



Fundamental Rights And Directive Principles Controversy, Historical Perspective, Recent Debate And Judicial Order

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At the time of independence India was facing the grave problem of hunger, poverty, unemployment and economic inequality etc. The freedom fighters and framers of Indian Constitution were fully obliged to the obligation, to make an independent India free from the above-mentioned problems. "Nehru had told the constituent assembly that the first task of the assembly was to free India through a new Constitution, to feed the starving people and clothe the naked masses and give every Indian the fullest opportunity to develop himself according to his capacity. He had added that if the constitution failed to solve the basic problems of the poor and the starving it will become useless and purposeless".

Though India became a socialist state with the inclusion of word "socialist" to the preamble of Indian Constitution by 42nd amendment in 1976 but the establishment of socialistic pattern of society was the objective of our freedom movement and our Constituent assembly. The preamble of Indian Constitution promises Justice social, economic and political for the people of India. Chapter III on fundamental rights from article 12 to 36 and chapter IV on directive principles of state policy from article 37 to 51 fulfills the promise of social, economic and political Justice. But there is a constitutional clash between chapter III and chapter IV of our constitution and our constitutional machinery failed to solve that and it is still persists. Article 13 of our constitution reads that the state shall not make any law which take away or abridges the rights conferred by this part and any law made in contravention, be void. Article 37 of our constitution declares that the directive principles have been declared to be fundamental in the governance of country and it shall be the duty of the state to apply these principles in making laws. Article 13 assure guarantee for fundamental rights on the one hand and article 37 permits the state to override any fundamental right which hinder the way of implementation of directive principles of state policy. The bone of contention was the right to property which was granted as a fundamental right under Article 31 of our constitution. The directive principles included in our constitution empowers the state to make economic reforms to achieve the goal of just and equitable society based on economic equality which is promised by the preamble of our constitution.

During the decade of 1970, Constitution was amended in routine to keep certain laws exempted from Judicial review. It was the era of continuous conflict between fundamental rights and directive principles of state policy. It can be said that it was an era of struggle for supremacy between parliament and judiciary. In Golak Nath case the Supreme Court of India limit the power of the parliament to amend the constitution by laying down its decision that parliament has no constitutional right to amend the chapter of fundamental right. In 1971 the govt. of Indira Gandhi carried out 24th amendment to constitution to sought the absolute power to amend any part of the constitution including the chapter on fundamental rights. By 25th constitutional amendment parliament added clause 'c' to article 31 to get exemption for their laws from Judicial scrutiny which are being made to implement directive principles of state policy. In Keshavananda Bharti Case 1973 the Supreme Court accepted the absolute power of the parliament to amend constitution as authentic but declared clause 31 (C) void. Supreme court declared that clause 'c' infringing upon the court's power of Judicial review, which is the part of the basic structure of Indian Constitution.

What the Article 31(C) says "Article 31(C) as inserted by the 25th amendment Act 1971, provided that any law which seek to implement the directives in Article 39(b)-(c) i.e., the plan for socialistic distribution of wealth and the means of production shall not be void for inconsistency with Article 14 or 19".

The Supreme Court of India made the article 31(C) ineffective by her Judgment in Keshavananda Bharti Case 1973. In her Judgment Supreme Court declared that Judicial Review is the one of the essential features of Indian Constitution and it cannot be taken away by the process of amendment under article 368. Court said that Article 31(C) which stated that any legislative declaration that a particular law was made to implement the directives in Article 39(b)-(c) shall not be open to question in a court is itself unconstitutional.

Article 31(C) which was introduced in 1971 and again expanded by 42nd constitution amendment 1976 reads

that though the directives themselves are not directly enforceable in the courts, if any law is made to implement any of the directive contained in part IV of the constitution, it would be totally immune from unconstitutionality on the ground of contravention of the fundamental rights conferred by the article 14 and 19.

“This attempt of the Parliament to establish the primacy of Directives on fundamental rights was foiled by the supreme Court by her Judgment in *Mincrva Mills* case 1980. In this judgment Supreme Court struck down the widening of Article 31(C) to include any or all or Directives in part IV, on the ground that such total exclusion of Judicial Review would offend the “basic structure” of the constitution. As a result, Article 31 C restored to it is pre 1976 position, so that a law would be protected by Article 31 C only if it has been made to implement Directive in Article 39 (b)-(c) and not any other directive included in part IV”.

In *Mincrva Mills v/s Union of India* (1980) a five judge Bench declared the amendment unconstitutional. The court found that while DPSPs provided the ends of governance, fundamental rights constituted the means to such ends. Article 14, 19 and 21 wrote Chief Justice Y.V. Chandrachud stood between the “heaven of freedom into which Tagore wanted his country to awake and the abyss of unrestricted power”. This amendment he added “removed two sides of that golden triangle”.

Advocate Subrith Parthasarathy made reference to another case Judgment by which issue became complicated. Justice YV Chandrachud, on behalf of a five judge Bench in case of *Waman Rao v/s Union of India*. “Here somewhat at odds with his own opinion in *Minerva Mills*, he held that the unamended Article 31 C was valid, because it was impossible to conceive how a law made in furtherance of Article 39(b) and (c) could at all infringe the rights under Article 14 and 19. Author says that this finding is clearly incorrect....”.

The forces behind Directive Principles

Article 355 is itself a force behind the implementation of directive principles. Article 355 of our constitution reads as under:

“It shall be the duty of the union to ensure that the government of every state is carried on in accordance with the provisions of the constitution”.

D.D. Basu writes “Indisputably part IV (containing Directive principles) is a part of our constitution. On the other hand, even though the Directive are not enforceable in the courts of law, Article 37 unequivocally enjoins that “it shall be the duty of the state to apply these principles in making laws”.

Granville Austin considers these directives to be “aimed at furthering the goals of social revolution or to foster this revolution by establishing the conditions necessary for its achievements”. He explains “by establishing these positive obligations of the state, the members of constituent assembly made it responsibility of future Indian governments to find a middle way between individual liberty and the public good, between preserving the property and the privilege of the few and bestowing benefits on the many in order to liberate the powers of all men equally for contribution to the common good” .

Historical Perspective

The state of India became a socialist by 42nd amendment made in Constitution of India in 1976. The Prime Minister of that time Mrs. Indira Gandhi made it clear that this socialism did not indicate collectivism, but the offering of equal opportunities to all through social- economic reforms. In 1978 to avoid excessive litigation directly in the Supreme Court by the propertied class the 44th constitutional amendment act was passed by the Desai govt by which the right to property was removed from the list of fundamental rights and it was made constitutional right under article 300 A. It is necessary to mention here that Nehru was not in favor of right to property. Subash C. Kashyap writes “Nehru dwelt at length and repeatedly on the changing concept of property in the history of mankind. In the Congress party meetings, he spoke rather strongly against the inclusion of the right to property as a fundamental right”

Some leaders of our Constitutional assembly including Nehru were under the influence of socialism. After independence India followed a socialistic pattern of society and adopted socialistic model of economy for nearly 40 years. To achieve the socialistic pattern of laws were made by the Centre and state govts based on economic reforms. In the decade of 1990 under the influence of Globalization and liberalization at international level Indian economy turned itself into open market economy and new industrial policy is adopted.

Recent Political Debate

Elections are the festival of democracy and this festival to be held in seven phases to elect our 18th Parliament of India. It is an open competition among the Political parties to seek the favor of voters to secure the victory. The Political parties also tries to woo the voters by promising different schemes for their welfare. This time Congress party try to seek the support of people on the issue of “economic inequality” and “distribution of wealth”. To solve the above said problems Congress party emphasizing on socialist approach. Rahul Gandhi in his compaining mentioned that there would be a financial survey to ascertain the distribution of wealth among the people of country and to address the issue of inequality. It seems that the Congress party want to solve the problem of inequality with the proper implementation of Article 39(b) of Directive principles. What the Article 39(b) says: Article 39(b) obligates the state to direct its policy towards securing that “the ownership and control

of material resources of community are so distributed as best to subserve the common good”.

Prime Minister Narendra Modi called the Congress’s plan for equality is a dangerous game. Modi says the opposition party aims at snatching the rights and properties. PM Narendra Modi said in his election rally that “while you are alive, they want to survey your personal wealth, property, houses, shops and land and give it away to secure their vote bank. And when you die, they want to deprive you of the right to lives your assets behind to future generations as well”

Why economic equality?

Economic inequality leads to social instability, unrest inferiority complexes and mental disorders which not only influence those who are less than equal but also those who are more than equal. Today inequality is a major source of social instability and unrest and even a cause of rising rates of crimes, delinquency and social pathology – alcoholism, drug addiction and mental illness..... inequality does not harm just unequal’s; it hurts the entire society. Economic equality is very important, not only for the poor classes, but also for social stability over peace and order.

How it can be secured

M.P. Jain writes that “Sometimes it is said that even in capitalist society economic equality can be realized. This task can be performed by state through taxation, redistribution of wealth and welfare services to the poor. The economic Programmes and policies of the welfare states can diminish disparities and bring economic equalities. Dahrendorf, Raymond Aron and Lipset support the view that due to the extension of welfare services to all strata, redistribution of income and wealth through progressive taxation increased the rate of social mobility, the extension of franchise to the working class and widespread consumer consciousness the issue of class antagonisms in society has vanished. This view is based on the assumption that even in class divided society economic equality can be achieved through piecemeal engineering or reforms. The state is given positive role in this whole process of leveling” But this contention has proved false in practice. The state is not a bulldozer which can create economic equality through taxation and welfare services in a class divided society. In 1991 India adopted open market model of economy but it also failed to produce the desired results to remove the economic inequality. Rangarajan R. writes “the market driven economy has resulted in additional resources for the government that has helped in bringing people out of abject poverty. This economic system, now the less, has also resulted in growing inequality. A report by the world inequality Lab states that the top 10% of the country’s population have a share of 65% and 57% of wealth and income respectively as of 2022-23. The bottom 50%. On the other hand, have a share of 65% and 15% of the wealth and income respectively”

Prashanth Perumal J. in his article “the wrong way to fight inequality” he suggests that “the overall wealth will have negative effect on economic growth and living standards. The right way to fight inequality and help the poor is thus not to the tax the rich but to offer more economic freedom to the poor, so that they can compete better in the market place for a bigger share at the economic pie”

He again said About the growing wealth disparity “the extreme wealth disparity we see in India today, however is not because of the free market rewarding top 1% for their entrepreneurial capabilities. Instead, much of it is due to top 1% enjoying special privileges, from government, which protect them from competition in the market place that could erode wealth share significantly. So, the way forward then is to get rid of such special privileges and allow more competition in the economy. This would naturally reduce the wealth share of the top 1% and also benefit the wider economy since competition ensures that the best investors rise to the top of wealth hierarchy and enlarge the size of economic pie in the process. Free competition would also ensure no one would stay at the top forever by enjoying special privileges”

What can be the way forward? Rangarajan R. writes in his article ‘About the redistribution of wealth’ that “it’s is not Just in India, but growing inequality is a worldwide problem of liberalized open market economic system. However, it is the responsibility of the government to protect the interest of poorer classes who are most dependent on the state machinery for their livelihood. At the same time past policies of extremely high tax rates, state duty, wealth etc. did not achieve their desired goals. Instead, they only led to concealment of income and wealth. Innovation and growth should not be curtailed but benefits of growth should reach all sections especially the marginalized. The policies may vary and need to be framed after adequate debate in line with current economic models. The underlying principle to be achieved never the less remains the same economic Justice for all as enshrined in our constitution”

Judicial Order

The Association of property Owners of Mumbai and others challenged the law of Maharashtra govt that allows the taking over dilapidated private buildings for redevelopment, the present case was filled in 1992 and was referred to a nine Judge Bench by a seven Judge Bench in 2002. The Supreme Court delivered Judgment in this case on dated 23rd April 2024 in which Supreme Court said that “it would be ‘dangerous’ to say that private wealth of an individual can’t be regarded as ‘material resources’ of community and taken over by the state to sub serve “common good”.

“It may be little extreme to suggest that “material resources of community” only means public resources and we do not have their origin in the private property of an individual. I will tell you why it would be dangerous to take the view” said CJI DY Chandrachud, who is heading nine Judge Constitution Bench, examining if privately owned resources can be considered “material resources of the community”. “Take simple things like mines and even private forests. For instance, for us to say that the government policy will not apply to the private forests under Article 39(b)..... therefore, keep the hands off. It will be extremely dangerous as a proposition” said the Bench, which also referred to Zamindari abolition.

The CJI said, “The socialist concept of property is the mirror image which attributes to property, a notion of commonality. Nothing is exclusive to the individual. All property is common to the community. That’s the extreme socialist view” In this case petitions opposed the proposition that private properties can be taken over by state under the garb of Constitutional scheme of Article 39(b) and Article 31 C of the Constitution, the Bench said it would be decided independently.

Conclusion: - Economic inequality is inherent feature of human society it can be controlled but cannot be abolished. The extent of inequality may vary from state to state but no state can claim aloofness from economic inequality. Every state tries to control the inequality by adopting measure according to their socio economic and political conditions and their capacity. At the time of Indian independence India was facing the problem of economic inequality at large scale. The zamindars and big landlords has occupied the major portion of land and wealth. After independence the problem of inequality attracted the attention of the constitution framers and they made provisions in the constitution to control the evil of economic inequality. The Article 39(b) and Article 39(c) are the constitutional measure to curb the problem of economic inequality by distribution of wealth and avoiding concentration of wealth in few hands. M.P. Jain writes *from the unequal distribution of wealth and power arise all disorders of which nine-tenths of the inhabitants of all civilized countries justly complain. In a society, in which such disorders are there, no theory of the State or society and no piecemeal engineering can create equilibrium. Thus, economic equality is very important, not only for the poor classes, but also for social stability, overall peace and order”

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