

Directive Principles of State Policy

Introduction

- ❑ Directive Principles are certain ideals, particularly aiming at socio-economic justice, which according to the framers of the Indian Constitution, States should strive for.
- ❑ Dr B. R. Ambedkar described Directive Principles as a “Novel Feature” of the Constitution. They are in the nature of general directions, instructions or guidelines to the State. Directive Principles embody the aspirations of the people, objectives and ideals which Union and the State governments must bear in mind while making laws and formulating policies.

Nature

- ❑ Directive Principles of State Policy are positive in nature as it requires the State to do certain things as opposed to restricting State.
- ❑ The directive principles ensure that the State shall strive to promote the welfare of the people by promoting a social order in which social, economic and political justice is informed in all institutions of life.
- ❑ The State shall work towards reducing 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.

PART IV of the Constitution (Arts. 36-51) contains the Directive Principles of State Policy. They are of the following classes:

1. Certain ideals, particularly economic, which, according to the framers of the Constitution, the States should strive for.
2. Certain directions to the Legislature and the Executive intended to show in what manner the State should exercise their legislative and executive powers.
3. Certain rights of the citizens which shall not be

enforceable by the Courts like the 'Fundamental Rights', but which the State shall nevertheless aim at securing, by regulation of its legislative and administrative policy.

A Brief History of DPSP

The basic sources from which the directive principles of state policy have been derived are as follows.

Constitution of Ireland

- ❑ The Directive Principles of State Policy, which are incorporated in Part IV of the Constitution of India, are inspired and adopted by the Irish Constitution, which had copied it from the Spanish Constitution.
- ❑ The Indian Constitution's drafting committee was largely inspired by the Irish nationalist movement, and the principle of Directive Principles of State Policy was derived from Article 45 of the Irish Constitution, which is Directive principles of social policy.

Nehru report 1928

- ❑ DPSP and Fundamental Rights have a common origin. The Nehru Report of 1928 (chaired by Motilal Nehru) contained the Swaraj Constitution of India which contained some of the fundamental rights and some other rights such as the right to education which were not enforceable at that time.

Government of India Act, 1935

- ❑ 'Instrument of Instructions' under Government of India Act 1935 were instructions issued to Governors of the colonies or Governor in general by British government.

Thoughts of Famous Personalities

- ❑ **Dr B.R Ambedkar:-** The Directive Principles are the novel feature of the Indian Constitution.
- ❑ **Granville Austin:-** He described the DPSP as “Conscience of the Constitution”. Directive Principles are aimed at furthering the goals of social revolution or to foster this revolution by establishing the conditions necessary for the achievements.

- ❑ **Sir B.N. Rau (constitutional advisor to the constituent assembly):-** Directive Principles are intended as 'moral precepts for the authorities of the State'. They have at least an educative value.
- ❑ **Jawaharlal Nehru's statement in Parliament in 1955:-** The responsibility for economic and social welfare policies of the nation should lie with the Parliament and not with the Courts. In the case of contradiction, it was for Parliament to remove the contradiction and make Fundamental rights subserve the Directive Principles of State Policy (DPSP).

Article 36: The State has the same meaning as in Part III

Explanation:

As Part IV talks about the principles that a state needs to follow for proper governance, this Article explains what a state is. It holds the same meaning as a state does under Part III of the Constitution. A state, therefore, consists of the following:

1. The Central Government and the State Governments,
2. The Parliament at the Centre and the different state legislatures,
3. Any other local body or authority that is under the control of India or is a part of its territory.

Article 37: Application of the principles contained in this Part. The provisions contained in this Part shall not be enforceable by any court, 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.

Explanation:

- ❑ This Article talks about the non-enforceable nature of the Directive Principles of State Policy. DPSP cannot be enforced in a court of law; however, it does not mean that the states do not have a duty to follow through with the principles.
- ❑ They are mere guidelines that the states are supposed to consider throughout their governance.
- ❑ The court emphasized that their non-enforceability does not make them any less important than the Fundamental Rights.

Article 38: State to secure a social order for the

promotion of welfare of the people

Article 38(1) 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

Article 38(2) The State shall, in particular, strive to minimize the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations

Explanation:

The current Article is the one that reflects the characteristics embedded in the Preamble of the Constitution, especially Justice and Equality.

- ❑ Sub-clause (1) states that the ultimate goal of the State is to secure justice in all forms – social, political, and economic, across the country.
- ❑ Subclause (2) talks about how the state has to ensure that there are low to nil inequalities among the public with relation to income, facilities, and services, opportunities, etc. The 44th Amendment Act in the year 1978 expanded sub-clause (2) to state that efforts should be made to reduce inequalities not only among individuals but also among different groups of people residing in different areas of the country.

This particular Article shows the socialist status of the DPSP in which the main characteristic of a state is that it is societal -welfare-oriented.

Article 39: Certain principles of policy to be followed by the State: The State shall, in particular, direct its policy towards securing

Explanation:

This Article lays down some basic and general principles that the DPSP proclaims. They are the following:

- a) Presence of equal means to a sufficient livelihood. Livelihood consists of food, clothing, medical facilities, education, etc.
- b) Ownership and authority over material resources should be distributed in a utilitarian manner.
- c) There should not be any concentration of wealth

in the hands of a few people/groups of people that might result in a detriment of the common good of the public.

- d) Presence of equal pay for equal work done, no matter if it is a man, a woman, or any other gender.
- e) The health as well as the strength of the public workers that can be man, woman, child, etc. should not be abused. The people should not be compelled to enter into vocations that are not suitable for either their age or strength simply by economic necessity.
- f) As inserted by the 42nd Amendment, the state should ensure that children have a healthy environment around them for their holistic growth and development into able adults in the future.

Though given under Article 39(d) of the Constitution, the concept of equal pay for equal work is not enforceable under a court of law. As stated in the case *Harbans Lal v. the State of H.P.*, (1989), this principle is not enforceable as a separate fundamental right. It can only be read with Articles 14 and 16 of the Constitution that are subjected to certain conditions.

Article 39A: The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

Explanation:

- ❑ This Article was inserted by the 42nd Amendment and talks about free legal aid that is provided by the state to administer justice in the country by creating schemes, programs, and provisions and ensuring that people do not lose the opportunity to secure justice just because of economic disadvantages.
- ❑ The court also stated that the state is duty-bound to provide a lawyer to an accused person if circumstances of the case and needs of justice so require such as poverty, indigence, etc. as long as the accused does not object to the provision of providing a lawyer.

Article 40: The State shall take steps to organise

village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government.

Explanation:

This Article talks about the creation and establishment of Panchayats. Under this, the state should grant the necessary powers for these Panchayats that would result in them being self-governing units of small areas in the country.

- ❑ The Constitution (73rd Amendment) Act, 1992 has added a new part IX consisting of 16 Articles and the Eleventh Schedule to the Constitution.
- ❑ The 73rd Amendment contains the Gram Sabha as the foundation of the Panchayat Raj System to perform functions and powers entrusted to it by the State Legislatures.
- ❑ The amendment provides for a three tier Panchayat Raj System at the village, intermediate and district levels.

Article 41: Right to work, to education and to public assistance in certain cases. The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want

Explanation:

- ❑ The State plays the role of a welfare government under this Article by focusing on the parts of society that needs its help to flourish.
- ❑ Therefore, issues such as unemployment, food scarcity, old age, disability, etc. are looked after by the government through schemes and programs such as MGNREGA, Pension schemes, social assistance programs, etc.
- ❑ The state also ensures that adequate education and job opportunities are available to the best of its current economic abilities.

Article 42: Provision for just and humane conditions of work and maternity relief. The State shall make provision for securing just and humane conditions of work and for maternity relief

Explanation:

- ❑ The Article talks about the working conditions of the citizens.
- ❑ The state needs to ensure that the conditions and fair, just, and humane to every employee.
- ❑ The state also needs to ensure that people who can be pregnant are given maternity relief. Maternity Benefit Amendment Act, 2017 is an example of this directive principle.

Article 43: Living wage, etc, for workers. The State shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the State shall endeavour to promote cottage industries on an individual or cooperative basis in rural areas

Explanation:

- ❑ This goes back to the fair and equal wages principle under Article-39(d).
- ❑ The state, under this Article, states that the wages and salaries of people working in any kind of job – agricultural, industrial, etc. should be fair and enough to provide them with a decent standard of living and be able to enjoy the luxuries of their lives.
- ❑ In particular, under this Article, the state should give more focus and help to the cottage industries of the country either on its own or on a co-operative basis.

Article 43B: Promotion of co-operative societies. The State shall endeavour to promote voluntary formation, autonomous functioning, democratic control and professional management of co-operative societies.

Explanation:

- ❑ Cooperative societies
 - A Co-operative Society is an organization that is formed by a group of people whose primary objective is the promotion of the economic interests of its members. This is achieved by the Cooperative sharing its profits amongst its members, in proportion to their contribution to the Cooperative's business, from which its

overall profits are derived.

- The 97th Amendment Act of 2011 has inserted Article 43B so that the state would also promote the co-operative societies on their formation and functioning.
- ❑ Ministry of Cooperation
 - In a historic move, a separate 'Ministry of Co-operation' has been created by the Government of India in 2021 for realizing the vision of 'Sahkar-se-Samriddhi'.
 - This ministry will provide a separate administrative, legal and policy framework for strengthening the cooperative movement in the country.
 - It will help deepen co-operatives as a true people-based movement reaching up to the grassroots.
 - In our country, a Co-operative based economic development model is very relevant where each member works with a spirit of responsibility.
 - The Ministry will work to streamline processes for 'Ease of doing businesses for co-operatives and enable development of Multi-State Co-operatives (MSCS).
 - The Central Government has signalled its deep commitment to community based developmental partnership.

Article 44: Uniform civil code for the citizens. The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India.

Explanation:

- ❑ The Indian Constitution states that "the State shall endeavour to secure for the citizens a uniform civil code (UCC) throughout the territory of India."
- ❑ The desirability of a uniform civil code is consistent with human rights and the principles of equality, fairness and justice.

Article 45: Provision for free and compulsory education for children. The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years.

Explanation:

- ❑ The current Article was inserted by the 86th Amendment.
- ❑ This Article talks about the right of children to obtain compulsory and free pre-school education up to 6 years of age for their holistic growth and development.
- ❑ It shall also provide free and compulsory education up to 14 years of age within which the child would have basic education to survive.

Article 46: Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections. The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation

Explanation:

- ❑ This Article is about the protection of the minority and weak communities of the country such as the SCs, STs, etc. against any exploitation.
- ❑ As they are the weaker sections of the society, they may find it more difficult to prosper as compared to their counterparts.
- ❑ Therefore, the state needs to ensure that they are received with enough care and adequate economic and educational opportunities are also available to them.

Article 47: Duty of the State to raise the level of nutrition and the standard of living and to improve public health. The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health

Explanation:

- ❑ This Article brings about the duty of the state to ensure that the country has moderate to high standards of nutrition and public health.
- ❑ Steps need to be taken by the state to provide

nutrition to the poor and deserving, and also to prohibit or limit the consumption of drinks and drugs that are injurious to public health.

- ❑ Through these steps, the state tries to promote the standard of living of people in the country.
- ❑ Programs such as the National nutrition mission, Mid-day meal scheme, National Health Mission, etc. are already in function to achieve these objectives.

Article 48: Organisation of agriculture and animal husbandry. The State shall endeavour to organise agriculture and animal husbandry on modern and scientific lines and shall, in particular, take steps for preserving and improving the breeds, and prohibiting the slaughter, of cows and calves and other milch and draught cattle

Explanation:

- ❑ The current Article talks about the need of the state to engage in the promotion of agriculture and animal husbandry through scientific lines and methods.
- ❑ Through this manner, the state shall also ensure that unnecessary slaughtering of cows, calves, and other milch and draught cattle is prohibited as well as take scientific steps to improve the breeds of the cattle.
- ❑ In the case of State of Gujarat v. Mirzapur Jamat, (2005), the court had held that the term 'milch and draught cattle' was used to distinguish other kinds of cattle that neither belong to milch or draught. It is simply a form of classification.

Article 48 A: Protection and improvement of environment and safeguarding of forests and wild life The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country

Explanation:

- ❑ This article added by 42nd Amendment Act, talks about the protection and safeguard of the environmental surroundings as well as the flora and fauna of nature.
 - ❑ The court had held that preservation and protection of open spaces such as parks are of vital interest to the public.
 - ❑ The state authorities are dutybound to act in trusteeship for common spaces such as air, water, forests, etc.
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Article 49: Protection of monuments and places and objects of national importance. It shall be the obligation of the State to protect every monument or place or object of artistic or historic interests, declared by or under law made by Parliament to be of national importance, from spoliation, disfigurement, destruction, removal, disposal or export, as the case may be

Explanation:

- ❑ This Article talks about preserving and protecting monuments and objects that are of national importance from any sort of destruction, disfigurement, etc.
- ❑ It shall be the duty of the State to protect every monument or place or any object of historic or artistic interest which has some national importance, from any form of disfigurement, destruction, etc.
- ❑ Examples can be the Taj Mahal, Qutab Minar, etc. that hold the memories and history of Indian culture.

Article 50: Separation of judiciary from executive. The State shall take steps to separate the judiciary from the executive in the public services of the State

Explanation:

- ❑ This is the only direct evidence of separation of powers between at least two organs of the state that is present in Part IV of the Constitution.
- ❑ It states that the state should ensure that the executive and judiciary work as separate organs concerning public services.
- ❑ In the case of S.P Gupta v. Union of India, 1981, the court had reiterated the importance of the independence of the judiciary from executive pressure and influence.

Article 51: Promotion of international peace and security The State shall endeavour to

Article 51(a) promote international peace and security;

Article 51(b) maintain just and honourable relations between nations;

Article 51(c) foster respect for international law and treaty obligations in the dealings of organised peoples with one another; and encourage settlement of international disputes by arbitration

PART IVA
FUNDAMENTAL DUTIES

- ❑ The last directive principle is about the international dealings of the state.
- ❑ According to it, the state's main international aim is to maintain and preserve peace and security across borders, foster healthy relationships with other states, respect international law and other treaty obligations with another state, etc.

Classification of Directive Principles

- ❑ Socialist Principles:
 - These principles contemplate the ideology of socialism and lay down the framework of a democratic socialist state. The concept envisages providing social and economic justice, so that state should achieve the optimum norms of the welfare state
- ❑ Gandhi's principles:
 - These principles reflect the ideals of Gandhi during the national movement of India. In order to fulfil the dreams of Gandhi, some of his ideas were included in DPSP and they direct the state.
- ❑ Liberal policy
 - The aim of these principles is to establish a liberal socio-political system in India and to make the state an instrument of socio-economic welfare.
- ❑ International Policies:
 - Those principles which do not belong to any ideology and are of generic nature and also deal with the formulation of foreign policy of India and its role as member of the international community come under this category.
 - In accordance with Article 51, the State of India shall endeavour to promote international peace and security and to respect the treaty of law.

Amendments in Directive Principles

- ❑ 42nd Amendment Act of 1976
Four new Directive Principles were added in the 42nd Amendment Act of 1976 to the original list. They are requiring the state:
 1. An added clause in Article 39: To secure opportunities for the healthy development of children
 2. An added clause in Article 39 as Article 39A: To promote equal justice and to provide free legal aid to the poor

3. An added clause in Article 43 as Article 43 A: To take steps to secure the participation of workers in the management of industries
4. An added clause in Article 48 as Article 48A: To protect and improve the environment and to safeguard forests and wildlife

❑ 44th Amendment Act of 1978

The 44th Amendment Act of 1978 necessitated the state to abate inequalities in income, status, facilities and opportunities under Article 38.

- They have paved the way for confiscatory taxation and for equalising salaries and wages for different vocations and different categories of work, which would usher in a socialistic society, even without resorting to nationalisation of the means of production.

❑ 86th Amendment Act of 2002

The 86th Amendment Act of 2002 made the elementary education a fundamental right under Article 21 A and modified the subject-matter of Article 45.

The 86th Amendment Act necessitated the state to provide early childhood care and education for all children until they complete the age of six years.

❑ 97th Amendment Act of 2011

A new Directive Principle was added during 97th Amendment Act relating to co-operative societies. It necessitated the state to promote voluntary formation, autonomous functioning, democratic control and professional management of co-operative societies under Article 43B.

Directives in other parts of the Constitution

- ❑ (Article 335) instruct that the claims of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State.
- ❑ (Article 350A) It is the duty of every state and its local administration to ensure that education through mother tongue is provided to the minority community at the primary level
- ❑ (Article 351) enjoins the Union to promote the spread of the Hindi language and to develop it so

that it may serve as a medium of expression of all the elements of the composite culture of India.

- ❑ The Directives contained Articles 335, 350A, 351 are not included in Part IV, Courts have given similar attention to them on the application of the principle that all parts of the Constitution should be read together.

DPSP under Preamble

- ❑ The Preamble of the Constitution is called the key to the mind of the drafters of the Constitution. It lays down the objectives that our Constitution seeks to achieve.
- ❑ Many scholars believe that DPSPs is the kernel of the Constitution. The Directive Principles of the State Policy (DPSPs) lay down the guidelines for the state and are reflections of the overall objectives laid down in the Preamble of Constitution.
- ❑ The expression Justice- social, economic, political is sought to be achieved through DPSPs. DPSPs are incorporated to attain the ultimate ideals of preamble i.e., Justice, Liberty, Equality, and Fraternity.
- ❑ Moreover, it also embodies the idea of the welfare state which India was deprived of under colonial rule.

Comparison between Directive Principle & Fundamental Rights	
Fundamental Rights	DPSP
The Fundamental Rights guaranteed to Indian people are included in Part III of the Indian Constitution. Fundamental Rights are addressed in Articles 12-35 of the Indian Constitution.	Part IV of the Indian Constitution contains the Directive Principles. Articles 36-51 of the Indian Constitution contain these provisions.
Fundamental rights are rules within which the policy should be framed and can be challenged in court.	The Indian constitution's Directive Principles are the rules that the government must follow when formulating policy.
Fundamental Rights enshrined in the Indian Constitution contribute to establish political democracy in the country.	The Directive Principles of State Policy help to develop Economic and Social Democracy.
Fundamental Rights promote the well-being of each and every individual.	Directive Principles are used to promote the well-being of the entire community.
Violations of Fundamental Rights are penalised under the law.	In contrast to violations of Fundamental Rights, violations of Directive Principles are not penalised.

Fundamental Rights are justiciable in the sense that they can be lawfully enforced by the courts if they are violated.	Directive Principles are not justiciable in the sense that they cannot be enforced by the courts if they are broken.
If a law violates fundamental rights, the courts have the authority to declare it void and unconstitutional.	The courts do not have the authority to declare a law unlawful and unconstitutional if it violates the Directive Principles.
Fundamental Rights are sometimes viewed as a set of constraints placed on the government.	Directive Principles are guidelines for the government to follow in order to attain specific goals.

During a national emergency, fundamental rights might be suspended. However, Articles 20 and 21 protect rights that cannot be interrupted. Under no circumstances can the State Policy Directive Principles be suspended.

According to Article 13 (2), the law against fundamental rights can be repealed. Laws contrary to the directive policy of the state cannot be repealed.

Relationship with Fundamental Rights through various judgements

The main objective behind both the Fundamental Rights and Directive principle is to secure the pleasure of social, economic and political Justice. It is not only used for the dignity of the citizen but also helps in the welfare of every individual. They are complementary and supplementary to each other. The basic feature of the constitution is to maintain harmony between fundamental rights and DPSP. The theme of fundamental rights must be made in light to DPSP. Here are few important judgements:-

- ❑ In the Champakam Dorairajan vs Madras case (1951), the Supreme Court ruled that in case of any conflict between the fundamentals right and the Directive Principles, the Fundamental rights would prevail.
- ❑ Parliament made first Amendment Act (1951), the Fourth Amendment Act (1955), and the Seventeenth Amendment Act (1964) to implement some of the Directives.
- ❑ In Kerala Education Bill (1957) Court said that in case of conflict between Fundamental Right and DPSPs, the principle of harmonious construction should be applied.

Doctrine of Harmonious Construction

It says that you need to constitute the provision of the constitution in such a way that Fundamental

Rights and DPSP go hand in hand so this was there to avoid the situation of conflict while enforcing DPSP and Fundamental Rights. But still after applying the doctrines of interpretation, there is a conflict between Fundamental Right and DPSPs, then the former should be upheld.

- ❑ In Venkataraman vs State of Madras (1966), Court gave precedence to Fundamental Rights over DPSPs.
- ❑ In the Golaknath vs state of Punjab case 1967, the Court held that the Fundamental Rights cannot be amended for implementation of the Directive Principles.
- ❑ In Keshavananda Bharti (1973), The Apex Court placed the bedrock of basic structure. Supreme Court held that Parliament can amend any part of the Constitution but without destroying the basic structure of the constitution. The second clause of Article 31C was as declared as unconstitutional and void as it was against the Basic Structure of the Constitution propounded in this case itself.
- ❑ In the case of Pathumma vs. the State of Kerala, 1978, the Supreme Court emphasised the purpose of DPSP that is to fix some social-economic goals.
- ❑ Ultimately in the case of Minerva Mills vs. Union of India (AIR 1980 SC 1789), the question before the court was whether the directive principles of State policy enshrined in Art IV can have primacy over the fundamental rights conferred by Part III of the Constitution. The court held that the doctrine of harmonious construction should be applied because neither of the two has precedence to each other. Both are complementary therefore they are needed to be balanced. the Supreme Court also held that 'the Indian constitution founded on the bedrock of the balance between the Fundamental Rights and the Directive Principles.
- ❑ In Ashok Kumar Thakur Vs. Union of India, 2008, the Supreme Court said that no difference can be made between the 2 sets of rights. Fundamental Rights deal with Civil and political rights whereas DPSP deals with social and economic rights. DPSP are not enforceable in a court of law doesn't mean it is subordinate.

Conflicts between Directive Principles and

Fundamental Rights

- ❑ It may be observed that the declarations made in Part IV of the Constitution under the head 'Directive Principles of State Policy' are in many cases of a wider import than the declarations made in Part III as 'Fundamental Rights'.
- ❑ The question of priority in case of conflict between the two classes of provisions may easily arise. But while the Fundamental Rights are enforceable by the Courts and the Courts are bound to declare as void any law that is inconsistent with any of the 'Fundamental Rights', the Directives are not so enforceable by the Courts [Art. 37], and the Courts cannot declare as void any law which is otherwise valid, on the ground that it contravenes any of the 'Directives'.
- ❑ In case of any conflict between Parts III and IV of the Constitution, the former should prevail in the Courts. If any law is made to implement any of the Directives contained in Part IV of the Constitution, it would be totally immune from unconstitutionality on the ground of contravention of the fundamental rights conferred by Arts. 14 and 19.
- ❑ This attempt to confer a primacy upon the Directives as against the Fundamental Rights has, however, been foiled by the majority of the Supreme Court in the *Minerva Mills* case in two respects:
 - It has struck down the widening of Art. 31C to include any or all of the Directives in Part IV, on the ground that such total exclusion of judicial review would offend the 'basic structure' of the Constitution. In the result, Art. 31C is restored to its pre-1976 position, so that a law would be protected by Art. 31C only if it has been made to implement the directive in Art. 39(b)-(c) and not any of the other Directives included in Part IV.
 - It has been also held that there is a fine balance in the Original Constitution as between the Directives and the Fundamental Rights, which should be adhered to by the Courts, by a harmonious reading of the two categories of provisions, instead of giving any general preference to the Directive Principles.

- ❑ It is also to be noted that outside these two fundamental rights [in Arts. 14 and 19], the general proposition laid down in 1951 shall subsist. Thus, by way of implementing the Directive in Art. 45, to provide free and compulsory education to children, -the State cannot override the fundamental right, under Article 30(1), of minority communities to establish educational institutions of their own choice.

Present Order of Precedence

What will prevail if dispute arises? The present order of precedence is as below:

1. FR except Article 14 and Article 19
2. DPSP except Article 39(b) and Article 39(c)

This means that DPSP 39(b) and 39(c) has been given precedence over Fundamental Right 14 (Right to Equality) and Fundamental Right 19 (Freedom of Speech and Expression).

Enforceability of DPSPs

- ❑ Many times, the question arises that whether an individual can sue the state government or the central government for not following the directive principles enumerated in Part IV. The answer to this question is in negative.
- ❑ The reason for the same lies in Article 37 which states that:
 - The provisions contained in this Part shall not be enforceable by any court, 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.
 - Therefore, by the virtue of Article 37 no provision of this part can be made enforceable in the court of law thus these principles cannot be used against the central government or the state government. This non-justiciability of DPSPs make the state government or the central government immune from any action against them for not following these directives.
- ❑ Another question arises that whether the Supreme Court or High Court can issue the writ of mandamus if the state does not follow the directive principles. The literal meaning of mandamus is "to command."

It is a writ which is issued to any person or authority who has been prescribed a duty by the law. This writ compels the authority to do its duty.

- The Writ of mandamus is generally issued in two situations. One is when a person files writ petition or when the Court issues it suo moto i.e., own motion. As per Constitutional Principles, a Court is not authorized to issue the writ of mandamus to the state when the Directive Principles are not followed because the Directive Principle is a yardstick in the hand of people to check the performance of government and not available for the courts. But the Court can take Suo moto action when the matter is of utmost public importance and affect the large interest of the public.

DPSP and Governance

- The Constitution itself affirms that they are fundamental to the governance of the nation. The Directive Principles are the life-giving provisions of the Constitution. They constitute the stuff of the Constitution and its philosophy of social justice.
- Although the implementation of the principles laid down in Part IV are not directly visible yet there are large and excessive of laws and government policies which reflect the application of the principle of Part IV. Though these Directives are not enforceable by the Courts and if the Government of the day fails to carry out these objects no court can make the Government ensure them, yet these principles under Article 37 have been declared to be fundamental in the governance of the country and a government which rests on popular vote can hardly ignore them, while shaping its polity. "It shall be the duty of the State to apply these principles in making laws".
- Though paucity of the financial resources of the States is the primary reason for the failure to fully implement this Directive so far, it would be only candid to record that ultimately, failure of the people to imbibe the Gandhian ideal of life is at the back of this failure.
- Policies like Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA) get their

authority from Article 39(a) which talks about the right to adequate means of livelihood. Laws such as the Child Labour (Prohibition and Regulation) Act 1986 bolster the canons of Article 39(g) which deals with the protection of children.

- A large number of laws have been enacted to implement the directive in Art. 40 to organise village panchayats and endow them with powers of self-government. The panchayats, elected by the entire adult population in the villages, have been endowed with powers of civic administration such as medical relief, maintenance of village roads, streets, tanks and wells, provision of primary education, sanitation and the like.
- For the promotion of cottage industries [Art 43], which is a State subject, the Central Government has established several Boards to help the State Governments, in the matter of finance, marketing and the like.
- Legislation for compulsory primary education [Art. 45] has been enacted in most of the States and in Union Territories.
- For raising the standard of living [Art. 47], particularly of the rural population, the Government of India launched Its Community Development Project in 1952. Later on, Integrated Rural Development Programme (IRDP) (1978-79), National Rural Employment Programme (NREP), Rural Landless Employment Guarantee Programme (RLEGP), Drought Prone Areas Programme (DPAP), National Skill Development Programme, Pradhan Mantri Kaushal Vikas Yojana (PMKVY), Desert Development Programme (DDP) and some other schemes were launched.
- The legislation relating to prohibition of Intoxicating drinks and drugs (Art. 47) had taken place in some of the provinces long before the Constitution came into being, not much of effective work had been done until, in pursuance of the Directive in the Constitution, the Planning Commission took up the matter and drew up a comprehensive scheme through its Prohibition Enquiry Committee. Since then, prohibition has been introduced in several States in whole or in part.
- As to the separation of the executive from the

Judiciary [Art. 50], the slow progress and diverse methods in the various States has been replaced by a uniform system by Union legislation, in the shape of the Criminal Procedure Code, 1973, which has placed the function of judicial trial in the hands of the Judicial Magistrates', who are members of the judiciary and are under the complete control of the High Court

- ❑ In case of refusal to comply with such directions issued by the Union, it may apply Art 365 against such recalcitrant State. Otherwise, the Directives in Part IV shall ever remain
- ❑ It would also be a potent weapon at the hands of the Opposition -to discredit the Government on the ground that any of its executive or legislative acts is opposed to the Directive Principles.
- ❑ Even if the directive policies impose certain responsibilities on the state, the state cannot pass any law on the strength of the directive policy alone.

Importance of DPSPs for an Indian citizen

- ❑ They facilitate stability and continuity in domestic and foreign policies in political, economic and social spheres in spite of the changes of the party in power.
- ❑ They are supplementary to the fundamental rights of the citizens. They are intended to fill in the vacuum in Part III by providing for social and economic rights.
- ❑ Their implementation makes a favourable atmosphere for the full and proper enjoyment of the fundamental rights by the citizens. Political democracy, without economic democracy, has no meaning.
- ❑ They enable the opposition to exercise influence and control over the operations of the government. The Opposition can blame the ruling party on the ground that its activities are opposed to the Directives.
- ❑ They serve as a crucial test for the performance of the government. The people can examine the policies and programmes of the government in the light of these constitutional declarations.
- ❑ They serve as common political manifesto. 'A ruling party, irrespective of its political ideology, has to recognise the fact that these principles are intended to be its guide, philosopher and friend in

its legislative and executive acts'.

Problems in implementation of DPSP

There are several problems in implementation of DPSP as follows:

1. Historical factors: India was under control of Britishers for a long period of time. During this time period, India became more and more poor. Also, divisions in Indian society grew stronger. Thus, historical factors have further contributed to economic and social factors.
2. Social factors: Several social factors such as gender inequality, poverty, illiteracy, caste-based inequality, etc., inhibit implementation of some DPSP.
 - On account of gender inequality, equal pay for equal work is difficult to be ensured.
 - On account of high poverty in India, adequate means of livelihood are not available to everyone. Illiteracy hampers workers' participation in management, etc.
3. Economic factors: Some DPSP cannot be implemented because of lack of financial resources with the State. For instance, right to work, education, and public assistance requires expenditure on behalf of State.
4. Constitutional factors: As many subjects such as health, forest etc which are mentioned in state list where the interference by centre can impact on federal structure of nation.

Criticism of the Directive Principles

Many constitutional and political experts as well as members of the constituent assembly criticised the Directive Principles on the following grounds:

No Legal Force

- ❑ The criticism of the Directive principles was mainly the consequence of their non-justiciable nature. While K T Shah dubbed them as 'pious superfluities' and compared them with 'a cheque on a bank, payable only when the resources of the bank permit'.
- ❑ K.C Wheare called them as a manifesto of aims and aspirations and suggested that they serve simply as moral homily, and Sir Ivor Jennings observed them only as pious aspirations.
- ❑ T.T Krishnamachari described the Directives as a veritable dust-bin of sentiments, whereas

Arrangement of DPSP

- According to the critics, the Directive Principles are not arranged in a sensible manner on the basis of a consistent philosophy. The declaration blends with the relatively insignificant issues with the most important economic and social questions. It combines rather inappropriately the modern with the old and provisions suggested by the reason and science with provisions based purely on sentiment and prejudice.

Conservative

- Sir Ivor Jennings observed the Directives to be on the basis of the political philosophy of the 19th century England. He remarked: 'The ghosts of Sydney Webb and Beatrice Webb stalk through the pages of the text. Part IV of the Constitution expresses Fabian Socialism without the socialism'. He suggested that the Directives are deemed to be suitable in India in the middle of the twentieth century.

Constitutional Conflict

- K Santhanam has stated that the Directive principles arise a constitutional conflict between centre and state. According to him, the Centre can give directions to the states with respect to the implementation of these principles, and in case of non-compliance, can dismiss the state government.

For instance, when the Prime Minister gets a bill which is violating the Directive Principles and is passed by the Parliament, the President may reject the bill on the ground that these principles are fundamental to the governance of the country and hence, the Ministry has no right to ignore them. The same constitutional conflict may arise at the state level between the Governor and the Chief Minister.

Conclusion

Keeping in mind the arguments put forth above and the aim of the Constituent Assembly while creating the non-justiciable rights, it can be concluded that making the DPSPs enforceable is unnecessary. The Assembly did not want to enforce the Directives because they feared that they would become out of date over time. Secondly, most of their provisions have been enforced through various legislations; those that are not enforceable have debatable relevance in today's world.

The parties that form governments today are not concerned with the well-being of the nation. They play divisive politics for their betterment. They are concerned with the furtherance of their ideologies that the nation may not even share. In this environment, the DPSPs is a yardstick for the government's performance and also a check on arbitrary legislation.

The current position of the Directives is balanced and desirable. But it is also recommended that they must be made secular and free of morals that they impose on citizens. They must incorporate the sentiments held by the nation as a whole and not those held by only a particular class.

Related Topic in News

Uniform Civil Code

Uniform Civil Code or UCC, a single personal law for all citizens irrespective of religion, sex, gender and sexual orientation. Even the constitution says the state should "endeavour" to provide such a law to its citizens.

Article 44 as a Directive Principle of State Policy state about uniform civil code. It states that "The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India".

History

Pre independent era

- The debate for a uniform civil code dates back during the colonial period in India. Prior to the British rule try to reform local social and religious custom under the East India Company (1757-1858).
- The Lex Loci Report of October 1840 emphasised the importance and necessity of uniformity in codification of Indian law, relating to crimes, evidences and contract but it recommended that personal laws of Hindus and Muslims should be kept outside such codification.
- This separation of Hindus and Muslims before law was part of the Divide and Rule policy of the British Empire that allowed them break the unity among the various communities and rule over India.
- According to their understanding of religious divisions in India, the British separated this sphere which would be governed by religious scriptures and customs of the various communities (Hindus, Muslims, Christians and later Parsis).

- ❑ These laws were applied by the local courts or panchayats when dealing with regular cases involving civil disputes between people of the same religion; the State would only intervene in exceptional cases.

Post Independent Era

- ❑ Mohd. Ahmed Khan Vs Shah Bano case (1985)
- ❑ The discussion for the implementation of UCC started with the Shah Bano case wherein the apex court called for the implementation of UCC.
- ❑ Here, Supreme Court observed that, "A common civil code will help the cause of national integration by removing disparate loyalties to law which have conflicting ideologies."

Need of Uniform civil code

Ensuring equality for women

Across all religions, castes, and classes of society, UCC promoted the fundamental rights of women. Provides women's an equal right to inheritance, decisions in adoption, marriage, divorce, etc. This can bring in the essential economic and social reforms in society and ameliorate the situation of women in India.

Promote Gender Justice

- ❑ UCC will promote gender justice by separating the inbuilt discriminatory allocation of personal laws.
- ❑ Under the Hindu law, the Mitakshara branch of law refused to a Hindu daughter a right by birth in the joint family estate and this proceeded logically from the fact that her place in the paternal family was only provisional as she was belonged to her husband's family on marriage.
- ❑ Islamic law stipulated that generally a man's share of the inheritance is double that of a woman in the same degree of relationship to the diminished.
- ❑ Under Muslim law, the father is the sole protector of the person and property of his minor child.

Important for national Integration

- ❑ Uniform Civil Code will distinguish religion from social relations and personal laws, securing equality and thus create harmony in the society.
- ❑ It will help for the integration of India, as a lot of the animosity is caused by favorable treatment by the law of certain religious communities. This could in time persuade custodians of faith to look inwards

and seek to codify and reform age-old personal laws in accordance with current modernizing and integrative tendencies.

Implementing UCC

- ❑ State of Goa is the first and the only State to implement a uniform civil code since its liberation from the Portuguese in 1961.
 - The Supreme Court has even hailed Goa as a shining example where the uniform civil code is applicable to all, regardless of religion except while protecting certain limited rights.
- ❑ The States of Uttar Pradesh and Uttarakhand have also underscored upon the UCC being the need of the hour and how their state governments want to take appropriate measures in furtherance of its implementation.

Challenges in the implementation of Uniform Civil Code:

- ❑ Diverse personal laws: India is a land where diverse culture custom practice is found. The customary practices among communities differ a lot. The vast diversity of the personal laws, along with the allegiance to which they are adhered to, makes uniformity of any sort very difficult to attain. It is very tough to find a common ground between various communities.
- ❑ False penetration: Many people still not aware, what the uniform civil code really means. There are still false dissemination surrounding it, especially among the minorities, which make a various reasonable debate on its implementation quite challenging.
- ❑ Encroachment on religious freedom: Many communities, particularly minority communities fear that a common code will restrict their traditions and impose rules which will be mainly influenced by the majority religious communities
- ❑ Fundamental rights violation: There is an agitation that the uniform civil code may be in conflict with the fundamental rights of freedom of conscience of free profession, practice and propagation of religions under and the freedom to manage religious affairs under Article 25 and Article 26 respectively.
- ❑ Opposition from the different religious groups:

This is one of the most insignificant and obvious obstacles to bring up the Uniform Civil Code. The fundamentalism which is deep-rooted in numerous religions in India doesn't seem to end even in the 21st century.

Way forward:

1. **Acknowledgement:** Major realisation are needed to reform current personal law to improve which should first be instituted by the communities themselves.
2. **Progressive approach:** The social transformation from various civil code to uniformity shall be progressive and cannot happen in a day. Therefore, the government need to adopt a piecemeal approach.
3. **Recommendations of Law Commission:** The commission stresses on initiatives to adapt the country's diversity with universal debated on human rights. It suggested codification of all personal laws:

- ❑ So that the prejudices and stereotypes can be brought light for all the religions.
- ❑ In due course of time, they can test against the fundamental rights in the constitution.
- ❑ It could help arrive at determined Universal principles.
- ❑ Instead of the imposition of UCC, these may facilitate prioritising equality.

Conclusion

The UCC provides protection to vulnerable sections as contemplated by Ambedkar including women and religious minorities, while also encouraging nationalistic fervour through unity.

All citizen will share the same set of personal laws with the implementation of UCC. There will be no scope of politicization of subjects of the discrimination or concessions or remarkable privileges enjoyed by a certain community on the basis of their specific religious personal laws.