
DECODING ANTITHETICAL RELATIONS BETWEEN FUNDAMENTAL RIGHTS AND THE DIRECTIVE PRINCIPLES OF STATE POLICY

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Abstract

The Indian Constitution is a living document in a rapidly changing and almost frenetically political society. The Constitution, the touchstone for public and many private affairs is employed daily, if not hourly, by citizens in pursuit of their personal interests or desire to serve the public good. The essence of democracy and social strands is to be found throughout the Constitution. Fundamental Rights (FR) provided in Part III and the Directive Principle of State Policy (DPSP) in Part IV of the Indian Constitution are very important to implement the ideals, achieve the goals enshrined in the preamble, and establish a welfare state. The framers of the Indian Constitution gave primacy to Fundamental Rights by placing them ahead of Directive Principles. The paper argues that Fundamental Rights and Directive Principles are not contrary but complementary. Both ultimately aim at the welfare and well-being of the citizens. Although Directive Principles are non-justiciable, meaning they cannot be enforced by the courts, this does not imply that their implementation has been left at the will and mercy of the state. In addition to this, the paper explains the relation between Fundamental Rights and Directive Principles of State Policy cases under the Constitution of India.

Keywords: Indian Constitution, Fundamental Rights, DPSP, India

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Introduction

The Constitution is the supreme law of the land in India. No one is above the law. The preamble, the Fundamental Rights, and the Directive Principle constitute the most important features of our constitution. The formulation of a bill of rights was among the first tasks to which the constituent assembly addressed itself, Representing the crystallisation of the values and concepts held in India's varied and rich cultural heritage and having its roots deep in the motivational forces of the national struggle for independence. This historical context is crucial to understanding the Indian Constitution. Coming closely on the heels of the Universal Declaration of Human Rights, the inclusion of a bill of rights in the constitution of India accorded with the contemporary democratic and humanitarian temper and constitution practice in other nations of the world. It reflected in no small measure the anxiety of the founding fathers to incorporate and implement the basic principles enunciated in the Universal Declaration. Also, incorporating a charter of fundamental rights into our constitution became necessary in view of the special problem of minorities and the need to assure them the fullest protection of their rights. In India, the Simon Commission and the Joint Parliamentary Committee, which were responsible for the Government of India Act 1935, had rejected the idea of enacting the Declaration of Fundamental Rights on the ground that "abstract declarations are useless unless there exists the will and the means to make them effective. But nationalist opinion since the time of the Nehru Report has been in favour of a Bill of Rights because the experience gathered from the British regime was that a subservient legislature might serve as a handmaid to the executive in committing to individual liberty. Regardless of British opinion, therefore, the makers of our constitution adopted Fundamental Rights to safeguard individual liberty and to ensure (together with the Directive Principle) social, economic, and political justice for every member of the community. That they have succeeded in this venture is the testimony of an ardent observer of the Indian Constitution.

Basic Components of Fundamental Rights

Fundamental rights are basic human rights that are guaranteed to us by the Constitution of India. The concept of basic human rights needs involves drawing a list of foundational human needs of both physiological and social importance and, in a way, arriving at a list of the minimum social needs (Pande, 1989). The word 'fundamental' refers to the constitution, which is the land's fundamental law. Those rights guaranteed by the "Fundamental Law of the Land" to ensure human existence and enforceable against the state are known as fundamental rights. These rights are meant to promote the ideals of political democracy. They prevent the establishment of authoritarian and despotic rule in the country and protect the liberties and freedoms of people against invasion by the state. They operate as limitations on the executive's tyranny and the legislature's arbitrary laws. In short, they aim to establish a government of laws and not of men. The Fundamental Rights are named so because the Constitution guarantees and protects them. They are fundamental because they are essential for the all-round development of individuals. The fundamental rights have been guaranteed under six broad categories, namely,

- The Right to Equality includes equality before the law and the equal protection of the law (Article 14), prohibition of discrimination on the grounds of religion, race, caste, sex, or place of birth (Article 15), equality of opportunity in matters of public employment (Article 16), and abolition of untouchability and the system of titles (Articles 17 and 18).
- The right to freedom includes the right to protection of life and personal liberty (Article 21), the right to freedom of speech and expression, assembly, association or union, movement, and to reside and settle in any part of India, and the right to practice any profession or occupation (Article 19).
- The Right against Exploitation prohibits all forms of forced labour, child labour, and trafficking of human beings (Articles 23 and 24).

- The right to freedom of conscience, profession, practice, and propagation of religion (articles 25–28).
- The right of minorities to conserve their culture, languages, and script and to establish and administer educational institutions of their choice (Articles 29 and 30).
- The right to constitutional remedies to enforce all these fundamental rights (Article 32).

Basic tenants of Directive Principle of State Policy

Part IV of the constitution contains the DPSPs from Articles 36–51, which are unique features of our constitution. It deals with the Directive principles. Besides the precedent of the Irish Constitution, the basic inspiration for the DPSPs came from the concept of a welfare state (*Keshvananda Bharti v. State of Kerala*, AIR 1973 SC 146). While seeking to protect the individual's basic rights, the constitution's framers also wanted it to become an effective instrument for social revolution. The possible conflict between the rights of the individual and the needs of the community was sought to be resolved on the one hand by hedging the Fundamental Rights themselves by necessary restrictions in 'public interest' and, on the other, by incorporating a chapter on the more positive 'Directive Principle of State Policy'. The DPSPs are directed towards the ideals of building a true welfare state, which, inter alia, envisage an end to economic exploitation, staggering inequalities, and inequities and cast upon the state the duty to secure a just social order. These constitutional directives were not intended to be merely moral precepts but were to be treated as positive mandates, part, and parcel of the human rights provisions of the Constitution. The constitution makers in India did not force any economic system on the people; they only tried to suggest a system that could be most suited to the Indian condition. In the words of K. S. Hedge, "The Directive Principles constitute an important part of the constitution and an operative part at that, for through them the constitution seeks to achieve the

ideal of a democratic welfare state set out in the preamble of the Indian constitution and to bring about the social and economic revolution of which the founding fathers of our republic dreamt.”

Fundamental Rights aim to create an egalitarian society, free all citizens from society's restrictions, and make liberty available to all. On the other hand, the directive principle aims to fix certain social and economic goals for immediate attainment by bringing about a non-violent social revolution. Through such a social revolution, the Constitution seeks to fulfil the common man's basic needs and change our society's structure. It aims to make the Indian masses free in a positive sense. Some DPSPs include the right to work, the uniform civil court, the right to education, etc.

Why Do We Need Fundamental Rights?

The founding fathers of the Indian Constitution realised the need for fundamental rights because they are essential for human existence. Part III of the Indian Constitution, Article 12-35, deals with Fundamental Rights, which covers the traditional civil and political rights enumerated in the Universal Declaration of Human Rights. The vitality of fundamental rights is stated in our constitution. Dr. B. R. Ambedkar described them as “the most citizenly part of the Constitution.” They were considered essential to protecting the liberties and rights of the people against the infringement of the power they delegated to their government. These rights embody the basic values cherished by the people of this country since Vedic times. Fundamental rights are always planned to protect the individual's dignity and create situations that can help every human fully develop his personality. They interlace a guaranteed pattern into the basic structure of human rights. It imposes negative obligations on the state, not encroaching on individual liberty in its various dimensions. They are essential for the attainment of the individual's full intellectual, moral, and spiritual status. “The Supreme Court has, however, come to believe that fundamental rights are not only ‘negative’ or ‘against the state’ but also have positive

content because they cast certain responsibility on the state. This, in a way, has heralded the beginning of what has come to be regarded as 'Judicial Activism' with its byproduct of public interest litigation" (Kashyap, 1994: 95). The object of their inclusion in the constitution is to establish a government of law and not of man. Fundamental rights protect the liberties and freedoms of the citizens against any invasion by the state and prevent the establishment of authoritarian and dictatorial rule in the country. They are essential for the all-round development of individuals and the country. Fundamental rights are essentially human rights but are regulated by the constitution of India.

Importance of DPSP's for an Indian Citizen

The Directive Principle of State Policy is a unique feature of our constitution. These principles are directed towards the ideals of building a true welfare state. Even though they are made unjustifiable under Article 37 of the Indian Constitution, they have guided the Union and the State Legislatures in enacting social reform. These directives are not enforceable by the courts, and if the government of the day fails to carry out these objects, no court can make the government ensure them. Yet, these principles have been declared to be "fundamental in the governance of the country, and it shall be the duty of the state to apply these principles in making laws" (Article 37). Regardless of the non-justifiable nature of DPSPs, a citizen should be aware of them. The main objective of DPSP is to improve society's social and economic condition so people can live a good life. Knowledge of DPSPs helps citizens keep a check on the government. Citizens can use DPSPs to measure the government's performance and identify the scope where it lacks. A person should know these provisions because these principles act as a yardstick to judge the law that governs them. Moreover, it also constrains the power of the state to make draconian laws.

Through various judicial pronouncements, it is now a settled principle that balancing DPSPs and fundamental rights is as important as maintaining the sanctity of

fundamental rights. Non-following a directive principle would directly or indirectly affect the fundamental right, which is considered one of the most essential parts of the Constitution.

Contrasting Fundamental Rights and DPSPs

- Fundamental rights aim to establish political democracy in India, whereas DPSPs aim to establish the social-economic policies of the country.
- DPSPs are instruments of instruction for the government. They are not justifiable or enforceable in court, which means an individual cannot go against the state through the courts to enforce DPSPs. On the other hand, the Fundamental Rights are justifiable and enforceable in courts under Articles 32 and 226 of the Constitution. They are considered negative rights.
- Fundamental rights are facilities given to the people by the state, whereas DPSPs are directions given by the constitution to the state.
- Fundamental rights are individualistic in nature because they promote the welfare of individuals, whereas DPSPs are socialistic in nature because they promote the welfare of the community.
- Fundamental rights do not require any legislation for implementation because they are automatically enforced, whereas DPSPs require legislation for implementation.
- Fundamental rights have a limited scope, whereas the scope of the Directive Principle of State Policy is limitless.
- Fundamental rights protect the individual's rights and work at a micro level, whereas DPSPs protect the rights of a citizen and work at a macro level.

These are some differences that are evident, yet there is no inherent conflict between them. Instead of having certain distinctions, constitution makers always discussed the coherence between Fundamental Rights and DPSP. The chief sponsor of these principles and who anticipated this conflict, Dr. B. N. Rau, felt that harmonious

construction and compromise on the part of the judiciary would, in the future resolve this conflict. Dr. Ambedkar, who is also known as the father of the Indian Constitution, was also of the same view as Dr. Rau and said that “it is the intention of the Assembly that in the future both the Legislature and Executive should not merely pay lip service to these principles enacted in this part, but they should be made the basis of the legislation and executive action that may be taken hereafter in the matter of governance of the country.”.

Justice P. N. Bhagwati defines the inter-relation between Fundamental Rights and the Directive Principle of State Policy as “it is impossible to fit Fundamental Rights and DPSP in two different and strictly defined categories.” However, one important question that comes to mind is: What will happen if there is a conflict between fundamental rights and DPSPs?

Conflicting Views

From the above observation given by constitution framers, we can safely presume that Fundamental Rights and DPSP are interrelated. But the answer to this question is not as simple as we think. There are a few important judgments regarding this. A major concern regarding the validity of the DPSPs is their compatibility with the Fundamental Rights. As we already know, DPSPs are not enforceable laws; they are just directives to the state. It lays down various tenants of a welfare state. On the other hand, fundamental rights are the guaranteed rights of citizens by the Constitution. When the state tries to implement the provisions of DPSPs, there can be a conflict, which is also seen as a conflict between the fundamental rights of the individual and the state. “The issue related to the conflict between Fundamental Rights and Directive Principles of State Policy often arises as the declarations made under DPSP are often more important than Fundamental Rights. Fundamental rights, in their basic nature, are rights enforceable by the courts of law. Any act of state or law that violates Fundamental Rights is ultra vires, whereas the DPSPs are not enforceable by courts of

law, and any act of state or law that is otherwise valid cannot be declared void if it is against DPSPs” (Sharma, 2017). Now, we will discuss the judicial interpretation of the contradiction between Fundamental Rights and Directive Principles of State Policy. Whenever there is a conflict between Fundamental Rights and DPSPs, the court views every judicial decision differently. There were cases in which the field of conflict was between fundamental rights and DPSPs, including:

Champakam Dorairajan Case

The conflict between fundamental rights and DPSPs came to the Supreme Court for the first time in 1952 (Champakam Dorairajan case). She was a woman from the state of Madras. She was not admitted to a medical college because of a communal government order that provided caste-based reservations in government jobs and college seats. This government order was passed in 1927 in Madras during the Madras presidency.

This was the first verdict of the Supreme Court on the issue of reservation, and this case also led to the first amendment of the Indian Constitution. The conflict was between Article 15 of the chapter on Fundamental Rights and Article 46 of the Constitution. Article 15 of the Indian Constitution says, “The State shall not discriminate against any citizen on the ground only of religion, race, caste, sex, place of birth, or any of them.” On the other hand, Article 46 says, “The State shall promote with special care the educational and economic interests of the weaker sections of the people, and in particular of the Schedule Castes and the Schedule Tribe, and shall protect them from social injustice and all forms of exploitation.

The Supreme Court held Article 37 of the Indian Constitution, which says that Directive Principles are not enforceable by the court, and it also mandated that the chapter on Fundamental Rights in the Indian Constitution is sacrosanct and DPSPs have to conform to and run subsidiary to the chapter on Fundamental Rights. This

means that fundamental rights were given superiority over the Directive Principles. This continued for a decade and a half, and in other cases, such as *Qureshi v. State of Bihar* and *Sajjan Singh v. State of Rajasthan*, the court confirmed this stand.

Kerala Education Bill (1967): Doctrine of Harmonious Construction

Realizing the importance of implementing the DPSPs to establish the welfare state, the Supreme Court in 1957 adopted the Theory of Harmonious Construction and held that DPSPs cannot override Fundamental Rights; nevertheless, in determining the scope and ambit of FRs, the court cannot completely ignore the DPSPs and adopt the principle of harmonic construction and should try to give effect to both FRs and DPSPs as much as possible. The court also said that there is no inherent conflict between fundamental rights and the directive principle of state policy, so it is the court's responsibility to interpret the constitution in such a way as to implement the DPSPs and guarantee the non-violation of fundamental rights.

Golaknath Case (1967)

In this case, a bench of eleven Supreme Court judges was formed for the first time. In this, the court laid down that fundamental rights cannot be abridged or diluted to implement the DPSPs, and this decision forced the government to make amendments to the Constitution of India. By the 24th Amendment Act of 1971, the Parliament of India amended Articles 13 and 368 of the Indian Constitution, which inserted Article 31C in Part 3. Article 31 contains two provisions.

1. If a law is made to give effect to DPSPs in Article 39(b) and Article 39(c) and, in the process, violates Article 14, Article 19, and Article 31, then the law should not be declared unconstitutional and void merely on this ground.
2. Any such law that contains the declaration to effect DPSPs in Articles 39(b) and 31(c) shall not be questioned in a court of law.

This amendment made it very clear that parliament has the power to amend any part of the constitution, including fundamental rights, and here the word 'law' as used in Article 13 does not include a constitutional amendment act.

What is Article 39(b)?

The state shall direct its policy towards securing that the ownership and control of the material resources of the community are so distributed as best to subserve the common good.

What is Article 39(c)?

The state shall direct its policy towards ensuring that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment.

Kesavanath Bharathi Case (1973)

The above amendment was challenged in the Kesavananda Bharati Case (1973). In this case, the Supreme Court of India ruled that parliament could amend any and every part of the constitution, including fundamental rights. However, it could not destroy the basic structure of the constitution. In this case, the second clause of Article 31C was declared unconstitutional and void as it was against the basic structure of the constitution propounded in this case itself. However, the Supreme Court upheld the first provision of Article 31C. The court also upheld that the power of judicial review cannot be taken out by parliament.

Parliament brought the 42nd Amendment Act in 1976, which extended the scope of the above first provision of Article 31C by including its preview 'any law to implement any of the DPSPs specified in Part Four of the Constitution, not merely Article 39(b) or (c).

Revisiting the Basic Structure of the Constitution

The basic structure doctrine is a common law legal doctrine that the constitution of a sovereign state has certain characteristics that its legislature cannot erase. The Court of India developed it in a series of constitutional law cases in the 1960s and 1970s that culminated in *Kesavananda Bharati v. State of Kerala*, where the doctrine was formally formed. However, the basic features of the constitution have not been explicitly defined by the judiciary, and the claim of any particular feature of the constitution to be a 'basic feature' is determined by the court in each case that comes before it. The Supreme Court's position on constitutional amendments laid out in its judgements is that parliament can amend the constitution but cannot destroy its 'basic structure'. Some of the features of the constitution termed "basic" are listed below:

1. The principle of separation of power
2. The objectives specified in the preamble of the Constitution of India
3. Judicial review
4. Articles 32 and 226
5. Federalism (including financial liberty of state under articles 282 and 293)
6. Secularism
7. The sovereign, democratic, republican structure
8. Freedom and dignity of the individual
9. Unity and integrity of the nation
10. The principle of equality—not every feature of equality, but the essence of equal justice
11. The "essence" of other fundamental rights in part three
12. The concept of social and economic justice to build a Welfare State
13. The balance between fundamental rights and DPSPs
14. The parliamentary system of government
15. The principle of free and fair elections
16. Limitation upon the amending power conferred by Article 368
17. Independence of the judiciary
18. Effective access to justice
19. Power of the Supreme Court under Articles 32, 136, 141, and 142
20. Rule of law,

21. Supremacy of the Constitution

Minerva Mill Case (1980)

It is a landmark decision of the Supreme Court of India that applied and evolved the basic structure doctrine of the Constitution of India. In this case, the Supreme Court of India applied and evolved the basic doctrine of the Constitution of India. In this case, the Supreme Court provided key clarification on interpreting the basic structure doctrine. The court ruled that the power of parliament to amend the constitution is limited by the constitution. Hence, the parliament cannot exercise this limited power to grant itself unlimited power. In addition, most of the court also held that the parliament's power to amend is not a power to destroy. Hence, the parliament cannot emasculate the fundamental rights of individuals and includes the right to liberty and equality, which are not only fundamental rights but also considered the basic structure of the constitution.

A law under Article 31C would be protected only if it was made to implement directives in Articles 39b and 39c, not any other DPSPs. The extension of all DPSPs was declared unconstitutional and void by the Supreme Court in the Minerva Mills Case (1980).

In *State of Kerala v. N.M. Thomas* 1976, the Supreme Court of India upheld that the DPSPs and Fundamental Rights should be built in such a way to be with each other, and effort must be taken by the court to resolve the dispute between them.

In *Pathumma v. State of Kerala* (1978), the Supreme Court emphasized the purpose of the DPSPs, which was to fix some social-economic goals to establish economic and social democracy. The constitution of India aims to bring about a combination of DPSPs and fundamental rights, which is also reflected in several other cases.

In *Olga Tellis v. Bombay Municipal Corporation* (1985), the Supreme Court upheld that DPSPs are fundamental in the country's governance. As mentioned in Article 37 of the Indian Constitution, DPSPs are "fundamental in the governance of the country, and it shall be the duty of the state to apply these principles while making laws," so DPSPs should be given equal importance to the meaning and concept of fundamental rights.

In the case of *R. Coelho v. State of Tamil Nadu*, the 2007 Supreme Court said that it is the responsibility of the government to adopt a middle path between individual liberty, that is, fundamental rights and public good (the Directive Principle of State Policy).

In *Ashok Kumar Thakur v. Union of India* (2008), the Supreme Court said that there is no difference between the two sets of rights. DPSP deals with social and economic rights, whereas fundamental rights deal with civil and political rights. The fact that the Directive Principle of State Policies is not enforceable in a court of law does not mean that it is subordinate.

In *Dalmia Cement v. Union of India* (2017), the Supreme Court said that DPSPs and fundamental rights are complementary and supplementary to each other.

Smt. Tanuja Tolia v. State of Uttarakhand 2020, *D. Saritha v. Osmania University* 2020, and in many other cases, the court tries to explain that fundamental rights and the directive principle of state policy go together. Neither of them is superior to the other. It is now clearly understood that there is no essential dichotomy between fundamental rights and the Directive Principles.

Conclusion

The aims and objectives of the basic feature of the Indian Constitution are to maintain harmony between fundamental rights and DPSP. They are both supplementary and

complementary to each other. There is a need for the theme of fundamental rights to be made relevant to DPSP. The state should follow the guidelines enumerated in the DPSP to protect fundamental rights, or else they will have to face adverse consequences.

It is true that the hard realities of an underdeveloped country like India make it extremely difficult to implement the admissible social principles enumerated as directives in Part IV of the Constitution of India. However, they should not be dismissed as mere pious hopes that the government can never fulfill for generations to come. By implementing this Directive Principle, India is trying to achieve something that has never been attempted earlier in her history. By giving effect to these principles, India is trying to provide, on a modest scale, measures of social welfare regarded as essential by Western nations in the twentieth century but within the framework of an economy without resorting to force or violence. It is true that the Directives in Part IV are transcendental in character and, by their very nature, intact in their several imponderables. This is the reason why they are retained as non-enforceable by courts of law. Nevertheless, they are fundamental to the country's governance, and a duty is imposed on the state to apply these principles in making laws. If the state ignores these mandates, it, in effect, ignores the Constitution of India.

The fallacy of conflict between Fundamental Rights and Directive Principles, as seen through the courts, has been exploded on the ground that if the rights conferred by Part III are so fundamental for the life, liberty, and security of the citizens, the directives contained in Part IV are equally fundamental in the governance of the country. Article 37 makes it obligatory for the state to apply these principles in making laws. Thus, the provisions in either part are not designed to act as a barrier to progress. However, instead, both are intended to envisage a social order contemplated by the preamble to the Constitution of India. They are, therefore, complementary and supplementary to each other.

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