

## LECTURE NOTES – DIRECTIVE PRINCIPLES

**Article 36 to 51** of the Constitution of India embodies the Directive Principles of State policy and for these we are indebted to the Constitution of Ireland. The objective is to establish a social and economic democracy in India.

**Article 37** reveals that:

1. The Directive Principles are not justiciable
2. They are Fundamental to the governance of the country
3. It shall be the duty of the State to apply these Directive Principles while formulating policies or making laws for the governance of the State

### **Classification of DPs**

#### **1. Socialist Principles**

*Article 38 – the state shall endeavour to formulate such social system which will secure social, economic and political justice to all in all the spheres of life. Article 39(a) - the state shall try to formulate its policy in such a manner so as to secure adequate means of livelihood for all its citizens. Article 39(b) - the ownership of material resources would be controlled in such a manner so as to subserve the common good. Article 39(c) - the economy of the state will be administered in such a manner so that wealth may not yet be concentrated in a few hands and the means of production may not be used against the public interest. Article 41 - the State will work within the limits of its economic viability and progress, provide to the citizens the right to work, the right to education and general assistance in the event of unemployment, old age, disease and other disabilities. Article 42 - the state will make provisions for the creation of just and humane conditions of work. It will also ensure maternity relief. Article 43 - the state will ensure adequate wages, good life and rest to the labourers. The state will also endeavour to make available to the labourers various socio-cultural facilities.*

#### **2. Liberal Principles**

*Article 44 - The State shall endeavour to formulate and implement a Uniform Civil Code for all the people living throughout the territory of India. Article 45 - the State shall endeavour to provide early childhood care and education for all the children until they complete the age of six years. Article 47 - the State shall strive to raise the level of nutrition and the standard of living. Thus, it will endeavour to improve upon the health of the people. Article 48 - the State shall strive to organise agriculture and husbandry on modern and scientific lines. It will also try to maintain and improve upon the breed of the animals. Article 50 - the state will try to separate the judiciary from the executive in the case of public service.*

### 3. Gandhian Principles

Article 4 - the State will strive to organise Panchayats in villages and will endow them with such powers which enable them to act as units of self government. Article 43 - the state shall strive to develop the cottage industry in the rural areas both, on individual or cooperative basis. Article 47 - the state will strive to ban the consumption of wine, other intoxicating drinks and all such commodities which are considered injurious to health. Article 48 suggests that the State will ban slaughtering of cows, calves and other milch cattle.

### 4. International principles

Article 51(a)- The State will strive to promote international peace and security. Article 51(b)- The State will strive to maintain just and honourable relations among various states in the world. Article 51(c)- The State will endeavour to promote respect for International treaties, agreements, and law. Article 51(f)- The State will strive to settle international disputes by arbitration.

### 'Fundamentalization' of Directive Principles

The Supreme Court has, in a number of judgments, referred to the importance of the Directive Principles. It has called these principles the "conscience" and the "core" of the Constitution. These principles are the "goals" to be achieved by Part III of the Constitution. They are intended to ensure "distributive justice" for removal of inequalities and disabilities and to achieve a fair division of wealth amongst the members of the society. The Supreme Court held that the courts can look at the Directive Principles for the purpose of interpretation of the fundamental rights. The courts will adopt that interpretation which makes the fundamental rights meaningful and efficacious. The courts have to make every attempt to reconcile the fundamental rights with the Directive Principles remembering that the reason why the Directive Principles were left by the founding fathers as non-enforceable was to give the Government sufficient latitude to implement them.

### Directives contained in other parts (Important)

Besides the directives contained in Part IV, there are certain other directives addressed to the state in other part of the Constitution. These 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 Hindi 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.

## Fundamental Rights vs Directive Principles

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 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 Directives, neither the state nor individual can violate any existing law or legal right under colour of following a Directives.
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..
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 and economic order.
6. The court cannot declare any law as void on the ground that it contravenes the directives.

## Relative Importance of DPs vis-a-vis FRs

During the first sixteen years of the operation of the Constitution, the directive principles were considered subordinate to the fundamental rights: the courts struck 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 by 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. 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. The Supreme Court, after the judgment in the **Kesavananda Bharati case**, has adopted the view of the Fundamental Rights and Directive Principles being complementary to

each other, each supplementing the other's role in aiming at the same goal of establishing a welfare state.

*“The judicial approach should be **dynamic rather than static, pragmatic and not pedantic and elastic rather than rigid**. This Court while acting as a sentinel on the qui vive to protect fundamental rights guaranteed to the citizens of the country must try to **strike a just balance between the fundamental rights and the larger and broader interests of society** so that when such a right clashes with a larger interest of the country it must yield to the latter.”* – Supreme Court in Kesavananda Bharati judgment

### **The Doctrine of Basic Structure (1973)**

From the *Kesavananda* case emerged this doctrine, which suggested that there can be no law in violation of the "basic structure" of the constitution. Although, what it exactly comprises of is subject to some debate, usually the following come under this doctrine -

- The supremacy of the constitution.
- Republican and democratic form of government.
- The secular character of the Constitution.
- Maintenance of the separation of powers.
- The federal character of the Constitution.

### **Criticism of DPs**

- Can lead to ‘situations of conflict’ between the center and the states
  - If the Parliament passes a law to enforce DPs, even if it is beyond the fiscal reach of the states to implement the laws, failure to do so will be subject to art 256 (state governments are supposed to exercise their executive powers in accordance with the laws passed by the Parliament). If the state does not follow 256, then by art 365 (if the state does not follow the mandates of the Parliament, then the President can deem this to be a ‘breakdown of constitutional machinery’)
- Social values combined with sentimental values – prevention of cow-slaughter and alcohol consumption combined with principles of social and economic justice (39b, 39c)!
- It is said they imbibe the spirit of Fabian socialism – which is now losing relevance
  - The ideas of 5 year plans, setting up large and diversified public sector and nationalization of key industries came from erstwhile USSR
  - However, unlike USSR, India became a democracy with a Fabian aim of socialism – that is – achieve socialism through evolution, not revolution (e.g. Bolshevik Revolution of 1917)
  - After Liberalization, Privatization, Globalization (LPG) in 1991, leading to a restricted role of public sector, the very idea of socialism is under threat

- ✓ e.g. Right after independence, we acquired land from the big landlords and distributed it to the landless tillers – now we do the opposite – we acquire land from poor farmers and hand it over to big capitalists!
- These are Non-justiciable – then how can the courts monitor their implementation. Although, the courts, especially since the 1990s, have started giving significance to the DPs through ‘judicial activism’.
- No proper classification is done – the segregation into Socialist, Gandhian, Liberal and International principles was not there in the Constitution.
- Some Directive Principles are not practicable – strict nation-wide ban on alcohol can never be practically enforced.
- No mention of methods to implement these – no time frame, no process, no agencies prescribed.

### Importance of DPs

- ✚ Lay down the foundation of Economic Democracy
- ✚ Measuring rods to judge the achievements of the Govt
- ✚ They establish welfare state
- ✚ These are Fundamental in the Governance of the country.
- ✚ These Principles supplement Fundamental rights
- ✚ Guiding Principles for courts
- ✚ They bring **stability and continuity** in State policies

### Sanctions behind the DPs

- ✓ Constitution itself
- ✓ Public opinion
- ✓ Practical utility of a few DPs
- ✓ Constitutional amendments
- ✓ Laws made by the government
- ✓ Executive orders

### Practice Questions

1. During the drafting of the Constitution, T.T. Krishnamachari said, **“The chapter on Directive Principles is a veritable dustbin of sentiment ... sufficiently resilient as to permit any individual of this house to ride his hobby horse into it.”** Do you agree? (150 words)
2. Have the DPs really remained non-justiciable? Comment, using the recent judgments of the Supreme Court. (250 words)
3. Can the government of the day be taken to task for not implementing DPs? Why?(50 words)
4. Which DPs have been shifted to the category of FRs? Should all the DPs be accorded the status of Fundamental Rights? (150 words)
5. What do you understand by the doctrine of basic structure of our Constitution? (100 words)
6. Besides the directives contained in Part IV, are there any other directives in the Constitution? (50 words)