

FUNDAMENTAL RIGHTS VS DIRECTIVE PRINCIPLES OF STATE POLICY: A COMPARATIVE ANALYSIS OF SRI LANKAN POSITION WITH INDIA.

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INTRODUCTION

Fundamental rights are the rights guaranteed by the Constitution of the country and the directive principles of state policy serve as guidelines for the organs of the state while performing the functions they are legally obliged to do. In Sri Lanka directive principles are designed to be mere guidelines under the Constitution and not enforceable in any court of law¹. Even though the directive principles of state policy have no enforceability before the court of law under Constitution, the judiciary has struck a balance between the concepts of fundamental rights and directive principles of state policy, obliging the state to be bound by both set of standards in India.

The objective of the research is to explore the inter relation between Fundamental Rights and Directive Principles of State Policy in the governance of a country particularly with regard to protection of rights. The research also aims at finding out the suitable approach to be adopted by our courts in the interpretation of both fundamental rights and directive principles of state policy, not giving predominance to one over the other, like the Supreme Court of India.

METHODOLOGY

The research is carried out based on the following hypotheses: the harmonious construction of fundamental rights and directive principles of state policy will contribute to the full realization of the rights guaranteed to the people and the executive and the legislative arms of the government will be kept under control to act in line with both set of standards. The Sri Lankan judiciary has failed to adopt the principle of harmonious construction, oblige the executive and legislature to conduct the respective state functions in compliance with the fundamental rights chapter and the separate chapter for directive principles of state policy and superintend whether they do so in practice

The research is doctrinal in nature and desk based. The relevant Constitutional provisions of both Sri Lanka and India are analysed. The researcher has analysed the case reports decided by the Supreme Court of India and Sri Lanka.

RESULTS AND DISCUSSIONS

Both the First Republican Constitution (1972) and the Second Republican Constitution (1978) of Sri Lanka had a separate chapter on directive principles of state policy in order to guide the law making process and the governance of the country. But both the Constitutions declared directive principles of state policy are not enforceable in any court of law under Article 17 and 29 respectively. On the other hand Article 18 of the first republican Constitution guaranteed certain fundamental rights and Chapter III of the 1978 Constitution deals with fundamental rights. The rights recognized as fundamental rights under the two constitutions are subject to certain limitation via Article 18 and 15 respectively. Notwithstanding the limitations, fundamental rights are expressly declared to be enforceable².

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¹ Article 29, Chapter VI Directive Principles of State Policy, Constitution of the Democratic Socialist Republic of Sri Lanka

² Article 126 of the 1978 Constitution of the Democratic Socialist Republic of Sri Lanka

The 1972 Constitution of Sri Lanka gave the state a virtually blanket indulgence to restrict fundamental rights in the name of directive principles³. Restriction of fundamental rights in the interests of directive principles of the state policy is not permitted under the 1978 Constitution of Sri Lanka, but the state is not constitutionally bound to apply directive principles. The state is merely guided by them. According to Article 27 of the Constitution, the directive principles of state policy shall guide the Parliament, the President and the Cabinet of Ministers in the enactment of laws and the governance of Sri Lanka for the establishment of a just and free society, but when the organs of government act not in compliance with this Article, no citizen could question this matter before any court of law under Article 29 of the Constitution.

Under the Indian Constitution Directive principles are expressly made unenforceable, but they are nevertheless fundamental and it shall be the duty of the state to apply directive principles of state policy⁴. The Indian Supreme Court constantly admits the importance of both Fundamental Rights and Directive Principles of State Policy. The Supreme Court of India insisted in *Minerva Mills Vs Union of India*⁵ that anything that destroys the balance between the two parts destroys an essential element of the basic structure of the Constitution.

The question of the inter relation between fundamental rights and directive principles of state policy arose in *Seneviratne vs U.G.C. in Sri Lanka*⁶. Wanasundara J referred to many Indian cases and held that the UGC's decision to implement the relevant directive principles was reasonably acceptable. The Supreme Court neither permitted the directive principles to restrict fundamental rights nor imposed a constitutional duty on the state to apply directive principles of state policy.

While the fundamental rights chapter of the Constitution of 1978⁷ guarantees certain rights as Fundamental Rights from Article 10 to Article 14 mainly focusing on Civil and Political Rights whereas Article 14(1) (d), 14(1)(e) 14(1)(f) and 14(1)(g) guarantee the freedom to form and join trade union, manifest his religion, the right to enjoy and promote his own culture, to use his own language and freedom to engage in any lawful occupation, profession, trade ,business or enterprise respectively which form part of the Economic Social and Cultural Rights. The chapter VI on directive principles of state policy promotes the Economic, Social and Cultural Rights which are not adequately guaranteed under the fundamental rights chapter. The two branches of Human Rights namely, Civil and Political Rights and Economic, Social and Cultural Rights need to be protected and promoted by the three organs of a state simultaneously so that the people realize the full enjoyment of human rights. Chapter VI of the 1978 Constitution is the only constitutional arrangement where adequate reference is made to Economic Social and Cultural Rights in Sri Lanka unlike the Indian Constitution where fundamental rights chapter covers both branches of human rights. In this back ground, the people of Sri Lanka are denied their substantial rights by the denial of protection of either Fundamental Rights or Directive Principles of State Policy. It is essential that the court must strike a sustainable balance between the concepts giving equal importance to both concepts.

CONCLUSIONS AND RECOMMENDATIONS

When comparing the approach of the Sri Lankan Judiciary and India, we notice that the Indian judiciary has adopted a smart approach in the construction of chapter III and chapter IV the Constitution, fundamental rights and directive principles of state policy respectively. In

³ Section 18(2) of the 1972 Constitution of Socialist Democratic Republic of Sri Lanka

⁴ Article 37 of the Indian Constitution

⁵ AIR 1980 SC 1789

⁶ [1978-79-80] 1 Sri LR 182

⁷ Chapter III of the 1978 Constitution of Sri Lanka

*Re Kerala Education Bill*⁸, Das CJ observed that while directive principles must subserve and not override fundamental rights, in determining the scope of and ambit of fundamental rights “the court may not entirely ignore the directive principles...but should adopt the principle of harmonious construction and should attempt to give effect to both as much as possible”. Likewise in *Golak Nath v State of Punjab*⁹, Court held that directive principles of state policy can reasonably be enforced without taking away or abridging fundamental rights. In *Kesavananda Bharati v State of Kerala*¹⁰, the Court stated that no conflict on the whole between the provisions contained in Parts III and IV. In *Minerva Mills v Union of India* the court observed that parts III and IV together constitute the core of the Indian Constitution and combine to form its conscience to give absolute primacy one over to the other disturbing the harmony of the Constitution.

Apart from Indian Judiciary, it is also important to identify that there exists a developing international opinion regarding the integration of directive principles of state policy with the fundamental rights as can be seen by the United Nations Draft Country Programme for Ghana (2006 -2010) which encourages drawing links between the rights and the directive principles of state policy¹¹.

The Supreme Court of Sri Lanka emphasized the importance of directive principles of state policy in *Re the Thirteenth Amendment to the Constitution Bill*. The attempt to set up a provincial council with legislative power is in compliance with Article 27(4) of the Constitution which requires the state to strengthen and broaden the democratic structure of the government and the democratic rights of the people by decentralizing the administration and by affording all possible opportunities to the people to participate at every level in national life and government, the Court held. Sharvananda.CJ, observed that although directive principles are not enforceable in courts of Law, that shortcoming did not detract from their values as projecting the aims and aspirations of a democratic government. In *Bulankulama v. Secretary, Ministry of Industrial Development (Eppawela case)*¹² Amerasinghe.J emphasized the duty on the part of the state to protect the national environment in line with the directive principles of state policy. Although it is expressly declared in the Constitution that the directive principles and fundamental duties ‘do not confer or impose legal rights or obligations and are not enforceable in any Court or Tribunal’ Courts have linked the Directive Principles to the public trust doctrine and have stated that these principles should guide state functionaries in the exercise of their powers.¹³

Even though the Sri Lankan Courts emphasized the importance of directive principles of state policy in certain cases, neither the judiciary through judicial pronouncement nor the constitution impose a duty on the executive and the legislature to apply directive principles in their respective activities. The hypothesis is accepted that the Sri Lankan judiciary has not attempted well to insist on and explicitly provide for the harmonious construction of fundamental rights and directive principles of state policy there by making the executive and

⁸ AIR 1958 SC 956

⁹ AIR 1967 SC 1643

¹⁰ AIR 1973 SC 1461

¹¹ *Danushka Medawatte, Non enforceability of directive principles of state policy : Real barrier or fake?, E-Newsletter, CSHR, Univeristy of Colombo 12/2012*

¹² [2003] 3 Sri. LR 243

¹³ *Sugathapala Mendis vs. Chandrika Bandaranayake Kumaratunga, SC FR 352/2007*
Wattegedera Wijebanda Vs. Conservator General of Forests and others in S.C. Application 188/2004 decided on 5th April 2007.

the legislature adhere to both fundamental rights and directive principles of state policy equally,

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