

The concept of Social Justice under Indian Constitution -Justice Bhagwati's approach

Dr Sunitha Kanipakam

Assistant Professor, Department of Law, Sri Padmavati Mahila Visvavidyalayam, (Women's University)
Tirupati- 517502, AP, India

Abstract

India is a land of unity in diversity. The Directive Principles under the constitution of India, a holy document, aim at the establishment of the economic and social democracy which is pledged for in the Preamble. The scope of the Directive Principles is that it shall be the duty of the state to follow these principles both in the matter of administration as well as the making of laws. The object of the Directive Principles is to embody the concept of a welfare state and the ideal of a welfare state is to establish an egalitarian society. They lay down the goals which may be achieved through various means which have to be devised from time to time. The Directive Principles lay down the lines on which the state should work under the constitution. The directives emphasise, an amplification of the Preamble, that the goal of the Indian polity is not laissez faire, but a Welfare State, where the state has a positive duty to ensure to its citizens socio economic justice and dignity of the individual.

Keywords: Constitution of India -Directive Principles - egalitarian society -Welfare State- social justice.

1. Introduction

The ideals of a welfare state are to secure to its citizens Justice – Social, Economic and Political as enshrined in the Preamble of the Constitution. The idea of welfare state envisaged by the Indian Constitution can only be achieved if the States endeavour to implement the Directive Principles with high sense of moral duty. These Directive Principles are provided in Part IV of the Constitution containing from Article 36¹ to Article 51. Article 37 provides that the provisions contained in this Part shall not be enforceable as a right, 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. Article 38 provides that the State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which Justice, Social, Economic and Political, shall inform all the institutions of the national life’.

The Directive Principles lay down certain economic and social policies to be pursued by various governments (authorities) in India further they impose certain obligations on the State to take positive action in certain directions in order to promote the welfare of the people and achieve economic democracy.²

II. Constitution of India-Nature and Objective of Directive Principles of State Policy

The Indian Constitution (as framed in 1949) sought to effect a compromise between Individualism and socialism by eliminating the views of unbridled private enterprise and interest by social control and

welfare measures as far as possible.³ The underlying objectives of these provisions of Part IV of the Constitution can better be understood from the speech of the Chairman of the Drafting Committee Dr. Ambedkar stated⁴ in the Constituent Assembly that. A few lines from his speech may be produced as under: The reason why we have established in the constitution a political democracy is because we do not want to install by any means whatsoever a perpetual dictatorship of any particular body of people. While we have established political democracy, it is also the desire that we should lay down as our ideal economic democracy. We do not want merely to lay down a mechanism to enable people to come and capture power.

The constitution also wishes to lay down an ideal before those who would be forming the government that ideal is economic democracy... In any judgment, the Directive Principles have a great value; for they lay down that our ideal is economic democracy. Because we did not want merely a parliamentary form of government to be instituted through the various mechanisms provided in the constitution, without any direction as to what our economic ideal or as to what our social order sought to be, we deliberately included the Directive Principles in our Constitution.

III. Constitution of India-Relation between Directive Principles and Fundamental Rights

The Directive Principles differ from the Fundamental Rights in Part-III of the constitution or the ordinary laws of the land in the following respects: The Directive Principles are in the nature of instruments of instruction to the government of the day to do certain ends by their actions while the Fundamental Rights constitute limitations upon state action.⁵ while the Directive Principles are not enforceable through the courts⁶, nor can the courts declare any law void on the ground that the said law contravenes any of the Directives. Granville Austin described the Fundamental Rights and Directive Principles as the conscience of Indian constitution.⁷ It is true that Lawmen are the missionaries. The testament is the Constitution especially its Preamble and Part- IV: the strategy is the dynamic rule of Law.⁸

IV- Directive Principles and their implementation

The utility of directive principles⁹ is evident from the speech delivered by Dr. Ambedkar in the Constituent Assembly that the Directive Principles are not mere pious declarations, “In enacting this part of the constitution, the Assembly is giving certain directions to the future legislature and the future executive to show in what manner they are to exercise the legislative and the executive power they will have”.¹⁰ Granville Austin¹¹ considers these Directives to be aimed at furthering the goals of the social revolution or to foster this revolution by establishing the conditions necessary for its achievement.

Though these directives are non-justiciable, the working of the constitution during the last few years has demonstrated the utility of the directives in the courts. Further, the courts cannot declare a law to be invalid on the ground that it contravenes a Directive Principle; nevertheless, the constitutional validity of many laws has been maintained with reference to the Directives.

The Directive Principles are not enforceable, yet the court should make a real attempt at harmonising and reconciling the directive principles and the fundamental rights and any collision between the two should be avoided as far as possible. The reason why the founding fathers of Indian constitution did not advisedly make these Directive Principles enforceable was, perhaps due to the vital consideration of giving the government sufficient latitude to implement these principles from time to time according to capacity, situations and circumstances.¹²

The Preamble provided the objectives; Directive Principles provide the goals while the Fundamental Rights provide means to achieve the goals. Both¹³ the Fundamental Rights and Directive Principles have

been the source and inspiration of reform legislation, for under their aegis ‘the Indian Parliament has been active in the matter of social legislation, whether it be called by the Hindu Code or by another name. Further, the Supreme Court said that the courts are not free to direct the making legislation, but courts are bound to evolve, affirm and adopt principles of interpretation which will further and not hinder the goals set out in the Directive Principles of State Policy. In case any conflict arises between the Fundamental Rights and Directive Principles that which shall prevail over the other is a question. But the very first case in which the issue arose regarding this matter came before the Supreme Court was in the case of State of Madras v. Champakam Dorairajan¹⁴.

In the instant case, where the Madras government had reserved seats in State Medical and Engineering Colleges for different communities in certain proportions on the basis of religion, race and caste. The state defended the law on the ground that it was enacted with a view to promote the social justice for all sections of the people as required by Article 46 of the Directive Principles of state policy. The top court expressed its views on the correct approach to understand the provisions laid down under part III and IV of the Indian Constitution stating that the Chapter on fundamental Rights is sacrosanct and not liable to be abridged by legislative or executive act or orders, except to the extent provided in the appropriate Article in Part III. The Directive Principles of State policy must conform and to run as subsidiary to the Chapter of Fundamental Rights. that is the correct approach in

In this case the apex court’s view is that the fundamental rights would prevail over the Directive Principles. But a year later¹⁵ when the court dealt with Zamindari Abolition cases its attitude was considerably modified. In the State of Bihar v. Kameshwar Singh¹⁶, the court relied on Article 39 in deciding that a certain Zamindari Abolition Acts had been passed for a public purpose within the meaning of Article 31. Again, in re Kerala Education Bill¹⁷, the Supreme Court observed that though the Directive Principles cannot override the Fundamental Rights, nevertheless, in determining the scope and ambit of fundamental rights the court may not entirely ignore the directive principles but should adopt the principles of harmonious construction and should attempt to give effect to both as much as possible.

V- Justice Bhagwati’s Judgements on Directive Principles

Article 31-C of the constitution was inserted by Section 8 of the Constitution (Twenty Fifth Amendment) Act, 1971 to give protection to some of the directive principles as stated in the objects clause of the Bill was enacted to get over the difficulties placed in the way of giving effect to the Directive Principles of State policy and this amendment has considerably enhanced the importance of the Directive Principles which runs as: “Notwithstanding anything contained in Art. 13, no law giving effect to the policy of the state towards securing the principle specified in clause (b) or clause (c) of Article 39¹⁸ shall be deemed to be void on the ground that it is inconsistent with or takes away or bridges any of the rights conferred by Article 14 or Article 19, and no law containing a declaration that it is for giving effect to such policy shall be called in question in any court on the ground that it does not give effect to such policy.¹⁹

The first part of the Article 31-C gave protection to a defined and limited category of laws which were passed for giving effect to the policy of the State towards securing the principle specified in clause (b) or clause (c) of Article 39. Directive Principles contained in Article 39(b) and (c) are vital to the wellbeing of the country and the welfare of its people.

In the present case the Constitutional validity of 25th Amendment was challenged on the insertion of Article 31-C in the Constitution. The Amendment introduced by section 4 of the Forty-Second

Amendment, provision is made in Article 31-C stating that no law giving effect to the policy of the state towards securing all or any of the principles laid down in Part IV shall be deemed to be void on the ground that it is inconsistent with or takes away or abridges any of the rights conferred by Article 14, 19 or 31 of the constitution”.

In *Minerva Mills*²⁰ case the issue came before the Supreme Court for consideration is the validity of Article 31-C as inserted in the constitution by sections 4 and 55 of the 42nd Amendment Act, 1976. In this regard the majority judgment was delivered by Chandrachud C.J. for himself, Gupta, Untwalia and Kailasam, JJ and Bhagwati, J. gave a dissenting judgment. The Supreme Court by a majority held that while the first part of Article 31-C (as it stood prior to 1976) was valid, and its second part was invalid. This means that a law enacted to implement Article 39(b) and (c) would not be challengeable under Article 14 and 19 but the courts have the power to go into the question whether the law in question does really achieve these objectives or not.

Thus, when a law is challenged, the courts would have the power to consider whether it could reasonably be described as a law giving effect to the policy of the state towards securing the said aims. The last part of Article 31-C being invalid, no legislature by its own declaration could make the law challenge proof.²¹ In *Minerva Mills* case the question for consideration before the Supreme Court was whether the amendments introduced by section 4 and 55 of the constitution (42nd Amendment) Act, 1976 damage the basic structure of the Constitution by destroying any of its basic features or essential elements.

The Supreme Court observed that the Constitution is a precious heritage; therefore, you cannot destroy its identity. The majority conceded to the Parliament the right to make alterations in the constitution so long as they are within its basic framework. Further, the court held that section 4 of this amendment was beyond the amending power of the Parliament and was void since it damages the basic or essential features of the constitution and destroyed its basic feature by a total exclusion of challenge to any law on the ground that it was inconsistent with or took away or abridged any of the rights conferred by Art.14 or Article 19 of the constitution.

In the instant case²² Justice Bhagwati, in his dissenting judgment expressed that: “if the exclusion of the Fundamental Rights embodied in Article 14 and 19 could be legitimately made for giving effect to the Directive Principles set out in clauses (b) and (c) of Article 39 without affecting the basic structure, I fail to see why these Fundamental Rights cannot be excluded for giving effect to the other Directive Principles if the constitutional obligation in regard to the other Directive Principles which stand on the same footings.

The amendment in Article 31-C far, from damaging the basic structure of the constitution strengthens and reinforces it by giving fundamental importance to the rights of the members of the community as against the rights of a few individuals and furthering, the objective of the constitution to build an egalitarian social order. But so far as section 4 of the 42nd Amendment of the Constitution is concerned Justice Bhagwati said, “I hold that, on the interpretation placed on the amended Article 31-C by me, it does not damage or destroy the basic structure of the constitution and is within amending power of Parliament and I would, therefore, declare the amended Article 31-C of the constitution as valid.” This approach of Justice Bhagwati clearly shows his concern to socio economic justice.

VI- Concept of Social Justice -Justice Bhagwati’s approach

In *Waman Rao v. Union of India*²³ the main challenge was made to the constitutionality of Articles 31-A, 31-B, and the unamended Article 31-C of the constitution. The Supreme Court expressly held that

the unamended Article 31-C is valid and did not damage any of the basic or essential features of the constitution or its basic structure. On that basis Justice Bhagwati in his dissenting judgment said that it was difficult to appreciate how the amended Article 31-C could be said to be violative of the basic structure. In this aspect the majority judgement is on the lines of Justice Bhagwati's opinion though he differed with the majority in other part of the judgment.

In *Bandhua Mukti Morcha v. Union of India*²⁴ Justice Bhagwati observed that 'When the Directive Principles of State Policy have obligated the Central and the State governments to take steps and adopt measures for the purpose of ensuring social justice to the have-nots and the handicapped, it is not right on the part of the concerned governments to shut their eyes to the inhuman exploitation to which the bonded labourers are subjected. The court speaking through observed that why the administration should feel shy in admitting the existence of bonded labour, because it is not the existence of bonded labour that is a slur on the administration but its failure to take note of it and to take all necessary steps for the purpose of putting an end to the bonded labour system by quickly identifying, releasing and permanently rehabilitating bonded labourers. What is needed is determination, dynamism and a sense of social commitment on the part of the administration to free these bonded labourers.

The State is under Constitutional obligation to see that there is no violation of any person, particularly when he belongs to the weaker sections of the community and is unable to wage a legal battle against a strong and powerful opponent who is exploiting him. The Central and State Governments are bound to ensure observance of various social welfare and labour laws enacted by the Parliament for securing the workmen a life of basic human dignity in compliance with the Directive Principles of State Policy enshrined under Part –IV of the Indian Constitution'.

Hence, his directions in this judgment, for quickly identifying, releasing and permanently rehabilitating bonded labourers reveals the commitment of Justice Bhagwati not only as a Judge of the highest court of India but also as a human being to uplift the fellow human beings' living conditions.

In *Centre of Legal Research v. State of Kerala*²⁵, it has been held by Justice Bhagwati that 'in order to achieve the objectives in Article 39-A of the Constitution²⁶, the state must encourage and support the participation of voluntary organizations or social action groups in operating the legal aid programme. It is now acknowledged throughout the country that the legal aid programme which is needed for the purpose of reaching social justice to the people cannot afford to remain confined to the traditional or litigation oriented legal-aid programme but it must, taking into account the socio-economic conditions prevailing in the country, adopt a more dynamic posture and take within its sweep what we may call Aid Schemes or the State Legal Aid and Advice Board, but we may make it clear that such voluntary organisation or social action group shall not be under the control or direction or supervision of the State Government or the State Legal Aid and Advice Board because we take the view that voluntary organisations and social action groups operating these programmes should be totally free from any Governmental Control'. Thus, always Justice Bhagwati had strived to ensure equal and fair opportunity for the people.

In *Peoples Union for Democratic Rights v. Union of India*'s²⁷ case, where the workers are being paid less than minimum wages though there is the Minimum Wages Act, 1948, which is intended to fulfil the directive made under Article 43 for living wages. And in the case of women workers they are receiving less than wages paying to the male workers though there is the Equal Remuneration Act, 1976 to fulfil the direction provided under Article 39 (d) of the constitution. In this case the court made the Union of India, the Delhi Administration and the Delhi Development Authority which, as principal employers, are statutorily responsible for securing such rights and benefits to the workmen.

Again in *Sanjit Roy v. State of Rajasthan*²⁸, Justice observed that, the workers employed in the construction of the Madanganj Harmara Road as a measure of relief in famine stricken area are entitled to a minimum wage of Rs7.00 per day, and the wage cannot be reduced by reference to the Rajasthan Famine Relief Works Employees (Exemption from Labour Laws) Act. Thus, Justice Bhagwati had given importance to the protection of rights guaranteed under fundamental rights and also to implement the directive principles.

Article 39(e) directs the state to protect the health, strength and tender age of children and to ensure that they are not forced by economic necessity to enter avocations unsuited to their age or strength. This directive has been effectively fulfilled by Justice Bhagwati through the judgments in *Asiad Projects case* and *Salal Hydro Electrical works*. While dealing with these cases, as far as concerned to the employment of children in the construction work, he held that ‘the construction work is a hazardous work therefore no children below the age of 14 years shall not be employed in the construction and the government should include the construction as hazardous work in the *Employment of Children act, 1938*. Thus, the objectives enshrined under Article 39(d)²⁹ and (e)³⁰ of the Indian Constitution has been upheld and accomplished by the adjudications of Justice Bhagwati³¹.

A number of decisions of the Supreme Court pursued the observations made by Justice Bhagwati on directive principles, in *Unni Krishnan v. State of A.P.*³², it has been held that children from the age of 6 to 14 years have Fundamental Right to education. In *M.R.F. Ltd., v. Inspector of Kerala*,³³ the Supreme Court heavily relied up on the provisions of Art. 43 to uphold the validity of *Kerala Industrial Establishment (National and festival holidays) Act, 1958* and held that ha Act is a Social Legislation to give effect to the directive principles of State policy contained in Art. 43. In *Gujarat Agricultural University V. Rodhad Labhu Prachar*,³⁴ the Supreme Court observed that the Government who is the guardian of the people and obliged under Art. 38 of the Constitution to secure social order for promotion of welfare of the people to eliminate inequalities in a status will endeavour to give maximum posts even at the first stage of absorption.

Thus, the Supreme Court through its judgments has declared many directives as fundamental rights. For example, equal pay for equal work, free legal aid to poor, speedy trial of under trial prisoners Art 39-A, protection of children from exploitation, protection of ecology and environmental pollution Art. 48-A. Free and compulsory education of children below the age of 14 years is a recent Directive Principle to as Fundamental Right by the 93rd Amendment Act, 2002 under article 21A.

The ratio applied by Justice Bhagwati in his decisions, protecting other directive principles, other than Article 39(b) and 39(c) is being followed by the Supreme Court. He justifies his adjudications by saying that “a Judge is a creative artist, he cannot and should not blindly interpret the constitution or law³⁵. And every judge should have before him a complete picture of the Constitution and the values that it embodies. When a judge decides a case, there are competing social values before him all clamouring for acceptance. He must try to understand and give effect to the social purpose and the economic mission of the Constitution or the Law. Our Constitution itself is a wonderful document and it is the beacon light. He has to give effect to those values with all his heart and soul”.

VII- Conclusion

the Supreme Court is issuing directives in proper cases enjoining the government to perform their positive duties to achieve the goals envisaged by the Directives, for example *People’s Union for Democratic Rights v. Union of India*,³⁶ *Sheela Barse v. State of Maharashtra*³⁷ – Because of these

references made by the Courts, to the Directives, the provisions enshrined under directive principles are transforming in to Fundamental Rights, for example, Article 45 directs the state to provide free and compulsory education for children below the age of 14 years, now the right to education is a fundamental right guaranteed under Article 21A of the constitution³⁸.

Thus, though, Justice Bhagwati had given his opinions by way of dissenting judgments, they are very effectively influenced the concept of Social Justice in India. The Supreme Court in its successive judgments also had some reflections of his judgments and he strived to promote social justice all the way his judicial career.

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17. AIR 1957 SC 956
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