of the conflicting provisions of the two incongruous parts has been dealt with, on the very premise that fundamental rights should be interpreted in order to fulfil the parameters for the implementation of DPSP, so that socio-economic upgradation may also be ensured. In simple words, fundamental rights shall act as a means in order to achieve the DPSP as an end. Relying on this very principle, the Hon'ble Apex Court has time and again emboldened the scope of Article 21 (a fundamental right). In the light of Article 39A Hon'ble Supreme Court, by way of liberal interpretation, broadened the scope of Article 21 to include the right to livelihood as well. Here, also, the fundamental right has been used as a means to implement the mandate of Articles 38 and 39A of the Constitution, which primarily deal with the idea of upgrading social and economic status.

ART 25 VS ART 44: AN INEXORABLE, NON-NEGOTIABLE TUSSLE

At present, the contradiction between Articles 44[28] and 25[29] is a widely debated tussle across the nation. India is a culturally diverse country where people from different castes, creeds, and religions reside together. This diversity has been preserved by the Constitution, declaring India a secular state. The country provides the freedom of religion to its people. The right not only includes the freedom to follow any religion but also to practice, profess, and propagate the same. There are apprehensions that the Uniform Civil Code (hereinafter UCC) will curtail the fundamental right of freedom of religion guaranteed under Article 25. UCC, if implemented, will introduce a common or uniform personal law for everyone, and

[25] Constitution of India 1950, art 19(1)(g)
[26] *Nashirwar v State of MP* AIR 1975 SC 360
[27] *Har Shankar and Ors. v Deputy E&T Commissioner & Ors* (1975) 1 SCC 737
[28] Constitution of India 1950, art 44
[29] Constitution of India 1950, art 25

all the current personal laws will cease to operate. In other words, the personal laws which is deeply rooted in the religious texts will be diluted, meaning that the superiority of authority to implement the same would also become questionable and challengeable under the given circumstances. Once again, the question as to who is superior between Article 25 (fundamental right) and Article 44 (DPSP) has arisen, and for the sake of implementation of Article 44, can Article 25 be taken for granted?

Relying upon the current judicial trend and going by the progressive or liberal approach, it is an admitted scenario that none of the fundamental rights are absolute in nature. Likewise, the mandate of Article 25(1), which primarily deals with the right to practice, profess or propagate religion, can be regulated by the provision under Article 25(2)(b) of the Indian Constitution. Article 25(2)(b) basically states social welfare and reforms as an exception to Article 25(1) and the Indian Courts have adopted the principle and have often broken the ultra-conservative, blinkered, illegal, and arbitrary practices running under the curtain of religion and the Hon'ble Supreme Court has time and again in the case of ***Shah Bano***[30], ***Lily Thomas***, ***Sarla Mudgal***[31] emphasized upon the need of having a Uniform Civil Code, so that the much needed social reforms can take place which will further the cause of national integration by avoiding desperate loyalty to laws which has conflicting ideologies. As far as the conflict between Article 25 and Article 44 is concerned, the same can be harmonised by synchronising disputing elements on the very principal idea that fundamental rights are means to achieve DPSP as an end. Here, in the larger interest and for the upgradation of social order, certain social reforms in the nature of a Uniform Civil Code can be implemented. Hence, the religious laws may be interfered with by virtue of Article 25(2)(b), and the same shall not stand in violation of Article 25. The cases of ***State of Bombay*** **v** ***Narasu***[32], ***Fazru*** **v** ***State of Haryana,*** and ***Sri Venkatramana Devaru*** **v** ***State of Mysore***[33] are shining examples.

CONCLUSION

Ever since the Constitution was adopted, the country has witnessed various conundrums, one of the prominent among them being the clash between Fundamental Rights and DPSP. On one hand, where the Fundamental rights are unalterable and justiciable, and enforceable

[30] *Mohd. Ahmed Khan v Shah Bano Begum & Ors* AIR 1985 SC 945
[31] *Sarla Mudgal and Ors. v Union of India & Ors* AIR 1995 SC 1531
[32] *State of Bombay v Narasu Appa Mali* AIR 1952 Bom 84
[33] *Sri Venkatramana Devaru & Ors v State of Mysore & Ors* AIR 1958 SC 255

in the court of law, which promotes individualistic welfare, DPSP is unenforceable and non-justiciable, but a necessary set of mandates to be followed by the State, which promotes the community welfare at large. *Prime facie*, many provisions enshrined in these two parts may appear to be in conflict with each other, which has led to the birth of tussles as to the superiority of one over whom.

In such troublesome situations when two parts of the same fundamental law stood facing off against each other, the interpreters of the Constitution applied different approaches at different times to resolve the issue between them. Initially, the Court gave more weight to fundamental rights and accordingly declared it superior to the DPSP. With changing times, the approach of courts also changed drastically, and the present jurisprudential status is that both fundamental rights and DPSP are inseparable wheels of the same vehicle, and one cannot be given superiority over the other. The same is premised on an understanding that DPSP embodies goals of socio-economic nature and the state is under an affirmative obligation to accomplish them by way of means, i.e., fundamental rights. They both are considered supplementary or complementary to each other, and also, they as a whole are sufficient to respond to the evolving needs of society.

Time and again, various conflicts have arisen between the fundamental rights and DPSP, whereby the Courts tried to harmonise the two or reach a conclusion in such a way that the spirit of the Constitution remains protected. The conflict between the reservation of seats in educational institutions and Article 29(2) which states that there shall not be discrimination on basis of caste, creed, religion, etc. to anyone about one's admission in any educational institution; the property right, i.e., Article 31 (now repealed) and Article 39 that strives for distribution of material resources; the right to freedom of trade and commerce {Article 19(1)(g)} and the mandate under Article 47 to state for prohibiting intoxicating drinks and drugs harmful for health and the ongoing tussle of Right to freedom of religion (Article 25) and Uniform Civil Code (Article 44) are some of the examples of the incessant tussle between fundamental rights and DPSP.

It can never be assured that a time will come when there will be no dispute between these two, but whenever such differences occur, a balanced and harmonious approach would act as a catalyst in resolving the same so that the spirit or rudimentary character of the Constitution may be preserved. Also, such a judicial strategy, where construction that stands

in conformity with the socio-economic goals enumerated under DPSP shall be given preference, must be respected in prospective constitutional disputes in order to synchronise such tussle.