

Directive Principles of State Policy under the Indian Constitution

The Directive Principles of State Policy are embedded in **Part IV** of the Indian Constitution starting from **Articles 36 to Article 51**. The idea of Directive Principles of State Policy is borrowed from the Irish Constitution of 1937 which interestingly has borrowed itself from Spanish Constitution. Granville Austin combinedly defines Fundamental Rights and Directive Principles of State Policy as “Conscience of the Constitution”. B.R. Ambedkar defines them as ‘novel features’ of the Constitution as although ideas are being borrowed but the deriving force for the Constitution is novel in its own sense. The Directive Principles of State Policy, when combined with Fundamental Rights, inscribe the philosophy of the Constitution and are the Soul of the Constitution.

Several Features of Directive Principles of State Policy.

1. The Phrase ‘Directive Principles of State Policy’ denotes the ideals to be considered while forming the policies and statutes for governance. These are like guidelines or recommendations or instructions for forming the laws and legislatures. These need to be kept in mind by all the authorities under the meaning of ‘State’ defined in Fundamental Rights.
2. The Directive Principles of State Policy are similar to the concept of ‘Instrument of Instructions’ contained in the Government of India Act of 1935 which were recommendations for Governor-General and other Governors of the colonies by the British Government. The only difference is that they are for legislatures and are recommended by the Constituent Assembly.
3. These are comprehensive guidelines for Socio-Economic and political guidelines for the idealistic democratic State which was not possible at the time of Independence but seek to achieve high ideals of justice, liberty, equality and fraternity on which pillars of Indian

Democracy stands. The concept of welfare state needs to be achieved in contrast to the police state as it was under British.

4. These principles are non-justiciable in nature, means these cannot be legally enforced in a court of law against government. However, Article 37 of the Constitution itself says that these are fundamental in the governance of the country and it shall be the duty of the state to apply these principles in making laws.
5. Although these are non-justiciable in nature, they immensely help the court in determining the constitutional validity of the law. The Supreme Court many a time seeks to enforce Directive Principles till justice is done.

Classification of the Directive Principles of State Policy

The constitution doesn't differentiate between types of Directive Principles of State Policy but for better understanding of the terms, these can be classified into three broad categories namely, Socialistic, Gandhian and Liberal-intellectual.

Socialist Principles

Freeman and slave, patrician and plebeian, lord and serf, guild-master and journeyman, in a word, oppressor and oppressed, are now on equal footing in the eyes of the law but there were huge inequalities in the society, to curb these social Hierarchical problems, the Constituent assembly wants to achieve Socialist State and for this they included the following Articles of the Constitution that reflects the ideology of Socialism.

- **Article 38:** The promotion of the welfare of people by effectively maintaining social order in all institution of the nation. It will be the duty of the state to minimise the inequalities and will strive to eliminate inequalities in status, facilities and opportunity to an individual.
- **Article 39:** The state will follow certain principles in order to ensure the following:

- Men and women are treated equally and both have the right to adequate means of livelihood.
 - To serve the community the ownership and control will be distributed in the best interest of society and to subserve the common interest of common good.
 - The economic system will not be the result of the concentration of wealth and means of production would never be a detriment to the common good of the people.
 - Both men and women will be paid equal for an equal amount of work.
 - The mental and physical health of workers is of prime interest, children are not to be forced due to economic necessity and citizens are not to be forced to work unsuited to their age and health.
 - Opportunities and facilities are to be given to children for the development of children in an all-round manner, freedom and dignity of children need to be respected and need to be protected against exploitation.
- **Article 39A:** It will be the duty of the state to secure equal justice and to provide equal access to justice, a system of free legal aid for economically backward class people, so justice is denied to none
 - **Article 41:** The state within its economic capacity develops a system for the right to work, to education and provisions in cases of unemployment, old age, sickness and disability.
 - **Article 42:** It is the duty of the state to ensure just and humane conditions in the workplace and provisions for maternity relief.
 - **Article 43:** State will ensure a living wage to industrial, agriculture workers and ensure decent workplace to work and to promote cottage industries on an individual or co-operative basis in rural areas.
 - **Article 47:** The state shall work in raising the level of nutrition and standard of living of its people and to raise the level of nutrition and the standard of living of people and to improve public health.

These Articles are embedded keeping in mind to achieve the Socialist nature of Society in mind. However, only a few of them are achieved and the Government is still struggling to make them a reality.

Gandhian Principles

As the name suggests these Principles are based on the ideology of Gandhi. In order to fulfil the dreams of Gandhi and to achieve Gandhian State, these articles were included in the constitution. These are the following articles.

1. **Article 40:** The steps will be taken by the states to organize village panchayats and there will be decentralisation of power and authority, in order to form self-government.
2. **Article 43:** State will ensure a living wage to industrial, agriculture workers and ensure a decent workplace to work and to promote cottage industries on an individual or co-operative basis in rural areas.
3. **Article 43B:** To promote voluntary formation, autonomous functioning, democratic control and professional management of co-operative societies.
4. **Article 46:** to prevent Scheduled Caste and Scheduled Tribes from exploitation and injustice, the educational and economic interests of them shall be promoted.
5. **Article 47:** The state shall work in raising the level of nutrition and standard of living of its people To raise the level of nutrition and the standard of living of people and to improve public health.
6. **Article 48:** Organization of agriculture and animal husbandry on the basis of scientific lines and steps in preserving and improving the breeds, prohibiting the slaughter of cows, calves and other milch and draught cattle.

Liberal-Intellectual Principles

The liberalism ideology stands for the freedom and autonomy of an individual. These principles are included keeping in mind the ideology of Liberalism. These are:

1. **Article 44:** To secure for all citizens a uniform civil code throughout the country across all religions and every section of the society.
2. **Article 45:** To provide elementary education until the age of fourteen years which has now become a fundamental right under Article 21A.
3. **Article 48:** Organization of agriculture and animal husbandry on the basis of scientific lines and steps in preserving and improving the breeds, prohibiting the slaughter of cows, calves and other milch and draught cattle.
4. **Article 48 A:** It is the duty of the state to protect and conserve the environment and forest and wildlife of the country.
5. **Article 49:** it is the obligation of the state to protect every monument or place or object of artistic or historic interest declared under law as a monument of national importance.
6. **Article 50:** To separate the judiciary from the executive in the public services of the State.
7. **Article 51:** To promote international peace and security and maintain just and honourable relations between nations; to foster respect for international law and treaty obligations, and to encourage settlement of international disputes by arbitration.

New Directive Principles

The best feature of our constitution that it is a living being and keeps on evolving. Changes have taken place in directive principles and major changes were by the 42nd Amendment Act of 1976 which added four new principles for the first time. These were:

1. **Article 39:** Additional clause was added to secure opportunities for the healthy development of children and to respect the dignity and freedom of children.
2. **Article 39 A:** It will the duty of the state to secure equal justice and to provide equal access to justice, a system of free legal aid for economically backward class people, so justice is denied to none.
3. **Article 43 A:** Steps taken to ensure that participation of workers in the management of undertakings, establishments, or any other organization of the industry.

4. **Article 48 A:** To protect and improve the environment and to safeguard forests and wildlife.

The 44th Amendment Act of 1978 added one more Directive Principle, which requires the State to minimise inequalities in income, status, facilities and opportunities which was inserted in Article 38.

It is not that only new Directive Principles are added but these Directive principles are promoted in the category of fundamental rights, it happened by 86th Amendment Act of 2002 which made elementary education a fundamental right under Article 21A.

Again in 2011 with the help of 97th Amendment added Directive Principles related to Co-operative Societies under Article 43B.

Importance of Directive Principles of State Policy

The Constitution itself under Article 37 declares that these are fundamental in the Governance of the country. Dr B.R. Ambedkar embarked that Directive Principles have great value because they lay down the goals of Indian Polity is 'economic democracy' as distinguished from 'political democracy'.

Dr B.R. Ambedkar had pointed out that the Directives have great value because they lay down that the goal of Indian polity is 'economic democracy' as distinguished from 'political democracy'.

Further, Granville Austin opined that the Directive Principles are 'aimed at furthering the goals of the social revolution or to foster this revolution by establishing the conditions necessary for its achievement'. Sir B N Rau, the constitutional advisor to the Constituent Assembly, stated that the Directive Principles are intended as 'moral precepts for the authorities of the state. They have at least an educative value.' Some of the importance can be highlighted as:

1. They are useful in following policies of the government in the matter of foreign and domestic matter. These can be used as a raw structure for forming the policies.
2. They are the torch bearer for both Legislators and Judges, as for Legislatures they provide guidelines for forming the law and for judges they help in deciding the constitutional validity of the laws enacted.
3. They are the soul of the Constitution because they represent the ideology behind the Constituent Assembly for forming the Constitution.
4. They fill the gap between fundamental rights and social and economic rights of the citizens. They provide the way for legislatures to fill the gap.
5. These are supplementary to the fundamental rights and are the target of the Legislature to achieve.
6. They can be helpful in testing the performance of the government and can be seen as how far the government has worked in the Directive Principles of State Policy.
7. They help the government informing their electoral manifesto and to reflect upon their ideology in comparison with Directive Principles.

Criticism of Directive Principles of State Policy

The Directive Principles have been severely criticized several times. Some of the major criticisms are concluded as follows.

1. **No Legal Force:** one of the prominent criticisms of Directive Principles is that they are non-justifiable in nature. K.T. Shah compared these with “a cheque on a bank, payable only when the resources of the bank permit”. In the words of Nasiruddin, these principles are ‘no better than new year’s resolutions, which are broken on the second of January’. However, the legislators have created laws to implement these Directive Principles but no action is being taken against the Uniform Civil Code which has been long-standing demand.

2. **Illogically Arranged:** In one of the opinions, the criticism is that these are illogically arranged and are not based on any consistent philosophy or logic. In the words of N Srinivasan, ‘the directives are neither properly classified nor logically arranged. The declaration mixes up relatively unimportant issues with the most vital economic and social questions. It combines rather incongruously the modern with the old and provisions suggested by the reason and science with provision purely on sentiment and prejudice’.
3. **Conservative:** Sir Ivor Jennings criticizes them as the Directives are based on the British political philosophy of the 19th Century. He remarked ‘The ghosts of Sydney Webb and Beatrice Webb stalks through the pages of the text. Part IV of the constitution expresses Fabian Socialism without socialism’. These are based on old age philosophy of state which doesn’t represent 20th Century ideology.

Conclusion

It is indeed a fact that Directive Principles play a major role in the development of the laws and how these have taken place in the last few decades. Though the idea of directive Principle is conservative in nature, it has a huge impact in policy formation of the country. It is the test for the government in framing the laws and it fails if it goes in contrast with the Directive Principles. Further, it helps the court to decide the validity of the enacted laws. There is a scope of betterment by classifying the Articles in a more scientific manner. Articles could have been arranged according to the importance and need of the nation. These play ancillary with the fundamental rights but their roles cannot be ignored by virtue that these are non-enforceable. They have time and again helped the government and court with the litmus test to decide the constitutional validity of the law.

The Relation between the Directive Principles of State Policy and Fundamental Rights

Introduction

The constitution of India is considered as the longest written constitution of any sovereign nation in the world. At its birth, it had 395 articles in 22 parts and 8 Schedules and it currently has a Preamble, 25 Parts with 12 schedules, 5 appendices, 101 amendment and 448 articles. January 26 is celebrated as the Republic Day every year. The importance of the Constitution was given effect after 67 years and later on, it was amended 101 times also.

What are Fundamental Rights and DPSP?

Fundamental rights and DPSP as cherished in the Constitution of India together comprises the human rights of an individual. The Constitution expresses fundamental rights as an idea which appeared in India in 1928 itself. The Motilal Committee Report of 1928 clearly shows inalienable rights derived from the Bill of Rights enshrined in the American Constitution to be given to the individual. These rights were preserved in Part III of the Indian Constitution. of India.

Fundamental rights are also known as Inherent rights because they are inherent to every person by birth. These are the rights which provide an individual with some basic rights for the purpose of survival. No discrimination is made on the basis of religion, caste, race etc. and if any person feels so that his fundamental rights are being infringed then he can surely approach to court for the violation of his rights.

There are six fundamental right mentioned under the Constitution of India

- Right to equality
- Right to freedom
- Right to freedom of religion
- Right against exploitation
- Cultural and educational rights
- Rights to constitutional remedies

Right to Equality

Freedom Law is supreme in nature and everyone is equal before the law and equal treatment should be given to everyone. No discrimination should be done on the basis of race, caste, creed or gender. An equal amount of opportunity should be given to every individual in the field of employment. Abolition of untouchability and titles.

Right to Freedom

Every individual has the right to freedom to form an association, peacefully assemble, to travel or move freely reside and settle at any location and to go or opt for any profession throughout the territory of India. Right to education, life, liberty and dignity also fall under this right, protection in respect of arrest and detention and conviction of an offence.

Right against Exploitation

Prohibition of Child labour and Human trafficking and forced labour is a result of this right.

Right to Freedom of religion

This right provides us with the freedom to follow any religion without any question mark and freedom to attend any religious ceremony at a religious institution or education centre and pay tax for the promotion of religion. Nobody can force any individual who is not interested in paying any kind of tax for religious purposes.

Cultural and educational Right

It provides protection to different languages and varieties of culture present in India. It also protects the rights and culture of minorities. Establishing educational institutions and primary education to every child below the age of 14 years comes under this head.

Rights to seek Constitutional remedies

An individual has the right to move in any court of law if they feel fundamental rights are being violated. Our constitution consists of 5 writs. Here writs mean the “*Order of court*”. If only fundamental rights are violated then the individual can directly approach to Supreme Court of India. The writs are explained below:

1. Habeas corpus
2. Mandamus
3. Prohibition
4. Certiorari
5. Quo warranto

Habeas Corpus

It simply means to ‘*Produce the body*’. This writ is issued to produce a person who has been detained and to present him before the court to release if such detention is illegal.

Mandamus

This means ‘*We Command*’. It is an order given by the Superior Court to the Inferior Court to perform a public duty.

Prohibition

It is basically known as *Stay order* which prohibits from doing certain actions by the authority where it has no jurisdiction to deal with the case.

Certiorari

This means '*to be Certified*'. This order can be issued by the Supreme Court for quashing the order which is already passed by any inferior court, tribunal or authority.

Quo – warranto

It signifies *by what authority?* It is a writ issued to restrain a person from holding a public office to which he is not entitled.

The concept of DPSP emerged from **Article 45 of the Irish Constitution**. DPSP imposes a duty upon the state not only to protect and acknowledge the Fundamental right of the individual but also to achieve Social-economic goals. DPSP was summarizing in Part IV of the Indian Constitution of India.

Certain guidelines are present for the state authority to work upon them for the protection of society. It mostly focuses on welfare and improvement of society altogether. As fundamental rights are enforceable in a court of law, DPSP cannot be enforced for making any rules, policy or guidelines.

Some of the examples of DPSP are:

1. Right to education
2. Maternity benefit
3. Uniform Civil code
4. Providing proper nutrition food
5. Providing adequate means of livelihood

However, it is already a controversial topic in the Constitution about the relationship of Fundamental rights and DPSP, as there would be conflict in the interest of individual at a micro level and benefit of the community at a macro level.

The central part of this controversy is the question person should have primacy in the case of conflict between Chapter III and IV of the Constitution of India.

Relationship between Fundamental Rights and DPSP

Constitution of India is a Grundnorm all the law which are made must conform to the constitution of India.

The difference between DPSP and FR are:

Fundamental Rights	DPSP
Limited scope.	Scope of DPSP is limitless.
Protect the rights of the individual and work at a micro level.	Protect the rights of a citizen and work at a macro level.
If anybody feels that his rights are being violated can approach the court of law.	DPSP are not enforceable by law.

For better understanding about the conflict between DPSP and Fundamental Rights lets study some of the important case laws and then we can decide what happens when a conflict arises between both of them.

The first case we are going to study is about **Golak Nath vs the State of Punjab, A.I.R. 1976 SCR (2) 762**. Firstly, we will see what the Supreme Court has said and then we will discuss what the parliamentary action was taken. In this case, S.C. said Fundamental rights cannot be diluted, abridged, diminished, finish or taken away and then in response to it by bringing Amendment Act of the Constitution and inserted **Article 31 (C)** in part III now what does Article 31 (C) say:

By making a law under **Article 39 (B)** which talk about material resources of community and **Article 39 (C)** discuss the operation for an economic system. They say that if any law is framed with effect to DPSP and if it violates **Article 14, 19** and **21** then the law should not declare constitution as void merely on this ground.

In **Champak Dorairajan vs. the State of Madras**, the Supreme Court held that DPSP cannot override the provisions of Part III of the Constitution of India i.e. the Fundamental Rights. Now DPSP has to run subsidiary to the Fundamental rights and have to confirm them and this was very important judgement the parliament responded by amending various fundamental rights which were coming in conflict with DPSP.

So, now we will move to our next Case **Kerala Education Bill** where the ***Doctrine of Harmonious Construction was introduced by the Supreme Court.***

Now, what is the 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. So you should construe each and every provision of the constitution in such a way so they work harmoniously.

Now as per this doctrine the court held that if no inherent power is present then no conflict will arise but if any conflict comes in force just because the court is trying to interpret a particular law so they should attempt to give effect to both as far as possible.

So to connect them together by doing something without doing any kind of amendment. After all the efforts to make everything look balanced if any interpretation is done then the court has to implement Fundamental rights over DPSP.

In the case of **Kesavananda Bharathi, 1973** Supreme Court held that Parliament can amend any part of the Constitution but without destroying the basic structure of the constitution. Now, the second clause of Article 31 (C), as we have read earlier, was declared unconstitutional and void because that was against the basic structure. However, the first clause of Article 31 (C) was said to be valid. In response, the parliament brought the 42nd Amendment Act, 1976 and extended the scope of the above provisions of Article 31 (C).

Now in the case of **Pathumma vs. the State of Kerala, 1978**, the Supreme Court emphasised on the purpose of DPSP that is to fix some social- economic goals. The constitution aims at bringing about a combination between DPSP and Fundamental rights which is reflected in several other cases as well.

In **Minerva Mills Case**, the Court held that the law under Article 31 (C) would be protected only if it is made to implement the directive in Article 39 (b) and (c) and not in any other DPSP. Earlier protection was given to all the DPSP but after this case, it becomes restrictions and was declared that if protection is given to all DPSP it will be declared as void and unconstitutional in nature.

In **State of Kerala vs. N.M.Thomas, 1976**, the Supreme Court said that Fundamental rights and DPSP should be built in such a way to be with each other and every effort should be taken by the court to resolve the dispute between them.

In **Olga Tellis vs. Bombay Municipal Corporation, 1985**, the Supreme Court has submitted that DPSP are fundamental in the governance of the country so equal importance should be given to meaning and concept of fundamental rights

In **Dalmia Cement vs. Union of India**, the Supreme Court said that Fundamental rights and DPSP are supplementary and complementary to each other and the preamble to the constitution which gives an introduction, fundamental rights, DPSP are conscience of the Constitution.

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.

So basically, in all these cases, what they are trying to explain is that Fundamental rights and DPSP go together. Neither of them is supreme to each other.

Government has done several acts for the implementation purpose like panchayat were established by 73rd amendment, Nagar Palika under Article 41, compulsory education to every child who is below the age of 14 years and it was made Fundamental rights, to protect monuments of national importance now this right was converted into a law that is **Ancient and Historical Monuments and Archaeological sites and remains (Declaration of National Importance) Act, 1951**.

Conclusion

It can be concluded by saying that the basic feature of the constitution is to maintain harmony between fundamental rights and DPSP. They are complementary and supplementary to each other. The theme of fundamental rights must be made in light to DPSP.