



Fundamental Right vis-à-vis Directive Principle

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Introduction

The Fundamental Rights and Directive Principles had their origins in the Indian independence movement, which strove to achieve the values of liberty and social welfare as the goals of an independent Indian state.^[1] The development of constitutional rights in India was inspired by historical documents such as England's Bill of Rights, the United States Bill of Rights and France's Declaration of the Rights of Man.

^[2] The demand for civil liberties formed an important part of the Indian independence movement, with one of the objectives of the Indian National Congress (INC) being to end discrimination between the British rulers and their Indian subjects. This demand was explicitly mentioned in resolution adopted by the INC between 1917 and 1919.

^[3] The demands articulated in these resolutions included granting to Indians the rights to equality before the law, free speech, trial by juries composed at least half of Indian members, political power, and equal terms for bearing arms as British citizens.

The unsatisfactory Montagu–Chelmsford Reforms of 1919, and the rise to prominence of M. K. Gandhi in the Indian independence movement marked a change in the attitude of its leaders towards articulating demands for civil rights. The focus shifted from demanding equality of status between Indians and the British to assuring liberty for all Indians.^[5] The Commonwealth of India Bill, drafted by Annie Beasant in 1925, specifically included demands for seven fundamental rights – individual liberty, freedom of, free expression of opinion, freedom of assembly, non-discrimination on the ground of sex, free elementary education and free use of public spaces.^[6] In 1927, the INC resolved to set up a committee to draft a "Swaraj Constitution" for India based on a declaration of rights that would provide safeguards against oppression. The 11- member committee, led by Motilal Nehru, was constituted in 1928. Its report made a

number of recommendations, including proposing guaranteed fundamental rights to all Indians. These rights resembled those of the American Constitution and those adopted by post-war European countries, and several of them were adopted from the 1925 Bill. Several of these provisions were later replicated in various parts of the Indian Constitution, including the Fundamental Right itself to the defense of civil rights and economic freedom, with the stated objectives of putting an end to exploitation, providing social security and implementing land reforms. Other new rights proposed by the resolution were the prohibition of State titles, universal adult franchise, the abolition of capital punishment and freedom of movement.^[7] Drafted by Jawaharlal Nehru, the resolution, which later formed the basis for some of the Directive Principles, placed the primary responsibility of carrying out social reform on the State, and marked the increasing influence of socialism and Gandhian philosophy on the independence movement. The final phase of the Independence movement saw a reiteration of the socialist principles of the 1930s, along with an increased focus on minority rights – which had become an issue of major political concern by then – which were published in the Sapru Report in 1945.

Fundamental rights in India are the rights guaranteed under Part III (Articles 12-35) of the Constitution of India. There are six fundamental rights (Article 14- 32) recognized by the Indian constitution : the right to equality (Articles 14-18), the right to freedom (Articles 19-22), the right against exploitation (Articles 23-24), the right to freedom of religion (Articles 25-28), cultural and educational rights (Articles 29-30) and the right to constitutional remedies (Article 32 and 226). While the Constitution also creates other rights, such as the Right to Property, they are not fundamental rights. In cases of fundamental rights violations, the Supreme Court of India can be directly petitioned under Article 32 of the Constitution. The Rights have their origins in many sources, including England's Bill of Rights, the United States Bill of Rights and France's Declaration of the Rights of Man.

Fundamental rights for Indians have also been aimed at overturning the inequalities of pre-independence social practices. Specifically, they have also been used to abolish untouchability and thus prohibit discrimination on the grounds of religion, race, caste, gender or place of birth. They also forbid trafficking of human beings and forced labor

a crime). They also protect cultural and educational rights of religious establishments. Right to property was changed from fundamental right to legal right.

Fundamental Rights

The Fundamental Rights, embodied in Part III of the Constitution, guarantee civil rights to all Indians and prevent the State from encroaching an individual's liberty while simultaneously placing upon it an obligation to protect the citizens' rights from encroachment by society. Seven fundamental rights were originally provided by the Constitution – the right to equality, right to freedom, right against exploitation, right to freedom of religion, cultural and educational rights, right to property and right to constitutional remedies. However, the right to property was removed from Part III of the Constitution by the 44th Amendment in 1978. The purpose

of the Fundamental Rights is to preserve individual liberty and democratic principles based on equality of all members of society.^[21] Dr Ambedkar said that the responsibility of the legislature is not just to provide fundamental rights but also and rather, more importantly, to safeguard them.

Fundamental rights

The Constitution guarantees six fundamental rights to Indian citizens as follows: (i) right to equality, (ii) right to freedom, (iii) right against exploitation, (iv) right to freedom of religion, (v) cultural and educational rights, and (vi) right to constitutional remedies.

Right to equality

The Right to Equality is one of the chief guarantees of the Constitution. It is embodied in Articles 14–16, which collectively encompass the general principles of equality before law and non-discrimination and Articles 17–18 which collectively encompass further the philosophy of social equality.

Article14

Article 14 guarantees equality before law as well as equal protection of the law to all people within the territory of India. This includes the equal subjection of all persons to the authority of law, as well as equal treatment of persons in similar circumstances. The latter permits the State to classify persons for legitimate purposes, provided there is a reasonable basis for the same, meaning that the classification is required to be non-arbitrary, based on a method of intelligible differentiation among those sought to be classified, as well as have a rational relation to the object sought to be achieved by the classification.

Article15

Article 15 prohibits discrimination on the grounds of religion, race, caste, sex, place of birth, or any of them. This right can be enforced against the State as well as private individuals, with regard to free access to places of public entertainment or places of public resort maintained partly or wholly out of State funds.^[18] However, the State is not precluded from making special provisions for women and children or any socially and educationally backward classes of citizens, including the Scheduled Castes and Scheduled Tribes. This exception has been provided since the classes of people mentioned therein are considered deprived and in need of special protection.^[19]

Article16

Article 16 guarantees equality of opportunity in matters of public employment and prevents the State from discriminating against anyone in matters of employment on the grounds only of religion, race, caste, sex, descent, place of birth, place of residence or any of them. It creates exceptions for the implementation of measures of affirmative action for the benefit of any backward class of citizens in order to ensure adequate representation in public service, as well as reservation of an office of any religious institution for a person professing that particular religion.

Article17

Article 17 abolishes the practice of untouchability in any form, making it an offense punishable by law. The Protection of Civil Rights Act, 1955 was enacted by Parliament to further this objective.

Article18

Article 18 prohibits the State from conferring any titles other than military or academic distinctions, and the citizens of India cannot accept titles from a foreign state. Thus, Indian aristocratic titles and title of nobility conferred by the British have been abolished. However, Military and academic distinctions can be conferred on the citizens

of India. The awards of Bharat Ratna and Padma Vibhushan cannot be used by the recipient as a title and do not, accordingly, come within the constitutional prohibition". The Supreme Court, on 15 December 1995, upheld the validity of such awards.

Right of freedom

The Right to Freedom is covered in Articles 19 to article 22, with the view of guaranteeing individual rights that were considered vital by the framers of the Constitution, and these Articles also include certain restrictions that may be imposed by the State on individual liberty under specified conditions. Article 19 guarantees six freedoms in the nature of civil rights, which are available only to citizens of India. These include the freedom of speech and expression, assembly without arms, freedom of association, freedom of movement throughout the territory of our country, freedom to reside and settle in any part of the country of India and the freedom to practice any profession. All these freedoms are subject to reasonable restrictions that may be imposed on them by the State, listed under Article 19 itself. The grounds for imposing these restrictions vary according to the freedom sought to be restricted and include national security, public order, decency and morality, contempt of court, incitement to offences and defamation. The State is also empowered, in the interests of the general public to nationalize any trade, industry or service to the exclusion of the citizens.

Fundamental Rights and Directive Principles

The fundamental rights and directive principles are described in part 3 and part 4 of the Indian constitution respectively. They are two sides of the same coin which complement each other and together comprise the "conscience" of the Indian constitution. The fundamental rights ensure political democracy while the directive principles ensure economic and social democracy. Let us understand how they differ from each other!

Fundamental Rights:

Fundamental right scan be described as the basic rights guaranteed to the citizens of India under the constitution of India. These rights are written in part 3 of the Indian Constitution and ensure civil liberty to every citizen of the country so that people can live peacefully. They also prevent the state

from snatching the freedom of the citizens of the country.

Fundamental rights equally apply to all citizens of the country irrespective of their race, caste, creed, sex, religion, place of birth etc. Violation of the fundamental rights is a punishable offence under the Indian Penal Code (IPC), based on the discretion of the judiciary.

The Constitution offers all citizens, individually and collectively, some basic freedoms. These are guaranteed in the Constitution in the form of six broad categories of Fundamental Rights, which are justifiable. Article 12 to 35 contained in Part III of the Constitution deal with Fundamental Rights. These are:

- Right to equality, including equality before law, prohibition of discrimination on grounds of religion, race, caste, sex or place of birth, and equality of opportunity in matters of employment.
- Right to freedom of speech and expression, assembly, association or union, movement, residence, and right to practice any profession or occupation (some of these rights are subject to security of the State, friendly relations with foreign countries, public order, decency or morality).
- Right against exploitation, prohibiting all forms of forced labour, child labour and traffic in human beings.
- Right to freedom of conscience and free profession, practice, and propagation of religion.
- Right of any section of citizens to conserve their culture, language or script, and right of minorities to establish and administer educational institutions of their choice; and
- Right to constitutional remedies for enforcement of Fundamental Rights.

Fundamental Rights (Part–III)

As discussed earlier in this article, These Justiciable Rights are enshrined in Part III of the Constitution of India (Article 12 to Article 35) and are called and named “Fundamental” because of two significant reasons:

1. Firstly, these rights are guaranteed and protected by the Constitution of the Country which is the fundamental law of the land.
2. Secondly, they become fundamental in the sense that they are most essential for the all-round material, intellectual, moral, and spiritual development of an Individual.

Initially and Originally there were about seven fundamental rights but after the abolition of Zamindari Act 1950, there number reduced to about six which are as follows:

1. **Right to equality (Article 14-18)** which entails in itself that every one stands equable before the law and equal treatment should be given to everyone thereby implying a complete prohibition of discrimination founded on the grounds of race, caste, creed, or gender.
2. **Right to Freedom (Article 19-22):** Each individual has the right to freedom to form an association, to peacefully assemble, to practice any profession, and carry on any trade, occupation, or business. Contains one of the most significant right i.e. Right to Life and Liberty (Article 21). protection and rights to an accused in respect to arrest and detention for conviction of any offense under the penal code of the country.
3. **Right against Exploitation (Article 23 and 24):** This Article entails in themselves important and rights such as the prohibition of Child Labour or Forced Labour and Human trafficking.
4. **Right to Freedom of Religion (Article 25-Article 28):** This specific right in the Constitution is of utmost importance in a country like India where there is a huge diversity of religion, this right provides the citizens with the freedom to follow and practice any religion and most importantly grants freedom of conscience to an Individual. The rights under this head also specifically provide a clause concerning paying taxes for religious purposes.
5. **Cultural and Educational Rights (Article 29 and Article 30):** These rights entailed in Part III provides protection to different languages and varieties of culture present in India and additionally protects the rights and culture of minorities, right to minorities to establish and administer educational Institution, etc.
6. **Right to seek Constitutional remedies:** Article 32 as described by Dr. Ambedkar the heart and soul of the Indian constitution, These remedies are available to any individual whose fundamental right gets violated, and these rights enshrined in the Constitution empowers the Supreme Court of India to issue 5 types of writs.

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However, the right to property was deleted from the aforementioned list of Fundamental Rights by

the 44th Amendment Act, 1978, and thereby this amendment made the Right to property as a Non-Fundamental Constitutional Right under Article 300-A in Part XII of the Constitution.

Directives

The directive principles ensure that the State^[1] shall strive to promote the welfare of the people by securing a social order in which social, economic and political justice is animated/informed in all institutions of life as per Article 38 (1). Dr.Ambedkar clarified as given below in the Constituent Assembly debates on Article 38 highlighting its inevitable implementation.

The word 'strive' which occurs in the Draft Constitution, in judgment, is very important. We have used it because our intention is even when there are circumstances which prevent the Government, or which stand in the way of the Government giving effect to these Directive Principles, they shall, even under hard and unpropitious circumstances, always strive in the fulfillment of these Directives. That is why we have used the word 'strive'. Otherwise, it would be open for any Government to say that the circumstances are so bad, that the finances are so inadequate that we cannot even make an effort in the direction in which the Constitution asks us to go.

Also, the State shall strive to minimise the inequalities in income and endeavour to eliminate economic inequality as well as inequalities in status and opportunities, not only among individuals, but also among groups of people residing in different areas or engaged in different vocations per Article38(2).The States shall aim for securing right to an adequate means of livelihood for all citizens, both men and women as well as equal pay for equal work for both men and women. The State should work to prevent concentration of wealth and means of production in a few hands, and try to ensure that ownership and control of the material resources is distributed to best serve the common good. Child abuse and exploitation of workers should be prevented. Children should be allowed to develop in a healthy manner and should be protected against exploitation and against moral and material abandonment per Article 39. The State shall provide free legal aid to ensure that equal opportunities for securing justice is ensured to all, and is not denied by reason of economic or other disabilities per Article 39A. The State shall also work for organisation of village Panchayat and help enable them to function as units of self-government per Article 40. The State shall endeavour to provide the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, within the limits of economic capacity per Article 41 as well as provide for just and humane conditions of work and maternity relief per Article 42.

The State should also ensure living wage and proper working conditions for workers, with full enjoyment of leisure and social and cultural activities. Also, the promotion of cottage industries in rural areas is one of the obligations of the State per Article43 The State shall take steps to promote their participation in management of industrial undertakings per Article 43A. Also, the State shall Endeavour to secure a civil code for all citizens per Article 44 and provide early childhood care and education for all children until they complete the age of six

years per Article 45. This directive regarding education of children was updated by the 86th Amendment Act, 2002. It should work for the economic and educational upliftment of scheduled castes, scheduled tribes and other weaker sections of the society per Article 46

The directive principles commit the State to raise the level of nutrition and the standard of living and to improve public health, particularly by prohibiting intoxicating drinks and drugs injurious to health except formed purposes per Article 47. It

should also organise agriculture and animal husbandry on modern and scientific lines by improving breeds and prohibiting slaughter of cows, calves, other milch and draught cattle per Article 48. It should protect and improve the environment and safeguard the forests and wild life of the country per Article 48A. This directive, regarding protection of forests and wildlife was added by the 42nd Amendment Act, 1976.

Protection of monuments, places and objects of historic and artistic interest and national importance against destruction and damage per Article 49 and separation of judiciary from executive in public services per Article 50 are also the obligations of the State as laid down in the directive principles. Finally Article 51 ensure that the State shall strive for the promotion and maintenance of international peace and security, just and honorable relations between nations, respect for international law and treaty obligations, as well as settlement of international disputes by arbitration.

Directive Principles:

Directive principles are written in Part 4, Article 36-51 of the Indian constitution. They contain directives or guidelines to be followed by the state while establishing laws and policies. The legislative and executive powers of a state are exercised in accordance with the directive principles of the Indian Constitution.

The directive principles follow the basic philosophy of the Constitution of India like an overall development of the nation, social justice, economic welfare, foreign policy etc. However, the violation of directive principles is not a punishable offence. They cannot be enforced in a court of law and state cannot be sued for not following the same. The directive principles are divided into three categories: Socialistic Directives, Gandhian Directives, and Liberal Intellectual Directives. They aim to create a positive socio-economic environment to help the citizens live a better life.

Based on the above information, some of the key differences between fundamental rights and directive principles are as follows:

	Fundamental Right	Directive Principles
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1	They refer to the basic rights Guaranteed to the citizens of India under the Indian constitution.	They are the guide lines to the state to be followed while framing laws and policies.
2	They are written in part3 of the Constitution of India.	They are written in part 4, Article36-51oftheConstitution of India.
3	It is negative in nature as it prevents The government from doing certain things.	They are positive in nature as it requires the government to do certain things.
4	They are justiciable as they can be enforced and their violation is a punishable crime.	They are not justiciable as they cannot be enforced and their violation is not a punishable crime.
5	They establish political democracy.	They establish social and Economic democracy.
6	They are legal sanctions.	They are moral and political sanctions.
7	They promote individual welfare.	They promote the welfare of The entire community.

Conclusion

In an overview, it becomes apparent or ostensible to note that the view of the judiciary regarding the relationship between the Fundamental Rights and the Directive Principles of State Policy is the one that is subjected and have undergone gradual transformations from the case of 1951 of Srimathi Champakam Dorairajan where the Supreme Court accorded supremacy to the Fundamental Rights over the Directive Principles to making the harmony

And balance between the two (PartIII and PartIV) an essential feature of the basic structure of the Constitution.

Today, we can manifestly observe that Part III at times have to necessarily be interpreted in the light of the Directive Principles and the co- dependence and liable between the two are increasing day by day.

Conclusively, it can be clearly inferred from the judgments as mentioned above that the approach of our judicial system towards the Fundamental Rights and Directive Principles have been an integrative one and time and again, the judiciary in its judgment has employed the principle of Harmonious Construction.

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