

FUNDAMENTAL RIGHTS AND DIRECTIVE PRINCIPLES: COMPLIMENTARY PARTS

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ABSTRACT

Fundamental Rights and Directive Principles are described as the conscience of the Indian Constitution by Granville Austin, an acclaimed authority on the Government, Politics, Polity, and the Constitution of India. Nobody has said anything better than this about the relationship between Parts III and IV of our Constitution¹. Yet, they are not understood in that sense; may they are even seen as being in conflict with each other! How can two parts which constitute the conscience of a doctrine be in conflict with each other? What does the Constitution say about them? It is a relevant question.

KEYWORDS: *Fundamental Rights, Government, Politics, Polity*

INTRODUCTION

The Constitution itself does not visualize any conflict between the rights and the directives². In fact, there is no mention of any incompatibility between them in the Constitution. It is just that we have not understood the relationship in the right perspective largely due to the court's erroneous interpretation of their relationship. The court treated the Directives as the ends and Rights as the means in the Kesavananda and Minerva Mills verdicts and emphasized that the means must not be tampered to realize the constitutional objectives³. This itself is a debatable formulation. How can the fundamental rights be a means of realizing the objectives enshrined in the Directive Principles? Right to equality is a fundamental right which says that 'the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them'⁴. Does equality prevail just on the basis of this assertion? The State may not discriminate, but society does. How do we ensure the claims made in Part III as real? Or are they really just because they have the status of fundamental rights? It is here that the court has obviously formulated a wrong position.

If we examine the Directives closely, there are provisions corresponding to fundamental rights in many respects⁵. The Directives are an actionable agenda for the State. The Constitution states: 'the provisions contained in Part IV shall not be enforceable by any court, but the principles laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws'⁶. Part IV contains an elaborate list of Dos for the State; Part III a list of Don'ts. Part III is a given thing and nothing needs to be done by the State. On the other hand, Part IV contains an objective which is achieved through State action⁷. For a country to claim as democracy, it ought to have basic freedoms for the people⁸. Those freedoms are made available through Part III; but the question is while the rights are available to all people, are they accessible to all? The bitter truth is that while rights are available to all, they are accessible to a few. If a fundamental right is violated by the State, the aggrieved party can move the High Court or the Supreme Court which is known as the constitutional courts. How many people have the wherewithal to engage an

advocate and move the High Court in the State capital and move the apex court in the national capital? Only the educated, employed, enterprising and propertied sections can afford to assert their rights⁹. What about others who constitute a vast majority of the country's population?

What meaning and relevance would the rights carry for the rickshaw puller, street vendor, slum dweller, agriculture labor and domestic worker? These five categories of men and women constitute a vast majority of population¹⁰. Are they even aware of the fact that there is a Constitution; much less that it contains a list of justiciable rights? These questions have not been raised by the media, academia, court, the intelligentsia and others. Article 39(d) states: 'the State shall, in particular, direct its policy towards securing that there is equal pay for equal work for both men and women'¹¹. This provision, if enacted, is capable of making real the assertion made in Article 15(1) which states that 'the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them'¹². Of Articles 15 (1) and 39(d), which provision is capable of making equality a reality; the former or the latter? The answer is obvious, of course, but the question must be raised in the context of treating the rights as the means to achieve the ends stated in Part IV of the Constitution. This formulation, propounded by the court and meekly accepted by the polity, is nothing but putting the cart before the horse. Fundamental Rights are asserted by affluent individuals because they only understand their rights. One needs education and freedom from hunger to understand one's rights. It is possible to free the nation from hunger and promote educational opportunities for the unlettered population if there is a progressive action on the provisions enshrined in the Constitution known as Directive Principles.

An aggressive and progressive implementation of the Directives would actually fortify the foundation of the fundamental rights. When a man's basic necessities of life are taken care of, then and then only will he be in a position to think of his rights and be in a position to assert them. Existence precedes essence. One must first live in order to philosophize. When life is marked by a 'here and now' syndrome when earning a square meal a day is a big challenge, is it possible to be conscious of one's rights? Is it possible to seek the enforcement of rights by moving the High Court or the apex court by engaging an expensive advocate when one is facing survival urgency? What is the relevance of rights to a man who is struggling to keep himself alive? Can the rights get him his entitlements? Ironically, the rights are cited to deny him his entitlements¹³. It happened in the Champakam Dorairajan case. The judgment said that reservation of seats in educational institutions in furtherance of the Directive Principles violates the right to equality and therefore unconstitutional¹⁴. Is it the justiciable rights or the non-justiciable Directives that would lead to the development of the community at large? Well, off individuals harp on the imperative of rights because they have access to them. The poor know neither about rights, nor the Directives, but if there is anything relevant to them in the Constitution, it is the Directives¹⁵. And, if the Directives are relegated to the back burner, what is the relevance of the Constitution to the teeming millions of toiling masses? Is the Constitution mere a document enlisting the rights of the affluent? Or is it a doctrine on the entitlements of the poor? If it is both, which view would have an upper edge over which view? The right approach or the entitlements approach? The nation is seized with the right approach, vigorously promoted by the court, for far too long. The time has come to emphasize the entitlements approach of the Indian Constitution¹⁶.

In other words, unless we implement the Directive Principles and establish a level playing field among various sections of society by ensuring the fulfillment of basic necessities of civilized existence, fundamental rights are nothing more than writing on the sand!¹⁷

This aspect has been ignored by the media, academia and the intelligentsia which went along the court that declared in stunning words the rights as sacrosanct and the Directives as subservient stating 'this is the correct position in our view'¹⁸ Nothing is more damaging to the credibility of a doctrine that is seen as an instrument of social engineering to usher in a social revolution.¹⁹

It is obvious for any discernible scholar that the route to fundamental rights is through the Directive Principles which are the entitlements of the community as a whole which constitutes the majority. The rights of the individual have to yield place to the rights of the community. Once the community is strengthened, individual members are better positioned to ascertain their rights and fight for them because the individual in a strengthened community would be educated, having to clothe over his body, a roof over his head and the ability to earn a living.²⁰ When we see right through the prism of the Directives they appear clear and concrete. If we view them, bypassing the Directives, they are pious homilies to the poor. What are the objective of a democratic polity; to assure freedom and ignore the need for food or to ensure food first and freedom next to the people? Existence precedes essence in any system of social organization. One must first be able to stay alive in order to aspire to a meaningful life. Contrary to the stand of the court, the Directives come first and the rights next.

Ultimately, it is the fundamental rights which will benefit from a progressive implementation of the Directive Principles. By importing the provisions of Part IV into Part III, we have seen the exponential growth in the ambit of the right to life, a fundamental right. Many of its new features are found in the various provisions of the Directive Principles. Judicial activism has created a jurisprudence of directive principles and the court seems to be making up for the opportunity it missed in becoming a part of the nation -building process. Better late than never, although the lack of consistency on the part of the court is a matter of concern for observers. It is to be seen how the future unfolds with regard to the relationship between fundamental rights and directive principles in our constitutional scheme.

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