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SOCIAL DEVELOPMENT FOR IDEAL ECONOMIC DEMOCRACY AND RELATION BETWEEN DIRECTIVE PRINCIPLES OF STATE POLICY AND FUNDAMENTAL RIGHTS UNDER INDIAN CONSTITUTION

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ABSTRACT

Today we are living in a welfare State unlike in a mere Police State. The ideals of a welfare state are to secure to its citizens Justice – Social, Economic and Political as enshrined in the Preamble of the Constitution. This paper explains and discusses the importance and interrelationship between fundamental rights and directive principles of state policy. Further it explains the concept of social justice in India. Especially like countries like India Social Development is important for Stability. The Directive Principles are the embodiment of the ideals and aspirations of the teeming millions of India and the goal towards which they expect the state to march for their attainment.

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INTRODUCTION

The idea of welfare state envisaged by our constitution can only be achieved if the States endeavour to implement the Directive Principles with high sense of moral duty. These Directive Principles are provided in Part IV of the Constitution containing from Article 36 (which defines the state) to Article 57. The draft Article 29 provides that the provisions contained in this Part shall not be unenforceable by any court, but the principles therein 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. Article 30 provides that the State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which Justice, Social, Economic and Political, shall inform all the institutions of the national life.

In the above context it is clear that the Directive Principles lay down the lines on which the state should work under this constitution. The directives emphasize, an amplification of the Preamble, that the goal of the Indian polity is not laissez faire, but a Welfare State, where the state has a positive duty to ensure to its citizens socio economic justice and dignity of the individual. (The State was mainly concerned with the maintenance of law and order and the protection of life, liberty and property of the subject (this was assumption at one time) such a restrictive role of the state is no longer a valid concept.)

The Directive Principles lay down certain economic and social policies to be pursued by various governments (authorities) in India further they impose certain obligations on the State to take positive action in certain directions in order to promote the welfare of the people and achieve economic democracy.iii

Scope, Nature and Object of Directive Principles

The scope of the Directive Principles is that it shall be the duty of the state to follow these principles both in the matter of administration as well as the making of laws. Most of these Directives aim at the establishment of the economic and social democracy which is pledged for in the Preamble. According to Sir Ivor Jenningsiv, the philosophy underlying most of these provisions is 'Fabian Socialism without the Socialism, for, only 'the nationalization' of the means of production, distribution and exchange is missing. This much is clear, however, that our constitution (as framed in 1949) did not adhere to any particular 'ism' but sought to affect a compromise between Individualism and socialism by eliminating the views of unbridled private enterprise and interest by social control and welfare measures as far as possible.[v]

The Directive Principles lay down certain social, economic and political principles suitable to peculiar conditions prevailing in India towards establishing a modern democratic state. The underlying objectives of these (Part IV of the Constitution) can better be understood from the speech of the Chairman of the Drafting Committee Dr. Ambedkar in the Constituent

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Assembly [vi]. A few lines from his speech may be produced as under:

The reason why we have established in the constitution a political democracy is because we do not want to install by any means whatsoever a perpetual dictatorship of any particular body of people. While we have established political democracy, it is also the desire that we should lay down as our ideal economic democracy. We do not want merely to lay down a mechanism to enable people to come and capture power. The constitution also wishes to lay down an ideal before those who would be forming the government that ideal is economic democracy.

It is no use giving a fixed, rigid form to something which is not rigid, which is fundamentally changing and must, and having regard to the circumstances, and at times keep on changing. It is, therefore, no use saying that the Directive Principles have no value. In any judgment, the Directive Principles have a great value; for they lay down that our ideal is economic democracy. Because we did not want merely a parliamentary form of government to be instituted through the various mechanism provided in the constitution, without any direction as to what our economic ideal or as to what our social order sought to be, we deliberately included the Directive Principles in our Constitution”.

Now it is clear that the main object in enshrining the directive principles appear to have been to set standards of achievements before the legislature and the executive, the local and other authorities by which their success or failure can be judged. Thus, it is clear that the object of the Directive Principles is to embody the concept of a welfare state and the ideal of a welfare state is to establish an egalitarian society. They lay down the goals which may be achieved through various means which have to be devised from time to time.

Relation between Part-III and Part-IV of the Constitution relation between Directive Principles and Fundamental Rights
The Directive Principles differ from the Fundamental Rights in Part-III of the constitution or the ordinary laws of the land in the following respects: The Directive Principles are in the nature of instruments of instruction to the government of the day to do certain ends by their actions while the Fundamental Rights constitute limitations up on state action.[vii] In other words, the Fundamental Rights are enforceable by Courts[viii] and the courts are bound to declare any law void if it is inconsistent with any of the fundamental rights[ix], while the Directive Principles are not enforceable courts[x,] nor can the courts declare any law void on the ground that it contravenes any of the Directives.

Black Shield prescribes to describe the provisions of Parts III and IV as moral rights

“To adoption fuller’s now well-known distinction, the Fundamental Rights are a strict morality of duty which India’s constitution makers set for themselves, and the Directive Principles are merely a morality of aspiration. Nevertheless, it is clear that the two sets of Articles have a great deal in common.[xi] Granville Austin described the Fundamental Rights and Directive Principles as the “Conscience of our constitution.[xii]

Utility and Implementation of Directive Principles

The utility of directive principles is evident from the speech delivered by Dr. Ambedkar in the Constituent Assembly that

the Directive Principles are not mere pious declarations, the directive principles have been a guide for the Union Parliament and State legislatures, they have been cited by the courts to support decisions, and governmental bodies have been guided by their provisions. Moreover, they have been held to supplement the fundamental rights in achieving a welfare state. (The Govt. of India Fiscal Commission [xiii] of 1949, for example, report said that a policy for the economic development of India should conform to the objective laid down in the directive principles of State Policy).

Granville Austin[xiv] considers these Directives to be “aimed at furthering the goals of the social revolution or to foster this revolution by establishing the conditions necessary for its achievement.”

The sanction behind these directives is in fact political and no legal force behind them. Through these directives are not enforceable by the courts these are fundamental in the governance of the country.xv So, if they are not implemented them the government will have to answer before the electorate. As observed by Dr. Ambedkar in the constituent Assembly: “if any government ignores them, they will have to certainly have to answer for them before the electorate at the election time. [xvi]

The Directive Principles are not enforceable yet the court should make a real attempt at harmonising and reconciling the directive principles and the fundamental rights and any collision between the two should be avoided as far as possible. The reason why the founding fathers of our constitution did not advisedly make there Directive Principles enforceable was, perhaps due to the vital consideration of giving the government sufficient latitude to implement these principles from time to time according to capacity, situations and circumstances that may arise this was held by the Supreme Court in state of TamilNadu V. L. Abu Kavur Bai, AIR 1984 SC 626.

In case of any conflict between the Fundamental Rights and Directive Principles that which shall prevail over the other, P.K. Tripathi[xvii], suggests that the Directive Principles, they are, in fact, by their very origin and history, principles which define and delimit the Fundamental Rights of the individual any conflict between a Fundamental right and a Directive Principles is apparent and resolvable when the two conflicting rules are properly interpreted.

In State of Madras V. Champakam Dorairajan[xviii], where the Madras government had reserved seats in State Medical and Engineering Colleges for different communities in certain proportions on the basis of religion, race and caste. The state defended the law on the ground that it was enacted with a view to promote the social justice for all sections of the people as required by Article 46 of the Directive Principles of state policy. The Supreme Court held the law void because it classified standards on the basis of caste and religion irrespective of merit.

Supreme Court View’s on Directive Principles- Justice Bhagwat Approach

Article 31-C of the constitution was inserted by Section 8 of the Constitution (Twenty Fifth Amendment) Act, 1971 to give protection to some of the directive principles as stated in the objects clause of the Bill was enacted to get over the difficulties placed in the way of giving effect to the Directive Principles of

State policy and this amendment has considerably enhanced the importance of the Directive Principles which runs as:

Notwithstanding anything contained in Art. 13, no law giving effect to the policy of the state towards securing the principle specified in clause (b) or clause (i) of Article 39 shall be deemed to be void on the ground that it is inconsistent with or takes away or bridges any of the rights conferred by Article 14 or Article 19, and no law containing a declaration that it is for giving effect to such policy shall be called in question in any court on the ground that it does not give effect to such policy.[xx]

The first part of the Article 31-C gave protection to a defined and limited category. In *Minerva Mills* case the validity of Article 31-C as introduced in the constitution by sections 4 and 55 (42nd Amendment) Act, 1976, the majority judgment was delivered by Chandrachud C.J. for himself, Gupta, Untwalia and Kailasam, JJ and Bhagwati, J. gave a dissenting judgment. As the constitutional validity of Twenty – Fifth amendment was challenged, Article 31-C was inserted. The Supreme Court by a majority held that while the first part of Article 31-C (as it stood prior to 1976) was valid, and its second part was invalid. This means that a law enacted to implement Article 39(b) and (c) would not be challengeable under Article 14 and 19 but the courts have the power to go into the question whether the law in question does really achieve these objectives or not.

In *Centre of Legal Research V State of Kerala*[xxii], it has been held that in order to achieve the objectives in Article 39-A, the state must encourage and support the participation of voluntary organizations or social action groups in operating the legal aid[xxiii] programme. The legal aid programme which is meant to bring social justice to the people cannot remain confined to the traditional or litigation-oriented programme but must take into account the socio-economic conditions prevailing in the country and adopt a more dynamic approach. The voluntary organizations must be involved and supported for implementing legal aid programme and they should be free from government control.

In *Sheela Barse V. Union of India*[xxiv] apart from the above case the Supreme Court through its judgments has declared many directives as fundamental rights and have enforced them, for example, equal pay for equal work, free legal aid to poor, speedy trial of under trial prisoners, (Art 39-A) protection of children from exploitation, protection of ecology and environmental pollution (Art. 48-A) free and compulsory education of children below the age of 14 years.

CONCLUSION

The Directive Principles of the state policy, which by Article 37 are expressly made enforceable by courts cannot override the provisions found in Part III which, notwithstanding other provisions, are expressly made enforceable by appropriate writs, orders, or directions under Article 32. The Chapter on fundamental Rights is sacrosanct and not liable to be abridged

by legislative or executive act or orders, except to the extent provided in the appropriate Article in Part III. The Directive Principles of State policy have to conform and to run as subsidiary to the Chapter on Fundamental Rights that is the correct approach in which the provision found in part III and IV have to be understood. However, so long as there is no infringement of any fundamental right to the extent conferred by the provisions in Part III, there can be no objection the state acting in accordance with the directive Principles set out in Part IV but subject again to the Legislative or Executive Powers and limitations conferred on the state under different provisions of the constitution.

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- XV. Art. 37
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- XVII. P.K. Tripathi, Spotlights on Constitutional Interpretation, p.293.
- XVIII. AIR 1951, SC 228
- XIX. Article 39 provides that the state shall in particular, directs its policy towards securing, (b) that the ownership and control of the material resources of the community are so distributed as best to sub serve the common good, (c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment.
- XX. Constitution of India Article, 31-C.
- XXI. *Minerva Mills Limited, Bangalore V. Union of India*, AIR 1980 SC 1789; SCC, 3-625.
- XXII. AIR 1986 SC 1322
- XXIII. Art 39-A directs the state to ensure Equal Justice and Free Legal Aid to economically backward classes, this Article was been inserted to the Directive Principles by 42nd Amendment Act, 1976.
- XXIV. AIR 1987 SC

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