THE INDIAN LAW INSTITUTE, NEW DELHI

Seminar

on

Constitutional Developments Since Independence

April 1973

FUNDAMENTAL RIGHTS AND DIRECTIVE PRINCIPLES

By

P. Parameswara Rao*

Parts III and IV dealing respectively with Fundamental Rights and Directive Principles of State Policy are among the important features of our Constitution. Questions were raised before the Supreme Court from time to time regarding their relative importance. An analysis of the Supreme Court decisions is necessary in order to assess how far the intentions of the framers of the Constitution were appreciated by the judiciary.

Before considering the decisions it is necessary to bear in mind certain provisions of the Constitution. Article 12 defines "The State" for purposes of part III, viz., Fundamental Rights. Article 36 which figures in Part IV, viz., Directive Principles of State Policy, says that the expression "the State" has the same meaning as in Part III. Article 13(2) lays down that the State shall not make any law which takes away or abridges the rights conferred by Part III and any law made in contravention of the said clause shall, to the extent of the contravention, be void. Article 37 says that the provisions contained in Part IV shall not be enforceable by any court but the principles laid down therein 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. Two questions arise in the context of the above provisions viz.,

> (1) What is the meaning of "take away" or "abridge" in Art. 13(2) or what constitutes "taking away" or "abridgment" or a fundamental right?

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*. Advocate, Supreme Court.

(2) What is the purport and significance of Art. 37 when it says that the Directive Principles of State Policy are not enforceable by any court, but nevertheless they are fundamental in the governance of the country and it shall be the duty of the State to apply those principles in making laws?

Part III sets out various fundamental rights. The precise scope and extent of many of these rights is not clearly spelt out by the Constitution. It is left to judicial interpretation. Whenever a person comes before the Court with a complaint that any of his fundamental rights is violated, the Court will examine the scope of the rights and see whether there is, in fact, any abridgment of that right. In this process the courts on the one hand define the scope of each fundamental right from time to time and on the other hand lay down whether in a given set of circumstances there is any taking away or abridgment of a Fundamental Right. Often the alleged abridgment may be found to be baseless by the Courts. The question that has to be considered is whether the implementation or giving effect to the provisions of one part of the Constitution by the State could at all be regarded as constituting 'abridgement' or 'taking away' any of the fundamental rights?

It is one of the cardinal principles of construction that two provisions of thesame Act shall be so construed as to avoid a conflict between the two. This is what is called the rule of harmonious interpretation. The rule applies all the more to the interpretation of the basic or organic law i.e., the Constitution. However, some of the decisions of the Supreme Court seem to suggest (a) that there could be a conflict between the Fundamental Rights and the Directive Principles and (b) that in the case of such a conflict the Directive Principles of State Policy have to conform to and run as subsidiary to the Fundamental Rights. The very first case wherein such a conflict was postulated is the State of Madras v. Smt. Champakam Dorairajan.[1] In that case the communal G.O. issued by the State of Madras in regard to admissions to the Medical Colleges was challenged in a writ petition before the High Court of Madras. The High Court allowed the writ petition and struck down the communal G.O. as violative of Art. 15(1)and Art.29(2) of the Constitution. The State of Madras then appealed

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1. (1951) S.C.R. 525.

to the Supreme Court. The impugned G.O. laid down that out of every 14 seats to be filled by selection of candidates the allocation of seats to the various communities should be as follows:-

Non - Brahmin (Hindus)	-	6
Backward Hindus	-	2
Brahmins	-	2
Harijans	-	2
Anglo Indians and Indian Christians	-	1
Muslims	-	1

The learned Advocate-General for Madras contended that the impugned G.O. was justified by the provisions of Arts.37 and 46 of the Constitution (Directive Principles). Art. 46 says that the State shall promote with special care the educational and economic interests of the weaker sections of the people. The arguments could have been easily rejected stating that Art. 46 could justify reservation of some seats for the weaker sections of the people and leaving the remaining seats for open competition but there was no justification for making community-wise reservations of all seats. The Court, in fact, appreciated this weakness in the argument but unfortunately did not base its decision solely on this reasoning. The Court laid down a basic proposition of law in the following words:-

> "The directive principles of the State Policy, which by Article 37 are expressly made ununforceable by a Court, 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 of Fundamental Rights is sacrosanct and not liable to be abridged by any Legislative or Executive Act or order, except to the extent provided in the appropriate article in Part III. The directive principles of State Policy have to conform to and run as subsidiary to the Chapter of Fundamental Rights. In our opinion, that is the correct way in which the provisions found in Parts 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 to the State acting in accordance with the directive principles set out in Part IV, but subject again to the Legislative and Executive powers and limitations conferred on the State under different provisions of the Constitution".[2]

The learned Judge (Mr. Justice S.R.Das) who delivered the judgment of the Court in Champakam's case reiterated the same proposition in another case, Mohd. Hanif Quareshi v. State of Bhiar.[3] In that case Pandit Thakurdas Bhargava, appearing as Amicus Curiae contended that the impugned Acts i.e., Acts banning the slaughter of certain animals passed by the States of Bihar, Uttar Pradesh and Madhya Pradesh respectively, were made by the States in discharge of the obligation cast on them by Article 48 to endeavour to organise agriculture and animal husbandry and in particular to take steps for preserving and improving the breeds and prohibiting the slaughter of certain specified animals. The argument was that the directive principles are equally, if not more, fundamental and must prevail. Rejecting this argument the Court observed that the Directive Principles cannot over-ride the categorical restriction imposed by Article 13(2) on the legislative power of the State.

More recently in Golaknath's case[4] Chief Justice K.Subba Rao, speaking for himself and four other learned Judges observed as follows:-

> "It will, therefore, be seen that fundamental rights are given a transcendental position under our Constitution and are kept beyond the reach of Parliament. At the same time Parts III and IV constituted an integrated scheme forming a self-contained code. The scheme is made so elastic that all the Directive Principles of State Policy can reasonably be enforced without taking away or abridging the fundamental rights".

In a somewhat different language Mr. Justice Hidayatullah in a separate judgment observed as follows:-

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2. .....

3. (1959) S.C.R. 629 at 648.

4. (1967) 2 S.C.R. 762, 789.

> "It is wrong to invoke the Directive Principles as if there is some antinomy between them and the Fundamental Rights. The Directive Principles lay down the routes of State action but such action must avoid the restrictions stated in the Fundamental Rights".[5]

In the same case Mr. Justice Bachawat observed as follows:-

> "The Constitution makers could not have intended that the rights conferred by Part III could not be altered for giving effect to the policy of Part IV. Nor was it intended that defects in Part III could not be cured or that possible errors in judicial interpretation of Part III could not be rectified by constitutional amendments".[6]

The above quoted observations of the various learned judges seem to suggest that the Fundamental Rights have a fixed content and that laws enacted for giving effect to the Directive Principles could take away or abridge the Fundamental Rights.

However, a welcome change is noticeable in a more recent pronouncement of the Supreme Court i.e., Chandra Bhavan Boarding and Lodging, Bangalore v. The State of Mysore and another,[7] where the Court observed as follows:-

> "The provisions of the Constitution are not erected as the barriers to progress. They provide a plan for orderly progress towards the social order contemplated by the reamble to the Constitution. They do not permit any kind of slavery, social, economic or political. It is a fallacy to think that under our Constitution there are only rights and no duties. While rights conferred under Part III are fundamental, the directives given under Part IV are fundamental in the governance of the country. We see no conflict on the whole between the provisions contained in Part III and Part IV. Tjey are complementary and supplementary to each other. The provisions of Part IV enable the

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5. .....

6. Ibid at 913.

7. (1970) 2 SCR 600, 609.

> the legislatures and the Government to impose various duties on the citizens. The provisions therein are deliberately made elastic because the duties to be imposed on the citizens depend on the extent to which the directive principles are implemented. The mandate of the Constitution is to build a welfare society in which justice social, economic and political shall inform all institutions of our national life. The hopes and aspirations aroused by the Constitution will be belied if the minimum needs of the lwest of our citizens are not met".

These observations clearly indicate better appreciation of the relative importance of Parts III and IV, as compared to the unreasonable position taken in Champakam's case.[8] But the expression "we see no conflict" is not the same thing as "there could be no conflict between the provisions of Parts III and IV".

Notwithstanding the rigid position adopted by the Supreme Court in Champakam's case, it has on occasions relied on the Directive Principles in interpreting the scope of some of the fundamental rights.[9] In the State of Bihar v. Kameshwar Singh Mahajan J. relied on Art. 39 holding that the purpose of acquisition contemplated by the Bihar Land Reforms Act is a public purpose. After quoting the relevant portion of Art. 39 the learned Judge observed as follows:-

> "Now it is obvious that concentration of big blocks of land in the hands of a few individuals is contrary to the principle on which the Constitution of India is based. The purpose of acquisition contemplated by the impugned Act therefore is to do away with the concentration of big blocks of lands and means of production in the hands of a few individuals and to so distribute the ownership and control of the material resources which come in the hands of the State as to subserve the common good as best as possible. In other words, shortly put, the purpose behind the Act is to bring about a reform in the land distribution system of Bihar for the general benefit of the community as advised. The legislature is the best judge of what is good for the community, by whose

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8. (1951) SCR 525.

9. (1962) SCR 889.

> suffrage it comes into existence and it is not possible for this Court to say that there was no public purpose behind the acquisition contemplated by the impugned statute. The purpose of the statute certainly is in accordance with the letter and spirit of the Constitution of India".[10]

Mukherjee and Chandrasekhara Aiyar JJ. agreed with the conclusions of Mahajan J. Ever S.R.Das J. who was the author of the Judgment in Champakam's case relied on the Directive Principles for the purpose of interpreting the meaning of 'public purpose' in Art. 31. The learned Judge observed as follows:-

> "What were regarded only yesterday, so to say, as fantastic formulae have now been accepted as directive principles of State Policy prominently set out in Part IV of the Constitution. The ideal we have set before us in article 38 is to evolve a state which must constantly strive to promote the welfare of the people by securing and making as effectively as it may be a social order in which social, economic and political justice shall inform all the institutions of the national life. Under article 39 the State is enjoined to direct its policy towards securing, inter alia, that the ownership and control of the material resources of the community are so distributed as to subserve the common good and that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment. The words "public purpose" used in article 31(2) indicate that the Constitution uses those words in a very large sense. In the never-ending race the law must keep pace with the realities of the social and political evolution of the country as reflected in the Constitution. If, therefore, the State is to give effect to these avowed purposes of Our Constitution we must regard as a public purpose all that will be calculated to promote the welfare of the people as envisaged in these directive principles of State policy whatever else that expression may mean. In the light of this new outlook what, I ask, is the purpose of the State in adopting measures for the acquisition of the

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10. Ibid. 941.

> zamindaries and the interests of the intermediaries? Surely, it is to subserve the common good by bringing the land, which feeds and sustains the community and also produces wealth by its forest, mineral and other resources, under State ownership or control. This State ownership or control over land is a necessary preliminary step towards the implementation of the directive principles of State policy and it cannot but be a public purpose. It cannot be overlooked that the directive principles set forth in Part IV of the Constitution are not merely the policy of any particular political party but are intended to be principles fixed by the Constitution for directing the State policy whatever party may come into power".[11]

In Bijoy Cotton Mills Ltd. v. The State of Ajmer[12] the court relied in Art. 43 while holding that the fixation of minimum rates of wages was not an unreasonable restriction on the right of freedom of trade or business guaranteed in Art. 19(1)(g) of the Constitution.

In Orient Weaving Mills (P) Ltd. v. The Union of India[13] the Court held that regarding being had to the directive principles contained in Art. 43 of the Constitution, there was no doubt that the State in differentiating between goods produced in big establishments and similar goods produced by small power-loom weavers in a cooperative society, had made a classification that was constitutionally valid.

Again in Chandra Mohan v. State of Uttar Pradesh and ors.[14] the Supreme Court relied on Art. 50 in support of its view that the Constitution postulates independence of the judiciary and that the rules framed by the Governor empowering him to recruit district judges from the 'judicial officers' are unconstitutional.

Serious controversies came to the surface in regard to the interpretation of the right to property guaranteed by the Constitution. The interpretation of the said right by the Supreme Court has led to the amendment of the Constitution several

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11. Ibid 947.

12. (1955) 1 S.C.R. 752.

13. (1962) Supp. 3SCR 481.

14. (1967) 2 SCR 77.

times and is responsible for the long list of Acts included in the ninth schedule.

After a very painstaking and thought-provoking analysis of the amendments made till then Mr. Justice Hidayatullah pointed out in Golaknath's case[15] that none of the fundamental rights except the right to property of the fundamental rights except the right to property was abridged by the amendments. He also observed that all would have been well if the Court had construed Art. 31 differently.

Even though in construing the meaning of 'public purpose' in Art. 31 the Court relied on the directive principles, it did not do so while interpreting the meaning of 'compensation' which occurs in the same Article. It may be because the courts' attention was not drawn to the directive principles. In the State of West Bengal v. Mrs. Bela Banerjee & Others,[16] the argument of the learned Attorney-General proceeded on the footing that the word 'compensation' must mean a full and fair equivalent. Conceding this meaning of the word 'compensation' it was urged that in the context of article 31(2) read with entry No. 42 of List III of the Seventh Schedule, the term was not used in any rigid sense importing equivalence in value, but had reference to what the legislative might think was a proper indemnity for the loss sustained by the owner. It could as well have been contended in that case that having regard to the directive principles, and in particular articles 38 and 39(b) and (c), the word 'compensation' did not mean full market value, but some amount in return which could be regarded as reasonable in the particular circumstances of each case. Even after holding that 'compensation' meant just compensation the Court could have said that 'just compensation' like the expression "reasonable restriction" was not capable of precise definition and that all relevant circumstances like the interests of the public served by the acquisition or taking possession of property in question, the economic position of the owner of the property, the urgency of the need for acquisition etc. would have to be considered in each case in determining whether the compensation offered was just.

Economic justice implies economic equality. For the quicker achievement of this Constitutional goal the State should not only level up but level down the individual holdings of property and means of

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15. (1967) 2 SCR 762.

16. (1954) SCR 558.

of production. Economic justice through agrarian reforms can never be achieved by paying the latifundia full market value or near about that for the land taken. If only the Court had adopted some such flexible approach to the right to property the course of events would perhaps have been different altogether.

Admittedly, the fundamental rights are not absolute rights. They are subject to the overriding interests of the society. Moreover, the Constitution merely sets out these rights; it does not define their precise scope. It is for the Courts to say what the scope of each of these rights is and what constitutes an 'abridgment' or 'taking away' of a fundamental right in a given case. In interpreting the scope of the rights it is the duty of the Courts to so interpret them as not to frustrate the intentions of the framers of the Constitution in regard to the Directive Principles.

According to Art. 37, though not enforceable by any Court the directive principles of State policy are nevertheless fundamental in the governance of the country.

The fact that the directive principles of State policy are made unenforceable in a court of law for obvious reasons does not necessarily mean that they are less important as compared to the Fundamental Rights whose enforcement is guaranteed by Art.32. If at all, a provision of the Constitution which is placed beyond the reach of the judiciary should be regarded as more important than the one which is within its reach. In an illuminating study of the Directive Principles Mr. Justice Hegde, disagreeing with the proposition laid down in Champakam's case, observed as follows:

"whether or not a particular mandate of the Constitution is enforceable by courts, has no bearing on the importance of that mandate".[17]

It follows that the position taken in Champakam's case is untenable. A better way of reconciling Parts III and IV appears to be to hold that any recidental impingement on fundamental rights by any law which gives effect to a directive principle does not amount to taking away or abridgment of fundamental rights within the meaning oa Art. 13(2). Then only those laws which directly take away or abridge fundamental rights would be liable to be struck down as void but not laws which, while giving effect to directive principles, consequentially or incidentally restrict the scope of the said rights.

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17. Sir B.N.Rau Memorial Lectures - Journal of Constitutional and Parliamentary Studies, vol. V No. 2 page 129 at 156.

According to the framers of the Constitution the rights in Part III and the Directive Principles in Part IV are both fundamental. The speedy implementation of the latter is necessary for the fulfilment of the pledges of the preamble and paying the way for granting the people morefundamental rights such as the right to work, the right to education, the right to health etc., which the State can ill-afford at present. It is an established principle of interpretation of laws that in the event of a conflict the different provisions must be harmonised. The interpretation of fundamental rights should therefore be such as to facilitate, and not impede, the implementation of the Directive Principles.

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