

## FUNDAMENTAL RIGHTS AND DIRECTIVE PRINCIPLES

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Part III and IV of the Constitution have been together described as “Conscience of the Constitution”. But the fundamental question in the context of the Constitutional relationship between Fundamental Rights and Directive Principles of the State Policy is; which of these parts would have primacy in the case of conflict between them? This question has all along been the central point of controversy between parliament and Supreme Court resulting not only in the enactment of some of the significant Constitutional amendments but also in the pronouncement of some of the locus classicus judicial decisions. The Constitution of India has issued two broad mandates to the parliament, the Legislature of the states and to all the institutions of the Government:

- 1) Not to take away or abridges certain rights described as Fundamental Rights and
- 2) To apply certain principles described as Directive Principles of the State Policy.

The Fundamental Rights are mostly of individual characters and are primarily meant to protect individuals against arbitrary state action. They are intended to foster the ideal of a political democracy and are meant to prevent the establishment of authoritarian rule. Several of these Fundamental Rights are ordinarily capable of enjoyment only by persons who are already free from want and necessity. They are little practicable value and have no meaning to the hungry and the homeless. The Constitution makers realized that mere adherence to the abstract democratic ideal was not enough and that if the Constitution was to survive it was necessary to secure to the people economic and social freedom in addition to political freedom. So the Directive Principles has to be enunciated in the Indian Constitution. The relationship between Directive Principles of state policy and the Fundamental Rights has been the subject matter of controversy since commencement of the Constitution. Soon after the commencement of the Constitution, the Indian Supreme Court was called upon to pronounce its view on the Constitutional relationship between the Fundamental Rights and Directive Principles. The relation between Fundamental Rights and Directive Principles came into the lime light because the former was made expressly justiciable and the later was made expressly non-justiciable. The Supreme Court of India initially misunderstood the relation between Fundamental Rights and Directive Principles as they interpreted the law by words and not by its spirit. The resentence was accorded to Fundamental Rights as being enforceable over the Directive which is not enforceable stood in the way of implementing the latter. In judicial decisions and academic writings,

Directive Principles appeared to be an unattached soul, standing aloof and preaching detachment in the traditional Indian fashion. Though they are fundamental in governance of the country and though it is enjoined on the State to apply these principles in adopting legislative measures, the legislature could with impunity ignore them, and the legislative immunity would be upheld by the courts as the principles were regarded as non-justiciable. An undue emphasis was laid on the un-enforceability of Directive Principles without taking into consideration their fundamentalness and the Constitutional duty imposed upon the State to implement them. It gave rise to the belief that the Directive 104 Principles were merely pious aspirations of little legal force and had to conform to and run subsidiary to Fundamental Rights. The Fundamental Rights were made enforceable whereas the Directive Principles were made non-justiciable by the court of law.

Soon after the commencement of the Constitution the judiciary started laying down an undue emphasis on the unenforceability of Directive Principles without taking in consideration their Fundamentalness and the Constitutional duty imposed upon the state to implement them. It gave rise to a belief that the Directive Principles were merely pious aspirations of little legal force and had to conform to and run subsidiary to the chapters on Fundamental Rights. The judicial decisions made it clear that: 1) Directive Principles are non-justiciable and these cannot override Fundamental rights. 2) Directive Principles have to conform and run subsidiary to the Fundamental Rights. 3) Fundamental Rights envisaged in Part III of the Constitution is sacrosanct and cannot be abridged by the legislature or executive except to the extent provided in the appropriate articles in part III. 4) Any action of the state under Directive Principles is subject to the legislative and executive powers. Thus, the court held that if there is any conflict between Fundamental Rights and directive Principles it is the Directive Principles which would be subordinate to the Fundamental Rights.

The basic issue in the controversy over the relationship of Fundamental Rights with Directive Principles ultimately boils down to the choice between human freedom and unfettered socio-economic development (as envisaged and implemented by the executive). The founding father has wisely answered the question as not being that of a choice and confrontation, but of accommodation, between the two. It has also been reiterated in the Plan documents, viz. 'Planning within a democratic framework', that freedoms and equal protection of the laws are essential for the effective functioning, nay the very survival, of democracy. That accommodation is exemplified by the restrictions to which all Fundamental Rights are subjected. Any resurrection of this controversy, it is submitted, is going back to square one and could hardly be sustained either on rational or practical considerations or on

the three-decade long experiences of the nation. It is not surprising, therefore, that pleas made in support of the supremacy of one over the other sound rhetorical and fail to carry conviction. Once this basic premise is accepted, the subsidiary politico-legal questions can find their solutions, viz. Supremacy of the Constitution vis-à-vis parliamentary sovereignty, nature and extent of amending and constituent power, emergency and Fundamental Rights, Fundamental Rights vis-à-vis basic structure doctrine, the role and place of judiciary in our Constitutional setup, and the like. It has to be appreciated that accommodation between freedom (in other words restraints on governmental powers) and socio-economic development naturally comprehends and implies accommodation between the various institutions of the State as well the values embedded in our Constitution. The dialogue on these issues has to be a continuing one. No ultimate, final and razor-sharp solutions to these issues can possibly be provided, nor ought they to be attempted