

Fundamental Rights - Study of their Inter-relationship - P.S.N.Prasad

Shri P. Ishwara Bhat, Dean, Faculty of Law, University of Mysore has restructured and revised his Ph.D. thesis and brought out the book titled "Fundamental Rights – A Study of Their Interrelationship".

The present book has four Parts. Part One consists of 3 Chapters, viz., the Chapter 1 and Chapters 2 and 3. Chapter 2 discusses jurisprudential basis for and the doctrinal thrusts involved in interaction of civil rights values. The synthesis of interests of personality, the application of concern for justice and the consequent relations amidst multitude strands of equality and liberty under the value matrix of equal liberty of all are discussed here in the light of politico-legal philosophies. Chapter 3 focuses on the Indian historical experiences about interrelationship of basic rights. The ancient Indian tradition of basing the rights on performance of social duties, and the positive and negative scenario arising from compliance or non-compliance with the value of equal liberty of all at various stages and spheres of historical development have been discussed in this chapter.

In Part Two, which consists of 4 Chapters (4 to 7), the discussion concentrates on interrelationship principles and practices in a sphere where Fundamental Rights project the claims for justice. Fairness in procedural due process norms (Chapter 4), Substantive due Process Development (Chapter 5). Right to Equality (Chapter 6) and Right to constitutional Remedies (Chapter 7) are analysed from the perspective of interrelationship of rights.

In Part three are grouped 6 Chapters (Chapters 8 to 13) that deal with interrelationships connected with aspects and attributes of dignified life, personal liberty, freedoms and right to property. Positive dimensions of right to dignified life and personal liberty (Chapter 8), right against exploitation (Chapter 9), the freedoms under Article 19 relating to speech, expression, assembly, association, movement, residence, business, profession and occupation (Chapter 10), freedom of religion, secularism and denominational rights (Chapter 11), educational and cultural rights (Chapter 12) and right to property (Chapter 13) are discussed keeping in mind the implications and impact of interrelationship of rights.

In Part four there are four Chapters. Since interrelationship of rights is a part of the larger phenomenon of interrelated working of various provisions of the Constitution, in Chapter 14 the impact of other parts of the constitution relating to Directive Principles of State Policy, Fundamental Duties, Democracy, Federalism and Emergency Provision upon the interrelationship of rights is analysed. Chapter 15 bring out international human rights discourse from the perspective of interrelationship of rights. It analyses the genesis and development of international human rights instruments, their operation and impact, regional system like European Convention on Human Rights, the British Human Rights Act, 1988, and the impact of international human rights norms upon India's constitutional jurisprudence on fundamental rights. Chapter 17 deals with the contemporary issues, whether Part III of the Constitution requires any amendment. The proposals made in the Constitution Papers and the Final Report released by the National Commission for Review of Working of the Constitution are discussed from the perspective of interrelationship of fundamental rights. In Chapter 16 the issues of prioritisation of rights in the background of this study is discussed and general conclusions are drawn.

The following observations of Prof. Bhat are good food for thought :

Firstly, some of the directive principles of State policy, which are related to distributive justice, moulded the property relations by influencing the interrelationship doctrine, both directly and indirectly.

Secondly, the interrelationship doctrine is very much influenced by Article 39A of the Constitution which provides for equal justice and free legal aid in the justice delivery system.

Thirdly, the directive principles of State shall strive to secure its citizens right to an adequate means of livelihood and make the effective provision for securing right to work.

Fourthly, the directive principle that "tender age of children are not abused", and that "children are given opportunities and facilities to develop in a healthy manner and in a conditions of freedom and dignity that childhood and youth are protected against exploitation against moral and material abandonment"; [Article 39(f) have provided the spirit of law to the Apex Court.

Fifthly, the directive principle of "Equal pay for equal work" and "participation of workers in management" were received through right to equality under Article 14 in Part III, in various cases, such as Randhir Singh (AIR 1982 SC 469) and National Textile Workers Union case (AIR 1983 SC 75).

Sixthly, the directive principles relating to uniform civil code has the potentiality of using the interrelationship doctrine for its implementation.

Seventhly, the promotion of educational and economic interest of Scheduled Caste and Scheduled Tribe and other weaker section of the society, contemplated under Article 46 provides a guidance for affirmative actions under Article 15(4) and 16(4) and a pointer for resolving tension between formal and substantive equality by laying emphasis on infusing of strength and ability to compete, through education and training to weaker sectors (M.R. Balaji vs. State of Mysore – AIR 1963 SC 649).

Finally, the directive principle that the State shall endeavour to foster respect for international law and treaty obligations has a great potentiality of absorbing the international principles relating to guarantee of human rights, and thus influence the interrelationship doctrine.

The author's convictions are reflected as under :

(i) The impact of directive principles upon the interrelationship doctrine or vice-versa is not only theoretical but also practical and rewarding. Interrelationship doctrine has given impetus to, and got animated by the process of reading the directive principles into Part III of the Constitution.

(ii) It is true to say that the interrelationship doctrine has its roots in the very text of the constitution. This can be seen when the objects set in the Preamble, followed by Juxtaposing of right to equality with classification, the flexibility imbibed in fundamental rights, the spirit of law (operation of whole Part-III of the Constitution visa-vis the impugned law) rejection of compartmentalised treatment of fundamental rights and finally, the distinction between citizens and non-citizens with regard to availability of fundamental rights and the possibility of invoking a fundamental right to avail a suspended fundamental right during emergency are taken into account with a conscious approach of unity in diversity.

Former Chief Justice of India Shri M.N. Venkatachelaiah, in his foreword to the above book, said that professor Bhat examines the relationship of fundamental rights inter se and the jurisprudential and constitutional foundations of that interrelationship. The interrelationship is also a necessary implication of constitutionalism and Rule of Law. It was viewed that professor Bhat, in his elegant analysis, indicates the "parallel streams" and 'cross-currents' of fundamental rights and how these rights inform and enrich each other. This discourse has its familiar ring in the International Human Rights Regime, and the principles of their universality, indivisibility and interdependence.

The Eastern Law House Pvt. Ltd., 54, Ganesh Chunder Avenue, Kolkata a 700 013 have published and processed the book and priced at Rs. 650/-.

Great constitutional provisions must be administered with caution. Some play must be allowed for the joints of the machine, and it must be remembered that legislatures are ultimate guardians of the liberties and welfare of the people in quite as great a degree as the courts.

— **HOLMES, Oliver Wendell, in Missouri, Kansas and Texas Railway Company of Texas v. May, 194
U.S. 267, 270 (1904)**

Wherefore a Man ought not to rest upon the Letter of an Act, nor think that when he has the Letter on his Side, he has the Law on his Side in all Cases.

—**PLOWDEN, Edmund, Eyston v. Studd (1574) 2 Plow, 460, 464**