

THE SUPREME COURT AND DIRECTIVE PRINCIPLES OF STATE POLICY

By

—G. RAMESH BABU,

Personal Management (Oxford University)

I.R.P.M., N.I.P.M., M.A., (Ph.D.), L.L.M.,

Former Government Pleader,

A.P. High Court

The preamble of the Indian Constitution sets up the goals that are to be realized by the Government for its people through the Instrumentalities of the State. These goals enshrined in the preamble are considered to be basic structure of the Indian Constitution as laid down in *Kesavananda Bharati v. State of Kerala*¹. The goals adumbrated in the preamble sound the fact that the Constitution of India is not just a politico legal document portraying the structure and composition of the Governmental machinery vested with necessary powers. It is clear from the preamble that the founding fathers of the Indian Constitution lay before the Government a vital task, namely establishment of a well balanced socio-economic system where justice, liberty, equality and fraternity pervade among all sections of the people in the Society, further it is relevant to add that the preamble testifies to the fact that a Constitution is living and organic thing which, of all instruments has the greatest claim to be construed liberally and broadly pursuant to the Philosophy of Welfare State, and Constitutional Goals.

Apparently, one of the significant and vital features of the Indian Constitution is that it contains Fundamental Rights and Directive Principles of the State Policy².

While the fundamental rights as guaranteed under Part 3 of Indian Constitution are enforceable by the Supreme Court of India³, or by the High Courts⁴. The Directive

Principles of State Policy embodied in the Indian Constitution are not enforceable by any Court of law⁵ and the relevant Article there of reads as follows:

“Application of the principles contained in this part”. The Provisions contained in this part 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.

Various directive principles incorporated under Part 4 from Articles - 37 to 51 manifestly echo the manifesto of the welfare State which if implemented would secure “a social order in which justice, social, economic and political shall inform all the institutions of the national life⁶ “and according to Professor *M.P. Jain*, a renowned Constitutional authority “The Directive Principles are designated to usher in a social and economic democracy in the country⁷.”

Evidently directive principles in Part 4, and fundamental rights in Part 3 appear to be two mutually contrasting parts as such initially it has engendered not debate and cleavage of judicial opinion amongst Legal Luminaries and Judges. At the outset, the Indian Judiciary taking into account apparent tenor of these two parts, adopted a strict and literal interpretation, consequently, it

1. AIR 1973 SC 1461.

2. Parts 3 and 4 - Indian Constitution

3. Article - 32- Indian Constitution

4. Article 236 - Indian Constitution

5. Article - 37 - Indian Constitution

6. Article - 38 - (1) The Indian Constitution

7. The Indian Constitution Law - Page 1595

resulted in the proposition that directive principles are subservient to the fundamental rights, consequently, the latter cannot be overridden by the former, as such in case of a conflict between fundamental rights and directives. The fundamental rights gain primacy and paramountacy as against the directive principles. Such judicial interpretation has emerged when the Supreme Court has to decide the Constitutionality of the Government Orders issued by the State of Madras acting under the Article - 46, one of the Directive Principles, quashing the impugned Order, the Supreme Court, maintained that the directive principles cannot be implemented by the State at the cost of the fundamental rights⁸. This rigid approach of the Supreme Court following the letter of Article - 37 has reduced the directive principles to a naught.

Although, the stand taken by the Supreme Court of India in respect of directive principles created an impression that the directive principles have no substance of their own unless preferred by the State to lend legislative content to the directives, it is pertinent to note that in the course of time one can perceive a radical change in the judicial attitude towards the directives. Precisely though the Supreme Court maintained that no harmonization is possible between the directives and fundamental rights, and directive must give way to the fundamental rights, the Supreme Court had adopted the view that directives may be applied as a tool for interpreting a statute and when there are two judicial choices available to the Court, the Supreme Court maintained that the interpretation which is in consonance with directives principles must be adopted to make these directives real one, such liberal interpretation of directives had been further extended by the Supreme Court to ascertain the scope and ambit of the fundamental rights as such the directives have been given little preference in bringing about harmonious

construction between the fundamental rights and the directives. Now the Supreme Court took the stand that directives are not to be ignored while interpreting the fundamental rights⁹. This as a matter of fact is desirable, and a welcome sign from the Supreme Court, since such liberal and dynamic interpretation of directives really enables the State to effectively implement the directives. But for such harmonious understanding of interrelationship of the fundamental rights and directives as projected by the Supreme Court State would have placed the directives at the mercy of the Legislature without which the directives would have remained mere moral Constitutional precepts. In order to realize the objectives of Social Welfare State as reflected in the preamble of the Indian Constitution, the State must have laxity to initiate necessary measures and take effective and adequate action where by the directives in the Part 4 thereof could be implemented in their real spirit. As a result, the Supreme Court maintained that a silent and non violent social revolution is possible only by synthesizing a fundamental rights and directives¹⁰.

By virtue of the synthetic interpretative approach to the directives and the fundamental rights, the Supreme Court has brought to the lime light the fact that State should never be oblivious of the importance of the directive principles which are "Fundamental" in the Governance of the State giving exclusive and undue importance to the fundamental rights as laid down in Part IV of the Constitution of India.

It is relevant in this context to add that undoubtedly Part 3 of the Indian Constitution has guaranteed various fundamental rights with adequate and, effective Constitutional protection against arbitrary interference of the State. At the same time one must remind

8. State of Madras versus Champakam Dorairajan, AIR 1951 SC 228

9. In re Kerala Education Bill - AIR 1958 SC - 956

10. Pathumma versus State of Kerala - AIR 1978 SC 771

himself of the fact that it is not enough if rights are only created, inasmuch as, conducive environment facilitating the persons to enjoying those rights also must be created, lest such rights created under the Constitution remain beyond the reach of the persons who are mostly in India indigenous and illiterate masses.

The changed attitude and approach of the Supreme Court to the directive principles has given a new content to the directives and direction to the State in formulating its Governmental policy towards the path of progress. Further the directive principles have become a touch stone to understand the meaning and the content of fundamental rights.

His Lordship *Chandra Chud*, the Chief Justice of India, has relevantly observed that fundamental rights *per se* are not an end by themselves but means to an end, and the end is specified in Part 4 in the directives. The fundamental rights and the directives are the core of the Constitution and both being inseverable from each other and being the bed rock of the Constitution should be maintained in harmony, as otherwise, shake the basic structure of the Indian Constitution¹¹, in view of the liberal approach of the Supreme Court to the inter relationship between Part-3 and Part-4, it has not only judicially asserted the significance and role of the directives as fundamental principles in the process of formulating the Governmental Policy and adjudging the Constitutional tenability of the laws enacted by the State, and the Governmental action, it has enlarged the scope of the fundamental rights already guaranteed under Part - 3, has also created certain new rights by virtue of such new approach, consequently the co-relationship brought about by the Supreme Court between the two parts has resulted in the enforcement of the directive principles through the fundamental rights.

11. *Minerava Mills versus Union of India* 1980 2 SCC 591

It is in this context, the relevant to be borne in Mind is that the preamble of the Indian Constitution ensures that dignity of the individual has to be upheld by the State and in Part 4 of the Indian Constitution the State is directed to take necessary step and create all such necessary situation wherein the inherent dignity of the individuals is upheld. As such, the Supreme Court of India has ruled that Article 21 which guarantees fundamental right for life and personal liberty also includes right to live with human dignity and it should be noted that the Supreme Court has taken into account that the right to live human dignity is based upon the Directive Principles of State Policy¹². Similarly Article -39A which has been added in 1976 through 44th Amendment laid down that "the State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity and shall in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities" Article - 21 as already referred to herein about guarantees life and personal liberty as a fundamental right against arbitrary deprivation by the State, and in view of wide purport given to the life and personal liberty within the meaning the Article - 21¹³, free legal aid has been understood as an indispensable requisite of Article - 21 in necessary cases to ensure fair play of justice as interpreted in the light of the above mentioned directive incorporated under Article - 39A¹⁴. Similarly right to enjoy pollution free environment are treated as concomitant of Article - 21 read with the relevant directives¹⁵.

12. *Bandhu Mukti Morcha versus Union of India*, 1984 3 SCC 161

13. *Menaka Gandhi versus Union of India*, AIR 1978 SC 597

14. *Hoscot versus State of Maharashtra* AIR 1978 SC 1548 and AIR 1986 SC 991

15. *Subhash Kumar versus State of Bihar*, 1991 1 SCC 598

Justice, liberty, equality and fraternity are constitutionally cherished values and guaranteed goals. Social justice, equality and dignity of individuals are the conspicuously the foundation and buttressing pillars of the edifice of social democracy, as envisaged under the Indian Constitution and the social justice becomes reality and accessible to every individual, and in a very sphere of life as contemplated in

Article - 38 becomes reality and the masses who have reposed their confidence in the Government whom they voted making their aspirations true, becomes possible only when the State always Governs keeping in mind the directives embodied in Part - 4 mindful of their substance and sprit the light focused by the Supreme Court in synthesizing both fundamental rights and the directives.

IMRANA ILAHI'S CASE - NEED FOR UNIFORM CIVIL CODE

By

—**N. RAMACHANDER RAO**, Advocate,
A.P. High Court
&

—**Dr. N. VENKATESHWARLU**,
Academic Consultant, Department of Law,
Osmania University, Hyderabad

“A Common Civil Code will help the cause of national integration by removing disparate loyalties to laws which have conflicting ideologies. No community is likely to bell the cat by making gratuitous concessions on this issue. It is the State which is charged with the duty of securing a uniform civil code for the citizens of the country and, unquestionably; it has the legislative competence to do so.”

—Justice Y.V. *Chandrabud* in *Mohd Ahmed Khan v. Shah Bano Begum*.

An incident occurred in Charthawal Village in Muzaffarnagar on 11th June, 2005 where Smt. *Imrana* was raped by her father-in-law and subsequent developments from religious heads in the name of Fatwa stating that now she is the wife of her father-in-law, hence she can't be the wife of her own husband, so she can't live with him. Again country reminds the need of uniform civil code applicable to all citizens. There is no uniform civil code in India but a uniform criminal civil code exists. The Criminal Law

is equally applicable to all citizens irrespective of their religious affiliation. However in the case of civil particularly in the matter of personal laws there is no uniformity. Twenty four year old *Rani Begum*, a mother of four was raped by her father-in-law at their home in Hardauli, Bulandshaher three years ago. As per a local cleric's edict issued then, she was forced to return to her parents. History repeated itself last month. The victim *Imrana Ilahi*, a mother of five children, took refuge of her native village nearby in the wake of the controversial fatwa by clerics of Darul Uloom of Deoband that disallows her to live with her husband and children, with a ruling that rape by the father-in-law establishes the mother-son-relationship between the raped woman and her husband thus annulling the marriage and further, the ruling ordered that she marry the father-in-law and stay with him.

Woman raped by Father-in-Law cannot live with her husband:—

The All Indian Muslim Personal Law Board (AIMPLB) supported Islamic seminary