

## Relationship between Fundamental Rights and DPSP

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### Introduction

Both the fundamental rights and the directive principles of state policy are a part of the basic structure of the Indian Constitution. The origin of these two has to be traced in the freedom struggle and the basic principles and the demands in the course of the freedom struggle. Both in Nehru Report<sup>1</sup> and the Sapru Report<sup>2</sup>, the socio economic as well as political charter for the Indian society was framed. The demand was both for political rights and socio-economic rights. The declaration in the freedom struggle was that in the independent India the basic political freedoms of the individuals as well as the socio-economic rights of these individuals will be equally guaranteed and protected. Both the political rights and socio-economic rights were therefore incorporated in the constitution. However, the very nature of the political rights that is the fundamental rights were such as would require a restraint upon the power of the state, as these fundamental rights had to be guaranteed primarily against the state action, thought there are certain fundamental rights which are applicable against individuals as well. But even in such cases, the guarantee of the protection of those rights has to come from the state itself. Since these rights are declared too be existing in the individuals a constitutional guarantee for the enforcement of these rights by a direct process to the supreme court was required in order to give the real essence to these rights and therefore it was essential to declare these rights to be enforceable.

Fundamental rights already exist in an individual, these are inherent rights. The problem is not that the state has to take a proactive action to create those, but state has to refrain in the exercise of its powers from violating these rights. While there are some rights which need a proactive action on part of state, mere declaration is not enough eg. Uniform Civil Code<sup>3</sup>, right to education to children etc.

Directive principles are also basic human rights which are to be attained by efforts on the part of the state. It is possible to convert a directive principle of state policy into a fundamental right only when they are related. Since state had no resources earlier, it couldn't enforce such DPSP but later it can make it a fundamental right with the availability of resources<sup>4</sup>.

The directive principles of state policy is also a part of some basic rights of the individuals but since these rights were not possible to be enforced by a mere declaration of restraint upon the individual or state and these rights had to be attained by creating the circumstances. These rights were not declared to be enforceable per se, rather it was expected that the state would play a positive role in attaining the circumstances and thereupon to make laws under which these rights could be enforced. These rights are in the nature of positive rights as they put a positive duty upon the state to take a proactive action to implement or enforce these rights. Article 37<sup>5</sup> latter part is a manifestation of such positive duty.

Thus, in essence there is no difference between the fundamental rights and DPSP as far as their constitutional importance is concerned. The DPSP guarantees a particular pattern of society in which the fundamental rights can be made effective in the real sense. On the other hand, the FRs are also a guarantee for the attainment of that particular pattern of the society. Without assuring the freedom of basic rights to the individual, the socio- economic revolution as stipulated by the DPSP cannot be brought about. Both FRs and DPSP are mutually indispensable. Both are equally important. The FRs are the means to attain the larger goals of

<sup>1</sup> In 1928, the Nehru Report was a document presented by the All Parties Conference in British India. The report aimed to request a new dominion status and a federal system of governance for the formation of India's constitution. Additionally, the report suggested the implementation of Joint Electorates, with the inclusion of reserved seats for minority groups in the legislative bodies. The committee responsible for drafting the report was led by Motilal Nehru, with his son Jawaharlal Nehru serving as the secretary.

<sup>2</sup> The Non-Party Conference's Standing Committee passed a resolution in 1944 to establish a committee that would offer suggestions on constitutional principles with a special focus on communal divisions in India. The committee was to be headed by Sapru, who was asked to select members from different communities to help prepare the report. The resulting document, known as the Sapru Committee Report, presented 21 recommendations addressing constitutional issues relevant to the politics and governance of India.

<sup>3</sup> See Article 44 of the Indian Constitution.

<sup>4</sup> Equal pay for equal work which was enlisted under chapter IV was in Dhirendra Chamoli and Another v. State of U.P., (1985 SC), it was held as a fundamental right.

<sup>5</sup> The provisions contained in this Part (Part IV) shall not be enforceable 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.

the constitution as declared in the DPSP. The harmony between the two is part of the basic structure and this harmony cannot be destroyed either by making a law or by making an amendment.

The DPSP and Fundamental rights cannot be seen in isolation as discussed above. The constitutional stipulation of the overlapping or encroachment of the two is an essential feature of the basic structure and therefore, the need to draw a balance between the two is also a part of the basic structure. However, it is implicit in this that such balance shall be drawn in respect of the individual/ specific fundamental right and DPSP concerned<sup>6</sup>. The interpretation shall be in the light of the purposes of the concerned fundamental right and DPSP and also the larger purposes of the Constitution. Therefore, if a general declaration is made that any law made for promotion of any DPSP will not be ultravires even if it violates a fundamental right, then that will not be an example of the constitutionally stipulated circumstantial balance, rather, it will be a violation of the basic structure of the constitution<sup>7</sup>.

### **Fundamental rights as perfect rights:**

The concept of perfect rights requires that there has to be a corresponding duty for every right. The constitution cannot stipulate a set of imperfect rights. To that extent the fundamental rights of the individuals do impose a duty upon the state not to violate the said fundamental rights. However, the constitutional concept of fundamental rights and DPSP cannot be seen in a mechanical sense to be just a right conferred and guaranteed to an individual, rather it envisages a society which is harmonious within itself. The mere availability of rights would not be sufficient rather it is also to be ensured that there is a harmony between the rights of the various individuals. This cannot be guaranteed unless apart from guaranteeing the availability of fundamental rights to the individuals it is also guaranteed that one individual will not violate the rights of the other individuals i.e., he will be bound by his fundamental duties.

The fundamental duties can be seen as a means to attain a greater harmony and fraternity in the society and the means to make the fundamental rights and DPSP more effective. The three are not mutually exclusive, rather, they shall be read together and also they shall be interpreted in light of each other. The fundamental duties and directive principles are also a tool of interpretation and putting limitations upon the fundamental rights.

In *Union of India v. Naveen Jindal and others*<sup>8</sup>, the principle that the fundamental duties can be used to restrict the fundamental rights was manifest. Every Indian being a sovereign has a right to show i.e., depict his sovereignty by way of showing or hoisting the National flag i.e., a part of his freedom of speech and expression under Art. 19(1) (a) and at the same time he also has a fundamental duty to protect and respect the national flag. The court held that, "the individual should ensure that in the exercise of his right to hoist or depict the national flag, he shall not cause any insult to it.

Thus, in order to balance fundamental rights and directive principles, the Indian Constitution provides for the doctrine of harmonious construction<sup>9</sup>, which means that both provisions should be read together and interpreted in a way that does not lead to a conflict. The courts also have the responsibility to strike a balance between fundamental rights and directive principles when adjudicating cases, ensuring that neither is given undue weightage over the other.

In conclusion, it is important to strike a balance between fundamental rights and directive principles of state policy as provided under the Indian Constitution. This requires a nuanced approach that takes into account the specific circumstances of each case and seeks to harmonize these two important provisions of the Constitution.

<sup>6</sup> Both of these provisions are essential for the smooth functioning of a democratic society, but there can be instances where they come into conflict with each other. For example, the right to property, which was once a fundamental right, was later removed from the list of fundamental rights to ensure that the state could take measures for land reform and provide housing for the poor, as laid out in the directive principles of state policy.

<sup>7</sup> Articles 14 and 19 have to give way to Article 39(B) and (C) so as to achieve the larger socialistic goals of the constitution. Accordingly, the 25<sup>th</sup> amendment was held not to be unconstitutional.

<sup>8</sup> AIR 2004 SC 1559

<sup>9</sup> In *Minerva Mills Ltd. v. Union Of India*, AIR 1980 SC 1789, it was held that harmony between Fundamental rights and dpsp is part of basic structure.