
LAW AND SOCIAL CHANGE

ROLE OF DIRECTIVE PRINCIPLES IN BRINIGING SOCIAL CHANGE IN INDIA



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“ if it is said that the directive principles have no legal force.....I am prepared to admit it, but I am not prepared to admit that they have no sort of binding force at all. Nor I am prepared to concede that they are useless because they have no binding force in law.....the draft constitution as framed only provides a machinery for the government of the country. it is not contrivance to install any particular party in power as has been done in some countries. who should be in power is left to be determined by the people, as it must be, if the system is to satisfy the test 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 which are called directive principles. he cannot ignore them. he may not have to answer for their breach in the 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 realized better when the forces of rights contrive to capture powers”¹

----- Dr. Ambedkar

“Motherhood and childhood are entitled to special care and assistance. All Children whether born in or out of wedlock shall enjoy the same social protection.”

.....Article 25(2) of the Universal Declaration of Human Rights

“Women are one-half of the world but until a century ago it was a man’s world. The Laws were man’s laws, the Government a man’s Government. The Country a man’s country. The man’s world must become a man’s and a woman’s world.”

.....Martha Thomas, American Educator (1908)

¹ , When he introduced the drafting constitution as settled by the drafting committee...Page 1577 H.M Seervai...3rd edtn vol II...constitutional law of india

CHAPTER 1

INTRODUCTION

Part IV (Article 36-51) of the Constitution contains the directive principles of state policy. The principles reflect a unique mixture of humanitarian, socialist percepts, Gandhian ideals and democratic socialism. Though non-justiciable, they constitute the fundamental principles of governance. These directives are in nature of directions to the legislative and executive wings of government to be observed while formulating laws and policies. Most of them aim at the establishment of economic and social democracy which is pledged for in the preamble.

Our Constitution aims at bringing a synthesis between fundamental rights and directive principles between fundamental rights and directive principles of state by giving the former a pride of place and the later a place of permanence together, not individually, they form the case and conscience of constitution. The Philosophy of Directive Principles has been taken from the Constitution of Ireland. Dr. Ambedkar described the Directive Principles as the "instrument of instructions." Articles 38, 39, 41, 42, 43 and 45 are based on the socialistic ideas. Articles 39 (a), 43 (a), 48 (a) have been inserted by the 42nd Amendment to accentuate the socialistic bias of the Constitution.

So, these principles may be classified under several groups:

(i) certain ideals, particularly economic which according to the farmers of the constitution, state should strive for; (ii) certain directions to to the legislature and the executive intended to show in what manner the state should exercise their legislative and executive powers and (iii) 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.

Directive Principles cannot override Fundamental Rights. Fundamental Rights are superior. Whereas Various Acts like Employers State Insurance Act. Minimum wages Act, Wealth Tax

Act, Estate Duty Act etc. were passed to give effect to the Directive Principles.

By the 42nd amendments, certain changes have been introduced in part IV, adding new directives to accentuate the socialistic bias of the Constitution:

(a) Article 39 A has been inserted to enjoin the state to provide 'free legal aid' to the poor and to take other suitable steps to ensure equal justice of all, which is offered by the Preamble.

(b) Article 43 A has been inserted in order to direct the state to ensure the participation of workers in the management of industry and other undertakings. This is a positive step in advancement of socialism in the sense of economic justice.

(c) Article 48 A has been inserted in order to direct the state to protect and improve the environment and to safeguard the forests and wild life of the country.

The Janata Government sought to implement the promise of economic justice and equality of opportunity assured by the preamble, by inserting Section (2) in Article 38 (by the 44th Amendment Act, 1978) as follows:

“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.”

This amendment is to be read along with the elimination of the Fundamental Right to Property. They have paved the way for confiscatory taxation and for equalizing salaries and wages for different vocations and different categories of work, which would usher in a socialist society, even without resorting to nationalization of the means of production.

History

The concept of Directive Principles of State Policy was borrowed from the Irish Constitution. The makers of the Constitution of India were influenced by the Irish nationalist movement. Hence, the Directive Principles of the Indian constitution have been greatly influenced by

the Directive Principles of State Policy. The idea of such policies "can be traced to the Declaration of the Rights of Man proclaimed by Revolutionary France and the Declaration of Independence by the American Colonies." The Indian constitution was also influenced by the United Nations Universal Declaration of Human Rights.

In 1919, the Rowlatt Acts gave extensive powers to the British government and police, and allowed indefinite arrest and detention of individuals, warrant-less searches and seizures, restrictions on public gatherings, and intensive censorship of media and publications. The public opposition to this act eventually led to mass campaigns of non-violent civil disobedience throughout the country, demanding guaranteed civil freedoms, and limitations on government power. Indians, who were seeking independence and their own government, were particularly influenced by the independence of Ireland and the development of the Irish constitution. Also, the directive principles of state policy in the Irish Constitution were looked upon by the people of India as an inspiration for the independent India's government to comprehensively tackle complex social and economic challenges across a vast, diverse nation and population.

In 1928, the Nehru Commission composing of representatives of Indian political parties proposed constitutional reforms for India that apart from calling for dominion status for India and elections under universal suffrage, would guarantee rights deemed fundamental, representation for religious and ethnic minorities, and limit the powers of the government. In 1931, the Indian National Congress (the largest Indian political party of the time) adopted resolutions committing itself to the defense of fundamental civil rights, as well as socio-economic rights such as the minimum wage and the abolition of untouchability and serfdom. Committing themselves to socialism in 1936, the Congress leaders took examples from the constitution of the erstwhile USSR, which inspired the fundamental duties of citizens as a means of collective patriotic responsibility for national interests and challenges.

When India obtained independence on 15 August 1947, the task of developing a constitution for the nation was undertaken by the Constituent Assembly of India, composing of elected representatives under the presidency of Dr. Rajendra Prasad. While members of Congress composed of a large majority, Congress leaders appointed persons from diverse political backgrounds to responsibilities of developing the constitution and national laws.

Notably, Bhimrao Ramji Ambedkar became the chairperson of the drafting committee, while Jawaharlal Nehru and Sardar Vallabhbhai Patel became chairpersons of committees and sub-committees responsible for different subjects. A notable development during that period having significant effect on the Indian constitution took place on 10 December 1948 when the United Nations General Assembly adopted the Universal Declaration of Human Rights and called upon all member states to adopt these rights in their respective constitutions.

Both the Fundamental Rights and the Directive Principles of State Policy were included in the I Draft Constitution (February 1948), the II Draft Constitution (17 October 1948) and the III and final Draft Constitution (26 November 1949), being prepared by the Drafting Committee

Philosophical Bases of Directive Principles

The framers of the Constitution were in this respect influenced most by the Constitution of Irish Republic which embodies a chapter on “Directive Principles of State Policy”. The Irish themselves had, however, taken the idea from the Constitution of Republican Spain which was the first ever to incorporate such principles can be traced back to such noble declarations as French declaration regarding Rights of Men, American Declaration of Independence and the Charter of Liberal Philosophy of the 19th Century. The ideas of Jeremy Bentham, the political and social stand of the of the Liberal and Radical Parties of Western Europe, the major principles of Fabian Socialism, and to some extent those of Guild Socialism, are all akin to much of what is embodied in this part of the Constitution. The Directive Principles represent some what the pattern of instrument of instruction provided in the Government of India Act, 1935. At the same time, it will be wrong to say that the Directive Principles are all foreign borrowings. In fact, a number of these principles are entirely Indian and Gandhian in nature like setting up of village panchayat and cottage industries, prohibition, protection against cow-slaughter etc.

Characteristics

Directive Principles of State Policy aim to create social and economic conditions under which the citizens can lead a good life. They also aim to establish social and economic democracy through a welfare state. They act as a check on the government, theorized as a yardstick in the hands of the people to measure the performance of the government and vote it out of power if it

does not fulfill the promises made during the elections. The Directive Principles are non-justiciable rights of the people. Article 31-C, inserted by the 25th Amendment Act of 1971 seeks to upgrade the Directive Principles. If laws are made to give effect to the Directive Principles over Fundamental Rights, they shall not be invalid on the grounds that they take away the Fundamental Rights. In case of a conflict between Fundamental Rights and DPSP's, if the DPSP aims at promoting larger interest of the society, the courts shall have to uphold the case in favour of the DPSP. The Directive Principles, though not justiciable, are fundamental in the governance of the country. It shall be the duty of the State to apply these principles in making laws. Besides, all executive agencies should also be guided by these principles. Even the judiciary has to keep in mind in deciding cases.

Directives

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. Also, 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. The State shall aim for securing right to an adequate means of livelihood for all citizens, both men and women as well as equal pay for equal work for both men and women. The State should work to prevent concentration of wealth and means of production in a few hands, and try to ensure that ownership and control of the material resources is distributed to best serve the common good. Child abuse and exploitation of workers should be prevented. Children should be allowed to develop in a healthy manner and should be protected against exploitation and against moral and material abandonment. The State shall provide free legal aid to ensure that equal opportunities for securing justice is ensured to all, and is not denied by reason of economic or other disabilities. The State shall also work for organisation of village panchayats and help enable them to function as units of self-government. The State shall endeavour to provide the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, within the limits of economic capacity, as well as provide for just and humane conditions of work and maternity relief.

The State should also ensure living wage and proper working conditions for workers, with full enjoyment of leisure and social and cultural activities. Also, the promotion of cottage industries in rural areas is one of the obligations of the State. The State shall take steps to promote their participation in management of industrial undertakings.

Also, the State shall endeavour to secure a uniform civil code for all citizens, and provide free and compulsory education to all children till they attain the age of 14 years. This directive regarding education of children was added by the 86th Amendment Act, 2002. It should and work for the economic and educational upliftment of scheduled castes, scheduled tribes and other weaker sections of the society.

The directive principles commit the State to raise the level of nutrition and the standard of living and to improve public health, particularly by prohibiting intoxicating drinks and drugs injurious to health except for medicinal purposes. It should also organise agriculture and animal husbandry on modern and scientific lines by improving breeds and prohibiting slaughter of cows, calves, other milch and draught cattle . It should protect and improve the environment and safeguard the forests and wild life of the country. This directive, regarding protection of forests and wildlife was added by the 42nd Amendment Act, 1976.

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

Directives contained in other parts

Besides the directives contained in Part IV, there are certain other directives addressed to the state in other part of the Constitution. Those directives are also non-judicial. There are:

1. Article 350 A enjoins every state and every local authority within the state to provide adequate facilities for instruction in the mother tongue at the belonging to linguistic minority groups.
2. 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.
3. Article 335 enjoins that the claims of the members of the Scheduled Castes and 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 a state.

Though the Directives contained in Article 335, 305A and 351 are not included in Part IV, courts have given similar attention to them on the application of the principle, that all part of the Constitution should be read together.²

² en.wikipedia.org/wiki/Directive_Principles_in_India

CHAPTER II

MEANING OF SOCIAL CHANGE

Social change refers to an alteration in the social order of a society. Social change may include changes in nature, social institutions, social behaviours, or social relations.

Social change may refer to the notion of social progress or sociocultural evolution, the philosophical idea that society moves forward by dialectical or evolutionary means. It may refer to a paradigmatic change in the socio-economic structure, for instance a shift away from feudalism and towards capitalism. Accordingly it may also refer to social revolution, such as the Socialist revolution presented in Marxism, or to other social movements, such as Women's suffrage or the Civil rights movement. Social change may be driven by cultural, religious, economic, scientific or technological forces.

Prominent theories of social change

Change comes from two sources. One source is random or unique factors such as climate, weather, or the presence of specific groups of people. Another source is systematic factors. For example, successful development has the same general requirements, such as a stable and flexible government, enough free and available resources, and a diverse social organization of society. So, on the whole, social change is usually a combination of systematic factors along with some random or unique factors.^[1]

There are many theories of social change. Generally, a theory of change should include elements such as structural aspects of change (like population shifts), processes and mechanisms of social change, and directions of change.^[2]

- **Hegelian:** The classic Hegelian dialectic model of change is based on the interaction of opposing forces. Starting from a point of momentary stasis, Thesis countered by Antithesis first yields conflict, then it subsequently results in a new Synthesis.
- **Marxist:** Marxism presents a dialectical and materialist concept of history; Humankind's history is a fundamental struggle between social classes.

- **Kuhnian:** The philosopher of science, Thomas Kuhn argues in *The Structure of Scientific Revolutions* with respect to the Copernican Revolution that people are unlikely to jettison an unworkable paradigm, despite many indications that the paradigm is not functioning properly, until a better paradigm can be presented.
- **Heraclitan:** The Greek philosopher Heraclitus used the metaphor of a river to speak of change thus, "On those stepping into rivers staying the same other and other waters flow" (DK22B12). What Heraclitus seems to be suggesting here, later interpretations notwithstanding, is that, in order for the river to remain the river, change must constantly be taking place. Thus one may think of the Heraclitan model as parallel to that of a living organism, which, in order to remain alive, must constantly be changing. A contemporary application of this approach is shown in the social change theory SEED-SCALE which builds off of the Complexity Theory subfield of Emergence.
- **Daoist:** The Chinese philosophical work *Dao De Jing*, I.8 and II.78 uses the metaphor of water as the ideal agent of change. Water, although soft and yielding, will eventually wear away stone. Change in this model is to be natural, harmonious and steady, albeit imperceptible.

Types of Social Change?

Social change is mostly brought about through social movements. There are two primary types of social movements. A reform movement seeks to preserve existing values but alter how they are interpreted or implemented. A revolutionary movement aims to replace existing values with new ones.

What are the 3 Major Causes of Social Change?

Three major causes of social change are what people have, what people think, and what people value. You will notice in society that the more people have the less they value and vice versa. A change in thinking is the most powerful among the three.³

³ en.wikipedia.org/wiki-social_change

CHAPTER III

UNDERLYING OBJECT BEHIND THE DIRECTIVE

PRINCIPLES OF STATE POLICY.

The directive principles are the ideal which the union and state governments must keep in mind while they formulate policy or pass a law. They lay down certain social, political, economic principles suitable to peculiar conditions prevailing in India.

Thus, it is clear that the main object in enacting the directive principles appear to have been to set standards of achievement before the legislature and the executive, the local and other authorities, by which their success or failure can be judged. It was also hoped that those failing to implement the directives might receive a rude awakening at the polls. It should, however be noted that the directive principles do not impose any particular brand or pattern of economic or social order. They lay down the goals which may be achieved through various means which have to be devised from time to time.⁴

Fundamental Rights Vs Directive Principles

The preamble, the Directive Principles and the Fundamental Rights constitute the more important features of our Constitution. The Directive Principles of the State Policy enshrined in Part IV and the Fundamental Rights, guaranteed in Part III of the Constitution.

Although Fundamental Rights and Directive Principles appear in the Constitution as distinct entities, it was the Assembly that separate them; the leaders of the freedom struggle had drawn no distinction between the positive and negative obligations of the states. Both types of rights

⁴ Dr.J.N.Pandey The constitutional law of india, Pages at 409

had developed as a common demand, products of national and social revolutions, of their almost inseparable intertwining and of the character of Indian polity itself.

The directive principles, though fundamental in the governance of the country, are not enforceable by any court in terms of the express provisions of Article 37 of the Constitution, while fundamental rights are enforceable by the Supreme Court and the High Court in terms of the express provisions of Article 32 and 226 of the Constitution. This does not, however, mean or imply any dichotomy between the two. Its social aspect can, however, be amended only by legislation to carry out the objectives of the directive principles of state policy.

The directives differ from the fundamental rights in Part III of the Constitution or the ordinary laws of the land, the following ways:

1. While the fundamental rights constitute limitations upon state action, the directive principles are in the nature of instruments of instruction to the government of the day to do certain things and to achieve certain ends by their actions.
2. Fundamental rights are justiciable, but the directive principles are non-justiciable.
3. The directives, however, require to be implanted by legislation, and so long as there is no law carrying out the policy laid down in a Directive, neither the state nor individual can violate any existing law or legal right under colour of following a Directive.
4. The fundamental rights lay down the negative obligation of the state. They are prohibitive in character and are, in fact, in the nature of injunctions requiring the state not to do certain things. Directive principles are, on the contrary, affirmative directions dealing with the positive obligations of the state towards the citizens, they declare the duty of the state to promote certain social and economic objectives.
5. The main objective of fundamental rights is to establish political democracy, by guaranteeing equality, liberty, religious freedom and cultural rights but the aim of directive principles of state policy is to establish just social, economic and political order. *M.V. Pylee* has rightly observed:
6. The fundamental rights are negative in character, the government, the directive principles are positive as they ask the state to endeavour to achieve certain goals.
7. Directives are implemented by the legislation sought from the legislative list contained in 7th Schedule of the Constitution. Fundamental rights are incorporated in the Constitution and are

within jurisdiction of an individual.

8. The court cannot compel the state to implement the directives. They can issue writs to enforce the fundamental rights.

9. The court cannot declare any law as void on the ground that it contravenes the directives.

In the state of **Madras vs Chnmpakan** (1951), the Supreme Court highlighted the non-enforceable nature of the Directive Principles. It declared that no law could void on the ground of contravening the directive principles. However, the 25th Amendment Act (1971) introduced Article 31C'. Which was to protect a law seeking to implement a directive under 39 (b)-(c) (ownership and control on material resources for common good; to avoid common fraction of wealth) from being declare ultra vires on the ground of contravening. The **Keshvananda Bharti Case** (1973) upheld the validity of the 25th Amendment Act.

The 42nd Amendment Act (1976) (Section 4) tried to further expand the scope of the directive principles through change in Article 31 A's operation. It sought to protect any laws implanting any of the directive principles from judicial review on ground of violating Article 14 and 19. However, **the Minarva Mills Case** (1930) foiled the attempt to accord primacy to the directives over fundamental rights. It declared the expansion of 31C as ultra vires as it tried to change the basic structure of the Constitution. The scope of Article 31C was pushed back to the pre-1976 position. The Court added 197, position. The Court added the 'reasonableness' clause to enable any Act under 31C to implement Directive Principles 39 (b)-(c), (c f. **State of Tamil Nadu Vs Abu Kavur** (1981), Sec, 515).

Relative Importance

During the first sixteen years of the operation of the Constitution, the directive principles were considered subordinate to the fundamental rights: the courts track down a number of laws enacted to implement directive principles on the ground that they violated the fundamental rights. The conflict has its root in the fact that fundamental rights are enforceable b1' the courts, while the directive principles are not so. However, the government tried to overcome the problem by amending the Constitution. When the Supreme Court laid down in the Golaknath Case that the fundamental rights cannot be abridged to implement the directive principles, the

Government tried to overcome the limitation in 1971 through the 24th Amendment which gave Parliament the right to amend fundamental rights. In the same year, the 25th Amendment Act inserted Article 31c ensuring that certain laws meant to implement Directives in clauses 39 (b) and 39 (c) will prevail even if these laws violate the rights granted in Article 14 and 19. An attempt to enhance the scope of Article 31c was made by the 42nd Amendment Act which gave primacy to any or all the directive principles and deprived the courts of the right to look into such cases. This attempt was foiled by the Supreme Court majority judgement in *Minerva Mills Case* which asserted that such total exclusion of judicial review would offend the basic structure of the Constitution. The widening of Article 31c is restored to its pre-1976 position in that a law would be protected by this Article only if it has been made to implement any directive in Article 39 (b)-(c) and not any of the other directive principles in Part IV. In all other matters no fundamental rights can be violated by a law purporting to implement a directive principle.

On the whole, however, the conflict between these two features of the Constitution is meaningless as they are, in reality complementary to each other. The courts have increasingly based their judgment on a harmonious reading of Part III and IV of the Constitution.

Implementation of the Directive Principles

The Constitution has been amended, successively (e.g., first, fourth, seventeenth, twenty-fifth, twenty-fourth, 42nd and 44th Amendments), to modify those fundamental rights by reason of whose existence the state was experiencing difficulty in effecting agrarian, economic and social reforms which are envisaged by the directive principles. The unspectacular implementation of the directive principles is mainly on account of the resource crunch and lack of political will or foresight. Poverty eradication, education, betterment of the backward classes' condition are a few areas where the directives have practically failed to show results.⁵

The State has made and is making many efforts to implement the **Directive Principles**. The Programme of Universalisation of Elementary Education and the five-year plans has been accorded the highest priority in order to provide free education to all children up to the age of 14 years. The 86th constitutional amendment of 2002 inserted a new article, Article 21-A, into the

⁵ Dr.J.N.Pandey The constitutional law of india, Pages at 429

Constitution, that seeks to provide free and compulsory education to all children aged 6 to 14 years. Welfare schemes for the weaker sections are being implemented both by the Central and State governments. These include programmes such as boys' and girls' hostels for scheduled castes' or scheduled tribes' students. The year 1990-1991 was declared as the "Year of Social Justice" in the memory of B.R. Ambedkar. The government provides free textbooks to students belonging to scheduled castes or scheduled tribes pursuing medicine and engineering courses. During 2010-2011, a sum of Rs. 4.77 crore was released for this purpose. In order that scheduled castes and scheduled tribes are protected from atrocities, the Government enacted the The Prevention of Atrocities Act, which provided severe punishments for such atrocities.

Several Land Reform Acts were enacted to provide ownership rights to poor farmers. Up to September 2013, more than 20,000,000 acres (80,000 km²) of land had been distributed to scheduled castes, scheduled tribes and the landless poor. The thrust of banking policy in India has been to improve banking facilities in the rural areas. The Minimum Wages Act of 1948 empowers government to fix minimum wages for employees engaged in various employments. The Consumer Protection Act of 1986 provides for the better protection of consumers. The act is intended to provide simple, speedy and inexpensive redressal to the consumers' grievances, award relief and compensation wherever appropriate to the consumer. The Equal Remuneration Act of 1976, provides for equal pay for equal work for both men and women. The Sampoorna Grameen Rozgar Yojana was launched in 2001 to attain the objective of gainful employment for the rural poor. The programme was implemented through the Panchayati Raj institutions.

Panchayati Raj now covers almost all states and Union territories. One-third of the total number of seats have been reserved for women in Panchayats at every level; in the case of Bihar, half the seats have been reserved for women. Legal aid at the expense of the State has been made compulsory in all cases pertaining to criminal law, if the accused is too poor to engage a lawyer. Judiciary has been separated from the executive in all the states and Union territories except Jammu and Kashmir and Nagaland.

India's Foreign Policy has also to some degree been influenced by the DPSPs. India has in the past condemned all acts of aggression and has also supported the United Nations' peace-keeping activities. By 2012, the Indian Army had participated in 37 UN peace-keeping operations. India

played a key role in the passing of a UN resolution in 2013, which envisaged better cooperation between the Security Council and the troop-contributing countries. India has also been in favour of nuclear disarmament.

Though implementation has been far from satisfactory, the state is showing genuine will to implement the directive principles. In electoral politics, no government may, with impunity, ignore welfare-oriented policies with regard to public health, education, economic equality, position of women, children and backward classes. In totality the directive principles operate well in the planning process, but still have not been fully translated into action. It cannot be denied that various governments have put in some efforts in this direction. The directive in Article 39 (b) has influenced legislation to fix land ceilings, remove intermediaries such as Zamindar, abolish hereditary proprietors, etc, and made the tiller of the soil real owners of the land. The enactment of the Hindu Marriage Act (1955) and the Hindu Succession Act (1956) have been important steps to implement the directives of Uniform Civil Code.

CHAPTER IV

ARTICLE 36-51 ARE DIRECTIVE PRINCIPLES OF STATE POLICY UNDER INDIAN CONSTITUTION.

In this part unless the context otherwise requires the state has the same meaning as in part III,

Article 37 states as the 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 law.

Classifications of the Directives—The Directives may be classified into following groups

The Indian constitution containing articles **38, 39,(a) (d)and (e) 42, 44 and 45 deals with welfare and development of People in the Country.**

A. Social and Economic Charter

1. Social order based on justice

Article 38(1) provides that the state shall strive to promote the welfare of the people by securing as effectively as it may, a social order in which justice—social, economic, political—shall inform all the institutions of national life. this directives only reaffirms what has been said in the Preamble according to which the function of the republic is to secure to all its citizens social, economic, and political justice. the constitution (44th amendment act 1978) inserted a new directive principle in article 38 of the constitution which provides that the state shall in particular strive to minimize inequalities in income

and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also among the groups of people residing in different areas or engaged in different vocations.

Article 39 states as, Certain principles of policy to be followed by the state.

The state shall, in particular direct its policy towards securing

(a) Equal right of men and women to adequate means of livelihood.

According to article 39 (a) the state should direct its policy towards securing that the citizens both men and women equally have the right to an adequate means of livelihood.

This article provides equal right for all citizens irrespective of sex, to adequate means of livelihood.

Olga tellis V/S Bombay Municipal Corporation(Pavement dwellers case)⁶

In this case it was held that an equally important factor of right to life is right to livelihood because no person can live without the means of livelihood and the easiest way to depriving a person of his life right to life would be to deprive him of his means to livelihood. so the citizen both men and women equally have right to livelihood.

(b) Distribution of ownership and control of the material resources of the community to the common good.

(c) To ensure that the economic system should not result in concentration of wealth and means of production to the common detriment.

⁶ AIR 1986 SC 180

(d) That there is equal pay for equal work for both men and women

As per article 39(d) of the Indian constitution, states that there should be equal work for both men and women. Thus, the state is under constitutional obligation to direct its policy towards securing that there is equal pay for equal work for both men and women.

The apex court in...

Randhir singh V/S union⁷

In this case supreme court has held that the principles of equal pay for equal work for both men and women is not a fundamental right but it is fundamental goal and therefore capable of enforceable of under article 32 of the Indian constitution.

Article 39(d) of the constitution declares that state shall direct its policy towards securing that there is equal pay for equal work for both men and women. The court further said that continuing articles 14 and 16 in the light of preamble and article 39(d), the principle of equal pay for equal work is deducible from those articles and any be properly applied to cases of unequal scales of pay based on no classification or irrational classification though, those drawing the different scales of pay do identical work under the same employer. In the present case the supreme court has held that the equal pay for equal work though not a fundamental right, is certainly a constitutional goal and therefore capable of enforcement through constitutional remedies under article 32 of the constitution.

⁷ AIR 1982 SC 879

Daily rated casual Labour V/S union of India⁸

In this case it was held that the doctrine of equal pay for equal work is equally applicable to both men and women, even the daily wagers are also entitled to the same wages as other permanent employees in the department employed to do the identical work.

Similarly in,

State of Haryana V/S Rajpal Sharma⁹

The supreme court has held that the teachers employed under or in privately managed aided schools in the state of Haryana are entitled to the same salary and dearness allowances as is paid to teachers employed in the government schools.

If the kind of work is not identical then it does not matter if men are paid more. But, in case work is of same type both men and women should be paid equally without any discrimination.

In state of A.P V/S V.G Sreenivasa Rao.¹⁰

In this case it was held that giving higher pay to a junior in the same cadre is not illegal and violative of article 39(d) if there is rational basis.

- (e) To protect health and strength of worker and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength.

⁸ .(1988) 1 SCC 122

⁹ .AIR 1997 SC 449

¹⁰ (1989) 2 SCC 290

(f) That children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

View to emphasize the constructive role of the state with regard to children, In
M.C.Mehta V/S State of Tamil Nadu¹¹

it has been held that in view of article 39 the employment of children within the match factories directly connected with the manufacturing process of matches and fireworks cannot be allowed as it is hazardous.

Principles of equal pay for equal work is a constitutional goal.

Men and women workers to be protected equally.

According to article 39(e) of the constitution, the health and strength of workers ie, men and women and that of the children of underage to be protected equally. They should not be forced to work under inhuman and hazardous condition. In view of this article the state shall direct its policy towards encouraging health and strength of workers i.e, of both men and women and the under aged children are not forced by economic necessity to enter a vocation unsuited to their age and strength.

In M.C. Mehta V/S State of Tamil Nadu¹²

It has been held that not in view of article 39 the employment of children within the match factories directly connected with the manufacturing process of matches and fire works can not be

¹¹ 1991 1 SCC 283

¹² 1991 1 SCC 283

allowed as it is hazardous. Children can, however, be employed in the process of packaging etc. away from the place of manufacturing.

Equal justice and free legal aid.

Article 39-A of the constitution provides equal justice and free legal aid. The state shall ensure that the operation of legal system promotes justice, on a basis of equal opportunity and shall, in particular provide free legal aid by appropriate legislation or schemes or in any other way to ensure the existence of opportunities for securing justice.

Hussainara Khatoon V/S State of Bihar¹³

‘Legal aid’ and ‘speedy trial’ have now been held to be fundamental rights under article 21 of the constitution available to all prisoners and enforceable by the courts. the state is under a duty to provide lawyer to a poor person and he must pay to the lawyer his fee as fixed by the court.

Air India statutory corporation V/S united labour union.¹⁴

In this case it was held that, the social justice concept consists of diverse principles for orderly growth and development of personality of every citizen. The aim of social justice is to attain a substantial degree of social, economic, and political equality which is legitimate expectations and constitutional goal.

On several occasions it has been held by the apex court that legal aid and speedy trial have now been treated as fundamental rights under article 21 of the constitution available to all prisoners

¹³ AIR 1979 SC 1360

¹⁴ AIR 1997 SC 645

and enforceable by the courts. The state is under a duty to provide lawyer to poor person and it must pay to the lawyer his fee as fixed by the courts.

In A. M. Hoskot V/S State of Maharashtra¹⁵

In this case it was held that right to free legal aid is part and parcel of article 21 of the Indian constitution. State shall be under a duty to provide a lawyer to poor person and he must pay to lawyer his fees as fixed by the court.

Centre of legal Research V/S State of Kerala¹⁶

It has been held that in order to achieve the objectives in article 39-A, the state must encourage and support the participation of voluntary organization or social action groups in operating the legal aid programme. the legal aid programme which is meant to bring social justice to the people cannot remain confined to the traditional or litigation oriented programme but it must take into account socio-economic conditions prevailing in the country and adopt a more dynamic approach.

B. SOCIAL SECURITY CHARTER

Article 41. Right to work, education and Public assistance in certain cases

Article 41 directs the state to ensure the people within the limit of its economic capacity and Development a) Employment b) Education c) Public Assistance in cases of unemployment, old age, sickness and disablement and in other cases of undeserved want.

Article 42. Just and humane condition of work and maternity relief.

¹⁵ .AIR 1978 SC 1548

¹⁶ AIR 1986 SC 1322

Article 42 directs the state to make provisions for securing just and humane and for maternity relief.

Article 43. living wage for workers

Article 43 requires the state to try secure by suitable legislation or economic organization or in any other way to all workers, agricultural, industrial or otherwise 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 co-operation basis in rural areas.

Article 43 refers to a living wage and not minimum wage. the concept of living wage includes in addition to the bare necessities of life, such as food, shelter, and clothing provision for education of children and insurance etc.

Universalisation of Education

Universalisation of Education, Child Labour and Status of Women Illiteracy is a big hindrance in the achievement of the goals of socio-economic justice and welfare state.

The percentage of literate people at the time of independence was only 14%. Our government realized the importance of education and laid stress on the spread of literacy among the masses. Efforts have been made by the governments to raise this level. But a large section of our population is still illiterate. The foremost effort which is required in this field-is the spread of elementary education and its universalisation. Due to increased number of drop outs at the primary stage, the number of illiterates between 15 to 35 years of age has constantly increased.

According to National Policy on Education, 1986, the government has launched National Literacy Mission, and 'Operation Blackboard' for the spread of mass literacy at primary stage.

For those who were deprived of the benefits of education in their childhood, the government and many voluntary agencies are making special efforts to educate them by opening night schools and adult literacy centers. Many distance education programmes through correspondence courses, distance education and open learning have been started in different states. The National Institute of Open Schooling and several Open Universities have been set up to attain the goal of universalisation of education. The Directive Principles providing free and compulsory education for children upto the age of 14 years has been included through the 86th Amendment Act, 2002 in the list of Fundamental Rights under Article 21A.

Though much has been achieved but still there is a long way to go to accomplish this objective of a welfare state.

C. COMMUNITY WELFARE CHARTER.

Article 44. Uniform civil code for the citizens.

Article 44 of the Indian constitution states as the constitution requires that state shall endeavour to secure for the citizen a uniform civil code throughout the territory of India. But women still experience inequalities and injustice. The founding fathers of the Indian constitution were aware of the gender injustice and sexual inequalities of women and they incorporated article 44 of the constitution with the aim that it may be exercised in future at appropriate time. It is really unfortunate that even after 60 years of independence the state did not find it necessary to make any serious endeavours to fulfill this constitutional obligation.

In the landmark judgment in

Sarla Mudgal V/S Union of India¹⁷

The apex court held has passed direction to the central government to take a fresh look at article 44 of the constitution which enjoins the state to secure a uniform civil code which, according to the court is imperative for both protection of the oppressed and promotion of national unity and integrity. The above direction was given by the court, while dealing with the case where the question for consideration was whether a Hindu husband married under Hindu law, conversion to Islam without dissolving the first marriage after he can solemnize a second marriage. It has been held by the apex court that such a marriage will be illegal and the husband can be prosecuted for bigamy under section 494 of Indian Penal Code of 1860.

In the present case the court further held that a Hindu marriage continues to exist even after one of the spouse converted to Islam. There is no automatic dissolution of Hindu marriage. It can only be dissolved by a decree of divorce on any of the ground mentioned in section 13 of the Hindu marriage act. Accordingly the second marriage of Hindu after his conversion to Islam was void in terms of section 494 of IPC and therefore husband was liable to be prosecuted for bigamy.

As to the question regarding uniform civil code the division bench (Justice Kulpid Singh and R. M. Sahani) in their concurrent but separate judgments in the aforesaid case observed that since 1950 a number of government have come and gone but they have failed to make any serious efforts towards implementing the constitutional commitment made under article 44 of the constitution. Resultantly, the problem today is that many Hindus have changed their religion and have converted to Islam only for the purpose of escaping the consequences of

¹⁷ .1995 3 SCC 635

bigamy. This is so because Muslim law permits more than one wife to the extent to four. Justice Kuldip Singh said that article 44 of the constitution is based on the concept that there is no necessary connection between religion and personal law in a civilized society. Marriage succession and like matters are of a secular nature and therefore they can be regulated by law. No religion permits deliberate distortions. Much apprehension prevails about bigamy in Islam itself.

Islamic countries such as Tunisia, Morocco, Iran, Pakistan, Syria, and several other Islamic countries have codified their personal law to prevent its abuse. Even in America it has been judicially acclaimed that the practice of polygamy is injurious to public morals, even though some religion may make it obligatory or desirable for its followers.

All marriages must be registered: First step towards Uniform Civil Code¹⁸

In a landmark judgment of supreme court has held that all marriages irrespective of their religions, be compulsorily registered. moved by the plight of women fighting for their rights under marriages like maintenance and custody of their children, a two judge bench of supreme court comprising of justice Arijit Pasayat and S.H. Kapadia directed the centre and state governments to amend the law and frame rules and notify them within three months.the court directed the government to provide for “consequences of non-registration of marriages”in the rules which should be formalized after inviting public response and considering them.the court said that rules so framed would continue to operate till the respective governments framed proper legislations for the compulsory registration of marriages. the court felt that this ruling was necessitated by the need of time as certain unscrupulous husbands deny marriages leaving their

¹⁸ the times of india February 15, 2006

spouses in lurch, be it for seeking maintenance, custody of children or inheritance of property. the ruling of the court will itself facilitate the object of having a common civil code as most the problems relating to it are due to the non-registration of the marriages. the benefits of this ruling are as follows—it will

- a) prevent child marriages
- b) check bigamy and polygamy
- c) help women to exercise their rights under marriage-maintenance-custody of children
- d) enable widows to claim inheritance
- e) deter husbands from deserting their wives.

Article 45 . Provisions for free and compulsory education for children.

Article 45 required the state to make provisions within 10 years for free and compulsory education for all children until they complete the age of 14 years.

In Unni Krishnan V/S State of A.P.¹⁹

The supreme court has held that the right to education up to the age of 14 years is the fundamental right within the meaning of article 21 of the constitution, but thereafter the obligation of the state to provide education flows directly from right to life.

Article 46. Promotion of Educational and Economic Interest of Weaker Sections

Article 46 enjoins the state to promote with special care the education and economic interest of the weaker sections of the people, and in particular schedule caste and schedule tribes, and to protect them from social injustice and all form of exploitation.

¹⁹ 1993 1 SCC 645

Article 47. Duty to raise standard of living and improvement of health.

article 47 imposes duty upon the state to raise the level of nutrition and the standard of living of its people and the improvement of public health. In particular the state should bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and drugs which are injurious to health.

Status of Women

Indian society basically is a male dominated society in which father has been head of the family and mother's position has been subordinated to him. The position of a woman in such a system is naturally weak. Women have been suffering a great deal on account of cruel social customs and religious practices like, pardah and dowry etc.

Women as an integral part, account for 495.74 million and represent 48.3% of the country's total population as per 2011 census. Necessity of raising the status and education of women has already been stressed in our Constitution through Fundamental Rights and various Directive Principles of State Policy. They have been provided with the right to an adequate means of livelihood and equal pay with that of men for their work. Women workers have also been provided for health-care and maternity-relief.

Even in the Fundamental Duties stress has been laid on the duty of every citizen of India to renounce practices derogatory to the dignity of women. Many laws and judicial decisions have restored the dignity of women. To protect their rights, measures have been taken to give them share in the family property. For their emancipation from cruel practices like bride burning for dowry, wife beating, sati etc. laws have been enacted. Prohibition of female infanticide, foetouscide, discrimination against girl child and child-marriage are some of the other measures that will help in improving the status of women.

To empower women, reservation of one third of seats through the 73rd and 74th Amendment Act, 1991, 1992 for them has been made in the Panchayats and Municipalities. There is a similar proposal for reservation of seats for them in the Parliament and in the state Legislatures.

Protection of women from prostitution and rehabilitation of their children.

In a significant judgment in

Gaurav Jain V/S Union of India²⁰

The petitioner, a public spirited advocate “Gavrav Jain” filed a public interest petition seeking appropriate directions to the government for the improvement of the plight of prostitutes, fallen women and their children. He was inspired by reading article entitled “A red light trap” “Society gives no chance to prostitutes off springs,”, published in India today dated July 1988. The supreme court has issued a number of directions to the government and all social organizations to take upon appropriate measures for prevention of women in various forms of prostitution and to rescue them from falling again into the trap of red light areas and to rehabilitate their children through various welfare measures so as to provide them with dignity of person means of livelihood and socio economic improvement. The court has issued the following directions.

- 1) the court held that it is the duty of government and all voluntary non-governmental organization to take necessary measures for protecting them from prostitution and to rehabilitate them so that they may lead a life with dignity of person.

²⁰ AIR 1997 SC 3021

- 2) The court directed that they should be provided opportunity for education, financial support, developed marketing facilities for goods produced by them. If their marriages may be arranged so that the problem of child prostitution can be eradicated. Marriage would give them real status in society. They should be given housing facilities, legal aid, free counseling assistance and all similar aids and services so that they do not fall into the trap of red light area again.
- 3) The court held that economic empowerment is one of the major factors that prevent the practice of dedication of the young girls to the prostitution as devadasis jogins or venkatasins. the court gave example of state of Andhra Pradesh where the state government is providing housing facilities free treatment in hospitals and pensions to devadasis women of 60 years or above and adult literacy programme. Such measures are being taken by non-governmental organizations in the state of Maharashtra, Karnataka, and Andhra Pradesh.
- 4) The court directed that the rescue and rehabilitation of the child prostitutes and children should be kept under nodal department, namely, department of women and child development under the ministry of welfare and human resources, government of India, which will devise suitable schemes for proper and effective implementation.
- 5) The court directed to constitute a committee within a month from the judgment which would make an in depth study into these problem and evolve suitable schemes as are appropriate and consistent with the directions given above.

The court held that under article 32 of the constitution the court has power to adopt such procedure as is expedient in a given fact and situation and deal with the matter appropriate therefore, the rigours of the pleading or the reliefs sought for on adversial litigation has been

soften, new methods tools and procedures have been evolved to meet out justice and to enforce fundamental right.

In Vishaka V/S State of Rajasthan²¹

The supreme court has laid down exhaustive guidelines to prevent sexual harassment of working women in places of their work. the court held that it is the duty of the employer or other responsible person in work-places or other institutions, whether private or public, to prevent sexual harassment of working women.

Article 45- Provision for early childhood care and education to children below 14 years ie, free and compulsory education for all children. Article 45 required the state to make provision within 10 years for free and compulsory education for all children until they complete the age of 14 years. the object was to abolish illiteracy from the country.

In the landmark judgment

In Mohini Jain V/S State of Karnataka (Capitation fee case)²²

In this case it was held that right to education is a fundamental right and denial of admission by charging capitation fees means denial of his right to education. It was also held that right to education flows directly from right to life.

²¹ AIR 1997 SC 3011

²² (1992) 3 SCC 666

In Unni Krishnan V/S State of A.P.²³

the supreme court has held that the Right to Education upto the age of 14 years is a fundamental right within the meaning of article 21 of the constitution, but thereafter the obligation of the state to provide education is subject to the limits of its economic capacity and development.

The constitution 86th Amendment Act 2002, the constitution (86th amendment act 2002) has substituted a new article for article 45 which provides that the “the state shall endeavour to provide early childhood care and education for all children until they complete the age of six years. this has been necessitated as a result of making the right to education of children upto 14 years of age a fundamental rights. the marginal heading of new article will be entitled as “provision for early childhood care and education to children below the age of six years.

PIL regarding eradication of prostitution-

Gavray Jain and supreme court bar association V/S union of India²⁴

Wherein, the public interest litigation filed on the existing affairs of prostitution. The judges been differing on the opinion of issuing direction for eradication of prostitution. Since they differed in their opinion, judges were not justified in issuing directions in exercise of powers under article 142 of the constitution. It was held that the proper course was to refer the matter before the chief justice of India for placing the question before larger bench of the court

Whether the children of Muslim divorced women are entitled to claim maintenance under section 125 of the code of criminal procedure 1973, inspite of the legal position that they are

²³ (1993) 1SCC 645

²⁴ (1998 (3) supreme 350)

governed by the Muslim personal law. i.e, Muslim women (Protection of right on divorce) Act, 1986.

In Noorsabakhaton V/S Mohd. Quasim²⁵

The apex court has held that a divorced Muslim women is entitled to claim maintenance for her children till they become major. The court further held that both under the Muslim personal law and under section 125 of the code of criminal procedure 1973, the obligation of the father was absolute when the children were living with the divorced wife. The court makes it clear that the children of Muslim parents are entitled to claim maintenance under section 125 of the code of criminal procedure 1973 for the period till they obtain majority or are able to maintain themselves, whichever is earlier and in case of female, till they get married.

The freedom of religion under the Indian constitution does not permit religion to violate adversely on the secular rights of the citizens and the power of the state to regulate the socio economic relations.

It is to restated that in India the supreme court has taken note of injustice faced by the women particularly in matters of personal laws.

In Mohd. Ahmed Khan V/S Shah Bano Begum²⁶

The supreme court observed in the matter relating to the Muslim husbands liability to maintain his wife beyond “Iddat” who is not able to maintain herself. The court held that section 125 of

²⁵ AIR 1997 SC 3280

²⁶(AIR 1985 SC 945

the code of criminal procedure 1973, which imposes such legal obligations on all the husbands is secular in character and is applicable to all religions.

Article 44 of the constitution of India, in its part IV directs the state to make a uniform civil code throughout the territory of India. Since, “this constitutional provisions falls under the chapter namely, the directive principles of state policy.” It cannot be enforced by the court of law.

It is submitted that no gender justice or gender equality can be achieved in its true sence, without making a uniform civil code containing the provisions derived from all the religions, is enacted immediately.

Conversion- Right as to Plurality of marriage is not conferred on husband.

It is settled legal that no right is conferred on the husband regarding plurality of marriages without any condition.

In Lily Thomas etc V/S Union of India²⁷

Wherein a Hindu converted into Muslim and got second marriage will be bigamous. In this case the supreme court observed that mere conversion does not bring to amend the maritd ties unless a decree for divorce is obtained from the court. Till a decree is passed marriage subsists. Any other marriage during the subsistence of first marriage would constitute an offence under section 494 of the Indian penal code, 1860 read with section 17 of the Hindu Marriage Act, 1955 and the person, in spite of his conversion to some other religion would be liable to be prosecuted for the offence of bigamy. It also follows that if the first marriage was solemnized under the Hindu

²⁷ AIR 2000 SC 1650

Marriage act, the husband or the wife by mere conversion to another religion cannot bring to amend the marital ties already established on account of a valid marriage having been performed between them. So long as that marriage subsists, another marriage cannot be performed the person would be liable to be prosecuted for the offence under section 494 of the Indian penal code.

CHAPTER V

STATUS OF THE DIRECTIVE PRINCIPLES IN THE INDIAN LEGAL SYSTEM

Directive Principles of State Policy, or Directive Principles as generally known, or DPSPs form one of the basic and an important part of the Indian Constitution. These principles have been embodied under Part IV of the Constitution. The socio-economic condition of India at the time of the independence was in shambles. The agricultural land belonged to the zamindars, banks and industries were controlled by the capitalists, labours were exploited. And, there was no proper legislation or provision which can make sure that these activities can be stopped. Most of the population was illiterate, and it was the aim of framers of the Indian Constitution to make India a literate and a prosperous nation. And for this purpose, there were several rights which the framers of the Indian Constitution were keen to include in the list of Fundamental Rights, but they were aware of the fact that the resources available in the Country are very limited and it would not be possible for them to include each and every such right in the list of the Indian Constitution. So, these rights were included in the Indian Constitution as “Directive Principles of State Policy” which are not justifiable, but forms a fundamental part in the governance of the country and it is the duty of the State to enforce such rights. These are the basic guidelines which have been mentioned in the Indian Constitution to have a ordered society characterized by social, economic and political justice accompanied by Liberty, Equality and Fraternity. These principles have been borrowed from the Irish Constitution

These principles are specific policies which are to be fulfilled by the State in distant future, and provide a much-desired philosophy to the Government and a set of instructions which are to be complied with. After analyzing these principles, it can be seen that these principles can be classified into various categories viz. Social, Gandhian and Liberal ideas. But, there have been various issues regarding the applicability of these provisions which have been laid down under the Indian Constitution. These principles cannot be enforced in any court of law in the country, nor is it the duty of the state to comply with these principles mandatorily. Directive Principles are seen as a positive set of principles unlike Fundamental Rights, as it allows State to implement

these principles on its own convenience. It has been argued by various political leaders, and even by several members of the Constitution that these principles are superfluous and mere instruction with no agency to enforce it. The same view has been taken by various scholars at several instances, but it has been laid down in various decisions though not enforceable, should not be ignored by the legislature which would be discussed later in this article. But this view has been contradicted by Dr. B.R. Ambedkar stating that these principles are mere guidelines which are issued to the legislature and it would be quite interesting to note that it was never denied by Ambedkar that these principles have no legal force. In other words, it can be concluded that Directives principles are the instruction which have been incorporated under the Indian Constitution so that it can provide directions or guidance to the legislature and the executive as regards the manner in which they should exercise their powers.

State's Duty and some cases laws related to Directive Principles and its relation to Fundamental Rights –

Every legal aspect in India is accompanied by a number of case laws which act as precedents which are to be followed by several courts while dealing with the matters similar to such case laws. Also, these case laws provide directions to the state to consider what has been decided by a particular court as the case may be.

These case laws have reiterated at various occasions that state should not overlook the Directive Principles, and it should implement these principles as and when it becomes important to do so. The importance of Directive Principles was enhanced by the 42nd amendment to the Indian Constitution which provided that Directive Principles cannot be declared unconstitutional only on the ground that they have violated any of the fundamental rights. The amendment simultaneously stated that laws prohibiting "antinational activities" or the formation of "antinational associations" could not be invalidated because they infringed on any of the Fundamental Rights. From this amendment, it can be seen that the duty of the state and the importance of Directive principles have been enhanced not only by the Judicial decisions, but also by the legislative actions from time to time. In other words, a state has been achieved wherein the Directive Principles are looked upon as equivalent to Human Rights and the directives have been held to supplement fundamental rights in achieving a welfare state. The

main problem which arises while dealing with Directive Principles is the inability of the Indian Courts to implement these principles. There have been various instances when State escapes from implementing these principles on the ground that it is not bound to implement these principles. The power which has been provided to Indian High Courts and Supreme Court is very vast, and it has directed state on various occasions to do or not to do something. The judgment which curtailed the power of the legislature to amend the Indian Constitution to the extent that it should not amend the basic structure of the Indian Constitution and various such judgements indicates that there has always been an active role played by the Indian Judiciary in instructing the state with regard to certain matters.

One of the earliest case law after the Indian Independence which deals with the matter related to State's duty towards the implementation of Directive Principle is

Keshvananda Bharti v. State Of Kerala²⁸ in which it was held by the Supreme Court that while imposing the restrictions on fundamental rights, the directive principles are to be kept in mind mandatorily and opined that "In view of the principles adumbrated by this Court it is clear that the directive principles form the fundamental feature and the social conscience of the Constitution and the Constitution enjoins upon the State to implement these directive principles. The directives thus provide the policy, the guidelines and the end of socio-economic freedom and Articles 14 and 16 are the means to implement the policy to achieve the ends sought to be promoted by the directive principles". The reason behind providing importance to Directive Principles was crucial. There had been a lot of dispute over the distinction between Fundamental Rights and Directive Principles. There is a view which had been taken by various scholars that Fundamental Rights are the end which has to be achieved, and Directive Principles act as a source to that means that has to be achieved. These principles provide a medium or source for the government for implementing the Fundamental Rights.

It can be seen that while implementing the fundamental rights of a citizen, the state should not underestimate or ignore the importance of Directive Principles and there should be a balance between these two sets of principles. The relation between Fundamental Rights and Directive Principles was once again discussed in the case

²⁸ 1973 4 SCC 225

Pathumma and Others v. State of Kerala and Ors.²⁹, where it was held by the Supreme Court that Fundamental Rights and Directive Principles constitute the "conscience" of the Constitution. The purpose of the latter is to fix certain social and economic goals for immediate attainment by bringing about a non-violent social revolution. The Constitution aims at bringing about a synthesis between fundamental rights and directive principles by giving to the former a place of pride and to the latter a place of permanence. It is clear from this decision that even after remaining unenforceable, Directive Principles find a prominent position under the Indian Constitution.

Similar set of principles as that of Directive Principles, which have been included under Chapter IV-A of the Indian Constitution i.e. Fundamental Duties. Though not enforceable in any court of law, this set of duties finds a very important place under the Indian Constitution.

In **AIIMS Students' Union v. AIIMS and Ors.**³⁰, it was opined by the Supreme Court that in the era of globalisation, where the nation as a whole has to compete with other nations of the world so as to survive, excellence cannot be given an unreasonable go-by and certainly not compromised in its entirety. Fundamental duties, though not enforceable by a writ of the court, yet provide a valuable guide and aid to interpretation of constitutional and legal issues. In case of doubt or choice, people's wish as manifested through Article 51-A, can serve as a guide not only for resolving the issue but also for constructing or moulding the relief to be given by the courts. Constitutional enactment of fundamental duties, if it has to have any meaning, must be used by courts as a tool to tab, even a taboo, on State action drifting away from constitutional values.

These are the few cases which deal with the importance of Directive Principles as considered by the Supreme Court from time to time. The reason behind providing such importance to the Directive Principles is quite simple, firstly there must have been a motive for including these principles under the Indian Constitution. The framers of the Indian Constitution wanted to create a society where each and every citizen of the country would be able to live a happy and prosperous life. But for achieving this goal, they wanted to include several human rights in the form of fundamental rights in the constitution. But they were also aware of the fact that the

²⁹ 1978 2 SCC 1

³⁰ 2002 1 SCC 428

amount of resources which were available at the time of independence was limited. And, that was the fundamental reason why these principles were not enforceable in any court of law. In case these principles had been enforceable, then there would have been an extra burden on the government to implement these principles irrespective of the available resources with them. But it is the law of nature that as and when time changes, the economic, political, social scenario change. It would be quite illogical to interpret the provision in the same way as they were interpreted at the time of the independence. The economic condition of India has changed over a period of time, and the resources and means which are now available with them are much greater than ever before. Considering these facts, it now becomes the duty of the state to implement these principles as and when it becomes necessary to implement them. Instead, there have been various provisions which were once parts of these directive principles have been enacted in the form of some legislation, and some have been included in the some other parts of the Indian Legal System. But, still there is a need to understand the basic difference between the provisions and its applicability which are present under the head of Fundamental Rights and Directive Principles of State Policies. The differences can be understood as follows-

1. On one hand where Fundamental Rights are the basic civil rights which are guaranteed to every citizen of India equally and are enforceable in the court of law, Directive Principles are considered as basic human rights which are not enforceable in any court of law.
2. Directive Principles in order to get implemented need a specific legislation passed by the legislature, but fundamental rights do not require any legislation for their enforcement in the court of law.
3. Directive Principles are the guidelines which have been included in the constitution so as to instruct the state to implement these guidelines as and when it is capable to do so taking into account the available resources.

These are some basic differences which are to be kept in mind while dealing with Fundamental Rights and Directive Principles. But as the time has passed, the importance of directive principles has been increasing through various judicial decisions. The Supreme Court and High

Courts have started providing importance to these principles more than ever before. This can be seen from various judicial decisions.

Article 39(d) of the Indian Constitution states that *the state shall, in particular, direct its policy towards securing that there is equal pay for equal work for both men and women*. This provision has been considered by Supreme Court from time to time, and finally it was decided in

Grih Kalyan Kendra Workers' Union vs Union Of India And Others³¹ that “Equal pay for equal work is not expressly declared by the Constitution as a Fundamental Right but in view of the Directive Principles of State Policy as contained in Art. 39(d) of the Constitution “equal pay for equal work” has assumed the status of the Fundamental Right in service jurisprudence having regard to the constitutional mandate of equality in Articles 14 and 17 of the Constitution³²”.

This view was reiterated by the Supreme Court in **Randhir Singh v. Union of India**³³ that “equal pay for equal work” is not a mere demagogic slogan but it is a constitutional goal capable of attaining through Constitutional remedies. The Court went on to declare thus: “Directive Principles as even pointed out in some of the Judgments of this Court, have to be read into the Fundamental Rights as a matter of interpretation”.

Another important section of Part IV of the constitution which has received importance in section 41 which states that 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. Right to Education, as popularly known was included in the list of Fundamental Rights in the year 2002 by 86th Amendment Act, and became functional in the year 2010. The need of making Right to Education a fundamental right was opined by the Supreme Court in

³¹ AIR 1989 SC 239

³² AIR 1991 SC 1773

³³ AIR 1982 SC 879

Mohini Jain v. State Of Karnataka ³⁴ stating that the directive principles which are fundamental in the governance of the country cannot be isolated from the Fundamental Rights guaranteed under Part III. These principles have to be sent into the Fundamental Rights. Both are supplementary to each other. The State is under a constitutional mandate to each other. The State is under a constitutional mandate to create conditions in which the Fundamental Rights guaranteed to the individuals under Part III could be enjoyed by all. Without making “Right to education” under Article 41 of the Constitution a reality, the Fundamental Rights under Chapter III shall remain beyond the reach of large majority which is illiterate. The Fundamental Rights guaranteed under Part III of the Constitution of India including the right to freedom of speech and expression and other rights under Article 19 cannot be appreciated and fully enjoyed unless a citizen is education and is conscious of his individualistic dignity.

Article 44 of the constitution states that the State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India. This provision is very hard to get implement for various reasons. In a country like India where different religious groups are present, it is quite difficult to have a uniform civil code which should be followed by members of every religion in a same way. This instance can be seen in the case of

Shah Bano Begum v. Mohd. Akeel Khan ³⁵ where a Muslim woman was demanding maintenance from her husband after their divorce. Being a Muslim, husband had paid her maintenance for the period as required by the personal Muslim Law, but it was held by the Supreme Court that Shah Bano would be entitled to get maintenance under section 125 of CrPC. This decision was followed by several protests from the Muslims priests and society claiming that this decision would harm their personal law. Soon an action was taken by the then Prime Minister Rajiv Gandhi by passing the Muslim Women's (Protection of Rights in Divorce) Act in 1986, a law that essentially provided for maintenance for Muslim women outside the criminal code, thus ensuring that Muslim women were not protected under the constitutional right to equality, and that they could no longer have recourse to section 125 of the Criminal Code. Thus, protection which was provided to Muslim women by Shah Bano judgment was made invalid subsequently due to the pressure from the Muslim section. This is just an example which shows

³⁴ AIR 1992 SC 1858

³⁵ 1985 SCC (2) 556

that how difficult it is to implement a uniform civil code in India, and this question remains in ambiguity i.e. whether there would be any legislation in India which can be implemented uniformly. Other legislations such as the Indian Succession Act of 1925, which dealt with inheritance and succession, specifically exempted Muslims, the Special Marriage Act of 1872, which was essentially a secular civil marriage law, also exempted Muslims. Although, some pieces of legislation which don't exempt anyone from its purview e.g. section 112 of the Indian Evidence Act, 1872 concerning the legitimacy of the children. It was initially not applicable to Muslims, but later it became applicable to them also despite its inconsistency with Muslim Law.

The above discussion throws a light over the changing status of Directive Principles. The time is not the same where state can escape from its duty to implement these principles when resources are available. At the time of independence, India was not in a condition so that it can provide each and every citizen of the country a happy and prosperous life. Poor administrative system, poor political system, unemployment due to lack of opportunities were some of the major problems which were prevalent at the time of independence. These problems have been solved to a great extent on many parts of the country, and in a process to get solved in the other parts of the country. The Indian Judicial system is considered to be the most powerful judicial system in the world. Here, judiciary is empowered to direct the executive to implement the required legal provisions or to work in accordance with the Constitution. And as the time would pass, it seems that more and more Directive Principles would be implemented.³⁶

³⁶ <http://legaljunction.blogspot.in/2011/05/status-of-directive-principles-in.html>

CONCLUSION

The Directive Principles of State Policy, embodied in Part IV of the Constitution, are directions given to the State to guide the establishment of an economic and social democracy, as proposed by the Preamble. They set forth the humanitarian and socialist instructions that were the aim of social revolution envisaged in India by the Constituent Assembly. The State is expected to keep these principles in mind while framing laws and policies, even though they are non-justiciable in nature. The Directive Principles may be classified under the following categories: ideals that the State ought to strive towards achieving; directions for the exercise of legislative and executive power; and rights of the citizens which the State must aim towards securing

Despite being non-justiciable, the Directive Principles act as a check on the State; theorised as a yardstick in the hands of the electorate and the opposition to measure the performance of a government at the time of an election. Article 37, while stating that the Directive Principles are not enforceable in any court of law, declares them to be "fundamental to the governance of the country" and imposes an obligation on the State to apply them in matters of legislation.

The Directive Principles of state Policy sets forth the ideals and objectives to be achieved by the state for setting up in India a social welfare state, as distinguish from a mere police state, which aims at social welfare state, as distinguish from the common good and the secure to all its citizens, justice socio and economic. the inspiration to include directive principles of state policy is drawn from the constitution of Ireland. the basic aim of the welfare state is the attainment of the substantial degree of social, economic and political equalities the assumption by community acting through the state, as its responsibility to provide the means, whereby all members can reach minimum standard of economic security civilized living capacity to secure social status and culture to keep good health.

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