

## CHAPTER - 4

# FUNDAMENTAL RIGHTS & DIRECTIVE PRINCIPLES

### CONCEPT OF FUNDAMENTAL RIGHTS

Right are necessary condition for fulfilment of life of man.

They are needed by individual to put himself against the arbitrary action of state & society.

Rights are also required by individual for his advancement.

Rights are important for existence of Democracy.

The concept of right establish concept of rule of Law & Constitution State according to Laski, Every state is known by the right it maintains.

Indian states grants its people various set of Rights. Rights given in chapter 3 are called FR. The status of FR is different from Legal rights.

- (1) FR are sacred rights.
- (2) FR are enforceable by court of law.
- (3) Automatic rights
- (4) Came into existence since commencement of constitution.
- (5) In Indian context, FR are available to both individual and certain classes of society.
- (6) In Indian context, Chapter on FR is primarily based on philosophy of Liberalism. Also reflects of Liberalism Multi-culturalism.

Constitution also grants certain set of rights under Chapter 4, called

- (1) Right to Employment
- (2) Right to Equal Wages
- (3) Right to Education
- (4) Other social-security rights related to Old age, health etc.

Rights under Chapter 4 are not enforceable in court of law in same manner as those in chapter 3.

For enforcement of these rights state has to make

law. Not authority enforced. They represent the philosophy of Liberalism and socialism & Gandhism.

Art. 37 of Constitution of India mentioned that the DPSP are not enforcement but fundamental in government of country. It shall be the duty of state to apply these principles by marketing laws.

Chapter III & IV together-constitute the Soul of Constitution.”

According to Granville Austin:

“They constitute the conscience of Constitution.”

Both set of rights required for achieving ideals of / social justice / given in preamble & for establishment egalitarian social & exploiting free society

### Historical Context

The struggle for Rights was one of the prime objective of Indian National Movement/ Freedom Struggle. The Indian demand for rights is seen in Constitution of India Bill, 1895.

Nehru report present an elaborate set of rights. It was national in Indian context to have a chapter on FR. Indians had suffered the arbitrariness of Government during Colonial period

The way rights were present in Constitution of India bill, as well as in nehru Report, it shows Indians always thought absolute rights in comprehensive sense.

Thus historically the 2 set of rights were always together.

“Approach of Constitutional Assembly (CA)”

In CA also, they were always part of an integrated scheme.

They were dealt on by the single committee on F.R.

During debates in constitution Assembly issue of feasibility of certain rights emerged.



It was thought that it'll not be possible to give all rights immediate effect.

There was scarcity of at that time it was thought to be impossible to make Right To Work, Right To education kind of rights enforceable then.

Similarly thought that social conditions were not conducive to give immediate effect to certain rights like UCC (Uniform Civil Code). Nevertheless, these rights were consider important. Hence attempt made to diversify these set of 6 rights & to make some enforceable immediate & to transfer certain rights under seperate chapter. Whenever the conditons of society will permit, these rights will be made enforceable.

Constitutio of Ireland

Source of inspiration provision basis to split rights.

Sapru Report

Also suggeste for classification of rights into 2 types:

1. Justiciable 2. Non-Justiciable

However, some member in the CA, like Prof. K.T. Shah, T.T. Krishnamchari who beleive that in the absence of the criterion of Enforcement, the rights under chapter 4 will lose significance & will become nothing but Pious Declarations.

Ambedkar did not believe in above approach. He advocate that there is a political sanction behind these rights. The government about to face people during election cannot neglect these rights. The CA advisor Dr. B.N. Aru also held that FR & DP were single scheme.

### Constitutional Provisions

Fundamental Rights reflect the value of liberatlism Article 14, 19 (1f), 31 were the core rights from angle of liberalism. These rights come into conflict with the socialistic provisions given under Chapter 4 (DPSP).

Article 39(b) & (c) are treated as core principles that aim to establish socialist pattern in Indian society. It was very natural that the 2 set of rights come under conflict.

View of CA

It would be political naive to think that the founding father were unaware of possible of a future tussle between two.

*Reason for the Tussle between FR vs DPSP.*

Indian constitution is a product of deliberation. Different ideology elementary were present in CA Present Constitution is a result of bargain & compromise.

The constitution doe not explicitly mention superiority of DPSP. It was assumed that the 3 organs of the govt. will work in a complementary manner. They'll try to give effect to both FR & DPSP.

Instead of clearly earmarking the legal position and the rel. between FR & DPSP, they thought that there should be enough flexibility so that future generation can prioitize & goals accorting to the necessity.

Thomas Paine:

Prominent political philospher while writing the theory of social contract establish that it is incorrect to bind the future generation with contract entered by their previous generation.

Article 13, Calse II, 13 (2)

This article gives the power of Judicial review to Indian Judiciary. If any law made by any legacy or any excecutive act contravenes the provision given under Chapter, 3 Judiciary can declare the provisisions. Null and Void to the extent of contravention.

In this article, it was not clear whether the term law will also include the constitution Amendment.

There is a possibility of scope of conflict between the 2 branches of govt. in Indian context because we have adopted a pol. systems based on 2 contradictory principles. We have adopted parliament form of governemt in a federal set up.

Parliamentary form of govt.establish supriority of Parliament while federal govt. estbilsh supremacy of constitution that automatically leads to supremacy of Judiciary , it is the final interpreter of the law & has power of Judiciary review.

Historical Context

The first case in which the debate between FR & DP emerge in court was

1. Champakam Dorairajan Case of 1951.

The petitioner challenged the reservation order of government of Madras on the ground of Article 15(1).

Article 15(1) : State shall not discriminate against any citizen on the grounds of Rel. Race, Caste, Sex, Place of Birth or any others.

Opinion of Judiciary:

Judiciary rep. the Tradition approach. It was also the phase of Legislative supremacy in Indian Context, hence following opinion:

1. FR are superior to DP enforceable in court of law.
2. If government aims to implement any dir. DP that results into lim. of any FR, then government can do so by passing constitutional amendment. (require not simple but special majority).

### Response of Governments

(1) Amendment Act:

1. Government has intrd. clause IV in Article 15. 15(4). According to 15(4), government could make special provision for the adv. of any socially or education backward classes of citizens or for SC/ STs.

(2) Article 31A

It provides immunities to the laws provision for acquisition of Estates.

(3.) Article 31B

By this IXth scheduled was added special that the laws placed under it will not be questioned in the court of law on the ground that it contravenes the FR under Chapter 3.

(But on ground that it wol. the Basic Str.)

IXth Scheduled aims at giving effect to land reforms in India.

(4) Shankari Prasad vs Union of India 1951

In this case the constitution validity of I Amendment Act was questioned.

This was the I case where scope of Power of Parliament wrt. Amendment came to court.

### Opinion of Supreme Court of India

Parliament has power to amend the constitution on chapter 3 (FR). The term "Law" used under Art. 13(2) does not include power of Amendment.

### Response of Government

IVth Amendment, 1955 This ..... introduced a change in article 31A according to it, Article 13 won't be a lim. on laws giving effect to 31A.

17th Amendment Act (1964) aimed to give effect to Agrarian & economy reforms and has added entries into the IX schedule.

5. Sajjan Singh vs State of Rajasthan (1965)

In this case the validity of IVth & XVIIth and act came into question.

View of Supreme Court of India continued with its tradition approach & upheld the validity of above amendments.

This phase is also called Phase of Judicial Restraint -ve Judicial Activism

II Phase (1967)

(1) Golak Nath Case

Here Judicial overruled its earlier decisions, wrt.

- Shankari Prasad Case
- Sajjan Singh Case

Judicial held that the term "Law" in 13(2) included Amendment. According to judicial the power of "is also a legacy power under Article 245.

Response of Govt passed 2 Amendments

1. 24th Amendment Act
2. 25th Amendment Act.

(1) 24th AA : 1971

added 13(4) to Article 13 according to its was made clear that the lim. imposed by Article 13 shall not apply in case of Amendment.

Also in Article 368 the term "procedure of Amendments" was used earlier, but instead the term "Power of Parliament" to amend constitution and the procedure of it was incl.

It has added 368(3) to Article 368.

Nothing in 13 Article will apply to Amendment

(2) 25th Amendment, 1971

By this amendment the Article 31(c) was added in the constitution.

If any law is made to give effect to DP given under 39(B) or 39(c), such laws'll not be challenged under court of law on the ground that it is inconsistent with Article 14 & 19.

Also, stated that no such law shall be called in question in court of law on ground that it does not give effect to 39(B),(C).

### Opinion of Supreme Court of India

**Keshavanand Bharati vs. State of Kerala (24th April, 1973).**

Supreme Court valid the II aspect of Amendment.

Since it seemed to establish equilb. bet. DP & FR.

Otherwise DP were subord. to FR. This was never intent of CA.

Supreme Court has objective to I aspect of amendment that takes away power of Judiciary Review.

Judiciary Review is the basic structure of IC & cannot be taken away even by amendment.

Amendment is not rewriting the constitution.

Thus the doctrine of Basic structure emerged based on Implied Powers of Judiciary.

This doctrine made Indian Supreme Court the strongest in the World.

No other supreme / federal court has power to challenge validity of constitution amendment.

(3) 42nd Amendment Act made following challenges.

In Article 31C, protection was extended to laws giving effect to any DP & not article 39(b) & 39(c) added 368 (4)(5) to 368.

No and can be called into question in any court on any ground.

368(5): No limitation on amending power of Parliament.

(4) 44th Amendment Act, 1978

The basic reason for dispute between fundamental rights & dir. Principle was due to Right to Property as a FR & convert it into a legal right. Hence one of the major reason of dispute was rid off.

Response of SC

**Minerva Mills vs. Union of India**

In this case, the validity of 42nd Amendment came under security.

SC invalidated the change made in article 31C, It has restored the situation as it was existing under 25th Amendment.

42nd Amendment has disturbed the balance between FR & DPSP. It gives superiority of DPSP over FR.

This was creating an imbalance not desired by CA.

It has invalidated 368(4) & 368(5);, takes away the power of Judiciary Review.

Present Situation

FR superior to DPSP.

It does not mean that DPSP can't be implemented Parliament can make Union & amendment in the constitution to give effect to DPSP so long as it does not destroy the basic structure.

The objective DPSP are to be schedule without abrogating the means provision by FR.

Court adopts the doctrine of Harmonious Construction between the two.

Views of Granville Austin: FR & DPSP together constitute the soul of Constitution & the heart of Social Revolution.

Fundamental Duties

Explain concept of Duty

Duty is an obligation. It is something we have to others as social being.

In the polity theory, Rights and duties are always present together. In the abs. of Duties, it is diff. to exercise Rights.

Fundamental Duties in Indian Constitution

Original Constitution of Indian did not contain FD

Constitution of Liberal contribution do not give prominent place to duties.

Japan is perhaps the only liberal state of include basic duties in constitution.

The concept of duties is a socialist tradition.

In Indian context the chapter in FD was added as a result of 2nd Aa, 1976. FD were added in Chapter 4. A new article 51A came into existence. It enumerated 10 FD. The 81 Act has added the 11th FD.

Introduction of FD was based on the recommendation of Swarna Singh Committee.

During Emergency, it was real. that the concept of FD must be incorporation.

The incorporation of FD was not without controversis.

(1) Considering the circumstances when FD were added to Constitution of India, political scholars expressed, doubts on intention of Govt.

(2) FD were not made enforceable in the Court of Law. They were kept at par with DPSP. No legal sanction behind their violation. No compulsory / punishment is mentioned.

Scholars like

(1) Nani Pakhiwala expressed his doubts in the context that duties are inconsistent. e.g. It is the duty of every citizen to develop a scientific temper & spirit of Enquiry. Such as possible only when people are education. We cannot except preference of Duty when masses are illiterate & society is tradition.

Constitution of India also does not mention measures to be taken to implement these duties.

(2) Duties are vaguely defined e.g. It is the duty of citizen to follow the noble ideals which inspired our freedom struggle. Everyone knows that different sets of leaders had "ideals, means & methodologies. Half yearly, it is the duty of citizen to pressure the rich & composite culture of India. Not clearly different.

(3) Duties are based on citizenship values.

Citizenship values are the features of modern Society. In Indian context, our loyalties are to rel., caste & rel.

(4) In Indian context, we see that there is a disproportionate emphasis on rights among citizens rather than on preference of duties.

In spite of above weaknesses, FD have been accepted as part of constitution 44th AA — was a corrective attempt to rectify the excess of 42nd AA did not make any change.

The national Comm. to review the Wkg. on Constitution, on recommendation of Verma Committee, II committee appt. for FD sugg. that govt. should take steps to sensitize people & create gen. awareness, wrt. provision under FD, in our constitution some people suggest that to give effect to FD., legacy can use the clause of Reasonable Restriction under chapter 3.

Govt. can make laws & presc. punishment for implement for implementation of certain duties.

Verma committee also suggestion for inclusion of new duties.

Conclusion:

Duties are reminders to citizens that while exercise or claiming rights, they have also to be conscious of duties they owe to nation & their fellow beings.

(Q) Examine the nature of provisions given under chapter 4 of constitution of India. Do you think that DPSP are nothing but pious declarations?

Framework:

- (1) Introduction of DP
- (2) Legal standing of DP
- (3) Criticism of DP
- (4) Evaluation of Criticism

Conclusion

Ans. The DPSP are like instruments of instructions as given under the Government of India act, 1935. They are the basic guidelines to be followed by the government of the day while formulating their policies.

In chapter 4, that deals with DP in constitution of India, we have different types of Directives. e.g. some directives are forms of some directives are forms of goals to achieve e.g.

- (1) Redistribution of Resources in the common interest
- (2) Raising standard of living
- (3) Promotion of international peace etc.
- (4) Certain directives are different in terms of policies like
  - provisions of village Panchayats
  - provisions of Cottage industry
  - uniform civil code
  - prohibition on consumption of liquor Directive also talk about certain set of rights like

Right to Work

Equal pay for Equal work

Right to Education.

Some scholars also divide different dir. on the basis of ideology eg. R

- (1) Article 38: Minimization of Social ineq.
- (2) Article 43A: Participation of Workers in management, both come under the socialistic principles.
- (3) Article 40 : Village Panchayats.
- (4) Article 43 : Cottage industry both rep. Gandhian Ideology.

We do have liberal intellectual principles in the form

of Article 44 talking about the Uniform Civil Code. Article 50 that talks of sep. of Judiciary from Exe. & Article 51 that talks of poom. of International Peace.

### Legal Status

The DPSP are not legally enforceable in the court of law in the manner the provisions & rights given under chapter 3. They are legally enforceable when legacy makes law in this context.

Article 37 of Indian Constitution, tells that the DP are fundamental in the governance of the country. It shall be the duty of state of apply them in making laws.

### Critical Evaluation

Certain sectors in the CA bel. tha the DP should be make legally enforceable. From their pvo, TDP contain those set of righs termed more important that once in chapter 3 for such poeple, the idea of social - eco dem must preceed the pol. dem.

However CA, tought that it's pragmatic to put certain rights under chapter 4. the reason for not making such provision aut. enforceable was that the country lacked sufficient resoerces or neccessary condition. Hence it was thought that as & when sitation are felt to be appropriate these Rights will be made enforceable by making law with this effect.

However, above provision came under wisdespread criticism eg.

K.T. Shah ealled DPSP as K.T. Pious Declarations  
T.T. Krishnamchari called DPSP as "Dustbin of Sentiments".

Nasiruddin called them as "New Year resolutions to be broken on 2nd Jan."

K.T. Shah also held that "DPSP are like blank cheques to be paid by bank only when resources of bank permits.

Famous constitutional experts Prof. K.C. Wheare called DPSP Moral Homily.

Ivor Jennings called DPSP "pious escalatons"

The essence of above criticism was dissatisfied for not marking above principle enforceable by law.

### Views of Ambedkar

If there is'nt any legal sanction behind these directives, there is a greater sanction i.e. Political. No govt. can avoid the directives because they have to face the electorates.

It would not be correct to consider DPSP as mere pious declarations because from the very beginning the government has made efforts to give effect to these provisions e.g. Five Year Plans were initiated, & were the prime instruments to achive, implment goals in DPSP. The Constitution has been amended to give effect to DPSP & to facilitate the implementation of planned objective. Specific programmes were undertaken to give effect to these provision. some of the prominent programmes are:

(1) Almost all states assembly passed Land Reform Acts.

(2) In 1948, the Minimum Wages Act was passed.

(3) In 1970, contract Labour Regulation & Abolition came into existence.

(4) The Wildlife Act & National Forest Policy are some of the implement for 48A,

(5) NREG scheme can be treated as one of the most ambitious programe for provision social sector in terms of ensuring employment.

(6) The Primiry Health Care Centres Public Distribution System & special Scheme for promotion of interests of SCs/ STs came into eixstence.

(7) the 73rd / 74th Amendment were passed to give effect to the objective of Panchayati Raj.

(8) The 86th AmendmentAct has made Right to Education as at Fundamental rights.

Above programmes exhibit Govt's preference in implement. DPSP by formulating laws in that regard. At times the institutions of Govt. like Legacy & Judiciary came into conflict in this context.

Initially Judiciary wanted FR should not bose thier significance gradually Supreme Court of India has evolved concept of "Harmonious Construction".

Sajjan Singh Vs. State of Raj.

At times Judicary has taken initiative & questioned the negligence of Legacy & Executive towards DPSP eg. In 1986, the

- Shah Bano Case (1986)
- Sarla Mudgal Cae (1995) the Judiciary has directive the govt. to implement uniform Civil Code.
- In 1993, in J.P. Unnikaishnan caes, the Judiciary directive the govt. to implement Right

Education wherein the Article 21 should be read along with Article 45-46.

- In Indira Sawhney Case, (Mandal case) Supreme Court of India has division that article 14, should be read in the light of DPSP.

### Critical Evaluation of Governments Programmes

It is said that the CA has designed the Constitution which if implemented in true spirit could have changed India into an ideal world.

The empirical data shows there are a lot of lacunae / gap left between Ideals & Achievement.

Gunna Myrdal : "Asian Drama" (book), calls India a Soft State, According to him, the state is good at making laws but poor at implementing.

Though many states have enacted the Land Reforms Act, the achievement in this context are very poor due to lack of willingness & loopholes in the laws. The targeted section could not get benefit. The farmers committing suicide is an example of failure of Agricultural Policies.

About 1/5th of World's poor live in India. The sector which is living just above Poverty line is not having adequate living. The conditions of labourers working in unorganised sector is still bad.

In terms of sex ratio, the female literacy rate, the IMR, evidences present a pessimistic picture. Problem of Child labour is yet to be solved.

It is said that the financial constraints, lack of power & administrative interference in Panchayats make the Gandhian dream lifeless. Still there are many areas that required immediate attention.

### Conclusion

The goals outlined in DPSP are yet to be achieved. There has been some partial success in certain areas like

- reduced crude illiterate to some extent
- modernization of Agriculture etc. still a lot remains to be done. According to major critics of New Economy Policy, are against the spirit of DPSP.

It has been recognised by the 11th 5 year plan to move with the Inclusive Growth Model. In contemporary times, it has become a necessity.