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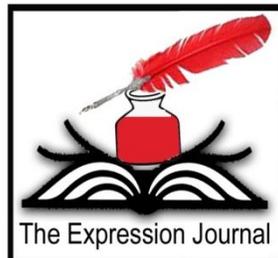
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DR. AMBEDKAR'S OBSERVATIONS ON THE CONFLICT BETWEEN FUNDAMENTAL RIGHTS AND DIRECTIVE PRINCIPLES OF STATE POLICY

S.R. Seelam

Research Scholar

**Department of Philosophy,
RTM Nagpur University, Nagpur**

Abstract

The Constituent Assembly initiated debated on the so-called conflict between Fundamental Rights and the Directive Principles. Critics found several exceptions and qualifications to the Rights and claimed that the exceptions completely depleted the rights. Ambedkar replied that the whole of the criticism is based upon a misconception that Fundamental Rights are absolute. The Directives were criticised as pious declarations that have no binding value. Ambedkar protested that the Directives were not intended to be mere pious declarations and considered them as promising economic and social rights endowed with the state to provide practical content to the Fundamental Rights. Indeed, Ambedkar viewed the complex of Rights and Directives as complementary means of social justice in constitutional terms. Later on, courts of the land found conflicting positions between the Rights and the Directives. Many studies on this question viewed the dispute as technical and legal sort, however, the study reveals that the conflict is complex, which involves social, political, economic and cultural progress of the excluded sections of Indian social order. The study argues that though the relation between them seems conflicting, the recent history has proved that they are complementary in accomplishing the aim of social justice.

Key-Words

Ambedkar, Dalit, Constituent Assembly, Fundamental Rights, Directive Principles,
Indian Constitution, Law, Social Justice.

Vol. 3 Issue 3 (June 2017)

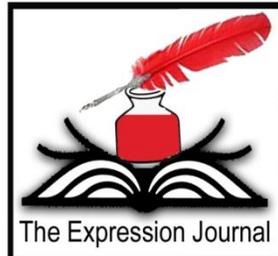
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Introduction

The Fundamental Rights and Directive Principles were under criticism in the Constituent Assembly. Critics found several exceptions and qualifications to the Rights and they claimed that that the exceptions have completely depleted the rights. The Directives were criticised as pious declarations that have no binding value. Later on, courts of the land found conflicting positions between the Rights and the directives. However, Ambedkar asserted the significance of the Rights and defended the Directives in the Assembly. Though the relation between them seems conflicting, the recent history has proved that they are complementary in accomplishing the aim social justice and making national progress in a harmonious fashion. The so-called conflict generated an intense debate in legal and social justice discourses. The debate concerning the dispute involves the question of state responsibility towards the inclusion of the excluded humanity into the mainstream and the categories of social justice that have been a significant current in contemporary streams of academic considerations. Many studies on this question viewed the dispute as technical and legal sort, but the conflict is complex, which involves social, political, economic and cultural progress of the disadvantaged sections of Indian social order. Ambedkar, from the beginning, comprehended the conflict in terms of social justice which is embedded in the Constitution, but not defined in clear terms (Iyer 1979: 53). The virtues of social justice suffer from the vice of artificiality of social inequality. Therefore, social justice aims at removing all inequalities and affording equal opportunity to all citizens in social affairs as

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well as economic activities (Gajendragatkar 1965: 79). It is observed that social justice is the end; judicial justice is the means; the legislative and executive operations are human engineering, and together the three branches of government have to work in comity so that the Constitution may fulfil what Ambedkar intended (Iyer 1984: 169). Along these lines, Ambedkar thought of the complex of Rights and Directives as complementary means of social justice in constitutional terms. Therefore, the paper analyses the conflict comprehensively and arrives at an agreeable conclusion that both the Rights and Directives are complementary components of social justice though the Constitutional means.

The Fundamental Rights:

Fundamental rights constitute Part III of the Constitution. The enumeration of certain rights as 'fundamental' makes a break from the Government of India Act, 1935. The Act rejected the idea of enacting declarations of fundamental rights on the ground that declarations of abstract sort are worthless, unless there exists the will and the means to make them effective. The Constitution proclaims that the people shall have the following fundamental rights: (1) Right to equality; (2) Right to seven freedoms – freedom of speech and expression, to assemble peacefully and without arms, to form association or unions, to move freely throughout the territory of India, to reside and settle in any part of the territory of India, to acquire, hold and dispose of property, and to practice any profession, trade or business; (3) Right to life and personal liberty; (4) Right to freedom of religion; (5) Right against exploitation; (6) Cultural and educational rights; (7) Right to property; and (8) Right to constitutional remedies. Accordingly, Article 32 was constituted to make the fundamental rights real by giving judicial protection.

The Fundamental Rights are the severely censured part of the Constitution. It has been contended that fundamental rights involve several exceptions and qualifications that have eaten up the rights completely. Further, it was pointed out that the "life and liberty of the subject" has been placed at the mercy of "the executive government" and there is "hardly any protection against tyrannical laws" (Pylee 1960: 142). Regarding the exceptions and qualifications to the fundamental rights, Ambedkar illustrated that the whole of the criticism about the fundamental rights is "based upon a misconception" and it is "incorrect to say that fundamental rights are absolute" while "non-fundamental rights are created by agreement between parties." Indeed, fundamental rights are the gift of the state and "it does not imply that state cannot qualify them." Accordingly, he declares that "the fundamental rights are not absolute" (Ambedkar 1991: 462).

The fundamental rights are comprehensive and highly crafted than in the Bill of Rights in any other constitution. In fact, it was demanded by the special problems of diverse religions, and socio-cultural contexts of Indian society. They are also intended to "provide not only for security and equality of citizens but also certain standards of conduct,

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citizenship and justice” (Rajasekharaiah 1981: 202). Ambedkar emphasised that the Constitutional objective was to establish an egalitarian society where rights were guaranteed not to a few but to all. He firmly believed that “the right to equality of opportunity” has no meaning unless the vast disparities between the rich and the poor are reduced. Moreover, “political liberties and individual freedoms” are of little value when the fear of starvation compels the vast majority of people to the will of the few. Right to private property has no meaning for those who have no roofs over their heads. Right to leisure or freedom to choose one’s profession conveys nothing to an unemployed person. Therefore, primacy was accorded in the Constitution to “the rights of the masses, of the minorities, and of the depressed classes” as against the political and civil rights of an entrenched interest. Actually, the Constitution “sought a balance between the individual rights and demands of social justice.” Thus, the entire document was based on a view proposing “a dialogue between individualism and state control.” The depressed classes must be made free citizens entitled to all the rights of citizenship in common with other citizens of the state. Resolving the issue of untouchability meant securing to the minority liberty and equality of opportunity which were denied to them by the hostile majority of touchables. Ambedkar sharply reacted to the clause relating to social, economic and political justice in the Constituent Assembly by saying that he should have from that point of view expected the resolution to state in most explicit terms that in order that there may be social and economic justice in this country, “that there would be nationalisation of industry and nationalisation of land” (CAD, vol. IV: 100). In this manner, his fight for justice was the main plank in his struggle as the leader of the Dalits since he was fully convinced that social justice could not be secured to all “unless it was enshrined in the Constitution itself.”

The Directive Principles

Ambedkar’s vision of social justice can be found in the provisions contained in Part IV (Articles 36-51) of the Constitution. Indeed, “every provision was enacted for ameliorating the condition of the depressed classes.” The Directive Principles, “fundamental in the governance of the country,” are merely another name for “instrument of instructions to the Government” of India. The Directive Principles embodied in the Indian Constitution... are “a novel feature in a constitution framed for parliamentary democracy” (Ambedkar 1991: 463). They are “instructions to the legislature and the executive.” It becomes necessary wherever there is a grant of power in general terms for peace, order and good government, and it should be accompanied by instructions regulating its exercise. The principles “shall not be enforceable by any court” and it shall be the duty of the state to apply these principles in making laws.

While the fundamental rights guarantee “the rights and liberties of the individuals” against arbitrary state action, the directive principles seek to “emphasise economic and

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social goals.” Ambedkar intended to incorporate into the Constitution concepts and principles that should determine governmental activity which would in turn bring about a “social and economic revolution” in the country. He believed that the very survival of the country depends on the success of this resolution. He said that the principles were not intended to be mere pious declarations. It was his intention that in future “both the legislature and the executive” should not merely pay lip service to these principles, but that they “should be made the basis of all executive and legislative actions” that may be taken in the matter of governance of the country. Therefore, the directive principles “strive to create a welfare state” as a means to attain just social order. The core of principles declares: “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 national life” (Art. 38). However, the state neither says that it will implement the Directives, nor does it say that it will not. It keeps the future as an open book, its sovereign domain. Thus, “social justice is held captive to the sovereign power.” The Directive Principles were adopted without intense debate in the Assembly. The attention of the Assembly was primarily on “the issue of justiciability of the Principles” since some members earnestly pleaded for making them justiciable.

The Directive Principles were also criticised as mere “pious declarations” without binding force. In fact, Ambedkar sought to make the Principles justifiable at some point, but changed his stand to the non-justiciability side and strongly “pleaded for a full-dress social scheme to come into force within ten years.” Among others, T.T. Krishnamachari, dubbed the Directive Principles, “A veritable dust-bin of sentiment sufficiently resilient to permit any individual of this House to ride his hobby-horse into it” (CAD, vol. VII: 76). Ambedkar rubbished this sort of criticism as superfluous and he held, “If it is said that the Directive Principles have no legal force behind them, I am prepared to admit it. But I am not prepared to admit that they have no sort of binding force at all. Nor am I prepared to concede that they are useless because they have no binding force in law” (Ambedkar 1991: 463). Whether “dust-bin” or “rose bowl,” Ambedkar perhaps saved the situation and held his own conscience by insisting, “the Directive Principles prescribed that every government in power shall strive to bring about economic democracy” (cited in Austin 1966: 34). Besides, there was a difference of opinion as to “the exact place the Directives should be given” in the Constitution. Later, he clarified that they have no binding force is not a sound argument against their inclusion in the Constitution. To be sure, that they are really instruments of instructions to the executive and the legislatures as to how they should exercise their powers (Ambedkar 1991: 463-64).

Ambedkar further justified the insertion of Directives into the Constitution by arguing that the draft constitution as framed only provides a machinery for the

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Government of the country. It is not a contrivance to install any particular party in power as has been done in some countries. Therefore, he said, "Who should be in power is left to be determined by the people, as it must be, if the system is to satisfy the tests of democracy.... But whoever captures power will not be free to do what he likes with it. In the exercise of it, he will have to respect these instruments of instructions.... He may not have to answer for their breach in a court of Law. But he will certainly have to answer for them before the electorate at election time. What great value these directive principles possess will be realised better when the forces of right contrive to capture power" (CAD, vol. VII: 241). Therefore, the state ought to take into account the special needs of certain strata of society, and to make special provisions for equalising the unequal conditions obtaining among the different strata (Iyer 1979: 168). Ambedkar observes that Indian Constitution sought to establish political democracy and to lay down an ideal before those who would be forming the Government. Obviously, that ideal was economic democracy. To Ambedkar, the Directive Principles have a great value, for they lay down that our ideal is economic democracy. Therefore, he maintained that fundamental rights are of no use to the underdog in the absence of economic security. Parliamentary democracy by itself cannot achieve the economic ideal and the alternative of dictatorship could be defeated only by realising state socialism within the framework of parliamentary democracy.

The Conflict between Rights and Directives:

The question that which part of the Constitution is superior bothers the experts of constitutional law. Part III of the Constitution contains the Fundamental Rights that are justiciable and Part IV of the Constitution comprises the Directive Principles that are non-justiciable. In fact, Part III ensures the rights of the citizens and Part IV is the conscience of the Constitution and the provisions in this part are meant for the welfare of the Dalits and other excluded communities that are aimed at transforming the traditional social order. This part of the Constitution mandates the state to enact laws in bringing about justice to those people, who are denied the fruits of independence. The judiciary of the land involved in the dispute and the first assault on Part IV came in the case of Champakam Dorairajan vs. State of Madras. The Court ruled that Part IV should run secondary to Part III which accorded primacy. In case of conflict between Part III and Part IV, Part III will prevail over Part IV (AIR 1951: SC 2260). In this connection a noted jurist and human rights protagonist, K.G. Kannabiran observes, "While the courts have taken a position on social and economic justice in principle, this has mostly proved ineffective in reality because of excessive and unjustified reliance on the executive to translate into reality the dicta of the court on social justice" (Kannabiran 1998: 124). He further reveals, "We never recognised the fact that the Directives are politically enforceable and that the absence of restraint is a mandatory requirement for social transformation. Courts watered down egalitarian

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measures when matters came before them, and by the time the matter reached the Supreme Court, arrangement for evasion had already been expertly made. It is in this context that political processes for transformation needed the absence of restraint to discipline the government. This was not available" (Ibid: 128). In actual fact, the controversy ranging on the political plane, viz., whether the Fundamental Rights should give way to the Directive Principles or vice versa, has no real basis since both deal with civil, political, social, economic and cultural rights. Besides, both are fundamentally significant for the governance of the country. However, the former are the realised and existing rights and, therefore, an injunction is given against the state not to interfere with those rights except within the permissible limits. The latter enumerates the rights to be realised by the constructive efforts of the state. However, the right to work, to leisure and such rights are very desirable rights, but unless the state creates conditions by positive action, such rights cannot come into existence. Unless the state creates employment potential, medical facilities, educational opportunities, and guarantees prosperity, these rights will continue to be mere platitudinous aspirations. The correlation between the Rights and the Directives can be approached from two perspectives: "(1) The directive principles are inchoate and potential rights and therefore the constitution gives a command to the state to bring about the necessary conditions for evolving them as enforceable rights; and (2) Part III is comprised of all categories of rights – civil, political, social, economic and cultural – and the directive principles only enjoin a duty on the state to create the necessary conditions to give a practical content to the fundamental rights" (Rao 1974: 22). In fact, the machinery for working of the scheme of social justice is enshrined in both Part III and Part IV.

Whether the directive principles are considered to be inchoate economic and social rights or as directions given to the state to give practical content to the fundamental rights, in either case, the state can enforce the said principles through laws of social control, creating statutory rights or imposing restrictions on the fundamental rights. The Directive Principles came into conflict with the Fundamental Rights. Out of this conflict evolve the new social order by the process of judicial adjustment and through the rule of law. The Constitution created an independent judiciary to decide on the scope of the fundamental rights and permissible limits on the laws of social control and also on the validity of laws, creating statutory rights on the basis of the tests of legitimate encroachment on the said rights. If the statutory rights have become crystallised and the state could guarantee their enforcement, they could be included in Part III. The new list of fundamental rights in their turn becomes subject to justiciable laws of social control. By this continuous interaction of the fundamental rights and the laws of social control, through the medium of judicial process, the Constitution envisaged an organic growth of socio-economic justice in a free

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society. It is, therefore, clear from the analysis of constitutional scheme that Parts III and IV contain an integrated scheme for implementing the welfare of the people through social justice. Ambedkar did not rule out the functional inequality rooted in a notion of social justice. This situation led towards the rule of law. He assigned the judiciary the responsibility of enforcing justice through law. Therefore, the judiciary as the guardian of the legal order has to be impartial, independent and adequately competent. In his view, the state was conceptualised as both a creature of the law and the creator of the law.

Conclusion

Ambedkar's apparent view of the Constitution is to ensure equality of status and opportunity among all citizens. Accordingly, he brought some significant provisions of social justice to safeguard the interests of the excluded classes into Part III and Part IV of the Constitution. He protested that the Directives were not intended to be mere pious declarations and considered them as promising economic and social rights endowed with the state to provide practical content to the Fundamental Rights. He believed that the conflict between the Rights and Directives evolve the new social order by the process of judicial adjustment and through the rule of law. As a matter of fact, the Constitution created an independent judiciary to decide on the scope of the Rights and permissible limits on the Directives and also on the validity of laws, creating statutory rights on the basis of the tests of legitimate encroachment on the Rights. If the statutory rights have become crystallised and the state could guarantee their enforcement, they could be included in Part III. The new list of fundamental rights in their turn becomes subject to justiciable laws of social control. By this continuous interaction of the Rights and the Directives, through the medium of judicial process, the Constitution envisaged an organic growth of socio-economic justice in Indian society. Therefore, it is clear from the analysis of constitutional design of Parts III and IV that contain an integrated scheme for implementing the welfare of the citizens through social justice.

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Vol. 3 Issue 3 (June 2017)

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Vol. 3 Issue 3 (June 2017)

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