



## **FACULTY OF JURIDICAL SCIENCES**

**Course : BALLB , 3<sup>rd</sup> Semester**

**Subject : CONSTITUTIONAL LAW I**

**Subject code : BAL304**

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## **Constitutional law - I**

**OBJECTIVE:** The objective of this paper is to provide understanding of basic concepts of Indian Constitution and various organs created by the constitution including their functions.

### **UNIT – I**

- **Salient features of the Indian Constitution.**
- **Preamble**
- **Definition of State (Art. 12)**
- **Doctrines of Ultra-vires, severability, eclipse, waiver (Art, 13)**

### **UNIT-II**

- **Right to equality (Art. 14)**
- **Prohibition of discrimination, Rights to equality of opportunity (Art. 15-16)**
- **Right to freedom under Article 19: Freedom of association; Freedom of movement;**
- **Freedom of residence; Freedom of assembly; Freedom of association; Freedom of**
- **movement; Freedom of residence; Freedom of occupation, trade and business;**
- **Right to take out processions; Right of the State to impose reasonable restrictions**

### **UNIT – III**

- **Protection in respect of Conviction under Article 20,**
- **Ex-post-facto law; Double jeopardy; Self-incrimination;**
- **Right of Life and Personal Liberty (Act. 21),**
- **Protection in respect of arrest and detention**
- **Right to freedom of religion (Articles 25-28)**

### **UNIT – IV**

- **Cultural and Education Rights (Articles 29-30)**
- **Enforcement of Fundamental Right, Writ Jurisdiction of the Supreme Court and**
- **High Court (Article 32, 226)**

- **Right to property before and after the Constitution 42nd Amendment Act, 1976**
- **Abolition of Untouchability, Titles (Articles 17-18)**
- **Right against exploitation (Articles 23, 24)**

**Suggested Readings:**

- 1. Austin Granville: Constitution of India: Cornerstone of a Nation; and Working A Democratic constitution**
- 2. NarenderKumar : Constitutional Law of India.**
- 3. Basu D. D : Shorter Constitution of India**
- 4. Jain, M.P.: Constitutional Law of India,**
- 5. Seervai, H.M. : Constitutional Law of India, Vols. I-III**
- 6. Shukla, V.N. : Constitutional of India (ed. M.P.Singh)**
- 7. B.R. Sharma : Constitutional Law and judicial Activism**
- 8. M.C. Jain Kagzi : The constitution of India**
- 9. B. Shiva Rao: The Framing of India's Constitution**

# LECTURE 40

## Correlation Between Fundamental Rights and Directive Principles of State Policy

Directive principles are in the nature of instruments of instructions to the government of the day to do something positive. They are not justiciable or enforceable in courts. On the other hand, the fundamental rights are enforceable in the courts under Arts 32 and 226 of the constitution and hence are justiciable. Fundamental rights are facilities given by the state to the people, whereas directive principles are directions given by the constitution to the state.

Fundamental rights aim at establishing political democracy in India, while directive principles attempt to provide socio-economic foundations to Indian democracy.

Article 37 provides that 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 question of relationship between the Directive Principles and the Fundamental rights has caused some difficulty, and the judicial attitude has undergone transformation on this question over time. What if a law enacted to enforce a directive principle infringes a fundamental right? On this question, the judicial view has veered round from irreconcilability to integration between the Fundamental rights and Directive Principles and in some of the more recent cases, to giving primacy to the Directive Principles.

Initially, the courts adopted a strict and literal legal position in this respect. The Supreme Court adopting the literal interpretative approach to Art. 37 ruled that a Directive Principle could not override a Fundamental right, and that in case of conflict between the two, the

Fundamental right would prevail over the Directive Principle. This point was settled by the Supreme Court in *State of Madras v. Champakam Dorairajan* (1951), where governments order in conflict with Art. 29 (2), **a fundamental right, was declared invalid, although the government did argue that it was made in pursuance of**

**Art 46, a Directive Principle. The court ruled that while the Fundamental rights were enforceable, the Directive Principles were not, and so the laws made to implement Directive**

**Principles could not take away Fundamental rights. The Directive Principles should conform, and run as subsidiary, to the Fundamental rights. The Fundamental rights would be reduced to 'a mere rope of sand' if they were to be override by the directive principles. The court observed in this regard.**

***"The Directive Principles of the state policy, which by Art. 37 are expressly made unenforceable by a court cannot override the provisions found in part III (fundamental rights) 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 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 on Fundamental rights.”*

In course of time, a perceptible change came over the judicial attitude on this question. The Supreme Court's view as regards the interplay of Directive Principles and Fundamental rights underwent a change. The Supreme Court started giving a good deal of value to the Directive principles from a legal point of view and started arguing for harmonizing the two the Fundamental rights and Directive Principles.

The Supreme Court came to adopt the view that although Directive Principles, as such, were legally non-enforceable, nevertheless, while interpreting a statute, the courts could look for light to the “lode star” of the Directive Principles. “Where two judicial choices are available, the construction in conformity with the social philosophy” of the Directive Principles has preference. The courts therefore could interpret a statute so as to implement Directive Principles instead of reducing them to mere theoretical ideas. This is on the assumptions that the law makers are not completely unmindful or oblivious of the Directive Principles.

Further the courts also adopted the view that in determining the scope and ambit of Fundamental rights, the Directive Principles should not be completely ignored and that the courts should adopt the principles of harmonious construction and attempt to give effect to both as far as possible. For example, as early as 1958, *in Kerala Education Bill (1959)*,

DAS, C.J., while affirming the primacy of fundamental rights over the directive principles, qualified the same by pleading for a harmonious interpretation of the two. He observed

*“nevertheless, in determining the scope and ambit of the Fundamental rights relied upon by or on behalf of any person or body, the court may not entirely ignore these Directive*

*Principles of state policy laid down in part IV of the constitution but should adopt the principle of harmonious construction and should attempt to give effect to both as much as possible.”*

Without, therefore, making the directive principles justifiable as such, the courts began to

implement the values underlying these principles to the extent possible. The Supreme Court began to assert that there is “no conflict on the whole” between the fundamental rights and the directive principles. ‘They are complementary and supplementary to each other.’ Since then, the judicial attitude has become more positive and affirmative towards directive principles, and both fundamental rights and directive principles have come to be regarded as co-equal. There is in effect a judicial tendency to interpret Fundamental rights in the light of, and so as to promote, the values underlying Directive Principles.

This aspect of the directive principles was stressed upon by the Supreme Court in

*Golak Nath (1967)*. The Supreme Court there emphasized that the fundamental rights and directive principles formed an “integrated scheme” which was elastic enough to respond to the changing needs of the society.

In *Kesavananda Bharti v. State of Kerala (1973)*, HEGDE and MUKHERJI, JJ., observed:

*“the fundamental rights and directive principles constitute the “conscience of the constitution” there is no antithesis between the fundamental rights and directive principles and one supplements the other.”*

SHELAT and GROVER, JJ., observed in their judgment :

*“both parts III (fundamental rights) and IV (directive principle) have to be balanced and a harmonized then alone the dignity of the individual can be achieved they were meant to supplement each other.”*

The Supreme Court said in *State of Kerala v. N.M Thomas (1976)*, that the Directive Principles and Fundamental rights should be construed in harmony with each other and every attempt should be made by the court to resolve any apparent inconsistency between them.

In *Pathumma v. State of Kerala (1978)*, the Supreme Court has emphasized that the purpose of the directive principles is to fix certain socio-economic goals for immediate attainment by bringing about a non-violent social revolution. The constitution aims at bringing about synthesis between Fundamental rights and the Directive principles. The Directive principles and Fundamental rights are not now regarded as exclusionary of each other. They are regarded as supplementary and complementary to each other. In course of time, the judicial attitude has veered from irreconcilability to integration of the fundamental rights and the directive principles. The directive principles which have been declared to be “fundamental” in the governance of the country cannot be isolated from fundamental rights. The directive principles have got to be read into the fundamental rights.

An example of such relationship is furnished by the “right to education”. Chandrachud, CJ., in *Minerva Mills v. Union of India (1980)*, said that the fundamental rights “are not an end in themselves but are the means to an end.” The end is specified in the directive principles. It was further observed in the same case that the fundamental rights and directive principles together “constitute the core of commitment to social revolution and they, together, are the conscience of the constitution.” The Indian constitution is founded on the bedrock of “balance” between the two. “To give absolute primacy to one over the other is to disturb the harmony of the constitution. This harmony and balance between fundamental rights and directive principles is an essential feature of the basic structure of the constitution.”

The fundamental rights “are not an end in themselves but are the means to an end.” The end is specified in directive principles. On the other hand, the goals set out in directive principles are to be achieved without abrogating the fundamental rights. “It is in this sense” that fundamental rights and directive principles “together constitute the core of our constitution and combine to form its conscience. Anything that destroys the balance between the two parts will ipso facto destroy an essential element of the basic structure of our constitution.”

The Supreme Court has argued in *Olga Tellis v. Bombay Municipal Corporation (1986)* that since the directive principles are fundamental in the governance of the country they must, therefore, be regarded as equally fundamental to the understanding and interpretation of the meaning and content of fundamental rights. In *Unnikrishna v. State of Andhra Pradesh (1993)*, Jeevan Reddy, J., said that the fundamental rights and directive principles are supplementary and complimentary to each other, and not exclusionary of each other, and that the fundamental rights are but a means to achieve the goal indicated in the directive principles that “fundamental rights must be construed in the light of the directive principles.”

In *Dalmia Cement (Bharat) Ltd. v. Union of India (1996)*, the Supreme Court has emphasized that the core of the commitment of the constitution to the social revolution through rule of law lies in effectuation of the fundamental rights and directive principles as supplementary and complimentary to each other. The preamble to the constitution, fundamental rights and directive principles—the trinity—are the conscience of the constitution. In *Ashoka Kumar Thakur v. Union of India (2008)*, Balakrishna, CJI said that no distinction can be made between the two sets of rights. The Fundamental right represents the civil and political rights and the directive principles embody social and economic rights. Merely because the directive principles are non-justiciable by the judicial process does not mean that they are of subordinate importance.

It has now become a judicial strategy to read fundamental rights along with directive principles with a view to define the scope and ambit of the former. By and large this assimilative strategy has resulted in broadening, and giving greater depth and dimension to, and even creating more rights for the people over and above the expressly stated, fundamental rights. At the same time, the values underlying the directive principles have also become enforceable by riding on the back of the fundamental rights. On the whole, a survey of the case-law shows that the courts have used directive principles not to restrict, but rather to expand, the ambit of the fundamental rights.

The theme that “fundamental rights are but a means to achieve the goal indicated in the directive principles” and the fundamental rights must be construed in the light of the directive principles” has been advocated by the Supreme Court time and again.

The development of law regarding the conflict and irreconcilability between fundamental rights and the directive principles, has passed through four distinct stages. At the beginning, a strict literal interpretation was advocated and the Fundamental Rights would prevail over the Directive Principles. Later in course of time, a perceptible, and a welcome change came over the judicial attitude, and the courts though subordinated the Directives to the



Fundamental Rights, took the view that the mechanism of harmonious construction should be used to interpret the two Parts.

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**Choose the correct option**

**1. Which of the following is/are true?**

- 1) India did not possess sufficient financial resources to implement DPSPs at start of the constitution.
  - 2) Dr. B. R. Ambedkar recommended division of individual rights into - justiciable and non-justiciable.
- a. Only 1
  - b. Only 2
  - c. Both 1 and 2
  - d. Neither 1 nor 2

**2. Which of the following examples of implementation of Directive Principles?**

- 1) Planning Commission
  - 2) Wildlife (Protection) Act, 1972
  - 3) 73<sup>rd</sup> Amendment Act of 1992
  - 4) Minimum Wages Act
- a. 1, 2, 4
  - b. 1, 3
  - c. 2, 3, 4
  - d. All of the above

**3. Which of the following are other directives apart from Directive Principles in Part 4?**

- 1) Claims of SCs and STs to Services
  - 2) Instruction in mother tongue during primary education
  - 3) Development of the Hindi Language
- a. 1, 2
  - b. 1, 3
  - c. 2, 3
  - d. All of the above

**4. Which of the following deal with the conflict between Fundamental Rights (FRs) and Directive Principles (DPSPs)?**

- 1) Champakam Dorairajan case (1951)
- 2) Bommai case (1978)
- 3) 42<sup>nd</sup> Amendment Act (1976)
- 4) Minerva Mills case (1980)

- a. 1, 3, 4
- b. 3, 4
- c. 1, 3
- d. All of the above

**5. What is the utility of Directive Principles?**

- 1. Rigid constitution
  - 2. Appointment of Governor
  - 3. Integrated judiciary
- a. 1, 3
  - b. 1, 2
  - c. 2, 3
  - d. All of the above